

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

KEVIN D. HOPE,

Claimant,

v.

STATE OF IDAHO, INDUSTRIAL SPECIAL
INDEMNITY FUND,

Defendant.

IC 2002-516298

IC 2004-001924

IC 2004-500701

**ORDER DENYING
RECONSIDERATION**

Filed February 1, 2013

Pursuant to Idaho Code § 72-718, Claimant moves for reconsideration of the Commission's October 26, 2012 decision in the above-captioned case. In the decision, the Commission found that Claimant failed to prove that the Industrial Special Indemnity Fund (ISIF) bears liability on this claim. On reconsideration, Claimant argues that the Commission's decision was not supported by the evidence of record. Claimant implies that the Commission had an unspecified ulterior motive in ruling against Claimant and characterizes the conclusions of law as "utter nonsense." ISIF objects to the motion, arguing that Claimant fails to present new law or evidence that would support reconsideration.

A decision of the Commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated, provided that within twenty days from the date of filing the decision, any party may move for reconsideration. Idaho Code § 72-718. A motion for reconsideration must "present to the Commission new reasons factually and legally to support [reconsideration] rather than rehashing evidence previously presented." *Curtis v. M.H. King Co.*, 142 Idaho 383, 128 P.3d 920 (2005). The Commission is not inclined to reweigh evidence and arguments simply because the case was not resolved in the party's favor.

On reconsideration, the Commission will examine the evidence in the case and determine whether the evidence presented supports the legal conclusions in the decision. However, the

Commission is not compelled to make findings of fact during reconsideration. *Davidson v. H.H. Keim*, 110 Idaho 758, 718 P.2d 1196 (1986).

In this case, the Commission found that Claimant was totally and permanently disabled; however, Claimant failed to prove ISIF liability because he failed to prove that his last industrial injury combined with a preexisting condition to render him totally and permanently disabled. Rather, the evidence indicated that Claimant's last injury alone disabled him.

This "combining with" element is a required element in proving ISIF liability. Without proving this element, Claimant cannot establish ISIF liability, even though he has proven every other element of his case. The "combining with" element was discussed by the Referee in paragraphs 76-85 of her recommendation. The Commission found the Referee's analysis well-supported by the evidence in the record. Claimant's motion for reconsideration is therefore DENIED.

IT IS SO ORDERED.

DATED this __1st_____ day of February, 2013.

INDUSTRIAL COMMISSION

/s/ _____
Thomas P. Baskin, Chairman

/s/ _____
R.D. Maynard, Commissioner

/s/ _____
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of February, 2013, 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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