BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JESUS DIAZ,)	
v.	Claimant,)	IC 2006-507999
FRANKLIN BUILD	OING SUPPLY COMPANY,)	ORDER DENYING RECONSIDERATION
	Employer,	
and)	filed February 23, 2010
LIBERTY NORTHY CORPORATION,	WEST INSURANCE)	
	Surety,	
	Defendants.)	

Pursuant to Idaho Code § 72-718, Claimant moves for reconsideration of the Commission's decision in the above-captioned case. Claimant asserts that the Commission erred as a matter of law when it held that Claimant failed to prove he suffers from permanent disability in excess of impairment. Defendants respond that the determination of disability is a question of fact, not law; that the Commission's findings are supported by the evidence in the record; and that Claimant's motion amounts to little more than a request to re-weigh evidence and arguments already considered.

A decision of the Commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated, provided that within twenty days from the date of filing the decision, any party may move for reconsideration. Idaho Code § 72-718. A motion for reconsideration must "present to the Commission new reasons factually and legally to support [reconsideration] rather than rehashing evidence previously presented." *Curtis v. M.H. King Co.*, 142 Idaho 383, 128

P.3d 920 (2005). The Commission is not inclined to re-weigh evidence and arguments simply because the case was not resolved in the party's favor.

A motion for reconsideration must be properly supported by a recitation of the factual findings or legal conclusions with which the moving party takes issue. On reconsideration, the Commission will examine the evidence in the case, and determine whether the evidence presented supports the legal conclusions in the decision. However, the Commission is not compelled to make findings of fact during reconsideration. *Davidson v. H.H. Keim Co.*, 110 Idaho 758, 718 P.2d 1196 (1986).

Claimant disagrees with the Commission's conclusion that he failed to prove permanent disability in excess of impairment. Claimant admits he is an undocumented worker. The majority of the Commission found that Claimant's loss of earning capacity is due to his status as an undocumented worker, not his industrial injury.

There are compelling policy reasons that support Claimant's arguments. However, Claimant's arguments, while compelling, are unpersuasive. The substantial, competent evidence in this case supports the majority's conclusion that Claimant failed to prove permanent disability in excess of impairment. For that reason, Claimant's motion for reconsideration is DENIED.

IT IS SO ORDERED.

DATED this 23rd day of February, 2010.

INDUSTRIAL COMMISSION

/ _S /			
R.D.	Maynard, Cha	airman	
/ _S /			
Thon	nas E. Limbau	gh, Commi	ssioner

Com. Baskin dissented on underlying case Thomas P. Baskin, Commissioner

ATTEST:			
/s/ Assistant Commission Secretary			
CERTIFICATE OF SERVICE			
I hereby certify that on the _23rd day of February, 2010, a true and correct copy of the foregoing ORDER DENYING RECONSIDERATION was served by regular United States Mail upon each of the following:			
BRETT FOX PO BOX 937 BOISE ID 83701-0937			
KENT DAY PO BOX 6358 BOISE ID 83707-6358			

eb/cjh