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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 06/26/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

EVAN F. EVANS, ) No. 1 CA-IC 11-0081  
)  
Petitioner, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication  
THE INDUSTRIAL COMMISSION OF ) - Rule 28, Arizona  
ARIZONA, ) Rules of Civil  
) Appellate Procedure)  
Respondent, )  
)  
WACKENHUT, )  
)  
Respondent Employer, )  
)  
NEW HAMPSHIRE c/o GALLAGHER )  
BASSETT, )  
)  
Respondent Carrier. )  
\_\_\_\_\_ )

Special Action--Industrial Commission

ICA CLAIM NO. No. 20092-740081

CARRIER NO. No. 000891-086680-WC-01

Administrative Law Judge Paula R. Eaton

**AWARD AFFIRMED**

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Evan F. Evans In <i>Propria Persona</i> , Petitioner	Phoenix
Andrew Wade, Chief Counsel The Industrial Commission of Arizona Attorney for Respondent	Phoenix

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G E M M I L L, Judge

¶1 Evan Evans ("Claimant") seeks special action review of the decision of the Administrative Law Judge ("ALJ") in which she resolved conflicting medical evidence by finding that Claimant's industrial accident did not cause a compensable permanent impairment. Claimant raises one issue for our review: whether there was sufficient evidence to support the ALJ's findings. For the reasons that follow, we affirm the ALJ's award.

**FACTUAL AND PROCEDURAL HISTORY**

¶2 Claimant sustained injuries after a fall while working the graveyard shift on September 21, 2009. Claimant alleges that he has a permanent impairment to his left shoulder and neck (cervical spine) as well as carpal tunnel syndrome. On October 18, 2010, Claimant's employer's insurance carrier, Gallagher Bassett, issued a Notice of Claim discharging Claimant and stating there was no permanent disability to Claimant. Claimant subsequently requested review before the Industrial Commission of Arizona on December 30, 2010. After formal hearings and testimony from Claimant and multiple physicians, the ALJ issued

a Decision Upon Hearing and Findings and Award on September 8, 2011.

¶3 The ALJ made the following pertinent findings:

I find the opinions of Dr. Guidera and Dr. Nauman to be more probably correct and well founded. Based upon the testimony of Dr. Guidera and Dr. Nauman, I find that the [Claimant's] condition related to the industrial injury was medically stationary as of November 22, 2010 with no permanent impairment. I further find that the [Claimant's] carpal tunnel condition is unrelated to the subject industrial injury.

¶4 On September 26, 2011, Claimant requested a review of the ALJ's Decision Upon Hearing and Findings and Award. On November 2, 2011, the Industrial Commission affirmed the Decision Upon Hearing and Findings and Award, concluding it was "fully supported by the evidence[.]"

¶5 Claimant timely filed this appeal and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(2) (2003), 23-951(A) (2012),<sup>1</sup> and Arizona Rule of Procedure for Special Actions 10.

#### **ANALYSIS**

¶6 The applicable standard of review requires that we consider the evidence in a light most favorable to upholding the ALJ's award. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶

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<sup>1</sup> We cite the current versions of statutes when no material revisions have occurred since the events in question.

16, 41 P.3d 640, 643 (App. 2002). We will not disturb the ALJ's findings unless her conclusions "cannot be reasonably supported on any reasonable theory of evidence." *Phelps v. Indus. Comm'n*, 155 Ariz. 501, 506, 747 P.2d 1200, 1205 (1987). Moreover, the ALJ determines witness credibility, *Royal Globe Ins. Co. v. Indus. Comm'n*, 20 Ariz. App. 432, 434, 513 P.2d 970, 972 (1973), and has a duty to "resolve all conflicts in the evidence and to draw inferences from that evidence." *Johnson-Manley Lumber v. Indus. Comm'n*, 159 Ariz. 10, 13, 764 P.2d 745, 748 (App. 1988).

¶7 We understand Claimant's argument to be that the ALJ should have accepted Dr. Scott's and Dr. Scalice's findings that Claimant's injuries were permanent and causally related to his industrial injury -- conclusions which were contrary to two other physicians' findings. In a report dated January 15, 2010, Dr. Scalice expressed his belief that Claimant's left shoulder injury qualified as a permanent impairment. Dr. Scalice did not testify in person, but his medical reports were included in the record. Drs. Scott, Guidera, and Nauman testified before the ALJ.

¶8 We briefly summarize the findings made by the doctors below. Dr. Scott testified that Claimant had permanent impairments to his shoulder and neck (cervical spine) caused by his fall. Dr. Scott did not evaluate Claimant's carpal tunnel

issues.

¶19 Dr. Guidera, a hand surgeon specialist, testified that Claimant did have carpal tunnel syndrome but that he could not say with reasonable probability that it was causally related to Claimant's fall.

¶10 Dr. Nauman, after reviewing Dr. Scalice's notes and other records, opined that Claimant's injury to his left elbow did not warrant a finding of a permanent impairment. Dr. Nauman further opined that Claimant's cervical spine injury was unrelated to the industrial injury. He also concluded that Claimant's shoulder injury was "not specifically related to the industrial injury." Finally, Dr. Nauman believed that Claimant did not suffer from carpal tunnel syndrome, and if he did, it was not casually related to the industrial injury suffered by Claimant.

¶11 Faced with conflicting opinions from the medical experts, the ALJ is charged with resolving the conflicting testimony and is in the best position to do so. See *Kaibab Indus. v. Indus. Comm'n*, 196 Ariz. 601, 605, ¶ 10, 2 P.3d 691, 695 (App. 2000) ("it is the ALJ, not this court, who has the responsibility of resolving conflicts in expert opinions, and we will affirm an ALJ's resolution of conflicting opinions absent an abuse of his discretion"). All testifying doctors evaluated

Claimant personally. They also reviewed various medical reports from other professionals as well as MRIs, x-rays, and other records.

¶12 Based on this record and our standard of review, we conclude there was sufficient evidence to support the ALJ's findings. The ALJ did not abuse her discretion by determining that Claimant's injuries did not warrant a permanent injury finding and that Claimant's injuries were not causally related to his on-the-job fall on September 21, 2009. In short, we find no error.

#### CONCLUSION

¶13 For the foregoing reasons, we affirm the ALJ's findings and award because they were sufficiently supported by the evidence.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN C. GEMMILL, Presiding Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
PETER B. SWANN, Judge

\_\_\_\_\_/s/\_\_\_\_\_  
ANDREW W. GOULD, Judge