

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 for decisions issued since 2013. Each summary, in turn, is followed by a citation to the applicable 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 standard for an award of attorney fees is high. To collect attorney fees under Idaho Code § 12-117, it must be shown that a non-prevailing party's claims are frivolous, unreasonable, groundless, or in bad faith.

Shana Gonzales (Walker) v. Idaho State Police, IPC No. 19-3, (Decision and Order on Petition for Review, November 3, 2020)

Evidence & Discovery

Any evidence of policy and procedure violations by other employees is irrelevant; such evidence does not constitute a basis for determining that ISP did not have cause to discipline Appellant.

Shana Gonzales (Walker) v. Idaho State Police, IPC No. 19-3, (Decision and Order on Petition for Review, November 3, 2020)

The Idaho Personnel Commission passes no judgment on whether other employees should have been disciplined, were disciplined, or should have received any certain level of discipline- those issues are not within its power.

Shana Gonzales (Walker) v. Idaho State Police, IPC No. 19-3, (Decision and Order on Petition for Review, November 3, 2020)

Hearing Officer correctly declined to allow discovery for, or to consider, ISP personnel records of other employees in review of disciplinary action taken against Appellant.

Shana Gonzales (Walker) v. Idaho State Police, IPC No. 19-3, (Decision and Order on Petition for Review, November 3, 2020)

IDOC as Law Enforcement Agency for Purposes of Idaho Code § 44-904

Idaho Code § 19-510A and 20-209C create "peace officer" status for IDOC correctional officers who are POST certified.

Rodney J. Schilling v. Idaho Department of Correction, IPC No. 13-20 (Decision and Order on Petition for Review, July 22, 2014)

IDOC Is Not Prohibited By Idaho Code § 44-903 from Directing and Requiring a Polygraph

Examination as a Condition of Continued Employment as Part of Its Administrative Investigation

Rodney J. Schilling v. Idaho Department of Correction, IPC No. 13-20 (Decision and Order on Petition for Review, July 22, 2014)

Non-Classified Employee

The Commission is without jurisdiction, power, and authority to entertain or accept Appellant's appeal since she was a non-classified employee.

Lara Millich v. Idaho State Treasurer's Office, IPC No. 13-07 (Order of Dismissal, May 10, 2013)

Rule 190 Discipline

Insubordination is a "willful or intentional disregard of the lawful and reasonable instructions of the employer." It has also been very similarly defined as a deliberate or willful refusal by an employee to obey a reasonable order or directive which an employer is authorized to give and entitled to have obeyed. Accordingly, a finding of insubordination requires proof that the employee intentionally or willfully disregarded a lawful and reasonable instruction from an employer or supervisor.

Patricia Scott v. South Central Public Health District, IPC No. 12-5 (Decision and Order on Petition for Review, January 23, 2013)

Requiring the employee to sit in a closer chair was not a reasonable order under the circumstances presented in this case. Therefore, the refusal was not insubordination.

Patricia Scott v. South Central Public Health District, IPC No. 12-5 (Decision and Order on Petition for Review, January 23, 2013)

If proven by a preponderance of the evidence, Appellant's failure to meet established performance standards over the course of her employment amounts to just cause for termination under Rule 190.01.b.

Marsa Plummer v. Idaho Industrial Commission, IPC No. 17-1 (Decision and Order on Petition for Review, February 2, 2018)

Discipline must be based upon one of the reasons set forth in IDAPA 15.04.01 .190.01 ("Rule 190"). Any one violation of Rule 190 supports the level of discipline the state agency decides to enforce. *Idaho Dept. of Health & Welfare v. Arnold*, IPC No. 04-26. If cause for discipline exists, IPC does not have jurisdiction to decide the level of discipline the agency decides to impose.

Dan Wild v. Lewis-Clark State College, IPC No. 18-2 (Decision and Order on Petition for Review, November 3, 2020)

Documented policy violations, supported by substantial and competent evidence in the administrative record, can show a failure to meet performance standards established by Respondent, and amount to just cause under Rule 190.01.b for imposition of discipline.

Dan Wild v. Lewis-Clark State College, IPC No. 18-2 (Decision and Order on Petition for Review,

November 3, 2020)

Appellant's behavior in violation of multiple IDOC Policies and Standard Operating Procedures, as proven by substantial and competent evidence, constitutes a failure to meet performance standards established by IDOC, and is just cause for discipline under Rules 190.01.a., b., and e.

Caryl Frasier v. Idaho Dep't. of Correction, IPC No. 19-2, (Decision and Order on Petition for Review, November 3, 2020)

Idaho State Trooper's intentional certification and submission of a misrepresentation of fact to a court of law under penalty of perjury constitutes conduct unbecoming a state employee and detrimental to the good order and discipline of ISP and is cause for discipline under Rule 190.01.e.

Shana Gonzales (Walker) v. Idaho State Police, IPC No. 19-3, (Decision and Order on Petition for Review, November 3, 2020)

Standard and Scope of Review

On a petition for review to the Idaho Personnel Commission, the Commission conducts a *de novo* review of the record and renders an independent decision on the facts.

Patricia Scott v. South Central Public Health District, IPC No. 12-5 (Decision and Order on Petition for Review, January 23, 2013)

Once proper cause is proven for discipline under Idaho Code § 67-5309(n) and IPC Rule 190, the Commission (and its hearing officers) have no authority to second guess the choice of discipline imposed.

Patricia Scott v. South Central Public Health District, IPC No. 12-5 (Decision and Order on Petition for Review, January 23, 2013)

In reviewing a Hearing Officer ruling on a motion for continuance, the Commission adopts the same standard of review as an appellate court in reviewing trial court motion rulings. The decision to grant or deny such motions is vested in the sound discretion of the hearing officer and only where there is a clear abuse of discretion will the Commission reverse a hearing officer's ruling on a motion for continuance.

Matthew P. Emery v. Idaho Department of Health and Welfare, IPC No. 12-15 (Decision and Order on Petition for Review, October 29, 2013)

Alleged conflict of interest of a hearing officer must be raised and ruled upon before the hearing officer in order to be preserved for review by the Commission. It cannot be newly raised on petition for review before the Commission.

Matthew P. Emery v. Idaho Department of Health and Welfare, IPC No. 12-15 (Decision and Order on Petition for Review, October 29, 2013)

Subject Matter Jurisdiction (Lack Of)

The Commission does not have jurisdiction to entertain the Petition and it is dismissed pursuant to IDAPA 15.04.01.201.04. Of primary note, Idaho Code § 67-5232 is within the Idaho Administrative

Procedure Act (“APA”) and is inapplicable to proceedings before the IPC. *Swisher v. State Dept. of Environmental and Community Services*, 98 Idaho 565, 569-70 (1977). The Commission's subject matter jurisdiction is limited as authorized by Idaho Code §67-5316. None of the limited jurisdictional grounds are presented by the Petition. The IPC does not have statutory authority providing it jurisdiction to enforce the cited statutes, let along (*sic*) rule on the applicability of the cited statutes to NACSA and its former CEO.

In the Matter of the Action of the National Association of Charter School Authorizers, ICP No. 20-3 (Order of Dismissal for Lack of Jurisdiction, August 24, 2020)

Timeliness of Appeal

The decision of the appointing authority shall be final and conclusive unless a classified employee files an appeal within thirty-five (35) days after completing the departmental problem solving or due process procedure. Acknowledgement of the receipt of the Letter of Disciplinary Action completed the due process procedure and the IPC must have physically received Appellant’s appeal within thirty-five calendar days from the acknowledgement in order to have jurisdiction over the appeal.

Paula Aldous v. Idaho Department of Correction, IPC No. 13-06 (Order of Dismissal, May 1, 2013)