

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DELIA ROBERTSON,

Claimant,

v.

VERNON STEEL, INC.,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

IC 2018-001726

**ORDER GRANTING
RECONSIDERATION AND VACATING
DISMISSAL**

Filed October 11, 2019

On August 23, 2019, the Industrial Commission filed a notice of intent to recommend dismissal without prejudice 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 September 30, 2019, 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. Thereafter, on October 3, 2019, Claimant's Attorney argued that he drafted a responsive memorandum to the notice of intent to recommend dismissal, but learned the same was not filed when he received the Commission's dismissal. Claimant's motion is construed as a request for reconsideration. Defendants did not file a response. Claimant submitted documentation that his response included the Commission on the certificate of service.

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, the Commission’s dismissal was based on Claimant’s failure to respond to the Notice of Intent to Recommend Dismissal. Claimant’s counsel has submitted evidence showing that they prepared a timely response to the Notice of Intent to Dismiss Complaint on August 27, 2019, and listed the Commission on the certificate of service. For unknown reasons, most likely a mail error, the Commission did not receive the Claimant’s response. Claimant is still receiving medical care and treatment and is not yet medically stable. As such, Claimant wishes to continue pursuing the complaint with the Commission. The Commission finds that Claimant’s oversight

is isolated and Claimant promptly acted to mitigate the consequences of such. In addition, Claimant has shown good cause for reinstatement of the Complaint.

On its own motion, and in accordance with Idaho Code § 72-719, the Commission finds it necessary to vacate its September 30, 2019 order dismissing Claimant's complaint. Based on the foregoing, **IT IS HEREBY ORDERED** that Claimant's request for reconsideration is GRANTED, and the Commission's order dismissing Claimant's complaint, filed September 30, 2019, is hereby **VACATED. IT IS SO ORDERED.**

DATED this __11th__ day of __October__ 2019.

INDUSTRIAL COMMISSION

_____/s/_____
Thomas P. Baskin, Chairman

_____/s/_____
Aaron White, Commissioner

_____/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on this ___11th___ day of ___October___2019, a true and correct copy of the foregoing **ORDER GRANTING RECONSIDERATION AND VACATING DISMISSAL** was served by regular United States Mail upon each of the following:

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cs-m

_____/s/_____
