

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MIDGE SHERMAN,

Claimant,

v.

THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS,

Employer,

and

AIU INSURANCE COMPANY,

Surety,
Defendants.

IC 2024-003090

**ORDER GRANTING CLAIMANT'S
MOTION FOR REINSTATEMENT OF
BENEFITS SUSPENDED UNDER
IDAHO CODE § 72-434**

**FILED JANUARY 24, 2025
IDAHO INDUSTRIAL
COMMISSION**

Order granting reinstatement of benefits based on a finding of no actual notice of the Motion to Suspend Benefits.

Introduction and Procedural Background

On December 19, 2024, and pursuant to Idaho Code § 72-718 and Rule 3 of the Judicial Rules of Practice and Procedure under the Idaho Workers' Compensation Law effective September 6, 2023, (JRP), Midge Sherman (Claimant) timely seeks reconsideration of the Commission's November 29, 2024, Order Granting Defendants' Relief Under Idaho Code § 72-434 (Order Suspending Benefits). Claimant's motion is supported by a Brief in Support of Request for Reconsideration (Claimant's Brief), and the Affidavit of Midge Sherman which is accompanied by Exhibits 1-3. On January 2, 2025, the Employer and Surety (Defendants) timely responded with Defendants' Objection to Claimant's Request for Reconsideration (Objection to Reconsideration). The Objection includes Exhibits A-C. On January 13, 2025, Claimant timely

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replied.

Defendants' original request for an Independent Medical Examination (IME) on October 24, 2024, was cancelled because Claimant did not appear. On November 15, 2024, Defendants brought a Motion for Relief Under Idaho Code §72-434, invoking the provisions of newly enacted JRP 22. They supported their motion with briefing. Under JRP 22, the opposing party, if wishing to respond to such a motion, "may" file a response within ten days after the motion is filed. Claimant did not timely file any response. Therefore, no expedited hearing was held. On October 29, 2024, the referee's Order Suspending Benefits was issued.

As the contents of the exhibits and the representations of Claimant fairly represent she did not receive timely service of Defendant's motion to suspend benefits, and was therefore unable to respond, the Commission's order suspending benefits is voided. Claimant's request for reinstatement of benefits is granted.

Arguments of the Parties

Claimant argues there is no basis to suspend benefits because she did not "unreasonably fail to submit" to the scheduled IME under Idaho Code § 72-434. In fact, she received no actual notice of the October 24, 2024, IME scheduled by Defense. She completed a USPS change of address form on November 8 or 9, 2024, and left a voicemail with Surety notifying them of the change of address on or about November 10, 2024. On approximately that same day, she moved from Declo to Burley, Idaho. Furthermore, her first indication that any action had been taken with the Commission was when she received the Order Suspending Benefits on approximately December 5, 2024. A Notice of Change of Status dated December 2, 2024, was also received with the Order. Exhibits contain copies of the Order and the Suspension of Benefits, as well as the envelope that contained Defendant's JRP 22 Motion to Suspend Benefits with a "Notify Sender of

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New Address” label dated December 1, 2024. Claimant wishes to continue treatment for her total knee replacement resulting from the January 18, 2024, industrial accident. She fully intends to cooperate with the IME process.

Defendants argue first that proper notice was given; Claimant simply did not show for the IME. Second, she admits the IME was reasonable. Claimant’s Brief, p.3. Finally, the alleged facts are not sufficient to show her failure to attend the IME was reasonable. The change of address is immaterial. She was notified at the correct address on October 10, 2024, and did not move to Burley until November 10, 2024. Indeed, Claimant owed a duty to provide timely notice of any change of address and failed to do so. Commission precedent holds workers to such a standard. Furthermore, Claimant received and cashed numerous time loss checks which were sent to the Declo address. “Lost in the mail” arguments are not persuasive as Commission precedent indicates. And, “[w]hile pro se claimants are generally afforded more leniency in workers’ compensation proceedings, the Idaho Supreme Court has repeatedly held that pro se claimants are held to the same standards and rules as those litigants represented by an attorney.” *Clark v. Cry Baby Foods, LLC* 115 Idaho 182, 185, 307 P.3d 1208 (2013). Attorney’s fees are warranted pursuant to Idaho Rules of Civil Procedure(IRCP) 54(e) due to an unfounded and unreasonable motion to reconsider.

Standards for Reconsideration

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.”

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Curtis v. M.H. King Co., 142 Idaho 383, 388, 128 P.3d 920 (2005). 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. *Whitmore v. Cabela's*, 021611 IDWC, IC 2007-033768 (Idaho Industrial Commission Decisions, 2011). 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.

As described in the Findings of Fact and in the Discussion below, Claimant presents new evidence. Particularly relevant is evidence regarding the timing of Claimant's receipt of the motion to suspend benefits, regardless of the address to which it was sent. Reconsideration under Idaho Code § 72-718 is warranted.

Findings of Fact

1. On October 10, 2024, Defendants sent Claimant notice of an October 24, 2024, IME, which conforms to the Commission's example notice contained in JRP, Appendix 8. Defendants filled out the "Worker's Address" box on the notice with Claimant's Declo, Idaho address. The Defendants failed to include as evidence a certificate of service by mail (or any other means) with their copy of the notice. Defendant's Ex. A, p 2.

2. In preparation for Claimant's relocation from Declo to Burley, Idaho, she avers she had completed a U.S. Postal Service change of address form on or about November 8 or 9, 2024. Aff. No. 10.

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3. Claimant avers that on or about November 10, 2024, she moved from Declo to Burley. She further avers she gave Surety notice of her new Burley mailing address in a voicemail which was also left on or about November 10, 2024. Aff. Nos.7-9, 11.

4. On November 15, 2024, Defendants moved to suspend Claimant's benefits under Idaho Code § 72-434. Their supporting memorandum makes no mention of Claimant's voicemail, and the certificate of service contains Claimant's Declo address. Def. Memo in Support, p. 5. Claimant did not respond.

5. Six temporary disability checks in Claimant's insurance file cleared Surety's account between October 10, 2024, and November 13, 2024. Def. Objection, Exh. B. It is assumed the checks were sent in the mail to Claimant's Declo address, although the exhibits do not make this explicit.

6. On November 29, 2024, the Commission suspended Claimant's benefits. Order Suspending Benefits, p. 1. The Commissioner certificate of service contains Claimant's Declo mailing address. Id, p. 2.

7. Claimant's exhibits include a copy of the envelope she received in the mail which contained a copy of Defendant's JRP 22 Motion to Suspend Benefits. The envelope's U.S. postage stamp is dated November 18, 2024. Over the place on the envelope where a mailing "To" address would appear, is a "NOTIFY SENDER OF NEW ADDRESS" U.S. Postal Service label dated December 1, 2024. The "new address" is Claimant's Burley address.

8. Claimant avers on approximately December 5, 2024, she received the Order Suspending Benefits, as well as a Notice of Change of Status dated December 2, 2024, which indicates the benefits had been suspended on November 29, 2024. Aff. No. 13, Ex. 1. Copies of the envelopes which would have contained these documents are not included in Claimant's supporting documentation.

Discussion

Under Idaho Code § 72-434, an employee's right to take or prosecute any proceedings under the Idaho Worker's Compensation Law is suspended if the injured employee

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“unreasonably fails to submit or in any way obstructs” an employer’s IME. Rule 22 A, JRP, says an employer shall provide at least 14 days written notice to a pro se claimant of such an exam, which is described in the sister statute Idaho Code § 72-433. Rule 22 A further states that the notice shall substantially comply with the sample notice attached to the rule. *See* JRP 22A, appendix 8. Under the Commission’s general filing and service rules, service upon a pro se party is “...accomplished by means of regular U.S. mail, overnight service, parcel service, personal service or facsimile transmission. Service by U.S. mail is complete upon mailing.” JRP 4A.

The Commission is persuaded that its November 29, 2024, order is in error because Claimant did not receive actual notice of the motion to suspend or have a meaningful opportunity to respond. It is not clear why Defendants’ motion to suspend benefits failed to reach Claimant until some date no sooner than December 1, 2024, which is the date on the U.S. Postal Service “NOTIFY SENDER OF NEW ADDRESS” label. Defendants’ motion to suspend post stamp of November 18, 2024, contradicts the their November 15, 2024, certificate of service date. Therefore, the entry of the Commission’s order suspending benefits on November 29, 2024, is in error and is hereby voided.

Defendants’ IRCP 54(e) request for attorney’s fees is moot.

Order

Based on the foregoing, Claimant’s request for reconsideration is GRANTED. The Commission’s order suspending benefits is voided, and consequently Claimant’s benefits are reinstated.

Commission JRP 22 decisions are not subject to review on appeal until all issues relating to the claim have been decided. *See*: JRP 22C(6). However, no complaint has been filed by either party in this case. Therefore, pursuant to Idaho Code § 72-718, this decision is final and conclusive

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as to all matters adjudicated and may be appealed under Idaho Code § 72-724.

IT IS SO ORDERED.

DATED this 24th day of January, 2025.

INDUSTRIAL COMMISSION



Claire Sharp
Claire Sharp, Chair

[Signature]
Aaron White, Commissioner

Thomas E. Limbaugh
Thomas E. Limbaugh, Commissioner

ATTEST:

Kamerron Slay
Commission Secretary

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of January, 2025, a true and correct copy of the foregoing **ORDER GRANTING CLAIMANT'S MOTION FOR REINSTATEMENT OF BENEFITS SUSPENDED UNDER IDAHO CODE § 72-434** was served by Electronic email upon each of the following:

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