

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

KEVIN R. SMITH,)
)
 Claimant,)
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 v.)
)
 GARLAND CONSTRUCTION SERVICES,)
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 Employer,)
)
 and)
)
 TRUCK INSURANCE EXCHANGE/)
 FARMERS INSURANCE,)
)
)
 Surety,)
 Defendants.)
)
 _____)

IC 2007-002698

**ORDER DENYING
RECONSIDERATION**

June 8, 2009

On May 11, 2009, Claimant filed a motion requesting reconsideration of the Industrial Commission’s decision filed April 24, 2009, in the above referenced case. Defendants filed a response on May 15, 2009, and Claimant filed a reply on May 21, 2009.

At hearing, Claimant alleged that his left wrist injury resulted in psychological disorders, including severe depression, and principally relied on the expert testimony of Tim Rehnberg, Ph.D. Defendants argued that Claimant’s work injury was not the predominant cause of his psychological condition, and relied on the expert testimony of Ronald Klein, Ph.D. The Commission found Dr. Klein’s opinion more persuasive and concluded that Claimant had not proven his entitlement to benefits for psychological injuries from his January 15, 2007, industrial accident pursuant to Idaho Code § 72-451.

In the motion for reconsideration, Claimant contends that the Commission erred in

discounting Dr. Rehnberg's opinion, and that the opinions of Dr. Klein are not admissible because he is a non-Idaho licensed psychologist. Defendants aver that Claimant's reconsideration is chiefly a request to reweigh the evidence.

First, Claimant argues that the Commission incorrectly discounted Dr. Rehnberg's opinion that Claimant wrist injury was the predominant cause of his psychological condition. Claimant states that the Commission was incorrect in finding that Dr. Rehnberg's opinion was based in part on the unreliable foundation of Claimant's representations that he was not using marijuana. Dr. Rehnberg reviewed Claimant's deposition, in which Claimant testified he had used marijuana as recently as Memorial Day 2008. The decision does not state that Dr. Rehnberg did not question whether Claimant used marijuana, only that Dr. Rehnberg was not fully apprised and did not address the impact of Claimant's marijuana abuse.

Claimant argues that there is no evidence that the substance abuse evaluation administered by Dr. Rehnberg was invalid. While not finding the evaluation invalid, the Commission found Claimant's two positive drug tests, and his own admission that he was having trouble quitting marijuana more persuasive. There is no requirement that the Commission invalidate all conflicting evidence. The Commission weighed the evidence before it and made findings of fact accordingly.

The final finding which Claimant avers is unsupported is that Dr. Rehnberg relied on Claimant's deposition and the records of mental health professionals commencing in 2007. Yet Dr. Rehnberg's deposition testimony fully supports the Commission's finding.

Question: All right. And you haven't reviewed any of Mr. Smith's medical records or psychological records, if there were any, prior to 2007?

Dr. Rehnberg: No. If I had – I would have reviewed mental health records prior to that if they were available.

Rehnberg Deposition, p. 38.

Claimant argues that Dr. Rehnberg did not need to evaluate medical reports because he is a psychologist addressing mental issues, not orthopedic issues. While not persuaded by Dr. Rehnberg, the Commission made no statement implying that Dr. Rehnberg did not fully meet all of the applicable Idaho standards of care. Dr. Rehnberg may not have needed to review additional records, but the Commission found that without a full understanding of Claimant's past and recent, medical and psychological, history Dr. Rehnberg's opinion was less persuasive than Dr. Klein.

Finally, Claimant asserts that the opinions of Dr. Klein are not admissible because he is a non-Idaho licensed psychologist, and according to Idaho Code § 72-451 a more rigorous test for psychological injury claims requires that the opinions "must be made by a psychologist, or psychiatrist, duly licensed to practice in the jurisdiction in which treatment is rendered." Idaho Code § 72-451(5). The recommendation, as adopted by the Commission, states that Claimant's motion to strike the testimony of Dr. Klein is denied because Idaho § 72-451(5) does not require Defendants' medical expert to be licensed to practice in Idaho before providing medical opinion testimony. McGee v. J.D. Lumber Co., 1999 IIC 0538, 0540, n.1, 99 IWCD 11988 (April 27, 1999).

The Commission previously discussed the issue of whether a Washington licensed psychologist is competent to testify in Idaho. Blancer v. Louisiana-Pacific Co., 1993 IIC 0838, 93 IWCD 6449 (June 30, 1993). The Commission noted that a psychologist is competent to testify regarding the causes of mental conditions. O'Loughlin v. Circle A Construction, 112 Idaho 1048, 739 P.2d 347 (1987).

Idaho Code, Section 54-1804(1)(b) allows a person residing in another state or country and authorized to practice medicine there to "conduct a lecture, clinic, or demonstration. . . so long as he (sic) does not open an office or appoint a place to meet patients or receive calls in this state. The legislature here differentiated

between the passing of information formulated outside the state and the actual practice of medicine by an unlicensed physician. This differentiation also applies to psychologists whose testimony is given in a similar format as, or in lieu of, medical testimony. Further, we do not read O'Loughlin so narrowly as to hold that because the psychologist there was licensed in the State of Idaho, Idaho licensure is a mandatory prerequisite for an expert witness. Such an interpretation would lend a very provincial view to our ability to receive expertise in a hearing. Rather, O'Loughlin stands for the proposition that the testimony given by a licensed psychologist is valid as to the diagnosis of mental disorders. The Commission knows of no requirement that an expert witness be licensed in the State of Idaho in order to testify.

Blancer v. Louisiana-Pacific Co., 1993 IIC 0838, 0844, n.9, 93 IWCD 6449 (June 30, 1993).

Claimant argues that prior Commission decisions are not binding precedent. While not binding, we do find it instructive and persuasive. The Commission holds that Idaho Code § 72-451(5) does not require Dr. Klein to be licensed to practice in Idaho in order to provide medical opinion testimony. Claimant has not presented a sufficient argument to require the reconsideration of the ruling denying Claimant's motion to strike the testimony of Dr. Klein.

The Commission has reviewed the record with a focus on the concerns that Claimant has raised in the motion for reconsideration and we still feel that the facts support the decision issued on April 24, 2009. The Commission's analysis took into account all the documentary evidence and testimony and found that Dr. Klein's opinions are entitled to greater weight because he had more complete knowledge of Claimant's condition. The Commission's decision concluded that Claimant has not proven by clear and convincing evidence that his wrist injury is the predominant cause of his present psychological condition as compared to all other causes combined. Although Claimant disagrees with the Commission's findings and conclusions, the Commission finds the decision of April 27, 2009, is supported by substantial evidence in the record and Claimant has presented no persuasive argument to disturb the decision.

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Based upon the foregoing reasons, Claimant's Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

DATED this ___8th___ day of June, 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 __8th__ day of June, 2009, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail upon each of the following:

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