

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JOSEPH D. SELZER,

Claimant,

v.

ROSS POINT BAPTIST CAMP,

Employer

and

STATE INSURANCE FUND,

Surety,
Defendants.

IC 2007-015506

**ORDER DENYING
RECONSIDERATION**

Filed May 15, 2013

On March 19, 2013, Claimant filed Claimant's Request for Reconsideration of the Industrial Commission's decision filed February 27, 2013, in the above referenced case. On March 21, 2013, Defendants filed an Objection to Claimant's Request for Reconsideration.

In the underlying case Claimant contended that Defendants should not be reimbursed for any permanent partial impairment (PPI) benefits paid simply because they shopped around for a lower rating.

Defendants argued that the final medical opinion by Dr. Stevens was the only opinion to be based on a review of the medical records involving both Claimant's back injury and his hand injury. Thus, Defendants asserted that Dr. Stevens' opinion is the most persuasive, and the prior impairment paid in recognition of Dr. Shanks' opinion should be reimbursed.

In 2006, Claimant injured his back in an industrial accident in Arizona. In 2007, Claimant injured his hand in an industrial accident in Idaho while working for Employer.

Claimant received treatment for both injuries concurrently. Dr. Shanks gave Claimant two impairment ratings; the final being 28% of the upper extremity related to the Idaho hand injury. However, Dr. Shanks did not know of the Arizona back claim and improperly considered the back condition in assessing Claimant's impairment for the Idaho hand injury. Defendants paid Claimant benefits for the 28% upper extremity impairment rating. Then, in 2011, Dr. Stevens conducted an evaluation of Claimant with records from both injuries. Dr. Stevens opined Claimant suffered no impairment due to his 2007 Idaho accident.

The Commission found Dr. Stevens' opinion to be the most persuasive, as it was the only opinion informed by knowledge of both the Arizona and Idaho injuries. The Commission concluded that Claimant failed to prove that he suffers any impairment due to his 2007 Idaho industrial accident. Further, the Commission concluded that Claimant shall reimburse Defendants the sum of \$26,980.80, representing the overpayment of PPI benefits.

In his motion for reconsideration, Claimant argues the operative language of Idaho Code §72-316 authorizes reimbursement only where prior payments were "not due and payable when made". Claimant argues that the payments in question were due and payable when made. Claimant also avers that Idaho Code §72-316 does not address the peculiar facts of this case and the Commission is without authority to order repayment in this instance without clear statutory authority to do so.

Defendants contend that Claimant was never entitled to benefits for an impairment rating based on a factually incomplete and inaccurate account of the medical history supplied by Claimant. Claimant should not be financially rewarded for his less than candid report of his medical history and the Commission properly applied equitable principles in ordering reimbursement.

ORDER DENYING RECONSIDERATION - 2

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 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.

First, Claimant contends that the operative language of Idaho Code § 72-316 allows for reimbursement where prior benefits were "not due and payable when made" and that PPI payments were due and payable when made in this case. The Commission addressed this precise argument in its decision and ultimately decided that Claimant was, at no point in time, entitled to

a PPI award, payable by Defendants, for his finger and hand. Claimant's impairment from the Idaho accident did not change over time and the facts of the case prove that Claimant did not suffer any impairment for his finger injury at the time of any of the three evaluations. The Commission concluded that the fact that the PPI determination is retrospective does nothing to diminish the fact that the PPI benefits paid by Employer following Dr. Shanks' evaluation were not due and payable when made.

Additionally, Claimant argues that under Idaho Code § 72-316 claims for reimbursement are only recognized where there are yet some benefits due and owing to which an overpayment credit can be applied. Therefore, the argument goes, the statute does not authorize reimbursement where no further benefits are payable. This argument, too, was specifically addressed in the Commission's decision. Idaho Code § 72-316 addresses how reimbursement must take place when there are benefits remaining to be paid on a claim: Employer can only take credit for the overpayment by shortening the period during which remaining periodic benefits are payable. However, the statute does not prohibit claims from reimbursement in situations like those at bar. The Commission finds it important to encourage the payment of questionable claims and to not allow a claimant to be unjustly enriched. Ultimately, the purpose underlying Idaho Code §72-316 and equitable principles were applied and Claimant was ordered to reimburse Defendants the overpayment of PPI benefits.

The Commission has reviewed the record with a focus on the details presented by Claimant in the motion for reconsideration and we still find that the facts support the decision. The Commission's analysis took into account the peculiar facts of this case and decided the issues in question with great care and consideration. Although Claimant disagrees with the Commission's conclusions, the Commission finds the decision is supported by substantial

evidence in the record and 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 __May_____, 2013.

INDUSTRIAL COMMISSION

/s/ _____
Thomas P. Baskin, Chairman

R.D. Maynard, Commissioner

/s/ _____
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of May, 2013, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail upon each of the following:

THOMAS B AMBERSON
PO BOX 3724
COEUR D'ALENE ID 83816-3724

BRADLEY J STODDARD
PO BOX 896
COEUR D'ALENE ID 83816-0896

/s/ _____