

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BRENT AUSTIN

Claimant,

v.

BIO TECH NUTRIENTS

Employer,

and

EMPLOYERS COMPENSATION
INSURANCE COMPANY,

Surety,

Defendants.

IC 2008-038504

**ORDER DENYING REQUEST FOR
RECONSIDERATION**

Filed May 23, 2018

Employer/Surety (hereinafter “Defendants”) timely moved for reconsideration of the Commission’s March 26, 2018 Findings of Fact, Conclusions of Law, and Order. The Commission held that Idaho Code § 72-806 required Defendants to submit a Notice of Change of Status (NCOS) with the last check for Claimant’s PPI payments. Because Defendants did not make the required Idaho Code § 72-806 notice, the limitations provisions of Idaho Code § 72-706 are tolled by operation of Idaho Code § 72-604. Defendants argue on reconsideration that the Commission erred in finding that Idaho Code § 72-806 required a NCOS in these circumstances; second, even if Idaho Code § 72-806 required a NCOS, the Defendants “substantially complied” with Idaho Code § 72-806, which excuses any technical violation of the statute. Defendants contend that the Commission erred by failing to make a finding as to whether or not Defendants’ failure to issue the Idaho Code § 72-806 NCOS was a “willful failure” under Section 72-604. Defendants believe that their failure was not willful.

Claimant responded by arguing that the Commission correctly determined that Idaho Code § 72-806 required a NCOS, and that the Defendants' failure to provide such notice results in tolling of the one-year statute of limitations under Idaho Code § 72-604, making Claimant's filing of his Complaint on July 20, 2016 timely. Claimant also contended that the Commission correctly rejected the "substantial compliance" argument and correctly found Defendants' actions "willful." Claimant addressed these arguments in detail in briefing of the case, and cited to those pleadings on reconsideration.

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, "[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.

“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 a workers' compensation claimant 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).

Defendants issued their final payment of PPI to Claimant on June 22, 2015, without a NCOS. Claimant filed his Complaint on July 20, 2016, more than one year after the last payment of PPI benefits. Defendants argued that Claimant's Complaint was time-barred. The Commission held that Claimant's Complaint was not time-barred because Surety did not send Claimant a Notice of Change of Status (NCOS) under Idaho Code § 72-806, which requires written notice within fifteen (15) days of any change of status, including the cessation of monetary compensation benefits. Therefore, Idaho Code § 72-706 Limitation on time on application for hearing was tolled.

The March 26, 2018 Order outlines why the statutory scheme requires a NCOS when PPI benefits stop. The plain language of the statute treats the cessation or final payment of PPI benefits the same as other benefits, such as TTDs or medical benefits; therefore, the cessation of any of these benefits triggers the need for a NCOS from Defendants. Defendants correctly

observe that the Commission did not explicitly find Defendants' failure to provide a NOCS to be willful. Under Idaho Code §72-604, the statute of limitations for filing a claim is only tolled if the employer's failure to file the change of status is willful. However, such a finding of willfulness is implicit in our finding that the plain language of the statute requires a NOCS upon the cessation of any class of benefits. Therefore, we specifically conclude that Defendants' failure was willful as anticipated by Idaho Code § 72-604.

In Mead v. Swift Transportation, 2015 IIC 0041 (2015), the Commission noted the Defendants did not mistakenly believe a filing (of change of status) was not required in the situation presented therein. Instead, the Commission found that Defendants were aware of the legal requirements of the statute requiring filing, but failed to do so. Although not malicious such failure to file the document when aware such filing was required was willful.

The Idaho Supreme Court has held that the word "willful" implies a purpose or willingness to commit the act or make the omission referred to. While it does not require an intent to violate the law in the sense of having an evil or corrupt motive or intent, it does imply a conscious wrong. It is more nearly synonymous with "intentionally," "designedly," "without lawful excuse," and, therefore, not accidental. It refers to those who purposely, intentionally, consciously or knowingly fail to report, not those whose omission is accidental because of negligence, misunderstanding or other cause. See, Meyer v. Skyline Mobile Homes, 99 Idaho 754, 589 P.2d 1240 (1079); Bainbridge v. Boise Cascade Plywood Mill, 111 Idaho 79, 721 P.2d 179 (1986).

Here, because there is no ambiguity in the plain language of statute requiring a NOCS when there is a cessation of benefits, Defendants' failure to submit the NOCS was similarly without lawful excuse and willful.¹

¹ The facts of this case are distinguishable from Rodriguez v. Woodgrain Millwork, Inc., IC 2014-001999 (Filed Dec. 29, 2017)(Baskin, T., concurring). In Rodriguez, *supra*, the defendant did not believe it was required to file a FROI until Claimant actually sought medical treatment; medical care had been recommended but Claimant declined to seek immediate medical treatment, and it was initially unclear that her subsequent medical appointments were related to the accident. Here, the primary facts are undisputed. Claimant was entitled to PPI benefits. Defendants stopped paying PPI benefits after they satisfied their PPI obligation to Claimant, but did not file a NOCS.

