

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

RYAN WALKER,

Claimant,

v.

BONNEVILLE JOINT SCHOOL DIST. NO.
83,

Employer,

and

IDAHO STATE INSURANCE FUND,

Surety,

Defendants.

IC 2010-014146

**ORDER GRANTING MOTION FOR
RECONSIDERATION**

Filed 12/24/2018

On September 18, 2018, McBride filed a motion to reconsider the Commission's August 30, 2018 order on attorney's fees in the above captioned matter. The August 30, 2018 order ordered as follows:

1. From any future award or settlement Claimant may receive in connection with the subject claim, McBride is entitled to recover, on a first dollar basis, \$11,250.00 as his attorney fee.
2. McBride has proven costs of suit of \$4,126.43. He has retained \$5,000 of Claimant's funds to pay anticipated costs of suit. McBride shall return to Claimant the sum of \$873.57.
3. If he has not done so, McBride shall pay to Claimant the sum of \$2,514.78, representing recovery of past medical benefits owed to Claimant, less McBride's 25% fee of \$838.26.
4. McBride has previously taken and is entitled to an attorney fee of \$11,210.54 on TTD benefits of \$44,842.14 and \$434.43 on a PPI award of \$1,737.72.

Order, p. 11. In his September 18, 2018 request for reconsideration, McBride requested further attorneys fees on medical benefits the Claimant received through his efforts and requested 30-60 days to secure documentation of the same. Claimant did not respond. On October 16, 2018, the

Commission sent a letter to McBride allowing him to submit additional documentation to verify his claim for attorney fees, and on November 26, 2018, McBride submitted a second affidavit with accompanying exhibits. Claimant did not respond.

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.

McBride requests an attorney fee award of \$4,658.53 representing 25% of \$18,594.13 and additional future fees, to be determined. McBride asserts that Claimant’s pain treatment was

terminated on November 14, 2013, that McBride sent a demand letter to the State Insurance Fund on April 29, 2015 to reinstate said treatment, and that it was reinstated on January 26, 2016 because of his efforts. Since that date, Claimant has received \$15,819.13 worth of Lyrica prescriptions and \$2,775.00 of medical treatment and will continue to receive such treatment and prescriptions into the future. McBride argues that because the August 30, 2018 order on attorney fees allows him a contingency fee, he should be awarded a contingency fee on past and future medical benefits.

McBride alleges that pursuant to the Commission's Order of August 30, 2018, he is entitled to an award of attorney's fees based on the medical benefits referenced above, and which Claimant obtained only as the result of McBride's intervention. We first address whether, or to what extent, our Order of August 30, 2018 anticipates that McBride be granted the additional relief he now seeks.

As developed in the Commission's Order on attorney fees dated August 30, 2018, McBride initially sought fees based on Paragraph 5 of his Attorney-Client Contract with Claimant. Pursuant to that section, if McBride cancelled his contract with Claimant due to "lack of cooperation" on the part of Claimant, McBride was entitled, at his option, to a fee based on either (a) attorney time spent on the case at the rate of \$225 per hour; or, (b) a 25% - 30% fee based on the highest offer received prior to termination of the attorney-client relationship.

The Commission found that Paragraph 5 did not apply to the facts of this case since we concluded that it could not be said that Claimant failed to cooperate with McBride in the prosecution of the case. However, even if we had found Paragraph 5 applicable, it would not endorse the fee McBride now seeks; the contingent fee alternative only recognizes a 25% or 30% fee on the last offer obtained before termination of the attorney-client agreement.

As we noted in the original decision, Paragraph 4 of the agreement recognizes that McBride was also free to terminate the attorney-client relationship without cause. However, Paragraph 4 did not address how or whether McBride should be paid for services rendered under such circumstances. The Commission's decision to allow McBride to recover the sum of \$11,250 from any future settlement or award obtained by Claimant in connection with this case represents the Commission's attempt to fashion a remedy where one does not specifically exist under the terms of the attorney-client agreement. Informing our judgment in this regard is the fact that the agreement also anticipated that had McBride stayed in Claimant's employ, he would have been entitled to a 25% or 30% fee on any settlement he was primarily or substantially responsible for obtaining for Claimant. We relied on these provisions of the attorney-client agreement to craft a remedy in the instant matter, since our system of jurisprudence anticipates that attorneys should be compensated for the services they render.

From McBride's uncontested affidavit we conclude that he was primarily or substantially responsible for securing the medication and medical treatment referenced above. Assuredly, Claimant has received value for this work, in the form of the medical care in question. Had McBride settled this case on behalf of Claimant, it would be hard to argue that in calculating his fee on the settlement, he would not be entitled to include the value of the medical services previously obtained "available funds" pursuant to IDAPA 17.02.028.033. However, on such a hypothetical settlement, there would be no way to obtain a fee on medical benefits that might be owed in the future.

From the foregoing, we conclude that McBride should be allowed to take a fee on the additional medical benefits he has procured to date. Accordingly, we amend the August 30, 2018 Order to include the payment of these fees out of any settlement or award that Claimant may yet

obtain in the underlying matter. We decline to order the payment of fees on prospective medical treatment or prescriptions.

ORDER

Based on the foregoing, the Order of August 30, 2018 is amended as follows:

1. From any future award or settlement Claimant may receive in connection with the subject claim, McBride is entitled to recover, on a first-dollar basis, \$15,908.53, as his attorney fee;
2. McBride has proven costs suit of \$4,126.43. He has retained \$5,000 of Claimant's funds to pay anticipated costs of suit. McBride shall return to Claimant, the sum of \$873.57.
3. If he has not done so, McBride shall pay to Claimant the sum of \$2,514.78, representing recovery of past medical benefits owed to Claimant, less McBride's 25% fee, or \$838.26.
4. McBride has previously taken, and is entitled to, an attorney fee of \$11,210.54 on TTD benefits of \$44,842.14 and at \$434.43 on a PPI award of \$1,737.72

DATED this ___24th___ day of ___December___, 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 the 24th day of December , 2018, a true and correct copy of the **ORDER GRANTING RECONSIDERATION** was served by regular United States Mail upon each of the following:

RYAN WALKER
PO BOX 66
IONA ID 83427

MICHAEL MCBRIDE
1495 E 17TH ST
IDAHO FALLS ID 83404

MATT PAPPAS
PO BOX 4747
POCATELLO, ID 83205

snr

_____ /s/ _____