

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

DENNIS GRAWCOCK,	)	
	)	<b>IC 2007-007328</b>
Claimant,	)	
	)	
v.	)	<b>ORDER DENYING</b>
	)	<b>RECONSIDERATION</b>
STATE OF IDAHO, INDUSTRIAL	)	
SPECIAL INDEMNITY FUND,	)	
	)	Filed July 27, 2011
Defendant.	)	
_____	)	

On May 16, 2011, Claimant filed a Motion for Reconsideration with Supporting Brief pertaining to the Industrial Commission’s decision filed April 22, 2011, in the above referenced case. Defendant, Industrial Special Indemnity Fund (ISIF), filed a response on May 25, 2011. No reply was filed.

In the underlying decision Claimant contended that he is totally and permanently disabled as an odd-lot worker as the result of four work-related accidents which occurred during his tenure as a paramedic and firefighter for Employer and that ISIF is liable for a portion of his benefits because he had pre-existing impairments that were manifest, a subjective hinderance to employment, and combined with his last injury to render him totally and permanently disabled. ISIF argued that it is not liable for any portion of Claimant’s disability claim, because Claimant failed to establish he had any pre-existing impairment and failed to prove he is totally and permanently disabled.

The Commission found that whether Claimant’s last injury occurred April 16, 2006,

October 27, 2006, or February 26, 2007, he has failed to establish a pre-existing impairment as defined by Idaho Code § 72-422, as required by Idaho Code § 72-332, and as applied by the Idaho Supreme Court in *Quincy v. Quincy*, 136 Idaho 1, 27 P.3d 410 (2001). Claimant was not medically stable and ratable from his earlier injury and surgery prior to the February 16, 2007 incident. Thus, he had no pre-existing, permanent impairment at the time of his last accident. Therefore, the Commission concluded that the ISIF is not liable on Claimant's claim, and the issue of Claimant's total and permanent disability is moot.

In his motion for reconsideration, Claimant argues that the opinions of Drs. Stevens and McNulty, along with the opinions of the treating physicians, Drs. Martin and Hjeltness, clearly show that all physicians determined Claimant stable prior to the October 2006 injury.

ISIF contends that the overwhelming evidence is that Claimant did not have a stable pre-existing, permanent impairment that was at maximum medical improvement (MMI) at the time of the October 2006 incident. Claimant sustained an undetected hernia in April 2006, which grew progressively worse until October 2006, when it was finally diagnosed and surgically treated.

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."

On reconsideration, the Commission will examine the evidence in the case, and determine whether the evidence presented supports the legal conclusions. The Commission is

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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 contends that all four physicians determined that his April 2006 injury was at MMI prior to October 27, 2006. The Commission addressed that precise argument in its decision. Claimant, further argues that the Commission should take guidance from *McGee v. J.D. Lumber*, 135 Idaho 328, 17 P.3d 272 (2001), and give the treating doctors greater weight than the examining IME physicians.

Claimant suffered an injury on April 14, 2006 transporting an obese patient. Dr. Martin gave Claimant a full release, effective June 14, 2006. Although Claimant returned to work, his groin pain interfered with his ability to perform his duties and, on June 21, he returned to Dr. Martin. Dr. Martin took Claimant off work, and on July 20, 2006 Dr. Hjeltness released Claimant to return to work. Claimant's testimony was consistent that during the period between late July 2006 and late October 2006 he continued to work, but the pain he first experienced in April never went away.

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Claimant suffered another injury while transporting a patient on October 27, 2006. Although it was difficult to discover, on October 30, 2006 Claimant's large hernia became evident.

The Commission agrees that Claimant's argument has support in the record, yet it is ultimately unpersuasive when the evidence is viewed as a whole including the discovery of the previously undetected hernia. The Commission was persuaded by Drs. Stevens and McNulty, who opined that Claimant suffered a small hernia in April 2006, and the hernia progressed until the October 27 event caused the rupture observed on October 30. Claimant's testimony of varying but continued pain, as well as the medical records and medical opinions, support a conclusion that Claimant's April 2006 injury was not stable prior to the October 27, 2006 injury.

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 27th day of July, 2011.

INDUSTRIAL COMMISSION

/s/  
Thomas E. Limbaugh, Chairman

/s/  
Thomas P. Baskin, Commissioner

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R.D. Maynard, Commissioner

ATTEST:

\_\_\_\_\_  
/s/  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on   27th   day of   July  , 2011, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail upon each of the following:

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/s/