

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

STEVE FINDLEY,

Claimant,

v.

CITY OF POCA TELLO,

Employer,

and

STATE INSURANCE FUND,

Surety,

Defendants.

**IC 2005-514741**

**ORDER GRANTING  
RECONSIDERATION**

**Filed October 24, 2012**

On September 12, 2012, Claimant requested reconsideration of the Commission's September 9, 2012 order dismissing his complaint. The Commission dismissed Claimant's complaint because he failed to respond to the Commission's notice of intent to recommend dismissal. The sole issue is whether the Commission should grant Claimant's request for reconsideration and reinstate his complaint. Claimant was injured on June 26, 2005, and filed his complaint on or about June 24, 2010. If the Commission does not reinstate Claimant's complaint, Claimant will be barred from income benefits.

Claimant's counsel inadvertently failed to submit his August 13, 2012 request to maintain Claimant's complaint on the Commission's active calendar. *See*, C. Exh. 7. Unfortunately, Claimant's counsel misplaced the request, and the error went undiscovered until the complaint was dismissed. Claimant's counsel argues this particular omission is uncharacteristic of his twenty-four (24) years of workers' compensation practice and deserves leniency. Claimant

recently underwent a multi-level fusion around June 29, 2012, and counsel has actively been gathering medical records and advising Claimant. Finally, the humane purposes of workers' compensation laws support case reinstatement, cause no prejudice to Defendants, and would allow the Commission to decide the case on the merits.

On September 19, 2012, Defendants objected to Claimant's motion for reconsideration. Defendants argue that the subject case was languishing for over six (6) months, and Claimant's compliance with discovery requests was lackluster. Defendants contend that they are prejudiced by Claimant's actions, because Claimant went forward with a multi-level fusion without providing Defendants the appropriate medical information.

On September 19, 2012, Claimant responded that Defendants were notified, in writing, several months before Claimant underwent the multiple-level cervical fusion surgery. Claimant argued that Defendants have received regular updates orally, and in writing. Finally, Claimant has formally responded to the sole outstanding supplemental discovery request.

### **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, Claimant's attorney did err when he failed to file his request to maintain Claimant's case on the Commission's active calendar. Because Claimant's counsel's oversight is isolated, and he has promptly acted to mitigate the consequences of such, the Commission is inclined to reinstate the complaint. Idaho workers' compensation laws auger in favor of deciding Claimant's case on the merits. The alternative approach would create a harsh result—statutorily barring Claimant from any income benefits. Defendants have not shown that they were prejudiced, because the Commission is persuaded that Claimant is communicating with Defendants and actively developing his case.

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

IT IS SO ORDERED.

DATED this 24th day of October, 2012.

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   24th   day of   October  , 2012, a true and correct copy of ORDER GRANTING RECONSIDERATION was served by regular United States Mail upon each of the following:

FRED J. LEWIS  
PO BOX 1391  
POCATELLO ID 83204

SCOTT R HALL  
PO BOX 51630  
IDAHO FALLS ID 83405

/s/