

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

JUSTIN M. BARTLETT,

Claimant,

v.

KNIFE RIVER CORPORATION, Employer,  
and LIBERTY INSURANCE  
CORPORATION, Surety,

and

TITANIUM EXCAVATION, L.L.C.,  
Employer, and IDAHO STATE  
INSURANCE FUND, Surety,

Defendants.

**IC 2017-026840**

**IC 2018-021618**

**ORDER DENYING MOTION  
FOR RECONSIDERATION**

**Filed March 18, 2020**

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This matter is before the Idaho Industrial Commission (“Commission”) on Defendants Knife River Corporation (“Knife River”) and Liberty Insurance Corporation (“Liberty”) Motion for Reconsideration timely filed November 7, 2019, requesting a reconsideration of the Commission’s Findings of Fact, Conclusions of Law, and Order filed in the above-captioned case on October 18, 2019. Defendants Knife River and Liberty contemporaneously filed its Brief in Support of Motion for Reconsideration. Claimant, and Defendants Titanium Excavation L.L.C. (“Titanium”) and Idaho State Insurance Fund (“ISIF”) timely filed their responses on November 21, 2019 and November 25, 2019. Defendants Knife River and Liberty timely filed its Reply on November 27, 2019.

There is no dispute that Claimant suffers from a pre-existing back condition that contributes to the necessary medical treatment and proposed surgery. At hearing, Claimant alleged the condition’s permanent acceleration and exacerbation was industrial related. Defendants Knife

River and Liberty argued Claimant's need for treatment was/is wholly related to the pre-existing condition. Whereas Defendants Titanium and ISIF argued Claimant's need for treatment was due to his pre-existing condition and the August 3, 2016 Knife River accident.

In the October 18, 2020, Findings of Fact, Conclusions of Law, and Order, the Commission concluded that the August 3, 2016 Knife River industrial accident permanently accelerated or aggravated Claimant's underlying and pre-existing condition resulting in Claimant's need for medical treatment and proposed surgery.

In the Motion for Reconsideration, Defendants Knife River and Liberty first assert that the Referee's Recommendation should be reinstated because the Commission's decision is based on the unreliable and legally incompetent expert opinion of Dr. Montalbano. However, if the Commission believes Dr. Montalbano's opinion is sufficiently legal, then causation must be apportioned between the August 3, 2016 Knife River accident and the June 7, 2018 Titanium accident. Second, Defendants Knife River and Liberty argue that the Commission abused its discretionary powers by substituting its judgment and opinion in an arbitrary and capricious manner that violates procedural and substantive due process.

Claimant's response argues that the Motion for Reconsideration simply asks the Commission to reweigh evidence. Claimant also stated that the Commission is not required to adopt nor explain why a recommendation is not adopted. Defendants Titanium and ISIF responded by reiterating their argument from hearing; Claimant's need for medical care is wholly related to the pre-existing condition, and the August 3, 2016 Knife River accident.

### **DISCUSSION**

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, rather than rehashing evidence previously presented, a motion for reconsideration must present the Commission with new factual or legal reasons to support a reconsideration. *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. *Davison 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 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.

The assertion that Dr. Montalbano's opinion lacks the requisite level of certainty to be sufficiently legal is not persuasive. "Substantial and competent evidence is relevant evidence that a reasonable mind might accept to support a conclusion." *Curtis v. M.H. King Co.*, 142 Idaho 383, 385, 128 P.3d 920, 922 (2005), citing *Uhl v. Ballard Medical Products, Inc.*, 138 Idaho 653, 657, 67 P.3d 1265, 1269 (2003). The burden on workers compensation claimants is to establish by the weight of the evidence that his injury was the result of a compensable accident or occupational disease to "a reasonable degree of medical probability". Furthermore, "a worker's compensation

claimant has the burden of proving, by a preponderance of the evidence, all facts essential to recovery.” *Evans v. O’Hara’s, Inc.*, 123 Idaho 473, 479, 849 P.2d 934, 940 (1993). Additionally, “[t]he Industrial Commission, as a factfinder, is free to determine the weight to be given to the testimony of a medical expert.” *Eacret v. Clearwater Forest Industries*, 136 Idaho 733, 737, 40 P.3d 91, 95 (2013).

Defendants Knife River and Liberty have failed to present new factual or legal reasoning to support the assertion that Dr. Montalbano’s opinion is unreliable or legally insufficient. This argument is a reinstatement of arguments presented at hearing. The weight of medical testimony was previously considered by the Commission, and we find no reason to disturb those findings on reconsideration.

Since the Commission is not disrupting the weight given to Dr. Montalbano’s medical testimony, Defendants Knife River and Liberty assert the Commission “ignores critical portions of the record,” and “misapplies the legal standard as to what constitutes a compensable aggravation.” (Memorandum in Support of Motion for Reconsideration). This assertion is similarly an extension of arguments evaluated at hearing. Additionally, no new factual or legal reasoning was provided in support. As such, the Commission previously considered the record and determined that the June 7, 2018 Titanium accident was not a separate injury and therefore apportionment was not required. We find no reason to disturb this finding on reconsideration.

Finally, the Commission is not persuaded that discretionary powers were abused when the referee’s recommendation was not adopted. The Court has held that a referee’s findings of fact are merely a recommendation to the Commission. *Lorca-Merono v. Yokes Washington Foods, Inc.*, 137 Idaho 446, 50 P.3d 461, (Idaho 2002). Upon review, and without explanation, the Commission “can either adopt them or enter its own findings.” *Id.* Defendants Knife River and Liberty argue

that the Commission’s judgement and opinion is substituted without the “benefit of such critical observations made by the trier of fact.” (Memorandum in Support of Motion for Reconsideration). In this case, similar to *Lorca-Merono*, the Commission did not disturb the Referee’s findings and observations on Claimant’s presentation or credibility, but did enter its own findings based on weight given to other medical opinion. The Commission acted within its authority and power, and did not violate due process by substituting its own findings.

The Commission has reviewed the record with a focus on the concerns raised in the Motion for Reconsideration and concludes that the facts support the October 18, 2019 Findings of Fact, Conclusions of Law, and Order as written. For the foregoing reasons, the Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

DATED this \_\_\_18th\_\_\_ day of \_\_\_March\_\_\_, 2020.

INDUSTRIAL COMMISSION

Participated but not available for signature  
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 18th day of March, 2020, a true and correct copy of the foregoing **ORDER DENYING MOTION FOR RECONSIDERATION** was served by regular United States Mail upon each of the following:

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