

## **ISSUE INDEX**

*The Issue Index is arranged alphabetically. The issue headings appear on the left margin underlined and in bold. Below each heading you will find short, descriptive summaries of the Commission's rationale and holdings. Each summary, in turn, is followed by a citation to the applicable 2005 Commission decision.*

***NOTE: The summaries are not law. Please refer to the official Commission decisions for the actual text, rationale, and holdings.***

### **Attorney Fees**

Under Idaho Code § 12-117, attorney fees shall only be awarded against Appellant where Appellant acted without a reasonable basis in fact or law.

*Sickles v. Department of Labor*, IPC No. 04-26 (Decision and Order on Petition for Review, (May 26, 2005)

### **Burden of Proof**

Among cases involving Rule 190 discipline, the state must prove its case by a preponderance of the evidence.

*Arnold v. Dept. of Health and Welfare*, IPC No. 04-26 (Decision and Order On Petition for Review, January 5, 2006)

*Peterson v. Dept. of Correction*, IPC No. 04-20 (Decision and Order on Petition for Review, May 26, 2005)

*Sickles v. Department of Labor*, IPC No. 04-26 (Decision and Order on Petition for Review, (May 26, 2005)

With regard to the viewing of pornographic or sexually explicit material on state-owned computer as grounds for dismissal under Rule 190 (violation of Executive Order and ITRMC policies), the Hearing Officer must find by a preponderance of the evidence that the state employee knowingly and intentionally used his state-owned computer to view pornographic or sexually oriented material.

*Arnold v. Dept. of Health and Welfare*, IPC No. 04-26 (Decision and Order On Petition for Review, January 5, 2006)

### **Employee Discipline**

Where there is more than a single basis alleged, any one violation when proven and constituting proper cause supports whatever level of discipline the state agency decides to impose, up to and including dismissal.

*Arnold v. Dept. of Health and Welfare*, IPC No. 04-26 (Decision and Order On Petition for Review, January 5, 2006)

Use of state phone lines in making unauthorized long-distance telephone calls constitutes proper cause for discipline under IPC Rule 190.01a. (failure to perform duties and carry out obligations imposed by the . . . rules of the department or the Division of Human Resources and Idaho Personnel Commission) and IPC Rule 190.01g. (improper use or unlawful conversion of the state phone lines).

*Peterson v. Dept. of Correction*, IPC No. 04-20 (Decision and Order on Petition for Review, May 26, 2005)

### **Evidence**

Evidence of policy and procedure violations by other Department of Correction employees left undisciplined is irrelevant; such evidence does not constitute a basis for determining that the Department did not have cause to discipline Appellant.

*Peterson v. Dept. of Correction*, IPC No. 04-20 (Decision and Order on Petition for Review, May 26, 2005)

### **Standard and Scope of Review**

Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment in its favor as a matter of law. The facts are to be construed in the light most favorable to the non-moving party.

*Arnold v. Dept. of Health and Welfare*, IPC No. 04-26 (Decision and Order On Petition for Review, January 5, 2006)

Upon review by the Idaho Personnel Commission, findings of fact must be supported by substantial, competent evidence.

*Arnold v. Dept. of Health and Welfare*, IPC No. 04-26 (Decision and Order On Petition for Review, January 5, 2006)

*Peterson v. Dept. of Correction*, IPC No. 04-20 (Decision and Order on Petition for Review, May 26, 2005)

*Sickles v. Department of Labor*, IPC No. 04-26 (Decision and Order on Petition for Review, (May 26, 2005)

On petition for review, the Commission may “affirm, reverse or modify the decision of the hearing officer, may remand the matter, or may dismiss it for lack of jurisdiction.” Idaho Code § 67-5317(1).

*Arnold v. Dept. of Health and Welfare*, IPC No. 04-26 (Decision and Order On Petition for Review, January 5, 2006)

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Once proper cause for discipline has been shown, the law is clear that the Commission and its hearing officers have no authority to second-guess the choice of discipline imposed.

*Arnold v. Dept. of Health and Welfare*, IPC No. 04-26 (Decision and Order On Petition for Review, January 5, 2006)

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