

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARIA C BECERRA,

Claimant,

v.

CHOBANI GLOBAL HOLDINGS, INC.,

Employer,

and

SENTRY CASUALTY COMPANY,

Surety,
Defendants.

IC 2013-030449

**ORDER ON
RECONSIDERATION**

Filed 4/25/18

This matter is before the Idaho Industrial Commission (“Commission”) on Claimant’s timely Motion for Reconsideration and supporting Memorandum filed on March 13, 2018. Defendants timely filed their Memorandum and Response to Claimant’s Motion for Reconsideration on March 26, 2018. Claimant did not file a reply.

In its February 23, 2018 decision, the Commission held:

1. Claimant is entitled to the first two epidural injections she received as a trial, but nothing further. Claimant has not shown she is entitled to a change of physician to Dr. Spackman.
2. The Claimant has proven her entitlement to 3% whole person permanent physical impairment (PPI);
3. Claimant has proven her entitlement to 29% permanent physical disability (PPD), without apportionment;
4. Apportionment under Idaho Code § 72-406 does not apply in this matter;
5. Claimant has not shown that the Commission should retain jurisdiction.

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, "it 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. Davison v. H.H. Keim Co., Ltd., 110 Idaho 758, 718 P.2d 1196. 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)).

Claimant requests reconsideration of specific language in the underlying Decision:

“53. The Commission is persuaded by the medical testimony of Drs. Hajjar and Spackman [sic: Bates] that Claimant is medically stable, and is not entitled to further medical care. Therefore, there is an insufficient basis to retain jurisdiction of the matter.” Claimant avers that ¶53 is written such as to “appear to deny Claimant further medical care of any sort” despite other findings suggesting a narrower holding; that Claimant had failed to demonstrate that she was entitled to the medical care recommended by Dr. Spackman.

Defendants assert that it is unnecessary to revise the language of the Decision, arguing that “it goes without saying that Claimant retains the right to petition the Commission...for further medical benefits, provided she can prove that she requires the medical care subsequent to

February 28, 2018 which is causally related to the accident and which is reasonable under Idaho Code § 72-432(1). And it goes without saying that Defendants retain all their rights under the Workers' Compensation Law to contest any such further claims." Under the context of the Decision, Defendants argue, Claimant did not prove her entitlement to additional medical care as a causal result of the industrial accident.

Here, the Commission determined that the industrial accident caused a "lumbar sprain / strain with components of soft tissue damage and pain in the pelvic or sacroiliac region." (See Findings of Fact, Conclusions of Law and Order at ¶ 32). Having made this finding, the Commission then addressed the extent and degree to which Claimant was entitled to further medical care for this condition. Specifically, the Commission addressed Claimant's contention that she was entitled to such additional care as recommended by Dr. Spackman. Following review of the medical evidence and opinions of record, the Commission eventually concluded:

Given the voluminous medical objections, the Commission is not inclined to find ongoing epidural steroid injections reasonable. Drs. Hajjar and Bates have persuasively testified that ongoing epidural steroid injections are not reasonable treatment for Claimant's industrial accident, and that Claimant is medically stable. Claimant is entitled to the epidural injections she received on June 17, 2015 and September 15, 2015, but nothing further.

(See Findings of Fact, Conclusions of Law and Order at ¶ 37). Therefore, the Commission concluded that except for two epidural steroid injections, Claimant failed to prove that she was entitled to the care recommended by Dr. Spackman. However, Paragraph 53, quoted above, speaks in much broader terms.

For their part, Defendants appear to concede that the decision should not be read to foreclose the possibility that Claimant may be entitled to further care for her work-related condition; Defendants simply contend that this is implicit in the decision, and that the decision

CERTIFICATE OF SERVICE

I hereby certify that on 24th day of April, 2018, a true and correct copy of the foregoing **ORDER ON RECONSIDERATION** was served by regular United States Mail upon each of the following:

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_____/s/_____
