

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

TOMMIE D. ALFREY,

Claimant,

v.

WINCO HOLDINGS, INC.,

Employer,

and

AMERICAN ZURICH INSURANCE  
COMPANY,

Surety,  
Defendants.

**I.C. No. 2018-000010**

**ORDER GRANTING MOTION TO  
RECONSIDER**

**FILED  
8-2-24  
IDAHO INDUSTRIAL COMMISSION**

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*Order Granting Claimant's Request to Reconsider the dismissal of the complaint for inaction. The above captioned case is reinstated to active status.*

Claimant seeks reconsideration of the *Order Dismissing Complaint* issued by the Commission on June 25, 2024, in the above-captioned case.

**FACTS**

Claimant filed a complaint on October 8, 2020, represented by Starr Kelso. Defendants filed an answer and discovery requests shortly thereafter, and Claimant served discovery responses in February of 2021.

Nothing further happened until about twenty months later<sup>1</sup>, when the Idaho Industrial Commission referee issued a notice of intent to recommend dismissal for inactivity under Judicial Rule of Practice and Procedure (“JRP”) 12(B). Claimant was given twenty-one days to respond in

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<sup>1</sup> Although no filings were made, on September 20, 2021, the Commission was copied on a letter sent by Defendants to Claimant informing him Defendants would stay proceedings for 90 days after the death of his attorney.

writing.

Michael Kessinger substituted as counsel for Claimant. Claimant filed a response stating that Claimant's attorney Starr Kelso had passed away, requiring Claimant to obtain a new attorney, and requested the case be kept on the active calendar as a settlement had been discussed. *Claimant's Response to Notice of Intent to Recommend Dismissal, 10/27/2022.*

In response, the Commission issued an *Order Retaining Case on Active Calendar, 10/31/22*. In pertinent part, the *Order* stated:

[T]he above-entitled matter will be retained by the Commission for six (6) months from the date of this Order. If Claimant has taken no further action within the six (6) month period, and has not filed proof of continuing good cause, the Complaint may be dismissed without further notice.

Approximately nineteen months later, Claimant still had not filed proof of continuing good cause. Nor had any additional action been taken on the case. After the referee issued a recommendation for dismissal, the Commission issued an order of dismissal on June 25, 2024 under JRP 12(B). The Commission found that “[t]he Claimant has not filed proof of continuing good cause.” *Order Dismissing Complaint, 6/25/2024.*

#### **STANDARD FOR RECONSIDERATION**

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 removed]. 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). "It 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, 925 (2005).

### **DISCUSSION**

Claimant has now moved for reconsideration of the order of dismissal. *Claimant's Request for Reconsideration*, 7/2/2024.

For all relevant time periods, JRP 12(B) has read as follows:

The Commission may dismiss a complaint without prejudice if no action has been taken on the case for a period of 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.

The present case was inactive for a period in excess of six months, and notice of intent to dismiss was given. However, the Commission's notice of intent to dismiss, and the dismissal itself issued on June 25, 2024, incorrectly held Claimant to the standard of "good cause."

Under *Fuentes v. Cavco Indus., Inc.*, 170 Idaho 432, 511 P.3d 852 (Idaho 2022), the Idaho Supreme Court has held that it is legal error to apply the standard of "good cause" to a dismissal under JRP 12(B). In *Fuentes*, a claimant failed to respond to discovery after multiple requests by defendants, and after a motion to compel, the referee ordered that the claimant "respond to the discovery requests within fifteen days and warn[ed] that '[f]ailure to comply with this Order may result in sanctions being imposed.'" *Id.* at 854. When the worker failed to respond, the Commission dismissed under JRP 12(B), citing that "[n]o good cause has been presented to retain the case." *Id.*

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at 856-57. The Supreme Court held the dismissal was in error. It reasoned that JRP 12(B) did not authorize a dismissal without six months of inaction, there was no finding or evidence showing six months of inaction, no notice of intent to dismiss was given, and the Commission incorrectly denied Claimant’s motion on the grounds that “[n]o good cause” had been shown, rather than “no cause.” *Id.* at 856-57. “The application of a ‘good cause’ standard contravenes both the plain language of JRP 12(B) and this Court’s case law.” *Id.* at 857.

Here, when the Commission acted on the notice of intent to dismiss, it stated that Claimant had failed to “file proof of continuing good cause.” Per *Fuentes*, it was an error to apply the standard of good cause, and the dismissal was in error.

**ORDER**

Based upon the foregoing reasons, Claimant’s motion for reconsideration is **GRANTED** and the *Order Dismissing Complaint* entered on June 25, 2024, is hereby vacated. Claimant’s case is reinstated to active status.

DATED this 2nd day of August, 2024.



Attest:

Christina Nelson  
Commission Secretary

INDUSTRIAL COMMISSION

Thomas E. Limbaugh  
Thomas E. Limbaugh, Chairman

Claire Sharp  
Claire Sharp, Commissioner

Aaron White  
Aaron White, Commissioner

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of August, 2024, a true and correct copy of the foregoing **ORDER GRANTING MOTION TO RECONSIDER** was served by email upon each of the following:

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RK

*Racquel Kotte*