



basis for the disability findings; 3) the foot elevation restriction is self-perceived, questionably practiced by Claimant, and not an insurmountable barrier to employability according to Doug Crum; 4) while RSD is not “entirely without objective clinical evidence,” there is no medical evidence of work restrictions resulting from it; 5) in comparison with other people, Claimant’s disability is much less serious; 6) Mrs. Sotelo is properly considered in the decision because she became highly and often improperly involved in nearly all aspects of the case.

### **Social Security Disability Determination**

Social Security Disability determinations (SSD’s) have been considered in previous Commission decisions for the limited purpose of establishing wage history, medical history, and pertinent non-medical factors under Idaho Code § 72-430. See: Ragan v. Kenaston Corp., IC No. 84-472763,1993; Davis v. Tyrolean Condo Rental Association, Inc., IC No. 89-645542, 1994; Cox v. Finke Logging, Inc., IC No. 92-795671, 1996; Moldenhauer v. First Security Bank, IC No. 96-003055, 1996; and Psalto v. Industrial Special Indemnity Fund, IC No. 99-028241, 2006. The SSD’s are based “almost exclusively on medical grounds, and may or may not consider factors in our law.” Cox v. Finke Logging, Inc., IC No. 92-795671, 1996, at 0560. Although the SSD was admitted into the evidence in this case, the medical and wage histories were abundant from other sources. Therefore, an absence of SSD findings in this case is not an adequate basis to warrant reconsideration of total permanent disability.

### **Dr. Yu**

Medical opinions are advisory only. Baker v. Louisiana Pac. Corp., 123 Idaho 799, 853 P.2d 544 (1993). In this case, there were three medical opinions to review for impairment and medical restriction purposes. The decision clearly and adequately states the reasons Dr. Yu was less persuasive. He applied the AMA Guides less accurately than Dr. Phillips. Dr. Yu’s medical restrictions were less reliable than Dr. Phillips’. And Dr. Yu gave no explanation for his

unusually high lifting restriction. These and the other reasons amply justify the weight given to Dr. Yu's opinion.

### **Elevating Foot Restriction**

Footnote 6, on page 17 of the Findings of Fact, Conclusions of Law and Recommendation, states: "There was extensive testimony regarding Claimant's need to elevate his left foot whenever he was seated, a limitation not supported by the medical records." This appears in the context of Findings of Fact regarding vocational expert, Doug Crum. On reconsideration, Claimant contends this footnote is inaccurate and that an accurate finding would give support for a finding that Claimant is totally and permanently disabled.

The Commission reviewed the evidence on reconsideration, and continues to find it in support of the decision.

### **Reflex Sympathetic Dystrophy**

The record contained little information regarding Claimant's RSD condition. Therefore, it was afforded the appropriate amount of consideration, and had essentially no impact on disability analysis.

### **Odd Lot Disability Analysis**

A *prima facie* case of odd lot total permanent disability was not found in this case. The Claimant may disagree with the Commission's analysis. However, the determination was clearly appropriate in light of the limited or absent evidence regarding an attempt to work, a search for work, and futility.

### **Ms. Sotelo**

Claimant characterizes Ms. Sotelo's involvement in this case as an effort to aggressively protect her husband's interests. That may be, but her involvement rose to the level that it warranted considering in relation to both her credibility and that of Claimant. Ms. Sotelo

was not credible, and Claimant's testimony was rendered not reliable. Findings of Fact, Conclusions of Law, And Recommendation, p. 17. There are two bases for credibility determinations, observation and numerous inaccuracies. Darner v. Southeast Idaho In-Home Services, 122 Idaho 897, 900, 841 P.2d 427, 430 (1992). Both these bases contributed to the credibility determinations.

The arguments by Claimant were thoroughly reviewed and addressed in the Commission decision of May 24, 2007. The record fully supports the factual findings and legal conclusions made by the Commission. Claimant, in essence, simply disagrees with the outcome of the Commission determination.

Based upon the foregoing reasons, Claimant's motion for reconsideration should be, and is hereby, DENIED.

DATED this \_\_15th\_ day of August, 2007.

INDUSTRIAL COMMISSION

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

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

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

ATTEST:

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

**CERTIFICATE OF SERVICE**

I hereby certify that on \_\_\_15th day of August, 2007, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail upon each of the following:

GREG J MAESER  
1920 E 17<sup>TH</sup> STE 103  
IDAHO FALLS ID 83404

ERIC S BAILEY  
PO BOX 1007  
BOISE ID 83701-1007

sn/db

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