

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

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 03/02/2010  
PHILIP G. URRY, CLERK  
BY: GH

ROY A. ROGERS, )  
 ) 1 CA-IC 09-0032  
 )  
Petitioner, ) DEPARTMENT D  
 )  
v. ) **MEMORANDUM DECISION**  
 ) Not for Publication -  
THE INDUSTRIAL COMMISSION OF ) (Rule 28, Arizona Rules  
ARIZONA, ) of Civil Appellate Procedure)  
 )  
Respondent, )  
  
COMPLETE CONSTRUCTION, )  
 )  
Respondent Employer, )  
 )  
SCF ARIZONA, )  
 )  
Respondent Carrier. )

Special Action - Industrial Commission

ICA CLAIM NO. 98215-325992

CARRIER NO. 9186704

Anthony Halas, Administrative Law Judge

**AWARD AFFIRMED**

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Roy A. Rogers <i>In Propria Persona</i>	Phoenix
Andrew Wade, Acting Chief Counsel, The Industrial Commission of Arizona Attorneys for Respondent	Phoenix
James B. Stabler, Chief Counsel, SCF Arizona	Phoenix

By Kenna L. Finch  
Attorneys for Respondents Employer and Carrier

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T H O M P S O N, Judge

¶1 Roy A. Rogers (petitioner) appeals the Industrial Commission of Arizona's decision not to reopen his case. Petitioner asserts that the Administrative Law Judge (ALJ) erred by (1) ending petitioner's inquiries at the hearing, (2) not allowing petitioner's expert to "phonetically testify" on his behalf, and (3) not allowing petitioner to question respondent's medical experts in the form of rebuttal. Petitioner makes no legal argument in his opening brief. For the following reasons, we affirm.

¶2 Petitioner sustained a compensable industrial injury while employed by Complete Construction (respondent employer), who was insured by SCF Arizona (respondent carrier). Respondent carrier later issued a notice of claim status terminating petitioner's temporary compensation and medical treatment. Years later, petitioner filed a petition to reopen his claim. Respondent carrier denied the petition. Petitioner requested a hearing. Petitioner testified in person, and the doctors did so telephonically. The ALJ issued a decision upon hearing and findings and award denying the petition to reopen, finding that there was no objectively new, additional, or previously undiscovered condition related to the industrial injury and

resolving the conflicts in the medical records in favor of respondent-carrier's medical expert. On review, the ALJ issued a decision upon review affirming his decision, and petitioner filed this special action.

¶3 We review factual issues in a light most favorable to sustaining the ALJ's award. See *Micucci v. Indus. Comm'n*, 108 Ariz. 194, 195, 494 P.2d 1324, 1325 (1972) (citations omitted). To be sustained, an ALJ's findings and award must be reasonably supported by the evidence. *Nelson v. Indus. Comm'n*, 24 Ariz. App. 94, 98, 536 P.2d 215, 219 (1975) (citation omitted). The claimant has the burden of proving, by a preponderance of the evidence, all elements of a claim for workers' compensation. *Brooks v. Indus. Comm'n*, 24 Ariz. App. 395, 399, 539 P.2d 199, 203 (1975).

¶4 Petitioner argues that, after he began questioning respondent carrier's medical expert, the ALJ considered the questioning to be argumentative, asked respondent's attorney if she had any further questions, and then "abruptly ended the entire phonetic [sic] testimonial session." Petitioner also argues that the ALJ denied him the opportunity to question respondent's medical expert in the form of rebuttal. According to petitioner, the ALJ prevented petitioner from being able to address all of his questions of the doctor. However, petitioner was able to address the expert doctor in question. After a

series of questions, the ALJ tried to focus petitioner's questioning on the issue of whether the claim should be reopened. The ALJ determined that the doctor had addressed that issue, and petitioner was able to continue his questioning. The ALJ later ended the questioning, finding that he had enough evidence to consider and, at that point, petitioner was just arguing with the doctor. We find no error because petitioner had ample opportunity to question the doctor, and the ALJ only stopped the questioning when it became repetitive and argumentative. See *Pauley v. Indus. Comm'n*, 10 Ariz. App. 315, 317-18, 458 P.2d 519, 521-22 (1969) (ALJ has discretion to regulate and control the cross-examination of witnesses, and an award will not be disturbed based on mere procedural error).

¶15 Next, petitioner asserts that the ALJ told petitioner that he could seek his own specialist in the proceedings and use his own medical insurance to cover the cost of the examination, even though the injury was work-related. Petitioner contends that, although the ALJ did "allow and consider" his podiatrist's written report, petitioner believed that the podiatrist would be allowed to testify on his behalf. As respondent carrier notes, however, petitioner did not request a subpoena under Arizona Workers' Compensation Practice and Procedure Rule 20-5-141(A)(2), which provides that a "party may request a presiding administrative law judge to issue a subpoena to compel the

appearance of an expert medical witness by filing a written request with the presiding administrative law judge at least 20 days before the date of the first scheduled hearing." The ALJ must then issue the subpoena if the ALJ determines that the evidence is "material and necessary" to the case. Rule 141(A)(4). Because petitioner failed to request a subpoena for his podiatrist, there was no error.

¶6 Finally, petitioner asserts that he suffered an additional injury that supported the reopening of his claim. However, the evidence presented at the hearing established that petitioner's medical complaints at that time resulted from diabetes rather than the industrial injury and supports the ALJ's finding that there was not a new, additional, or previously undiscovered condition related to the industrial injury.

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

\_\_\_\_\_/s/\_\_\_\_\_  
JON W. THOMPSON, Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
PATRICIA A. OROZCO, Presiding Judge

\_\_\_\_\_/s/\_\_\_\_\_  
DIANE M. JOHNSEN, Judge