BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

UNTE CHEH, Claimant, v. EG&G OF IDAHO, INC., dba IDAHO NATIONAL ENGINEERING LABORATORY, Employer, and WAUSAU UNDERWRITERS INS. CO., Surety, Defendants.	)	**IC 2007-032277** **ORDER DENYING RECONSIDERATION AND GRANTING THE MOTION FOR A COPY OF THE REFEREE'S RECOMMENDATION** filed October 1, 2009

On August 4, 2009, Claimant filed a Motion for an Order Providing Him a Copy of Referee Donohue's Recommendation and a Motion for Reconsideration. Claimant requests reconsideration of the Industrial Commission's decision filed July 30, 2009 in the above referenced case. Defendants filed a response on August 18, 2009. Claimant's reply was filed August 27, 2009.

Claimant requests a copy of Referee Donohue's recommendation which was modified by the Commission. Claimant's motion for reconsideration asks the Commission to issue its ruling on the Referee's Order of Claimant's Motions and Another Amended Order on Briefing Schedule filed April 23, 2009. Claimant also requests reconsideration of the Commission's July 30, 2009 decision arguing that he did not know he suffered a high dose radiation exposure at INEL until he received the USW letter of January 3, 2007, and it was not until he received the

January 22, 2007 letter of Dr. Chiodo that Claimant was aware that the high dose radiation exposure he received at INEL was the cause of his disease. Claimant contends that because he did not know of his exposure until January 22, 2007, his claim is timely.

Defendants aver that Claimant is merely asking the Commission to reweigh the facts already considered. Defendants argue that at some point well before Claimant filed his Complaint in this case, Claimant was fully aware that he suffered a constellation of maladies which were caused by radiation exposure Claimant suffered as a particular result of his trade, occupation or employment.

In the motion requesting a copy of the Referee's recommendation, Claimant asserts that general equitable rules support the fact that he should be permitted to review the recommendation of Referee Donohue. Claimant correctly notes that the Commission modified the findings and conclusions as submitted by the Referee. While the Commission does not, as a standard of practice, release recommendations that are not adopted by the Commissioners, we see no reason for denying Claimant the opportunity to review the recommendation. The Commission GRANTS Claimant's motion requesting a copy of the recommendation and attaches the document to this order. The Commission reiterates that the recommendation was not adopted by the Commission and is not binding.

Additionally, Claimant asks for reconsideration of the Commission conclusion that Claimant's occupational disease became manifest between 1978 and February 2006, which would bar Claimant's current claim by the statute of limitation. Idaho Code § 72-448.

Claimant argues that he did not know he suffered a high dose radiation exposure at INEL

until he received the USW letter of January 3, 2007. Claimant contends that it was not until he received Dr. Chiodo's January 22, 2007 letter that he became aware that the high dose radiation exposure he received at INEL was the cause of his disease.

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.

The Commission's decision carefully addressed the relevance of the USW letter. The

letter was a general notice from the USW Worker Health Protection Program which informed former INEL workers of a free medical screening examination and of the Energy Employees Occupational Illness Compensation Program, a federal workers compensation program. The letter did not discuss symptoms of radiation exposure, and it did not inform Claimant his symptoms were caused by radiation exposure. The letter was intended to reach all workers at the INEL site from 1949 to the present and did not address Claimant's individual situation. The evidence does not support Claimant's contention that the January 3, 2007 USW letter informed him that he suffered high dose radiation exposure at INEL.

While Claimant contends it was not until he received the January 22, 2007 letter of Dr. Chiodo that he was aware that the high dose radiation exposure he received at INEL was the cause of his disease, the Commission concluded that Claimant's date of manifestation occurred no later than February 2006. Claimant left INEL due to health concerns in 1978 and later began pursuing benefits relating to his radiation exposure. Claimant has been seen by a myriad of doctors. Many opined that Claimant's ailments were effects of the radiation exposure. The record reflects that February 2006, the date of Dr. Lehr's report, is the latest date at which manifestation occurred in this case.

We reiterate that if Claimant is to be believed, he is far from unsophisticated in matters relating to the handling and use of radioactive materials. It strains credibility to conclude that if he was exposed to "high doses" of radiation during the period of his employment, he did not have contemporaneous knowledge of these exposures. We find no reason to reconsider our previous ruling that Claimant's date of manifestation falls between 1978 and February 2006, the

timeframe during which he had knowledge that his manifold physical complaints were related to radiation exposure.

Claimant also requests the Commission issue its ruling on Claimant's previous motion. The motion is question was filed on April 15, 2009 and is titled Motion to Stay Briefing Schedule; Reopen the Hearing; and Permit Discovery to the Extent Necessary Pursuant to J.R.P.P. Rule 3(E), I.C. § 72-719(c); I.C. 72 § 708; and General Equitable Powers of the Industrial Commission to Correct Manifest Injustice. The motion was filed after the January 15, 2009 hearing in this case. The motion requested the briefing schedule be stayed and the hearing be reopened for further testimony by Claimant and other witnesses as necessary. The motion was filed by attorney Starr Kelso on Claimant's behalf, though Mr. Kelso had not filed a notice of appearance in this case. Mr. Kelso filed an Attorney Status Report on filed April 27, 2009, stating that he was no longer acting as attorney for Claimant.

The Order on Claimant's Motions and Another Amended Order on Briefing Schedule was filed on April 23, 2009. The order noted that Claimant had repeatedly filed inappropriate discovery and motions. Claimant was encouraged to retain counsel on several occasions. The Referee found that Claimant did not show a manifest injustice and that Claimant had been afforded due process and equitable courtesy above and beyond that allowed to most *pro se* claimants. Claimant could have retained counsel before the hearing but chose to proceed on his own. Claimant did work with an attorney from June 2007 until March 21, 2008 when that attorney informed Claimant that he was withdrawing as counsel. Yet, this still left Claimant with ample time to retain counsel prior to the January 15, 2009 hearing. Finally the order granted

Claimant an additional week within which to file his brief.

The issues of this case were bifurcated to narrow the scope for discovery and focus on the heart of the matter. The hearing proceeded and then several months later Claimant, through Mr. Kelso, filed a motion to reopen and essentially start over. Claimant had sufficient time to prepare or find assistance in preparing for the hearing as he saw fit. The Commission agrees that Claimant was afforded due process and there was no manifest injustice. Finding no error in the Referee's order, the Commission affirms the same.

Although Claimant disagrees with the Commission's findings and conclusions, the Commission reviewed and weighed, as a whole, the medical reports and evidence presented. The Commission's decision of July 30, 2009, in the above referenced case, is supported by substantial evidence in the record and Claimant has presented no persuasive argument to disturb the decision.

Based upon the foregoing reasons, Claimant's Motion for a Copy of the Referee's Recommendation is GRANTED, and Claimant's Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

DATED this _1st_ day of ___October_____, 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 _1st__ day of ____October_____, 2009, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION AND GRANTING THE MOTION FOR A COPY OF THE REFEREE'S RECOMMENDATION** was served by regular United States Mail upon each of the following:

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sb/cjh ___/s/_____