

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

FRANK CAMPBELL,

Claimant,

v.

CALIFORNIA TANK LINES, INC.,

Employer,

and

HDI GLOBAL INSURANCE COMPANY,

Surety,
Defendants.

IC 2018-011741

**ORDER DENYING DEFENDANTS'
MOTION FOR RECONSIDERATION**

FILED

AUG 18 2023

INDUSTRIAL COMMISSION

The above-entitled matter went to hearing in Idaho Falls on November 22, 2022. The Commission adopted the Referee’s recommended Findings of Fact, and Conclusions of Law in an order dated May 15, 2023 (the “Decision”). On May 25, 2023, Defendants filed a timely motion for reconsideration pursuant to Idaho Code § 72-718. On June 6, 2023, Claimant filed a response objecting to the motion. On June 12, 2023, Defendants filed a reply to Claimant’s objection. The Commission has reviewed the parties’ pleadings and issues this order denying Defendants’ motion for reconsideration.

DISCUSSION

A decision of the Commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated, provided that within 20 days from the date of the filing of the decision, any party may move for reconsideration. Idaho Code § 72-718. However, “[i]t is axiomatic that a [party] must present to the Commission new reasons factually and legally to support a hearing on

[a] 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 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)). 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.

“Substantial and competent evidence is relevant evidence that a reasonable mind might accept to support a conclusion.” *Curtis v. M.H. King Co.*, 142 Idaho 383, 385, 128 P.3d 920, 922 (2005) (citing *Uhl v. Ballard Medical Products, Inc.*, 138 Idaho 653, 657, 67 P.3d 1265, 1269 (2003)). Furthermore, “a worker’s compensation claimant has the burden of proving, by a preponderance of the evidence, all facts essential to recovery.” *Evans v. O’Hara’s, Inc.*, 123 Idaho 473, 479, 849 P.2d 934, 940 (1993).

I. Liberal construction in favor of the employee

Defendants argue that the Commission erred by construing provisions of the Idaho Workers’ Compensation Act in favor of Claimant, who is represented by legal counsel. Def. Mot. for Reconsideration pp. 1-3. Defendants argue that the recently amended statute, Idaho Code § 72-

404, suggests that, in a contested case where the Claimant is represented by legal counsel, the law and facts should be construed equally amongst the parties, and not liberally construed favorably to Claimant. *Id.*

Defendants' novel argument is not persuasive. It is a well-established principle that the worker's compensation law should be liberally construed in favor of a finding of compensation. The Idaho Supreme Court first announced its support of this principle in *McNeil v. Panhandle Lumber Co.*, 34 Idaho 773, 203 P. 1068 (1921). The Court stated:

The workmen's compensation law, like other laws of this state, is to be liberally construed with a view to effect its object and promote justice. This does not mean that the courts should endeavor by construction to extend its provisions to persons not intended to be included by it, but that it shall be so construed as to carry out its purposes and, so far as is reasonably possible, secure its benefits to all those who were intended to receive them.

McNeil, 34 Idaho at 786-87, 203 P. at 1073 (internal citations omitted).

In the decades and decades since *McNeil* was decided, the Court has long adhered to the principle that the worker's compensation law should be liberally construed in favor of the claimant in order to effect the object of the law and to promote justice. *E.g.*, *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990); *see also Miller v. Amalgamated Sugar Co.*, 105 Idaho 725, 672 P.2d 1055 (1983) (liberally construing the statute in favor of claimant to hold that an occupational disease does not manifest itself, for the purpose of notice and filing provisions, until the employee is first informed by competent medical authority of the nature and work related cause of the disease); *Flock v. J.C. Palumbo Fruit Co.*, 63 Idaho 220, 118 P.2d 707 (1941) (holding that x-ray treatment of a tumor constituted "reasonable medical care" under the statute, although neither the contract between employer and employee nor the statute referred to x-ray treatment); *Burch v. Potlatch Forests, Inc.*, 82 Idaho 323, 353 P.2d 1076 (1960) (holding that an employer must furnish employee with artificial teeth or a replacement bridge, because such constituted

treatment under the statute requiring an employer to provide an injured employee with “reasonable medical, surgical or other attendance or treatment”); *In re Haynes*, 95 Idaho 492, 511 P.2d 309 (1973) (applied a liberal construction to a statute providing benefits for a widow of a deceased worker because, even though she was separated from the deceased worker at the time of the accident, the worker had been furnishing her with financial support); *Smith v. University of Idaho*, 67 Idaho 22, 26, 170 P.2d 404, 406 (1946) (stating that the worker’s compensation act should be accorded a “broad and liberal construction” and “that doubtful cases should be resolved in favor of compensation”). It should be noted that the Court has adhered to these principles regardless of whether the claimant is represented by legal counsel or represented themselves in a *pro se* capacity.

The former Idaho Code § 72-404 directed the Commission to approve lump-sum settlements between parties only if the Commission determined that a proposed settlement was in the “best interest of the parties.” In 2022, Idaho Code § 72-404 was amended to withdraw this responsibility in most cases, and made settlements effective on filing with the Commission.¹ However, where parties are not represented by an attorney, or in any case where a party is a minor child or legally incompetent, the Commission continues to review proposed settlements between those parties and can only approve such proposals if the Commission determines that the agreement is in the best interest of the parties. Defendants assert that the amended statute implies a legislative intention to abandon the rule of liberal construction, at least for represented Claimants: “[I]f a represented Claimant can enter into an LSA without best interest review, they can go to hearing without liberal construction of facts to their favor.” Def. Mot. for Reconsideration, p. 2.

We see nothing in Idaho Code § 72-404, as presently constituted, that would require or even suggest that the Commission disregard the well-established maxim and long-standing

¹ Although not required, a represented party still has the option to request that the Commission review and approve a proposed compromise or settlement. Idaho Code § 72-404(2).

directive of the Idaho Supreme Court that Idaho worker's compensation laws should be construed liberally in favor of the employee simply because Claimant happens to be represented by legal counsel. Defendants' request that the Commission should re-evaluate the case without liberally construing the law in Claimant's favor because Claimant is represented is rejected.

II. Idaho Code § 72-208 and proximate cause

Next, Defendants argue that the Commission erred because it did not analyze whether Claimant's actions "proximately caused" the injuries that he suffered from the incident in question. Def. Mot. for Reconsideration, pp. 3-12. Defendants argue that the Commission focused solely on whether Claimant willfully intended to injure himself or to injure others, and neglected to analyze whether Claimant engaged in conduct that was either a "but-for" or a "substantial factor" in causing Claimant's injuries. Furthermore, Defendants contend that it was reasonably foreseeable that Claimant's injuries were a result of his own actions (i.e. Claimant yelling and swearing at Mr. Garner, etc.) and thus, Idaho Code § 72-208 should act as a bar to worker's compensation benefits.

Defendants' argument is without merit. The Commission must first determine whether the Claimant willfully intended to injure himself or injure another before analyzing whether his injuries were proximately caused by that willful intention to injure himself or injure another. The statute in question reads as follows:

No compensation shall be allowed to an employee for injury proximately caused by the employee's **willful intention to injure himself or to injure another**.

Idaho Code § 72-208(1) (emphasis added). The statute is very specific. To reiterate, it does not bar compensation merely for injuries proximately caused by Claimant's actions. Rather, the statute only applies if Claimant's injuries are proximately caused by Claimant's willful intention to injure himself or to injure another. If the Commission finds that Claimant did not willfully intend to

injure himself or to injure another, it is axiomatic that there is no need to determine whether Claimant's injuries were proximately caused by that specific willful intention.

Defendants argue that the Commission did not analyze whether Claimant actions proximately caused his injuries, as the Commission did in *Whetzel v. Truckers Corp.*, IIC 1989-672247 (Idaho Ind. Comm. May 28, 1992). Although this case bears some similarities to *Whetzel*, there is an important distinction. Unlike the instant matter, in *Whetzel* the Commissioners did find that the claimant in that case had acted with a willful intention to injure another.

In *Whetzel*, the claimant (Whetzel) was a truck driver. Whetzel was driving his truck for work and attempted to pass another truck being driven by Tommy Kehm (Kehm). Whetzel was unable to safely pass Kehm and felt that Kehm deliberately drove his truck in a way to kick up rocks to damage Whetzel's truck. When the two truckers reached a gas station further down the road, Whetzel confronted Kehm. Whetzel swore at Kehm and wanted to "go outside" to fight. Kehm went outside in an attempt to calm Whetzel down, but then Whetzel hit Kehm in the face. Kehm then tackled Whetzel, and hit Whetzel several times. Whetzel was hospitalized for two days with a broken nose and sought workers' compensation for the injuries he incurred in the fight. Whetzel admitted that he started the argument and ensuing fight and that he threw the first punch at Kehm, intending to injure him. The Commission determined that Whetzel had acted with a "willful intention to injure himself or to injure another" (namely, to injure Kehm). Then, the Commission concluded that by starting the fight, Whetzel's actions proximately caused his injuries (the broken nose caused by Kehm punching him). It was only after the Commission determined that Whetzel had acted with a willful intention to injure another, that the Commission undertook the analysis to determine whether Whetzel's injuries were proximately caused by his willful intention to injure another.

For the reasons explained in the Decision, the Commission determined that Claimant did not act with a willful intention to injure himself or injure another. Upon reconsideration, we do not see any reason to change that determination. In summary, Claimant asked Mr. Garner to move Mr. Garner's truck forward so that he could clear his own truck from the railroad tracks and proceed to the loading station. Mr. Garner refused to move his truck. Claimant became angry and called Mr. Garner a "fucking rookie." Mr. Garner then put his hands on Claimant's shirt and hit Claimant. In response, Claimant sidestepped Mr. Garner and put Mr. Garner to the ground. Once Mr. Garner was on the ground, Claimant did not continue the fight, rather he immediately reported the altercation to Simplot, the police, and his Employer.

The record demonstrated that although Claimant swore at Mr. Garner and called him names, Claimant did not start the fight. It is undisputed that Mr. Garner started the physical aspect of the altercation. Claimant's action to "put" or "drop"² Mr. Garner to the ground was done to stop the fight and defend himself from further injury inflicted by the physical aggressor, Mr. Garner.

Claimant's actions on that day may not have been entirely prudent, but on these facts, we cannot conclude that Defendant met its burden to demonstrate that Claimant's actions were a "willful intention to injure himself or to injure another" which would bar his entitlement to workers compensation benefits. Thus, there is no need to discuss whether Claimant's injuries were proximately caused by his willful intention to injure himself or others because we found that Claimant did not act with that willful intention to injure himself or others.

Defendants' argument that an objective reasonable person would deem it reasonably foreseeable that Claimant's actions (by yelling and swearing at Mr. Garner) would result in a fight

² The Referee gave more weight to Claimant's contemporaneous written statements than his later recollection of the fight at hearing and at deposition. In his statement to Surety, Claimant said he "put" Mr. Garner to the ground. JE 5:12. In the police statement, the officer recorded that Claimant said that he "dropped" Mr. Garner to the ground. JE 8:22.

that led to his injuries – and thus “proximately caused” his injuries – is unpersuasive and, in our view, inconsistent with case law.

In *In re Coleman*, 53 Idaho 339, 23 P.2d 1115 (1933), the Idaho Supreme Court affirmed the Commission’s decision that an employee who fell asleep at the wheel while driving for work and died did not demonstrate a willful intention to injure himself. The record established that the deceased employee (Coleman) attended a farewell party the night before the accident and returned home early the following morning. Later that morning, around 4:00 a.m., Coleman went out to feed and water his stock. Then, at 4:45 a.m. he departed on a work-related errand to Orofino. On the way to Orofino, he fell asleep at the wheel and went off the road. One could argue that it would be reasonably foreseeable for Coleman to fall asleep at the wheel because he had stayed up late the night before and tended to other chores early in the morning before embarking on his work-related drive. However, that is not the analysis the Court applied. Rather, the Court analyzed whether Coleman demonstrated a willful intention to injure himself and concluded that he did not.

Likewise, in *Shoemaker v. Snow Crop Marketers Division of Clinton Foods*, 74 Idaho 151, 258 P.2d 760 (1953), an employee was injured when, in an effort to retrieve his lunch pail as quickly as possible in order to return to work, he proceeded hand over hand on a board across an elevator shaft, the board gave way, and the employee fell about twenty feet. The Court conceded that the employee was negligent and engaged in a hazardous undertaking, but that there was no evidence that he willfully intended to injure himself. *Id.* at 158, 764. Thus, the employee was entitled to worker’s compensation benefits. Again, it could be reasonably foreseeable to an objective person that crossing a board in such a dangerous manner could lead to falling and injuring oneself. But that did not bar the employee in *Shoemaker* from compensation because he did not demonstrate a “willful intention to injure himself or injure another.”

In summary, on reconsideration, Defendants have failed to persuade the Commission to alter its determination that Claimant's injuries were not proximately caused by his willful intention to injure himself or to injure another. Idaho Code § 72-208 does not act as a bar to prevent Claimant's entitlement to worker's compensation benefits.

III. Accident/Injury

Next, Defendants argue that the Commission erred in determining that the assault in this case was work-related rather than an assault that was personal and private in origin. Def. Mot. for Reconsideration, pp. 12-18.

In *Mayo v. Safeway Stores, Inc.*, 93 Idaho 161, 457 P.2d 400 (1969), the Court held, inter alia, that assaults which are inherently related to the employment, such as assaults arising out of work disputes, are generally compensable while assaults that are inherently personal or private in origin, which arise from disputes imported by the employee from outside the sphere of employment, the only connection with the employment being the location at which the assault occurs, are generally considered non-compensable. *Id.* at 163, 402.

The record in the instant matter established the following: Mr. Garner and Claimant were strangers to each other. Both Claimant and Mr. Garner claimed that the other was not following Simplot's rules. Claimant claimed Mr. Garner was not supposed to "double stack" i.e., park behind another truck getting a dry load. Meanwhile, Mr. Garner claimed Claimant was not supposed to go around another truck and/or go across the railroad tracks until it was clear. Claimant attempted to get Mr. Garner to move his truck forward so Claimant could clear the railroad tracks and proceed to a loading station. Mr. Garner said he didn't have enough room to pull forward and refused Claimant's request to move his truck. The conversation devolved into an argument and altercation. On these facts, the Commission determined that the assault arose out of a work-related dispute.

Defendants argue that although the subject-matter of the altercation between Claimant and Mr. Garner may have been related to work, the matter was a personal or private one because it was a “name calling cussing match between two men who were insulting each other.” Def. Mot. for Reconsideration, p. 13. Essentially, Defendants’ postulate that the origin of the assault was due to Claimant’s personality, namely his impatience and apparent propensity to lose his temper. In their motion for reconsideration, Defendants do not cite to any authority to support this argument, rather they present a litany of hypotheticals and argue that this case sets bad precedent because it would give ill-tempered employees carte blanche to assault anyone that they perceive is obstructing them from doing their job and still have their injuries from those assaults be compensable.

Defendants’ argument is unpersuasive. The origin of the dispute was clearly work-related. Claimant wanted to get his truck off the railroad tracks and to the loading station. He repeatedly asked Mr. Garner to move forward so he could do so. Mr. Garner refused to move his truck forward. Claimant swore at Mr. Garner, and then Mr. Garner assaulted Claimant. Claimant’s impatience, name-calling and swearing is insufficient to transform a dispute that is work-related in origin into one that is personal or private in origin. To adopt Defendants’ reasoning is to ignore the obvious work-related origin of the assault in this case. The Commission is not persuaded to alter its Decision on reconsideration.

For the reasons outlined above and further discussed in the Decision, we remain convinced the assault in this case was work-related and was not personal or private in its origin.

IV. Public policy

Next, the Defendants argue that, as a matter of public policy, Claimant’s case should not be considered compensable and that our Decision sets bad precedent. Def. Mot. for Reconsideration, pp. 18-19. Defendants argue that the Commission should reverse its decision

because the Commission is “providing benefits to Claimants who are hurting themselves, committing assaults and batteries, trying to physical [sic] scare people, and engaging in behavior that is bad enough that the police are getting involved and prosecutors are having to make charging decisions – and calling it all work-related. Claimant is a truck driver, not a bounty hunter and this continued line of cases culminating in the *Campbell* decision is dangerous to the public.” *Id.* at 19.

Defendants’ public policy argument is unpersuasive. The Idaho Worker’s Compensation Act was enacted with the express purpose to provide “sure and certain relief for injured workmen and their families and dependents [and] is hereby provided regardless of questions of fault” Idaho Code § 72-201. The general rule is that compensation is provided to injured employees, regardless of the employee’s contributory negligence or conduct that led to the injuries. However, the Act does not entirely ignore all aspects of an employee’s culpability that led to their injuries. The legislature enacted a statutory exception that prohibited compensation if the injury was “proximately caused by the employee’s *willful intention to injure himself or to injure another.*” Idaho Code § 72-208(1) (emphasis added). After a thorough review of the evidence in the record, the Commission concluded that Defendants did not meet their burden to demonstrate that Claimant’s injuries were proximately caused by his willful intention to injure himself or injure another. The Commission acknowledges that Defendants vehemently disagree with the Commission’s Decision, but we are not persuaded to alter our Decision on reconsideration due to any public policy basis.

V. Attorney’s fees

Finally, Defendants argue that the Commission erred by awarding attorney’s fees. Def. Mot. for Reconsideration, pp. 19-24.

Defendants argue that the Idaho Supreme Court's ruling in *Salinas v. Bridgeview Estates*, 162 Idaho 91, 394 P.3d 793 (2017), mandates that the Commission reverse its ruling that attorney's fees be awarded to Claimant. In *Salinas*, the Commission concluded that the claimant failed to prove she was entitled to payment of compensation. Notwithstanding that conclusion, the Commission awarded Salinas attorney's fees pursuant to Idaho Code § 72-804. The Supreme Court reversed the Commission's decision, holding that attorney fees could not be awarded because there was no compensation "justly due and owing" to allow attorney's fees, regardless of how unreasonably the employer or surety may have acted. *Salinas* is distinguishable from the instant matter. Here, unlike the claimant in *Salinas*, Claimant has met his burden to demonstrate that he was injured in the course and scope of employment and is therefore entitled to compensation.

Defendants argue that the Commission's award of attorney's fees is premature. Namely, that it has not yet been determined if Claimant is owed any benefits arising from the Act. This was a bifurcated hearing in which the Commission was tasked with ascertaining whether Claimant suffered an injury arising out of and in the course of employment. It has not yet been ascertained whether Employer and Surety owe Claimant TTD/TPD, PPI, medical, or PPD benefits. Therefore, Defendants argue, at a minimum the Commission should reserve the issue of attorney's fees for a future hearing once the actual benefits issues come before the Commission.

Defendants' argument misses the mark. Although TTD/TPD, PPI, and PPD benefits have not yet been determined in this case, benefits have indeed been paid to Claimant. On June 8, 2018, the Surety accepted Claimant's claim for injury to neck and shoulder. JE 3:6. The Notice of Claim status reflects that Surety paid Claimant indemnity benefits in the amount of \$2,710.80 for the

period of April 25, 2018 to May 22, 2018. JE 3:6. On July 16, 2018³, Surety notified Claimant via letter and a Notice of Claim status that Claimant's claim would be denied because "our investigation reveals that according to the statements received you were the aggressor in the altercation between you and Mr. Garner. Based on this and Idaho Statute 72-208 unfortunately we are unable to accept your claim for workers compensation benefits and must respectfully deny your claim." JE 3:8; *see also* JE 3:9.

Idaho Code § 72-804 outlines three instances in which the Commission may award attorney's fees against an employer or surety:

If the commission or any court before whom any proceedings are brought under this law determines that the employer or his surety contested a claim for compensation made by an injured employee or dependent of a deceased employee without reasonable ground, or that an employer or his surety neglected or refused within a reasonable time after receipt of a written claim for compensation to pay to the injured employee or his dependents the compensation provided by law, **or without reasonable grounds discontinued payment of compensation** as provided by law justly due and owing to the employee or his dependents, the employer shall pay reasonable attorney fees in addition to the compensation provided by this law. In all such cases the fees of attorneys employed by injured employees or their dependents shall be fixed by the commission.

Idaho Code § 72-804 (emphasis added). The benefits that Surety paid upon accepting the claim on June 8, 2018 constitute "compensation" for the purposes of the statute. *See* Idaho Code § 72-102(6) (defining "compensation" as "used collectively means any or all of the income benefits and the medical and related benefits and medical services"). The Commission determined that the third instance is relevant to this case. The Commission concluded that Surety discontinued payment of compensation without reasonable grounds for injuries that the Claimant has demonstrated he incurred in the course and scope of employment.

³ The Decision erroneously referred to this letter as dated July 15, 2018 (rather than July 16, 2018). Decision, p. 13 ¶32. On reconsideration, the Commission acknowledges that the denial letter and Notice of Claim Status denying Claimant's claim were both dated July 16, 2018.

As discussed in the Decision, Claimant submitted his statement about the incident to Surety on or about May 2, 2018. *See* JE 5:11-14. Claimant's statement is marked with a date stamp that reads as follows: "RECEIVED MAY 02 2018 S & C CLAIMS." JE 5:11-12. Surety accepted his claim on June 8, 2018. JE 3:6. But then, six weeks later, Surety denied the claim on July 16, 2018. JE 3:8-9. In the letter denying the claim, Surety referenced that its investigation revealed that "according to the statements received" Claimant was the aggressor and Surety denied the claim pursuant to Idaho Code § 72-208. Vicky Roepker, Surety's claims adjuster, signed these correspondences to Claimant and was deposed. *See* JE 3, 11. Ms. Roepker did not have any recollection of the case specifically, and no longer had access to the claim file because a different third-party administrator now serviced the claim. Ms. Roepker did not recall any detail of the investigation into the claim; she did not recall reviewing the police report or interviewing witnesses. In its Decision, the Commission determined that the Defendants failed to explicitly demonstrate what investigation Surety undertook and what documents Surety relied on to lead to its decision to deny the previously accepted claim on July 16, 2018.

In their motion for reconsideration, the Defendants assert that the Claimant's statement (JE 5); Mr. Garner's statement (JE 6:17-18); statement of Karl King, who did not witness the assault (JE 6:19-20); and the police report of the incident (JE 7), all of which were generated prior to Surety's denial of July 16, 2018, support the Surety's decision to cut off benefits in July 2018 because they indicated that Claimant was the aggressor in the altercation. The Commission does not agree. Although these statements were generated prior to Surety's July 16, 2018 denial, it is not clear if the Surety had access to and/or reviewed all these statements prior to the denial.

As stated above, the date stamp on Claimant's statement (JE 5) indicates that it was received by Surety on May 2, 2018. It appears that the Surety based its initial June 8, 2018

acceptance of the claim on this statement. Unlike the Claimant's statement, the additional statements of Mr. Garner, Karl King, and the police report (JE 6 – 7) are not date stamped by Surety and do not contain any indication of when exactly Surety received them. Furthermore, the Surety's adjusters were unable to recollect what investigation they conducted and statements they reviewed prior to denying the claim on July 16, 2018. Therefore, it is unclear whether the Surety reviewed these additional statements prior to denying the claim. The record established that only the Claimant's statement (JE 5) was in Surety's possession when they initially determined to accept the claim. Claimant's statement (JE 5) does not support the contention that Claimant was the aggressor in the altercation, nor that he acted with a willful intention to injure himself or to injure another. After having accepted the claim, Defendants have failed to articulate the reason why Surety decided to reverse course at the time of their July 16, 2018 denial. The Commission concluded that such denial was without reasonable grounds. Any investigation conducted or statements reviewed by Surety subsequent to their denial of July 16, 2018 do not avail Defendants. Defendants' grounds for denying a claim must be reasonable both at the time of the denial and in hindsight. *Bostock v. GBR Restaurants*, IIC 2018-008125 (Idaho Ind. Comm. Nov 6, 2020).

Even if it was established that Surety reviewed the additional statements contained in JE 6 and 7 prior to its July 16, 2018 denial, the Commission does not agree that those additional statements reasonably support the contention that Claimant acted with a willful intention to injure himself or another. The additional statements essentially comport with the Claimant's statement of what happened. Although Claimant yelled and swore at Mr. Garner because Mr. Garner refused to move his truck forward, the additional statements support the fact that Mr. Garner was the first to physically assault Claimant.

For the reasons discussed in the Decision and further discussed above, the Commission concludes that Surety discontinued payment of compensation justly due and owing to Claimant without reasonable grounds. On reconsideration, the Commission will not alter its conclusions regarding the award of attorney's fees.

In its Decision, the Commission ordered Claimant's counsel to submit a memorandum of attorney's fees incurred in counsel's representation of Claimant in connection with these benefits, plus an affidavit in support thereof. On May 23, 2023, Claimant's counsel filed his memorandum and supporting affidavit for attorney's fees. Defendants' time to respond to Claimant's memorandum was stayed pending the filing of an order on Defendants' Motion for Reconsideration. The timeline for Defendants to respond shall re-commence upon the filing of this Order.

ORDER

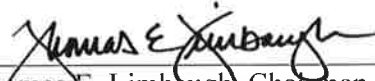
In conclusion, the Commission's reasons for: (1) determining that Claimant's injuries were not proximately caused by Claimant's willful intention to injure himself or to injure another; (2) concluding that Claimant suffered an injury that arose out of and in the course of his employment; and (3) finding that Claimant is entitled to attorney's fees for Defendants' discontinuance of compensation without reasonable grounds, are sound and thoroughly analyzed. Defendants have not presented a persuasive argument on reconsideration denigrating this reasoning. Defendants have not persuaded the Commission to reverse its Decision.

Based on the foregoing, Defendants' request for reconsideration is DENIED. **IT IS SO ORDERED.** Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 18th day of August, 2023.

INDUSTRIAL COMMISSION




Thomas E. Limbaugh, Chairman


Thomas P. Baskin, Commissioner


Aaron White, Commissioner

ATTEST:


Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of August, 2023, a true and correct copy of the foregoing **ORDER DENYING DEFENDANTS' MOTION FOR RECONSIDERATION** was served by regular United States Mail and Electronic Mail upon each of the following:

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