

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ALBERTO CASTANEDA,

Claimant,

v.

CROP PRODUCTION SERVICES, INC.,
F/K/A/ UAP DISTRIBUTION, INC.,

Employer,

and

INSURANCE COMPANY OF THE STATE
OF PENNSYLVANIA,

Surety,

Defendants.

IC 2007-033482

**ORDER ON
RECONSIDERATION**

Filed June 20, 2012

On April 19, 2012, Defendants filed a motion for reconsideration with supporting brief. Defendants argue that the Commission erred in determining that Claimant met his burden of proof to establish that his recurrent left inguinal hernia was related to the September 20, 2007 industrial injury. Therefore, the Commission's order should be reversed. It follows that the Commission should also revise its conclusion on Claimant's entitlement to temporary total disability benefits from July 30, 2009 through August 31, 2009. In the alternative, the Commission should modify the finding that Claimant was entitled to Dr. Johansen's July 30, 2009 surgical repair of the right inguinal hernia and recurrent left hernia, because the Commission only found the left hernia compensable. *See, Williamson v. Whitman Corp./Pet, Inc.*, 130 Idaho 602, 944 P. 2d 1365 (1997).

Defendants also seek clarification of whether the award of medical benefits in the Commission's order contemplates ongoing liability for conditions beyond September 1, 2009. Defendants request that the language in the Industrial Commission's Order regarding medical benefits be reformed to state:

“Claimant has proven he is entitled to reasonable medical benefits for his recurrent left inguinal hernia through September 1, 2009, but not thereafter. This includes a proportionate share of the costs of surgery performed by Dr. Johansen on July 30, 2009, referable to the left hernia repair.”

On May 7, 2012, Claimant notified the Commission that it would not file a response to the Defendants' motion for reconsideration. However, Claimant did not acquiesce or concede to Defendants' arguments.

Defendants 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.

Defendants question whether Claimant adduced sufficient proof to meet the burden of proof on medical causation. A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). "Probable" is defined as "having more evidence for than against." *Fisher v. Bunker Hill Company*, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974). Magic words are not necessary to show a doctor's opinion is held to a reasonable degree of medical probability, only his or her plain and unequivocal testimony conveying a conviction that events are causally related. *See, Jensen v. City of Pocatello*, 135 Idaho 406, 412-413, 18 P. 3d 211, 217-218 (2001).

The Referee relied on Dr. Moser's testimony that Claimant's recurrent left inguinal hernia was caused by his 2007 industrial accident and Dr. Johansen's acknowledgement that Claimant's recurrent hernia could potentially be related to the repair of his previous industrial injury. Claimant received a laparoscopic repair of a left inguinal hernia on October 25, 2007. By February 2008, Claimant had returned to his normal work duties, including lifting 50-pound bags of fertilizer, general farm work, planting, irrigating, cleaning beets and onions, and feeding

livestock. Claimant presented to Ray Hanson, M.D., complaining of right inguinal pain on July 10, 2008. Dr. Hanson recommended anti-inflammatories and reduced activity for three weeks. Claimant resumed his normal work duties and never returned to Dr. Hanson. Claimant lost his job on May 8, 2009, and subsequently filed a discrimination claim with the Idaho Human Rights Commission against Employer. Claimant did not seek further medical attention for inguinal pain until May 2009, shortly after his termination. Thereafter, Claimant's small recurrent left inguinal hernia and right-sided inguinal hernia prompted the July 2009 surgical intervention.

Defendants' criticism of Claimant's medical experts is well-taken. The expert testimony offered from Claimant had various shortcomings, compounded by the lack of a brief from Claimant to elucidate his arguments on the case. The Commission realizes that experts do not need to be infallible or veteran witnesses to be persuasive. The Commission strives to discern between genuine medical opinions and opinions manufactured solely for litigation purposes—a difficult task in the adversarial forum of litigation. The facts of this case and the medical testimony supported a finding of medical causation on the left inguinal hernia; however, Claimant prevailed only by a very slim margin. While Claimant was not particularly reliable as a witness, such does not foreclose the Commission from a finding of compensability. Again, aside from TTD benefits related to Claimant's recovery from the surgical procedure, Claimant failed to prevail on all other issues. Defendants' request to modify the Commission's causation findings about Claimant's medical care and related TTD benefits is DENIED.

Defendants cite Williamson v. Whitman Corp./Pet, Inc. for the proposition that an Employer is only obligated to provide medical treatment necessitated by the industrial accident, and is not responsible for medical treatment not related to the industrial accident. 130 Idaho 602, 944 P. 2d 1365 (1997). Defendants are correct that Claimant's July 30, 2009 bilateral

laparoscopic hernia repair surgery with Dr. Johansen treated compensable and non-compensable conditions. Defendants call attention to the fact that Claimant's left-sided hernia had a PerFix mesh repair, while his right-sided hernia had a Kugel mesh repair to allow the Commission to separate the procedures. Defendants only wish to pay proportionate costs for the bilateral surgery.

Because Defendants denied medical care for Claimant after November 2007, the Commission follows the Court's guidance in Neel v. Western Construction, Inc., 147 Idaho 146, 206 P.3d 852 (2009).

Neel v. Western Construction, Inc., supra, has been generally cited for the proposition that where a surety has denied responsibility for medical treatment, surety is responsible for the payment of 100% of the invoiced amount of the bills in question upon the Industrial Commission's subsequent determination that surety is responsible for that care. The underlying premise of Neel is that where the workers' compensation surety has denied responsibility for the payment of medical benefits, claimant is in the wilderness: He must go out and strike his own bargain with providers, and is potentially liable for 100% of the invoiced amount of bills for services. For this reason, once the Industrial Commission determines that the denied care is the responsibility of surety, surety is obligated to pay claimant 100% of the invoiced amount of the bills in question, this sum representing the injured worker's exposure on the bills he incurred outside the Workers' Compensation system.

Aspiazu v. Homedale Tire Service, IIC 1984-477235, 2012 IIC 0004 (filed Jan. 18, 2012).

On closer review, Claimant's invoiced incurred bills for his bilateral surgical intervention gives some delineation of the separate procedures' costs. Claimant's Exhibit 17 shows a Health Insurance Claim Form with \$2,300 each for surgical procedures on the left and right side and a charge for \$614.40, corresponding with the Parkway Surgery Center invoiced amount for Kugel patches (excluding state tax of \$36.86). Claimant's health insurance claim for the July 30, 2009 surgical procedure was for \$5,214.00 and \$651.26 for the Kugel patches for the non-compensable care. Defendants should not be responsible for the invoiced amounts of \$2,300 for

the right-sided surgery and \$651.26 for the Kugel patches, as the right-sided hernia was not related to the industrial accident. Defendants' request to revise the Commission's finding on Claimant's entitlement to reasonable medical care for the July 30, 2009 surgery is GRANTED.

The majority of Claimant's bills are not readily distinguishable between compensable and non-compensable conditions. For example, Claimant incurred other medical costs connected to the bilateral repair, such as the general anesthesia and reasonable pain medication post-surgery, which treated both compensable/non-compensable conditions. The IFSC Anesthesia Group billed Claimant a flat rate, without separating costs for the individual procedures. Claimant's medical providers reasonably treated both conditions (compensable and non-compensable hernias) contemporaneously, as Claimant should not have undergone separate appointments and/or operations in the chance that he failed to establish compensability for the entirety of his hernia conditions. There is no indication that treatment of the non-compensable condition extended Claimant's recovery from the compensable injury. For these reasons, the Commission will not modify its finding that Defendants are responsible for Claimant's reasonable medical benefits, with the exception of the surgery costs discussed above.

The Commission's underlying order on medical benefits to Claimant was not intended to extend Defendants' liability for conditions beyond September 1, 2009. Defendants' request for clarification on whether the award of medical benefits contemplates ongoing liability for conditions beyond September 1, 2009 is GRANTED.

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ORDER

Based on the foregoing reasons, the Commission **ORDERS** the following:

1. Defendants' request to reverse the Commission's findings on medical causation and TTDs, is DENIED. Claimant satisfied his burden of proof on medical causation for his July 30, 2009 left hernia repair.

2. The Order's finding that "Claimant has proven he is entitled to reasonable medical benefits for his recurrent left inguinal hernia, including surgical repair as performed by Dr. Johansen on July 30, 2009," is modified as follows:

"Claimant has proven he is entitled to reasonable medical benefits for his recurrent left inguinal hernia, including surgical repair as performed by Dr. Johansen on July 30, 2009. Defendants are responsible for the invoiced cost of the left-sided hernia repair. However, Defendants are not responsible for the invoiced cost of the surgical repair and Kugel patches referable to the right-sided hernia repair."

3. Defendants' request for clarification of the underlying order is GRANTED. The Commission's award on medical benefits to Claimant is not intended to extend Defendants' liability. Defendants do not have ongoing liability for conditions beyond September 1, 2009.

IT IS SO ORDERED.

DATED this 20th day of June, 2012.

INDUSTRIAL COMMISSION

/s/ _____
Thomas E. Limbaugh, Chairman

/s/ _____
Thomas P. Baskin, Commissioner

/s/
R.D. Maynard, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of June, 2012, a true and correct copy of the foregoing **ORDER ON RECONSIDERATION** was served by regular United States Mail upon each of the following:

SUSAN VELTMAN
PO BOX 2528
BOISE ID 83701-2528

PATRICK BROWN
335 BLUE LAKES BLVD. N.
TWIN FALLS ID 83301

/s/