

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

KIMBERLY STIEF,

Claimant,

v.

SPOKANE FOOD SERVICES, INC.,

Employer,

and

WAUSAU UNDERWRITERS INSURANCE
CO.,

Surety,

Defendants.

IC 2010-000795

**ORDER DISMISSING
RECONSIDERATION**

FILED 7/19/13

Pursuant to Idaho Code § 72-718, Claimant moved for reconsideration of the Commission's decision in the above-captioned case on June 13, 2013. Claimant argues that the Commission erred in its Findings, Conclusions and Order filed on May 23, 2013. The Commission held that Claimant failed to show she was entitled to the additional medical benefit of a total knee replacement—that is, she failed to show that the condition for which she seeks a total knee replacement was likely caused, permanently exacerbated, or hastened by the 2009 industrial accident. Claimant argues that the Commission failed to apply the compensable consequence doctrine and misread Dr. McInnis' medical opinion.

On June 25, 2013, Defendants (Employer/Surety) filed a brief in opposition to Claimant's request for reconsideration. Defendants argue that the Commission relied on Dr. Stevens' medical opinion as substantial and competent evidence that Claimant failed to show that the

condition for which she sought a total knee replacement was likely caused, permanently exacerbated, or hastened by the 2009 industrial accident. Although there is evidence from which the Commission could have reached a different conclusion, the Commission appropriately weighed the competing medical opinions. Dr. McInnis was the only physician of the six physicians proposing a causal link between the subject accident and Claimant's request for knee replacement surgery, and the Commission detailed at least five reasons why they rejected Dr. McInnis' opinion. (Findings of Fact, Conclusions of Law, and Order, pp. 12-13). Claimant is essentially asking the Commission to re-weigh the evidence and come to a different conclusion, one that is favorable to the Claimant this time. Claimant's request for reconsideration should be denied.

DISCUSSION

Idaho law provides that a party must file a request for reconsideration within 20 days from the date an order is issued. Idaho Code, § 72-718 and Rule 3(G), JRP. Filing is defined in Rule 1(B)1, JRP, as "the actual receipt of a document at the Commission's office at 700 South Clearwater Lane in Boise, Idaho, before the close of business at 5:00 p.m., Mountain Time, as shown by the Commission's date stamp, except as otherwise provided by these rules."

Claimant's facsimile motion for reconsideration was received by the Commission on June 12, 2013, at 5:08 p.m., after the close of business, and deemed filed on June 13, 2013. In this case, Claimant filed her motion for reconsideration on the 22nd day following the order. Claimant's motion for reconsideration is untimely.

Moreover, the arguments made in Claimant's motion are repetitive of Claimant's initial arguments in the original case. Claimant has presented no factual or legal basis that was not already considered in issuing the original decision.

ORDER

Based on the foregoing reasons, Claimant's request for reconsideration is **DISMISSED**.

IT IS SO ORDERED.

DATED this 19th day of July, 2013.

INDUSTRIAL COMMISSION

/s/
Thomas P. Baskin, Chairman

/s/
R.D. Maynard, Commissioner

/s/
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of July, 2013, a true and correct copy of the foregoing **ORDER DISMISSING RECONSIDERATION** was served by regular United States Mail upon each of the following:

KENT DAY
PO BOX 6358
BOISE ID 83707

STEPHEN NEMEC
1626 LINCOLN WAY
COEUR D'ALENE ID 83814

/s/