BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

STEVEN HARVATH,	)	
	)	**IC 2010-020646**
Claimant,	)	**2010-007470**
v.	)	
	)	
	)	
IDAHO FOOD BANK,	)	**ORDER DENYING REQUEST**
	)	**FOR RECONSIDERATION**
Employer,	)	
and	)	
	)	
IDAHO STATE INSURANCE FUND,	)	
	)	Filed December 2, 2011
Surety,	)	
	)	
Defendants.	)	
	)	

Claimant moves for reconsideration of an order issued by Referee Douglas A. Donahue in the above-captioned case. Claimant submitted various supplemental affidavits to support his request for reconsideration. Defendants responded to Claimant's request, and submitted their own supplemental affidavit. The case is pending before Referee Marsters.

Claimant requests that the Commission overturn the Order denying Claimant's request for a change of treating physician. Claimant would like to substitute his current treating physician, Dr. Gussner, for Richard Radnovich, M.D. Claimant finds Dr. Gussner unhelpful. Further, Claimant argues that Dr. Gussner canceled the appointment that was intended to rehabilitate the relationship between Claimant and Dr. Gussner.

Defendants counter that Dr. Gussner has rescheduled his appointment with Claimant. Further, Claimant is not entitled to a new treating physician at Surety's expense, because Claimant disagrees with his treating physician's determination. Defendants argue that

Claimant's motion raises issues that are more appropriately resolved in the context of a traditional hearing, and not in the setting of a petition for change of physician under Idaho Code § 72-432(4).

In the underlying order, Claimant requested that Referee Donahue designate Richard Radnovich, M.D., as his treating physician. Defendant objected to Claimant's request because (1) Claimant has had multiple qualified physicians treat him; (2) Claimant's disagreement with the opinions of his treating physicians is not grounds for granting a petition for change of physician; and (3) Differing opinions among medical professionals is a question to be decided only after a full hearing on the merits and not in the context of a request for reconsideration.

The Referee was persuaded by Defendants' arguments, and noted that differing opinions among medical professionals is a question to be decided only after a full hearing on the merits and not in the context of this petition. As such, the Referee denied Claimant's request for a change of physician.

DISCUSSION

Under Idaho Code § 72-506(2), an order made by a referee is not an order of the Commission unless it is "approved and confirmed" by the Commission. This statute establishes the Commission's authority to review the orders of a referee; otherwise, the Commission would not be able to approve and confirm such orders. The process by which a party may seek Commission review of a referee's order is not expressly outlined by statute or rule. Review may be sought by means of a motion for reconsideration filed after the Commission has issued its decision in the case. *See Wheaton v. ISIF*, 129 Idaho 538, 928 P.2d 42 (1996) and *Simpson v. Louisiana-Pacific Corp.*, 134 Idaho 209, 998 P.2d 1122 (2000). Generally, however, the Commission prefers that challenges to interlocutory orders of a referee be made in the parties'

post-hearing briefs, before the final decision has been issued.

There are some circumstances that justify earlier consideration of a challenge to a referee's order. 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).

Such circumstances do not exist in this case. From the parties' submission, the Commission understands that Dr. Gussner, Claimant's treating physician, may not find Claimant needs the treatment that Claimant desires. The Commission relies on treating physicians, and all other physicians, to submit their candid and honest assessment on a claimant's condition, presentation, and the need for additional medical care, if any is needed. Often, the parties will disagree about what treatment is necessary or required. The Commission routinely handles cases with these disputes between medical experts. Frankly, disagreeing with Claimant on his entitlement to additional medical care is not a sufficient basis to designate a new treating physician, nor does disagreeing with Claimant's assessment of his need for medical care prove bias.

In addition, Claimant raises issues that are best addressed during a hearing before Referee Marsters or in post-hearing briefs, and not in a request for reconsideration. Claimant is entitled to present his own expert medical testimony, by means of an independent medical exam, deposition or otherwise. However, Claimant should present these arguments at hearing. Thereafter, the referee will consider the testimony and evaluate the merits of the case.

ORDER

Based on the foregoing analysis, IT IS HEREBY ORDERED:

1. Claimant's request for reconsideration is **DENIED.**

DATED this _2nd__ day of _December_____, 2011.

INDUSTRIAL COMMISSION

_/s/_____
Thomas E. Limbaugh, Chairman

_____
Thomas P. Baskin, Commissioner

_/s/_____
R.D. Maynard, Commissioner

ATTEST:

_/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the _2nd__ day of _December_____, 2011, a true and correct copy of the foregoing **ORDER DENYING REQUEST FOR RECONSIDERATION** was served by regular United States Mail upon each of the following:

BRECK SEINIGER
942 W MYRTLE ST
BOISE ID 83702

JAMES FORD
PO BOX 1539
BOISE ID 83701

__/s/_____