

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

WILLIAM CALDWELL,

Claimant,

v.

H.D. FOWLER COMPANY,

Employer,

and

TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA,

Surety,  
Defendants.

**IC 2015-031889**

**ORDER GRANTING MOTION FOR  
RECONSIDERATION**

**FILED**

**NOV 03 2022**

**INDUSTRIAL COMMISSION**

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*Motion for Reconsideration of the September 21, 2022, Order Dismissing Complaint. The Motion for Reconsideration is GRANTED and the September 21, 2022, Order Dismissing Complaint is vacated. Claimant's case is reinstated to active status.*

On September 21, 2022, the Idaho Industrial Commission issued an Order Dismissing Complaint based on inactivity for six months under Judicial Rule of Practice and Procedure ("JRP") 12(B). Claimant has moved to reconsider arguing that notice of the intent to dismiss was served upon an incorrect email address. Therefore, Claimant had no opportunity to contest the dismissal or present the reasons for the delay. The Commission finds there was an error in service, no notice was given, and reconsideration is appropriate. Further, Claimant has adequately presented good cause for the delay in case activity and the September 21, 2022, Order Dismissing Complaint is vacated. Claimant's case will be reinstated to active status.

**Facts & Procedural History**

On April 7, 2022, the Idaho Industrial Commission issued a *Notice of Intent to Recommend*

*Dismissal* and served it to the email addresses [will.murphy@outlook.com](mailto:will.murphy@outlook.com), intended to reach Claimant's counsel William Murphy, and [swgile@bowen-bailey.com](mailto:swgile@bowen-bailey.com), defendant's counsel Scott Wigle.

At the time, Claimant's counsel had registered his email address on the Idaho State Bar attorney registry in accordance with Idaho State Bar Rule 302(a) and Idaho Rule for Electronic Filing and Service 18(a). That address was [will.murphy@outlook.com](mailto:will.murphy@outlook.com). Claimant also retained access to his prior e-service address of [will@becklawidaho.com](mailto:will@becklawidaho.com), which had appeared on Defendant's filings in this case. No other notice was sent to Claimant.

No response to the notice of intent to dismiss was received from Claimant's counsel, and the case had been without activity for over six months. The Idaho Industrial Commission issued an Order Dismissing Complaint on September 21, 2022.

Claimant timely filed a motion to reconsider 16 days later on October 7, 2022, arguing lack of notice and presenting reasons for the delay. An amended motion was filed on October 11, 2022. Defense counsel has filed a response to the motion to reconsider taking a neutral position, and indicating there is no information in Defendants' possession that Claimant did in fact have notice of the intent to dismiss. Defendants have requested that this matter not proceed to hearing.

#### **Standard for Motion to Reconsider**

Under Idaho Code § 72-718, "within twenty (20) days from the date of filing the decision any party may move for reconsideration or rehearing of the decision."

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 reconsideration. *Davidson v. H.H. Keim Co., Ltd.*, 110 Idaho 758, 718 P.2d 1196 (1986). The Commission may reverse its decision upon a motion for reconsideration, or rehear 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)), emphasis supplied. 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.

*Corbell v. Micron Technology*, 120919 IDWC, IC 2013-013574 (Idaho Industrial Commission Decisions, 2019).

### **Claimant's Motion Presents Grounds to Reconsider**

The Idaho Industrial Commission may dismiss a complaint without prejudice under JRP 12(B) where "no action has been taken on the case for a period of six (6) months. Prior to dismissal, the Commission shall give written notice to the parties of the Commission's intent to dismiss the complaint . . . Any party may, within 21 days of the date of service of the Commission's notice, show cause in writing why the Commission should not dismiss the complaint." *Id.*

As written in the plain language of the rule, written notice is required, and the right to respond to such notice makes explicit mention of the date of service. Under JRP 4, "[s]ervice of documents by email to represented parties shall be to the email address for electronic service of notices and orders that the party's attorney has provided to the Idaho State Bar."

Here, notice of the intent to dismiss was inadvertently sent to an incorrect e-service address for Claimant's counsel. Claimant's counsel had complied with legal requirements for making his correct address available with the Idaho State Bar. As such, notice of the notice of intent to dismiss was not given to Claimant and there is good cause to reconsider the order of dismissal. This is consistent with precedent granting the motion to reconsider where an error in service of the notice of intent to dismiss has been made, and a claimant's attorney addresses the dismissal promptly. *See Robertson v. Vernon Steel, Inc.*, IC 2018-001726 (Idaho Ind. Comm. October 11, 2019) (granting a timely motion for reconsideration when claimant's apparent failure to respond to the Notice of Intent to Dismiss was likely due to a mail error, was an isolated incident, and claimant

promptly acted to mitigate the consequences of such); *Whitney v. Sysco Corp.*, IC 2017-003966 (Idaho Ind. Comm. July 5, 2018) (granting a timely motion for reconsideration when, due to claimant's counsel's oversight, a response to a Notice of Intent to Dismiss was not filed and counsel promptly acted to mitigate the consequences of such); *Padilla v. Prestige Fence & Landscape Co.*, IC 2012-031446 (Idaho Ind. Comm. December 10, 2018) (granting a timely motion for reconsideration when claimant's counsel, through inadvertence or mistake, did not follow established office procedure and was unaware of the Notice of Intent to Dismiss and failed to file a response).

Claimant's brief has also presented the reasons for the inactivity in the case, citing that Claimant is awaiting a second-opinion IME that is scheduled for November 8, 2022. Claimant is currently undergoing medical treatment, and that exam will be pertinent to whether Claimant is at maximum medical improvement and future care. Discovery remains ongoing. The Order Dismissing Complaint was based on inactivity and was intended to serve interests of efficiency and prevent the non-prosecution of claims. The Commission finds there is good cause for the delay. Claimant's response addresses the concerns of the Commission and the September 21, 2022, Order Dismissing Complaint is vacated. Claimant's case is reinstated to active status.

#### **ORDER**

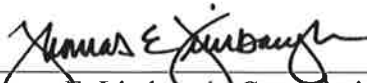
Based upon the foregoing reasons, Claimant's motion for reconsideration is **GRANTED** and the Order Dismissing Complaint entered on September 21, 2022, is hereby vacated. Claimant's case is reinstated to active status.

DATED this 3rd day of November, 2022.

INDUSTRIAL COMMISSION

  
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Aaron White, Chairman



  
Thomas E. Limbaugh, Commissioner

*unavailable to sign*  
Thomas P. Baskin, Commissioner

ATTEST:

  
Commission Secretary

#### CERTIFICATE OF SERVICE

I hereby certify that on 3rd day of November, 2022 a true and correct copy of the foregoing **ORDER GRANTING MOTION FOR RECONSIDERATION** was served by regular United States mail or email upon each of the following:

WILLIAM CALDWELL  
WILLIAM MURPHY  
MURPHY LAW, PLLC  
P.O. BOX 175  
POST FALLS, ID 83877  
[will.murphy@outlook.com](mailto:will.murphy@outlook.com)

H.D. FOWLER COMPANY  
TRAVELERS PROPERTY CASUALTY CO. OF AMERICA  
W. SCOTT WIGLE  
BOWEN & BAILEY, L.L.P.  
P.O. BOX 1007  
BOISE, ID 83701  
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[bperkins@bowen-bailey.com](mailto:bperkins@bowen-bailey.com)

  
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