

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JOANNE DICKERSON-CUMMINGS,

Claimant,

v.

A COMPASSIONATE CARE,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

IC 2014-008982

**ORDER DISMISSING
RECONSIDERATION**

Filed 2/20/15

On January 12, 2015, Claimant filed a letter requesting reconsideration of the Industrial Commission's Order Dismissing Complaint filed on December 17, 2014, in the above referenced case. No response has been filed.

Claimant's case was set for hearing on November 10, 2014, in Lewiston, Idaho. Claimant did not appear at the hearing and Defendants moved for dismissal of Claimant's Complaint. On November 13, 2014, the Commission issued an Order on Motion to Dismiss Complaint. The Order required Claimant to present good cause by November 24, 2014, for her failure to appear at the hearing, absent which the Commission intended to dismiss her Complaint. No response was received, and on December 17, 2014, the Commission issued an Order

ORDER DISMISSING RECONSIDERATION - 1

Dismissing Complaint. On January 12, 2015, the Commission received Claimant's request for reconsideration. In her motion for reconsideration, Claimant argues that she had a ride scheduled on the day of the hearing, but when the ride was late she called the company and found out that she was scheduled for pickup the following day. Claimant states that there was no way for her to travel from Kamiah to Lewiston.

Pursuant to Idaho Code § 72-718 a party has twenty (20) days from the date a decision of the Commission has been filed within which to move for reconsideration. If no motion to reconsider has been made within 20 days, the decision shall be final and conclusive and may be appealed to the Supreme Court. Rule 3(F), Judicial Rules of Practice and Procedure.

The Industrial Commission filed its Order Dismissing Complaint on December 17, 2014. Claimant did not date her letter requesting reconsideration. The envelope containing the letter has a cancelation stamp from the United States Postal Service with the date of January 8, 2015, 22 days after the filing of the Commission's order. The motion was received and filed by the Commission on January 12, 2015, 26 days after the filing of the Commission's order.

The Idaho Supreme Court has ruled that when a motion for reconsideration was in the mail 20 days after the decision and received 21 after the decision, the motion is timely. *Wright v. Willer*, 111 Idaho 474, 725 P.2d 179 (1986). Accordingly, a motion for reconsideration may be deemed made on the day it is mailed, faxed, or hand delivered to the Commission. The earliest date evidenced by Claimant's letter is the cancelation stamp by the United States Postal Service dated January 8, 2015. The Commission finds that Claimant's motion was made on January 8, 2015. Thus, Claimant's motion was made 2 days late and is untimely.

Based upon the foregoing reasons, Claimant's motion for reconsideration is
DISMISSED.

IT IS SO ORDERED.

DATED this __20th__ day of ____February____, 2015.

INDUSTRIAL COMMISSION

____/s/_____
R.D. Maynard, Chairman

____/s/_____
Thomas E. Limbaugh, Commissioner

____/s/_____
Thomas P. Baskin, Commissioner

ATTEST:

____/s/_____
Assistant Commission Secretary

|

CERTIFICATE OF SERVICE

I hereby certify that on 20th day of February, 2015, a true and correct copy of the foregoing **ORDER DISMISSING RECONSIDERATION** was served by regular United States Mail upon each of the following:

JOANNE DICKERSON-CUMMINGS
PO BOX 1386
KAMIAH ID 83536

WYNN MOSMAN
PO BOX 8456
MOSCOW ID 83843

_____/s/_____
