

because the case was not resolved in the party's favor.

A motion for reconsideration must be properly supported by a recitation of the factual findings or legal conclusions with which the moving party takes issue. On reconsideration, the Commission will examine the evidence in the case, and determine whether the evidence presented supports the legal conclusions in the decision. However, the Commission is not compelled to make findings of fact during reconsideration. *Davidson v. H.H. Keim Co.*, 110 Idaho 758, 718 P.2d 1196 (1986).

In this case, the Commission found that Claimant failed to prove that his need for lumbar surgery was caused by his industrial accidents. Claimant argues that this conclusion was based on inaccurate testimony from his co-worker and supervisor. Claimant is incorrect. The Referee's findings, adopted by the Commission, were based largely on the medical evidence in the record. Indeed, the Referee expressly noted in her Finding 33 that "Claimant's co-workers provided little, if any, probative evidence on the causation issue."

Claimant also challenges the expert opinion of Dr. Montalbano. Claimant asserts that Dr. Montalbano's opinion was "greatly" influenced by the statements of Mr. Conklin. This, again, is incorrect. Dr. Montalbano did consider Mr. Conklin's deposition testimony in coming to his opinion, but the opinion was primarily based on a thorough review of Claimant's medical records. Dr. Montalbano explained his conclusions, and why he came to them, at deposition. In contrast, Claimant failed to depose the doctor on whose opinion he relied, and the evidence in the record supports the Commission's conclusion that the opinion of Claimant's doctor was based on incomplete and inaccurate information.

The substantial, competent evidence in the record supports the Commission's decision. For that reason, Claimant's motion for reconsideration is DENIED.

IT IS SO ORDERED.

DATED this 12th day of March, 2010.

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 the 12th day of March, 2010, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail upon each of the following:

ALAN WILLFORD
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eb/cjh

_____/s/_____