

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ERIN QUINN,

Claimant,

v.

DOUG'S FIREPLACE SALES, INC.,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,
Defendants.

IC 2008-037924

**ORDER DENYING
RECONSIDERATION**

Filed April 24, 2015

This matter is before the Commission on Claimant's Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order, timely filed January 12, 2015 requesting reconsideration of the Industrial Commission's Decision filed December 24, 2014, in the above referenced case. Defendant timely filed a Response on January 23, 2015. Claimant filed his Reply on February 4, 2015, three days after the filing deadline established in JRPP Rule 3(G).

There is no dispute that Claimant suffered an accident at work on November 24, 2008, when he fell approximately nine feet and landed on his back. At hearing, Claimant alleged his entitlement to additional medical benefits for treatment following his industrial injury, disability in excess of impairment benefits, permanent partial impairment benefits, permanent partial disability benefits, and an award of attorney fees for Defendant's unreasonable denial of those benefits. Defendant Doug's Fireplace contended no responsibility for further benefits, as Claimant was at MMI and no longer needed treatment.

The Idaho Industrial Commission's Findings of Fact, Conclusions of Law, Recommendation and Order and Erratum filed December 29, 2014 ("Decision") found that Claimant has proven Defendant's liability for past and future medical benefits for facet radiofrequency ablation as recommended by Dr. Hope; Claimant has proven Defendant's liability for routine follow-up x-rays at 3, 6, and 12 months post-cervical fusion as recommended by Dr. Blair; Claimant has not proven Defendant's liability for any other past or future medical treatment, including lumbar surgery; Claimant has not proven Defendant's liability for any past or future psychological treatment benefits; Claimant has proven he sustained permanent partial impairment of 23% of the whole person due to his industrial accident; Claimant has proven he sustained permanent disability of 7.25% in addition to his 23% permanent partial impairment due to the industrial accident; Claimant has not proven Defendant's liability for attorney fees under Idaho Code § 72-804; and Claimant has not proven his entitlement to additional temporary disability benefits.

In his Motion for Reconsideration, Claimant argues that he is entitled to additional TTDs since the evidence demonstrates that Claimant's employment came to an end because it exceeded his physical limitations, and not because of reasons unconnected with the subject accident. Claimant further contends that the Commission should have relied more on Dr. Blair's rating than that of Dr. Tallerico concerning Claimant's cervical impairment rating; the Commission should have relied more on Dr. Granat's vocational report than those of Dr. Jordan; Claimant's psychological injuries are a direct result of his industrial injuries according to Dr. Anderson's conclusions; and Claimant is entitled to attorney fees from Defendant's unreasonable denial of such benefits.

Defendants respond that Claimant's Motion for Reconsideration relies on the same evidence and arguments already presented before the Commission and that the Commission should decline to reconsider 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 20 days from the date of the filing of the decision, any party may move for reconsideration. Idaho Code § 72-718. However, "it is axiomatic that a claimant must present to the Commission new reasons factually and legally to support a hearing on her Motion for Rehearing/Reconsideration rather than rehashing evidence previously presented." *Curtis v. M.H. King Co.*, 142 Idaho 383, 388, 128 P.3d 920 (2005).

On reconsideration, the Commission will examine the evidence in the case and determine whether the evidence presented supports the legal conclusions. The Commission is not compelled to make findings on the facts of the case during reconsideration. *Davison v. H.H. Keim Co., Ltd.*, 110 Idaho 758, 718 P.2d 1196 (1986). 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)).

A motion for reconsideration must be properly supported by a recitation of the factual findings and/or legal conclusions with which the moving party takes issue. However, the Commission is not inclined to re-weigh evidence and arguments during reconsideration simply because the case was not resolved in a party's favor.

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The Commission has reviewed the record with a focus on the concerns that Claimant has raised in his Motion for Reconsideration and we remain of the view that the facts support the Decision as written. Claimant presents no reason why the Commission should reconsider its Decision in this matter. Claimant raises several points of disagreement with the Commission's Decision, most of which focus on individual interactions between Employer and Claimant in the period before Claimant's employment relationship ended. These interactions were part of the record and were carefully considered in the drafting of the Decision. The same applies for Claimant's contentions that the Commission relied on the incorrect expert witnesses regarding Claimant's cervical impairment rating, disability in excess of impairment rating, and psychological injuries. Claimant's Motion for Reconsideration presents the same evidence and arguments already considered by the Referee and the Commission in the underlying Decision.

Although Claimant disagrees with the Commission's findings and conclusions, the Commission finds the Decision filed December 24, 2014 is supported by substantial evidence in the record and Claimant has presented no persuasive argument to disturb the Decision.

Based upon the foregoing reasons, Claimant's Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

DATED this 24th day of April, 2015.

INDUSTRIAL COMMISSION

/s/ _____
R.D. Maynard, Chairman

/s/ _____
Thomas E. Limbaugh, Commissioner

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/s/ Thomas P. Baskin, Commissioner

ATTEST:

/s/ Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on 24th day of April, 2015, 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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ka

/s/