

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 2011 Commission decision.

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

Attorney Fees

Idaho Code provides that attorney fees shall be awarded to the prevailing party in any administrative proceeding, if the administrative tribunal "finds that the on prevailing party acted without a reasonable basis in fact or law." I.C. § 12-117.

Idaho Dep't of Correction v. Tony Campa, IPC No. 10-13 (Decision and Order on Petition for Review, August 19, 2011)

Mark Hyndman v. Idaho State Department of Agriculture, IPC No. 10-04 (Decision and Order on Petition for Review, May 31, 2011)

Idaho Code § 12-117 requires a showing that a non-prevailing party's claims/defenses are frivolous, unreasonable, groundless or in bad faith.

Mark Hyndman v. Idaho State Department of Agriculture, IPC No. 10-04 (Decision and Order on Petition for Review, May 31, 2011)

Authority of ISP Director

Under the current statutory scheme, the ISP Director has broad statutory authority to make appointments unless that authority is specifically given to another appointing authority and POST Council does not have statutory authority to hire and fire employees, including specifically the POST Executive Director. Idaho Code § 25-1103.

Jeffrey Black v. Idaho State Police, IPC No. 09-22 (Decision and Order on Petition for Review, April 12, 2011)

An "appointing authority" is the officer, board, commission, person, or group of persons authorized by statute or lawfully delegated authority to make appointments to or employ personnel in any department. Idaho Code § 67-5302(3).

Jeffrey Black v. Idaho State Police, IPC No. 09-22 (Decision and Order on Petition for Review, April 12, 2011)

As a head of an executive agency, the Director of ISP has general authority to supervise, direct, account for, organize, plan, administer and execute the functions vested within the department, establish policy to be followed by the department employees, establish and make appointments, remove employees, transfer employees between positions, and change duties of employees, among other things. Idaho Code § 67-2405.

Jeffrey Black v. Idaho State Police, IPC No. 09-22 (Decision and Order on Petition for Review, April 12, 2011)

The Director of ISP has ultimate administrative authority over ISP employees carrying out POST functions including the Executive Director of POST.

Jeffrey Black v. Idaho State Police, IPC No. 09-22 (Decision and Order on Petition for Review, April 12, 2011)

The Director of ISP has the general powers and duties “necessary to carry out the proper administration of the state police [.]” Idaho Code § 67-2901.

Jeffrey Black v. Idaho State Police, IPC No. 09-22 (Decision and Order on Petition for Review, April 12, 2011)

Idaho Protection of Public Employees Act (Whistleblower Act)

If an employee or former employee believes he has a cause of action under the whistleblower act by virtue of a state employer’s adverse action against him, he may file a lawsuit in district court within one-hundred eighty (180) days, thereof. The whistleblower act is of no relevance in IPC proceedings.

Jeffrey Black v. Idaho State Police, IPC No. 09-22 (Decision and Order on Petition for Review, April 12, 2011)

Due Process

An appointing authority need not provide the employee with every piece of evidence prior to termination, but still must provide notice and basis of the evidence so that employee can have an opportunity to meaningfully respond before the appointing authority takes disciplinary action.

Idaho Dep’t of Correction v. Tony Campa, IPC No. 10-13 (Decision and Order on Petition for Review, August 19, 2011)

Even considering the post-termination process as part of the due process afforded to an employee, an appointing authority cannot raise grounds for discipline beyond those grounds set forth in the Notice of Contemplated Action (NOCA) or Letter of Disciplinary Action (LODA).

Idaho Dep’t of Correction v. Tony Campa, IPC No. 10-13 (Decision and Order on Petition for Review, August 19, 2011)

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.

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Inefficiency, incompetence, negligence in performing duties, or job performance that fails to meet established performance standards constitutes grounds for discipline for Rule 190.01.b.

Mark Hyndman v. Idaho State Department of Agriculture, IPC No. 10-04 (Decision and Order on Petition for Review, May 31, 2011)

Directing a constituent producer to complete the work of a livestock inspector, contrary to ISDA training and policy, was unbecoming of a state employee and conduct detrimental to good order and discipline in the agency violating Rule 190.01.e.

Mark Hyndman v. Idaho State Department of Agriculture, IPC No. 10-04 (Decision and Order on Petition for Review, May 31, 2011)

Failure to prepare complete and accurate inspection reports, established as a primary job duty, constituted inefficiency and incompetence in performing job duties and job performance failing to meet performance standards as set forth in Rule 190.01.b.

Mark Hyndman v. Idaho State Department of Agriculture, IPC No. 10-04 (Decision and Order on Petition for Review, May 31, 2011)

Standard and Scope of Review

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. 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).

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Where credibility is crucial, and first-hand exposure to witnesses may strongly affect the outcome, the IPC may not override a Hearing Officer’s credibility determinations unless it identifies a cogent, articulable reason for doing so.

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Summary Judgment

Summary Judgment should be rendered when the pleadings on file, together with any affidavits, show that 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.

Jeffrey Black v. Idaho State Police, IPC No. 09-22 (Decision and Order on Petition for Review, April 12, 2011)