

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GARY HARP,

Claimant,

v.

TRADEFORCE STAFFING SOLUTIONS OF
COLORADO,

Employer,

And

QBE INSURANCE CORPORATION,
Surety,

Defendants.

I.C. No.: 2024-035009

**ORDER DENYING REQUEST FOR
RECONSIDERATION**

**FILED SEPTEMBER 10, 2026
IDAHO INDUSTRIAL
COMMISSION**

Defendants move for Reconsideration of Referee Rauschendorfer's Order Denying Defendants' Motion for Relief Under Idaho Code §72-434.

Claimant is represented by Andrew Adams. Defendants are represented by Matthew Pappas.

On June 22, 2026, Defendants moved for a suspension of benefits due to Gary Harp ("Claimant's") failure to attend a scheduled IME. Mot. to Suspend Benefits at 1-2. Defendants assert that Claimant unreasonably missed his IME appointment without a valid excuse. *Id.* at 2. Claimant responded on June 26, 2026, objecting to motion for suspension of benefits arguing that the Claimant had missed a scheduled IME due to recording the incorrect date in his phone. Response To Defs' Mot. to Suspend Benefits at 2. Claimant affirms that he is willing and able to attend the IME when it is rescheduled. *Id.* Referee Rauschendorfer held a telephone conference on July 15, 2026, where she was apprised of the situation and listened to the arguments and objections of each party. Order Denying Defs' Mot. for Relief Under Idaho Code §72-434 at 1. On July 16,

2026, Referee Rauschendorfer issued her ordering denying the suspension of benefits making the discretionary call that missing one IME did not constitute unreasonable conduct. *Id.* at 2.

The Commission has considered both parties' motions, 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.

The Commission construes this request for reconsideration to be one for a prehearing or interlocutory review. 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* IIC 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 (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).

ANALYSIS

Defendants argue that the Referee erred in denying the motion to suspend benefits. Memo. in Support of Mot. for Recons. of Order Denying Def's Mot. to Suspend Benefits at 3. Defendant alleges that, while Referee Rauschendorfer has discretion to determine what is an unreasonable obstruction of an IME, she decided to rule incorrectly in this case and overlooked Idaho Code § 72-434 and JRP 22.¹ *Id.* Claimant asserts that the denial was a discretionary decision by the Referee, and after considering the unique fact pattern, the decision to not suspend benefits was fair. Response to Defendants Motion to Reconsider at 2. The Commission agrees with Claimant.

Once a case has been assigned to a Referee, they have discretion to manage the case proceedings. *See* § 72-717. Determining whether a missed IME is an unreasonable obstruction under § 72-434 is discretionary choice and reviewable under an abuse of discretion standard. *Hewson V. Asker's Thrift Shop*, 120 Idaho 164, 168, 814 P.2d 424, 428 (1991). 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.” *McGivney v. Aerocet, Inc.*, 165 Idaho 227, 232, 443 P.3d 241, 246 (2019) (citing *Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)). The burden of proving an unreasonable obstruction to an IME under § 72-434 rests on the employer. *Hewson v. Asker's Thrift Shop*, 120 Idaho 164, 168, 814 P.2d 424, 428 (1991). “Whether or not an employee's conduct rises to the level of an unreasonable obstruction is a factual question reserved for the Industrial Commission to determine.” *Id.* (citing *Profitt v. Deatley-Overman, Inc.*, 86 Idaho 207, 384 P.2d 473 (1963)).

¹ Defense asserts an incorrected decided discretionary decision but does not provide any case law for his analysis into the issue.

Referee Rauschendorfer appropriately exercised her discretion in her ruling to deny suspending benefits. In evaluating that choice, the Commission would weigh the four essentials of the test. The Referee correctly understood that she could use discretion in determining if the missed IME was an unreasonable obstruction for the surety suspend benefits. During the phone conference the Referee allowed both parties to present arguments and subsequently reviewed the case file. In denying the suspension, 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 22 and § 72-434. The Referee's Order is clear in its reasoning, scope, and legal basis. Referee Rauschendorfer was persuaded that Claimant missed the scheduled IME due to recording the incorrect date in his phone, and that Claimant is willing to attend an IME. Response To Defs' Mot. to Suspend Benefits at 2. The Commission does not find ambiguity or internal inconsistency requiring modification.

The Commission finds no basis to grant prehearing or interlocutory reconsideration. Defendants do not raise an extraordinary circumstance such as new facts or a controlling question of law for the reconsideration. Additionally, Defendants have not cited any opposing case law or presented a new legal argument as to why the Referee erred in using her discretion to rule the missed IME as reasonable.

ORDER

IT IS HEREBY ORDERED that Defendants' Motion for Reconsideration of Order Denying Defendants' Motion to Suspend Benefits is DENIED.

DATED this 10th day of September, 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 10th day of September, 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