

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JONATHAN DAVIS,
Claimant,

v.

SPUNSTRAND, INC.,
Employer,

and

WESTERN NATIONAL ASSURANCE
COMPANY,
Surety,
Defendants,

and

CORVEL CORPORATION,
Intervenor.

IC No. 2020-028778

**ORDER GRANTING DEFENDANTS'
MOTION TO RECONSIDER
IN PART, DENYING IN PART,
AND REMAND**

FILED

AUG 29 2023

INDUSTRIAL COMMISSION

On or about July 10, 2023, the referee assigned to this matter entered an order denying Claimant's request for emergency hearing, denying the motion of Surety's third-party administrator, CorVel Corporation (CorVel) to intervene and concluding that the Industrial Commission has no jurisdiction over the matters at issue. On or about July 20, 2023, Defendants and CorVel filed the instant motion to reconsider the referee's order pursuant to the provisions of Idaho Code § 72-718. Claimant filed his response on or about July 21, 2023, and Defendants and CorVel filed their reply on or about July 21, 2023.

Pursuant to Idaho Code § 72-718, a decision of the Commission is final and conclusive as to all matters adjudicated unless a timely motion for reconsideration is filed. Motions to reconsider interlocutory orders of a referee are disfavored.

**ORDER GRANTING DEFENDANTS' MOTION TO RECONSIDER IN PART, DENYING
IN PART, AND REMAND - 1**

Here, however, the referee's order that it is the District Court, and not the Industrial Commission, that has jurisdiction over the payment of the award is tantamount to a decision resolving all issues before the Commission.

Accordingly, the peculiar facts of this case make it appropriate to entertain the request for reconsideration pursuant to Idaho Code § 72-718.

STATEMENT OF FACTS

In support of, and in response to, Defendant's motion for reconsideration, the parties have filed various affidavits and supporting documents to help explain the unusual facts of this case. The Referee to whom this case was assigned did not make any factual findings because he concluded that the Commission does not have jurisdiction over this matter. However, the legal arguments of the parties on the motion for reconsideration must be treated in the context of a factual background. Therefore, we find it necessary to discuss facts that have been asserted as true in the filings of the parties, but the discussion below is not intended to constitute findings of fact by the Commission that would bind the referee on remand.

This case has its genesis in a compensable accident/injury occurring on November 18, 2020. The claim was accepted, and the payment of benefits initiated. It is unclear when Claimant retained counsel, but he was represented by Steven Nemeč, Esq., (Nemeč) as of June 6, 2023, the date upon which the settlement agreement of the underlying claim was deemed effective.

At some point during the administration of the claim, Claimant requested that income benefits be paid to him through electronic funds transfer, as authorized by IDAPA 17.01.01.305.07.

Claimant received a number of payments on an account ending 9875. He then notified CorVel that he wished future benefits to be electronically transmitted to another account with Chime Financial, with account number ending in 5072.

A number of deposits were made to this account, the last on July 2, 2021. It is unknown whether Nemec asserted a charging lien against any of the monies paid to Claimant prior to July 2, 2021. Further, it is unknown whether Nemec had previously consented to electronic fund transfers as anticipated by IDAPA 17.01.01.305.06(c).

Between July 2, 2021 and approximately June 12, 2023, no payments on the subject claim were made to Claimant.

At some point prior to June 6, 2023, Claimant and Defendants entered into settlement negotiations concerning the underlying claim. The parties agreed to settle the claim for \$39,000, new money. On or about June 6, 2023, Claimant and Defendants filed their settlement with the Commission, which settlement is deemed effective on filing and constitutes, for all purposes, an adjudication of the claims resolved by the settlement. *See* Idaho Code § 72-404(5).

Contemporaneous with the filing of the settlement agreement, Nemec filed an attorney's charging lien with the Commission, pursuant to which he justified his claimed fees of \$9000 on available funds. The Commission approved the attorney's charging lien on or about June 6, 2023.

The settlement agreement filed with the Commission appears to allow, but does not require, the payment of the award by paper check mailed to the office of attorney:

It is further stipulated and agreed that Defendants shall pay the sum within twenty-one days, plus six days for mailing, following the date of the executed order of dismissal. Any interest allowable under the workers' compensation laws of the State of Idaho will not begin to accrue until after the twenty-one day period.

Although the settlement agreement does not require the payment of the award by paper check, the attachments to Nemec's affidavit reflect that he made immediate request for such

a check from CorVel. He also received assurance from CorVel that the check would be issued on or about June 8, 2023.

However, a paper check was not forthcoming. Rather, it appears that the award was erroneously paid by CorVel via electronic funds transfer to Claimant's Chime account. Further email exchanges between Nemec and CorVel suggest that the money deposited in the Chime account has been withdrawn, making it impossible to reverse the transaction.

For his part, Claimant contends that since monies were last deposited in his Chime account by Defendants in July of 2021, he lost access to the Chime account, and no longer uses it. He denies having withdrawn the settlement award from the Chime account.

Nemec did not give his approval to the transfer of the proceeds of settlement by electronic funds transfer.

On or about June 21, 2023, Claimant filed his complaint with the Commission requesting payment of the settlement amount, interest thereon and attorney's fees under Idaho Code § 72-804. Defendants answered on June 28, 2023, stating that the settlement amount had been paid in the same manner in which Claimant had previously received compensation. Defendants further allege that Claimant "failed or was unable to access" the settlement funds to satisfy attorney's charging lien.

An emergency hearing was requested. On July 6, 2023 a motion to intervene was filed by CorVel, the TPA of Western National Assurance Company, Surety herein.

A telephone conference was held by Referee Hummel on July 10, 2023, after which he denied the motion for emergency hearing, denied the motion to intervene, and ruled that pursuant to Idaho Code § 72-735(1), the Commission does not have jurisdiction to entertain this matter. Rather, pursuant to Idaho Code § 72-735(1), jurisdiction is vested with the District Court.

ORDER GRANTING DEFENDANTS' MOTION TO RECONSIDER IN PART, DENYING IN PART, AND REMAND - 4

A timely motion for reconsideration was filed by Defendants and CorVel.

CONTENTIONS OF THE PARTIES

CorVel takes the position that it has standing to intervene in this matter because it is the third-party administrator for Western National Assurance Company, Surety herein. As such, it is responsible for paying workers' compensation benefits to injured workers on behalf of Surety.

Allowing it to intervene in this matter will prevent duplicative litigation and the possibility of inconsistent results. CorVel argues that Idaho Code § 72-735 is inapplicable to this case since there has been no default in the payment of the award; the award was paid via electronic funds transfer to the same account to which Claimant had previously directed electronic payments to be made. Therefore, the ultimate issue before the Commission is the fate of funds that were electronically deposited in Claimant's account, not whether there has been a "default" in the payment of compensation.

Claimant asserts that the wire transfer to Claimant's Chime account was void because it did not comply with the provisions of IDAPA 17.01.01.305.06(c) inasmuch as Neme's permission was not obtained before the transfer was made. Such a payment is illegal and cannot be relied upon to satisfy Defendants obligations under the Act.

DISCUSSION

The former Idaho Code § 72-404, which required Commission approval of settlement agreements, was repealed in 2022, and replaced with a new version of the statute which, generally, dispenses with the requirement that settlements be approved by the Commission. Per Idaho Code § 72-404, "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).

Therefore, notwithstanding that the Commission did not review and approve the settlement in question, filing of the settlement nevertheless constitutes an “adjudication” of the claims which were resolved. As such, the settlement is final and conclusive as to all matters adjudicated therein. *See* Idaho Code § 72-718.

Moreover, since the settlement is deemed adjudicated by the Commission, it is enforceable pursuant to the provisions of Idaho Code § 72-735. In pertinent part, that statute provides:

In the event of default in payment of compensation due under an award and on or after the 30th day from the date upon which compensation became due, any party in interest may file in the district court for the county in which the injury or disease occurred if such occurred within the state, otherwise in the district court for the county in which the employer resides, a certified copy of the decision of the commission awarding compensation from which no appeal has been taken within the time allowed therefor, or a certified copy of the memorandum of agreement approved by the commission, and thereupon the court without notice shall render a decree of judgment in accordance therewith and cause the parties to be notified thereof.

Idaho Code § 72-735(1).

Therefore, a prerequisite to the application of the statute is a default in the payment of compensation “owed” pursuant to the settlement. The District Court has only very limited powers to enforce the collection of Commission awards. *Brannon v. Pike*, 112 Idaho 938, 737 P.2d 459 (1987).

As specified by Idaho Code § 72-733, the District Court does not have jurisdiction to review, vacate, set aside, reverse, revise, correct, or amend any order or award of the Commission. *Brannon, supra.* .

The statute which vests the District Court with power to enter judgment upon a default does not confer upon the Court jurisdiction to determine whether or not there has actually been a

ORDER GRANTING DEFENDANTS’ MOTION TO RECONSIDER IN PART, DENYING IN PART, AND REMAND - 6

default in the payment of compensation. That determinization rests with the Industrial Commission pursuant to the provisions of Idaho Code § 72-707.

As applied to the facts of the instant matter, it appears that the settlement agreement made provision for, but did not require, a payment of the award by check. The parties' conduct following the filing of the settlement also seems to indicate that a paper check would be issued and mailed to Nemecc. That the funds were transmitted, instead, by electronic funds transfer to Claimant's Chime account appears to have been the result of an error on the part of CorVel. (See the emails attached to declaration of Nemecc.)

Although the electronic funds transfer appears to have been successful, the whereabouts of the \$39,000 that was transferred is unknown; the money has been withdrawn or transferred and is no longer in the account. (See declaration of Nemecc.)

Knowing who has possession of the money may be relevant to understanding whether there has been a default in the payment of the award. If Claimant withdrew the funds then there may be no default in the payment of the award vis a vis Claimant, but Nemecc has a Commission approved attorney charging lien on those funds which must be addressed. Theft of the funds by a third party may not prove default if CorVel acted appropriately in electronically transferring the funds to the Chime Financial account. A theft from that account by a third person could not be charged to CorVel.

We come then to the assertion made by Nemecc that the transfer of funds via electronic funds transfer was inappropriate and unauthorized. Nemecc cites the Commission to the provisions of IDAPA 17.01.01.305.06(c), which provides:

If the Claimant is represented by an attorney who may have an attorney's lien for fees due on such compensation payments, the attorney must agree to payment by electronic funds transfer to Claimant's account or payment through an access card

ORDER GRANTING DEFENDANTS' MOTION TO RECONSIDER IN PART, DENYING IN PART, AND REMAND - 7

before such compensation may be paid other than by a check made payable to the Claimant and the attorney.

Therefore, where Claimant is represented by counsel who “may” have a charging lien on such compensation, the attorney must agree to an electronic transfer before money may be transmitted in this fashion.

The provision exists in order to protect the financial interest of the attorney in available funds obtained as the result of his representation. Nemecc asserts that his permission for an electronic transfer of funds was not obtained and that the transfer was therefore illegal.

Certainly, CorVel was aware of Nemecc’s representation of Claimant and was aware of the existence of the attorney’s charging lien and the Commission’s June 6, 2023 order approving counsel’s claimed fees and costs. (*See Memorandum in Support of Motion for Reconsideration, p. 3.*)

However, it also appears that previous electronic fund transfers had been made to Claimant, in fact, to the account in question. It is unknown whether Nemecc represented Claimant at the time the last of these transfers were made in July of 2021. It is unknown whether Nemecc had previously consented to such transfers, or whether he asserted a charging lien to any of the funds previously transferred to Claimant.

Suffice it to say that whether there has been a “default” in the payment of the award requires further fact finding and legal analysis that is outside of the ambit of the District Court’s jurisdiction.

Therefore, we agree with Defendants that the matter must remain with the Commission in order to determine whether there has been a default that may later, if necessary, be acted upon by the District Court.

Finally, we take up the matter of the motion to intervene by CorVel. For the reasons set forth below, we conclude that CorVel Corporation is not a proper party to this proceeding.

ORDER GRANTING DEFENDANTS’ MOTION TO RECONSIDER IN PART, DENYING IN PART, AND REMAND - 8

Idaho Code § 72-301 specifies that all employers shall secure the payment of compensation by self-insuring, or securing a policy of worker's compensation insurance from an authorized surety. Sureties are required, in turn, to provide prompt claims services through their own adjusting offices or by independent licensed resident adjusters. *See* Idaho Code § 72-305.

The Commission may withdraw the authority of the surety to provide workers' compensation insurance where surety unnecessarily delays the payment of compensation. *See* Idaho Code § 72-304.

IDAPA 17.01.01.302.01(c) discusses the Idaho resident adjuster requirements for sureties who write Idaho workers' compensation insurance. That subsection reiterates a surety's obligation to provide adjusting services, either through its own employees, or through some other Idaho licensed resident adjuster.

The Commission's authority exists with respect to employers and their sureties, not with respect to the Idaho resident adjuster that a surety may contract with for the purposes of satisfying its obligations under Idaho law.

Failings of a TPA to provide prompt claim servicing are visited upon the surety, who is ultimately responsible for properly adjusting Idaho claims. That responsibility is not assignable to a third-party administrator.

A third-party administrator whose actions or inactions imperil the ability of a surety to write workers' compensation insurance may ultimately be liable to surety, but not in any action that may be brought before the Industrial Commission.

The TPA is merely an agent of the surety, retained by the surety for the purposes of discharging a surety's responsibility under Idaho law. It is not a proper party to a proceeding before

the Commission. *Public Employees' Retirement System, Application of*, 100 Idaho 490, 600 P.2d 1146 (1979).

We decline to allow CorVel to intervene. Surety is the proper party to be held responsible for any default in the payment of compensation, even though the actions of CorVel, Surety's agent, are surely implicated in the evaluation of whether Surety discharged its statutory obligations in this matter.

In summary, we agree with Defendants that the Commission must yet make a determination as to whether or not there has in fact been a default in the payment of compensation following the June 6, 2023, settlement.

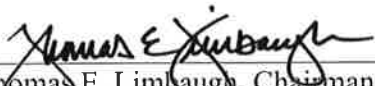
The Commission retains jurisdiction of this matter and refers the matter to the referee for the necessary factual and legal determinations. The referee appropriately declined to allow the intervention of CorVel.


Based on the foregoing, Defendants' request for reconsideration is granted in part and denied in part and remanded to the Referee for the reasons outlined above. **IT IS SO ORDERED.**

DATED this 29th day of August, 2023.



INDUSTRIAL COMMISSION


Thomas E. Limbaugh, Chairman


Thomas P. Baskin, Commissioner


Aaron White, Commissioner

ATTEST:


Commission Secretary

ORDER GRANTING DEFENDANTS' MOTION TO RECONSIDER IN PART, DENYING IN PART, AND REMAND - 10

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of August 2023, a true and correct copy of the foregoing **ORDER GRANTING DEFENDANTS' MOTION TO RECONSIDER IN PART, DENYING IN PART, AND REMAND** was served by email transmission and regular United States mail upon each of the following:

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