

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

DALE WHITMORE, )  
 )  
 Claimant, )  
 )  
 v. )  
 )  
 )  
 CABELA’S, )  
 )  
 Employer, )  
 )  
 )  
 and )  
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 )  
 SENTRY INSURANCE A MUTUAL )  
 COMPANY, )  
 )  
 Surety, )  
 )  
 )  
 and )  
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 )  
 STATE OF IDAHO, INDUSTRIAL )  
 SPECIAL INDEMNITY FUND, )  
 )  
 )  
 Defendants. )  
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 \_\_\_\_\_ )

**IC 2007-033768**

**ORDER DENYING  
RECONSIDERATION**

Filed February 16, 2011

On January 6, 2011, Claimant filed a motion requesting reconsideration of the Industrial Commission’s decision filed December 27, 2010, in the above referenced case. Defendants, Cabela’s and Sentry Insurance, filed a response on January 11, 2011. Defendant, Industrial Special Indemnity Fund (ISIF), filed a response on January 14, 2011. No reply was filed.

In the underlying decision Claimant contended that he contracted Complex Regional Pain Syndrome (CRPS) as the result of a left ankle injury sustained in an accepted industrial accident. Claimant admitted that he lied about his past to the attorneys, his wife, and physicians. But Claimant maintains that he did not lie about the nature of the injuries he suffered. Defendants argued that Claimant is not credible, he does not have CRPS, and he has recovered from his work related ankle sprain.

The Commission found that Claimant did not prove he suffered from work-related CRPS.

The Commission concluded that Claimant is entitled to reasonable medical care for his left ankle injury until December 21, 2007, the date the ankle injury reached maximum medical improvement.

In his motion for reconsideration, Claimant argues that several evidentiary ruling are incorrect, that all of Claimant's admitted lies deal with matters unrelated to his alleged symptoms, and generally that the doctors who opined Claimant suffers from work-related CRPS are more persuasive than those who opined otherwise.

Defendants, Cabela's and Sentry Insurance, contend that Claimant's motion is an attempt to reweigh the evidence and presents no new legal or factual information. Defendant, ISIF, addresses each finding placed at issue by Claimant and concludes that the Decision is supported by substantial and competent evidence.

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."

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 will begin by addressing the two evidentiary ruling questioned by Claimant. First, Dr. Mallari's deposition, pages 28-29, contained questions about Dr. Prager's use of Ketamine treatments and explanations of Dr. Prager's notes, not questions about Ketamine treatments in general. The objection was properly sustained. Second, Dr. Krafft's deposition, pages 36-38 and 59, contained questions relating to a Social Security ruling referencing the evaluation of Reflex Sympathetic Dystrophy. Workers' compensation cases are procedurally different and not bound by Social Security rulings or their discussions on medical issues. These objections were properly sustained.

Claimant avers that the Commission essentially concluded that a lack of credibility is all that is needed to rule out a diagnosis of CRPS. Claimant's contention is a gross understatement of the Commission's findings and conclusions. Dr. Kadyan opined that Claimant does not meet the criteria for a CRPS diagnosis. Dr. Kraft convened a team conference and found a lack of evidence to support a CRPS diagnosis. Dr. Calhoun concluded Claimant's alleged pain condition is not CRPS and is not related to his industrial accident. A panel consisting of Drs. Rogers, Moress, and Enright opined that Claimant's stand-alone pain complaints are insufficient under the *AMA Guides, 6<sup>th</sup> Ed.*, to establish a CRPS diagnosis. In addition to the medical

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evidence suggesting a number of differential diagnoses for Claimant's complaints (gout, somatoform disorder, and arthritis), the Commission was also presented with Claimant's wildly creative and highly damaging credibility issues. Because of the nature of Claimant's pain complaints and alleged CRPS, having confidence that Claimant is a credible historian when it comes to describing the nature and extent of his pain complaints is critical. It is impossible to find Claimant a credible patient or witness given the pervasiveness of his prevarications.

Claimant takes issue with many of the Decision's findings but he presents no new arguments which cause the Commission to revise its conclusions. Clearly Claimant views many of the statements in the Decision in a different light, yet all of the findings and conclusions are supported by the record.

The Commission has reviewed the record with a focus on the details presented by Claimant in the motion for reconsideration and we still feel that the facts support the decision issued on December 27, 2010. The Commission's analysis took into account all the documentary evidence and testimony. Although Claimant disagrees with the Commission's findings and conclusions, the Commission finds the decision 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 Reconsideration is DENIED.

IT IS SO ORDERED.

DATED this \_\_\_16th\_\_\_ day of \_\_\_February\_\_\_\_\_, 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 \_\_16th\_\_\_\_ day of \_\_February\_\_\_\_\_, 2011,  
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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\_\_\_\_\_/s/\_\_\_\_\_