

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

JAMES BRENNAN,

Claimant,

v.

SELKIRK PRESS INC.,

Employer,

and

STATE INSURANCE FUND,

Surety,

Defendants.

**IC 2009-025084**

**ORDER DENYING  
RECONSIDERATION**

Filed March 22, 2012

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On February 21, 2012, Claimant filed a motion for reconsideration with supporting brief. Claimant argues that the Commission made erroneous findings and conclusions. Claimant contends that the law of the case is contained in Sundquist v. Precision Steel & Gypsum, Inc., 141 Idaho 450, 111 P.3d 135 (2005), which distinguishes between the time a condition is “incurred” and the “manifestation” of the condition. Should the preexisting condition not become manifest, then the preexisting condition does not fall under Nelson v. Ponsness-Warren Idgas Enterprises, 126 Idaho 129, 879 P.2d 592 (1994). Therefore, the Commission’s order should be reversed, and Claimant should be awarded benefits.

On February 29, 2012, Defendants filed a response to Claimant’s motion for reconsideration. Defendants argue the record supports that Claimant’s condition was not caused by an accident, but rather was a continuation of the previous injury and subject to the rule in

Nelson v. Ponsness-Warren Idgas Enterprises, 126 Idaho 129, 879 P.2d 592 (1994). Therefore, the Commission should uphold the underlying order.

Claimant did not file a reply brief.

### **DISCUSSION**

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. J.R.P. 3(f) states that a motion to reconsider “shall be supported by a brief filed with the motion.” Generally, greater leniency is afforded to *pro se* claimants. 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). 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 argues that his preexisting degenerative changes at C4-5 must be viewed in a vacuum, and that this condition must, itself, be treated as a preexisting "occupational disease" of a type that invites the application of the rule in Sundquist v. Precision Steel & Gypsum, Inc., *supra*. Though acknowledging that the C4-5 degenerative changes noted on the 2008 MRI predated the Claimant's employment at Selkirk, Claimant argues that this preexisting condition must be shown to have become "manifest" prior to the commencement of Claimant's employment by Selkirk in order for that condition to qualify as a preexisting condition for purposes of the application of the rule announced in Nelson v. Ponsness-Warren Idgas Enterprises, *supra*. Determining the date on which Claimant knew, or was told, of the C4-5 "occupational disease" is therefore necessary in order to understand whether it can be deemed a preexisting condition for purposes of the application of the rule of Nelson, *supra*. Claimant's argument fails for at least two reasons.

First, although Claimant argues that the C4-5 condition qualifies as an occupational disease predating Claimant's employment at Selkirk, there is no evidence of record which supports this assertion. It is just as likely that the C4-5 problems have their genesis in the same ISLD accident that caused damage to Claimant's C5-6, C6-7 levels.

Second, and more importantly, the C4-5 lesion cannot be considered in a vacuum, independent of Claimant's multi-level injuries following the 2008 accident. It is beyond dispute that Claimant suffered an "accident" while employed by ISLD in 2008. That accident eventually led to cervical spine surgery, and a fusion of Claimant's cervical spine at C5-6 and C6-7. As explained by Drs. Dirks and Larson, the fact that Claimant lost motion segments at those levels

as a consequence of the cervical fusion makes the adjacent C4-5 motion segment more susceptible to subsequent injury, since it must now absorb greater forces than it was subjected to prior to the fusion of the two motion segments below. The Commission has found that Claimant's work activities at Selkirk did contribute to the further degeneration of this C4-5 level. However, the Commission also expressly found, as amply supported by the medical record, that Claimant's preexisting multilevel cervical fusion set him up for accelerated degeneration of the C4-5 disk, caused by the work activities to which he was exposed at Selkirk. Clearly, this constitutes a work-related aggravation of a preexisting condition, a condition which has its genesis in the 2008 work accident. To accept Claimant's argument would require of the Commission that it consider the preexisting degenerative changes at C4-5 in a vacuum, and ignore the fact that Claimant's 2008 accident led to surgical fusions at C5-C7, fusions which subjected Claimant's C4-5 level to greater stresses. Claimant suffered from preexisting injuries caused by an accident, which condition was aggravated in subsequent employment by something other than a discrete accident. Nelson applies, and Sundquist is not implicated.

Based on the foregoing reasons, Claimant's Motion for Reconsideration is **DENIED**.

**IT IS SO ORDERED.**

DATED this 22nd day of March, 2012.

INDUSTRIAL COMMISSION

/s/ \_\_\_\_\_  
Thomas E. Limbaugh, Chairman

/s/ \_\_\_\_\_  
Thomas P. Baskin, Commissioner

\_\_\_\_\_  
R.D. Maynard, Commissioner

ATTEST:

/s/ \_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of March, 2012, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail upon each of the following:

STARR KELSO  
PO BOX 1312  
COEUR D'ALENE ID 83816

H JAMES MAGNUSON  
PO BOX 2288  
COEUR D'ALENE ID 83816

/s/ \_\_\_\_\_