BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LANCE DURHAM, Claimant, v. THE KINETIC GROUP, INC., Employer, XL INSURANCE AMERICA, INC., Surety, Defendants.	**I.C. No.: 2022-019379** **ORDER DENYING REQUEST FOR RECONSIDERATION** **FILED OCTOBER 30, 2026** **IDAHO INDUSTRIAL COMMISSION**

Claimant moves for reconsideration of the Declaratory Ruling issued on August 13, 2026. Claimant asserts that the Commission erred by not fully adjudicating the issue of attorney's fees and misstated the precedent on statutory interest. Claimant's Br. in Support of Mot. for Recons. 2-3. Specifically, Claimant requests an award of attorney fees and that the Commission to change the word "tolled" to "accrued" in the Order Granting Declaratory Judgement. *Id.* at 11.

Defendants argue that Claimant is not entitled to attorney's fees. Defs' Resp. to Mot. for Recons. 1. In Defendants' response, Defendants assert the ambiguous precedent to whether the mailbox rule applies and maintain their position in their initial response to the JRP 15 petition. *Id.* Defendants state that once noticed on the issue of a delayed check the interest was paid promptly. Resp. To JRP 15 Pet. for Decl. Ruling on I.C. §72-734 2-3.

Claimant is represented by Michael Kessigner. Defendants are represented by Lora Breen.

Based on the foregoing, Claimant's motion for reconsideration is DENIED.

BACKGROUND

On May 20, 2026, Claimant and Defendants entered into a settlement agreement (hereinafter "Agreement") to resolve multiple worker's compensation claims. The Claimant alleged entitlement to all applicable benefits for his alleged accidents and injuries or occupational diseases in addition to an award of attorney fees for unreasonable delay or denial of benefits. Lump Sum Settlement Agreement and Order of Discharge 5, 6. Defendants asserted that the paid or denied benefits have been appropriate also noting that any additional benefits due to Claimant are addressed in this Agreement. *Id.* Both parties note that "as a compromise, and to avoid the time and expense of litigation, the parties prefer to fully and finally settle these claims as set forth herein." *Id.* at 6.

The Agreement provided a waiting period of thirty days for Surety to process payment without accruing interest. *Id.* at 6, 7. The Agreement memorialized the following terms:

> (1) The Industrial Commission enter an order declaring that this agreement is a full and complete resolution of the rights and responsibilities of the respective parties under the Workers' Compensation Law of the State of Idaho . . . and that all claims and proceedings pertaining thereto now pending before the Industrial Commission be dismissed with prejudice.
>
> (2) The Industrial Commission enter an order that this agreement fully and finally disposes of all claims by Claimant against Defendants under the Idaho Workers' Compensation Law on account of the industrial accidents and injuries or occupational diseases set forth herein.
>
> (3) The Industrial Commission enter an order fully and finally discharging and releasing Defendants from past, present, and future liability or responsibility of any kind to Claimant under the Idaho Workers' Compensation Law arising from the industrial accidents and injuries or occupational diseases.

Id. at 7, 8. Both parties agreed that Claimant retained the right to statutory interest under Idaho Code § 72-734, and that the statutory interest accrued after the thirty-day period had passed. *Id*. at 6-7.

On May 28, 2026, the Idaho Industrial Commission approved the Agreement and dismissed

the worker's compensation cases with prejudice based on the stipulation of the parties. The Surety did not pay the settlement amount within the next thirty days due to mailing delay. After informal interaction between counsel, there arose a genuine dispute over whether payment was considered made on mailing or by receipt of payment. *See* JRP 15 Pet. for Decl. Ruling on I.C. § 72-734 1-10.

Claimant elected to file a petition for declaratory ruling about Idaho Code § 72-734 and requested an award of attorney fees. *Id.* The Industrial Commission granted the motion on August 13, 2026; thereby clarifying precedent on the date when payment is considered "made" under Idaho Code § 72-734. The Commission affirmed that interest accrues until receipt of payment by the Claimant and that interest was due under Idaho Code § 72-734. Order Granting Pet. for Decl. Rul. 4. Defendants were ordered to pay interest; the Commission declined to award attorney's fees. *Id.* at 4-5.

DISCUSSION

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, 925 (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. 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.

The Commission has performed a de novo review of the record. Under Idaho Workers' Compensation Law, parties "may compromise and settle claims by way of agreements for lump sum payments, future payments, accrued income benefits, future income benefits, medical cost reimbursements, and other benefits payable" under the act. Idaho Code § 72-404(1).

On July 1, 2022, Idaho Code § 72-404 was substantially amended to largely remove the Commission's authority to review and approve proposed settlement agreements. Prior to July 1, 2022, the Commission was required to review all proposed settlement agreements and determine if the proposed settlement agreement was in the best interest of the parties. Now, the Commission only retains this authority in certain, limited scenarios – in cases where at least one of the parties is unrepresented by counsel or where a party is a minor child or legally incompetent person.

In cases where both parties are represented by counsel "commission approval is not required for parties to enter into enforceable compromise or settlement agreements." § 72-404(2). A represented party may request the Commission to review and approve a proposed compromise or settlement agreement. § 72-404(2). If such review is desired, the party shall make the request contemporaneously with the submission of the proposed settlement agreement to the Commission and shall be accompanied by such documents or explanation as the requesting party desires the Commission to consider in connection with the proposed settlement. Rule 18(A)(6) of the Judicial Rules of Practice and Procedure Under the Idaho Workers' Compensation Law ("JRP"), effective July 9, 2025.

A settlement agreement shall include, at a minimum, a detailed ledger of all benefits paid or disputed, and all terms agreed upon by the parties. § 72-404(5). 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." *Id*. Within seven days of the filing of a settlement agreement, the Commission shall issue a notice of dismissal with prejudice. § 72-404(6).

Pursuant to this statute, if both parties are represented by counsel and do not request approval by the Commission, the Commission's review of the settlement agreement is limited to merely ascertain if the minimum filing requirements of § 72-404 are met. Essentially, the Commission's review of the agreement is primarily for recordkeeping purposes. *See* § 72-404(5) ("All compromise and settlement agreements shall be filed with the commission for recordkeeping purposes and for purposes of assessment under section 72-327, Idaho Code").

In compliance with Idaho Code § 72-404, in scenarios where both parties are represented by counsel and do not request approval by the Commission, the Commission only requires that a settlement agreement identify the attorney who prepared it, the surety name, the claim number, set forth the terms of the agreement, affirm that the claimant is neither a minor child nor legally incompetent, that it be signed by the parties and their attorneys, and include a ledger of benefits paid or disputed. See JRP 18(A)(1). A settlement agreement meeting these basic requirements is deemed filed and "shall constitute a final decision of the Commission under § 72-718, effective the date of filing." JRP 18(A)(4). The Commission then enters a dismissal of the claim with prejudice, subject to the terms of the settlement agreement, within seven days of its filing. JRP 18(A)(5); *see also* § 72-404(6).

In the instant case, the Parties, through their respective Counsel, filed a Lump Sum

Settlement Agreement and Order of Discharge. Per § 72-404(5)-(6), the Agreement was effective upon filing, and the Commission approved and dismissed the claims with prejudice on May 28, 2026. The Agreement comports with the statutory requirements, and its terms included the request that the Commission dismiss the cases by Claimant and release "defendants from past, present, and future liability or responsibility of any kind to Claimant under the Idaho Workers' Compensation Law." Lump Sum Settlement Agreement and Order of Discharge 8. The Commission finds it unambiguous that both parties agreed to have the workers' compensations claims dismissed with prejudice.

In Idaho Code § 72-404(6), it specifically states that the case is dismissed with prejudice *excepting* future claims and benefits agreed upon by the party. The statute specifically bars any further claims for benefits that were not expressly agreed upon by the parties in the filing of a lump sum settlement agreement. *See* § 72-404(6). Additionally, it is well-held that "[a] court will not add to the terms of an unambiguous contract or make a better agreement for the parties than they themselves have been satisfied to make." *Simplot v. Simplot*, 109 Idaho 92, 94, 705 P.2d 1047, 1049 (Ct. App. 1985) (citing *Minidoka County v. Krieger*, 88 Idaho 395, 399 P.2d 962 (1964)). The result of § 72-404(6) and case precedent result in the Commission being constrained from rewriting the terms of a filed settlement agreement.

In the subject settlement agreement, the parties include the following provision:

> The parties agree that no interest provided for in Idaho Code § 72-734 shall be claimed by Claimant or payable by Defendants for the first thirty (30) day period following the date of the Industrial Commission's Order of Discharge. Claimant does not waive any rights to interest under Idaho Code § 72-734 accruing after the thirtieth day following the Industrial Commission's dismissal.

Lump Sum Settlement Agreement and Order of Discharge 6, 7. This provision illustrates the parties' intent for statutory interest to be the consequence for a delayed payment; notably, the Agreement does not include attorney's fees as a consequence for delayed payment. We expect

material terms to be articulated in the Agreement. Therefore, the Commission finds that the Agreement limits Claimant to statutory interest for late payment. Therefore, Claimant's request for attorney's fees is DENIED.[1]

ERRATUM REQUEST

The Commission wishes to correct a clerical omission made on page 5 of the Order Granting Petition for Declaratory Ruling filed February 13, 2026. The Order states that "interest is *tolled* from date that [it] becomes due" when it should read the "interest *accrues* from the date that [it] becomes due." The Commission appreciates Claimant bringing the error to our attention.

ORDER

Therefore, Claimant's Motion for Reconsideration is DENIED. IT IS SO ORDERED.

[1]. Claimant is reminded that he filed for a declaratory ruling to clarify the expectations of the statute and case law. Notwithstanding his request for a declaratory ruling, Claimant has now raised arguments that are philosophically inconsistent with the Claimant's request for declaratory ruling and inconsistent with the Agreement's terms. Assuming, *arguendo*, that the Agreement allowed an award of attorney's fees, the factual circumstances in this case do not support them.

DATED this 30th day of October, 2026.

INDUSTRIAL COMMISSION

Erik Farner, Chair

Aaron White, Commissioner

George Gutierrez, Commissioner

ATTEST:

Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on 30th day of October, 2026, a true and correct copy of the foregoing **ORDER DENYING REQUEST FOR RECONSIDERATION** was served upon the following:

__X___US MAIL __X___ EMAIL

MICHAEL KESSINGER
826 Main Street
LEWISTON, ID 83501
mtkessinger@gmail.com

__X___US MAIL __X___ EMAIL

LORA BREEN
1703 W HILL ROAD
BOISE, ID 83702
breen@bvwcomplaw.com

Commission Secretary