

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

DAVID COLER,

Claimant,

v.

THE HOME DEPOT USA, INC.,

Employer,

and

NEW HAMPSHIRE INSURANCE  
COMPANY,

Surety,

Defendants.

**IC 2015-013957**

**ORDER DENYING PETITION FOR  
DECLARATORY RULING**

**Filed July 2, 2020**

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On January 27, 2020, two days before the continued hearing in this matter was scheduled to commence, Claimant filed a petition for declaratory ruling with supporting memorandum pursuant to Rule 15 Judicial Rules of Practice and Procedure (JRP). Defendants filed a response on February 6, 2020. Claimant then filed a reply on February 18, 2020, outside the allowable 10-day period permitted by JRP 15(E). The following issues were presented:

1. Whether it is a violation of a claimant's due process rights to allow defendants, over objection and without prior notice, to add a new issue at the time of an I.C. § 72-714 hearing;
2. Whether, absent requisite showing of "good cause" and a commensurate order at the time of hearing, it is a violation of a claimant's due process rights to allow defendants, over objection, to continue conducting discovery and enter new medical evidence after expiration of Rule 10 deadlines and commencement of an I.C. § 72-714 hearing;

3. Whether I.C. § 72-715 Certification must be premised upon existent facts; and
4. Whether as a matter of due process, injured workers are entitled to know the professional relationship, if any, between Employer/Surety's defense counsel and purported defense witness(es).

This case arises out of an accident occurring on May 31, 2015. The matter was originally scheduled to be heard on March 1, 2019, but was then reset for April 11, 2019. The April hearing was also vacated for a number of reasons, including the unavailability of Leif Thompson, the store manager of the location at which Claimant worked. Hearing was then reset for June 19, 2019. Preparatory thereto, Claimant caused a subpoena to be issued to insure the attendance of Thompson. The subpoena was evidently served on defense counsel, not on Thompson. Thompson failed to attend the June 19, 2019 hearing, and the Referee eventually ruled that the hearing would be continued to allow the perpetuation of Thompson's testimony. This was accomplished on January 29, 2020. Claimant contends that Thompson, Defense counsel, or perhaps both have engaged in conduct violating I.C. § 72-715, and that the facts of the matter should have been certified to the District Court for contempt proceedings.

The case also involves a subpoena duces tecum issued in connection with medical records generated by Karl Watts, M.D., one of Claimant's physicians. There was some indication that not all of Dr. Watts' records on Claimant had been provided in response to the usual pre-hearing document requests. Dr. Watts' post hearing deposition duces tecum was set by defendants to assure that all Dr. Watts' records on Claimant had been obtained. The Referee allowed the deposition and agreed to take under advisement the issue of the admissibility of additional records, if any. Eventually, the deposition was cancelled when Defendants worked out a way to obtain the records by other means. Evidently, nothing particularly relevant turned up in the additional

records; neither party has requested that the hearing exhibits be supplemented with these records. However, Claimant contends that Defendants' subpoena represents an attempt to do an end run around the provisions of JRP 10, and should not be countenanced.

Defendants did not specifically request that the issue of I.C. § 72-406 apportionment be included in the issues to be heard at the June 19, 2019 hearing. Claimant objects to consideration of this unnoticed issue. The Referee has taken this objection under advisement.

Rule 15 JRP provides the option for a Declaratory Ruling as a mechanism to address the construction, validity, or applicability of any worker's compensation statute, rule, or order. The Rule provides, in pertinent part:

Whenever any person has an actual controversy over the construction, validity or applicability of a statute, rule, or order, that person may file a written petition with the Commission, subject to the following requirements:

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.

JRP 15(c).

Further, JRP 15(f)(4) authorizes the Commission to decline to take action on a Petition for Declaratory ruling where any of the following circumstances exist:

- a. The Commission lacks jurisdiction over the issue or issues presented;
- b. There is no actual controversy;

- c. The petitioner would not be directly affected by a resolution of the issue presented;
- d. The petitioner does not provide sufficient facts or other information on which the Commission may base a ruling;
- e. The issue on which a determination is sought is or should be the subject of other administrative or civil litigation or appeal; or
- f. It appears to the Commission that there is other good cause why a declaratory ruling should not be made.

In his supporting Memorandum, Claimant asserts the petition is an attempt to “avoid an *Ayala* scenario.” Although correctly highlighting the Court’s concern with due process, Claimant’s attempt to “avoid” such a situation is misguided. In *Ayala*, the Court reminded the Commission that a hearing “is an integral component of due process because it provides a claimant with an opportunity to be heard in a meaningful time and in a meaningful manner.” *Ayala v. Robert J. Meyers Farms, Inc.*, 165 Idaho 355, 445 P.3d 164 (2019). Additionally, since “the referee is the eyes and ears of the Commission,” without the benefit of the recommendation, the Commission and the Court may be impaired in the “obligation to conduct a meaningful review of all issues presented” *Id.*<sup>1</sup> The Court further emphasized that shifting from a previously established laid-out process without further notice is the “kind of move that undermines public confidence in a fair and impartial tribunal.” *Id.*

Here, the Claimant’s petition for a declaratory ruling was filed just two days before the completion of the hearing process before the referee on January 29, 2020. By the time Defendants had an opportunity to respond, the hearing was complete. This case has properly moved through the hearing process, and is currently under advisement by the Referee. In one way or another, it

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<sup>1</sup> In *Ayala*, the Court recognizes the Commission “functions much more like an appellate court in a case where a referee has been assigned,” and “does have an obligation to have those recommendations in hand before reviewing the case and making a decision.” *Id.*

appears that Claimant has raised the issues he raises here in the matter currently pending before the Referee, and the Referee has taken those objections under advisement, or otherwise acted on them. We find no reason to disrupt this process at this juncture. We make no judgment on the issues identified by Claimant. The Commission will have the opportunity to independently review the Referee's actions in this case after the Referee submits his proposed findings of fact and conclusions at law to the Commission for review.

Even though JRP 15 allows for the Commission to make declaratory rulings, the Commission may decline to make a ruling where "the issue on which a determination is sought is or should be the subject of other administrative or civil litigation or appeal." JRP 15 (F)(4)(e). Moreover, we note that one of Claimant's stated purposes in interposing the Petition for Declaratory Ruling when he did was to prevent the January 29, 2020 hearing from proceeding. (See Petition for Declaratory Ruling at 4.) The hearing was held, mooted this rationale for the petition. Therefore, the Commission finds these matters are better suited to be addressed through the normal course of proceedings and/or appeal.

Based on the foregoing, Claimant's petition for declaratory ruling is DENIED.

DATED this 2nd day of July, 2020.

INDUSTRIAL COMMISSION

  
Thomas P. Baskin, Chairman

  
Aaron White, Commissioner

  
Thomas E. Limbaugh, Commissioner

ATTEST:

*Kamerron Monroe*

Commission Secretary



**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of July, 2020, a true and correct copy of the foregoing **ORDER DENYING PETITION FOR DECLARATORY RULING** was served by email upon each of the following:

Justin Aylsworth  
Email: justin@goicoechealaw.com

Scott Wigle  
Email: swigle@bowen-bailey.com

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*Emma O. Landers*