BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LANCE DURHAM , Claimant, v. THE KINETIC GROUP INC., Employer, and XL INSURANCE AMERICA, INC., Surety, Defendants.	**I.C. No.: 2022-019379** **ORDER GRANTING PETITION FOR DECLARATORY RULING** **FILED AUGUST 13, 2026** **IDAHO INDUSTRIAL COMMISSION**

This matter is before the Idaho Industrial Commission ("Commission") upon Claimant's July 15, 2026, Petition for Declaratory Ruling ("Petition") under Judicial Rules of Practice and Procedures ("JRP") 15 on I.C. § 72-734. On July 29, 2026, Defendants responded to the request for declaratory ruling. Michael Kessinger represents Petitioner and Lora Breen represents Defendants.

Claimant petitions the Commission to enter a declaratory ruling on whether, under Idaho Code § 72-734, statutory interest accrues until receipt of check by the Claimant, or until the mailing of the check by Defendant. JRP 15 Pet. For Decl. Ruling on I.C. § 72-734 at 1. Claimant states precedent indicates that interest accrues until receipt of check by the Claimant and the common law mailbox rule does not apply. Memo. in Support of JRP 15 Pet. for Decl. Ruling at 6. Additionally, Claimant states that the Defendants engaged in unreasonable conduct and a § 72-804 attorneys fee award is mandatory. Clmnt's. Reply in Support of JRP 15 Decl. Ruling at 2.

Defendants argue that their interpretation of § 72-734 is the common law mailbox rule, stating if the receipt of the check by Claimant is used as the standard, it invites misuse and gamesmanship. Response to JRP. 15 Pet. For Decl. Ruling at 2-3.

As explained below, the Commission finds that interest accrues until the receipt of check by Claimant.

STANDARD OF REVIEW

Pursuant to JRP 15, a party may request a declaratory judgment to resolve a dispute when there is "an actual controversy over the construction, validity or applicability of a statute, rule, or order." JRP 15(C). Under JRP 15(C) the following requirements must be met:

1. The petitioner must expressly seek a declaratory ruling and must identify the statute, rule, or order on which a ruling is requested and state the issue or issues to be decided;
2. The petitioner must allege that an actual controversy exists over the construction, validity or applicability of the statute, rule, or order and must state with specificity the nature of the controversy;
3. The petitioner must have an interest which is directly affected by the statute, rule, or order in which a ruling is requested and must plainly state that interest in the petition; and
4. The petition shall be accompanied by a memorandum setting forth all relevant facts and law in support thereof.

DISCUSSION

Here, the parties have presented an actual controversy on the construction of a statute and demonstrated an interest which is directly affected. The statute at issue is Idaho Code § 72-734 and whether the statutory interest under accrues to the receipt of check by the Claimant or by mailing of the check by Defendant. Regarding interest, Idaho Code § 72-734 provides:

> Whenever a decision shall have been entered by the commission awarding compensation of any kind to a claimant, such award shall accrue and the employer shall become liable for, and shall pay, interest thereon from the date of such decision pursuant to the rates established and existing as of the date of such decision, pursuant to section 28-22-104(2), Idaho Code. Such interest shall accrue on all compensation then due and payable, and on all compensation successively becoming due thereafter, from the respective due dates, regardless of whether an

appeal shall be taken from the decision of the commission, until the time of payment thereof.

The Commission has ruled that Idaho Code § 72-734 is applicable to lump sum settlement agreements because such agreements constitute decisions and awards entered by the Commission upon an agreed set of facts presented by the parties. *Norris v. Caldwell Memorial Hospital*, IIC 0456, 84-483242 (Aug. 6, 1986). A settlement agreement "shall be effective on the date it is filed with the commission and shall for all purposes constitute an adjudication of the claims resolved in the settlement agreement." Idaho Code § 72-404(5).

As the Commission noted in *Norris*, § 72-734 Idaho Code mandates the award of interest, because the statute specifically provides that interest shall accrue from the date of the Commission's decision and award. "Therefore, delays which may have been occasioned by mailing the approved award or by mailing the payment check or by administrative delays encountered by the surety do not serve to mitigate the surety's liability under Sec.72-734." IC 84-483242 (1986). In a later decision, the Commission found a surety liable for interest due to a delay in payment caused by an error, not indicated to be in bad faith, reinforcing the *Norris* holding.[1] *Hendrix v. Kodiak Am.*, IC No. 2020-016090 (Nov. 3, 2023). Therefore, the Commission holds that interest accrues from the date of filing until receipt of payment by the Claimant, since mailing delays do not excuse surety's liability.[2]

Parties frequently include a stipulation in their settlement agreements that stays the accumulation of statutory interest for a period of from the date of filing to allow time for the sureties to process payment of the award. The Settlement Agreement in this case had a stay of

[1] The error in this case is not specified.
[2] The Commission acknowledges Defendants concern about the potential misuse of this ruling. In the instant case it does not appear that Claimant unreasonably denied receipt of the check. That conduct will be addressed once it comes before the Commission.

thirty days regarding the accumulation of statutory interest, from May 28, 2026, to June 27, 2026. Memo. in Support of JRP 15 Pet. for Decl. Ruling at 5. Therefore, pursuant to Idaho Code § 72-734, the statutory interest began to accrue, and Defendant became liable for such interest, on June 27, 2026. *Id.* The Commission finds that the interest began June 27, 2026, and ended on July 6, 2026, when the check was received by the Claimant, totaling nine days.[3]

II. Attorney's Fees

Claimant asserts entitlement to attorney fees pursuant to Idaho Code § 72-804 which provides:

> 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 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.

The decision that grounds exist for awarding a claimant 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).

In the instant case, the Commission does not find that the Defendants contested the interest request on unreasonable grounds.[4] The issue warranted declaratory ruling as the precedent was limited to only two Commission decisions regarding statutory interest, and the Commission's approach departs from the widely used mailbox rule.[5] Although Defendants did not prevail on the

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[3] This is a declaratory ruling, not a motion for statutory interest, therefore the Commission will not weigh in on award amounts.

[4] An attorney fees request is inconsistent with the purpose of a declaratory ruling. If the statute is unclear and requires a declaratory judgement, then there was a controversy to be resolved and the two interpretations in this case were both reasonable.

[5] The first case is *Norris*, a case from 1986 that provides little context and is not readily available online. The second case is *Hendrix* from 2023, which again provides for little context, with the delay being due to an unspecified error.

outcome, they responded promptly. Defendants conceded that they owe two days of interest due to mailing the check on June 29, 2026.[6] The Commission declines to award attorney fees in these circumstances.

ORDER

IT IS HEREBY ORDERED that Claimant's Petition for Declaratory Ruling is GRANTED. Under Idaho Code § 72-734 interest is tolled from date that interest becomes due until receipt of payment by the Claimant.

[6] It appears that Defendants found out about the delay in mailing after the Petition was filed and have since conceded it is owed.

DATED this 13th day of August, 2026.

INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair

Aaron White, Commissioner

ATTEST:

Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on 13th day of August, 2026, a true and correct copy of the foregoing **ORDER ON PETITION FOR DECLARATORY RULING** was served upon the following:

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