

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

In the Matter of:)	
)	
ADDIE DEE PARKS,)	IC 1993-848767
)	
Decedent.)	
_____)	
MARK PARKS, Surviving spouse,)	ORDER REGARDING
)	RECONSIDERATION
Claimant,)	AND RE-ASSIGNMENT
)	
v.)	
)	
WESTERN HEALTH CORPORATION, DBA)	Filed January 25, 2010
VALLEY CARE CENTER,)	
)	
Employer,)	
and)	
)	
FREMONT INDEMNITY COMPANY,)	
)	
Surety,)	
)	
Defendants.)	
_____)	

On December 2, 2010, Defendants filed a motion for reconsideration, requesting that the Commission overturn an order entered by Referee Alan Taylor. Thereafter, Defendants filed a motion to re-assign this case to the full Commission or to another referee. Claimant has not responded to Defendants’ motions. However, Claimant has filed a motion to enlarge time to answer discovery, to which Defendants have objected. This order addresses Defendants’ motions.

I

MOTION FOR RECONSIDERATION

Defendants ask that the Commission reconsider Referee Taylor’s order granting

Claimant's motion for extension of time. Defendants argue that the order, issued on November 18, 2010, allows Claimant to ignore Commission rules, and also fails to address the merits of Defendants' motion to dismiss.

Pursuant to Idaho Code § 72-506(2), the Commission may reconsider a referee's order. Generally, however, a party's challenge to referee orders should be made in the party's post-hearing brief. Certain circumstances justify earlier consideration of such challenges; these circumstances are similar to those that would compel the Idaho Supreme Court to consider an interlocutory appeal. Pre-hearing review is appropriate where the challenge "involves a controlling question of law as to which there is substantial grounds for difference of opinion," and when immediate consideration of the challenge "may materially advance the orderly resolution of the litigation." *See Kindred v. Amalgamated Sugar Co.*, 118 Idaho 147, 149, 795 P.2d 309, 311 (1990).

Defendants have failed to show that compelling circumstances exist in this case. There is no controlling question of law at issue; Defendants simply disagree with the Referee's order. Therefore, the Commission declines to consider the motion for reconsideration at this time. Defendants may renew their motion in their post-hearing brief.

II

MOTION FOR RE-ASSIGNMENT

Defendants have also requested that the full Commission hear this case, or that the matter be assigned to a different referee. Defendants argue that Claimant's counsel improperly disclosed information regarding settlement negotiations to Referee Taylor, and that the disclosure prejudices the Referee's ability to make fair and impartial findings in this case.

The full Commission will hear cases that involve novel or complex facts, issues of first

impression, or situations that could overturn or modify precedent. J.R.P. 8(A)(8). While other cases may merit hearing by the full Commission, we do not find that this case is one of them. Nor do we find reason to re-assign the case to a different referee. Aside from vague assertions, Defendants do not specify the disclosure made to the Referee, and Defendants have made no showing that Referee Taylor's ability to impartially consider this case has been impacted by the disclosure. Such disclosures are not admissible into the record; consequently, Referee Taylor's recommendation cannot be based on them. Defendants have neither asserted nor shown that Referee Taylor has in fact been influenced by the disclosure, or that Referee Taylor has dealt with Defendants in a prejudicial or unfair manner. The motion to have the case heard by the full Commission is therefore DENIED.

Based on the foregoing, IT IS HEREBY ORDERED That:

1. The Commission will not consider Defendants' motion for reconsideration at this time;
2. Defendants' motion to have the case heard by the full Commission or another referee is DENIED;
3. Other pending motions and matters shall be considered by Referee Taylor.

DATED this 25th day of January, 2011.

INDUSTRIAL COMMISSION

/s/ _____
Thomas E. Limbaugh, Chairman

/s/ _____
Thomas P. Baskin, Commissioner

/s/ R.D. Maynard, Commissioner

ATTEST:

/s/ Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January 2011, a true and correct copy of the foregoing **ORDER REGARDING RECONSIDERATION AND RE-ASSIGNMENT** was served by regular United States Mail upon each of the following:

JOHN O AVERY
770 S WOODRUFF AVE
IDAHO FALLS ID 83401

MARK C PETERSON
PO BOX 829
BOISE ID 83701

eb

/s/