

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

VINCENTE SALAS,

Claimant,

v.

SHAWN ELLIS,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,
Defendants.

IC 2012-029281

**ORDER DENYING
MOTION FOR
RECONSIDERATION**

Filed March 6, 2019

This matter is before the Idaho Industrial Commission (“the Commission”) upon Claimant’s February 5, 2019 filing of his Request for Reconsideration dismissing his complaint without prejudice on January 15, 2019. Claimant included a copy of his Request to Continue Case on Court’s Calendar, a copy of a facsimile of the same dated as sent June 27, 2018, and a copy of the Commission Order Dismissing Complaint. Defendants did not file a response.

Under Judicial Rule of Practice and Procedure 12(B), 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.

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. The Commission may reverse

its decision upon a motion for reconsideration, or rehearing of 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)). Process 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. Idaho Code § 72-708.

The Commission filed the Notice of Intent to Recommend Dismissal on June 19, 2018, 2018 and issued its Order Dismissing Complaint on January 15, 2019. Claimant avers in his Request that he filed a Request to Continue Case on Court's Calendar on June 27, 2018 with the wrong case number. He includes a copy of the Communication Result Report showing a two page fax sent on June 27, 2018 to a number matching a Commission fax number. As Defendants did not respond to Claimant's Request for Reconsideration, the Commission is unable to determine if the June 27, 2018 fax was sent to them as well. The Commission has no reason to doubt Claimant's averment that the fax was sent somewhere on June 27, 2018, but does not have a record of receiving the fax and did not receive the original document pursuant to Judicial Rule of Practice and Procedure 4(A) via regular United States mail, overnight service, parcel service, or personal service of process. JRP 4(A) requires "For any document transmitted by fax, the original document shall be sent to the Commission and copies served on all other parties the same day as the day of transmission." Claimant indicates that Claimant's case is "past the statute of limitations to refile a Complaint" and requests "that the case be reopened and be retained on the calendar for an additional 6 months to allow time to reach a settlement." For reasons that are unclear from the record, Claimant failed to prosecute the claim even after the Request to Continue was improperly filed.

