

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

MICHAEL C. ANDERSON,

Claimant,

v.

ADVANCED CUSTOM CABINETS,

Employer,

and

LIBERTY NORTHWEST INSURANCE  
CORP.,

Surety,

Defendants.

**IC 2013-004877**

**ERRATUM ON FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER**

Filed October 29, 2014

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On August 26, 2014, the Findings of Fact, Conclusions of Law and Order were filed by the Commission in the above-entitled case. The following editing error should be changed as follows:

On the Findings of Fact, Conclusions of Law and Order, Page 3, Paragraph 1, the sentence, “Previously, he had been fired by a different employer for incurring an industrial injury.” should be changed to read “Claimant asserts knowledge of a previous employee of Employer who was let go because of an industrial injury.”

On the Findings of Fact, Conclusions of Law and Order, Page 11, Paragraph 21, the date “February 2012” should be changed to “October 2012”.

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**IC 2013-004877**

**ORDER DENYING  
RECONSIDERATION**

Filed October 29, 2014

Pursuant to Idaho Code § 72-718, Claimant moves for reconsideration of the Commission's August 26, 2014 decision in the above-captioned case. In the decision, the Commission found that 1) Claimant has failed to prove by a preponderance of the evidence that he is entitled to benefits related to his left middle finger puncture wound; and 2) Claimant's Complaint should be dismissed with prejudice. Claimant asks for reconsideration of what he contends are factual errors in the Commission's decision. He argues that these errors prejudicially impact the Commission's decision and that the Commission created a new burden of proof for the Claimant in rendering its decision.

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 his motion for reconsideration, Claimant cites *Muraski v. Tates Rents, Inc./Liberty Northwest Insurance Corp.*, 2009 IIC 0408 (August 31, 2009) and *Nino v. Land View Fertilizer, Inc./Liberty Northwest Insurance Corp.*, 2008 IIC 0572 (August 12, 2008) in support of the proposition that employees fear reporting their injuries because of the potential for retaliation by their respective employers. However, the Claimants in these cases were reasonably consistent in describing the time when and the place where their accidents occurred. In the instant matter, Claimant’s recollection of where and when the accident occurred depended on who Claimant was addressing at the time.

The medical records list the dates of accident as follows: Dr. Malek recorded on October 12, 2012 that Claimant “...poked a nail into his left middle finger a week ago at work.” (Claimant’s Exhibit 1 pg. 1), Dr. Shaw recorded on October 14, 2012 that Claimant “...had a nail puncture his left 3<sup>rd</sup> finger a little over a week ago...” (Claimant’s Exhibit 1 pg. 8), Dr. Mullen recorded on October 15, 2012 that “Seven or 8 days ago [Claimant] accidentally shot himself with an 18-penny nail in the left middle finger.” (Claimant’s Exhibit 2 pg. 30), Dr. Mullen further recorded on October 16, 2012 that “Nine days ago, he shot his left middle finger with a nail.” (Claimant’s Exhibit 2 pg. 32), Dr. Cooke recorded on October 17, 2012 that Claimant

“...apparently nailed a finger the better part of a week ago.” (Claimant’s Exhibit 1 pg. 10). Taken together, these dates make it more probable that Claimant injured himself around October 6-7, 2012. All of the chart notes in evidence are inconsistent with Claimant’s position that he injured himself on October 9, 2012, and we find the chart notes of Claimant’s attending physicians to be persuasive.

Moreover, as pointed out in the original decision, one of the reasons given by Claimant for deciding not to immediately report the accident on October 9 was that he did not believe that the injury was significant. (Transcript 54/19 - 55/3). However, by the morning of October 12, Claimant’s pain was “unbearable” and he knew he was not going to be able to work and would need to seek medical treatment. (Transcript 44/10-21). Even so, when Claimant later spoke with Wayne Dehnert on the morning of October 12, he again failed to report the occurrence of a work-related mishap occurring on October 9, even though, by this time, he was well aware that his symptoms were no longer insignificant.

We continue to feel that Claimant has not adequately explained this internal inconsistency in his testimony. On balance, considering the medical records and the testimony of record we find no reason to reconsider our previous ruling that Claimant has failed to establish that he suffered the claimed accident at Employer’s business.

**Harmless Factual Errors.** Claimant focuses on the importance of his perception that it was his current employer, not a previous employer, who terminated employees seen as a liability. Claimant’s Brief, pg. 5. This distinction does little to change the Commission’s recognition that Claimant feared for the future of his employment if he reported his injury as happening on-site. The Commission is sympathetic to Claimant’s statement that he is “representative of the American worker today; afraid for [his] job and knowledgeable that if [he] get[s] hurt at work

and costs [his] employer money, there is a line of workers around a city block who can replace [him].” Claimant’s Brief, pg 6. Claimant’s perception of the precarious nature of his employment is acknowledged by the Commission in its decision, but the factual error regarding which employer Claimant had in the past had no impact on the final conclusions of the Commission.

Additionally, Claimant indicates an error in the Commission’s decision identifying the Claimant’s injury as occurring in February 2012. Correcting this error to identify the correct month of Claimant’s injury, October 2012, does not change the original decision. The Commission will issue an erratum correcting these errors following the issuance of this Order.

**Unemployment Appeals Decision.** Claimant argues that the Commission’s decision is inconsistent with the unemployment appeal initially pursued by Claimant in regards to his termination by Employer. Idaho Code § 72-1368(11)(b) states that “No finding of fact or conclusion of law contained in a decision or determination rendered pursuant to this chapter by an appeals examiner, the industrial commission, a court, or any other person authorized to make such determinations shall have preclusive effect in any other action or proceeding”. The differing purposes of unemployment benefits and the workers’ compensation account for the inconsistency outlined by Claimant; the former contemplated why Claimant was terminated from his job duties with Employer, the latter determined what Claimant was doing and where he was at the time of his alleged industrial injury. These are different issues and have their own evidentiary burdens. The only issue before the Commission here is whether or not Claimant met his burden of proof to demonstrate that his alleged industrial injury occurred while Claimant was in the course and scope of his employment with Employer. As such, the Commission reiterates that the unemployment appeal decision has no precedential effect on the Findings of Fact, Conclusions of Law and Order issued August 26, 2014.



**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of October, 2014, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States mail upon each of the following:

STARR KELSO  
PO BOX 1312  
COEUR D'ALENE ID 83816-1312

JOSEPH M WAGER  
LAW OFFICES OF KENT W DAY  
PO BOX 6358  
BOISE ID 83707-6358

ka

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