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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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ROY DUNKELBARGER, *Petitioner,*

*v.*

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*

CITY OF MESA, *Respondent Employer,*

CITY OF MESA, *Respondent Carrier.*

No. 1 CA-IC 16-0070  
FILED 6-6-2017

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Special Action - Industrial Commission

ICA Claim No. 20153-240501  
Carrier Claim No. WC2015018919  
Marceline A. Lavelle, Administrative Law Judge

**AWARD AFFIRMED**

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COUNSEL

Jerome, Gibson, Stewart, Stevenson, Engle & Runbeck, P.C., Phoenix  
By Darryl Engle  
*Counsel for Petitioner Employee*

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

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By R. Todd Lundmark  
*Counsel for Respondents Employer and Carrier*

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**MEMORANDUM DECISION**

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Jon W. Thompson joined.

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**M c M U R D I E**, Judge:

¶1 This is a special action review of an Industrial Commission of Arizona (“ICA”) award and decision upon review for a noncompensable mental stress claim. On appeal, the petitioner employee (“Claimant”) argues that the administrative law judge (“ALJ”) erred by finding Claimant was not subjected to unexpected, unusual, or extraordinary stress while performing his work as a police detective for the self-insured respondent employer, City of Mesa (“Mesa”). Because the record supports the ALJ’s conclusion that Claimant was not exposed to any unexpected, unusual, or extraordinary stress in the performance of his work, we affirm the award.

**JURISDICTION AND STANDARD OF REVIEW**

¶2 This court has jurisdiction pursuant to Arizona Revised Statutes (“A.R.S.”) sections 12-120.21(A)(2), 23-951(A) (2017), and Arizona Rule of Procedure for Special Actions 10.<sup>1</sup> In reviewing findings and awards of the ICA, we defer to the ALJ’s factual findings, but review questions of law *de novo*. *Young v. Indus. Comm’n*, 204 Ariz. 267, 270, ¶ 14 (App. 2003). We consider the evidence in a light most favorable to upholding the ALJ’s award. *Lovitch v. Indus. Comm’n*, 202 Ariz. 102, 105, ¶ 16 (App. 2002).

**FACTS AND PROCEDURAL BACKGROUND**

¶3 On August 6, 2015, Claimant filed a workers’ compensation claim for a mental stress injury that he alleged arose out of viewing child pornography images as part of his job in Mesa’s computer forensics unit (“CFU”). Mesa denied his claim for benefits, and he timely requested an

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<sup>1</sup> We cite to the current version of applicable statutes or rules when no revision material to this case has occurred.

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ICA hearing. The ALJ held a hearing and heard testimony from Claimant, Claimant's coworker, Cindy Boccock, and Sergeant Peter Bina, the CFU supervisor.

¶4 Claimant testified that he had worked as a Mesa police officer for 23 years until his retirement in January 2016. He began as a patrol officer and worked through a variety of positions, including 15 years as a SWAT sniper, before joining the video services unit in 2009. With the video services unit, Claimant was tasked with video production, both creating training videos and extracting and manipulating crime scene videos. In July 2015, the video services unit was eliminated, and Claimant was transferred to the CFU.

¶5 In the CFU, Claimant continued to perform work as a certified forensic video analyst, but he also performed Internet Crimes Against Children ("ICAC") investigations. Most ICAC cases began with cyber tips received from the National Center for Missing and Exploited Children ("NCMEC"). Electronic service providers, such as Google, Facebook, Yahoo, etc., scan their systems and send anything that could be child pornography to the NCMEC. Using IP address locators, cyber tips are forwarded to the closest investigating agency such as Mesa's CFU.

¶6 Mesa's CFU had six detectives, including Claimant and Sergeant Bina, assigned to handle the cases. When Claimant transferred to the CFU, he had never seen child pornography and he had no training in ICAC investigations. Claimant stated he probably had less exposure to child pornography than other CFU detectives during his assignment, because he continued to perform his forensic video work and only did ICAC investigations when he had "spare time."

¶7 Claimant stated his mental stress injury occurred on August 6, 2015. He explained he had been assigned 15 to 20 cyber tips that day and spent the last "couple hours" of his shift "looking at image after image after image" and "being stunned at the abuse" he saw. Claimant stated that his wife had been a victim of child abuse, which may have "compounded" his reaction to the images. He testified that after August 6, he noticed weight gain and increased stress, heart rate, and blood pressure. Claimant stated that after attending a mandatory PTSD training session on October 22, 2015, he recognized his own symptoms and spoke to the presenter, Shelley Kaufman, Ph.D. He began treatment with Dr. Kaufman and filed a workers' compensation claim.

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¶8 Cindy Bocock had worked as a detective in the CFU for six years. She recalled occasional conversations with Claimant regarding the challenge of viewing child pornography, and she told him it would get better over time. Ms. Bocock stated she worked out every morning to de-stress, and she had never had a problem with the ICAC work. She testified she knew of one other CFU detective who had experienced some emotional issues, but she noted that detective had participated in a particularly troublesome investigation.

¶9 Sergeant Bina testified he had worked as a CFU detective for five years and had handled child pornography cases. He was the CFU's sergeant from July through November 2015, while Claimant worked there. Sergeant Bina stated he assigned ICAC cases to the CFU detectives on an equal basis. But when he realized that Claimant had very limited training in ICAC investigations, he began to give him fewer and less difficult cases to process. Sergeant Bina testified Claimant had a total of 15 ICAC cases while he was in the CFU. He first became aware of Claimant's emotional reaction to the cases on November 10, 2015, when he was told about Claimant's injury claim.

¶10 Sergeant Bina estimated that the Mesa police department had 775 officers. Of those officers, six detectives worked with child pornography images in the CFU, and some of the detectives in the sex crimes unit ("SCU") dealt with similar images. He testified the SCU had 18 detectives on three squads.

¶11 After the hearing, the ALJ received post-hearing memoranda from the parties. She then entered an award for a noncompensable claim. Claimant timely requested administrative review, and the ALJ supplemented and affirmed the award. Claimant brought this special action.

**DISCUSSION**

¶12 Workers' compensation claims for mental health injuries fall within A.R.S. § 23-1043.01(B), and are not compensable "unless some unexpected, unusual or extraordinary stress related to the employment" was a "substantial contributing cause of the injury." The Claimant has the burden of proof. *Owens v. Indus. Comm'n*, 129 Ariz. 79, 82 (App. 1981). In that regard, Claimant must prove that (1) the work-related stress was a substantial contributing cause of the mental health injury, and (2) the stress was unexpected, unusual, or extraordinary. *Findley v. Indus. Comm'n*, 135 Ariz. 273, 276 (App. 1983).

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¶13 In this case, the psychological experts agreed that Claimant had sustained a mental stress injury that “ar[ose] out of and in the course of employment,” A.R.S. § 23-1043.01(B), and the parties stipulated that no medical evidence was necessary. *See* Ariz. Admin. Code (“A.A.C.”) R20-5-152.A (parties to an ICA proceeding may stipulate to any fact or issue after a party files a request for hearing). The sole remaining issue was whether Claimant’s mental stress injury was causally-related to his work within the meaning of the statute, i.e., was the stress “unexpected, unusual or extraordinary.”

¶14 The requirement of “unexpected, unusual or extraordinary stress” is a legal causation standard. *See Barnes v. Indus. Comm’n*, 156 Ariz. 179, 182 (App. 1988); accord 2 Arthur Larson and Lex K. Larson, *Larson’s Workers’ Compensation Law* § 46.03[1], at 46-5 (2016). A higher causation burden is imposed to balance a Claimant’s substantial personal contribution. *Larson*, § 46.03[2], at 46-5 to 46-6.<sup>2</sup> Therefore,

the test for determining the measure of emotional stress is not a subjective one (i.e., how the employee reacts to the job), but an objective one (i.e., do the duties imposed by the job subject the claimant to greater stress than his fellow employees).

*Barnes*, 156 Ariz. at 182 (quoting *Archer v. Indus. Comm’n*, 127 Ariz. 199, 203 (App. 1980)).

¶15 In this case, Claimant argues his “fellow employees” consisted of the entire Mesa police department and not just the other CFU detectives. We find guidance for interpreting the term “fellow employees” in *Barnes*, where we held “there simply must be a hypothetical ‘reasonable person’ working alongside claimant by whom we can judge the stressfulness of work-related events and the reasonableness of the employee’s reaction thereto.” 156 Ariz. at 183 (emphasis added). We thus interpret “fellow employees” to mean employees performing the same type of work as the Claimant.

¶16 Our conclusion is also supported by *Sloss v. Industrial Commission*, 121 Ariz. 10 (1978), a case in which the claimant was a highway patrolman who suffered chronic anxiety due to work-related stress, but whose condition was determined to be non-compensable. 121 Ariz. at 11.

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<sup>2</sup> For the same reason, the rule that the employer takes the employee as he finds him does not apply to mental health injuries. *See Archer v. Indus. Comm’n*, 127 Ariz. 199, 204 (App. 1980).

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The claimant's anxiety manifested itself in a physical condition that was diagnosed as gastritis. *Id.* The claimant filed claims both for his physical and emotional conditions. *Id.* In rejecting the claim, the ALJ found the stress to which the claimant was exposed in his employment as a highway patrolman was the same as, and no greater than, that imposed upon all other highway patrolmen *in the same type of duty*. *Id.* at 11-12. Therefore, he was exposed to nothing other than the usual, ordinary, and expected incidents of his job as a highway patrolman. *Id.* at 12. The supreme court affirmed, finding that job-related emotional stress is not compensable unless the emotional stress is unexpected, unusual, or extraordinary. *Id.* at 11.

¶17 Two cases in which qualitatively different stress has been recognized are *Fireman's Fund Insurance Company v. Industrial Commission*, 119 Ariz. 51 (1978) and *Pima Community College v. Industrial Commission*, 137 Ariz. 137 (App. 1983). In *Fireman's Fund*, the supreme court found that an insurance underwriter sustained a compensable mental breakdown because she was singled out for different and more demanding jobs than other employees in her office. 119 Ariz. at 54-55. The insurance agency employer tripled its accounts from 400,000 to 1,200,000 in one year, without adding additional employees to handle the increased work load, and the claimant took on additional responsibilities. *Id.* at 52. Shortly thereafter, the employer purchased another insurance agency and acquired 500 more new accounts and an additional employee. *Id.* The claimant was given supervisory responsibility for the new employee and responsibility for merging the books of the two agencies. *Id.* The court recognized that this represented selective and adverse conduct by the employer toward this one employee, which resulted in a compensable mental injury claim. *Id.* at 54-55.

¶18 In *Pima Community College*, the claimant was the only male employee supervised by a female supervisor. 137 Ariz. at 138. He also was the only employee without an assigned area of responsibility, and he was constantly forced to fill in for other employees and learn new jobs without time to become proficient at any job. *Id.* There was also evidence his supervisor swore and threw things at him and required him personally to report illness, although the supervisor allowed other employees' spouses to report illness. *Id.* at 138-39. This court found the evidence established qualitatively different treatment of this claimant by the employer and affirmed the finding of a compensable mental stress claim. *Id.* at 140.

¶19 Claimant in the instant case relies heavily on *Tucson Unified School District v. Industrial Commission*, 198 Ariz. 133 (App. 2000). However,

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the claimant in *Tucson Unified* testified that his school's principal and vice principal had repeatedly harassed him, but the ALJ found that he had not been "intentionally singled out or harassed by the school's administration," and was thus not subjected to "unexpected, unusual, or extraordinary stress related to his employment." 198 Ariz. at 134, ¶ 3 (internal quotations omitted). Although the ALJ concluded the claimant's physical injury was compensable under A.R.S. § 23-1021 (general compensation statute), *Id.* at ¶ 4, this court reversed, holding that "in order for the physical symptoms of mental stress to be compensable, the claimant must show that the mental injury was compensable under § 23-1043.01(B)." *Id.* at 135, ¶ 10. Because the claimant failed to make such a showing, both his mental and physical maladies were noncompensable. *Id.*; see *Sloss*, 121 Ariz. at 11; *Pima Cmty. Coll.*, 137 Ariz. at 140.

¶20 In this case, the evidence established Claimant was exposed to fewer ICAC investigations than his fellow CFU detectives. Although there was evidence that one other CFU detective had been referred for counseling, that detective had been investigating a case that was unique enough that everyone involved with the case was similarly required to go to counseling. Here, there is no evidence Claimant was required to work on an "unexpected" or "unusual" case. And there was no evidence that Sergeant Bina treated Claimant any differently than the other detectives in his unit. Furthermore, Claimant's testimony that his personal reaction to the ICAC work may have been amplified by his wife's history of having been a victim of child abuse suggests that his reaction was the result of a personal, non-work related experience, rather than an unusual or unexpected work event.

CONCLUSION

¶21 For the foregoing reasons, we agree with the ALJ's conclusion that Claimant's job duties did not expose him to any greater stress than his fellow employees. Accordingly, we affirm the ALJ's award of a noncompensable mental stress claim.



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