BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CAMERON DEMOTT TYLER, Claimant, v. MASTERPIECE FLOORS, INC., Employer, and NORGUARD INSURANCE COMPANY, Surety, Defendants.	**IC 2019-028028** **ORDER DENYING CLAIMANT'S MOTION FOR RECONSIDERATION** FILED DEC 14 2023 INDUSTRIAL COMMISSION

The above-entitled matter went to hearing before the full Idaho Industrial Commission ("Commission") in Boise on May 1, 2023. The Commission issued its Findings of Fact, Conclusions of Law, and Order (the "Decision") on September 15, 2023. On September 29, 2023, Claimant made a timely motion for reconsideration pursuant to Idaho Code ("I.C.") § 72-718 and Rule 3(G) of the Judicial Rules of Practice and Procedure, effective as amended September 6, 2023 ("J.R.P."). Claimant contemporaneously filed a memorandum in support of his motion for reconsideration. On October 6, 2023, Defendants filed a response objecting to the motion. On October 16, 2023, Claimant filed a reply to Defendant's objection. The Commission has reviewed the parties' pleadings and issues this order denying Claimant's 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. I.C. § 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 I.C. § 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).

Claimant's Request for Oral Argument

Claimant requested to present oral argument in support of his motion for reconsideration. Defendants did not make a request for oral argument in their response. J.R.P. 3(F)(2) provides that

the Commission "may base its ruling on written argument or may conduct such conference or hearing as may be necessary, in the Commission's judgment, to rule on the motion." Having reviewed the parties' pleadings, the Commission believes that there is sufficient information contained therein to rule on the motion without further oral argument from the parties. Therefore, Claimant's request for oral argument is DENIED.

Background

The Commission's Decision was limited to two issues:

1. Whether the Idaho Industrial Commission has jurisdiction to determine if Claimant's injury was proximately caused by the willful or unprovoked physical aggression of Masterpiece Floors under I.C. § 72-209(3).

2. Whether Claimant's industrial injury was proximately caused by the willful or unprovoked physical aggression of Masterpiece Floors under I.C. § 72-209(3).

As to the first issue, the Commission concluded that the "matter was properly before the Commission, and that the Commission may exercise jurisdiction over the question of whether Claimant's injuries resulted from the willful or unprovoked physical aggression of another." Decision, ¶23. Secondly, the Commission concluded that, based on the testimony presented at hearing and the evidence contained in the record, the "facts of this case do not rise to the level of conscious disregard of a known risk as articulated in *Gomez*, and Employer's conduct does not constitute willful or unprovoked physical aggression under I.C. § 72-209(3)." Decision, ¶37.

In his motion for reconsideration, Claimant explained that although he does not agree with the Commission's conclusion on the first issue, he is not asking the Commission to reconsider its conclusion as to that issue. Memo. in Support of Mot. for Reconsideration (Memo.) p. 2. Rather, Claimant asks the Commission to reconsider its conclusion only on the second issue. *Id.*

Motion for Reconsideration

Claimant argues that although the Commission may have the first right in this specific case to determine jurisdictional issues pursuant to *Anderson v. Gailey*, 97 Idaho 813, 555 P.2d 144 (1976), the Commission is nevertheless required to apply a summary judgment standard of review to the facts because that would have been the standard the district court would have applied had the district court retained jurisdiction over the question whether Claimant's injury was proximately caused by the willful or unprovoked physical aggression of Employer under I.C. § 72-209(3). Claimant argues that in a concurrent jurisdiction setting, such as the case here, it is of "paramount importance that an injured party's claim of exception to the exclusive remedy rule is viewed uniformly and evenly regardless of whether his fate is determined by the Industrial Commission or the District Court." Memo. p. 3. Claimant does not cite to any case law or statutory authority to support this assertion. *See id.* In his reply memorandum, Claimant argues that to not equally apply the same standard of review in both tribunals would deny Claimant's "fundamental right to due process, equal protection, and to trial by jury, guaranteed by the U.S. Constitution and the Constitution of the State of Idaho." Claimant's Reply, p. 3.

In other words, Claimant's argument is that the Commission erred when it determined that the Claimant failed to prove by a preponderance of the evidence[1] that his injury was proximately caused by the willful or unprovoked physical aggression of Employer. Rather, Claimant argues, the Commission is constrained to review the evidence as a district court would when ruling on a motion for summary judgment, i.e. whether a genuine issue of material fact exists such that a

[1] Although I.C. § 72-209(3) currently requires a claimant to make a showing of clear and convincing evidence for the unprovoked physical aggression exemption to apply, the version of the statute in effect at the time of Claimant's injury did not require this higher burden. Rather, Claimant's burden to prove that the I.C. § 72-209(3) exemption applies is the standard level of proof that a claimant bears to prove his case, i.e. preponderance of the evidence. For the reasons explained in our Decision, the Commission concluded that Claimant failed to meet that burden of proof.

reasonable jury could return a verdict for the non-moving party, to liberally construe the record in favor of the party opposing the motion for summary judgment, and to draw any reasonable inferences and conclusions in the non-moving party's favor. In essence, Claimant asks the Commission to merely determine whether there is sufficient evidence, liberally construed in Claimant's favor, to establish that a reasonable jury could return a verdict that Claimant's injury was proximately caused by the willful or unprovoked physical aggression of Employer. Claimant cites to the summary judgment standard as outlined in *Gomez v. Crookham Co.*, 166 Idaho 249, 457 P.3d 901 (2020) to support this assertion. *See* Memo. pp. 3-6.

In response, Defendants contend that Claimant's argument has no merit because the Commission has not promulgated its own version of a summary judgment rule, nor has it adopted the Idaho Rules of Civil Procedure ("I.R.C.P.") regarding summary judgment (I.R.C.P. 56). Defendants' Response, p. 2. Instead, the matter was before the Commission on a request for hearing on the merits, a hearing was held, evidence was presented, post-hearing briefs were submitted, and the Commission, acting in its fact-finding capacity as established under workers' compensation law, issued its Decision based on the evidence presented. In short, Defendants argue that a summary judgment standard of review is simply not applicable. Defendants' Response, pp. 2-5.

The Commission agrees with Defendants' contention that Claimant's reliance on *Gomez* to support his arguments regarding the appropriate standard of review is misplaced. In *Gomez*, the plaintiffs filed their Complaint and Demand for Jury Trial in district court. The defendants moved for summary judgment, arguing, inter alia, that the claims were barred by the exclusive remedy of workers' compensation, and that the willful or unprovoked physical aggression exception to the exclusive remedy rule did not apply. The district court granted the motion for summary judgment,

ruling that workers' compensation was plaintiffs' exclusive remedy and that plaintiffs failed to adduce proof that decedent's death was the result of a willful or unprovoked act of physical aggression. On appeal, the Idaho Supreme Court ruled, inter alia, that the district court had misapplied the provisions of I.C. § 72-209(3). After articulating the correct legal standard governing that exception to the exclusive remedy rule, the case was remanded to the district court with instructions to apply the proper standard to determine whether there was a genuine issue of material fact as to whether employer "consciously disregarded" knowledge of a serious risk to plaintiff.

The instant matter is not before the Commission on a motion for summary judgement. Indeed, the Commission's Judicial Rules of Practice and Procedure contain no counterpart to I.R.C.P. 56. The Commission is not empowered to entertain a summary judgment motion in the absence of a rule regarding such. *See Monroe v. Chapman*, 105 Idaho 269, 668 P.2d 1000 (1983) (in which the Idaho Supreme Court held that while the Commission had the power to adopt a rule which would permit a class action proceeding before it, where it had chosen not to adopt such a rule, the Commission did not have authority to entertain a class action type proceeding). Rather, the Commission heard the case on its merits in its capacity as the finder of fact, as anticipated by I.C. §§ 72-201, 72-707, and 72-712. For the reasons outlined and analyzed in our Decision, the Commission found that the facts of this case did not rise to the level of conscious disregard of a known risk as articulated in *Gomez*, and that Employer's conduct did not constitute willful or unprovoked physical aggression under I.C. § 72-209(3). Although the provisions of the Workers' Compensation Law are to be liberally construed in favor of the injured worker (*See, e.g., Haldiman v. American Fine Foods*, 117 Idaho 955, 793 P.2d 187 (1990)), the Commission is not required to construe facts liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-*

Weston, Inc., 122 Idaho 361, 834 P.2d 878 (1992). Accordingly, the Commission sees no reason to change its conclusion regarding the inapplicability of the willful and unprovoked physical aggression exemption to the exclusive remedy rule under I.C. § 72-209 to this case on reconsideration.

Likewise, the Commission is not persuaded by Claimant's argument that the Commission is constrained to apply the summary judgment standard of review because that is the standard that the district court would have applied if the district court had retained jurisdiction in the matter. First, the argument presupposes that a motion for summary judgment will always be filed in a district court action. It need not be. Second, the standard for granting or denying summary judgment is not the standard by which Employer's liability will ultimately be judged. In district court, even if Claimant were to survive a hypothetical motion for summary judgment, i.e., if the district court determined that there is a genuine issue of material fact as to whether Employer could be held responsible under I.C. § 72-209(3), Claimant would still have to prove his case to the jury at trial, and there he might win or lose. Therefore, whether before the district court or the Commission, Claimant ultimately bears the burden of proving his case.

The Commission does not empanel juries. It is the trier of fact in matters before it, and an appropriate hearing on the merits on the I.C. § 72-209(3) issue has been held. As the party asserting an exception to the exclusive remedy of workers' compensation, it is Claimant who bears the burden of proving his case by a preponderance of the evidence. We reject the argument that the Commission must evaluate the matter before it pursuant to a different standard. We see nothing in *Gailey, supra*, or *Dominguez ex rel. Hamp v. Evergreen Resources, Inc.*, 142 Idaho 7, 121 P.3d 938 (2005) that suggests otherwise.

Although Claimant's briefing is not clear on this point, it is possible that he takes the position that the Commission should apply a summary judgment standard to the facts before it, conclude that there are facts which would preclude summary judgment, and refer the matter to the district court for further proceedings. The Commission rejects this argument because it is contrary to our determination that jurisdiction to resolve the I.C. § 72-209(3) issue resides with the Commission. This is a determination that Claimant has chosen not to challenge on reconsideration.

Having treated the arguments raised by Claimant, we acknowledge that the application of *Gailey* and *Dominquez* to cases like this may lead to some inevitable peculiarities. Indeed, this was recognized by the *Gailey* court:

> We recognize that adoption of either of the rules we have mentioned will undoubtedly lead to inconvenience in one case or another. However, like the California court, we prefer the sprint to the marathon and find that it gives a more workable rule of law. Accordingly, we hold that if the notice of injury was filed with the Industrial Commission before the plaintiffs filed their original complaint with the district court, then the Industrial Commission has the first right to determine the jurisdictional issue, and its determination is res judicata upon the question of jurisdiction and the factual questions upon which the determination of jurisdiction must necessarily turn.

Anderson v. Gailey, 97 Idaho at 825, 555 P.2d at 156. On the facts before the Commission, it is possible that a jury could come to a different conclusion about whether Employer consciously disregarded knowledge of a serious risk of injury to Claimant. But that possibility is foreclosed by the "sprint" to which the *Gailey* Court refers. In most cases like this, the sprint to filing will almost always be "won" by the filing of a claim with the Industrial Commission. To initiate the payment of medical and other benefits that might be needed immediately after an accident, a claimant must make his claim within 60 days. *See* I.C. § 72-701. Most claims are made much sooner, i.e. well before a claimant has had time to consider whether the facts of a particular case support a civil action against his employer. Therefore, it seems likely that under scenarios similar to the facts at

bar, the determination of I.C. § 72-209(3) issues will most often be made by the Commission, at least to the extent that one of the parties asks the Commission to determine the issue. This seems to have been anticipated by the *Gailey* Court.

Claimant has also argued that "to not equally apply the same standard of review in both tribunals would deny the Claimant's fundamental right to due process, equal protection, and to trial by jury, guaranteed by the U.S. Constitution and the Constitution of the State of Idaho." Reply Memo. p. 3. Claimant's constitutional arguments are noted; however, the Commission does not have subject matter jurisdiction to address these constitutional challenges. *See Tupper v. State Farm Ins.*, 131 Idaho 724, 963 P.2d 1161 (1998) (holding that the Commission lacked jurisdiction to address the claimant's claim that she was denied equal protection due to the different statutory qualifications for benefits for an injury caused by an accident pursuant to I.C. § 72-102(17)(b) versus an occupational disease claim pursuant to I.C. §§ 72-102(21) and 72-437).

ORDER

In conclusion, the Commission will not reconsider its Decision in order to apply a summary judgment standard of review. The Commission is not persuaded to alter its Decision on reconsideration.

Based on the foregoing, Claimant's motion for reconsideration is DENIED. **IT IS SO ORDERED.** Pursuant to I.C. § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 1st day of December, 2023.

INDUSTRIAL COMMISSION

Thomas E. Limbaugh, Chairman

Thomas P. Baskin, Commissioner

Aaron White, Commissioner

ATTEST:

Kamerron Slay
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of December, 2023, a true and correct copy of the foregoing **ORDER DENYING CLAIMANT'S MOTION FOR RECONSIDERATION** was served by regular United States Mail upon each of the following:

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