

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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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JARRELL HILLS, *Petitioner Employee,*

*v.*

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*

INNOVATIVE PLASTICS WEST CORP., *Respondent Employer,*

HANOVER AMERICAN INSURANCE CO., *Respondent Carrier.*

No. 1 CA-IC 21-0008

FILED 11-16-2021

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Special Action - Industrial Commission  
ICA Claim No. 20193-570430  
Carrier Claim No. 83-00053489-000  
Jeanne Steiner, Administrative Law Judge

**AWARD AFFIRMED**

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COUNSEL

Jarrell Hills, Phoenix  
*Petitioner Employee*

Industrial Commission of Arizona, Phoenix  
By Gaetano J. Testini  
*Counsel for Respondent*

Norton & Brozina PC, Phoenix  
By Rachel Parise Brozina  
*Counsel for Respondent Employer/Carrier*

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**MEMORANDUM DECISION**

Judge Brian Y. Furuya delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Michael J. Brown joined.

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**FURUYA**, Judge:

¶1 Jarrell Hills challenges an Industrial Commission of Arizona (“ICA”) award and decision upon review in which an administrative law judge (“ALJ”) denied his claim for workers’ compensation benefits. The ALJ found Hills had not shown by a preponderance of the evidence that he sustained a compensable injury. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 On April 13, 2019, Hills was working as a baler for Innovative Plastics West Corp. (“IPWC”), loading and unloading recycled plastics while wearing protective footwear, when, as Hills alleges, a heavy metal pole fell onto his feet, and he struggled to stand up or walk. He ceased working, received an MRI in May 2019, underwent an independent medical examination in September 2019 by Dr. George Gendy, and had surgery on his left foot in January 2020, which was performed by his treating physician, Dr. Katherine Kennedy.

¶3 In December 2019, eight months after the accident, Hills filed a claim for workers’ compensation benefits for injuries to both feet. Hanover American Insurance Company denied the claim, and Hills requested a hearing, at which both lay witnesses and medical experts testified.

¶4 Hills testified that on the day of the accident, he reported his injury to his main supervisor, Gary Johnson. Johnson testified to the contrary. Though IPWC’s company procedures normally require such incidences be documented with an accident report, there was no such documentation involving Hills for “any type of incident” on that date.

¶5 Dr. Gendy testified to his September 2019 independent medical examination of Hills, including review of Hills’ medical history dating back years before the alleged April 13, 2019 injury. Notably, Dr. Gendy pointed out that before any alleged heavy-pole accident, Hills had previously complained of chronic lower back pain and a foot fungus infection on April 3, 2019, to his then primary medical provider, Ferdinand

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Briones, a nurse practitioner. Dr. Gendy also found no substantiation of Hills' claims that he went to the emergency room on the day of the accident or visited Briones the day after the accident. Rather, an April 22, 2019 progress note from Briones stated that Hills sought disability paperwork related to chronic lower back pain, with no mention of any feet issue until May 14, 2019 – where Hills “requested to have his foot, neck[,] and low[er] back checked as pain ha[d] been worsening” and an MRI was ordered. Dr. Gendy testified that his examination of Hills revealed flat feet and a bunion – neither condition being related to his work – and that Hills experienced foot pain with no physiologic connection (e.g., foot pain while moving hip). Dr. Gendy further testified that even if a heavy pole had fallen on Hills' feet, it would not have caused a “plantar plate rupture” as Dr. Kennedy opined, but rather Hills would have sustained a contusion requiring no treatment.

¶6 Dr. Kennedy testified about her treatment of Hills beginning in November 2019. Per her testimony, Hills informed Dr. Kennedy he was following-up on a work injury that occurred in April and that he filed an incident report with his employer on the date of injury. Dr. Kennedy testified she “never saw that report.” And while she initially believed, after reviewing MRI records, that Hills sustained injuries to both feet consistent with the work-related accident described by Hills – namely plantar plate tears – she changed her opinion at the hearing. Dr. Kennedy opined “it would be difficult” to say within a reasonable degree of medical probability that Hills' feet injury related to the heavy-pole accident, given the lack of an incident report, her limited review, which included only the MRI records from May 2019 but not earlier treatment records, and her examination of Hills did not occur until about seven months after the alleged work injury.

¶7 The ALJ resolved the conflicting medical evidence by adopting Dr. Gendy's opinion “as being most probably correct and well-founded.” The ALJ found that Hills did not establish by a preponderance of the evidence that he sustained a compensable injury on April 13, 2019 and issued an award denying Hills' claim for workers' compensation benefits. Hills requested administrative review, asserting that he could prove his work injury did not occur on April 13, 2019, but on April 3, contrary to his workers' compensation claim and hearing testimony. The ALJ affirmed the award.

¶8 Hills timely petitioned for review, and we have jurisdiction pursuant to Arizona Revised Statutes (“A.R.S.”) §§ 12-120.21(A)(2) and 23-951(A), and Arizona Rule of Procedure for Special Actions 10.

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DISCUSSION

¶9 On review of an industrial commission award, we defer to the ALJ's factual findings because the ALJ is the sole judge of witness credibility, resolves conflicting evidence, and draws all warranted inferences. *Ibarra v. Indus. Comm'n*, 245 Ariz. 171, 174, ¶ 12 (App. 2018) (internal citations omitted). We will affirm if, considering the evidence in the light most favorable to upholding the decision, reasonable evidence supports the award. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16 (App. 2002) (citation omitted).

¶10 Hills maintains he was treated unfairly because his claim for workers' compensation was denied. Hills' argument essentially equates to a request to reweigh the evidence on appeal, which we will not do. *Simpson v. Indus. Comm'n*, 189 Ariz. 340, 342 (App. 1997) (citing *Salt River Project v. Indus. Comm'n*, 128 Ariz. 541, 544-45 (1981)). Hills bore the burden of proving compensability; that is, his sustaining of an injury by accident "arising out of" and "in the course of" his employment. *Ibarra*, 245 Ariz. at 174, ¶ 14 (citing A.R.S. § 23-1021). But here, reasonable evidence supports the ALJ's findings and conclusion that Hills failed to meet his burden, *see supra* ¶¶ 2-7.

CONCLUSION

¶11 For the foregoing reasons, the award is affirmed.



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