

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

RICHARD GADSBY,	)	
	)	
Claimant,	)	<b>IC 2005-518340</b>
	)	<b>2007-008459</b>
v.	)	
	)	<b>ORDER DENYING</b>
STATE OF IDAHO, INDUSTRIAL	)	<b>RECONSIDERATION</b>
SPECIAL INDEMNITY FUND,	)	
	)	Filed August 15, 2011
Defendant.	)	
_____	)	

On June 23, 2011, Claimant filed a Motion to Reconsider with a Memorandum in Support pertaining to the Industrial Commission’s decision filed June 3, 2011, in the above referenced case. Defendant, Industrial Special Indemnity Fund (ISIF), filed a response on July 5, 2011. No reply was filed.

In connection with the underlying decision Claimant contended that he is totally and permanently disabled as an odd-lot worker as the result of pre-existing physical impairments combined with injuries and impairments received in an accident in 2007. Claimant relied on the expert opinion of vocational consultant, Douglas Crum to support his position. ISIF argued that Claimant is not totally and permanently disabled, thus, ISIF bears no responsibility.

The Commission found that Claimant’s only restrictions given before his last accident arose as a result of suggestions made by Claimant in 2000 to Dr. Widell concerning what Claimant thought his restrictions should be. Dr. Widell evidently endorsed these suggestions.

Notably however, by the time of the instant action, Claimant had forgotten that he had any physician “imposed” restrictions. Claimant’s last accident resulted in serious injuries that alone caused Claimant’s total and permanent disability. The Commission concluded that Claimant was totally and permanently disabled, but that Claimant failed to establish that his total permanent disability was caused by a combination of pre-existing impairment and the injuries received in his last accident. Therefore, the Commission concluded that ISIF is not liable on Claimant’s claim pursuant to Idaho Code §72-332.

In his motion for reconsideration, Claimant argues that the parties did not argue Claimant was totally and permanently disabled solely due to his 2007 injuries, and such a finding is not supported by substantial evidence. Claimant has numerous pre-existing injuries and impairments which left Claimant unable to work a full day and which ultimately combined with his 2007 injuries to cause total and permanent disability.

ISIF contends that while it did argue that Claimant was not odd-lot, a finding by the Commission that Claimant is totally and permanently disabled does not mean the Commission must accept all of Claimant’s contentions. Claimant still bears the burden of proving all mandated elements found in Idaho Code §72-332.

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 . . . and in any such events the decision shall be final upon denial or 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."

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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 (1986). 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 the statements from Defense Counsel at the beginning of the hearing, that there was no combination issue in this case should bind the Commission. While it is helpful to get an understanding of the precise issues from the parties at the onset of hearing, it does not constrain the Commission's analysis or conclusion. The noticed issues for hearing included whether ISIF is liable pursuant to Idaho Code § 72-332. Thus, the Commission was required to make a finding on whether Claimant had a pre-existing impairment, whether the impairment was manifest, whether the impairment was a subjective hindrance to employment, and whether the impairment combines with the industrial accident in causing total disability. ISIF liability cannot to found without a conclusion on every element of Idaho Code §72-332.

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Claimant further argues that the only testimony as to the issue of combining is that of Doug Crum, who opined that “the combination of pre-existing physical conditions, which resulted in significant physical limitations, combined with the subjective limitations resulting from his 2007 cervical spine and right knee injuries has rendered Mr. Gadsby unemployable. The subjective problems from the 2007 injury in and of themselves would not have resulted in total and permanent disability.” Joint Exhibit 25.

The Commission agrees that Mr. Crum’s statement supports Claimant’s argument, but the Commission viewed the record as a whole and found that Claimant’s pre-injury restrictions were essentially self imposed and were not followed, or even acknowledged, by Claimant in the years immediately preceding the 2007 accident. On the other hand, Claimant’s injuries related to his last accident caused painful neck and knee conditions requiring surgery, hand and feet numbness, and balance problems. More importantly, the 2007 accident resulted in the imposition of significant limitations which constitute a severe hindrance to Claimant. The results of the last accident alone caused Claimant’s total and permanent disability. Although the evidence supports a finding that Claimant’s cervical spine impairment was the product of the combined effects of a pre-existing condition and the last work accident, the evidence fails to establish that the pre-existing cervical spine condition was anything but asymptomatic; Claimant had no restrictions referable to this pre-existing condition. Rather, Claimant’s significant restrictions arose only as a result of the subject accident and those restrictions, standing alone, are sufficient to cause total and permanent disability. Thus Claimant failed to meet the “combining with” portion of the test for ISIF liability.

The Commission’s analysis took into account all the documentary evidence and

testimony presented. The Commission finds the decision is supported by case law and by substantial evidence in the record. Claimant has presented no persuasive argument to disturb the decision.

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

IT IS SO ORDERED.

DATED this \_\_\_ 15th \_\_\_ day of \_\_\_ August \_\_\_, 2011.

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 15th day of August, 2011,  
a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was  
served by regular United States Mail upon each of the following:

KEITH E HUTCHINSON  
PO BOX 207  
TWIN FALLS ID 83303-0207

THOMAS B HIGH  
PO BOX 366  
TWIN FALLS ID 83303-0366

  /s/  \_\_\_\_\_