

## 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 2009 Commission decision.*

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

### Attorney Fees

The long standing rule in Idaho is that pro se litigants cannot recover attorney fees.

### Jurisdiction

An employee termination appeal must physically received and filed at the Commission within 35 calendar days after completion of the departmental due process procedure. IPC Rule 201.03.

*Smith v. Idaho State Liquor Division, IPC No. 09-23 (Order of Dismissal, December 08, 2009)*

Mailing of a Letter of Discipline by the agency completes the departmental due process procedure. IPC Rule 201.03.

*Smith v. Idaho State Liquor Division, IPC No. 09-23 (Order of Dismissal, December 08, 2009)*

The Commission's jurisdiction is limited to an appeal of a disciplinary dismissal, demotion or suspension or the failure of an appointing authority to provide a right and/or benefit to which the employee is entitled to by law. Idaho Code §§ 67-5316(1)(a)-(b).

The Commission does not have jurisdiction over an appeal once the employee's suspension has been rescinded, and there is no longer a disciplinary action to form the basis of the appeal.

*Floyd-Miller v. Idaho Dep't of Juvenile Correction, IPC No. 08-21 (Decision and Order on Petition for Review, July 17, 2009)*

The Commission does not have jurisdiction concerning a corrective action plan (CAP) outside the context of a disciplinary action. Even where a disciplinary suspension and the CAP are both based on the same subject matter, they maintain independence from one another as completely different employer actions, one appealable to the Commission (disciplinary suspension), the other not (CAP implementation).

*Floyd-Miller v. Idaho Dep't of Juvenile Correction, IPC No. 08-21 (Decision and Order on Petition for Review, July 17, 2009)*

The remedy for non-disciplinary claims of discrimination, retaliation by agencies against employees or constructive discharge remains with the courts.

*Floyd-Miller v. Idaho Dep't of Juvenile Correction*, IPC No. 08-21 (Decision and Order on Petition for Review, July 17, 2009)

### **Representation and Intervention**

Individual parties in an appeal may represent themselves (pro se) or be represented by an attorney.

*Floyd-Miller v. Idaho Dep't of Juvenile Correction*, IPC No. 08-21 (Decision and Order on Petition for Review, July 17, 2009)

### **Rule 190 Discipline**

In cases involving Rule 190 discipline, the state must prove by a preponderance of evidence that at least one of the proper cause reasons for dismissal exist as listed in Idaho Code § 67-5309(n) and IDAPA 15.04.01.190.01.

*Zweigart v. Idaho State University*, IPC No. 08-13 (Decision and Order on Petition for Review, July 30, 2009)

Insubordination occurs when an employee knowingly and recklessly disregards a reasonable directive from the employer.

*Zweigart v. Idaho State University*, IPC No. 08-13 (Decision and Order on Petition for Review, July 30, 2009)

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

Summary judgment is appropriate before the IPC when the record establishes that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

*Floyd-Miller v. Idaho Dep't of Juvenile Correction*, IPC No. 08-21 (Decision and Order on Petition for Review, July 17, 2009)

When considering a petition for review, the Commission reviews the record of the proceeding below together with any briefs or transcripts submitted by the parties.

*Floyd-Miller v. Idaho Dep't of Juvenile Correction*, IPC No. 08-21 (Decision and Order on Petition for Review, July 17, 2009)

*Zweigart v. Idaho State University*, IPC No. 08-13 (Decision and Order on Petition for Review, July 30, 2009)

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).

*Floyd-Miller v. Idaho Dep’t of Juvenile Correction*, IPC No. 08-21(Decision and Order on Petition for Review, July 17, 2009)

*Zweigart v. Idaho State University*, IPC No. 08-13(Decision and Order on Petition for Review, July 30, 2009)

### **Unemployment Compensation Eligibility**

The Industrial Commission’s determinations regarding unemployment compensation eligibility of former classified state employees have no bearing on whether a state agency has shown cause for disciplinary termination under the Idaho Personnel Act.

*Zweigart v. Idaho State University*, IPC No. 08-13(Decision and Order on Petition for Review, July 30, 2009)

The rule and standards regarding misconduct for unemployment compensation purposes are different from those applicable in IPC matters concerning dismissal for cause.

*Zweigart v. Idaho State University*, IPC No. 08-13(Decision and Order on Petition for Review, July 30, 2009)