

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

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| FRANKIE L. CREASEY, |) | |
| |) | IC # 2004-522002 |
| Claimant, |) | |
| v. |) | ORDER DENYING |
| |) | RECONSIDERATION |
| TOMINAGA FARMS INC., |) | |
| |) | |
| Employer, |) | |
| |) | Filed April 7, 2011 |
| and |) | |
| |) | |
| STATE INSURANCE FUND. |) | |
| _____ |) | |

On February 16, 2011, the Commission received a letter from Claimant requesting reinstatement of his payroll benefits. The Commission has construed Claimant’s letter as a request for reconsideration under Idaho Code § 72-718. Claimant argued that he appropriately responded to the Commission’s notice of intent to recommend dismissal, and that his payroll benefits should resume.

In this case, the Commission issued its Notice of Intent to Recommend Dismissal to the parties on October 21, 2010, due to inactivity in the case for a period of six (6) months. The Commission urged the parties to explain, within twenty-one (21) days of the date of the notice, why the Commission should not dismiss the case. Neither party responded to the Notice of Intent to Recommend Dismissal, and the Commission entered its Order Dismissing the Complaint without prejudice on December 7, 2010.

Thereafter, Claimant submitted a letter to David Lee, of the State Insurance Fund. That letter was received by the Fund on or about December 14, 2010, and reads as follows:

“I am writing this letter to tell you I am still seeing the Dr. Stan R. Griffiths for my arm. I hope I am not late.”

The envelope containing the aforementioned letter was addressed as follows:

“State of Idaho
Industrial Commission
PO Box 83720
Boise, Idaho 83720
Attention: David Lee”

At some point in the transmittal process, the Industrial Commission’s name was crossed out, and replaced by “State Insurance Fund.” As noted, the letter was received by the State Insurance Fund on or about December 14, 2010. The letter was not received by the State of Idaho Industrial Commission.

On or about February 16, 2011, the Industrial Commission received a letter from Claimant, containing the following averments:

“I am writing in regard to the above referenced case number. I received a letter stating that I didn’t respond. This is a mistake. I did respond and have enclosed a copy of that response for your benefit. I am also enclosing all documents from the doctor and the Industrial Commission”

Attached to Claimant’s February 16, 2011 letter is a copy of the letter to David Lee, received by the State Insurance Fund on or about December 14, 2010.

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. In any such event, the decision shall be final upon denial of a motion for rehearing or reconsideration, or 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.” 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)).

In this case, Claimant was served with the Industrial Commission’s Notice of Intent to Recommend Dismissal on or about October 21, 2010. Neither Claimant, nor the State Insurance Fund responded to the Notice of Intent to Recommend Dismissal within the time allotted (21 days), and on December 7, 2010, the Industrial Commission entered its Order Dismissing the Complaint without prejudice. At some point after December 7, 2010, but before December 14, 2010, Claimant authored the undated handwritten letter eventually received by David Lee, an employee of the State Insurance Fund. From neither the content of the letter, nor the envelope containing the same, can the Commission discern whether it was Claimant’s intent that the letter be directed to the State Insurance Fund versus the Industrial Commission. Assuming, for the sake of argument, that Claimant drafted his handwritten letter for the purpose of responding to the Industrial Commission’s October 21st Notice of Intention to Recommend Dismissal, and further intended that that letter be directed to the Industrial Commission as opposed to the State Insurance Fund, Claimant has nevertheless failed to adduce new facts that cause the

Commission to reconsider the December 7, 2010, Order of Dismissal.

As noted, the Commission's October 21, 2010 Notice of Intent to Recommend Dismissal required the parties to demonstrate, within 21 days of receipt of that Order, why the case should not be dismissed for failure to prosecute. Even if Claimant intended his handwritten letter to be a response to the Commission's Notice of Intent to Recommend Dismissal, that response was not submitted to the Industrial Commission within 21 days following the October 21, 2010 notice, and was not even received by the State Insurance Fund until after the order of dismissal was issued. Therefore, if the undated handwritten letter received by the State Insurance Fund on December 14, 2010 is simply viewed as the Claimant's response to the Notice of Intent to Recommend Dismissal, the response is untimely, and Claimant has provided no explanation or argument as to why his late submittal should be considered.

There is another way to consider the unsigned letter. Since it was likely generated after the Commission's December 7, 2010 Order of Dismissal, it is possible to construe the letter received by the State Insurance Fund on December 14 as a Motion for Reconsideration. However, as noted, the letter was delivered to the State Insurance Fund, as opposed to the Industrial Commission. On receipt of the letter, the State Insurance Fund, through David Lee, authored a January 28, 2011 letter explaining, *inter alia*, that Claimant should contact the Industrial Commission should he desire to ask the Commission to set aside the Order of Dismissal. It was not until receipt of Claimant's letter of February 14, 2011, that the Industrial Commission learned of the existence of the handwritten letter received by the State Insurance Fund on or about December 14.

The State Insurance Fund and the Idaho Industrial Commission are separate entities, as should have been well known by Claimant. Idaho Code §72-718 clearly required of Claimant

that should he wish to challenge the December 7th Order of Dismissal, he was required to file, within 20 days of the date of that Order, his Motion for Reconsideration. If Claimant's undated December 2010 letter is charitably construed to be his Motion for Reconsideration, it is clear that although the "Motion" may have been timely prepared, it was not filed with the Industrial Commission within the time prescribed by statute. Although Claimant's December 2010 letter was posted in an envelope addressed to the State of Idaho Industrial Commission, the letter, as addressed, did not contain the four number zip code suffix that would have helped convey the letter to the Industrial Commission. In addition, the letter was addressed to the attention of David Lee, and it must be supposed that someone involved with the delivery of the letter made the determination that the letter was, in fact, intended for the State Insurance Fund, as opposed to the Industrial Commission.

Construing the letter as a Motion for Reconsideration, and further assuming that the letter was filed with the Industrial Commission within the time prescribed by Idaho Code §72-718, the Commission nevertheless declines to reconsider the December 7, 2010 Order of Dismissal. Although Claimant avers that he is still receiving medical treatment, he has failed to explain his failure to provide a response to the Notice of Intent to Recommend Dismissal within the time specified in that October 21, 2010 Order. In short, Claimant has failed to adduce facts sufficient to justify reconsideration under Idaho Code § 72-718, and the Commission continues to abide by the December 7, 2010 Order dismissing this matter without prejudice.

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Based upon the foregoing reasons, Claimant's request for reconsideration is hereby DENIED.

IT IS SO ORDERED.

DATED this 7th day of April, 2011.

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 7th day of April, 2011 a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States mail upon each of the following:

FRANKIE L CREASEY
RT #3 BOX 301
BLACKFOOT ID 83221

DAVID J LEE
STATE INSURANCE FUND
PO BOX 83720
BOISE ID 83720-0044

cs-m/amw

/s/