

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CHRISTINA PRESLEY,

Claimant,

v.

ELDWOOD STAFFING,

Employer,

and

ZURICH AMERICAN INSURANCE COMPANY,

Surety,

Defendants.

IC 2016-003351

ORDER DENYING RECONSIDERATION

Filed 11/7/2018

On August 1, 2018, the Industrial Commission filed a notice of intent to recommend dismissal without prejudice due to case inactivity. The Commission notified Claimant that he was expected to respond within twenty-one (21) days with an explanation why this case should not be dismissed. On October 2, 2018, the Commission issued an order dismissing Claimant's complaint, which was premised on Claimant's failure to respond to its notice of intent to recommend dismissal. Thereafter, on October 15, 2018, Claimant's Attorney filed a motion for reconsideration. Claimant's attorney explained that he and Defendants had been actively engaged in settlement negotiations and had already filed a lump sum settlement with the Commission at the time of receiving the dismissal. Defendants did not file a response.

On October 29, 2018, the Commission signed and approved the lump sum settlement in this case and dismissed the claim with prejudice.

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,

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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.

Claimant’s motion for reconsideration was prudent, but is moot in light of the Commission’s October 29, 2018 order approving the lump sum settlement. The Commission’s October 2, 2018 order dismissed the complaint, but did not dismiss the underlying claim. The parties were still free to settle the claim and they did so, with the approval of the Commission.

Based on the foregoing, **IT IS HEREBY ORDERED** that Claimant's request for reconsideration is DENIED. **IT IS SO ORDERED.**

DATED this __7th__ day of __November__ 2018.

INDUSTRIAL COMMISSION

_____/s/_____
Thomas E. Limbaugh, Chairman

_____/s/_____
Thomas P. Baskin, Commissioner

_____/s/_____
Aaron White, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on this __7th__ day of __November__ 2018, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail upon each of the following:

NATHAN T. GAMEL
1226 EAST KARCHER ROAD
NAMPA, ID 83687-3075

ERIC BAILEY
PO BOX 1007
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SNR _____/s/_____