

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DOUGLAS R. ARLEDGE,

Claimant,

v.

HOFF COMPANIES, INC.,

Employer,

and

MILFORD CASUALTY INSURANCE
COMPANY,

Surety,

Defendants.

IC 2018-007901

**ORDER DENYING
RECONSIDERATION**

Filed April 8, 2019

On February 28, 2019, Claimant filed his motion for reconsideration of the Commission's February 25, 2019 Dismissal. The Commission issued its February 25, 2019 Order Dismissing Complaint because Claimant failed to show good cause for missing the hearing scheduled for February 19, 2019. The Commission gave written notice of the hearing, and both parties participated in a pre-hearing telephone conference.

Claimant argues that he was not aware of the February 19, 2019 hearing, because he never received the Notice of Hearing, due to the Commission's use of the incorrect zip code, i.e, 83687 instead of 83653. Claimant also argues that the Commission should have extended him the same courtesy it showed to Defendants when it reminded Defendants' attorney to join a telephonic hearing. Claimant acknowledges attending the last pre-hearing telephone conference, but believed that the next hearing was scheduled for March 14, 2019, when Claimant would be

allowed to give a narrative of the facts concerning his case. Claimant contends that he has never missed a scheduled telephone hearing in over a year, and that he faces significant hardships if his request for reconsideration is not granted.

On March 1, 2019, Defendants filed their objection to Claimant's request for reconsideration. Defendants argue that Claimant received appropriate notice of the scheduled hearing. Defendants argue that at all times Claimant's mailing address was listed on Industrial Commission pleadings as "P.O. Box 1751, Nampa, Idaho 83653, which includes the Order Dismissing Complaint. Claimant has acknowledged receipt of multiple notices of telephone conferences and other correspondence at that mailing address. Defendants contend that the parties discussed the upcoming February 19, 2019 hearing at the February 11, 2019 pre-hearing telephone conference, yet Claimant still did not show for the hearing.

On March 8, 2019, Claimant responded with an exhibit of the unpaid medical bills he seeks from Defendants. Claimant insists that the Defendants' Attorney needed to be reminded of a telephone conference, because the Attorney had failed to call in at the time of the hearing. Claimant contends that he has proof of unethical conduct by the insurance company, and the matter should be decided on the merits.

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 claimant must present to the Commission new reasons factually and legally to support a hearing on her 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 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. 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.

Here, Claimant's assertions that he lacked appropriate notice of the February 19, 2019 hearing are not persuasive. The Commission sent Claimant the Notice of Hearing to the Claimant's known address of record. While Claimant states that the zip code on the mailing address is incorrect, Claimant has acknowledged his receipt of numerous other documents from the Commission at this exact mailing address, and Claimant has the responsibility of updating his address with the Commission.

Second, Claimant attended the February 11, 2019 pre-hearing telephone conference, at which the upcoming February 19, 2019 hearing was discussed. According to the Referee's contemporaneously made notes of the pre-hearing telephone conference, the parties discussed the hearing set for February 19, 2019. They also reviewed the issues, which the parties agreed were correct, and the Rule X Disclosure requirements. The Referee instructed Claimant that he would

need to make a numbered list of his intended exhibits and submit the list to the Commission and Defendants. As Claimant requested, the parties agreed that Claimant would be allowed to testify in a narrative manner, followed by the Referee's questions and then Defendants' cross-examination. Defendants confirmed that the parties discussed the February 19, 2019 hearing at the February 11, 2019 pre-hearing telephone conference, and at the October 11, 2018 telephone conference.

Finally, the Commission is not persuaded that Defendants were shown special treatment. In arranging telephone conferences, the Referee will either select a "Meet Me" line whereby the participants can call a dedicated phone line to join a telephone conference, or the Referee will call both parties. If a "Meet Me" line is selected, parties cannot join the line until a Commission representative calls the "Meet Me" line. Here, the first Notice of Telephone Conference listed the "Meet Me" line where the parties could call to join the phone conference. On February 4, 2019, Referee Harper, acting for Referee Hummel, signed an Order Vacating and Resetting the Pre-Hearing Telephone Conference for February 11, 2019. The Order Vacating and Resetting the Pre-Hearing Telephone Conference did not provide a "Meet Me" phone number, making it unclear whether the parties should call a "Meet Me" line or wait for the Referee to initiate the conference call. In addition, if Claimant happened to call and be transferred directly to the Referee's phone line rather than the "Meet Me" line, then the Referee would have needed to call Defendants directly to allow Defendants to join the conversation. While it is unclear which line Claimant called, the Referee's courtesy to the Defendants was appropriate, particularly due to the lack of clarity in the Order Vacating and Resetting the Telephone Conference. The Commission routinely extends this courtesy to parties. Claimant has not shown good cause for his absence.

In accordance with Idaho Code § 72-719, **IT IS HEREBY ORDERED** that Claimant's request for reconsideration is DENIED. **IT IS SO ORDERED.**

DATED this __8th__ day of ____April____2019.

INDUSTRIAL COMMISSION

_____/s/_____
Thomas P. Baskin, Chairman

_____/s/_____
Aaron White, Commissioner

_____/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of April 2019, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail upon each of the following:

DOUGLAS ARLEDGE
PO BOX 1751
NAMPAID 83653-1751

R DANIEL BOWEN
BOWEN & BAILEY
PO BOX 1007
BOISE ID 83701-1007

cs-m

_____/s/_____
