

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

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| ALAN WILLFORD, |) | |
| |) | |
| |) | IC 2006-501260 |
| v. |) | |
| |) | |
| THE ROOTER GUYS, |) | ORDER DENYING |
| |) | RECONSIDERATION |
| |) | |
| Employer, |) | |
| and |) | |
| |) | |
| STATE INSURANCE FUND, |) | filed March 12, 2010 |
| |) | |
| Surety, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

Pursuant to Idaho Code § 72-718, Claimant moves for reconsideration of the Commission’s decision in the above-captioned case. Claimant asserts that the Commission’s decision relies on the inaccurate testimony of Jason Conklin, Claimant’s co-worker, and Ben Broyles, owner of Employer. Claimant further asserts that the Commission misinterpreted relevant medical records and improperly relied on the expert opinion of Dr. Montalbano. Defendants object to Claimant’s motion.

A decision of the Commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated, provided that within twenty days from the date of filing the decision, any party may move for reconsideration. Idaho Code § 72-718. A motion for reconsideration must “present to the Commission new reasons factually and legally to support [reconsideration] rather than rehashing evidence previously presented.” *Curtis v. M.H. King Co.*, 142 Idaho 383, 128 P.3d 920 (2005). The Commission is not inclined to re-weigh evidence and arguments simply

because the case was not resolved in the party's favor.

A motion for reconsideration must be properly supported by a recitation of the factual findings or legal conclusions with which the moving party takes issue. On reconsideration, the Commission will examine the evidence in the case, and determine whether the evidence presented supports the legal conclusions in the decision. However, the Commission is not compelled to make findings of fact during reconsideration. *Davidson v. H.H. Keim Co.*, 110 Idaho 758, 718 P.2d 1196 (1986).

In this case, the Commission found that Claimant failed to prove that his need for lumbar surgery was caused by his industrial accidents. Claimant argues that this conclusion was based on inaccurate testimony from his co-worker and supervisor. Claimant is incorrect. The Referee's findings, adopted by the Commission, were based largely on the medical evidence in the record. Indeed, the Referee expressly noted in her Finding 33 that "Claimant's co-workers provided little, if any, probative evidence on the causation issue."

Claimant also challenges the expert opinion of Dr. Montalbano. Claimant asserts that Dr. Montalbano's opinion was "greatly" influenced by the statements of Mr. Conklin. This, again, is incorrect. Dr. Montalbano did consider Mr. Conklin's deposition testimony in coming to his opinion, but the opinion was primarily based on a thorough review of Claimant's medical records. Dr. Montalbano explained his conclusions, and why he came to them, at deposition. In contrast, Claimant failed to depose the doctor on whose opinion he relied, and the evidence in the record supports the Commission's conclusion that the opinion of Claimant's doctor was based on incomplete and inaccurate information.

The substantial, competent evidence in the record supports the Commission's decision. For that reason, Claimant's motion for reconsideration is DENIED.

