

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA GONZALEZ,

Claimant,

v.

CONAGRA FOODS, INC.,

Self-Insured
Employer,

Defendant.

IC 2008-013533

**ORDER ON
RECONSIDERATION,
GRANTING IN PART,
DENYING IN PART**

Filed November 24, 2014

This matter is before the Commission on Defendant's Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order, requesting reconsideration of the Industrial Commission's decision filed June 2, 2014, in the above referenced case. Claimant filed a response on July 7, 2014. No reply was filed.

There is no dispute that Claimant suffered an accident at work on March 27, 2008, when she slipped on frozen diced potatoes and fell backwards. At hearing, Claimant alleged her entitlement to additional medical benefits, temporary and permanent disability benefits up to total permanent disability benefits, and an award of attorney fees for Defendant's unreasonable denial of impairment benefits. Defendant contended that Claimant has received proper medical care and that her continuing symptoms are not related to her work accident.

The Commission's Recommendation and Order found the opinion of Dr. Joseph persuasive in proving that Claimant's industrial injury persisted beyond the original August 27, 2008 stability date. Additionally, the Commission was critical of Dr. Walker's report because he

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reviewed records from a different individual also named Maria Gonzalez, and critical of Dr. Knoebel's conclusory opinion which was based in part on Dr. Walker's report. The Commission concluded that Claimant had proven her entitlement to additional medical care as recommended by Dr. Joseph, temporary disability benefits, 5% impairment, 80% permanent disability including impairment, and attorney fees for Defendant's unreasonable denial of impairment benefits.

In the motion for reconsideration, Defendant argues that the Commission's decision does not take into account the gap in Claimant's medical treatment between the resolution of her problems and when she began complaining again. Defendant further contends that while Dr. Marano's records were submitted in error, Dr. Knoebel did not review those records and his opinion cannot be discredited for that reason. Finally, Defendant states that attorney fees are not warranted because Claimant's condition had resolved prior to her later full body complaints. Claimant avers that her symptoms continued requiring additional medical care, that the decision was appropriately critical of Dr. Knoebel's review of Dr. Walker's records, and that Defendant unreasonably failed to pay Dr. Walker's 2% impairment rating.

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).

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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. 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.

First, Defendant argues that the Commission's decision does not take into account the gap in Claimant's medical treatment between the resolution of her problems and when her complaints of pain resumed. Defendant contends that Claimant's August 27, 2008 examination at which she was declared stable is the end of the story and any following treatment is unrelated. This exact issue addressed in the recommendation by reviewing all the doctors' opinions and weighing the conflicting evidence. The Commission's analysis took into account all the documentary evidence and testimony and found the opinion of Dr. Joseph, Claimant's treating physician, to be the most persuasive for determining the extent of her industrial injury, and Dr. Lords to be most persuasive in establishing Claimant's restrictions. Given the return and persistence of Claimant's symptoms after she resumed full work duties, Dr. Joseph accurately

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observed the assessment that Claimant reached maximum medical improvement by August 27, 2008, was hasty. The Commission concluded that the August 27, 2008 stability date was premature because at that time she had not resumed full work duties and she had only been without pain for eight days.

Defendant further contends that while Dr. Marano's records were submitted in error, Dr. Knoebel did not review those records and his 2013 opinion cannot be discredited for that reason. The only new information used in Dr. Knoebel's 2013 opinion was Dr. Walker's 2010 IME report which utilized Dr. Marano's records. While Dr. Knoebel states that Dr. Walker's report does not change his opinion, it is clear that Dr. Walker's report was reviewed by Dr. Knoebel. The decision does not state that Dr. Knoebel reviewed the erroneous medical records. But it does correctly state that Dr. Knoebel reviewed Dr. Walker's report, which cited and relied on medical records describing pre-existing cervical disc pathology in another individual. The separation of one more medical provider between the incorrect medical records may have lessened their importance but the Commission appropriately weighed the error when addressing conflicting medical reports. Further, Dr. Knoebel's prior April 2010 opinion of Claimant's condition was found to be less persuasive because Dr. Knoebel did not yet have the benefit of Claimant's July 2010 MRI scan which documented loss of cervical lordosis and cervical disc pathology. The full record was reviewed prior to balancing the medical opinions, including Dr. Knoebel's reports.

Finally, Defendant states that attorney fees are not warranted because Claimant's condition had resolved prior to her later full body complaints. Defendant contends it appropriately relied on the August 27, 2008 stability date in denying all further benefits. In its

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decision, the Commission found that it was unreasonable for Defendant to refuse to pay permanent impairment benefits, given by Dr. Walker in 2013, in reliance on Dr. Knoebel's 2010 opinion. At the time Dr. Knoebel evaluated Claimant in April 2010 he did not have the benefit of reviewing a July 2010 MRI which showed cervical disc pathology. Moreover, Defendant provided erroneous medical records to Dr. Walker and then provided Dr. Walker's report based upon those erroneous medical records to Dr. Knoebel in 2013.

Attorney fees are not granted as a matter of right under the Idaho Workers' Compensation Law, but may be recovered only under the circumstances set forth in Idaho Code § 72-804 which provides:

If the commission or any court before whom any proceedings are brought under this law determines that the employer or his surety contested a claim for compensation made by an injured employee or dependent of a deceased employee without reasonable ground, or that an employer or his surety neglected or refused within a reasonable time after receipt of a written claim for compensation to pay to the injured employee or his dependents the compensation provided by law, or without reasonable grounds discontinued payment of compensation as provided by law justly due and owing to the employee or his dependents, the employer shall pay reasonable attorney fees in addition to the compensation provided by this law. In all such cases the fees of attorneys employed by injured employees or their dependents shall be fixed by the commission.

The decision that grounds exist for awarding attorney fees is a factual determination which rests with the Commission. Troutner v. Traffic Control Company, 97 Idaho 525, 528, 547 P.2d 1130, 1133 (1976).

Important to our decision in this regard is the fact that by April 15, 2011, the date of Claimant's deposition, Defendant, its attorneys or representatives, was aware that certain medical records thought to relate to Claimant, were in fact records relating to another Maria Gonzalez. However, when Dr. Walker evaluated Claimant in 2013 he relied on these erroneous records to

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apportion Claimant's 3% permanent impairment rating between the subject accident, and what he thought was a documented preexisting condition. Based on Dr. Walker's April 2013 report, Defendant was obligated to pay at least the 2% which Dr. Walker related to the industrial accident. However, Defendant immediately sought another opinion from Dr. Knoebel, which he issued on May 2, 2013. It is this report which must be scrutinized to determine whether it gave Defendant a reasonable ground to deny the impairment benefits.

Dr. Walker concluded that some part of Claimant's problem was pre-existing, but this conclusion was based on an inaccurate assumption concerning Claimant's medical history. Dr. Knoebel considered Dr. Walker's report when he issued a brief letter declining to revise his previous opinion that Claimant was medically stable and without impairment. Would Dr. Knoebel's opinion have changed had he received a report from Dr. Walker that reached a different conclusion based on a correct medical history? For example, if Dr. Walker had not considered the erroneous records and had rendered an opinion to the effect that Claimant's clinical exam as correlated with the July 2010 MRI entitled her to a 3% PPI rating for the subject injury, would this have changed Dr. Knoebel's opinion? Defendant would have us conclude that this question must be answered in the negative, and find that Dr. Knoebel's opinion is unsullied by the flawed opinion reached by Dr. Walker. Therefore, it was reasonable for Defendants to rely on the opinion of Dr. Knoebel.

Let us examine exactly what Dr. Knoebel said in his letter of May 2, 2013.

Acknowledging receipt of Dr. Walker's report, Dr. Knoebel said of that report:

Dr. Walker concluded that the claimant has a soft tissue cervical sprain secondary to that injury with significant degenerative and age-related changes only seen on her cervical MRI scan and with no significant objective findings on physical exam.

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Using AMA Guides, sixth edition, he noted the claimant qualified for, at most, 3% whole person impairment of the neck. He apportioned 1% to pre-existing conditions and 2% to her industrial fall. He goes on to state, however, "it would be reasonable to actually even give her a 0% rating given the MRI findings were not new and her symptoms seem to far outweigh anything found on examination or the MRI scan.

Defendant's Exhibit 7, p. 113(a).

He then alluded to his original findings at the time of the April 8, 2010 exam:

I have also reviewed my prior IME of this claimant done 4/8/10. I found no indication for permanent impairment secondary to the industrial accident. It was noted that the claimant reasonably had a temporary industrial contusion only without permanent impairment or disability.

Id.

He then concluded:

The review of the IME of Dr. Walker does not change the previous opinions and conclusions expressed by this examiner.

Id.

From the foregoing it seems clear that even if Dr. Walker had assigned all 3% of the rating he gave to Claimant to the subject accident, this would not have swayed Dr. Knoebel. Quite apart from the question of how a rating should be apportioned, Dr. Knoebel is of the view that Claimant is simply not entitled to an impairment rating, and Dr. Walker's views to the contrary are unpersuasive. On balance, we cannot see how a Walker report based on a correct history would have yielded a different opinion from Dr. Knoebel. Therefore, while we have not found Dr. Knoebel's opinion to be persuasive, we conclude that it was not unreasonable for Defendant to rely on that opinion, even though it was expressed after considering the flawed report that was sent to Dr. Knoebel by Defendant. We are not persuaded that this report had any impact on Dr. Knoebel's opinion.

At the end of the day, we believe that the only facts that arguably support an award of

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fees are those which demonstrate that long after learning that certain medical records in its possession related to another Maria Gonzalez, Defendant provided those records to Dr. Walker, and invited Dr. Walker to render opinions based on those records. If Defendant provided those records to Dr. Walker intending to influence his opinion with facts it knew to be incorrect, this would support an award of fees under Idaho Code § 72-804. However, we are unwilling to assign such a motive to Defendant in the absence of clear evidence of such malfeasance. Defendant's actions are equally explained as simple sloppiness.

Claimant has not proven her entitlement to attorney fees under Idaho Code § 72-804. Defendant's motion is granted with respect to the issue of attorney fees under Idaho Code §72-804.

The Commission has reviewed the record with a focus on the concerns that Defendant has raised in the motion for reconsideration. Based on the record as a whole, the Commission concludes that Claimant has proven her entitlement to additional medical care, permanent impairment of 5%, temporary disability, permanent disability of 75% exclusive of 5% impairment, but not attorney fees pursuant to Idaho Code §72-804.

Based upon the foregoing reasons, Defendant's Motion for Reconsideration is DENIED in part, and GRANTED in part.

IT IS SO ORDERED.

DATED this __24th__ day of _____November____, 2014.

INDUSTRIAL COMMISSION

/s/ _____
Thomas P. Baskin, Chairman

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R.D. Maynard, Commissioner

/s/
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on 24th day of November, 2014, a true and correct copy of the foregoing **ORDER ON RECONSIDERATION, GRANTING IN PART, DENYING IN PART** was served by regular United States Mail upon each of the following:

MATTHEW ROMRELL
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IDAHO FALLS ID 83404

NATHAN GAMEL
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/s/

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