

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

JESSICA BERUBE,	)	
Claimant,	)	<b>IC 03-523902</b>
v.	)	
	)	
WELCO OF IDAHO, INC.,	)	<b>ORDER DENYING</b>
	)	<b>RECONSIDERATION</b>
Employer,	)	
and	)	
	)	
LIBERTY NORTHWEST INSURANCE,	)	
CORPORATION,	)	Filed April 12, 2006
	)	
Surety,	)	
Defendants.	)	
_____	)	

On January 19, 2006, Claimant filed a Motion for Reconsideration of the Industrial Commission's decision of January 6, 2006, in the above referenced case. Defendants filed a Response on January 31, 2006. No reply brief was filed.

In her motion, Claimant argues that while the Commission correctly determined that Claimant sustained a compensable injury and is entitled to medical benefits, the Commission erred in not ordering Defendants to pay Claimant income benefits. Claimant avers that Dr. Stevens perjured himself and that his biased reports are the only evidence upon which to base a denial of time loss benefits. Finally, Claimant states that she is entitled to income benefits because she remains in a period of recovery and is currently receiving treatment from Dr. DiBenedetto.

Defendants argue that Claimant's Motion for Reconsideration is an attack against Dr.

Stevens and his practice. Defendants urge the Commission to deny Claimant's request to re-weigh evidence the Commission has already weighed in reaching its first decision.

The Commission's decision concluded that Claimant's cervical strain and left shoulder strain were causally related to her industrial accident of November 12, 2003. The Commission also found Claimant's lumbar strain to be non-industrial in nature. The records show that Claimant worked at her time of injury job immediately following her industrial accident of November 12, 2003.

Then on December 2, 2003, Claimant visited the emergency room after her back locked up at home while getting ready for work. This injury is the lumbar strain the Commission found to be non-industrial in nature. On December 3, 2003, Claimant was unable to return to work for Employer. Based on the Commission's finding that the lumbar strain was a non-industrial injury and the medical opinion evidence of the extent and duration of Claimant's industrial injury, a conclusion was made that Claimant suffered no decrease in wage-earning capacity. Claimant presented no evidence of income loss until after the non-industrial lumbar injury.

The evidence showed that Dr. Fung imposed Claimant's lumbar-related restrictions on December 2, 2003 and that Dr. Fung did not classify Claimant's lumbar strain as work-related. While Dr. Rust attempted to link Claimant's lumbar strain to the physical therapy she received for her industrial injury, the Commission found his opinion to be conclusory without a medical explanation for the opinion.

Dr. Stevens, who had been treating Claimant's work-related shoulder strain and cervical strain, lifted all of Claimant's work restrictions on December 3, 2003. The Commission is aware and noted in the decision that Dr. Stevens has repeatedly asserted that Claimant is not truly injured, but may be a malingerer, pursuing this claim for monetary benefit. The Commission reviewed and

weighed, as a whole, the medical reports and evidence presented. Every individual report and statement will not be addressed and commented on by the Commission.

The Commission's decision of January 6, 2006, in the above referenced case, is supported by substantial evidence in the record and Claimant has presented no persuasive argument to disturb the decision.

Based upon the foregoing reasons, Claimant's Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

DATED this 12th day of April, 2006.

INDUSTRIAL COMMISSION

/s/ \_\_\_\_\_  
Thomas E. Limbaugh, Chairman

/s/ \_\_\_\_\_  
James F. Kile, Commissioner

/s/ \_\_\_\_\_  
R. D. Maynard, Commissioner

ATTEST:

/s/ \_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on *12* day of April, 2006, a true and correct copy of the foregoing ORDER DENYING RECONSIDERATION was served by regular United States Mail upon each of the following:

JOSEPH JARZABEK  
P.O. Box 1049  
Sandpoint, ID 83864

E. SCOTT HARMON  
P.O. Box 6358  
Boise, ID 83707-6358

\_\_\_\_\_/s/\_\_\_\_\_