

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LUANN SHUBERT,

Claimant,

v.

MACY'S WEST, INC.,

Employer,

and

LIBERTY INSURANCE CORPROATION,

Surety,

Defendants.

IC 2006-522943

**ORDER DENYING
RECONSIDERATION**

Filed August 16, 2013

On July 9, 2013, Claimant filed a motion for reconsideration of the Commission's June 19, 2013 order. The Commission ordered that (1) Claimant was medically stable on and after November 21, 2007 (MMI date); (2) Claimant was not entitled to additional medical benefits beyond the MMI date; (3) Claimant is not entitled to temporary disability benefits (TTD or TPD); (4) Claimant is entitled to a permanent partial impairment (PPI) rating of 5% of the whole person; (5) Claimant is entitled to a permanent partial disability rating of 10%, inclusive of her permanent impairment; and, (6) Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated. Claimant argues that the Commission erred in denying her further medical care, and assessing her permanent partial disability at 10%. Therefore, the Commission's order should be reversed.

On July 19, 2013, Defendants filed a response to the Claimant's motion for reconsideration. Defendants argued that Claimant is simply rearguing facts. The Commission

found the opinion of Dr. Nancy Greenwald persuasive on Claimant's MMI date of November 21, 2007. As to Claimant's request for additional medical care, the record supported that Claimant did not benefit from additional treatment, and that none of her treating physicians referred her for additional treatment post-MMI date. Claimant did not present any evidence from any expert regarding disability in excess of impairment. The Commission considered Claimant's medical and non-medical factors in determining Claimant's disability.

Claimant did not file a reply brief.

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, 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.

Claimant asks the Commission to revisit several factual findings, including, for example, her personal reasons for not taking her physician-prescribed medication and refusing the recommended epidural injections. Claimant's retelling of her narrative is unpersuasive, and the Commission considered the conflicting medical evidence, including Dr. Frizzell's recommendations and treatment. Ultimately, the Commission found Dr. Greenwald persuasive. Dr. Greenwald provided thoughtful, diligent care over a significant period of time, much of which Claimant refused outright, or simply failed to follow through on. Decision, p. 14. Dr. Greenwald's records and reasoning for Claimant's treatment and the date of medical stability were discussed below in the Commission's decision, and found persuasive. It is worth noting that although Dr. Frizzell did opine in July of 2008 that Claimant was not medically stable and was a candidate for a spinal stimulator trial, that trial, when conducted by Dr. Thompson, did nothing to alleviate Claimant's symptoms. Although Dr. Frizzell proposed yet more testing, we find, on balance, that Dr. Greenwald correctly found that further treatment/testing would not be efficacious.

At the hearing below, Claimant did not supply any evidence from any expert regarding disability in excess of impairment. Now, Claimant seeks a higher PPD rating, without supplying any new argument or citation to expert opinion supporting the same. Though Claimant is

dissatisfied with the Commission's ruling, she has not presented a legal basis to reverse the Commission's conclusions.

ORDER

Based on the foregoing reasons, the Commission **ORDERS** the following: Claimant's request for reconsideration is **DENIED**.

IT IS SO ORDERED.

DATED this 16th day of August 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 16th day of August 2013, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail upon each of the following:

LUANN SHUBERT
16601 N TALLAMORE DR
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KENT DAY
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BOISE ID 83707-6358

/s/ _____