

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TODD LAWRENCE HAMILTON
(DECEASED),

Claimant,

v.

ALPHA SERVICES, LLC,

Employer,

and

DALLAS NATIONAL INSURANCE
COMPANY,

Surety,

Defendants.

IC 2012-008983

**ORDER DENYING
RECONSIDERATION**

Filed August 1, 2014

Pursuant to Idaho Code § 72-718, Defendants move for reconsideration of the Commission's January 9, 2014 decision in the above-captioned case. In the decision, the Commission found that Decedent was acting within the course and scope of his employment with Defendants at the time of his fatal accident. The Commission also found that Decedent's widow and children (hereafter "Claimant") are entitled to benefits provided for under I.C. §§ 72-410-416, together with burial benefits as provided for under I.C. § 72-436, subject to the limitations of I.C. § 72-102(4).

Defendants claim that the Commission did not properly consider the evidence when issuing its decision, but rather "bent the concepts of arising out of and in the course of employment to the breaking point" in an attempt to provide for the heirs of Decedent. Claimant

objects, stating that Defendants' request for reconsideration is a reiteration of arguments and evidence previously considered by the Commission.

A decision of the Commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated, provided that within twenty days from the date of filing the decision, any party may move for reconsideration. Idaho Code § 72-718. A motion for reconsideration must "present to the Commission new reasons factually and legally to support [reconsideration] rather than rehashing evidence previously presented." *Curtis v. M.H. King Co.*, 142 Idaho 383, 128 P.3d 920 (2005). The Commission is not inclined to reweigh evidence and arguments simply because the case was not resolved in the party's favor.

On reconsideration, the Commission will examine the evidence in the case and determine whether the evidence presented supports the legal conclusions in the decision. However, the Commission is not compelled to make findings of fact during reconsideration. *Davidson v. H.H. Keim*, 110 Idaho 758, 718 P.2d 1196 (1986).

The Commission acknowledges the uncertainty surrounding this particular case, as no one is able to ask Decedent what his exact intent was when he changed direction on the highway and attempted to turn left onto the East Road. Upon reviewing the evidence and the record, the Commission still concludes that Claimant met her burden of showing that Decedent was acting within the course and scope of his employment when Decedent was struck and killed. As Defendants have not proffered new legal or factual evidence not already considered by the Commission, we are disinclined to grant them a reconsideration of the original decision. As such, Defendant's motion for reconsideration is DENIED.

IT IS SO ORDERED.

DATED this 1st day of August , 2014.

INDUSTRIAL COMMISSION

/s/ _____
Thomas P. Baskin, Chairman

/s/ _____
R.D. Maynard, Commissioner

/s/ _____
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of August , 2014, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States mail upon each of the following persons:

STARR KELSO
PO BOX 1312
COEUR D'ALENE ID 83816

ERIC BAILEY
BOWEN & BAILEY
PO BOX 1007
BOISE ID 83701-1007

ka

/s/ _____