

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

VERDENE PAGE,

Claimant,

v.

McCAIN FOODS, INC.,

Employer,

and

TRANSCONTINENTAL INSURANCE
COMPANY,

Surety,

Defendants.

IC 2002-007246

**ORDER ON RECONSIDERATION
REGARDING ATTORNEY FEES**

Filed November 19, 2012

This matter comes before the Commission on Claimant's motion for reconsideration of Commission's June 21, 2012 Order on Attorney Fees. The Order on Attorney Fees found that Claimant's counsel (Counsel) was not entitled to additional attorney fees from Claimant after Counsel entered into a stipulation with Defendants allowing 30% in attorney fees. The Commission further stated that attorney fees awarded pursuant to Idaho Code § 72-804 constitute the fees that Counsel is to accept and are not to be added into the pot of all other benefits before the contingent fee is taken.

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 . .

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. and in any such event the decision shall be final upon denial of 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 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.

Counsel argues that he should be entitled to attorney fees from Defendants pursuant to Idaho Code §72-804 (30% of benefits received per the stipulation executed by Counsel and Defendants), as well as additional attorney fees from Claimant. Counsel states that it is obvious that without the stipulation he would have been awarded 40% of fees. The Commission does not agree that such a conclusion is obvious. The issue would have been addressed by both parties and arguments would have been made before the Commission would have ruled on what was appropriate for an award of attorney fees pursuant to Idaho Code §72-804. As stated before

Counsel had the opportunity to request 40% from Defendants and come to the Commission for a ruling on that issue. The difference comes in how Counsel seeks his attorney fees and who will bear the responsibility to pay those fees. The additional fees that Counsel is requesting will come directly from Claimant, as opposed to Counsel making a case for 40% attorney fees to be paid by Defendants pursuant to Idaho Code §72-804.

Counsel avers that because of the efforts in arguing for attorney fees under Idaho Code §72-804, he is entitled to combine the amount of attorney fees awarded with the other compensation and then take his percentage of the entire pot. Counsel argues that the 804 attorney fee represents a benefit which should be treated like all other benefits and should be included in the total amount of benefits from which contingent fees are due. Counsel contends that it is unrealistic for the Commission to think that any attorney would pursue an award of attorney fees pursuant to Idaho Code §72-804 if they will simply receive the same recovery as they would receive.

The Commission acknowledges that Counsel will receive a larger fee if the percentage is taken from the full pot, but it does not necessary follow that all claimant attorneys will walk away from seeking 804 attorney fees if that calculation is not done. The Commission has great faith that the majority of attorneys representing claimants seek to assist the claimant in keeping the entirety of his or her benefits as well as to make defendants responsible for their unreasonable delay or denial of benefits. Additionally, if Counsel's position is adopted how are the responsibilities to be split? In this case Defendants paid 30% and Counsel is asking Claimant to pay another 10%. But if Counsel had only asked Defendants for 20%, would Counsel ask Claimant for another 20%. The Commission appreciates that Counsel is concerned with the general process of compensating and incentivizing claimant attorneys, but the system must also

keep in mind the interests of claimants and the recovery of their benefits.

The Commission notes that IDAPA 17.02.08.033.01 does not apply to awards of attorney fees pursuant to Idaho Code §72-804. IDAPA 17.02.08.033.01 governs lump sum settlements but awards of attorney fees under Idaho Code §72-804 are guided by the analysis set forth in *Hogaboom v. Economy Mattress*, 107 Idaho 13, 684 P.2d 990 (1984).

The Commission has reviewed the Order on Attorney Fees as well as the supporting documents and we still find that the facts support the order. Although Claimant disagrees with the Commission's conclusions, the Commission finds the order is supported by substantial evidence in the file and Claimant has presented no persuasive argument to disturb the order.

Claimant's Motion for Reconsideration is DENIED.

DATED this 19th day of November, 2012.

INDUSTRIAL COMMISSION

/s/
Thomas E. Limbaugh, Chairman

Recused
Thomas P. Baskin, Commissioner

/s/
R.D. Maynard, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November, 2012 a true and correct copy of **ORDER ON RECONSIDERATION REGARDING ATTORNEY FEES** was served by regular United States Mail upon each of the following persons:

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 /s/ _____