

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GUADALUPE GONZALEZ,

Claimant,

v.

BOISE HOTEL AND CONFERENCE
CENTER,

Employer,

and

FEDERAL INSURANCE COMPANY,

Surety,
Defendants.

IC 2013-019439

**ORDER GRANTING
MOTION FOR
RECONSIDERATION**

Filed January 9, 2019

This matter is before the Idaho Industrial Commission (“the Commission”) upon Claimant’s December 12, 2018 filing of her Motion for Reconsideration of the Commission’s Order dismissing her complaint without prejudice on November 23, 2018. Claimant contemporaneously filed her Affidavit in Support of Motion for Reconsideration and attached Exhibits, as well as Claimant’s Opening Brief in Support. Defendants did not file a response.

Under Judicial Rule of Practice and Procedure 12(B), the Commission may dismiss a complaint without prejudice if no action has been taken on the case for a period of 6 months. Prior to dismissal, the Commission shall give written notice to the parties of the Commission’s intent to dismiss the complaint. Any party may, within 21 days of the date of service of the Commission’s notice, show cause in writing why the Commission should not dismiss the complaint.

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. 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)). Process and procedure under this law shall be as summary and simple as reasonably may be and as far as possible in accordance with the rules of equity. Idaho Code § 72-708.

The Commission filed the Notice of Intent to Recommend Dismissal on October 25, 2018 and issued its Order Dismissing Complaint on November 23, 2018. Claimant filed her Motion to Retain with the Commission on November 26, 2018. The Affidavit of Sarah Caitlynn Tschohl states that two identical Motions to Retain, one for the above captioned complaint and one for IC 2012-032481, were sent via United States Postal Service on behalf of Claimant's two workers' compensation actions on November 14, 2018. Ms. Tschohl further states that on November 26, 2018, she spoke with the legal assistant of the Referee assigned to both cases regarding the dismissal of the above captioned complaint. "[S]he informed me [Ms. Tschohl] that she did not receive our Motion to Retain in IC 2013-019439 until that morning but she received the Motion to Retain in IC 2012-032481 a week prior." Based on the tracking information for both items, Claimant suspects that the Motion to Retain in the above captioned case was "inadvertently re-routed". Claimant also avers the statute of limitations on her claim has passed, and to dismiss the complaint "would preclude the Claimant from presenting her case on the merits." Lastly, Claimant argues that Defendants have failed "to answer the complaint in this matter and that there is, therefore, no prejudice to Defendants" in the retention of this case.

The undersigned Commissioners see no reason to question these averments and therefore find good cause to grant reconsideration and withdraw the Order Dismissing Complaint. The Claimant's Motion for Reconsideration is GRANTED. Claimant's Complaint is REINSTATED.

IT IS SO ORDERED.

DATED this __9th__ day of __January__ 2019.

INDUSTRIAL COMMISSION

_____/s/_____
Thomas E. Limbaugh, Chairman

_____/s/_____
Thomas P. Baskin, Commissioner

_____/s/_____
Aaron White, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the _9th_ day of __January__, 2019, a true and correct copy of the foregoing **ORDER GRANTING MOTION FOR RECONSIDERATION** was served by regular United States Mail upon each of the following persons:

CLINTON E MINER
MIDDLETON LAW
412 S KINGS AVE STE 105
MIDDLETON ID 83644

BOISE HOTEL & CONFERENCE CENTER
330 VISTA AVE
BOISE ID 83705

FEDERAL INSURANCE COMPANY
C/O GALLAGHER BASSETT SERVICES
720 E PARK BLVD STE 125
BOISE ID 83712

el

_____/s/_____
