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BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

MIRANDA MOSER,

Claimant/Appellant,

v.

ROSAUERS SUPERMARKETS, INC.,

Defendant/Respondent.

SUPREME COURT NO. 46004

APPELLANT'S REPLY BRIEF

Appeal from the Industrial
Commission of the State of Idaho

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TABLE OF CONTENTS

I.	Argument	1
	A. The Commission’s Order on Petition for Declaratory Ruling is an appealable order.	1
	B. The application of I.C. § 72-433 is unaffected by the parties’ allegations.	1
	C. Idaho Code § 72-433 is not in conflict with § 72-434.	3
	D. Defendant’s and the Commission’s assertion that employers must have timely access to an injured worker is unsupported by the law. ..	3
	E. Neither Employer nor the Commission provided any evidence of legislative intent to support its arguments.	4
II.	Conclusion	4

TABLE OF CASES AND AUTHORITIES

<u>Cases</u>	Page
<u>City of Idaho Falls v. H-K Contractors, Inc.</u> , 163 Idaho 579, ___, 416 P.3d 951, 954 (2018).	4
<u>Simpson v. Louisiana-Pacific Corp.</u> , 134 Idaho 209, 212, 998 P.2d 1122, 1125 (2000).	4

Statutes and Rules

Idaho Appellate Rule 11	1
Idaho Code Section 72-433	<u>passim</u>
Idaho Code Section 72-434	3
Idaho Code Section 72-707	2
Judicial Rules of Practice and Procedure	1

I. ARGUMENT

A. The Commission's Order on Petition for Declaratory Ruling is an appealable order.

Idaho Appellate Rule 11(d) addresses appeals from Industrial Commission proceedings:

An appeal as a matter of right may be taken to the Supreme Court from the following judgments and orders...

(d) Administrative Proceedings – Industrial Commission.

(1) From any final decision or order of the Industrial Commission or from any final decision or order upon rehearing or reconsideration by the administrative agency...

The rule provides for an appeal “from any final decision or order of the Industrial Commission.”

Defendant argued that the Commission's Order is an interlocutory order that is not appealable. Def. Br. p. 6. However, the plain language of J.R.P. 15(F)(3) clearly establishes that the Order on Petition for Declaratory Ruling is a final order:

F. Disposition of Petitions.

On receipt of a petition and after the time for filing all responses and replies has passed, the Commission may:

...

3. Issue a written ruling which shall have the force and effect of a final order or judgment...

By rule, the Commission's Order has the force and effect of a final order. The Order is appealable as a matter of right.

B. The application of I.C. § 72-433 is unaffected by the parties' allegations.

Defendant argued that Claimant cannot assert entitlement to disability benefits and at the same time refuse to attend an I.C. § 72-433 medical examination. Def. Br. p. 15. Defendant's

argument regarding Claimant's position is curious. Defendant criticized Claimant for alleging disability and refusing a medical examination because Defendant deemed her outside the period of disability. At the same time, Defendant concluded that Claimant was outside the period of disability, denied disability benefits, but demands a medical examination.

Claimant's allegation of disability and Defendant's allegation Claimant was outside the period of disability, however, are immaterial. Either Claimant was in a period of disability at the time the medical examination was scheduled, or she was not. Since the parties disagreed about whether Claimant was within a period of disability, the issue must be decided by the Industrial Commission. Pursuant to Idaho Code § 72-707: "All questions arising under this law, if not settled by agreement or stipulation of the interested parties with the approval of the commission, except as otherwise herein provided, shall be determined by the commission." If the Commission determines the injured worker is within the period of disability, an employer may require an I.C. § 72-433 medical examination. If the injured worker is not within the period of disability, then the employer may not require a medical examination.

The plain language of I.C. § 72-433 limits an employer's ability to require a medical examination. The statute's application is based on the prerequisites set forth in the plain language of the statute, not the allegations of the parties. If there is disagreement between the parties about whether the injured worker is within a "period of disability," then a mandatory medical examination is unavailable to the employer.

C. Idaho Code § 72-433 is not in conflict with § 72-434.

Defendant cites the Commission's argument that Claimant's interpretation of I.C. § 72-433 would create a conflict with I.C. § 72-434. Def. Br. p. 9-10. Notably absent, however, from both the Commission Order and Defendant's brief is any example of a conflict. A conflict does not exist simply because the statute anticipates situations when a compulsory medical examination is unavailable to employers.

When all the requirements of I.C. § 72-433 are met, an injured worker may be subject to a compelled medical examination. If the requirements of § 72-433 are met, and the injured worker refuses the examination, then benefits can be suspended pursuant to § 72-434. The code sections are not in conflict.

D. Defendant's and the Commission's assertion that employers must have timely access to an injured worker is unsupported by the law.

Defendant quotes the Commission's assertion that "Employers must have timely access to an injured worker in order to promptly investigate a claim and defend a case in litigation." Def. Br. p. 9. It is beyond question that employers can investigate and defend a claim. The proposition that an employer must have timely access to an injured worker, however, is unsupported by the law. An employer's access to an injured worker is limited by the prerequisites set forth in I.C. § 72-433.

The Court has specifically recognized statutory limitations on the Commission's authority: "The Industrial Commission as 'an administrative agency is a creature of statute limited to the power and authority granted to it by the Legislature and may not exercise its sub-

legislative powers to modify, alter, or enlarge the legislative act which it administers.” Simpson v. Louisiana-Pacific Corp., 134 Idaho 209, 212, 998 P.2d 1122, 1125 (2000).

The only legal authority granting an employer access to an injured worker for a medical examination is I.C. § 72-433. The Commission’s blanket assertion that employers must have timely access to an injured worker is an improper attempt to modify and enlarge I.C. § 72-433.

E. Neither Employer nor the Commission provided any evidence of legislative intent to support its arguments.

Defendant quoted the Commission’s Order:

... it cannot have been the intention of the legislature to require that the question of whether Claimant has suffered an “injury” or “occupational disease,” or is temporarily or permanently disabled, be adjudicated before Defendants are allowed to conduct the examination(s) that they feel are necessary to defend exactly those claims.

Def. Br. p. 9. Neither Defendant nor the Commission, however, has provided any evidence of the legislature’s intent. The Court has held that “the literal words of the statute are the best guide to determining legislative intent.” City of Idaho Falls v. H-K Contractors, Inc., 163 Idaho 579, ___, 416 P.3d 951, 954 (2018).

Defendant’s argument regarding legislative intent is both unsupported by the record and contrary to the plain language of the statute.

II. CONCLUSION

An injured worker must be within the period of disability for the Industrial Commission or an employer to mandate a medical examination.

Wherefore, Claimant respectfully requests that the Court reverse the Commission’s Order on Petition for Declaratory Ruling.

Dated this 12th day of October 2018.

GOICOECHEA LAW OFFICES, LLP

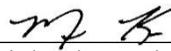


Michael Kessinger
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October 2018 I caused to be served a true and correct copy of the forgoing document via iCourt File and Serve:

Alan Gardner



Michael Kessinger