

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

KATHLEEN HANSON,

Claimant,

v.

UNITED PARCEL SERVICE,

Employer,

and

LIBERTY INSURANCE CORP.,

Surety, and

STATE OF IDAHO, INDUSTRIAL
SPECIAL INDEMNITY FUND,

Defendants.

IC 2007-038562

2009-025929

2010-014499

2010-016099

**ORDER FOR CLARIFICATION /
RECONSIDERATION**

Filed August 1, 2014

On May 22, 2014, Claimant filed a Motion for Clarification/Reconsideration with supporting memorandum regarding the Industrial Commission's decision filed May 14, 2014, in the above referenced case. On May 29, 2014, United Parcel Service and Liberty Insurance Corp. (Defendants) filed Defendants' Response to Claimant's Motion for Clarification/Reconsideration and Request for Permission to Deduct the Permanent Partial Impairment Amount Previously Paid from Benefits Yet Owing. Claimant filed Claimant's Response to Defendants' Brief in Response to Claimant's Motion for Clarification/Reconsideration and Request for Permission to Deduct the Permanent Partial Impairment Amount Previously Paid From Benefits Yet Owing on June 2, 2014.

BACKGROUND

The above entitled case is a combination of four industrial accidents: the first in 2007, the second in 2009, and two additional accidents on May 24 and June 24, 2010. The Commission decision addressed all four industrial accidents as well as Claimant's entitlement to disability. This reconsideration is limited to the industrial accident on May 24, 2010, when Claimant tripped and fell over a parcel in the back of her package car injuring, most notably, her right knee.

Claimant contended that she was totally and permanently disabled as a result of her industrial accidents and preexisting conditions at the underlying hearing. Claimant also asserted that she incurred permanent partial impairment (PPI) as a result of her May 2010 industrial right knee injury. Defendants argued that Claimant is totally and permanently disabled solely as a result of her preexisting vision impairment, multiple sclerosis, and limited labor market.

The Commission found Dr. Collins' opinion to be the most persuasive. He concluded that Claimant sustained a permanent aggravation of her preexisting right knee arthritis relating to her industrial accident, as he fully considered Claimant's condition before and after her industrial injuries. Dr. Collins also adequately explained the physiological mechanism by which Claimant's right knee was most likely physically altered. The Commission quoted Dr. Collins' note, which stated that Claimant "may at some point require surgical patellofemoral treatment up to and including a lateral patellar release on the right." The Commission concluded that Claimant's preexisting right knee degenerative condition was permanently exacerbated by her industrial accident on May 28, 2010. Dr. Collins assessed restrictions and rated Claimant's impairment related to her right lower extremity at 25%, with 18% apportioned to preexisting conditions.

The Commission's Order concluded, in part, that Claimant suffered four industrial injuries that were treated and healed by the time of hearing and that Claimant's preexisting right knee degenerative condition was permanently exacerbated by her industrial accident on May 28, 2010. The Commission further concluded that Claimant was totally and permanently disabled.

In her motion for reconsideration, Claimant seeks clarification on the decision's statement that Claimant's permanently aggravated right knee condition may need surgery, with the decision's conclusion that all Claimant's industrial injuries were treated and healed by the time of hearing. Claimant is interested in having her right knee treated and undergoing whatever procedure the physicians feel is appropriate. Claimant contends that she may be entitled to temporary disability benefits or additional impairment rating benefits, depending on what treatment Claimant pursues.

Defendants contend that the Commission should stand by its finding that Claimant's right knee condition had healed and was stable at the time of hearing. Additionally, because Defendants paid income benefits on Claimant's June 24, 2010 claim which were not due and payable when made, they respectfully request approval to deduct \$5,304.75 from the amount yet owing on Claimant's May 28, 2010 claim.

AUTHORITY

Under Idaho Code § 72-718, a decision of the commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated; provided, within twenty (20) days from the date of filing the decision any party may move for reconsideration or rehearing of the decision. . . and in any such events the decision shall be final upon denial of a motion for rehearing or reconsideration of the filing of the decision on rehearing or reconsideration. J.R.P. 3(f) states

that a motion to reconsider "shall be supported by a brief filed with the motion."

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 a 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.

DISCUSSION

Claimant contends that she is entitled to whatever medical treatment the physicians feel is appropriate for her right knee condition. Defendants contend that Claimant's right knee condition was declared stable. The Commission further stated that all four industrial injuries were healed as of the date of the hearing.

The Commission was not asked to address Claimant's entitlement to additional medical care. The decision analyzed the 2010 accident and its resulting injuries within the context of determining causation, impairment, and disability. The Commission found Dr. Collins' opinion

to be the most persuasive, as he fully considered Claimant's condition before and after her industrial injuries and he explained the physiological mechanism by which her right knee was altered. The Commission concluded that Claimant suffered an aggravation of her right knee as opined by Dr. Collins. Dr. Collins gave Claimant an impairment rating and restrictions relating to the right knee, and he also stated that Claimant may need additional right knee treatment.

The Commission does not know the extent of Claimant's entitlement to medical care. The potential exists that Claimant is entitled to surgery related to the aggravation of her preexisting right knee condition. Claimant has established the occurrence of an accident producing an injury, and is entitled to workers' compensation benefits under Idaho law. Claimant is entitled to recover medical expenses incurred in connection with the treatment of her injury, and such further medical treatment as may be required by Idaho Code §72-432. There is nothing inconsistent with finding Claimant medically stable as of hearing, yet recognizing she may require further treatment in the future. But the extent to which she is entitled to further medical benefits is not at issue in this proceeding.

Finally, the Commission addresses Defendants' request to deduct impairment amount from the June 24, 2010 claim they previously paid from the outstanding May 28, 2010 claim benefits still owed to Claimant. Claimant did not address Defendants' request. The above entitled claims were consolidated for the purpose of this litigation and no objection has been raised to Defendants' request. Defendants paid income benefits on Claimant's June 24, 2010 claim, which were not due and payable when made, and they are thus allowed to deduct \$5,304.75 from the amount yet owing on Claimant's May 28, 2010 claim.

CONCLUSION

The Commission has reviewed the record with a focus on the details presented by Claimant in the motion for clarification/reconsideration and finds that the facts support the initial decision. The Commission's analysis found Dr. Collins' opinion most persuasive. Dr. Collins opined Claimant's right knee condition stable and he noted the potential for a future surgery. The extent to which Claimant is entitled to further medical benefits was not at issue in this proceeding. Additionally, Defendants are allowed to deduct \$5,304.75 from the amount yet owing on Claimant's May 28, 2010 claim.

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 1st day of August, 2014, a true and correct copy of the foregoing **ORDER FOR CLARIFICATION / RECONSIDERATION** was served by regular United States Mail upon each of the following:

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