

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

WILLIAM WATTS,

Claimant,

v.

SCHWAN'S FOOD SERVICE, INC.,

Employer,

and

HARTFORD INSURANCE CO. OF THE MIDWEST,

Surety,

Defendants.

IC 2016-005024

**ORDER ON MOTION FOR
RECONSIDERATION**

Filed September 30, 2019

On July 31, 2019, Defendants timely filed their motion for reconsideration on the decision and order issued on July 16, 2019 in the above captioned matter. Defendants argue that their due process rights were violated under the recent holding in *Ayala v. Robert J. Meyers Farms, Inc.*, 165 Idaho 355, 445 P.3d 164 (2019), issued July 12, 2019. Specifically, Defendants argue the Commission violated Defendant's due process rights by issuing a decision and order without the benefit of findings of fact, conclusions of law, and recommendation from the Referee who actually conducted the hearing. Claimant responds that the holding in *Ayala* is concerned with observational credibility and that there were no concerns of observational credibility in this case. Defendants did not file a reply.

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.

On May 25, 2018, Referee Powers conducted a hearing with the Claimant present and represented by counsel. At the outset of the hearing, Claimant’s attorney raised the issue of attorney’s fees, which led to a discussion of what issues would be decided in this bifurcated matter:

Referee Powers: Anything else regarding the issues, Mr. McBride?

Mr. McBride: No.

Referee Powers: Ms. Veltman?

Ms. Veltman: I believe you articulated the threshold issues. What other issues will you be deciding in the decision, for example?

Referee Powers: Those two.

Ms. Veltman: So - -

Referee Powers: Notice and causation.

Ms. Veltman: Are you going to address medical benefits or temporary disability benefits or...

Referee Powers: Well, apparently he missed no work up to this point. So, I guess we're not dealing with TTD. My theory would be that, depending upon which way the Commission goes on this particular issue, I don't see that impairment's right [sic-ripe] at this point. I don't - - in other words, I'm thinking if notice is found in McBride's favor, causation is found as far as we're going within Mr. McBride's favor, I'm thinking the rest of that might just work itself out. And I'd rather not - - it sounded to me like some of those issues are a little bit complicated.

Ms. Veltman: Okay.

Referee Powers: And I'd rather this kind of a threshold issue be decided with just that in mind - - you see what I mean - - without going into all the - -

Ms. Veltman: I do, but - -

Referee Powers: - - medicals with the exception of what medicals are going to be required for causation.

Mr. McBride: I can concur with that. You know, given the change in condition.

Ms. Veltman: Okay.

Mr. McBride: We'd just reserve PPI and PPD later even though it's

Ms. Veltman: That was - -

Mr. McBride: - - on issue by notice.

Ms. Veltman: Okay. On the TTD issue, I believe this was the first day I realized that the Claimant was pursuing temporary disability benefits.

Mr. McBride: We're not.

...

Mr. McBride: No, I'm not.

Ms. Veltman: Okay. Perfect. I will not argue with that.

Referee Powers: All right. So, we're good as far as issues go.

Mr. McBride: Yes.

Referee Powers: Ms. Veltman?

Ms. Veltman: Yes.

Tr., 10:13-12:4; 12:19-13:1. Thereafter, Defendants submitted their post-hearing brief, which listed Claimant's entitlement to medical benefits as a noticed issue, and Defendants argued the issue in their brief. (See Defendant's Response Brief, p. 14 "Given the above causation arguments regarding Claimant's peroneal tendon tear, Claimant is not entitled to medical benefits beyond his initial visit...").

After briefs were submitted, Referee Powers retired, and the matter was re-assigned to Referee Harper. The notice of re-assignment did not give Defendants or Claimant the right to request another hearing. Referee Harper prepared findings of fact, conclusions of law, and a recommendation, which the Commission chose not to adopt, and issued its own decision in the matter.

Despite Defendant's arguments in brief and the discussion at hearing, the decision and order did not address Claimant's entitlement to medical benefits and specifically reserved the issue: "[r]eserved issues include the extent of medical benefits..." (See Decision, p.2).

Defendants essentially argue that Referee Powers would have understood the above quoted exchange at hearing to include medical benefits as an issue, depending on the causation question, and would have appropriately ruled on medical benefits. We find no support for that assertion in the above quoted exchange. Nevertheless, the Commission agrees with Defendants

that *Ayala* holds that the referees who hear cases are to be the “eyes and ears” of the Commission and that they may have “insight and conclusions” that the Commission should have the opportunity to consider. *Ayala*, 445 P.3d 164, 170. Beyond observational credibility of Claimant, Powers was the Referee who issued the notice of hearing, participated in the discussion of the issues, and “lived with the case.” *Id.* Referee Powers never issued findings of fact, conclusions of law, and a recommendation before he retired, so his contextual understanding of the case was lost and could not be replicated absent a new hearing. *Ayala* is not just concerned with observational credibility, as Claimant argues, but with the “vital role that referees play in the adjudicatory process.” *Id.* Further, even if the Commission ultimately rejects a decision proposed by a referee who heard a case, the proposed decision may be important to the Court’s review of the Commission’s decision on appeal.

Based on the foregoing, Defendant’s motion for reconsideration is GRANTED. The case will be remanded and re-assigned to a new Referee who will conduct another hearing and prepare findings of fact, conclusions of law, and recommendation. IT IS SO ORDERED.

DATED this __30th__ day of __September__ 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 _30th_ day of _September_, 2019, a true and correct copy of the foregoing **ORDER ON MOTION FOR RECONSIDERATION** was served by regular United States Mail upon each of the following:

MICHAEL MCBRIDE
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_____/s/_____