

BEFORE THE IDAHO OIL AND GAS CONSERVATION COMMISSION

DEPT. OF LAND
2018 NOV 15 AM 9:02

Randy and Thana Kauffman, <i>Complainants</i> ,)	Docket No. CC-2017-OGR-01-002
)	
v.)	RECOMMENDED ORDER
)	
AM Idaho, LLC and Alta Mesa Services, LP,)	
<i>Respondents</i> .)	
_____)	

ALLEGATIONS

On December 7, 2017, Randy and Thana Kauffman (hereinafter “*Complainants*”), filed a written letter with the Idaho Oil and Gas Conservation Commission (hereinafter “OGCC”) which they designated a “formal complaint... as provided for in Idaho Code § 47-331(4).” (*Complaint*). In said *Complaint*, the Kauffmans state various allegations and make four requests of the OGCC:

First, *Complainants* state “We have requested records we are entitled to under I.C. § 47-332(4) and Alta Mesa has refused to provide those records to us. This violates Idaho law, and we ask OGCC to exercise your authority to compel this information, as required, from Alta Mesa.” (*Complaint* ¶ 4).

Second, *Complainants* state “Additionally, Alta Mesa is obligated, under I.C. § 47-332(1) to provide specific information on our check stubs. Again, Alta Mesa is not compliant with these requirements, and we ask OGCC, as part of this complaint, to exercise your authority to compel this information from the operator.” (*Complaint* ¶ 4).

Complainants’ third request is “With this letter, we are formally requesting the OGCC to act immediately under the authority provided by Idaho law to ensure that ALL production, including past production and ‘testing,’ be accounted for and appropriate royalty in severance payments be made.” (*Complaint* ¶ 6).

Complainants' fourth and final plea is "Further, we request that all data related to every well drilled in Idaho be immediately made available to the public, as required in section I.C. 47-324 and 47-326." (*Complaint* ¶ 8).

PRELIMINARY LIMITATION

As an initial matter, the third and fourth requests are general applications that the OGCC perform its statutory obligations and are not specific grievances directly against AM Idaho, LLC or Alta Mesa Services, LP (hereafter collectively "*Respondents*"). As such, this Hearing Officer finds that said requests are outside the purview of the Hearing Officer's appointment and therefore will not be commented on further in this recommended order.

As to *Complainants'* requests one and two, this Hearing Officer recommends the OGCC enter an order consistent with the findings and rulings stated herein.

PROCEDURAL BACKGROUND

As stated above, the *Complainants* filed a written complaint against the *Respondents* on December 2017. On March 12, 2018, this Hearing Officer was appointed and the matter moved into the prehearing stage. In several informal prehearing conferences, various issues were raised and addressed. One issue in particular was the *Complainants'* request for certain materials from *Respondents*. This request in turn prompted a request by the *Respondents* that the materials be produced under a protective order as they were proprietary in nature. (See *Brief of Respondent AM Idaho, LLC RE: Availability of Discovery* filed June 29, 2018). Pursuant to Idaho Code and the Idaho Administrative Procedures Act (IDAPA), this Hearing Officer granted *Complainants'* request requiring *Respondents* to produce certain materials through the discovery process; and based on the unrefuted facts presented by *Respondents*, granted *Respondents'* request that the materials be produced under a protective order. (See *Order Regarding Discovery and Protective*

Order entered July 20, 2018). Said protective order was carefully and specifically crafted to allow *Complainants* to freely use the materials produced to verify gross production and to prove their case in this matter:

Use the Information only for the purpose of verifying the gross production, distribution and market value of the oil and gas produced at the wells commonly known as Kauffman # 1-9 and Kauffman # 1-34, or to otherwise prove their allegations in this matter. *Complainants* shall not use the Information for any other purpose, including but not limited to competing directly or indirectly with *Respondents* in any manner or assisting any other person or entity in such competition.

Protective Order, ¶ 2(b).

Complainants took exception to the issuance of the protective order and withdrew their request for the materials. *Complainants* took the position that if they could not receive the materials produced through discovery without a protective order, they did not want them. (See email correspondence dated July 24, 2018). The *Complainants* then requested relief from the protective order. This request was considered and denied. The denial was based on the fact that the protective order in no way prevented *Complainants* from using the materials to verify production or to prove *Complainants'* case, yet alternatively, according to the evidence filed by *Respondents*, there was a risk of *Respondents* being harmed by unprotected disclosure of the proprietary information.

Thereafter, no further procedural matters being before the Hearing Officer, this matter was set for a hearing to be held on October 18, 2018. At said hearing, *Complainants* would have been entitled to present their case through witnesses, evidence and argument; *Respondents* would thereafter have the opportunity to rebut the *Complainants'* allegations in the same manner. However, rather than proceed with this case and prove, or attempt to prove, their allegations, *Complainants* waived their right to a hearing in this matter (See email dated September 17, 2018). This Hearing Officer held a telephonic conference on September 24, 2018 in order to ensure

Complainants' request was correctly received. At the conference, the *Complainants* again reiterated their statement that they were waiving their right to have a hearing in this matter.

DECISION

Complainants' waiver essentially leaves the record before this Hearing Officer bare. The record only consists of a letter complaint filed by the *Complainants*, the order compelling discovery, the protective order, the *Order Denying Request for Relief from Protective Order*, briefing by *Respondents* and various notices and communications related to procedural matters. The record contains absolutely no testimony or evidence whatsoever to support *Complainants'* allegations. The Idaho Rules of Administrative Procedure place the burden upon the complainants to prove their case:

The burden of proof at an administrative license suspension hearing is on the individual requesting the hearing, and that burden is not satisfied merely by showing that the documents received by the ITD are inadequate.

Archer v. ITD, 145 Idaho 617, 620 (Ct. App. 2008).

The claimant in a worker's compensation case carries the burden of proving that the condition for which compensation is sought is casually related to an industrial accident.

Serrano v. Four Seasons Framing, 157 Idaho 309, 317 (2014) (quoting *Duncan v. Navajo Trucking*, 134 Idaho 202, 203 (2000)). This administrative hearing before the Oil and Gas Commission is no different than one before the Idaho Department of Transportation or the Idaho Industrial Commission; a complaint has to be proven.

It occurs to this Hearing Officer that *Complainants* may not have understood their obligations and burdens of proof in this matter. However, this Hearing Officer is in no position to provide *Complainants* legal assistance nor treat them differently simply because they chose to handle this matter *pro se*. Idaho law prohibits it:

We note initially that while Loomis appeared at the summary judgment hearing *pro se*, he may not request special consideration on that basis. "*Pro se* litigants are held to the same standards and rules as those represented by an attorney." We agree with

the district court's analysis of this issue as set forth in its decision denying Loomis' petition for rehearing.

The facts of the present case do not demonstrate excusable neglect as contemplated by I.R.C.P. 60(b)(1). The present case presents a situation more similar to that found in *Golden Condor*. . . *Golden Condor* dealt with a *pro se* litigant's failure to preserve an issue for appeal which precluded consideration of the issue on appeal. The Idaho Supreme Court noted:

In all likelihood this result [failure to preserve issue for appeal] has come about due to appellant's lack of understanding of the procedural rules of law. Nevertheless, the failure to abide by such rules may not "be excused simply because [appellant was] appearing *pro se* and may not have been aware of the rule[s]." *Pro se* litigants are held to the same standards and rules as those represented by an attorney.

The summary judgment entered against the appellant in the present case was the result of his not being aware of the rules requiring verification of pleadings. Failure to be aware of the requirements of procedural rules does not constitute excusable neglect. Summary judgment having been properly entered and appellant having failed to show excusable neglect, the trial court properly denied appellant's motion to set aside the judgment under Rule 60(b).

Had the trial court affirmatively misled appellant as to the adequacy of his unverified answer prior to the hearing on the summary judgment motion, a different case would be presented. However, as stated, appellant's failings, as argued at summary judgment and on the motion to set aside, were the result of appellant's lack of understanding of the procedural rules of law and, as such, do not constitute excusable neglect.

Golay v. Loomis, 118 Idaho 387, 392 (1990) (internal citations omitted).

CONCLUSION

Therefore, based on the reasons stated herein this Hearing Officer finds that the *Complainants* failed to meet their burden and therefore denies any and all relief requested in *Complainants' December 7, 2017 Complaint*.¹

STATUTORY PROCEDURAL NOTICES

The parties are advised that this is a recommended order of the Hearing Officer. It will not become final without action of the OGCC. Any party may file a petition for reconsideration of this

¹ As explained in the preliminary section, this Order and the denial relate only to *Complainants' first and second requests in their Complaint*.

recommended order with the Hearing Officer issuing the order within fourteen (14) days of the service date of this order. The Hearing Officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code.

Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position on any issue in the proceeding.

Written briefs in support of or taking exceptions to the recommended order shall be filed with the OGCC's Secretary, Mick Thomas. Opposing parties shall have twenty-one (21) days to respond. The OGCC may schedule oral argument in the matter before issuing a final order. The OGCC will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The OGCC may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

BE IT SO ORDERED.

DATED this 13th day of November, 2018.

By: 

JASON S. RISCH, Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2018, I caused to be served a true and correct copy of the following items in the Docket No: CC-2017-OGR-01-002: *Recommended Order* by the method indicated below and addressed to the following:

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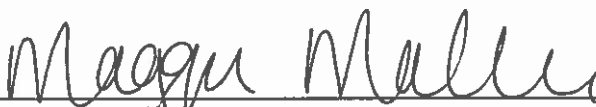
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