BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SUSAN D. OAKES, Claimant, v. COEUR D'ALENE SCHOOL DISTRICT #271, Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	**IC 2008-025143** **ORDER DENYING RECONSIDERATION** Filed August 7, 2015

On April 9, 2015, Claimant filed a motion for reconsideration of the Commission's March 16, 2015 Order finding Claimant failed to show her entitlement to further medical care. The Commissioners chose not to adopt the Referee's recommendation and issued their own findings of fact, conclusions of law and order (Decision). Claimant argues that the Referee's underlying recommendation was biased, and the Commissioner's changes were merely cosmetic, doing nothing to remediate the Referee's slanted treatment of the case. Claimant contends that the Commission's review was lacking because the Commissioners did not affirmatively state that they carefully reviewed the record. Because Claimant believes the Referee's attitudes were egregiously unfair to Claimant, and in turn encouraged erroneous factual findings as detailed in Claimant's brief, Claimant requests that the Commission review the record and issue a new decision granting Claimant further medical care.

On April 20, 2015, Defendants filed a response to Claimant's motion for reconsideration. Defendants argue that Claimant has not presented any new factual or legal arguments, and

addressed Claimant's criticisms of the Commission's factual findings. Defendants contend that all three Commissioners signed the Decision in question, thus endorsing that each made sufficient judicial review of the facts and adopted the same.

On April 30, 2015, Claimant responded. Claimant asserts that the Referee abdicated his responsibility to litigants by using demeaning and humiliating words in his recommendation. Claimant contends no layman would use the psychiatric diagnostic terms of "narcicisstic" or "hypochondriac" to characterize any person, and for the Referee to do so, is contrary to the Court's holding in Mazzone v. Texas Roadhouse Inc., 154 Idaho 750, 302 P.3d 718 (2013). Claimant also argues that the Referee is biased and should have disqualified himself. She argues that the Commission's trivial redaction of the term "narcicisstic hypochondriac" is not a cure for the substantive bias which pervades the balance of the opinion. Finally, Claimant argues that her experts were more persuasive than Defendants, and that the Referee should have allowed her to reopen the record to offer rebuttal testimony about whether and to what extent Dr. Chan actually examined Claimant. The Referee acknowledged that Claimant would deny that Dr. Chan actually examined her, but denied the motion for finality of the record and timeliness of the decision. Claimant denies that this was a minor dispute, as stated in the Decision, and that if the Referee agreed to assume that Claimant was not examined by Dr. Chan, this would necessarily impugn all of the opinions Dr. Chan issued on diagnosis and causation.

DISCUSSION

A decision of the Commission, in the absence of fraud, is final and conclusive as to all matters adjudicated, provided that within 20 days from the date of filing the decision, any party may move for reconsideration. See Idaho Code § 72-718. A motion for reconsideration must present the Commission with new reasons factually and legally to support reconsideration, rather

than rehashing evidence previously presented. See Curtis v. N.H. King Co., 142 Idaho 383, 128 P.3d 920 (2005). The Commission will not reweigh evidence and arguments simply because the case was not resolved in the moving party's favor. On reconsideration, the Commission will examine the evidence in the case and determine whether the evidence presented supports the legal conclusions set forth in the Decision. However, the Commission is not compelled to make findings of fact on reconsideration. Davidson v. H.H. Keim, 110 Idaho 758, 718 P.2d 1196 (1986).

The Commission made the following findings in the March 16, 2015 Decision:

1. Claimant was injured in a compensable work accident on July 29, 2008;

2. She is entitled to medical care and temporary disability benefits which have been paid by Surety;

3. She had reached maximum medical improvement on or before November 20, 2008 and has not shown entitlement to medical care or temporary disability benefits beyond that already paid;

4. Claimant failed to show it likely that any lingering or permanent physical or psychological condition was caused by the 2008 headbutt;

5. Claimant failed to show she is entitled to permanent partial impairment or permanent disability; and

6. All other issues are moot.

Claimant has advanced several assertions to infer bias or prejudgment from the Referee. The first is the Referee's first sentence in paragraph 109 of the recommendation, not adopted by the Commission, which reads as follows:

> 109. To a layman using layman's terms, upon first impression Claimant appears to be a narcissistic hypochondriac. Her manner, body posture, gestures, and use of voice resulted in a demeanor that seemed overdramatic and disingenuous. During Claimant's psychiatric admission in 2012, Dr. Carlberg used the terms "egocentric" and "manipulative" in her early assessments of Claimant. Upon review of the entire record, the Referee can make no finding about whether her demeanor was related to willfulness or to her longstanding personality disorder. However, as is evidenced in Dr. Carlberg's records, like Dr.

> Carlberg this Referee became more sympathetic to Claimant's unfortunate psychological condition as more information became available. This Referee prefers to believe that Claimant's inconsistent statements and beliefs are largely beyond her control.
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> Referee's recommendation, para. 109. (Emphasis added.)

Claimant argues that the Referee's use of the terms "narcissistic" and "hypochondriac" reflects a biased forum, and violates the Court's holding in Mazzone v. Texas Roadhouse Inc., 154 Idaho 750, 302 P.3d 718 (2013). The Referee candidly did not have a favorable first impression of Claimant. Although the Referee expressly intended his use of the terms "narcissistic" and "hypochondriac" to be a "layman's" description, the Commission found the description to be gratuitous, and struck the language.

In Idaho, a judge cannot be disqualified for actual prejudice unless it is shown that the prejudice is directed against the litigant and is of such nature and character that it would make it impossible for the litigant to get a fair trial. State v. Shackelford, 155 Idaho 454, 456, 314 P.3d 136, 138 (2013), (reh'g denied, Oct. 31, 2013)); Pizzuto v. State, 134 Idaho 793, 798, 10 P.3d 742, 747 (2000). The Commission notes that a claimant's credibility is generally at issue in most workers' compensation proceedings, and the Claimant's receipt of an unflattering description in the Referee's recommendation does not make the Referee or the Commission incapable of properly evaluating the record. "Impartiality is not gullibility. Disinterestedness does not mean child-like innocence. If the judge did not form judgments of the actors in those court-house dramas called trials, he could never render decisions." Martin v. Aluma-Glass Industries, Inc., 1999 IIC 0230 (Kerns, J., concurring), (citing In re J.P. Linahan, Inc., 138 F.2d 650, 654 (CA2 1943)). In fact, the Referee acknowledged that his opinion of Claimant improved and his sympathy increased as more information became available. Claimant has not shown that the Referee's initial impression of Claimant proves a biased tribunal.

The second assertion of bias is that the Referee should have disqualified himself in the matter because of his personal experiences with handicapped individuals. Claimant speculates that the Referee might have negative personal experience with persons providing care for handicapped individuals, or the Referee might hold "personal animosity" towards Claimant's attorney because Claimant's attorney questioned the Referee's adherence to the Idaho Code of Judicial Conduct, Canon 3(E) in a separate case with Mr. Kelso and Paul J. Augustine.

By way of explanation, Mr. Augustine was appointed as guardian ad litem of the Referee's handicapped son for guardianship proceedings. In cases assigned to the Referee involving Mr. Augustine, the Referee notified all parties that Mr. Augustine was appointed guardian ad litem of his son, and that he did not believe that this would affect his impartiality in workers' compensation cases. Referee Donohue also asked the parties to send a letter advising "whether you wish to allow [Referee Donohue] to continue on these and future such cases or to disqualify [him] from them." Claimant's attorney replied by letter on June 2, 2014, in which he stated that he did not believe that the question of disqualification was appropriately within his client's discretion, or the Referee's, because it was controlled by the Idaho Code of Judicial Conduct. (Claimant's June 2, 2014 letter.) In response to Claimant's letter, the Commission reassigned the separate case with attorneys Mr. Augustine and Mr. Kelso to another Referee. That matter is currently pending, and has no bearing on the resolution of this matter.

Claimant's supposition that the Referee might have had negative personal experiences with people caring for special needs individuals, or that he might harbor "personal animosity" against Claimant's attorney are altogether speculative.

The third assertion is that the Commission inappropriately weighed the evidence, particularly by denying Claimant the opportunity to present rebuttal lay witness testimony which

would have undermined Dr. Chan's opinions. Claimant wished to present rebuttal lay witness testimony establishing that Dr. Chan did not physically examine her. Defendants argue that Dr. Chan's January 24, 2012 examination occurred and was appropriately disclosed to Claimant, and no lay witness rebuttal testimony was warranted under J.R.P. 10 E(4).

The Referee denied Claimant's request to present rebuttal testimony during a telephone conference, and summarized the July 15, 2014 telephone conference ruling in the Decision as follows:

> After the taking of the posthearing deposition of Darlene Chan, D.D.S., Claimant moved to reopen the record to allow Claimant to offer rebuttal testimony about whether and to what extent Dr. Chan actually examined Claimant. At a telephone conference, upon Claimant's offer of proof that Claimant would deny that Dr. Chan actually examined Claimant, Claimant's motion was denied. Here, finality of the record and timeliness of decision are deemed to outweigh a minor dispute which can be assumed to fall in Claimant's favor without affecting the outcome of this case.
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> Decision, 3.

The Referee reasoned that no lay rebuttal testimony was needed to address the parties' dispute about the physical examination, because it did not affect the outcome. The Decision at page 25, paragraphs 99-100, states:

> On January 24, 2012 Dr. Chan evaluated Claimant by reviewing additional records, including X-rays, and taking a history personally from Claimant; Claimant made a pain drawing at that time. The pain drawing describes the injury as including being knocked out and hitting her face on the floor. Neither of these facts are supported by medical records made contemporaneous to the 2008 headbutt. As described by the offer of proof above, Claimant disputes whether Dr. Chan examined her. Among other things, Dr. Chan's report notes she used a stethoscope to listen for jaw crepitus. Dr. Chan opined Claimant's crossbite, overbite, missing teeth, headaches, and anxiety are all preexisting and unrelated to the 2008 headbutt. She opined Claimant did not suffer TMJ injury or TMJ syndrome, that Claimant's TMJ complaints were related to her missing teeth and partial dentures; root canals were unrelated to the 2008 headbutt.
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> In post-hearing deposition Dr. Chan well explained her bases for her opinions. Significantly, the absence of supporting contemporaneous medical records shortly

> after the 2008 headbutt suggests Claimant did not have TMJ or other dental or jaw problems then, and that if any arose later, they were unrelated to the 2008 headbutt. She opined that such problems, if related to the 2008 headbutt, would have manifested almost immediately. Dr. Chan admitted records prior to the 2008 headbutt did not describe the jaw malocclusion or overbite.
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> Emphasis supplied.

Claimant avers that the lack of physical examination is all that is needed to discredit Dr. Chan's opinions. Let it be assumed, as the Referee did, that contrary to her reports and testimony, Dr. Chan laid neither hands nor eyes on Claimant. While that fact would undermine certain of Dr. Chan's findings, it leaves others untouched. For her first evaluation, Dr. Chan reviewed records from July 29, 2008 through January 26, 2011. Chan Depo., 10. Dr. Chan reviewed additional records on January 24, 2012, and took a personal interview from Claimant. Chan Depo., 12. After completing her records review, Dr. Chan opined that there was no evidence of a dental injury, and that the malocclusion with crossbite and migraine headaches preexisted the 2008 headbutt. Chan Depo., 11/21-12/6; 14/4-18/7. Dr. Chan's records review also led to the conclusion that Claimant exhibited no TMJ complaints immediately after the accident, which she should have had the accident caused Claimant's TMJ. These conclusions are independent of whether Dr. Chan did or did not examine Claimant. Chan. Depo., 10/6-12/12; 15/24-17/9. The disputed physical exam primarily led to Dr. Chan's conclusion that Claimant had no evidence of tenderness or joint noises, and that she had a normal range of jaw opening and motion side to side and forward. Chan Depo., 13/18-14/3. While Dr. Chan's conclusions from the physical exam bolsters her position, rejecting the physical exam does not erase Dr. Chan's opinions based on her review of the medical record or establish a causal connection between Claimant's industrial accident and the medical care she seeks. The Decision found ample support in Dr. Chan's 2011 records review, described on page 21, paragraph 98, Dr. Chan's 2012 review, and

Dr. Chan's deposition. Claimant's parsing of Dr. Chan's testimony does not relieve Claimant of responsibility to present persuasive medical evidence supporting her claims. The Commission is not persuaded that the outcome of the case depends on the contested physical examination, such that this evidentiary ruling, if reversed, warrants a new hearing and decision.

Further, neither of Claimant's motions persuasively addressed J.R.P. 10 E(4) or Defendants' arguments, and the Referee could have appropriately denied Claimant's request for rebuttal testimony for failure to satisfy J.R.P. 10 E(4). Under J.R.P. 10 E(4), "Lay witness rebuttal evidence is only admissible post-hearing in the event new matters have been presented and the Commission so orders." There were no earlier indications that Claimant took issue with whether Dr. Chan's 2012 examination occurred as described in Exhibit 3 or during Dr. Chan's deposition. Defendants offered Dr. Chan's report as Exhibit 3 at hearing without objection from Claimant. See HT, 8/5-13. Claimant did not raise the objection at Dr. Chan's deposition that the physical examination did not occur as described. The Court reviewed a similar evidentiary ruling in Huerta v. School Dist. No. 431, 116 Idaho 43, 773 P.2d 1130 (1989).

> This Court has consistently held that proceedings in worker's compensation cases must be as summary as possible, but must be fair and do substantial justice to all parties involved. Hite v. Kuhlenak Building Contractor, 96 Idaho 70, 72, 524 P.2d 531, 533 (1974). It is within the discretion of the Commission whether to allow rebuttal evidence at the continuation of a hearing following the submission of depositions. Cf., Rosenberg v. Toetly, 94 Idaho 413, 419, 489 P.2d 446, 452 (1971). We note that Huerta made no motion accompanied by a showing of the necessity, for the presentation of Mrs. Huerta's testimony, concerning the contacts that Huerta made with Ore-Ida and Dickinson Frozen Foods after the October 1986 hearing. In any event, the refusal to allow Mrs. Huerta's testimony was not an abuse of the Commission's discretion. If Huerta proposed to rebut Montgomery's testimony concerning the availability of employment for him, this was evidence that he should have presented at the October hearing. To the extent that Huerta proposed to rebut the testimony of Stewart concerning the availability of employment for him, he had that opportunity at the October hearing.

Similarly, Dr. Chan's physical exam is not "new" testimony under J.R.P. 10 E(4); Claimant had several opportunities to advance the argument that the physical examination did not occur prior to her request to present rebuttal testimony, but she failed to do so. Rebuttal testimony is not intended to be allowed whenever a party disagrees with the opposing side's expert testimony; otherwise, the workers' compensation proceedings would lose their simple and summary processes to rebuttal and surrebuttal from the parties. After reviewing the matter, the Commission will uphold the evidentiary ruling to deny rebuttal testimony.

Next, Claimant argues that several factual findings were incorrect. Claimant raises eleven "red flags" that she feels show that the methodology employed by the Commission was biased. Defendants dispute Claimant's assertions, and contend that Claimant is simply rehashing evidence previously presented. The eleven factual issues Claimant feels were erroneous or skewed are detailed below:

#1. Claimant objects to page 6, paragraph 17 of the Decision, which states as follows. "On October 28 Claimant falsely reported to NP Kastens that 'she has not worked at all because the workers comp insurance can not [sic] place her in a job with restrictions.'"

Claimant contends that the use of the phrase "falsely reported" shows the Referee's predilection to find Claimant not truthful. Claimant also argues that Claimant's statement that she did "not work at all" was true because she had not worked for some days prior to her visit with NP Kastens. Employer's submitted "light duty work hours" that show Claimant worked, and Claimant acknowledged that she did work.

Technically, it is false to report that Claimant did "not work at all" during her light-duty release. Claimant herself acknowledged that she worked during a portion of her light-duty release.

#2. Claimant also objects to page 8, paragraph 34, where it is stated: "NP Kastens recorded, 'I explained she has had a neurological workup throught [sic] her workmans comp, that her symptoms are subjective and I see no objective evidence so she should seek out a specialist to further eval.'"

Claimant does not argue that this was untrue. Claimant objects to this finding, arguing that the nurse practitioner was not a specialist and could not have properly evaluated Claimant's condition. No evidence concerning the qualifications of nurse practitioners is before the Commission. Suffice it to say that nurse practitioners are physicians, as that term is defined in Idaho Code § 72-102(25). In addition, Claimant would have preferred that the Referee included more of the quote to make the excerpt more favorable to Claimant. Defendants responded that this finding was directly out of the record.

While Claimant may have liked the information presented differently, this finding was supported by the record.

#3. Claimant objects to page 9, paragraph 36, stating: "At the initial visit [with Dr. Deatherage], Claimant noted 'Blue Cross' should be billed."

Claimant does not argue that this was untrue, but argues that Claimant had no other option but to bill her non-industrial workers' compensation insurance. Defendants argue that this is directly from the record.

Claimant's justification of her actions does not change what occurred. Claimant billed her non-industrial health insurance, and this is supported by the record.

#4. Claimant objects to the Referee's finding that "Claimant attended essentially weekly counseling sessions [with Dr. Deatherage] until March 2010. They met less frequently thereafter."

Claimant argues that the Referee "clearly made an intentional decision to not identify and summarize each appointment that the Claimant had with Dr. Deatherage," which Claimant feels could cause a reader to assume that the appointments were not of note and minimize her PTSD. Defendants responded that this is directly supported by the record.

The Referee is under no obligation to summarize every single medical record. The frequency of Claimant's visits with Dr. Deatherage is supported by the record.

#5. Claimant objects to page 14, paragraph 69, stating: "On May 21, 2012, Dr. Ettner cleared Claimant for involuntary admission to Kootenai Behavioral Unit." Claimant argues that this admission was voluntary, because she did not currently meet the commitment criteria for an involuntary commitment.

Defendants argue that Claimant's position is without merit. Michael Ettner, M.D., did an emergency admit at Kootenai Medical Center on May 21, 2012. His assessment was (1) depression/suicidal, (2) homicidal statements. . . . Def. Ex. 1 at 286. Dr. Ettner reported that "She (Claimant) stated that, 'if I commit suicide, I will take Dr. Barbara Daugharty with me!'" Defendants contend that whether the commitment was voluntary or involuntary is inconsequential and of trivial value only. Defendants also note that Dr. Carlberg recorded that Claimant was voluntarily admitted on May 22, 2015, but that "she would be holdable given the fact she has made statements of homicide towards one of the local physicians."

Claimant believes that the "emergency" hospital admission on May 21, 2012 following her threats of suicide and threats of homicide towards her local physician should be considered a voluntary commitment. The record describes an "emergency" admit by Dr. Ettner and thereafter Claimant was voluntarily committed, although she could have been held on an involuntary basis. The Commission acknowledges Claimant's view that the "emergency" admission might be

considered "voluntary." Ultimately, whether Claimant's commitment was voluntary or not on May 21, 2012 is not important to the resolution of the case.

#6. Claimant objects to the following: "Dr. Carlberg noted, 'I do not see symptomatology associated with a posttraumatic stress disorder. I do, however, see symptomatology associated with a generalized anxiety disorder at this time, which is not inconsistent with somebody who has been exposed to a traumatic event."

Claimant argues that the Referee did not record other details about the PTSD. Defendants counter that this is a quote from Dr. Carlberg's entries, and Claimant is attempting to reargue the record.

The sentences in their entirety are found on pages 14-15, paragraph 71, as follows: "Upon discharge, Dr. Carlberg noted, 'I do not see symptomatology associated with a posttraumatic stress disorder. I do, however, see symptomatology associated with a generalized anxiety disorder at this time, which is not inconsistent with somebody who has been exposed to a traumatic incident.'"

The Referee is not obligated to summarize each and every medical record. After reviewing the record, the Referee found Dr. Carlberg's summary on Claimant's discharge from care to be helpful, and the same is supported by the record.

#7. Claimant objects to page 22, paragraph 89: "Claimant . . . continued [work] until termination for an event occurring in May 2011."

Claimant argues that she was not terminated, but was on a year-to-year contract, and that her contract was not offered to her in 2011 for the next school year. Defendants contend that Claimant was terminated. See Defendants Exhibit 34, 1199-1200.

Defendants Exhibit 34, pages 1199-1200, is a May 18, 2011 letter from Employer to Claimant. The letter details several instances of "unacceptable behavior" from Claimant and informs Claimant that:

> "[Claimant has] been given more than a reasonable time to correct [her] behaviors yet [she has] not shown significant improvement. To this end, the District has decided to not re-employ [Claimant] for the 2011/2012 school year. [Claimant] will remain on paid administrative leave through the end of the 2010/2011 school year. Your last paycheck will be August 25, 2011, with benefits through September 30, 2011." Id.

The Commission was persuaded by Defendants' evidence that Claimant was terminated.

#8. Claimant objects to page 27, paragraph 106: "Dr. Beaver opined that the tests administered by Mr. Cornell were vulnerable to manipulation."

Claimant argues that there is no basis to attach any weight to Dr. Beaver's unqualified opinions regarding Mr. Cornell's vocational testing. Defendants argue that Dr. Beaver explained his opinion, noting there was no validity assessment built into the testing.

Claimant clearly disagrees with Dr. Beaver's opinions, but that does not mean the Commission inaccurately described them. This finding is supported by the record.

#9. Claimant objects to pages 29-30, paragraph 114, "Claimant was not knocked out by the 2008 headbutt but misremembers having been so. Similarly, her after-acquired 'memory' of hitting her jaw on the floor is inconsistent with contemporaneous medical records."

Claimant argues that the Referee omitted Ms. Virginia Welton's record that Claimant was knocked out, and Ms. Nickie Wilson's statement. Defendants argue that the finding is supported by the record, because Dr. David Barnes recorded that Claimant was not knocked unconscious, and Ms. Welton was not present at the time of the accident. Def. Exhibit. 1, 195.

Here, Defendants' Exhibit 1, page 195, which Dr. David Barnes contemporaneously created with Claimant's emergency room visit, was found persuasive.

#10. Claimant objects to the sentence "Claimant's work at various positions with Employer shows she was well liked by coworkers. Among supervisors, opinions of her work are somewhat more variable."

Claimant argues that her work was excellent, and that she met the standards of the school district on each and every one of the areas evaluated. Defendants argue that Employer submitted records about Claimant's personnel file which speak for themselves, and that Mr. Tim Buzolich's testimony contributed to the Referee's finding.

As discussed in #7, Defendants presented evidence about Claimant's work performance, including some unflattering components. Employer decided to "not re-employ" Claimant based on Claimant's inability to correct her unacceptable behaviors within a reasonable time. See Defendants' Exhibit 34. The record also contains Employer's disciplinary actions against Claimant. This finding is supported by the record.

#11. Claimant objects to page 32, paragraph 124, "Dr. Beaver's opinions carry greater weight than Dr. Deatherage's. Dr. Beaver's qualifications are better; his records review was more comprehensive."

Claimant argues that the Referee's finding is based on his prejudice against Claimant and in favor of Dr. Beaver. Defendants question Dr. Deatherage's testimony, and endorse Dr. Beaver's qualifications.

The process of sifting and weighing evidence often requires that some testimony will be given greater weight than other testimony, and that not all propositions will be equally well supported by the record. Here, Dr. Beaver's testimony was found more persuasive. At page 32 of the Decision, paragraph 124 reflects the following:

> Dr. Beaver's opinions carry greater weight than Dr. Deatherage's. Dr. Beaver's qualifications are better; his records review was more comprehensive; he relies

> less upon Claimant's fallible memory and more on contemporaneously made records; his opinions show better reasoning. Moreover, Dr. Carlberg opined Claimant's history and symptoms did not establish a PTSD diagnosis; other qualified physicians expressed doubt about the diagnosis of PTSD and about whether Claimant exhibited symptoms consistent with such a diagnosis.

These are all legitimate reasons why the Referee found Dr. Beaver persuasive. Claimant has not substantiated his claims of Referee bias.

Throughout her pleadings, Claimant argues that the Commission reached erroneous or biased factual conclusions. As detailed above, Claimant admits to the truth of some of the conclusions, criticizes the presentation of the evidence (including direct quotes), or flatly ignores the conflicting evidence in the record. Although Claimant's most persuasive argument is that the "emergency" admission for Claimant's homicidal statements might be considered a voluntary commitment, as opposed to an involuntary one, Claimant has not shown this conclusion warrants revision on reconsideration or a new hearing.

Reconsiderations under Idaho Code § 72-718 are not intended to provide a second opportunity to reargue facts or legal arguments brought below. Claimant and Defendants both had the opportunity to present evidence. Claimant alleged entitlement to additional medical care, specifically including treatment for jaw and dental conditions, and counseling for traumatic brain injury and psychological injuries arising from the 2008 headbutt. As detailed in the decision, the Claimant did not meet her burden of proof. Dr. Creed was initially "at a loss to explain [Claimant's] pain symptoms" but subsequently submitted a checkmark opinion that Claimant's 2008 headbutt caused TMJ syndrome following a summary of history and assumptions provided by Claimant's attorney. Decision, 24. Unfortunately for Claimant, Dr. Creed's checkmark opinion was very thin evidence; the checkmark does not cite further records Dr. Creed might have reviewed or a physical examination to explain this new opinion. As discussed above and in

the decision, Dr. Chan opined that Claimant did not have TMJ or other dental or jaw problems related to the 2008 headbutt, and Dr. Chan explained why she reached her conclusions. Decision, 26. In addition, Dr. Wray opined that Claimant was medically stable, no further treatment was necessary; no permanent impairment related to the 2008 headbutt, and no work restrictions should be imposed. Decision, 7.

Claimant did not present persuasive evidence of a psychological injury resulting from the industrial accident. Dr. Carlberg opined Claimant's history and symptoms did not establish a PTSD diagnosis; other qualified physicians expressed doubt about the diagnosis of PTSD and about whether Claimant exhibited symptoms consistent with such a diagnosis. Decision, 14-15, para. 71. Dr. Deatherage's notes did not clearly separate his opinions from Claimant's reports. Decision, 9.

> Dr. Beaver opined while it is likely the 2008 headbutt temporarily exacerbated some of her underlying psychological difficulties—particularly anxiety and depression—there is no evidence of permanent exacerbation; no permanent neuropsychological changes were caused by the 2008 headbutt; no psychiatric condition was caused by the 2008 headbutt; there is no evidence of lingering postconcussive syndrome or of residual neurocognitive deficits; no neuropsychological restrictions or PPI are related to the 2008 headbutt.
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> Decision, 26-27.

Ultimately, the Commission relied on Dr. Beaver's opinions, because, again, "Dr. Beaver's qualifications are better; his records review was more comprehensive; he relies less upon Claimant's fallible memory and more on contemporaneously made records; his opinions show better reasoning." Decision, 32. Dr. Beaver's opinion that Claimant is stable and needs no further treatment related to the 2008 headbutt is consistent with the preponderance of evidence. While this is not an exhaustive list, the medical records of Drs. Chan, Wray, Carlberg, and Beaver support the Commission's conclusions. While Claimant has reminded the Commission

of her perspective, she has not brought forth anything legally or factually new which warrants reconsideration or supports her allegations of bias. The Commission was not persuaded by Claimant's arguments below, and will not reweigh the evidence on reconsideration. Finally, Claimant argues that the Commissioners did not carefully review the record. Claimant's assertions that the Commissioners fail to review the record when they sign decisions are patently false.

Claimant is not presenting anything new factually or legally, and her request for reconsideration is **DENIED**.

ORDER DENYING RECONSIDERATION

Claimant is not presenting anything new factually or legally, and her request for reconsideration is **DENIED**.

DATED this 7th day of August, 2015.

INDUSTRIAL COMMISSION

/s/
R.D. Maynard, Chairman

/s/
Thomas E. Limbaugh, Commissioner

/s/
Thomas P. Baskin, Commissioner

ATTEST:

___/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of August, 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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__/s/_____