

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

CONNIE LOPEZ,

Claimant,

v.

PERSONNEL PLUS, INC.,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

**IC 2014-028197**

**ORDER ON RECONSIDERATION**

**Filed January 28, 2020**

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On or about December 12, 2019 the Commission entered its Findings of Fact, Conclusions of Law, and Order in the matter above referenced. The Commission found that Claimant was not credible when describing her post-accident symptoms and functional capacity. Claimant's lack of credibility, correlated with the medical evidence of record, persuaded the Commission that Claimant did not suffer ratable permanent physical impairment as a consequence of the subject accident, therefore making further examination of her claim for disability moot. The Commission was aware that prior to hearing Defendants had paid the 24% upper extremity rating recommended by Dr. Esplin.

In her Motion for Reconsideration, Claimant requests that the Commission revisit its determination that Claimant has failed to prove entitlement to an impairment rating. However, Claimant does not contend that the Commission erred in declining to make an award of disability to Claimant in excess of her claimed entitlement to an impairment rating. Per Claimant, her only purpose in challenging the Commission's determination on the issue of impairment is to avert the

possibility that the Defendants may seek repayment from Claimant for the impairment rating paid by Defendants, but to which the Commission determined Claimant was not entitled. Claimant also avers that the issue of impairment though noticed for hearing, was waived by Defendants because it was not the subject of briefing. In response, Defendants contend that PPI is a component of PPD and that Claimant's disability was hotly contested. They further contend that their prior payment of the 24% upper extremity rating was made before Claimant's "perfidy" was revealed in subsequent investigations.

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.

Amongst the issues decided by the Commission was Claimant's entitlement to impairment and disability. As noted, prior to hearing, Defendants paid the 24% upper extremity rating recommended by Dr. Esplin. However, they did so before becoming aware of the numerous challenges to Claimant's credibility. At hearing, Defendants vigorously challenged Claimant's entitlement to any award of disability. They point out that impairment is but a component part of disability, as recently articulated in *Oliveros v. Rule Steel Tanks, Inc.*, 165 Idaho 53, 438 P.3d 291 (2019).

We agree with Defendants. That they did not focus their attention on challenging the 24% upper extremity rating awarded by Dr. Esplin does not amount to a waiver, or render the issue of impairment moot. Claimant bears the burden of proving all elements of her case, including proof of impairment which is a prerequisite to consideration of whether she is entitled to an award of disability over impairment per Idaho Code § 72-425 and Idaho Code § 72-430. *McCabe v. JoAnn Stores, Inc.*, 145 Idaho 91, 175 P.3d 780 (2007). Simply, the Commission's decision is premised on its conclusion that Claimant failed to adduce proof sufficient to justify an award of an impairment rating, notwithstanding that such an award had previously been paid by Defendants. Central to the Commission's decision was Claimant's demonstrated lack of credibility, if not false representation, concerning her symptoms and functional ability. While it is true that Dr. Esplin awarded Claimant a 24% upper extremity rating, this rating was obviously based on his acceptance of Claimant's presentation and subjective symptoms. The Commission was more persuaded by the opinion of Dr. Tintle, and accordingly, found no basis to make an award of impairment to Claimant.

Claimant contends that her only purpose in raising the issue at this juncture is to protect against a potential claim for reimbursement that may be raised by Defendants at some point. However, no such claim is before us, and we decline to entertain the same.

Having considered Claimant's arguments, we find no basis to amend our determination that Claimant has failed to prove her entitlement to an impairment rating, which is but another way to say that Claimant has failed to prove entitlement to disability.

Claimant's Motion for Reconsideration is DENIED.

DATED this \_\_28th\_\_ day of \_\_January\_\_, 2020.

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 \_\_28th\_\_ day of \_\_January\_\_, 2020, a true and correct copy of the foregoing **ORDER ON RECONSIDERATION** was served by regular United States Mail upon each of the following:

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\_\_\_\_\_/s/\_\_\_\_\_