

not previously considered by the Commission, and that Claimant has not raised any new law not previously considered by the Commission.

Claimant's motion and arguments have been previously made, considered and rejected by the Commission. The Referee, in determining whether Claimant was entitled to benefits associated with a weight loss program, already considered Dr. McInnis' testimony. Dr. McInnis made a referral to Dr. Pennington because he was not an expert in weight loss, and the Referee found that no physician, including Dr. McInnis, has expressed the opinion that Claimant cannot undergo the TKA surgery without weight loss. While it is reasonable for Claimant to lose weight pre-surgery, given Claimant's morbid obesity, the Referee correctly determined that there was no evidence that weight loss was medically required prior to surgery, and that the Defendants did not act unreasonably in handling this claim.

The record reflects an exhaustive review of all the evidence and fully supports the Commission's decision. As such, there is no justification to warrant a reconsideration of the order.

Based upon the foregoing reasons, Claimant's Motion for Reconsideration or, in the alternative for a rehearing, should be, and is hereby, DENIED.

DATED this 5th day of November 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 this __5th_ day of __November_____2008, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail upon each of the following:

STARR KELSO
PO BOX 1312
COEUR D'ALENE ID 83816-1312

MONTE R WHITTIER
PO BOX 6358
BOISE ID 83707-6358

cs-m/cjh

_____/s/_____