

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

KURT FELLOW,	)	
	)	
Claimant,	)	
	)	
v.	)	<b>IC 2001-520903</b>
	)	
IDAHO DEPARTMENT OF CORRECTIONS,	)	
	)	
Employer,	)	<b>ORDER DENYING</b>
	)	<b>RECONSIDERATION</b>
and	)	
	)	
IDAHO STATE INSURANCE FUND,	)	filed June 20, 2008
	)	
Surety,	)	
	)	
and	)	
	)	
STATE OF IDAHO, INDUSTRIAL	)	
SPECIAL INDEMNITY FUND,	)	
	)	
Defendants.	)	
_____	)	

Pursuant to Idaho Code § 72-718, Claimant moves for reconsideration of the Commission’s March 4, 2008 decision in the above-referenced case and asks for oral argument on his Motion. Claimant objects to the Commission’s application of the offset provisions of Idaho Code § 72-223 and the suspension of benefits provision of Idaho Code § 72-434. Claimant further objects to the Commission’s finding that he is not totally and permanently disabled. Defendants respond that the statutes were correctly applied and that there is substantial and competent evidence in the record to support the Commission’s decision. For the reasons discussed below, the Claimant’s Motion for Reconsideration is DENIED. The Request for Oral Argument is likewise DENIED.

Claimant first contends that the Commission's application of the offset provisions in Idaho Code § 72-223 results in inequity and has the effect of denying Claimant's attorneys appropriate pay for their work on Claimant's worker's compensation case. Though Claimant acknowledges, in his reply brief, that the Commission's application of the statute is correct under the statute's plain meaning, he maintains that such application is unjust and asks for the decision to be modified to reduce the offset by the amount of Claimant's attorney fees in the worker's compensation case.

It is not the Commission's place to ignore or deliberately misapply a statute duly enacted by the Idaho State Legislature. The statute was correctly applied in the Commission's decision; the modification Claimant seeks is contrary to the language of the statute. For that reason, Claimant's request for modification is denied.

Claimant next contends that the Commission erred in finding that he was not permanently and totally disabled under the odd-lot doctrine. He argues that the evidence in the record does not support the Commission's finding. He asks that the Commission modify the decision to accord him odd-lot status, or, in the alternative, to increase his permanent partial disability rating from 55% to 75%.

The Commission has already considered Claimant's evidence and arguments on the issue of permanent disability and weighed them along with the other evidence and arguments in the record. The Commission carefully examined and weighed all evidence and arguments before rendering its original decision and remains unpersuaded by Claimant's arguments. The decision is fully supported by the evidence in the record, and the request for modification of the odd-lot findings is denied. The request for modification of the permanent partial disability rating is also denied.

Finally, Claimant contends that the Commission erred by finding that Claimant is not entitled to total temporary disability benefits after July 21, 2002. Claimant argues that the Commission applied Idaho Code § 72-434 too harshly. According to the statute, “no compensation shall be payable” if an “injured employee unreasonably fails to submit” to a medical examination. Idaho Code § 72-434. Claimant does not dispute that he failed to attend such an examination, but he argues that his failure to attend was not unreasonable and that the Commission’s interpretation of the statute is too narrow.

The Commission has already considered Claimant’s evidence and arguments on this issue and remains unpersuaded by them. There is ample evidence in the record to support the Commission’s conclusion that Claimant’s failure to submit to the examination was unreasonable. Claimant was notified of the examination well in advance and deliberately failed to attend it. He did not communicate any concerns regarding the examination to the Defendants; he did not even notify them that he would not be attending. Claimant’s request to modify the findings on total temporary disability benefits is denied.

In effect, Claimant’s Motion is a request to reweigh evidence and arguments already considered, coupled with a request that the Commission ignore Idaho law. The Request for Oral Argument amounts to a request to repeat arguments already heard. Accordingly, the Motion for Reconsideration is hereby DENIED. The Request for Oral Argument is also DENIED.

DATED this \_\_20th\_\_ day of June, 2008.

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 the 20th day of June, 2008 a true and correct copy of **Order Denying Reconsideration** was served by regular United States Mail upon each of the following:

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eb

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