

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE
CITED 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: 06/21/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

SUZANNE CAMPBELL,) No. 1 CA-IC 11-0086
)
Petitioner Employee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
)
THE INDUSTRIAL COMMISSION OF ARIZONA,) (Not for Publication -
) Rule 28, Arizona Rules
Respondent,) of Civil Appellate
) Procedure)
ALLEGIANT AIR, LLC,)
)
Respondent Employer,)
)
FEDERAL INSURANCE CO./CHUBB SERVICES)
CORP.,)
)
Respondent Carrier.)
)

Special Action - Industrial Commission

ICA Claim No. 20103-010206

Carrier Claim No. WC2010344884

Administrative Law Judge Joseph L. Moore

AWARD AFFIRMED

J. Wayne Turley, P.C.
By J. Wayne Turley
Attorney for Petitioner Employee

Mesa

Andrew Wade, Chief Counsel
The Industrial Commission of Arizona
Attorney for Respondent

Phoenix

By Pamela A. Treadwell-Rubin and Elizabeth L. Warner
Attorneys for Respondents Employer and Carrier

B R O W N, Judge

¶1 This is a special action review of an Industrial Commission of Arizona ("ICA") consolidated award and decision upon review denying reopening and for temporary disability benefits. The principal issue raised is whether the administrative law judge ("ALJ") made legally sufficient findings to support the award. Because we conclude that the ALJ was not required to specifically explain his resolution of conflicting medical opinions, we affirm.

BACKGROUND

¶2 Suzanne Campbell was a flight attendant for Allegiant Air. Her duties included heavy lifting of cases of water bottles and soda cans and totes full of beer and ice. She had no history of prior back injuries, although she had been diagnosed with scoliosis as a teenager and wore a "girdle" for several months.

¶3 On October 23, 2007, Campbell sustained a back strain while lifting beverages. She filed a workers' compensation claim and received conservative medical treatment. A spinal injection completely relieved her pain, and she returned to her

regular work as a flight attendant. Campbell received no additional medical treatment and performed her regular work until she sustained a second industrial back injury.

¶14 Campbell testified that on September 24, 2010, she lifted a tote filled with 30 beers and felt a "snap" in her back followed by "excruciating pain." She filed a new workers' compensation claim, which was accepted for benefits. Following an independent medical examination ("IME"), her claim was closed with no permanent impairment. She timely requested a hearing and asserted she was entitled to receive continuing medical benefits because her industrially-related condition was not stationary.

¶15 Campbell also filed a petition to reopen her October 23, 2007 industrial injury claim. The petition to reopen was denied for benefits, and Campbell requested another hearing. The ALJ issued a consolidated notice of hearing on both the reopening and continuing benefits issues.

¶16 Three ICA hearings were held for testimony from the claimant, her treating physician, Mark Bradley Kabins, M.D., and the independent medical examiner, Paul Edgar Palmer, M.D. Following the hearings, the ALJ entered a consolidated decision denying reopening of the 2007 claim and awarding temporary disability benefits on the 2010 claim. Campbell timely

requested administrative review, and the ALJ summarily affirmed the award. Campbell then brought this special action, challenging the decision only as to the September 24, 2010 claim. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(2) (2003), 23-951(A) (2012), and Arizona Rule of Procedure for Special Actions 10.

DISCUSSION

¶7 Campbell does not challenge the ALJ's denial of her petition to reopen her 2007 injury claim. Instead, she appeals only the resolution of the 2010 claim, asserting that the ALJ's findings supporting the award of temporary disability compensation benefits were legally insufficient. Specifically, Campbell argues that the ALJ's award fails to comply with the standard set forth in *Post v. Indus. Comm'n*, 160 Ariz. 4, 770 P.2d 308 (1989), because the ALJ failed to explain why he adopted the testimony of Dr. Palmer instead of Dr. Kabins. In order to receive continuing medical benefits on her 2010 claim, Campbell had the burden of proving that her physical condition is causally related to her industrial injury and that she is not yet medically stationary. See, e.g., *Lawler v. Indus. Comm'n*, 24 Ariz. App. 282, 284, 537 P.2d 1340, 1342 (1975). Establishing a causal relationship usually requires expert medical testimony. *McNeely v. Indus. Comm'n*, 108 Ariz. 453,

455, 501 P.2d 555, 557 (1972). This is particularly true for back and spine injuries which are not apparent to laymen. *Western Bonded Prods. v. Indus. Comm'n*, 132 Ariz. 526, 527-28, 647 P.2d 657, 658-59 (App. 1982).

¶18 In *Post*, the ALJ was presented with conflicting medical testimony regarding the claimant's work-related injury. 160 Ariz. at 5, 770 P.2d at 309. The ALJ "made no factual findings of consequence, resolved no conflicts in the evidence, and set forth no conclusions applying law to fact." *Id.* The court therefore concluded that the ALJ's decision was deficient because it did not specify the basis for the ultimate disposition and the evidence supporting that basis. *Id.* at 7, 770 P.2d at 311. The court further stated that "the judge must resolve all conflicts in the evidence, especially when the conflicts involve expert medical testimony." *Id.* at 8, 770 P.2d at 312. The court went on to state that this does not mean a "lack of findings on a particular issue . . . invalidate[s] an award per se[.]" *Id.* at 7, 770 P.2d at 311. But if the appellate court must "speculate" about the basis for the award or "assume a factfinder's role," then the award must be set aside because it is "so lacking in specificity" that we cannot review it. *Id.* at 7, 9, 770 P.2d at 311, 313.

¶19 In this case, the ALJ heard medical testimony from

Drs. Kabins and Palmer. Dr. Kabins, a board certified orthopedic surgeon, first saw Campbell on a referral on December 14, 2007.¹ He took a history, performed an examination, and reviewed X-ray and MRI films. The doctor diagnosed preexisting degenerative scoliosis and the 2007 industrial injury with resultant back pain and right lower extremity radiculopathy. He recommended conservative treatment.

¶10 Dr. Kabins next saw Campbell on November 5, 2010, for her September 2010 industrial injury. He took an interim history and reexamined Campbell. He found that her "objective findings of abnormality had changed significantly" between his examinations, and he concluded that the October 2010 injury had aggravated Campbell's preexisting scoliosis. The doctor testified that Campbell's condition continued to deteriorate, and he performed a three-stage surgery in March and April 2011 to improve her pain and function by stabilizing her spine and preventing future progression of the curvature. Dr. Kabins opined that the September 2010 industrial injury aggravated Campbell's preexisting condition and contributed to the need for surgery.

¶11 Dr. Palmer testified that he is a board certified

¹ On cross-examination, Dr. Kabins testified that he had a felony conviction in January 2010 for misprision of a felony, but that he currently was licensed in Arizona and in good standing.

orthopedic surgeon, and he has diagnosed and treated scoliosis patients for over forty years. He is also a member of the Scoliosis Research Society, an international group of doctors involved with spinal deformities. Dr. Palmer saw Campbell twice for IMEs. On February 26, 2008, Dr. Palmer received a history of Campbell's preexisting scoliosis and her October 2007 industrial injury, and he reviewed her X-ray and MRI films. He testified that the industrial injury caused a sprain/strain superimposed on the preexisting scoliosis.

¶12 Dr. Palmer reexamined Campbell on January 11, 2011, and reviewed her interim medical history. He testified that his opinion remained unchanged and that there had been no aggravation of Campbell's underlying scoliosis. He explained that neither of her industrial injuries was of sufficient magnitude to cause an aggravation. Further, he stated that any aggravation caused by the injuries was temporary and not permanent. He found no objective evidence that Campbell required active medical care or surgery.

¶13 It is the ALJ's duty to resolve all conflicts in the medical evidence and to draw warranted inferences. *Royal Globe Ins. Co. v. Indus. Comm'n*, 20 Ariz. App. 432, 434, 513 P.2d 970, 972 (1973). In resolving medical conflicts, the ALJ may consider the qualifications and backgrounds of the expert

witnesses and their experience in diagnosing the type of injury incurred. *Carousel Snack Bar v. Indus. Comm'n*, 156 Ariz. 43, 46, 749 P.2d 1364, 1367 (1988). Further, the testimony of the treating physician is not entitled to greater weight than that of an independent medical examiner. See *Walters v. Indus. Comm'n*, 134 Ariz. 597, 599, 658 P.2d 250, 252 (App. 1982).

¶14 In this case, the ALJ entered an eight-page award with ten separate findings of fact. In his decision, he summarized the testimony of both Drs. Kabins and Palmer and reviewed both of their medical records and reports. The ALJ then acknowledged his responsibility to resolve the experts' conflicting opinions and found Dr. Palmer's "opinions to be more well-founded and more probably correct." We find that this finding complies with the specificity required under *Post*. Although *Post* requires an ALJ to state findings of fact that support his ultimate conclusion, an ALJ is not required to set forth his reasons for rejecting competing evidence. See *Post* at 7-8, 770 P.2d at 311-12. Nor is an ALJ required to make a specific finding on every issue, as long as he resolves the ultimate issues in the case. See *Cavco Indus. v. Indus. Comm'n*, 129 Ariz. 429, 435, 631 P.2d 1087, 1093 (1981). Therefore, although it might have been helpful for the ALJ to explain why he found Dr. Palmer's testimony more persuasive than Dr. Kabin's, he was not required

to do so.

¶15 Campbell also argues that because the medical testimony was taken telephonically, more thorough findings should be required of the ALJ. This court previously has addressed and accepted the adequacy of telephonic versus in-person testimony. See *T.W.M. Custom Framing v. Indus. Comm'n*, 198 Ariz. 41, 48, 6 P.3d 745, 752 (App. 2000). In addition, ALJs may conduct hearings in any manner that will achieve substantial justice, and they are "not bound by common law or statutory rules of evidence or by technical or formal rules of procedure." A.R.S. § 23-941(F) (2012). Therefore, the ALJ did not err in accepting the doctors' testimonies telephonically and was not required to make further findings because he did so.

CONCLUSION

¶16 For the foregoing reasons, we affirm the ALJ's award of temporary disability compensation benefits.

/S/

MICHAEL J. BROWN, JUDGE

CONCURRING:

/S/

MAURICE PORTLEY, PRESIDING JUDGE

/S/

PHILIP HALL, JUDGE