

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CARY WHITNEY,

Claimant,

v.

SYSCO CORPORATION,

Employer,

and

AMERICAN ZURICH INSURANCE COMPANY,

Surety,

Defendants.

IC 2017-003966

**ORDER GRANTING RECONSIDERATION
AND VACATING DISMISSAL**

Filed 7/5/18

On May 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 June 1, 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 June 11, 2018, Claimant's Attorney filed a motion for reconsideration and attached affidavit. Claimant's attorney explained that he drafted a responsive memorandum to the notice of intent to recommend dismissal, but learned the same was not filed when he received the Commission's dismissal. Defendants did not file a response.

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.

Claimant’s attorney avers he is and has been actively pursuing this case and offered specific examples of such, including, *inter alia*, a phone conversation with his client the day prior to receiving the dismissal. Defendants did not object to reinstating Claimant’s Complaint or raise any statute of limitations arguments. The Commission finds that Claimant promptly acted to mitigate the consequences of his oversight. In addition, Claimant has shown good cause for reinstatement of the Complaint.

On its own motion, and in accordance with Idaho Code § 72-719, the Commission finds it necessary to vacate its June 1, 2018 order dismissing Claimant’s complaint. Based on the foregoing, **IT IS HEREBY ORDERED** that Claimant’s request for reconsideration is

GRANTED, and the Commission's order dismissing Claimant's complaint, filed June 1, 2018, is hereby **VACATED. IT IS SO ORDERED.**

DATED this __5th__ day of _____ July _____ 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 ___5th___ day of _____July_____2018, a true and correct copy of the foregoing **ORDER GRANTING RECONSIDERATION AND VACATING DISMISSAL** was served by regular United States Mail upon each of the following:

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

SUSAN VELTMAN
1703 W HILL RD
BOISE, ID 83702

SNR

_____/s/_____
