

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JAMES ISH,

Claimant,

v.

IN & OUT PAINTING, INC.,

Employer,

and

STATE INSURANCE FUND,

Surety,

Defendants.

IC 2016-007219

**ORDER GRANTING
RECONSIDERATION**

Filed August 23, 2019

On August 6, 2019, Claimant contacted Commission staff and requested an addendum to the parties' July 17, 2019 lump sum settlement. On August 7, 2019, Claimant and Defendants filed their stipulated motion for reconsideration with Exhibits A-B and the affidavit of Claimant's counsel in support of the request. The parties jointly requested that the Commission vacate the July 17, 2019 *Modified Lump Sum Settlement* (Exhibit A) and approve and enter the *Stipulated Amended Lump Sum Agreement*, which was filed as Exhibit B.

DISCUSSION

Under Idaho Code § 72-718, a decision of the Commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated; provided, within twenty (20) days from the date of filing the decision any party may move for reconsideration or rehearing of the decision. J.R.P. 3(f) states that a motion to reconsider "shall be supported by a brief filed with the motion." Generally, greater leniency is afforded to *pro se* claimants. However, "it 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 a reconsideration. Davison v. H.H. Keim Co., Ltd., 110 Idaho 758, 718 P.2d 1196. 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)).

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, the parties stipulate and agree that it would be in their best interests to vacate the currently-entered *Modified Lump Sum Settlement* and accept the *Amended Modified Lump Sum Agreement* to allow the inclusion of the language below:

It is Claimant’s contention that he suffered permanent partial disability following an accident that occurred on 03/14/2016. At the time of the 03/14/2016 accident, Claimant was about 52.1 years old. Claimant asserts his life expectancy is presently 82.3 years. As such, he had an additional life expectancy of about 362.4 months after the date of the 03/14/2016 accident. Claimant’s life expectancy was extrapolated from the official website of the US. Social Security Administration: (<http://www.socialsecurity.gov/oact/population/longevity.html>.) As full settlement of any and all claims for workers’ compensation benefits concerning the above-referenced claims, Claimant has agreed to accept and surety has agreed to pay a lump sum of \$90,000.00 new money and agree to leave all benefits for reasonable future medical care open.

Claimant further asserts that this lump sum amount is compensation for permanent disability which will affect Claimant for the rest of his life. Claimant's remaining life expectancy is presently 322.8 months. Therefore, the total new money lump sum of \$90,000.00 less attorney's fees of \$22,500.00, will result in a net lump sum settlement to Claimant in the amount of \$67,500.00. In addition, Claimant's settlement is subject to a garnishment for child support in the amount of \$8,736.37. Claimant also asserts that the net lump sum payment of \$67,500.00 to Claimant (before the garnishment is applied) represents payment to Claimant of about \$209.10 per month for the 322.7 months of Claimant's remaining life expectancy, as calculated according to the official website of the U.S. Social Security Administration. Claimant contends that the net lump sum payment of \$67,500.00 to Claimant less the garnishment of \$8,736.37 would yield \$58,763.63 to Claimant as a result of this settlement. The receipt of \$58,763.63 represents payment to Claimant of about \$182.04 per month for the 322.8 months of Claimant's remaining life expectancy, as calculated according to the official website of the U.S. Social Security Administration.

Motion, 2-3.

Claimant contends that this additional language is necessary to accurately reflect the appropriate way the settlement funds should be characterized for consideration by the Social Security Administration. While the parties all agreed to its inclusion, it was mistakenly omitted from the currently-entered *Modified Lump Sum Agreement*. The Commission approves the parties' request to include this additional language in the *Amended Lump Sum Agreement*.

ORDER

Based on the foregoing reasons, the Commission **GRANTS** the parties' joint request for reconsideration; **VACATES** the July 17, 2019 *Modified Lump Sum Settlement* (Exhibit A) and **APPROVES** the Stipulated *Amended Lump Sum Agreement* (Exhibit B).

IT IS SO ORDERED.

DATED this 23rd day of August , 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 the 23rd day of August, 2019, a true and correct copy of the foregoing **ORDER GRANTING RECONSIDERATION** was served by regular United States Mail upon each of the following:

KIRSTEN OCKER
STATE INSURANCE FUND
PO BOX 83720
BOISE ID 83720-0044

WILL MURPHY
PO BOX 1390
HAYDEN LAKE, ID 83835-1390

_____/s/_____