

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JOSEPH MORRILL,

Claimant,

v.

STATE OF IDAHO INDUSTRIAL
SPECIAL INDEMNITY FUND,

Defendant.

IC 2006-518118

**ORDER DENYING REQUEST FOR
RECONSIDERATION**

Filed August 21, 2012

On June 12, 2012, the State of Idaho Industrial Special Indemnity Fund (“ISIF”) filed a timely motion for reconsideration of the Commission’s Decision filed May 24, 2012. In that Decision, the Commission found the following: (1) Claimant has a 1% impairment referable to the subject accident of June 1, 2006; (2) Claimant has suffered no impairment referable to the subject accident of August 27, 2007; (3) Claimant was not medically stable from the effects of the accident of June 1, 2006 until May 14, 2008; (4) Claimant is totally and permanently disabled under the odd-lot doctrine; (5) Claimant has pre-existing physical impairments totaling 36.5% of the whole person; (6) Claimant’s pre-existing physical impairments are manifest, constitute a subjective hindrance and combine with the effects of the accident of June 1, 2006 to cause total and permanent disability; and, (7) under Carey v. Clearwater County Road Department, 107 Idaho 109, 686 P.2d 54 (1984), the ISIF is responsible for the payment of total and permanent disability benefits commencing 13.5 weeks subsequent to May 14, 2008.

ISIF disputes that the Claimant’s pre-existing physical impairments “combine with” the accident of June 1, 2006 to cause Claimant’s total and permanent disability. ISIF argues that the Commission erred with regard to the findings on Claimant’s hydrocodone usage and in rejecting

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Dr. Stevens' report. ISIF contends that because Claimant's pre-2006 hydrocodone usage prohibited him from industrial machinery work, Claimant was totally and permanently disabled before 2006. Therefore, Claimant cannot meet the "combines with" element of ISIF liability. ISIF suggests that Dr. Sigler, whom the Commission found persuasive, supports this finding. ISIF defends Dr. Stevens' report and argues that the Commission has misinterpreted Dr. Stevens' opinion on restrictions for Claimant's pre-existing lumbar degenerative disc disease. ISIF requests the Commission reverse its finding on ISIF liability.

On June 21, 2012, Claimant filed a response to the ISIF's motion for reconsideration, arguing that ISIF is only reiterating unsuccessful arguments made below. Per Claimant, ISIF starts with the flawed premise that Claimant's hydrocodone usage was consistent throughout 2000 to 2006, and assumes that Claimant's hydrocodone usage is the sole factor making Claimant totally and permanently disabled. However, Claimant's 2006 accident caused additional injury and need for prescription medication. Claimant also contends that the ISIF is ignoring Dr. Stevens' overall report, and isolating portions out of context. Claimant defends the medical evidence below, including Dr. Sigler's reports, and the finding of ISIF liability. Claimant asks the Commission to deny ISIF's request for reconsideration.

On June 28, 2012, ISIF filed a reply brief. ISIF argues that it does not intend to re-argue its motion for reconsideration, but that the Commission should clarify the record on Claimant's hydrocodone usage and Dr. Stevens' report.

ISSUE

1. Has the ISIF shown that the Commission erred in finding Claimant met the "combines with" requirement of ISIF liability?

DISCUSSION

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, that within twenty (20) days from the date of filing the decision any party may move for reconsideration or rehearing of the decision. 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)).

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.

The Commission notes that this was a complex case which both parties argued vigorously and competently. The ISIF is correct that Claimant had a history of low back injury and pain

medication use predating the June 1, 2006 accident. However, despite being seen by multiple physicians at multiple times between July 2000 and June 1, 2006, there is but one medical record, generated in 2004, that references treatment/evaluation of low back pain. The Commission also found credible Claimant's testimony that his low back complaints were minimal prior to June 1, 2006. The Commission was persuaded that the June 1, 2006 accident caused significant injury, produced significant limitations and combined with Claimant's significant pre-existing cervical and upper extremity impairments to cause total and permanent disability.

ISIF has pointed to the following Decision paragraph as evidence of factual error:

“Dr. Sigler noted that Claimant had suffered an injury to his low back on June 1, 2006. He noted that since the low back injury, Claimant required three Hydrocodone tablets to control his pain on a daily basis. Dr. Sigler suggested that Claimant should not take these medications while working around hazardous equipment.”

Decision, p. 8, paragraph 12.

The above paragraph discusses Dr. Sigler's brief report or letter found in J. Ex. 3, pp. 328-29. ISIF argues that because Dr. Sigler found Claimant's pain medication incompatible with working around hazardous equipment, Dr. Sigler would not have allowed Claimant to return to work after his 2000 accident. ISIF reasons that Dr. Sigler is opining that Claimant, due to his pain medication usage, was totally disabled prior to the last accidents. Therefore, ISIF argues, Claimant has not met the “combines with” element of ISIF liability. While the ISIF is correct that Dr. Sigler did have concerns about Claimant's use of pain medication around heavy equipment, the ISIF has ignored the context of Dr. Sigler's brief report. First, Dr. Sigler drafted his report on August 9, 2007, and included Claimant's post-2006 physical condition with his comments. Ex. 3, p. 328. A fair reading of Dr. Sigler's report shows that Dr. Sigler was

considering Claimant's post-2006 physical condition and pain medication usage, and it is speculative to suggest that Dr. Sigler would have reached the same conclusions in 2000. ISIF, who criticized Dr. Sigler below and on reconsideration for a fourteen (14) month delay in restrictions, cannot persuasively explain why the Commission should apply Dr. Sigler's restrictions from a 2007 report to the 2000 accident—a seven (7) year delay. Second, Dr. Sigler does not discuss Claimant's pain medication usage in isolation. Claimant had a narrowing of his L4-L5 disc space without spurring. Finally, the underlying decision is not solely based on Dr. Sigler's report or Claimant's pain medication usage, but a totality of the circumstances. The majority of physicians evaluating Claimant have found him to be a credible historian and one who does not maximize his subjective complaints. Claimant returned to work following his 2000 lumbar spine injury and performed legitimate job duties. After August 27, 2007, Claimant never returned to work for Employer in his time of injury position. Claimant did attempt to return to forklift driving for Employer, but his low back and right lower extremity complaints made it impossible for him to perform this work. (Tr. 87/24-88/20).

The Commission considered Dr. Stevens' independent medical evaluation below. The Commission quoted Dr. Stevens' analysis on physical restrictions and surmised that Dr. Stevens' starting point was that Claimant did not require limitations/restrictions for his low back. Decision p. 13, paragraph 23. ISIF argues that a fair reading of Dr. Stevens' report is that Dr. Stevens' thinks Claimant's pre-existing lumbar degenerative disc disease alone is responsible for Claimant's inability to work, not that Claimant's should not have restrictions for his lumbar degenerative disc disease. The Commission agrees with the ISIF that it is possible for Dr. Stevens to disagree with the necessity of permanent restrictions outlined in Dr. Hill's May 19, 2008 note, and still find restrictions appropriate for Claimant's pre-existing lumbar degenerative

disc disease. However, ISIF has not shown that the Commission overlooked an aspect of Dr. Stevens' report. Dr. Stevens specifically declined the opportunity to comment on whether Claimant should be on restrictions related to his lumbar degenerative disc disease, stating "it is not appropriate for me to comment as I am asked only to address injury-caused factors." J. Ex. 13, p. 1506. The Commission has previously reviewed Dr. Stevens' report and the remaining medical testimony. ISIF's arguments do not support a reversal of the finding of ISIF liability.

ORDER

Based on the foregoing reasons, the Commission declines to reconsider its Findings of Fact, Conclusions of Law and Order dated May 22, 2012. ISIF's request for reconsideration is DENIED.

IT IS SO ORDERED.

DATED this 21st day of August 2012.

INDUSTRIAL COMMISSION

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 21st day of August, 2012, a true and correct copy of the foregoing **ORDER DENYING REQUEST FOR RECONSIDERATION** were served by regular United States Mail upon each of the following persons:

CHRISTOPHER CALDWELL
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/s/ _____