

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ERIC BENTON,

Claimant,

v.

GABE'S PAINTING LLC, a/k/a GABE'S
PAINTING & PROPERTY RESTORATION,
LLC, GABRIEL REYES and YOLANDA
GARCIA REYES,

Employer.

IC 2015-017100

**ORDER GRANTING CLAIMANT'S
MOTION FOR RECONSIDERATION
AND TO SET ASIDE ORDER
DISMISSING COMPLAINT**

FILED

OCT 07 2022

INDUSTRIAL COMMISSION

On August 3, 2022, the Commission dismissed Claimant's complaint without prejudice under Rule 12(B) of the Judicial Rules of Practice and Procedure established by the Industrial Commission effective July 1, 2022. *See* Order Dismissing Complaint. On August 5, 2022, Claimant filed a timely Motion asking the Commission to reconsider and set aside the order dismissing the complaint. A supporting affidavit accompanied the motion. Defendants did not file a response.

DISCUSSION

Under Idaho Code § 72-718, a decision of the Commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated; provided, within twenty (20) days from the date of filing the decision any party may move for reconsideration or rehearing of the decision. On a motion for reconsideration, the moving party "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 a reconsideration. *Davidson 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)).

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.

Background

The procedural timeline of this case is as follows. The Industrial Commission filed its Notice Recommending Dismissal on January 19, 2022. Claimant's counsel drafted an Objection to Dismissal on January 25, 2022. *See* Affidavit of Bryan Storer, Ex. A. This Objection was faxed to Defendants the same day. However, through inadvertence, the document was not filed with the Industrial Commission. Defendant has continued to timely pay Claimant's income benefits with the last check being issued to Claimant on July 22, 2022. As a result of Claimant's apparent failure to respond to Notice Recommending Dismissal, Claimant's Complaint was dismissed.

Analysis

There are several instances where the Commission has found it appropriate to set aside an order dismissing a claimant's complaint; *see Robertson v. Vernon Steel, Inc.*, IC 2018-001726 (Idaho Ind. Comm. October 11, 2019) (granting a timely motion for reconsideration when claimant's apparent failure to respond to the Notice of Intent to Dismiss was likely due to a mail error, was an isolated incident, and claimant promptly acted to mitigate the consequences of such); *Whitney v. Sysco Corp.*, IC 2017-003966 (Idaho Ind. Comm. July 5, 2018) (granting a timely motion for reconsideration when, due to claimant's counsel's oversight, a response to a Notice of Intent to Dismiss was not filed and counsel promptly acted to mitigate the consequences of such);

Padilla v. Prestige Fence & Landscape Co., IC 2012-031446 (Idaho Ind. Comm. December 10, 2018) (granting a timely motion for reconsideration when claimant's counsel, through inadvertence or mistake, did not follow established office procedure and was unaware of the Notice of Intent to Dismiss and failed to file a response).

Claimant's Objection to the Dismissal was not filed with the Commission due to inadvertence. However, Defendant was served with the Objection, as well as the motion for reconsideration, and did not respond. Claimant acted promptly to rectify the mistake once it was discovered. Claimant also highlights the judicial economy of setting aside the dismissal in this case, as not doing so would require Claimant to re-file his complaint and initiate the litigation over again. Such a result would be an inefficient use of resources for all parties involved. Claimant has provided good cause to show that the Commission's Order Dismissing Complaint of August 3, 2022 should be set aside.

ORDER

Based on the foregoing reasons, Claimant's Motion for Reconsideration is GRANTED. The August 3, 2022, Order Dismissing Complaint is set aside. **IT IS SO ORDERED.**

DATED this 6th day of October, 2022.



INDUSTRIAL COMMISSION



Aaron White, Chairman



Thomas E. Limbaugh, Commissioner



Thomas P. Baskin, Commissioner

ATTEST:

Kamerron Slay
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the ^{7th}~~6th~~ day of October, 2022, a true and correct copy of the **ORDER GRANTING CLAIMANT'S MOTION FOR RECONSIDERATION AND TO SET ASIDE ORDER DISMISSING COMPLAINT** was served by regular United States Mail and Electronic Mail upon each of the following:

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Kamerron Slay