

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARTIN FIERROS

Claimant,

v.

INTERIOR SYSTEMS INC.,

Employer,

and

LIBERTY NORTHWEST INS. CORP.,

Surety,

Defendants.

IC 2008-031087

**ORDER GRANTING REQUEST FOR
RECONSIDERATION**

Filed August 10, 2012

On June 21, 2012, Claimant timely requested reconsideration of the Commission’s June 20, 2012 Order Dismissing Complaint, without prejudice, for lack of prosecution. Prior to the Commission’s Order Dismissing Complaint, Referee Marsters sent the parties a Notice of Intent to Recommend Dismissal (“Notice”) on May 3, 2012, due to case inactivity. The Notice gave Claimant twenty-one (21) days to respond and/or object to the recommendation. Claimant failed to file a response.

In their July 10, 2012 response, Defendants argue that Claimant’s motion for reconsideration should be denied, because Claimant cannot show good cause for reinstatement. Claimant failed to file his response to the Notice of Intent to Recommend Dismissal within the allotted time, and dismissal was appropriate.

Claimant admits he failed to file his “Motion to Not Dismiss” with the Commission. However, Claimant’s certificate of service shows he served Defendants on May 7, 2012—well

within the Notice's twenty-one (21) day deadline. Because Defendants received his motion, they will not be prejudiced or surprised by the reinstatement of his Complaint. Further, Claimant contends that the statute of limitations is not at issue because Defendants have paid TTD and PPI benefits as recently as May 2012. Claimant requests reinstatement of his Complaint.

DISCUSSION

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, that within twenty (20) days from the date of filing the decision any party may move for reconsideration or rehearing of the decision. 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)).

In this case, the sole issue is whether Claimant has shown his Complaint should be reinstated. Claimant did make a clerical error when he failed to file his "Motion to Not Dismiss" with the Commission. However, Claimant served Defendants with the "Motion to Not Dismiss" on May 7, 2012, within the timeframe from the Notice. While Defendants are not obligated to notify Claimant he erred on his certificate of service, Defendants are not prejudiced by a reinstatement of the Complaint nor have Defendants raised any statute of limitations concerns. Claimant's oversight is isolated and Claimant promptly acted to mitigate the consequences of such. Claimant has shown good cause for reinstatement of his Complaint.

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ORDER

Based on the foregoing reasons, Claimant's request for reconsideration is GRANTED.

Claimant's Complaint is reinstated.

IT IS SO ORDERED.

DATED this 10th day of August 2012.

INDUSTRIAL COMMISSION

/s/ _____
Thomas E. Limbaugh, Chairman

/s/ _____
Thomas P. Baskin, Commissioner

R.D. Maynard, Commissioner

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 2012, a true and correct copy of the foregoing **ORDER GRANTING REQUEST FOR RECONSIDERATION** was served by regular United States Mail upon each of the following persons:

RICHARD HAMOND
811 EAST CHICAGO ST
CALDWELL ID 83605

ROGER BROWN
HARMON AND DAY
PO BOX 6358
BOISE ID 83707-6358

/s/ _____