BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DONNA ROBERDS, Claimant, v. THE HOME DEPOT U.S.A. INC., Employer, and NEW HAMPSHIRE INSURANCE COMPANY, Surety, Defendants.	**IC 2013-032278** **ORDER DENYING RECONSIDERATION** FILED JULY 9, 2025 IDAHO INDUSTRIAL COMMISSION

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Procedural Background

On May 19, 2025, and pursuant to Idaho Code § 72-718 and Rule 3 (G) of the Judicial Rules of Procedure (JRP), pro se Claimant Donna Roberds (Roberds) timely moved for reconsideration of the Industrial Commission's decision (Decision) of May 5, 2025. Defendants Home Depot and New Hampshire Insurance (Defendants) responded on May 27, 2025. Claimant made no reply.

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Additional Evidence Submitted on Reconsideration

Included in Roberds' request for reconsideration is a letter dated July 28, 2017. (Aherin's letter). In this correspondence, her then-attorney, Darrel W. Aherin, estimates her case value at $95,000, and explains the need for a $650 medical evaluation by an orthopedist in order to refute the May 13, 2014, report of the Defendants' medical expert, Dr. Stevens. According to Rule 10 (F), JRP, "only those documents which have been admitted as evidence shall be included in the

record of proceedings of the case." The Defense points out that Aherin's letter only bolsters Defendants' argument on reconsideration by showing an experienced work comp attorney was unwilling to advance her funds for a medical opinion or to take her case to hearing. (Response, pgs. 3 and 4).

Because Aherin's letter is outside the body of evidence admitted in this case, it will not be considered now on reconsideration. (See below.)

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Contentions of the Parties

3.1 Roberd's Contentions

Roberds contends the medical evidence developed unfairly; that Employer and Valley Medical colluded to keep the medical evidence from developing favorably and to afford Employer an opportunity to terminate her unjustly. She was unable to develop the medical evidence for her case because medical care was delayed and limited under Medicaid and Social Security rules. The traumatic brain injury (TBI) she incurred when the microwave hit her head has made self-representation very difficult and the handling of medical evidence confusing. The Commission must be lenient with pro se claimants such as herself. The Referee's restrictive directions at hearing prevented her from having a reasonable opportunity to present evidence.

Roberds contends the medical evidence supports a compensable TBI and cervical spine injury determination: MRI, healthy spine status before the injury, further aggravation of the neck condition after being returned to work "on lumber", limitation of neck mobility now, new

stomach conditions resulting from medications prescribed, new eyeglasses when eyesight was fine before the injury, consistent pain from the base of the skull down the back of her neck.

Finally, Roberds argues her interactions with her then-attorney, Mr. Aherin, indicated he believed her claim was compensable, but that he withdrew because Roberds was unrealistically expected to pay the cost of a medical expert.

3.2 Defendants' Contentions

Defendants argue there is no proof of collusion. The medical evidence developed appropriately, and it does not support compensability to the extent Claimant seeks. (Response, p. 4). On reconsideration, the Commission has been presented with no new factual or legal propositions. No problematic factual finding or legal conclusion is identified. Claimant only expands her arguments to say that Employer and Valley Medical were colluding. (Response, p. 2-3).

Finally, Claimant received her "day in court" and a review of the hearing transcript will show Referee Donohue afforded Claimant extra leeway by allowing her to enter documentary evidence into the record when it was outside IIC rules or evidentiary standards. (Response, p. 3).

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Standards for Motion to Reconsider

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). 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.

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Discussion

5.1 Attorney Letter – New Evidence Not Admitted on Reconsideration

As stated in JRP Rule 10(F), "...only those documents which have been admitted as evidence shall be included in the record of the proceeding of the case." The Attorney Letter documents a frustrating phase in Roberds' case. However, the letter was not admitted at any point prior to the date the case came under advisement on December 23, 2024.

Furthermore, even if the Commission were to exercise its discretion to rehear the case under Idaho Code § 72-718 in order to admit Aherin's Letter, this would not change the outcome. The contents of the letter (Aherin's estimating the case value at $95,000, and his

informing Roberds that a $650 medical opinion was necessary to contest the Defendants' medical expert opinion) do not address the determinative issue in this case, which is medical causation beyond her award of benefits until late July, 2014. For these reasons, Aherin's Letter will not be considered on reconsideration.

5.2 Fair Treatment of Pro Se Claimant and Evidentiary Rulings

Roberds argues Referee Donohue did not give her a chance to submit evidence. This is not so. Overall, she has been afforded a fair hearing. The adjudication process began with a complaint filed October 16, 2014, by her then-attorney, Darrel Aherin. (The Commission granted Aherin's motion to withdraw as legal counsel on June 27, 2018.) Two hearings were held in September, 2023, and June, 2024. Referee Donohue, who took over for Referee Taylor, presided.

The transcripts reflect Referee Donohue's accommodated her pro se status with patient explanations of procedural rules and requirements so that Roberds could understand the hearing process as they moved through it. He initiated her testimony and asked many questions. (9/2023 Hrg. Tr.p. 35-57, 82-85) He ordered a five-minute recess in the midst of her testimony, which afforded her an opportunity to add important points she had not thought about making prior. (p. 50-57) He questioned Employer witness, Ms. Civitello. (6/2024 Hrg Tr. p. 19:7 – 20:20; 45:23 – 46:9; 48:12 – 49:18) Referee Donohue noted the missing report of Roberds' coworker, Mr. Cannas. (p. 28) He also instructed Roberds on proper questioning of witnesses. (p. 23) When Roberds objected during the second hearing to not having been afforded an opportunity in the first hearing to testify about the evidence she had submitted, he overruled the objection because

the evidence was admitted and she had given full testimony. (6/2024 Hrg. Tr. p. 6:12-7:15) In light of these aspects of Referee Donohue's management of the case and hearing, the Commission finds no basis for concern about general unfair treatment of Roberds by the referee. As discussed below, a close inspection of Referee Donohue's evidentiary rulings also supports this conclusion.

Roberds submitted Exhibits 1-33 at the September 7, 2023, hearing. The Defense posed three evidentiary objections, mainly on hearsay grounds. Exhibit 27 is Roberds' favorable Social Security Administration (SSA) disability determination, in which disablement was awarded as of July 31, 2014. It is broken into three parts:

- the Determination (Notice of Award, Payment Summary, and Information) dated January 15, 2017 (Ex. 27 p. 1-10);
- the hearing transcript November 4, 2016, (Ex 27, p. 11-18); and,
- the Decision of SSA Judge Shumway dated December 14, 2016 (Ex. 27 p. 19-27).

As the Defense pointed out at hearing, Exhibit 27 was submitted two days before the second hearing. This amounts to a late filing, per the 10-day rule in JRP 10(C). It states that "[u]nless good cause is shown to the contrary at least 10 days prior to a hearing, each party shall serve on all other parties complete, legible, and accurate copies of all exhibits to be offered into evidence at hearing, including but not limited to, medical records." For this reason alone, all of Ex. 27 could have been deemed inadmissible because the Defense received the materials two days prior to the hearing. However, leniency was granted. Untimeliness was over-looked and the Defendants' substantive argument that the SSA materials contain objectionable hearsay was

addressed. The Commission supports these rulings because, had the evidence been fully admitted it would not render a different outcome. We will now proceed to describe each relevant portion of Ex. 27, and Ex. 33.

SSA Hearing Transcript – admitted, but receives no weight

Regardless of authenticity issues, Referee Donohue admitted Ex. 27, the SSA hearing transcript (Ex. 27 p. 11-18) with the understanding that the opinions of SSA Dr. Smiley and SSA vocational expert, Diane Kramer, would "receive no weight towards the findings of fact in the matter" of Roberds' work. comp case unless those individuals were deposed post-hearing. (9/2023 Hrg. Tr. 10:3-10:17, *emphasizing* p. 14:14-16)

The SSA hearing transcript contains information arguably supports Roberds' medical causation argument for expanded medical benefits. At the SSA hearing, Attorney Aherin's opening statement and questioning of Dr. Smiley go toward a brain contusion being a possible impairment for SSA purposes. (*Id.,* p.12., p. 15)[1]. In relevant part, Dr. Smiley's opinion amounts to a post-concussive syndrome diagnosis, and his agreement with the vocational expert that Roberds' inability to work was due to post-concussive migraine headaches. (*Id.* p. 14-15.) The vocational expert, had opined that Claimant could not work due to the limitations and restrictions of her impairments. (*Id.* pgs. 15-18).

SSA Decision – admitted, but receives no weight

[1] NOTE: Dr. Smiley's testimony apparently was not fully audible in the recording, so the transcription of his testimony is riddled with question marks and incomplete sentences.

Judge Shumway's Decision (Ex. 27 p. 19-27) was admitted as an ultimate determination, but the analysis would receive no weight.[2] (9/2023 Hrg. Tr. p. 8:21-9:2) Roberds had expressly argued for their inclusion. (9/2023 Hrg Tr. p. 8:2-5.)[3] Judge Shumway's reasoning is helpful to Claimant because it summarizes his understanding of the medical testimony, medical records and imaging studies upon which the SSA impairment and disability findings are based. In particular, the Decision states certain imaging records confirm brain and spine impairments. (Ex 27, p. 22)

Engineer Opinion - admitted

Finally, Exhibit 33, the correspondence with Shatech Engineering Consultants, was admitted. It contains Claimant's email correspondence with Shatech Engineering Consultants about the physics behind the impact of the microwave on her head. The Defense argued the engineer's opinion – brief as it is – amounts to hearsay. This was over-ruled on the grounds that judicial notice of the opinion could be taken, and it would not change anything. (Tr. 16:15-17:11)

[2] The page numbering on Claimant's exhibit contradicts itself. Defendants' objection was intended to cover pages 11-27 and, therefore, those are the page numbers of EX 27 addressed herein.

[3] First Claimant was put through voir dire examination to ascertain the source of the hearing transcript pages. The transcription technique, which identifies the attorney and the vocational expert by their first names, was suspicious to the Defense. More importantly, Defense pointed out the fact that Defense is unable to cross-examine those witnesses, particularly Dr. Smiley and his statements about post-concussive syndrome. The Referee stated he would not rely on anything Dr. Smiley says in the transcripts. (p. 13:16-18) Defense then qualified their objection to admission of the evidence; if the actual opinions are not considered by the Commission, then the Referee's reading the material would be encouraged. (Hrg. Tr 14:6-8). The parties went on to identify the vocational and medical opinions involved, and considered Claimant's inability to pay for their post-hearing depositions.

Commissioners' Evidentiary Ruling Review on Reconsideration

The Commission finds these three evidentiary rulings regarding Exhibits 27 and 33 do adhere to Commission evidentiary standards. The Commission has "the discretionary power to consider any type of reliable evidence having probative value, even though that evidence may not be admissible in a court of law." *Stolle v. Bennett*, 144 Idaho 44, 50, 156 P.3d 545, 551 (2007) (citing *Hite v. Kulhenak Building Contractor*, 96 Idaho 70, 72, 524 P.2d 531, 533 (1974)). The evidence must be "substantial and competent" to support a decision. *Citizens Utilities Co., Application of*, 351 P.2d 487, 489, 82 Idaho 208, 213 (Idaho 1960). "[S]trict adherence to the rules of evidence is not required in Industrial Commission proceedings, and admission of evidence in such proceedings is more relaxed." *Stolle*, 156 P.3d at 550-51. (citing *Hagler v. Micron Technology*, 118 Idaho 596, 598, 798 P.2d 55, 57 (1990)). The statutory basis for this approach to evidence is located in Idaho Code § 72-708, which requires that: "[p]rocess and procedure under this law shall be as summary and simple as reasonably may be and as far as possible in accordance with the rules of equity."

Authorization to consider evidence in records – which will often include hearsay type statements – is found in Idaho Code § 72-709(1), which states at hearing the Commission "shall have the power . . . to examine such of the books and records of the parties to a proceeding as relates to the questions in dispute." Rule 10(G) JRP explicitly provides that preexisting signed or authenticated medical records will not be excluded on hearsay grounds. Under these guidelines, the Commission has great latitude in accepting evidence that would otherwise be difficult and expensive to obtain, particularly in the form of medical and expert testimony. *See Hite v.*

Kulhenak Building Contractor, 96 Idaho 70, 72, 524 P.2d 531, 533 (1974); *see also Jones v. Emmett Manor*, 134 Idaho 160, 997 P.2d 621 (Idaho 2000), *Hagler v. Micron Technology*, 118 Idaho 596, 598, 798 P.2d 55, 57 (1990).

In this case, Roberds Rule 10 evidentiary submission includes no signed or authenticated SSA medical records that formed the foundation of the SSA expert opinions and Decision. Therefore, even the permissive approach to allowing medical evidence into the record under the Commission's JRP Rule 10(G) is unmet. The experts who issued the SSA opinions were also not deposed post Commission hearing.

Testimony for medical evidence does not necessarily require traditional testimony at hearing or at deposition.

> Requiring oral or deposition testimony in every worker's compensation case would impose an unnecessary procedural and financial burden on injured workers. There are cases in which deposition testimony or oral testimony is necessary to meet the substantial and competent evidence burden, but this does not mean that medical reports are inadequate per se when there is no contrary medical evidence. To the extent *Dean v. Dravo Corp.* and *Paulson v. Idaho Forest Industries* suggest a requirement of oral medical testimony in every case, the suggestion is disavowed.

Jones v. Emmett Manor, 134 Idaho 160, 997 P.2d 621 (Idaho 2000).

Even if Roberds' SSA foundational evidence were admitted, the Defense presents contrary medical evidence - in particular, the opinions of Dr. Stevens and Dr. Beaver – which amounts to substantial, competent, and persuasive evidence in support of the Referee's recommendation. The salient examples of mental and physical symptoms which are included in the Decision do not meet the reasonable degree of medical probability standard which claimants must meet in order to prove causation.

We turn now to Roberds' expert engineer evidence, Exhibit 33. For expert materials, the Supreme Court has held "it will still be necessary to introduce the evidence through witnesses who must be able to testify that they are recognized authority." *Hite v. Kulhenak Building Contractor*, 96 Idaho 70, 72, 524 P.2d 531, 533 (1974). Additionally, the Supreme Court has continued to restrict hearsay provided there is an objection. *See Jones v. Emmett Manor*, 134 Idaho 160, 997 P.2d 621 (Idaho 2000).

Referee Donohue properly admitted the opinion of Shatech Engineering Consultants. However, to Roberds' dissatisfaction, it is characterized as speculative in the Decision. (Decision ¶ 53, p. 15-16.) It is indeed speculative. Not included in Exhibit 33 are: 1) the exact dimensions and weight of the microwave that actually struck Claimant's face, 2) the mathematical formulas applied by the engineer when reaching his conclusions, and 3) the measurable physical circumstances of the microwaves decent. Without these factors and the engineer's analysis, the efficacy of the conclusion cannot be assessed.

A thorough review of the Referee's handling of the case, as well as the evidentiary rulings, make it clear to this Commission on reconsideration that Roberds has been afforded a fair hearing.

5.3 No Collusion Between Employer and Valley Medical

Roberds fails to point to particular aspects of the Decision which warrant review. Her ultimate concern on reconsideration is whether Defendants are liable for benefits beyond initial treatment for a bruised cheek and a neck strain. The points she makes on reconsideration are not persuasive.

Employer's termination of Roberds does not impact the medical causation determination in this case. Nor does it impact the measure of time loss, or the findings of no PPI or PPD. The timing of the neck injury was considered, as was the imaging. Facts about Roberds' stomach and vision appear in the Decision, and those facts arise after late July, 2014, which is the date Roberds' award of benefits ceased. (Decision p. 21). Furthermore, the Decision cites the appropriate statute and case law.

As the Defense points out, Roberds' arguments on reconsideration – particularly regarding the alleged collusion between Valley Medical and Employer – is not a new argument. Although the term "collusion" is used to characterize Defendants' involvement in the case this is only an expansion on her pre-Decision arguments. Those arguments may be summarized as "… the Home Depot, Scott Wigle and Home Depot's doctors are down playing the seriousness of my injury." (Claimant's Opening Brief, November 12, 2024, p. 8) "The whole system was against me." (p. 14) [4]

[4] Previously, Roberds arguments were to the effect that initial diagnoses were made by people who should not have been doing so; that medical imaging for diagnostic purposes was improperly read or delayed; symptoms were ignored; Employer harassed her; Defendant's IME physician, Dr. Stevens, gave an incomplete list of diagnosable conditions resulting from her industrial accident. (Claimant's Opening Brief, November 12, 2024, p. 1, 3, 4). She argued her work write-ups were due to the TBI she believes she suffered as a result of the accident. (p. 5) She argued 4 physicians support her contention that the injury is more severe than a cheek contusion and neck strain - Drs. Osborn, Thomas, Steeves, Campbell (p. 7) The September 18, 2014 brain MRI shows small spots which are neuroradiological findings of TBI. (p. 9) Her providers failed to record symptoms supportive of TBI and cervical spine injury. (p.12, 17-18) Her then-attorney Aherin estimated the case was worth $95,000 but failed to hire an IME as required in a contingency fee attorney-client agreement. (p. 14) Dr. Beaver's opinion is improperly founded and he never examined Roberds. (p. 17) The freefalling microwave "hammered [her] in the head" (Reply Brief, December 20, 2024, p. 10). Cervical degeneration at C5-6 shown in Valley Medical x-ray is located where her injury occurred. (Id)

Roberds simply continues to maintain the Commission's facts and legal conclusions are insufficient for a proper award of the full benefits to which she claims she is entitled. Our Decision points out her sincerity and belief in the accuracy of her perspective about the accident and subsequent course of events. (Decision, ¶ 57, p. 16-17). This remains our impression of Roberds at this time. However, repetition and expansion of arguments on reconsideration will not persuade this Commission to re-weigh the evidence or reach a different conclusion.

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Order

Based on the foregoing, Roberds' Motion for Reconsideration is Denied. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

Dated this 9th day of July, 2025.

INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair

Aaron White, Commissioner

Thomas E. Limbaugh, Commissioner

ATTEST:

Kamerron Slay

Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of July, 2025, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail and Electronic Mail upon each of the following:

DONNA ROBERDS
[redacted]

W. SCOTT WIGLE
PO BOX 1007
BOISE, ID 83701-1007
swigle@bowen-bailey.com
cteague@bowen-bailey.com

mm

Mary McMenomey