

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JASON L. WELLS,

Claimant,

v.

SWIFT TRANSPORTATION,

Employer,

and

ACE AMERICAN INSURANCE
COMPANY,

Surety,

Defendants.

IC 2016-004292

**ORDER GRANTING
RECONSIDERATION AND VACATING
DISMISSAL**

Filed January 9, 2019

On November 13, 2018, the Industrial Commission filed a Notice of Intent to Recommend Dismissal due to case inactivity. The Commission notified Claimant that he was expected to respond within twenty-one (21) days with an explanation why this case should not be dismissed. On December 6, 2018, the Commission issued an order dismissing Claimant's complaint, which was premised on Claimant's failure to respond to its notice of intent to recommend dismissal. On December 7, 2018, the Commission received Claimant's response to the Notice of Intent to Recommend Dismissal. The Commission construes Claimant's response as a request for reconsideration.

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, "[i]t 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. Davidson 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 rehear 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.

Here, Claimant argues that he requires additional medical treatment as a result of his work-related injury, and the matter is not ripe for adjudication. Claimant respectfully requests that the matter be retained on the active docket. While the Commission did not receive this response until after it had sent the Order Dismissing the Complaint, the Commission is persuaded that Claimant made a good faith effort to respond to the Notice of Intent to Dismiss, and Defendants did not object to Claimant’s response. In addition, Claimant’s stated reason for retaining the case on the active docket—the need for additional medical care—is legitimate.

