

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MAIDA C. ALLISON,
Claimant,

v.

KOOTENAI COUNTY,
Employer,

and

STATE INSURANCE FUND,
Surety,
Defendants.

IC 2013-003466

**ORDER DENYING
RECONSIDERATION**

Filed October 30, 2014

On August 20, 2014, Claimant filed correspondence which the Commission has construed as a motion for reconsideration regarding the Industrial Commission's decision filed August 14, 2014, in the above referenced case. On September 2, 2014, Defendants filed Defendants' Objection to Claimant's Motion for Reconsideration. Claimant filed a reply on September 4, 2014.

In post-hearing briefing, Claimant contended that she re-tore her right rotator cuff while moving notebooks in her office on February 17, 2012, during her last days of work. Claimant acknowledged she did not provide notice of her injury to Employer until eight months had passed, but asserts this should not bar her claim because she did not suspect an industrial origin before then. Defendants did not concede that an accident occurred, and argued that Claimant's upper extremity condition is due solely to degenerative processes. Further, Defendants assert

there is an inadequate basis upon which to excuse Claimant's failure to provide notice within the statutory 60 days.

The Commission rejected Claimant's arguments excusing the late notice of her alleged accident to Employer. Further, the Commission was persuaded by Dr. Stevens' opinion that it is unlikely that any part of Claimant's right shoulder condition, including her right rotator cuff tear, was caused by the events she described on February 17, 2012. The Commission's Order concluded that Claimant failed to establish she suffered an industrial right shoulder accident.

In her motion for reconsideration, Claimant contends that Employer's settlement negotiations, including a request for a settlement amount from Claimant, acknowledges acceptance of the accident occurring on February 17, 2012. Claimant also argues that she has proven her case and is entitled to compensation for the loss of the full use of her right arm.

Defendants contend that correspondence related to settlement is irrelevant to these proceedings, consistent with I.R.E. 408. Additionally, Claimant failed to provide timely notice of an industrial accident and failed to prove she suffered an industrial accident injuring her right shoulder.

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.

Claimant contends that Employer's settlement negotiations, including requesting a settlement amount from Claimant, acknowledges acceptance of the accident. For sound reasons of policy, settlement negotiations and offers to compromise are generally inadmissible. *See, e.g.*, Rule 408, Idaho Rules of Evidence. The circumstances here do not warrant a departure from the general rule. Similarly the Commission's Judicial Rules of Practice and Procedure, Rule 17(D)(3), states "Mediation proceedings shall be regarded as settlement negotiations, and no admission, representation, or statement made in mediation, not otherwise discoverable or obtainable, shall be admissible as evidence in any proceeding before the Commission. All communications, whether verbal or written, from the participants to the mediator shall be

confidential, unless otherwise agreed by the participants or ordered by an official with appropriate authority to do so.” To the extent that any statement by Defendants during settlement negotiations could be construed as an admission, such statement is not admissible.

Claimant also argues that she has proven her case and is entitled to compensation for the loss of the full use of her right arm. The Commission analyzed all the evidence presented and considered the same arguments that Claimant is now asserting. There was no sufficient excuse for Claimant’s late notice of her alleged accident to Employer. Additionally, there was no medical evidence that Claimant suffered an industrial right shoulder accident.

The Commission has reviewed the record with a focus on the details presented by Claimant in the motion for reconsideration and concludes the facts support the decision issued on August 14, 2014. The Recommendation’s analysis took into account all the documentary evidence and testimony. Although Claimant disagrees with the Commission’s findings and conclusions, the Commission finds the decision is supported by substantial evidence in the record and Claimant has presented no persuasive argument to disturb the decision.

IT IS SO ORDERED.

DATED this 30th day of October, 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 30th day of October, 2014, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail upon each of the following:

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/s/