



# IDAHO INDUSTRIAL COMMISSION

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October 3, 2022

RE: Guidance memorandum on IDAPA 17.01.01.402

This memorandum will address mechanisms available to practitioners seeking to contest application of the averaging rule pursuant to IDAPA 17.01.01.402.03 on the grounds that it would be manifestly unjust to require the averaging of impairments contemplated by IDAPA 17.01.01.402.02.

As developed in *Damian v. Big Wood Roofing, Inc.*, IC 2019-001166 (2022), in the case of an injury that is accepted as compensable, yet the parties disagree about the extent and degree of the injured worker's impairment owing to competing impairment ratings, a party seeking to avoid application of the averaging rule on the basis of manifest injustice, must apply to the Commission for relief as soon as the last of two or more impairment ratings for the accepted injury has been generated.


In cases where a complaint is already on file, a party may file a motion in conformance with current JRP Rule 3(F). Such motion must be supported by facts sufficient to warrant the relief sought, whether this comes in the form of affidavit, deposition or medical record. Similarly, under JRP 3(F)(2), an opposing party may defend the motion with such evidence as they deem necessary. In all cases, the Referee is free to craft a path going forward that meets the needs of a particular case.


In cases where no complaint has yet been filed, an aggrieved party may file a complaint similar to the complaint found at JRP Appendix 1- Workers' Compensation Complaint and must ensure all the same basic information is included. A complaint made pursuant to IDAPA 17.01.01.402.03 must identify the multiple impairment ratings at issue, and explain why it would be manifestly unjust to require averaging of the impairments. After a response or an answer is due, either party is free to request an emergency hearing pursuant to JRP 8(D). Nothing in the rule prohibits the parties and the Referee from crafting a procedure which best suits the needs of the parties to resolve the matter.

The above is not new law, but is an agency interpretation of existing law. Further questions can be directed to:

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