

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BRYAN BALLENGEE,

Claimant,

v.

SWIRE PACIFIC HOLDINGS, INC.,

Employer,

and

SAFETY NATIONAL CASUALTY
CORPORATION,

Surety,
Defendants.

I.C. No.: 2025-008212

**ORDER DENYING REQUEST FOR
RECONSIDERATION**

**FILED AUGUST 4, 2026
IDAHO INDUSTRIAL COMMISSION**

Defendants move for Reconsideration of Referee Rauschendorfer's, Amended Order Granting Claimant's second Request for Expedited/Bifurcated Hearing granting Bryan Ballengee's ("Claimant") Request for an Expedited/Bifurcated Hearing.

On May 7, 2026, Claimant moved for an expedited hearing due to imminent financial hardship. Claimant's 2nd Req. for Expedited/Bifurcated Hearing at 3. Claimant asserted that the balance in his bank account would not be enough to meet his basic living expenses in the near future. *Id.* Defendant responded on May 19, 2026, objecting to bifurcation stating that the Claimant had not provided a convincing argument as to why it was necessary. Def's. Objection to Claimants 2nd Request for Expedited/Bifurcated Hearing at 4. Defense also stated that he would not be available until October 13, 2026, a five (5) month period. ¹ *Id.* Referee Rauschendorfer held a telephone conference on June 3, 2026, where she was apprised of the situation and listened to the arguments and objections of each party. Transcript Audio-Recorded Telephone Conference June

¹ When Claimant is granted an expedited hearing, the Commission will prioritize adjudication of the urgent issues over Counsels lack of availability.

3, 2026, 2-19. On June 16, 2026, Referee Rauschendorfer, after having reviewed the files and been fully advised on the premises, granted an expedited and bifurcated hearing due to significant financial hardship. Order Granting Claimant's 2nd Req. for Expedited/Bifurcated Hearing at 1.

The Commission has reviewed parties Motions, the supporting memorandum, the Referee's Amended Order, June 16, 2026, the procedural history of this matter, and all applicable statutes and rules. For the reasons set forth below, the Motion for Reconsideration is DENIED.

STANDARDS OF RECONSIDERATION

Under Idaho Code § 72-718, 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 the decision, any party may move for reconsideration. 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 v. M.H. King Co.*, 142 Idaho 383, 388, 128 P.3d 920 (2005).

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 with the time frame established in Idaho Code § 72-718. *See Dennis v. School District No. 91*, 135 Idaho 94, 97, 15 P.3d 329, 332 (2000) (citing *Kindred v. Amalgamated Sugar Co.*, 114 Idaho 284, 756 P.2d 410 (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. The Commission is not inclined to re-weigh evidence and arguments during reconsideration simply because a motion was not decided in a party's favor.

ANALYSIS

I. Defendants' Motion for Reconsideration Does Not Meet Legal Threshold for Reconsideration

Defendants filed a motion for reconsideration and argue that the Referee erred in granting Claimant's Second Request for Expedited/Bifurcated Hearing Defendant. Motion for Reconsideration at 2. Defendant alleges that when the Referee Ordered a bifurcated hearing, she did not consider any of the objections that were made, and if she had, the objections would have been dispositive.² *Id.* Defendants further contend that the bifurcated hearing contravenes Idaho Code § 72-708 and JRP 1(A) and 8(C). Claimants assert that the expedited and bifurcated hearing is warranted under JRP 8(D) due to significant financial hardship. The Commission agrees.

Orders of the referee are not generally subject to immediate review by the Commission. To obtain Commission review of a referee's interlocutory order, a party must ordinarily preserve the issue and raise it in post-hearing briefing submitted after the worker's compensation claim hearing. *See Harvath v. Idaho Food Bank*, IIC 2010-020646 (Dec. 2, 2011). However, prehearing challenges to a referee's order are permitted where the challenge "involves a controlling question of law as to which there is substantial grounds for difference of opinion," and when immediate consideration of the challenge "may materially advance the orderly resolution of the litigation." *Ayala v. Robert J. Meyers Farms, Inc.*, IIC 2009-029533 (Jan. 29, 2021) (citing *Kindred v. Amalgamated Sugar Co.*, 118 Idaho 147, 149, 795 P.2d 309, 311 (1990)); *see also* IC 2010-020646 (2011).

While an interlocutory review is not seen in statute, the court has held that the correct procedure is through a motion for reconsideration. *See Wheaton v. Indus. Special Indem. Fund*, 129 Idaho 538, 540, 928 P.2d 42, 44 (1996). *Wheaton* specified that a party may seek a ruling through reconsideration on a matter decided by a referee and not confirmed or approved by the Commission at large. *Id.*; *See Simpson v. Louisiana-Pacific Corp.*, 134 Idaho 209, 998 P.2d 1122

² In the Referee's Order it states that she reviewed the file and was fully advised on the matter, resulting in Defendants objections being unpersuasive opposed to not considered.

(2000). *Wheaton* specifies that while Referee's orders are not appealable to the court if they are not adopted by the Commission at large, they should appeal within the Commission which preserves them for appellate appeal. Moreover, *Simpson* reinforced the *Wheaton* decision by again specifying that a motion for reconsideration to the Commission is the correct procedural vehicle for interlocutory review. *Simpson v. Louisiana-Pac. Corp.*, 134 Idaho 209, 211, 998 P.2d 1122, 1124 (2000). *Simpson* reinforced the need for the Commission to facilitate appeals for interlocutory decisions by Referees, arguing that if the Commission did not reconsider a Referees' decision, then it would be unreviewable. The Commission does not favor the practice of filing motions for reconsideration by the full Commission for referee orders on interlocutory procedural matters. *Rodriguez v. Walmart Associates, Inc.*, IIC 2023-014279 (August 30, 2024).

The Commission construes this request reconsideration to be one for a prehearing or interlocutory review. The Commission finds no basis to grant prehearing or interlocutory reconsideration. The Defense does not raise an extraordinary circumstance such as new facts or a controlling question of law for the reconsideration. Additionally, there is no opposing case law cited in either the Motion or the Memorandum for the Reconsideration. While the Defendant alleges that the Referees' approval of an emergency hearing for financial matters was one that lacked substance, JRP 8 plainly asserting the opposite: "Subsection D provides a specific forum to resolve issues which substantially impact the health or **financial stability** of an injured worker and need immediate attention by the Commission." (Emphasis added). Additionally, JRP 8(D) grants the Referee discretion to determine whether an expedited hearing is warranted. The Referee's decision to grant bifurcation and expedite a partial hearing does not reflect misapplication of JRP 8(D). The Referee's exercise of discretion is entitled to deference unless it is an abuse of discretion, which is examined below.

II. The Referee Did Not Abuse Her Discretion

Bifurcation is an inherent power of the Commission under JRP 1. *See* § 72-506. Once a case has been assigned to a Referee, they have discretion to hear it as they see legally fit without routine intervention from the Commission. *See* § 72-717. Much as a Referee is able to consolidate a case, they are able to bifurcate a hearing. *See McGivney v. Aerocet, Inc.*, 165 Idaho 227, 232, 443 P.3d 241, 246 (2019). In the deciding to bifurcate a case, “the determination of what constitutes a situation justifying an emergency hearing shall be within the Commission's sole discretion.” JRP 8(D). A Referee’s decision to bifurcate a hearing is discretionary and reviewable under an abuse of discretion standard. *See Id.* The four essentials of that test are whether the hearing officer: “(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of [her] discretion; (3) acted consistently with the legal standards applicable to the specific choices available to [her]; and (4) reached [her] decision by the exercise of reason.” *Id.* (quoting *Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

In bifurcating the case at hand, it was a discretionary choice by the Referee. In evaluating that choice, the Commission would weigh the four essentials of the test. The Referee correctly understood bifurcation as a discretionary choice within her boundaries. During the phone conference the Referee allowed both parties to present arguments and subsequently reviewed the files. The Referee ensure she was fully apprised of the circumstances and arguments of each party before issuing her Order. In bifurcating this case, the Referee correctly perceived the issue to be one of discretion and then used that discretion appropriately. Her actions were consistent with the legal standards applicable under JRP 8(D), which plainly states that emergency hearings are a forum to resolve the financial stability of an injured worker. The Referee’s Amended Order is clear

in its reasoning, scope, and legal basis. The Commission does not find ambiguity or internal inconsistency requiring modification.

III. Sanctions and Attorney's Fees

The Commission finds that the standard set forth by Idaho Code § 72-804 is unambiguous and uncomplicated. Idaho Code § 72-804 reads:

If the commission or any court before whom any proceedings are brought under this law determines that the employer or his surety contested a claim for compensation made by an injured employee or dependent of a deceased employee without reasonable ground, or that an employer or his surety neglected or refused within a reasonable [*6] time after receipt of a written claim for compensation to pay to the injured employee or his dependents the compensation provided by law, or without reasonable grounds discontinued payment of compensation as provided by law justly due and owing to the employee or his dependents, the employer shall pay reasonable attorney fees in addition to the compensation provided by this law. In all such cases the fees of attorneys employed by injured employees or their dependents shall be fixed by the commission.

Idaho Code § 72-804 provides for an award of attorney fees in the event an employer unreasonably denies a claim, or neglects to pay or refuses to pay an injured employee compensation within a reasonable time. Of course, finding that an employer or surety acted unreasonably must be supported by substantial and competent evidence in order to withstand scrutiny on appeal. *Skrudland v. Supervalu, Inc.*, IIC 2012-002491 (June 9, 2014). Additionally, pursuant to Rule 16 of the Judicial Rules of Practice and Procedure under the Idaho Workers' Compensation Law, the Commission retains power to impose appropriate sanctions for any violation or abuse of its rules or procedures.

The Commission is unable to grant attorney's fees to Claimant under § 72-804. While Claimant asserts that Defendant has only filed a motion for reconsideration to unduly delay proceedings, this is a subjective argument that the Commission cannot base an award of attorney's fees on. Additionally, there is no pervasive indication that the defendants pursued this

reconsideration for an improper purpose. Due to the lack of objective evidence, the Commission also declines to impose sanctions.

ORDER

IT IS HEREBY ORDERED:

Defendants' Motion for Reconsideration of the Referee's Amended Order, June 16, 2026, is DENIED. The Referee's Order granting Claimant's Second Request for Expedited/Bifurcated Hearing remains in full force and effect.

DATED this 4th day of August, 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 4th day of August, 2026, a true and correct copy of the foregoing **ORDER DENYING REQUEST FOR RECONSIDERATION** was served upon the following:

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

Commission Secretary