

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: 10/10/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

HANNA SAYEGH,) 1 CA-IC 12-0076
)
Petitioner,) Department B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
THE INDUSTRIAL COMMISSION OF) Rule 28, Arizona Rules
ARIZONA,) of Civil Appellate
) Procedure)
Respondent,)
)
TECHNIQUEX,)
)
Respondent Employer,)
)
COLORADO CASUALTY,)
)
Respondent Carrier.)
_____)

Special Action - Industrial Commission

ICA Claim No. 20111-360704

Carrier Claim No. 504469010

Paula R. Eaton, Administrative Law Judge

AWARD AFFIRMED

Hanna Sayegh, *In Propria Persona*

Phoenix

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

Phoenix

N O R R I S, Judge

¶1 In this special action review of an Industrial Commission of Arizona award and decision upon review, petitioner Hanna Sayegh argues the administrative law judge ("ALJ") should not have found his medical condition stationery with no permanent impairment effective August 29, 2011. In support of this argument, Sayegh first asserts the ALJ should not have accepted and relied on the testimony of Irwin Shapiro, M.D., a board-certified specialist in orthopedics, who evaluated him at the request of respondents, and instead, should have adopted and relied on the testimony of Sanjay Patel, M.D., a board-certified specialist in physical medicine and rehabilitation, who evaluated Sayegh at the request of his counsel. We disagree.

¶2 Dr. Shapiro examined Sayegh on August 1, 2011 and January 12, 2012. Based on his examinations of Sayegh and review of Sayegh's medical records, Dr. Shapiro diagnosed Sayegh with degenerative disc disease at multiple levels of the spine. At the hearing, he explained the industrial injury had temporarily aggravated the degenerative disc disease but it had resolved as of August 29, 2011 with no permanent impairment.

¶13 Although Dr. Patel disagreed with Dr. Shapiro's conclusions, when as here, an ALJ, charged with the responsibility of resolving conflicts in medical testimony, adopts one expert's opinion over another, we will not disturb that resolution unless it is "wholly unreasonable." *Gamez v. Indus. Comm'n*, 213 Ariz. 314, 316, ¶ 15, 141 P.3d 794, 796 (App. 2006) (citation omitted). When reviewing the appropriateness of an ALJ's ruling, we are not allowed to weigh the evidence; we are obligated to consider it in the light most favorable to sustaining the award. *Perry v. Indus. Comm'n*, 112 Ariz. 397, 398, 542 P.2d 1096, 1097 (1975). Pursuant to these authorities, the ALJ's adoption of the medical evidence presented by respondents through Dr. Shapiro was not "wholly unreasonable," and we are not at liberty to reject the ALJ's factual determinations.

¶14 Sayegh also appears to argue we should consider additional medical evidence which he appears to have submitted to the ALJ after the ALJ issued the award and decision upon review. This material is not properly before us, and our review is limited to the evidence presented to the ALJ at the hearing. *Cf. Torres v. Indus. Comm'n*, 16 Ariz. App. 404, 407, 493 P.2d 1209, 1212 (1972) (upon review, appellate court will not consider affidavit submitted after the close of evidence and not subject to cross-examination); *Morris v. Indus. Comm'n*, 3 Ariz.

App. 393, 396, 414 P.2d 996, 999 (1966) (“[M]atters placed in the record after the hearing may not be considered by the Commission in reaching its decision based upon that hearing, absent the consent of all parties . . .”).

¶15 Finally, Sayegh appears to argue we should set aside the award because the ALJ was not the same ALJ who decided he had sustained a compensable injury. Compensability and entitlement to benefits are separate issues and can be decided in separate proceedings before different ALJs. See *Indus. Indem. Co. v. Indus. Comm’n*, 162 Ariz. 503, 508, 784 P.2d 709, 714 (App. 1989).

¶16 For the foregoing reasons, we affirm the award.

/s/

PATRICIA K. NORRIS, Judge

CONCURRING:

/s/

PETER B. SWANN, Presiding Judge

/s/

DONN KESSLER, Judge