IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JEFFREY B. LOOMER, M.D., *Petitioner Employer,*

CONTINENTAL CASUALTY COMPANY C/O
CNA CLAIMPLUS INC., *Petitioner Carrier,*

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*

CAROLYN RIVERA, *Respondent Employee*.

No. 1 CA-IC 16-0031
FILED 3-21-2017

Special Action - Industrial Commission

ICA Claim No. 20151-560227
Carrier Claim No. E2C11911 B2
Jacqueline D. Wohl, Administrative Law Judge

AWARD AFFIRMED

COUNSEL

Jones, Skelton & Hochuli, PLC, Phoenix
By Gregory L. Folger, Jennifer B. Anderson
Counsel for Petitioners Employer and Carrier

Industrial Commission of Arizona, Phoenix
By Jason M. Porter
Counsel for Respondent

Dix & Forman, P.C., Tucson
By J. Stephen Dix
Counsel for Respondent Employee

MEMORANDUM DECISION

Judge Patricia K. Norris delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge Paul J. McMurdie joined.

N O R R I S, Judge:

¶1 In this special action from an Industrial Commission of Arizona ("ICA") award and decision upon review, Petitioner Employer, Jeffrey B. Loomer, M.D., and Petitioner Carrier, Continental Casualty Company c/o CNA Claimplus, Inc. (collectively, unless otherwise specified, "Petitioners"), argue the Administrative Law Judge ("ALJ") should not have found that Respondent Employee, Carolyn Rivera, sustained a compensable injury. Reviewing the ALJ's decision and award under the governing standards of review, we disagree. *See Young v. Indus. Comm'n*, 204 Ariz. 267, 270, ¶ 14, 63 P.3d 298, 301 (App. 2003) (appellate court defers to ALJ's factual findings but reviews questions of law de novo) (citation omitted); *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16, 41 P.3d 640, 643 (App. 2002) (appellate court considers evidence in a light most favorable to upholding ALJ's award) (citation omitted); *Bergmann v. Indus. Comm'n*, 199 Ariz. 164, 166, ¶ 9, 15 P.3d 276, 278 (App. 2000) (appellate court independently reviews whether facts as found by ALJ support ALJ's legal conclusion that claim is compensable). Therefore, we affirm the award.

PROCEDURAL AND FACTUAL HISTORY

¶2 In April 2015, a pharmaceutical representative visited Dr. Loomer's office and extended an invitation to Dr. Loomer and his staff, Sabrina, his office manager, and Rivera, his medical biller, to attend a dinner program hosted by the representative's company at a local restaurant. Dr. Loomer told Sabrina and Rivera the program would be on

"coding" and they could attend if they wanted to, but they were under no obligation to go.

¶3 Dr. Loomer, Sabrina, and Rivera attended the dinner program. As Rivera was leaving the restaurant, after the program concluded, she slipped on the restaurant's flooring, fell on her left knee, and injured it**.**

¶4 The Carrier denied Rivera's claim for workers' compensation benefits. Rivera requested a hearing to protest the Carrier's denial of her claim. Based on the evidence presented by the parties, and after considering their post-hearing memoranda, the ALJ entered an award finding Rivera's claim compensable. The Carrier requested administrative review, but the ALJ summarily affirmed the award.

DISCUSSION

I. In the Course of Employment

¶5 On appeal, Petitioners first argue the ALJ's conclusion that Rivera's injury occurred in the course of her employment for Dr. Loomer is unsupported by the evidence. Specifically, Petitioners argue because Dr. Loomer derived no benefit from her attendance at the program and neither required nor encouraged her to attend the program, her injury was not in the course of employment. The evidence of record, however, supports the ALJ's factual findings that Rivera's attendance at the program provided Dr. Loomer with a benefit, and he "authorized" her to attend the program. Accordingly, the facts as found by the ALJ support the ALJ's conclusion that Rivera's injury occurred in the course of her employment for Dr. Loomer. *See Bergmann*, 199 Ariz. at 166, ¶ 9, 15 P.3d at 278.

¶6 In addition to other requirements, *see infra* II, to be compensable, a claimant must sustain an injury in the course of employment. *See* Ariz. Rev. Stat. ("A.R.S.") § 23-1021(A) (2016). "In the course of" pertains to the time, place, and circumstances of the injury in relation to the employment. *Bergmann*, 199 Ariz. at 166, ¶ 9, 15 P.3d at 278. A claimant bears the burden of proving all elements of a compensable claim. *Toto v. Indus. Comm'n*, 144 Ariz. 508, 512, 698 P.2d 753, 757 (App. 1985).

¶7 Arizona courts have identified several factors that should be considered in determining whether an employee's injury at an off-premises recreational or educational activity occurred "in the course of" the

employee's employment. These factors include whether: the activity inured to the substantial benefit of the employer; the employee engaged in the activity with the permission, acquiescence, or at the direction of the employer; the employer knowingly furnished the "instrumentalities" by which the activity was to be carried out; the employee could reasonably expect compensation or reimbursement for the activity; and the activity was primarily for the employee's personal enjoyment. *Jayo v. Indus. Comm'n,* 181 Ariz. 267, 270, 889 P.2d 625, 628 (App. 1995) (citation and quotation omitted); *Johnson Stewart Min. Co., Inc. v. Indus. Comm'n*, 133 Ariz. 424, 426-27, 652 P.2d 163, 165-66 (App. 1982) (citation omitted); *Truck Ins. Exchange v. Indus. Comm'n*, 22 Ariz. App. 158, 524 P.2d 1331 (1974). The factors identified by Arizona courts are consistent with the factors identified by a leading commentator:

> An activity is related to the employment if it carries out the employer's purposes or advances its interests directly or indirectly. Under the modern trend of decisions, even if the activity cannot be said in any sense to advance the employer's interests, it may still be in the course of employment if, in view of the nature of the employment environment, the characteristics of human nature, and the customs or practices of the particular employment, the activity is in fact an inherent part of the conditions of that employment.

2 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* § 20.00, at 20-1 (2016), cited with approval in *Jayo*, 181 Ariz. at 270, 889 P.2d at 628.

¶8 Here, the ALJ's finding that Rivera's attendance at the program provided a benefit to Dr. Loomer is reasonably supported by the evidence. At the hearing, Rivera explained that after Dr. Loomer saw a patient, he completed a "superbill" that identified the diagnosis codes, modifiers, and ICD-9 codes[1] for the patient. Although Dr. Loomer decided

[1]This stands for the International Classification of Diseases. For background information, *see International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM)*, CENTERS FOR DISEASE CONTROL

which codes to use, Rivera was responsible for entering this information into the office computer using the office's medical billing software. Rivera testified she had to be familiar with the coding because she was responsible for communicating with the insurance companies and Medicare if they rejected a claim submitted by Dr. Loomer based on a code he had selected. Rivera explained:

> [I]t's true, that Dr. Loomer is the one who provided [the coding] information for me to enter into the computer. But that's not where my job [ended]. I [had] to make sure that . . . none of those [codes got] rejected[;] if they [were], I [had] to find out if [I made an error]. Then I also [had] to follow up with the insurance companies. If the insurance companies rejected a claim for whatever reason, I [had] to follow up with them and [ask] them why did you reject this code, why are you not paying this code, what can I do. Once I determined the answer to that, then I would take it to Dr. Loomer and let him know what the problem was.

Dr. Loomer also testified that during the time Rivera worked for him, she was the only person who spoke to insurance companies—a task that was part of her job.

¶9 Rivera testified she learned ICD-9 was going to be replaced with ICD-10. Despite this up-coming replacement, Sabrina told Rivera she would not receive any training on the new codes. Because Rivera knew she was not going to receive any training on the new codes, when she learned about the pharmaceutical company's program she "felt obligated to go there and to see what I could learn."

¶10 Conversely, Dr. Loomer testified Rivera did not need to be familiar with ICD codes, because "coding is not billing." He stated he provided Rivera with the information she needed to input into the computer. Further, Dr. Loomer testified that if a claim was rejected, Rivera gave it to him to investigate and recode before she resubmitted it.

AND PREVENTION (Feb. 2, 2017), https://www.cdc.gov/nchs/icd/icd10cm.htm.

¶11 As the foregoing reflects, and as the ALJ recognized in the award, the parties disagreed about whether Rivera's attendance at the program provided Dr. Loomer with a substantial benefit. As the sole judge of witness credibility, *Holding v. Indus. Comm'n*, 139 Ariz. 548, 551, 679 P.2d 571, 574 (App. 1984), the ALJ accepted Rivera's description of her employment responsibilities and obligations and rejected Dr. Loomer's argument that, "it was not necessary for [Rivera] to have knowledge of the coding system because it was the doctor who provides codes for the bills."

¶12 The ALJ's finding that Dr. Loomer "authorized" Rivera's attendance at the program is also reasonably supported by the evidence. Although the record reflects Dr. Loomer did not require or encourage Rivera to attend the program, he nevertheless discussed the program with her, knew she intended to go to the program, and never told her she should not go to the program because "it was not part of her job." Indeed, Dr. Loomer described the program to his insurance agent as a "non-mandatory work-related lecture."

¶13 On this record, we agree with the ALJ's conclusion that Rivera was injured in the course of her employment for Dr. Loomer. To do her job, Rivera needed to know the ICD codes; she knew the codes were going to be revised later in the year, and Dr. Loomer was not going to provide her with any training. Rivera went to the program to learn about the new codes so she could be a more efficient employee. As the ALJ found, Rivera's attendance at the program provided a benefit to Dr. Loomer and, as the ALJ also found, Dr. Loomer "was aware of her planned attendance and authorized it."

II. Arising Out of Employment

¶14 Petitioners also argue Rivera failed to show her injury arose out of her employment for Dr. Loomer. As Rivera points out, Petitioners did not raise this argument before the ALJ. Indeed, in their post-hearing brief and in requesting review after the ALJ issued the award, Petitioners identified one, and only one, issue: whether Rivera established she had sustained an injury while "in the course of [her] employment" as required under A.R.S. § 23-1021. Accordingly, Petitioners have failed to preserve this argument for our review.

¶15 Nevertheless, the ALJ found Rivera's injury arose out of her employment. Because the ALJ addressed this issue, we briefly address it.

¶16 The "arising out of" requirement, *see* A.R.S. § 23-1021, is a broad concept that refers to the origin or cause of the injury. *Delbridge v. Salt River Project Agr. Imp. & Power Dist.*, 182 Ariz. 46, 50-51, 893 P.2d 46, 50-51 (App. 1994) (citation omitted). "If the injuries *had their origin in a risk connected with the employment and were a consequence of that risk*, they arose out of the employment." *Id*. at 51, 893 P.2d at 51 (citation omitted). An injury also "arises out of" employment if the injury is incidental to the employee's discharge of the duties of the employment. *PF Chang's v. Indus. Comm'n,* 216 Ariz. 344, 347, ¶ 15, 166 P.3d 135, 138 (App. 2007) (citing *Royall v. Indus. Comm'n*, 106 Ariz. 346, 349, 476 P.2d 156, 159 (1970)). Although these formulations of the arising out of requirement vary, they share a common thread: A causal relation must exist between the injury and the employment. *E.g., Murphy v. Indus. Comm'n*, 160 Ariz. 482, 485, 774 P.2d 221, 224 (1989).

¶17 Petitioners argue Rivera's injury did not arise out of employment because her injury was not causally related to a necessary risk or danger inherent in her work for Dr. Loomer *as a medical biller*. That argument focuses too narrowly on Rivera's work as a medical biller and ignores Arizona law that an injury "arises out of" employment if the injury is incidental to the employee's discharge of the duties of the employment. Here, as discussed, Rivera attended the program to learn about the changes to the codes so she could perform her job responsibilities more proficiently and effectively. Her attendance at the program provided Dr. Loomer with a benefit and, although he did not order her to attend the program, he was aware of her planned attendance and authorized it, as discussed above. Under these circumstances, Rivera's injury was incidental to Rivera's discharge of the duties of her employment for Dr. Loomer.

CONCLUSION

¶18 For the foregoing reasons, we affirm the ALJ's award.

AMY M. WOOD • Clerk of the Court
FILED: AA