

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

VAL FERRIN,)	
)	
Claimant,)	IC 2006-001471
v.)	
)	
BECHTEL BETTIS, INC.,)	ORDER REGARDING
)	RECONSIDERATION
Employer,)	
and)	
)	
INTERMOUNTAIN CLAIMS, INC.,)	
)	Filed June 6, 2011
Surety,)	
)	
Defendants.)	
_____)	

Pursuant to Idaho Code § 72-718, Defendants move for reconsideration of the Commission’s decision in the above-captioned case. Defendants argue that Claimant should not be entitled to medical care benefits, as Claimant’s medical care has already been covered through Claimant’s health insurance provider. Furthermore, Defendants argue that the Commission should not have granted Claimant attorney fees, because the Commission based its attorney fee award largely on the determination that Defendants failed to pay for Claimant’s medical care, and Defendants never received the bills at issue.

Claimant responds that Defendants’ motion for reconsideration and accompanying memorandum are bereft of citations to legal authority. The Idaho Supreme Court case *Edmonson v. St. Alphonsus Regional Medical Center*, 130 Idaho 108, 937 P.2d 420 (1997), establishes that where a claimant is entitled to medical care benefits, those benefits are owed directly to the claimant, not to the medical providers. Therefore, argues Claimant, it is immaterial that in this case, the medical providers have already been paid, because the benefits are due to Claimant, not

the providers. Furthermore, Claimant's private health insurance provider has asserted a subrogation claim against Claimant's medical care award.

With regard to attorney fees, Claimant argues that he did submit his medical bills to Defendants, who refused to pay them. Defendants respond that no *outstanding* medical bills have been submitted to them, and the other medical bills have been previously paid by Claimant's health insurance.

Defendants further respond that, on the issue of medical care, *Edmonson* does not apply. That case involved medical providers who were seeking direct payment of bills from the surety. Here, the "question to be addressed ... is whether there can be a finding that medical payments were unreasonably denied when ... the employer-provided health care insurance was paying the claims." Defendant's Reply Memorandum, p. 2. As Defendants have already "indirectly" paid for medical expenses through the insurance plan, the Commission should reconsider both the award of medical care benefits and attorney fees.

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).

I.

MEDICAL CARE

The decision in this case, filed January 7, 2011, involved several issues, among them, Claimant's entitlement to medical care benefits. The Commission found that Claimant's condition was caused by his work-related accident, and that, pursuant to Idaho Code § 72-432, Defendants were therefore obligated to pay for Claimant's medical care. We note that Defendants' motion for reconsideration does not challenge the Commission's findings on causation or Defendants' attendant legal obligation to pay for Claimant's medical care. Rather, Defendants proffer a factual argument against having to pay for such care, as it has already been paid for by Claimant's private insurance. Essentially, Defendants argue that because the care has already been paid for, Defendants should not have to pay medical care benefits to Claimant, as that would constitute a "double recovery."

Defendants' argument is contrary to statute. Section 72-432 requires Defendants, and only Defendants — not a private health insurance provider — to pay for medical care relating to Claimant's industrial injury. The fact that Claimant's medical bills may have been paid by private insurance is immaterial; if they have been paid, they have been paid by the wrong entity. Defendants, not private insurance, are liable to pay for this claim, and Defendants are not allowed to substitute private insurance for workers' compensation. Such is contrary to Idaho law. *See* Idaho Code § 72-201 (establishing workers' compensation as exclusive compensation for injured workers) and § 72-318 (devices that are designed to relieve employers of their liability

under the workers' compensation statutes are invalid). Additionally, Claimant's counsel has indicated, via affidavit, that Claimant's private insurance provider has claimed a subrogation interest in Claimant's medical care benefits. This defeats Defendants' argument that Claimant, in receiving medical care benefits, would receive an inappropriate double recovery.

We note that, under the *Edmonson* rule, Defendants must pay the medical care award directly to Claimant. It is for Claimant and his counsel, not Defendants, to pay the providers and/or the insurers with whom Claimant contracted outside the workers' compensation system for the provision of medical services. *Neel v. Western Construction*, 147 Idaho 146, 206 P.3d 852 (2009).

II.

ATTORNEY FEES

In the decision, the Commission found that Claimant was entitled to attorney fees based on Defendants' unreasonable delay in paying medical care and TTD benefits, as well as Defendants' unreasonable failure to "make inquiry into Claimant's ongoing medical care following the termination of benefits in May 2007." Findings of Fact, Conclusions of Law, and Recommendation, p. 60. Defendants argue that Claimant did not submit his medical bills to Defendants, and that any outstanding bills have not been identified. Defendants do not address the finding related to TTD.

Claimant argues that the medical bills were submitted to Surety, as outlined in Claimant's Exhibit 21, which was admitted into the record at hearing. To this, Defendants respond that the bills and summaries of medical care costs submitted into the record are not "necessarily accurate or complete," quoting an observation made by the Referee. *See* Findings of Fact, Conclusions of Law, and Recommendation, p. 49.

Defendants' arguments are unpersuasive. First, because various bills and cost summaries have been made part of the record, it is clear that Defendants have received at least some of the bills, though, as the Referee noted, it is not clear whether these are accurate or complete.¹ Second, regardless of whether the bills were submitted to Defendants, the claim was denied, and it is doubtful that receiving medical bills would have caused Defendants to act differently, when the causation opinions of their own retained experts did not. Defendants, in denying the claim, made it clear that they would not pay for medical care. It would have been futile for Claimant to submit bills to them until Defendants either acknowledged liability or were found liable by the Commission. Moreover, the focus of the Commission's decision to grant attorney fees was on Surety's failure to fulfill its obligations in adjusting the case. Once Defendants' retained experts opined on causation, Defendants were on notice that Claimant might be entitled to additional benefits, yet Surety refused to change its position.

Additionally, Defendants do not challenge another basis of the attorney fee award, that is, the failure of Defendants to pay for TTD. Because Defendants' arguments regarding receipt of medical bills are unpersuasive, and because Defendants failed to challenge the rest of the reasons underlying the attorney fee award, we decline to reconsider the finding on attorney fees.

III.

CORRECTIONS TO ORDER

While considering the motion for reconsideration, the Commission has discovered certain language in the order that creates a potential for misunderstanding that we take this opportunity to correct. A finding on PPI was necessary to conduct the analysis on permanent disability. However, as we concluded that Claimant is totally and permanently disabled, we should not have

¹ The Referee also noted that it is the obligation of the parties to determine the exact amount owed in medical care. If an agreement on the amount cannot be reached, that specific dispute should be submitted to the Commission for determination.

ordered that Claimant is entitled to PPI benefits. Defendants are entitled to a credit against the total permanent disability award for any moneys paid on PPI.

Furthermore, the decision granted Claimant costs as well as attorney fees. Because the basis of the attorney fee award was Idaho Code § 72-804, which grants only fees, not costs, we should not have ordered costs to Claimant.

Based on the foregoing analysis, IT IS HEREBY ORDERED That:

1. Defendants' motion for reconsideration is DENIED.
2. Claimant is not entitled to an award of benefits on PPI, and Defendants are entitled to a credit against the total permanent disability award for any moneys paid on PPI.
3. Claimant is not entitled to costs.

DATED this 6th day of June, 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 the 6th day of June, 2011, a true and correct copy of the foregoing **ORDER REGARDING RECONSIDERATION** was served by regular United States Mail upon each of the following:

MICHAEL R MCBRIDE
1495 E 17TH ST
IDAHO FALLS ID 83404

DAVID P GARDNER
PO BOX 817
POCATELLO ID 83204

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/s/ _____