

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JASON MATTE,

Claimant,

v.

DAVID R. BATES, d.b.a.
PORTABLE CEDAR CABINS,

Defendant.

IC 2024-022682

**ORDER DENYING RECONSIDERATION
AND ORDER ON ATTORNEY FEES**

Filed
June 26, 2026
Idaho Industrial Commission

Pursuant to Idaho Code § 72-718, Defendant timely moved for reconsideration of the Idaho Industrial Commission's (hereinafter, "Commission") Order approving the Referee's Findings of Fact, Conclusions of Law, and Recommendation filed on March 10, 2026. Defendant submitted a memorandum in support of the motion for reconsideration.

On April 10, 2026, Claimant filed a Response to Defendant's Motion for Reconsideration.

In addition, Claimant filed his Memorandum in Support of Attorney Fees and Supporting Memorandum on March 26, 2026. Claimant analyzed the factors outlined in *Hogaboom v. Economy Mattress*, 107 Idaho 13, 16 (1984), citing the contingency fee agreement between Claimant and Counsel. Claimant requests 30% attorney fees from May 20, 2024, to the present, on the total benefit amount of \$178,772.97, and the 10% penalty under Idaho Code § 72-210, on those benefits. In total, Claimant contends he is entitled to \$58,995.08 in attorney fees. Defendant urges the Commission to consider the significant

ORDER DENYING RECONSIDERATION AND ORDER ON ATTORNEY FEES - 1

windfall Claimant will receive pursuant to *Neel* and contends that attorney fees should not be assessed on the full-invoiced *Neel* amount. Defendant proposes basing the fees on the value of indemnity benefits owed and mileage/travel expenses but excluding the full-invoiced *Neel* amount. Def. Resp. to Clmnt. Mot. for Atty. Fees at 2-3.

CONTENTIONS OF THE PARTIES ON RECONSIDERATION

Defendant's Argument. Defendant contends that the Referee applied the incorrect standard when evaluating the compensability of Claimant's July 2025 infection, and that Claimant lacked medical testimony supporting the claim for compensability. Def. Memo. at 2. Defendant argues that no medical evidence specifically addressed causation for the 2025 index finger infection, and the similarity in symptoms to his 2024 injury does not make Defendant liable for all future medical care related to that finger. *Id.* at 2-3.

Second, Defendant argues that *Neel* does not apply to all charges related to Claimant's July 2025 finger infection. *Neel v. Western Constr., Inc.*, 147 Idaho 146, 148, 206 (2009). *Id.* at 3-4. Defendants argue that medical treatment incurred after the Commission's August 5, 2025, determination, is not subject to *Neel*. *Id.* at 4. Defendant differentiates this case from *Millard v. Abco Constr., Inc.*, 161 Idaho 194 (2016). Def. Memo. Supp. Mot. For Recons., 5. Specifically, Defendant points out that the August 2025 compensability determination had medical records for two visits related to the index finger infection: July 28, 2025 and August 4, 2025. Def. Memo. Supp. Mot. for Recons., 5; Ex. P at 727-32. When the Commission issued its March 10, 2026, holding Mr. Bates liable for all past due medical treatment at the full-invoiced amount, it held *Neel* does not apply to medical treatment incurred after August 5, 2025. In addition, Defendant contends that *Neel* does not

apply to treatment incurred at Heritage Health after August 4, 2025 (the last record of treatment from the facility in evidence) or after September 13, 2024, at Kootenai Health.

Should the Commission uphold its compensability determination, Defendants assert that *Neel* does not apply to medical treatment incurred after August 5, 2025. Def. Memo. Supp. Mot. for Recons. at 6. Further, Defendants contend that *Neel* does not apply to treatment incurred at Heritage Health after August 4, 2025 (the last record of treatment from the facility in evidence) or after September 13, 2024, at Kootenai Health. Def. Memo. Supp. Mot. for Recons. at 6.

Claimant's Arguments. Claimant argues that the compensable consequences test has been satisfied. Clmnt. Resp. to Mot. for Recons. at 2. Under the two-part inquiry in *Miklos v. L&W Supply Corp.*, 582 P.3d 60, 71 (Idaho 2026), the aggravation of an injury initially sustained at work is also compensable, even if the aggravation occurs outside of work or after the employer-employee relationship ends. The Commission is presented with no new factual or legal propositions to keep the Commission from simply "... rehashing evidence previously presented" as held in *Curtis v. MH King Co.*, 142 Idaho 383, 389 (2005). Primarily, Claimant contends that Claimant aggravated his industrial injury when working on his car, and there's been no showing of a deliberate disregard of the material risk of harm. Clmnt. Response, 2-3. Second, Claimant argues that the Commission should reject a narrow reading of *Neel*, and that Defendant should not argue that *Neel* is inapplicable where they have not paid any benefits.

STANDARDS FOR MOTIONS TO RECONSIDER

A decision of the Commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated, provided that within 20 days from the date of the filing of

ORDER DENYING RECONSIDERATION AND ORDER ON ATTORNEY FEES - 3

the decision, any party may move for reconsideration. Idaho Code § 72-718 (2026). However, “[i]t is axiomatic that a [party] must present to the Commission new reasons factually and legally to support a hearing on [a] Motion for Rehearing/Reconsideration rather than rehashing evidence previously presented.” *Curtis*, 142 Idaho at 388. The Commission may reverse its decision upon a motion for reconsideration, or rehear the decision in question, based on the arguments presented, or upon its own motion, provided that it acts within the time frame established in Idaho Code § 72-718. *See Dennis v. School District No. 91*, 135 Idaho 94, 97 (2000) (citing *Kindred v. Amalgamated Sugar Co.*, 114 Idaho 284, 290 (1988)). A motion for reconsideration must be properly supported by a recitation of the factual findings and/or legal conclusions with which the moving party takes issue. *Whitmore v. Cabela’s*, IC 2007-033768 at 3 (Idaho Indus. Comm’n 2011). However, the Commission is not inclined to re-weigh evidence and arguments during reconsideration simply because the case was not resolved in a party’s favor.

DISCUSSION

On March 10, 2026, the Industrial Commission issued an order accepting Referee Harper’s Finding of Facts and Conclusions of Law as its own. Mar. 10 Order at 1. Per Idaho Code § 72-718 and JRP 3(G), parties may file a Motion for Reconsideration within twenty days from the filing of a final decision. The responding party must file a response within fourteen days after such a motion is filed. JRP 3(G). After a response is filed, the movant must respond within ten days. *Id.* Here, Defendant timely filed a Motion for Reconsideration on March 30, 2026. Def. Mot. for Recons. On April 10, 2026, Claimant timely responded. Clmnt. Resp. to Mot. for Recons. Defendant did not reply to Claimant’s response.

ORDER DENYING RECONSIDERATION AND ORDER ON ATTORNEY FEES - 4

Meanwhile, in the March 10 Order, the Commission ordered the Claimant to file a Motion for Attorney Fees within twenty-one days, and provided fourteen days from the date of that filing for the Defendant to respond and a further seven days for the Claimant to reply. Mar. 10 Order ¶ 7. On March 26, 2026, Claimant timely submitted the requested motion. Clmnt. Mot. for Atty. Fees. On April 9, 2026, Defendant timely responded. Def. Resp. to Mot. for Atty. Fees. On April 13, 2026, Claimant timely replied to Defendant's Response. Clmnt. Reply to Resp. to Mot. for Atty. Fees.

The Compensable Consequences Doctrine

In the instant case, Claimant's industrial injury developed complications beyond what have been expected following the May 24, 2024, industrial accident. Initially, Claimant cut his right index and middle fingers and received treatment at Kootenai Hospital and Harborview Hospital. F.O.F. ¶ 2. Thereafter, Claimant's suffered an infection during his treatment that necessitated the amputation of Claimant's middle finger. *Id.* ¶ 4. Between the first and second hearings, Claimant had surgery on his right index finger to treat an infection that had developed. *Id.* ¶¶ 12-13. In July 2025, Claimant bumped his right index finger while working on his truck. *Id.* ¶ 12. When Claimant's right index finger showed signs of infection, his provider ordered x-rays and a course of antibiotics, noting Claimant's history of prior infection and the amputation from his industrial accident. *Id.* ¶ 12.

The Court has recently reminded us of the correct application of the compensable consequences doctrine, that is: the aggravation of an injury initially sustained at work is also compensable, even if the aggravation occurs outside of work or after the employer no longer employs the claimant. *Miklos*, 582 P.3d at 60. Employer has the burden of showing that

the aggravation resulted from a rash or deliberate disregard of a material risk that the harm would occur. *Id.* at 71.

Here, Claimant had non-industrial event (bumping his right index finger while working on his truck) that affected an industrially injured body part, and his provider ordered a course of precautionary treatment. Because there has been no showing of a rash or deliberate disregard of a material risk that such harm would occur, we remain persuaded that the correct application of the compensable consequences doctrine supports the causation determination between the initial industrial accident and the subsequent treatment for the right index finger around July 2025. *Miklos* and the remedial and humane purposes of the workers' compensation system constrain us from a narrow, technical construction of the compensable consequences doctrine. We do not require a "special verbal formula" to establish causation. *Jensen v. City of Pocatello*, 135 Idaho 406, 412-13 (2000). Claimant persuasively established the causal relationship between the initial industrial accident and the subsequent treatment.

Defendant's arguments concerning the cost are reminiscent of the matter of *Chavez v. Kevin Stokes*, where the employer objected to the Life Flight expenses as unreasonable medical care for the partial amputation of the claimant's little finger. *Sohar Chavez, Claimant*, No. IC 2012-025814, at 5, 2014 WL 5320546, at *5 (Idaho Ind. Comm'n Sept. 26, 2014). Given that the utilization of Life Flight was unsuccessful at preventing the amputation, employer strenuously objected to the high cost of the treatment. *Id.* Defendants were reminded that the evaluation of an injured worker's treatment should not be made on retrospective analysis of the treatment's efficacy. "According to Idaho Workers' Compensation law precedent, the ultimate outcome of the treatment is neither the only nor an infallible indicator of reasonable treatment, but one factor in a more comprehensive analysis."

ORDER DENYING RECONSIDERATION AND ORDER ON ATTORNEY FEES - 6

Id.; *Campagni v. The Disney Store*, No. IC 2006-003561 at 40 (Idaho Indus. Comm’n 2013) (“The evaluation of an injured worker’s entitlement to medical treatment should not be made on the basis of retrospective analysis of whether that treatment proved efficacious.”). We are not unsympathetic that the peculiar facts of this case resulted in a substantial “full-invoiced” amount of medical bills; however, given the finding of compensability, those medical bills are appropriately Defendant’s responsibility.

***Neel* and the Uninsured Employer**

The over-arching issue on reconsideration is whether an uninsured Employer has the ability to review medical bills for reasonableness or if *Neel* applies. Defendant’s strongest arguments focus on the timing of the compensability determination, and that only two bills were admitted into evidence at the time of the hearing.

We start with the *Neel* doctrine and its application to the uninsured employer. *Neel* holds a surety liable for the full-invoiced amounts of a worker’s medical bills when (1) the surety denies a claim and (2) that claim is subsequently deemed compensable by the Commission. *Neel*, 147 Idaho at 147, 150; *Millard v. Abco Construction, Inc.*, 161 Idaho at 197. “Because Surety had initially denied the claim, it could not use the worker’s compensation regulatory scheme to reduce the worker’s bills.” *Millard*, 161 Idaho at 196 (citing *Neel*, 147 Idaho at 147) (brackets omitted). In *Millard*, the Court elaborated and held that *Neel* does not apply to all related bills in perpetuity; bills need to be denied, not simply pending, and bills must be found compensable. The subject Defendant is uninsured. We do not believe that an uninsured Defendant should be allowed the same privileges as a licensed surety to adjust worker’s compensation claims or use the regulatory scheme to conform bills to the Commission’s medical fee schedule.

For the uninsured employer, Idaho Code § 72-210 directs the Commission to award the injured employee an amount equal to ten percent (10%) of the total amount of the employee's compensation together with costs, if any, and reasonable attorney's fees. The total amount of compensation owed to the injured worker should be calculated using the full-invoiced cost per *Neel. Neel*, 147 Idaho at 149. In cases involving an uninsured employer, the Commission standardly holds the record open for the submission of additional medical bills, and then provides a sum certain amount in its order to facilitate the injured worker's enforcement of the Commission's order in district court. *Richard C. Mallery, Claimant*, No. IC 03-003816, 03-005856, 2004 WL 3330244 at *10-*11 (Idaho Ind. Comm'n Nov. 29, 2004); see *Jeremiah Johnston, Claimant*, No. IC 2024-028171, at 4, 6, 2026 WL 388518, at *4, *6 (Idaho Ind. Comm'n Jan. 22, 2026); see also *Matthew Deroche, Claimant*, No. IC 2011-024892, at 1, 2014 WL 4087604 at *1 (Idaho Ind. Comm'n July 28, 2014); *Mark Mingo, Claimant*, No. IC 04-008901, 2006 WL 4008696 at *2 (Idaho Ind. Comm'n Nov. 17, 2006).

In *Vawter v. United Parcel Service, Inc.*, 155 Idaho 903 (2014), Vawter was allowed to recover incurred medical expenses notwithstanding his previous request for a sum certain order. We find that Claimant should be afforded the same treatment. We agree with Defendant that only compensable bills should be included in the Idaho Code § 72-210 calculation, and accept Claimant's concession that the July 2025 lab work bills and March 2025 bills were not related and the March 2025 bills were not from Kootenai Health, but were actually billed by Heritage Health. Employer remains responsible for all accident-related medical bills incurred by Claimant.

Arguments of the Parties on Attorney Fees

We now turn to the other arguments of counsel on attorney fees. The Commission has already decided that consistent with Idaho Code § 72-210, the Claimant is to be awarded reasonable attorney fees subject to timely filing of memoranda. F.O.F. ¶ 14. The Claimant has timely filed such memorandum and the Defendant has timely responded. Clmnt. Mot. for Atty. Fees.; Def. Resp. to Mot for Atty. Fees. Accordingly, the only issue remaining is to determine what fees are reasonable. This requires consideration of whether fees should be assessed upon the full recovery, inclusive of fully-invoiced *Neel* amounts. Fees of 30% of recovery are rebuttably presumed reasonable. IDAPA 17.01.01.802.01(b) (2026).

Defendant argues that assessing fees upon the *Neel* amounts would result in an unreasonable windfall to Claimant. Def. Resp. to Mot. for Atty. Fees. at 3-4. This argument hinges upon finding that *Neel* amounts are unreasonable and not part of the risk born by the Defendant in denying payment for the Claimant's pertinent medical expenses. However, the Defendant bore the risk of "guessing wrong," *Thompson v. Burley Inn, Inc.*, 173 Idaho 637, 649 (2024). The Commission will not conclude that Claimant's recovery is unreasonable simply because the Defendant failed to mitigate his own risks. Especially as it pertains to the 10% penalty levied in response to Defendant's failure to comply with Idaho Code § 72-210.

Defendant also raises some of the *Hogaboom* factors. Def. Resp. to Mot. for Atty. Fees. at 4-5. While the Claimant failed to address this argument directly, the Claimant has successfully shown that the requested fees of \$58,995.08 are reasonable. However, to the extent that the factors illustrated by the Defendant are not rebutted, the Commission finds the Defendant's arguments unpersuasive.

ORDER DENYING RECONSIDERATION AND ORDER ON ATTORNEY FEES - 9

First, the Defendant argues that the Claimant's requested fees are too high for the work this case required. While the parties agreed to bifurcate proceedings, the practical effect of this was to require two sets of briefing and hearings. This workload is perhaps less than what would normally be incurred on an hourly basis, but this is the recognized nature of contingent fees. Contingent fees are often somewhat higher than would normally be incurred on an hourly basis so as to encourage attorneys to take on cases that otherwise would be unlikely to receive representation. *Hogaboom*, 107 Idaho at 17. The Commission will not second-guess the legislature on the necessity or utility of such a policy. This factor favors the reasonableness of the Claimant's requested fees.

Second, the Defendant argues that the fee is disproportionate for the routine and uncomplicated issues this case brought. The first issue of whether Claimant was indeed an employee of the Defendant, was indeed not complex, nor was it novel. However, Defendant properly brought matters of first impression before the Commission. The second issue that was bifurcated concerned the application of the *Neel* Doctrine to the penalized, unlawfully uninsured employer. The Commission is not persuaded that such an issue is routine, being a novel matter, nor are we persuaded that the matter was trivial or simple. Therefore, we conclude that this factor favors the reasonableness of the Claimant's requested fees, though it is mitigated by the routine triviality of the first issue.

Third, the Defendant argues that the requested fee is a windfall and beyond customary. This 30% fee is presumed reasonable. This is enshrined in regulation. Further, the Commission has already stated that the amount is not unreasonably excessive due to the application of the *Neel* Doctrine. This factor favors the reasonableness of the Claimant's requested fees.

ORDER DENYING RECONSIDERATION AND ORDER ON ATTORNEY FEES - 10

Finally, the Defendant argues that possible recovery is excessive. The Claimant, had the Defendant properly paid the medical expenses, would have recovered approximately \$100,000 less. However, the purpose of awarding attorney's fees at this stage is responsive to the reality that the Defendant failed to mitigate his own risk. Nonetheless, the amount that Claimant requests in fees is substantially larger than what may be strictly necessary to make him whole. Therefore, this factor lightly disfavors the reasonableness of the Claimant's requested amount.

Idaho Code § 72-210 awards "costs . . . and reasonable attorney's fees." Defendant has failed to rebut the presumption that 30% is reasonable. IDAPA 17.01.01.802.01(b). Only one of the Hogaboom Factors favors the Defendant, while at least three other factors favor the Claimant, so the Commission cannot conclude that \$58,995.08 award is unreasonable.

ORDER

Based on the foregoing, Defendants' request for reconsideration is DENIED. The Defendant is ordered to pay \$255,645.35 to the Claimant, comprised of benefits totaling \$178,772.97, Idaho Code § 72-210 penalties totaling \$17,877.30, and attorney fees totaling \$58,995.08. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 26th day of June, 2026.

INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair



Aaron White

Aaron White, Commissioner

ATTEST:

Kameron Slay

Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on 26th day of June, 2026, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION AND ORDER ON ATTORNEY FEES** was served upon the following:

☒ US MAIL ☐ EMAIL

MATTHEW ANDREW
PO BOX 170
MELBA, ID 83641
mandrew@andrewinjurylaw.com

☐ US MAIL ☒ EMAIL

EMMA WILSON
1703 W HILL ROAD
BOISE, ID 83702
wilson@bvwcomplaw.com



Assistant Commission Secretary