

Defendants...to File Reply Brief....” A stipulation between the parties that was not approved or allowed by the Commission does not amount to a permissible extension. Rule 3(F), J.R.P., allows a reply brief to be filed “no later than 10 days from the date of filing the response.” Regardless of the stipulation, Employer/Surety’s reply was filed 10 days from the date of the filing of the response. Therefore, Employer/Surety’s reply will be considered.

On January 14, 2008, Claimant filed a memorandum regarding the “Propriety of Using the AMA Guide’s Combined Values Chart for Purposes of Apportionment....” On January 15, Employer/Surety filed a motion to strike Claimant’s memorandum as untimely and not provided for by procedure. Regardless of its caption, Claimant’s memorandum amounts to a response to Employer/Surety’s original motion filed on December 10, 2007. Claimant’s response is untimely and will, therefore, not be considered. Employer/Surety’s motion to strike is GRANTED.

Employer/Surety’s argument on reconsideration amounts to little more than a request to reweigh the evidence following its receipt of a less than favorable decision. Employer/Surety had an opportunity in its post-hearing brief to address the calculation and apportionment of Claimant’s impairment. Indeed, in its brief, Employer/Surety simply added Claimant’s pre-existing impairment, without use of the combined values chart, when reasoning what ISIF’s liability should encompass. Now, when it is to their advantage to mitigate liability, they argue for an alternative interpretation. The addition of impairments to arrive at a final, total impairment is supported by prior case law.

Employer/Surety’s argument regarding psychological impairment is without merit. The Referee clearly delineated his reasoning regarding Claimant’s psychological impairment. *See*, Findings of Fact, Conclusions of Law, and Recommendation, Paragraphs 35 through 37.

Employer/Surety's arguments on this matter were considered prior to the Commission rendering its original decision. The decision is fully supported by the record.

Accordingly, Defendant Employer/Surety's Motion for Reconsideration should be, and is hereby, DENIED.

DATED this 29th day of February, 2008.

INDUSTRIAL COMMISSION

/s/ _____
James F. Kile, Chairman

/s/ _____
R. D. Maynard, Commissioner

Thomas E. Limbaugh, Commissioner

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 29 day of February, 2008, a true and correct copy of the foregoing **ORDER ON RECONSIDERATION** was served by regular United States Mail upon each of the following persons:

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