

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

MARY JANE DUENES, )  
 )  
 Claimant, )  
 )  
 v. )  
 )  
 CH2M WG IDAHO, LLC, )  
 )  
 Employer, )  
 )  
 and )  
 )  
 EMPLOYERS INSURANCE COMPANY )  
 OF WAUSAU, )  
 )  
 Surety, )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

**IC 2006-512972**

**ORDER DENYING  
RECONSIDERATION**

Filed December 29, 2011

On September 29, 2011, Claimant filed a motion requesting reconsideration of the Industrial Commission’s decision filed September 13, 2011, in the above referenced case. Defendants filed a response on October 11, 2011. No reply was filed.

In the underlying decision Claimant contended that as a result of her foot and ankle injuries she suffers from complex regional pain syndrome (CRPS), and she is entitled to continuing medical care, as well as, total and permanent disability benefits as an odd-lot worker. Defendants argued that Claimant’s fibula fracture healed and there are no objective medical findings to support her subjective pain complaints. Defendants state that Claimant’s treating physicians all agree that Claimant right foot and ankle are medically stable and they have released her from care without restrictions and without recommendations for further treatment.

The Commission found insufficient evidence to establish that Claimant has any diagnosed condition, including CRPS, beyond that for which she has already received benefits. The Commission concluded that Claimant failed to prove that she is entitled to benefits related to her right foot and ankle after she reached medical stability on July 12, 2007.

In her motion for reconsideration, Claimant argues that her subjective pain complaints were consistent and should be used to determine if she is entitled to further treatment. Claimant contends that her subjective complaints coupled with objective findings from her treating doctors establish at least five of the eight objective findings, necessary to diagnose CRPS, were present before Dr. Knoebel found that Claimant did not have CRPS.

Defendants contend that Claimant wants another bite at the apple. Defendants argue that no credible physician diagnosed Claimant with CRPS and the treating doctors opined that Claimant was not entitled to further medical care.

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 of 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)).

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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.

According to the *AMA Guides, 5<sup>th</sup> Ed.*, CRPS may be diagnosed after at least eight signs are concurrently present. Signs are objective evidence of disease perceptible to the examiner, as opposed to symptoms, which are subjective sensations of the individual. Claimant argues that at least five of the eight objective findings were determined to be present before Dr. Knoebel concluded Claimant had no objective findings. Claimant's attempt is still short of the requirement of eight and the objective findings in Claimant's list are from different doctors evaluating Claimant at different times, not concurrently as required. Even if five of the objective findings were found by different doctors at different times, no credible doctor found that Claimant suffers from CRPS. No doctor, other than Dr. Cook, diagnosed Claimant with CRPS. As stated in the recommendation, Dr. Cook's qualifications are unknown and his opinions are internally inconsistent and unsupported by the medical records.

Claimant avers that her subjective pain complaints should be valid because they were consistent. Because of the nature of Claimant's pain complaints, having confidence that Claimant is a credible historian when it comes to describing the nature and extent of her pain complaints is critical. The Commission supports the Referee's finding that Claimant is not a reliable witness. As set forth in the recommendation, Claimant was unable to answer even simple questions about work she performed for years, Claimant has a long history of dependence on narcotic pain medication, and Claimant's medical history includes a variety of self-reported diagnoses which have no supporting documentation in the record. Claimant's many credibility

concerns are not wash away by what Claimant characterizes as consistent allegations of pain.

Claimant underwent many evaluations and a variety of testing in an attempt to identify the cause of Claimant's complaints. But no diagnoses were confirmed and no physician recommended any further testing or treatment of Claimant's right foot and ankle.

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 September 13, 2011. 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 \_\_29th\_\_\_\_ day of \_\_December\_\_\_\_\_, 2011.

INDUSTRIAL COMMISSION

\_\_\_\_\_  
/s/ Thomas E. Limbaugh, Chairman

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/s/ Thomas P. Baskin, Commissioner

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/s/ R.D. Maynard, Commissioner

ATTEST:

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/s/ Assistant Commission Secretary

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**CERTIFICATE OF SERVICE**

I hereby certify that on 29th day of December, 2011, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail upon each of the following:

PAUL T CURTIS  
598 N CAPITAL AVE  
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SCOTT HARMON  
PO BOX 6358  
BOISE, ID 83707-6358

/s/ \_\_\_\_\_