

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PAMELA POWELL,

Claimant,

v.

HORIZON AIR INDUSTRIES, INC.,

Employer,

and

ACE AMERICA INSURANCE COMPANY,

Surety,

Defendants.

IC 2021-013168

**ORDER DENYING CLAIMANT'S
MOTION TO ENFORCE MEDIATION
SETTLEMENT AGREEMENT**

**FILED JULY 17, 2026
IDAHO INDUSTRIAL COMMISSION**

INTRODUCTION

This matter is before the Idaho Industrial Commission ("Commission") upon Pamela Powell's ("Claimant") May 20, 2026, Motion to Enforce Mediation Settlement Agreement. Attorney Anthony Shively represents the Claimant. Jamie Moon and Sheldon Eilers represent the Defendant.

The Claimant moves for the Commission to enforce a mediation settlement agreement either through an order for Defendants to prepare the documents or for the Commission to adopt the terms agreed upon. Mot. to Enforce Mediation Settlement Agreement at 4. The Commission is unable to do either.

ARGUMENTS OF THE PARTIES

Claimant filed a claim with the Commission arising from injuries sustained while employed by Horizon Air Industries, Inc. on May 12, 2021. Mot. to Enforce Mediation Settlement Agreement. at 1. The Parties participated in voluntary mediation on September 12, 2025. *Id.*

Claimant argues that Defendants were to draft a settlement agreement memorializing the terms agreed upon during the September 12, 2025, mediation. *Id.* at 2. Claimant contends that Defendants failed to materially respond to any communications regarding the settlement for the subsequent eight months, effectively freezing the settlement from proceeding. *Id.*

The following concrete injuries are claimed to have occurred due to the delay in the settlement agreement being filed: (1) Claimant was unable to receive benefits, (2) Claimant had accrual of interest on the CMS conditional payment loan, (3) Claimant had a loan referred to collections, and (4) Claimant incurred significant expenditure of attorney and paralegal time in pursuing the settlement paperwork. Mot. to Enforce Mediation Settlement Agreement. at 2. Claimant states that the settlement paperwork is still outstanding and has not been filed with the Commission. Shively Decl. ¶ 25.

Claimant now requests that the Commission either draft and enforce a settlement agreement, or order Defendants to draft the settlement agreement within fourteen days of an order. Mot. to Enforce Mediation Settlement Agreement. at 4.

No response to the Motion to Enforce Mediation Settlement Agreement was filed.

For the reasons discussed below, the Commission declines to draft or enforce a settlement agreement. The Commission does not have a filed settlement agreement, and therefore, the

agreement is not final and binding on both parties. JRP 18(4); § 72-718. Additionally, the Commission is unable to draft settlement agreements for parties post-mediation. *See* JRP 17(E).

ISSUES

1. Whether a settlement agreement exists under JRP 18.
2. Whether the Commission can create binding terms in a settlement agreement.
3. Whether the Commission can enforce a settlement agreement.

FINDINGS OF FACTS

1. Claimant sustained an injury while employed with Horizon Air Industries. Mot. to Enforce Mediation Settlement Agreement. at 1.

2. On November 6, 2023, Claimant filed a workers' compensation complaint with the Idaho Industrial Commission. I.C. No. 2021-013168.

3. On September 12, 2025, mediation was held before the Industrial Commission between the Claimant and the Defendant. Shively Decl. ¶ 3. Anthony Shively represented the Claimant and Jamie Moon represented the Defendant.

4. Counsel for Claimant reached out on October 14, 2025, regarding the status of the settlement paperwork, to which Counsel for the Defendant responded they had "submitted [the] records to Examworks and [were] waiting on the MSA." Ex. 2.

5. Counsel for the Defense submitted an MSA to CMS for approval. *See* Ex. 1. The report was returned on October 27, 2025. *Id.*

6. On December 10, 2025, Claimant requested a letter stating that Claimants' knee replacement was not accepted as part of settlement terms, Counsel for the Defendant did not respond. Ex. 4; Shively Decl. ¶ 7.

7. On December 18, 2025, Claimant contacted Counsel for the Defendant about the letter a second time, again Counsel for the Defendant did not respond. Ex. 4; Shively Decl. ¶ 8.

8. On February 18, 2026, Counsel for Claimant emailed regarding the settlement. Ex. 10. Counsel for Claimant stated that he received a response the same day. Shively Decl. ¶¶ 12, 13.

9. On March 3 and 24, 2026, two emails were sent by Counsel for the Claimant, neither of which received a response. Shively Decl. ¶¶ 15, 17, 18; Ex. 12.

10. On April 1, 2026, Claimant requested the Defendant provide a letter confirming the settlement check had not been sent. Shively Decl. ¶ 19; Ex. 14. Again, no response was received from Counsel for Defendant. Shively Decl. ¶ 19.

11. On April 8, 2026, Counsel for Claimant sent an email demanding a response, notifying Defense about the financial harm, and including a threat to pursue a breach of contract claim. Ex. 15. No response was received from Counsel for the Defense. Shively Decl. ¶¶ 19, 21.

12. Claimant states that two phone calls happened between April 28 and May 8, 2026. *Id.* at 22, 23. Counsel for Claimant states that there has been no contact between the parties after May 8 that is on record. *Id.* ¶ 25.

13. No settlement agreement was filed with the Commission. Shively Decl. ¶ 25.

14. Claimant's Motion contains no documents about the contents of the settlement agreement such as monetary amounts or terms agreed upon in mediation. The Commission has no record as to what was decided between the parties.

DISCUSSION

I. Mediation Process

Claimants are provided with the opportunity to use mediation through the Commission as a route to reach a mutually acceptable resolution of their dispute through discussion and

negotiation. JRP (17)(B). During mediation, parties are provided with an impartial and neutral mediator who does not offer legal advice. JRP (17)(B). The Commission states that mediation is a voluntary and informal process and “if the participants reach an agreement, the parties shall submit a written and signed settlement agreement for approval by the Commission.” JRP (17)(E). Prior to submission of a written document, mediation does not create a binding legal contract within the Commission. *See* JRP 17(A).

Communication between the parties in the mediation is privileged and disclosure could result in preclusion from asserting privilege. I.R.E. 507(3), (4)(b). The mediator is expected to maintain confidentiality of any information shared during the process and cannot provide that information without consent of both parties. JRP 17(B); I.R.E. 507(3)(a). Additionally, any party of mediation may prevent disclosure of a mediation communication. I.R.E. 507(3)(b)(1).

Claimant asks that the Commission draft a settlement agreement stemming from the negotiations during the mediation process. Mot. to Enforce Mediation Settlement Agreement. at 4. If a settlement agreement were to be drafted by the Commission based on the terms agreed upon in mediation, the agreement would be in violation of the confidentiality surrounding the process. JRP 17 (B); I.R.E. 507(3). The communication that occurred between the parties on September 12, 2025, is confidential and inaccessible to the Commission. I.R.E. 507(3). The Commission does not know the terms agreed upon until it is reduced to writing and filed. Therefore, it cannot draft a settlement agreement for the parties. JRP 17(D)(3).

II. A Settlement Agreement Does Not Exist

For a settlement agreement to constitute a final decision, it must be filed with the Commission and then becomes effective the date of filing. Idaho Code § 72-718; JRP (18)(A)(4).

The Commission has limited review power when a settlement agreement is submitted by represented parties. § 72-404. A settlement agreement submitted by represented parties is reviewed for content to ensure it fulfills all requirements. § 72-404(5). As a result, the Commission will neither review the terms of settlement agreements written by counsel or alter them. § 72-404. If the agreement does not fulfill the requirements, it will be rejected for the parties to rework. § 72-404(2). These requirements include a detailed ledger of all benefits paid or disputed, and all terms agreed upon by the parties, it must also “identify the attorney who prepared it, the actual surety’s name as identified by the National Council on Compensation Insurance (NCCI) coverage filing, and the Industrial Commission claim number(s) for the claim(s) being settled.” § 72-404(5); JRP 18(A)(1). A settlement agreement that satisfies all the requirements constitutes a final decision of the Commission. § 72-718; JRP 18(A)(4).

Claimant asks that the Commission enforce a settlement agreement on both parties. Mot. to Enforce Mediation Settlement Agreement. at 1. The Commission does not have a filed settlement agreement on record, and the lack of a filed agreement is uncontested. Mot. to Enforce Mediation Settlement Agreement. at 3. Without a filed agreement, there is no final decision or award, and the claim remains open with the Commission. § 72-404(5).

III. The Commission Cannot Draft a Settlement Agreement

Once a settlement agreement is filed and approved by the Commission it “becomes an award and is final and may not be reopened or set aside absent allegations and proof of fraud.” § 72-718; *Harmon v. Lute's Constr. Co.*, 112 Idaho 291, 293, 732 P.2d 260, 262 (1986). After a final decision has been filed, the Commission then dismisses the case with prejudice, closing the claim permanently. § 72-404(6). Any party may move for reconsideration within twenty days from

the date of filing the decision, but after the twenty days have elapsed, settlement agreements are explicitly denied modification. § 72-718-719.

If the Commission were to draft a settlement agreement for enforcement, it would be binding and final on both parties. To do so, the Commission would have to determine if a contract had been formed then reduce that contract to writing. For the Commission to determine whether there was a binding contract at the conclusion of mediation would require the interpretation of whether the essential terms were agreed upon by both parties, which is usually done in a court of law. *Lawrence v. Hutchinson*, 146 Idaho 892, 899, 204 P.3d 532, 539 (Ct. App. 2009) (holding that the court could not enforce an oral contract with only money amounts and unresolved terms on record). As expressed above, negotiations in mediation are confidential, meaning the Commission has no knowledge of the resulting agreements until they are filed. JRP (A).

The Commission cannot draft a settlement agreement because it cannot force binding contractual obligations onto unwilling parties. Moreso, it would create undue hardship, because the finalized document has limited ability to be contested. § 72-718. The Commission is unaware of the agreed terms for the settlement agreement that was reached during mediation by the parties. Claimant and mediator are both bound by confidentiality regarding the terms of the agreement resulting in the Commission having no way to learn the terms. JRP 17(B); I.R.E. 507(3) . Lastly, the Commission cannot create a settlement agreement on unwilling parties because it is up to the parties to reduce the agreement to writing. *See* JRP 17(E).

IV. Statute Vests Enforcement of Settlement Agreements with District Court.

The Industrial Commission is vested with jurisdiction to consider all questions arising under the workers' compensation laws of this State. § 72-707. The Commission has established

the ability to interpret contract terms in specific matters relating to Workers Compensation, but the Commission is unable to enforce the contract after establishing the terms. *See Palomo v. J.R. Simplot Co.*, 131 Idaho 314, 317, 955 P.2d 1093, 1096 (1998). After a settlement has been filed with the Commission, any subsequent enforcement must be sought through the district court. § 72-735.

This motion in front of the Commission is for enforcement. Mot. To Enforce Mediation Settlement Agreement. at 4. A motion to enforce a mediation settlement agreement does not fall within the jurisdiction of Commission. The Commission, by statute, does not have the power to enforce a settlement agreement much less draft one. § 72-735. Contract matters, including enforcement of settlement agreements, are in the purview of the District Court.

V. Failed Mediation to Adjudication

When mediation does not result in a settlement agreement being filed, the matter must then go before the Commission. *See* § 72-707. As established above, no settlement agreement exists, and the Commission will not intervene in the post-mediation process. JRP (17).

Claimant states that the unreasonable delay in submitting a Settlement Agreement warrants an award of attorney's fees. Claimants Mot. to Enforce Mediation Settlement Agreement. at 4. Attorney fees are not granted as a matter of right under the Idaho Workers Compensation Law but may be recovered only under specific circumstances. § 72-804; IDAPA 17.01.01.802. The decision that grounds exist for awarding attorney fees is a factual determination which rests with the Commission. *Troutner v. Traffic Control Company*, 97 Idaho 525, 528, 547 P.2d 1130, 1133 (1976). The Commission can find no suitable grounds under which to award attorney fees and therefore cannot award attorney fees at the present time. Though attorney's fees are not currently

a ripe issue, during adjudication, attorney's fees may be awarded for an unreasonable delay.
§ 72-804.

CONCLUSION

In conclusion, the Commission is unable to enforce an unfiled settlement agreement or draft one for the parties of Mediation. A workers' compensation dispute that was not resolved during mediation would have a more appropriate forum in adjudication moving forward.

ORDER

Based on the foregoing the Commission rules as follows:

1. The Order to Enforce Mediation Settlement Agreement is DENIED.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 17th day of July, 2026.

INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair



Aaron White

Aaron White, Commissioner

ATTEST:

M. Womer

Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on 17th day of July, 2026, a true and correct copy of the foregoing **ORDER DENYING CLAIMAINT'S MOTION TO ENFORCE MEDIATION SETTLEMENT AGREEMENT** was served upon the following:

☒ US MAIL ☒ EMAIL

ANTHONY SHIVELY
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☒ US MAIL ☒ EMAIL

JAMIE MOON
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A handwritten signature in dark ink, appearing to read "M. Moon", with a long, sweeping horizontal line extending to the right.

Commission Secretary