

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SYLVIA TAYLOR,)	
)	
Claimant,)	IC 2006-520699
)	
v.)	
)	
SUNBRIDGE HEALTHCARE)	ORDER DENYING
CORPORATION, dba SUNBRIDGE)	RECONSIDERATION
CARE & REHABILITATION FOR)	
EMMETT, and AACO-A1 HEALTH)	
CARE SERVICES, INC.,)	
)	filed April 27, 2009
Employer,)	
and)	
)	
LIBERTY NORTHWEST)	
INSURANCE CORPORATION,)	
)	
Surety,)	
)	
Defendants.)	
_____)	

On March 12, 2009, the Commission adopted Referee Michael E. Powers’ proposed findings of facts and conclusions of law as its own in the underlying case. The Commission found that (1) Claimant had failed to prove she suffered an injury from an accident arising out of and in the course of her employment; and, (2) the remaining issues were moot.

On March 25, 2009, Claimant filed a request for a new hearing on three grounds: (1) Defendants’ attorney made factual statements unsupported by the evidence; (2) Referee, Michael E. Powers, was biased by a previous case; and, (3) Claimant is a novice, and was unable to obtain legal counsel for her hearing. While Claimant may not be aware of the procedure for a motion for reconsideration or the technicalities of the pleading related thereto, the Commission concludes it has authority to construe Claimant's *pro se* request as such under

Idaho Code § 72-708. Claimant's request is construed as a motion for reconsideration, or in the alternative, for a rehearing of the decision pursuant to Idaho Code § 72-718.

The Defendants filed a response on March 31, 2009. The Defendants ask that the Commission deny Claimant's motion for reconsideration. Defendants argue that Claimant has not submitted a brief in support of her motion as required by JRP 3(f) to support her allegations. Claimant did not identify any information in the record that suggested that Referee Michael E. Powers was biased. Claimant does not specifically identify the alleged misstatements from opposing counsel. Further, Claimant raised concerns about alleged misstatements in her briefing, and the Commission considered those arguments in its decision. Defendants argue that Claimant's inexperience is an insufficient reason to order a new hearing.

Claimant did not file a reply to Defendants' response.

Under Idaho Code § 72-718, a decision of the commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated; provided, within twenty (20) days from the date of filing the decision any party may move for reconsideration or rehearing of the decision . . . and in any such events the decision shall be final upon denial or a motion for rehearing or reconsideration or the filing of the decision on rehearing or reconsideration. J.R.P. 3(f) states that a motion to reconsider "shall be supported by a brief filed with the motion." Generally, greater leniency is afforded to *pro se* claimants. However, "it is axiomatic that a claimant must present to the Commission new reasons factually and legally to support a hearing on her Motion for Rehearing/Reconsideration rather than rehashing evidence previously presented." Curtis v. M.H. King Co., 142 Idaho 383, 388, 128 P.3d 920 (2005). On reconsideration, the Commission will examine the evidence in the case, and determine whether the evidence presented supports the legal conclusions. The Commission is not compelled to

make findings on the facts of the case during a reconsideration. Davison v. H.H. Keim Co., Ltd., 110 Idaho 758, 718 P.2d 1196. The Commission may reverse its decision upon a motion for reconsideration, or rehearing of the decision in question, based on the arguments presented, or upon its own motion, provided that it acts within the time frame established in Idaho Code § 72-718. See, Dennis v. School District No. 91, 135 Idaho 94, 15 P.3d 329 (2000) (citing Kindred v. Amalgamated Sugar Co., 114 Idaho 284, 756 P.2d 410 (1988)).

A motion for reconsideration must be properly supported by a recitation of the factual findings and/or legal conclusions with which the moving party takes issue. However, the Commission is not inclined to re-weigh evidence and arguments during reconsideration simply because the case was not resolved in a party's favor.

In this case, Claimant argues that the Defendants' attorney made statements of facts not supported by evidence. Claimant does not elaborate upon this argument or identify those statements she believes are unsupported. Claimant made similar statements regarding her opinion of opposing counsel and her perception of Defendants' case in her submissions to the Commission. It is to be expected that opposing parties in litigation disagree on the issues before the Commission. Having reviewed the evidence, the Commission finds that the evidence presented by both parties was carefully considered in making the final determination.

Claimant also alleges that the Referee was biased by a previous case. "The constitutional requirement that an adjudicator be free from bias applies equally to the courts and to state administrative agencies." Owsley v Idaho Industrial Commission, 141 Idaho 129, 135-36 (citing Eacret v. Bonner Cty., 139 Idaho 780, 784, 86 P.3d 494, 498 (2004)). The legal conclusion of "bias and prejudice" will not be inferred as true absent accompanying allegations of sufficient supporting facts. Owsley, 141 Idaho at 136. Beyond her assertion,

Claimant has not presented any facts supporting her allegations. That the Referee assigned to this case had previously heard an earlier claim brought by Claimant does nothing to support her claim of bias. “The process of sifting and weighing evidence often requires that some testimony will be given greater weight than other testimony, and that not all propositions will be equally well supported by the record. However, it is not a manifestation of bias that a trier of fact has weighed the evidence and drawn logically consistent conclusions therefrom.” Nelson v. David L. Hill Logging, 1992 IIC 0333; See Felber v. Motive Power, 2007 IIC 0309. "A worker's compensation claimant has the burden of proving, by a preponderance of the evidence, all the facts essential to recovery." Evans v. Hara's, Inc., 123 Idaho 473, 479, 849 P.2d 934 (1993). Claimant did not prove her case by a preponderance of the evidence, and her disappointment is understandable. But Claimant’s disappointment with the outcome of her case, without any supporting facts, is insufficient to sustain an allegation of bias. The Commission has reviewed the record and finds no persuasive evidence of bias from the Referee.

Claimant argues that she was unable to obtain legal counsel and was a novice to the system. Commission proceedings are “informal and designed for simplicity; the primary purpose of these proceedings being the attainment of justice in each individual case.” Hagler v. Micron Technology, Inc., 118 Idaho 596, 599, 798 P.2d 55 (1990) (citing Idaho Code § 72-708; In Re Bones, 48 Idaho 85, 280 P.2d 233 (1929); Fueling v. Farmer's Co-op Ditch Co., 54 Idaho 326, 31 P.2d 683 (1934)).

From the time of its creation, the Industrial Commission and its proceedings have contemplated *pro se* claimants. The original notion was that the Industrial Commission would be like most any other Commission. It would lend a ready ear and a helping hand to a citizen with a grievance, the overriding purpose being to do justice in the given situation.

Id.

The Commission is not responsible for securing legal representation for a party, and its proceedings are designed to accommodate *pro se* claimants. Claimant's inexperience is not a sufficient basis to grant a reconsideration or rehearing.

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, is hereby DENIED.

DATED this __27th day of ___April____, 2009.

INDUSTRIAL COMMISSION

/s/
R.D. Maynard, Chairman

/s/
Thomas E. Limbaugh, Commissioner

/s/
Thomas P. Baskin, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2009 a true and correct copy of the of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail upon each of the following:

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MONTE R WHITTIER
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cs-m/cjh

/s/ _____