

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);  
Ariz.R.Crim.P. 31.24



DIVISION ONE  
FILED: 06-22-010  
PHILIP G. URRY, CLERK  
BY: GH

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

CARMEN FERNANDEZ, ) 1 CA-IC 09-0077  
)  
Petitioner, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
THE INDUSTRIAL COMMISSION OF ARIZONA, ) Rule 28, Arizona Rules  
) of Civil Appellate  
Respondent, ) Procedure)  
)  
RENT-A-CENTER, )  
)  
Respondent Employer, )  
)  
SPECIALTY RISK SERVICES, )  
)  
Respondent Carrier. )  
)

---

Special Action--Industrial Commission

ICA CLAIM NO. 20081-490301

CARRIER NO. YLL695558C

Administrative Law Judge Michael A. Mosesso

**AFFIRMED**

---

Carmen Fernandez Petitioner Pro Per	Chandler
Andrew Wade, Chief Counsel The Industrial Commission of Arizona Attorney for Respondent	Phoenix
Jardine, Baker, Hickman & Houston by Scott H. Houston Attorneys for Respondent Employer/Carrier	Phoenix

---

**I R V I N E**, Judge

¶1 Petitioner/Claimant Carmen Fernandez ("Fernandez") seeks special action review of an Industrial Commission of Arizona ("ICA") award and decision upon review of non-compensability. Fernandez argues on appeal that there was insufficient evidence to support the Administrative Law Judge's ("ALJ") findings that she failed to establish medical causation as to the relationship between her medical condition and her workplace. For the following reasons, we affirm the award and decision upon review.

#### **FACTS AND PROCEDURAL HISTORY**

¶2 In December 2007, Fernandez worked at a Rent-A-Center retail store as the assistant manager. During this time, the store hired K.L. to perform carpet and paint renovations. As the remodeling proceeded, Fernandez began feeling sick, noticed bumps on her tailbone, and visited a doctor on December 21, 2007, for treatment of a large boil. In January 2008, Fernandez' symptoms worsened and she visited an urgent care facility. The doctor diagnosed Fernandez with cellulitis and sent her home with pain pills and antibiotics. Fernandez continued working but returned to urgent care in March 2008. During this visit, the doctors conducted a culture and Fernandez tested positive for Methicillin-resistant Staphylococcus Aureus ("MRSA").<sup>1</sup> Fernandez subsequently returned to

---

<sup>1</sup> Fernandez testified that the doctors never notified her of this positive test. Instead, she testified that she first heard of MRSA when K.L. told her she had symptoms of MRSA.

work but was hospitalized as the infection spread to her chin and neck.<sup>2</sup>

¶13 On May 23, 2008, Fernandez filed a Worker's Report of Injury, alleging that an industrial injury occurred on December 21, 2007. The carrier issued a notice of claim status denying the claim, and Fernandez filed a request for hearing with the ICA.

¶14 At the hearing, Fernandez testified that she believed she contracted MRSA at work from K.L. K.L. testified that he had an infection on his face in December 2007, but could not recall if he ever tested positive for MRSA. However, the store manager testified that he heard K.L. admit to having MRSA. After hearing testimony, the ALJ entered an award denying Fernandez' claim. The ALJ concluded that Fernandez "failed to establish medical causation which is an essential element of Applicant's burden of proof in establishing a compensable claim." Fernandez timely requested administrative review, and the ALJ affirmed his award and stated: "medical causation, a central element of a compensable claim, was not established. Applicant's burden of proof was not met. Thus, the claim remains non compensable." Fernandez next brought this appeal. We have jurisdiction pursuant to Arizona Revised Statutes section 23-951 (1995) and Rule 10 of the Arizona Rules of Procedure for Special Actions.

---

<sup>2</sup> Fernandez required surgery to remove the lesions and was hospitalized for approximately two weeks. While in the hospital, Rent-A-Center terminated her employment.

## DISCUSSION

¶15 Fernandez argues that the ALJ abused his discretion in finding that her claim was not compensable because she failed to prove medical causation. She contends "the medical records submitted as well as the defense's IME report with a one page 'fact sheet' about MRSA should have been sufficient for the Court to find the facts necessary to make a decision on this case."

¶16 The claimant has 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). "We deferentially review the ALJ's factual findings but independently review his legal conclusions." *Grammatico v. Indus. Comm'n*, 208 Ariz. 10, 12, ¶ 6, 90 P.3d 211, 213 (App. 2004), *aff'd*, 211 Ariz. 67, 117 P.3d 786 (2005). The ALJ determines the credibility of witnesses, *Royal Globe Ins. Co. v. Indus. Comm'n*, 20 Ariz. App. 432, 434, 513 P.2d 970, 972 (1973), and resolves conflicts in the evidence. *Johnson-Manley Lumber v. Indus. Comm'n*, 159 Ariz. 10, 13, 764 P.2d 745, 748 (App. 1988). "When more than one inference may be drawn, the [ALJ] may choose either, and we will not reject that choice unless it is wholly unreasonable." *Id.*

¶17 Compensability requires both legal and medical causation. *Grammatico*, 211 Ariz. at 71, ¶ 19, 117 P.3d at 790; *DeSchaaf v. Indus. Comm'n*, 141 Ariz. 318, 320, 686 P.2d 1288, 1290 (App. 1984). Medical causation is established by showing that the accident caused the injury. *Grammatico*, 211 Ariz. at 71, ¶ 20, 117 P.3d at

790; *DeSchaaf*, 141 Ariz. at 320, 686 P.2d at 1290. As the ALJ correctly noted, the law is well settled that when an injury is not readily apparent to laymen, the existence of a physical disorder, its etiology, the need for further treatment or the existence of a permanent impairment must be established by expert medical testimony. *Western Bonded Products v. Indus. Comm'n*, 132 Ariz. 526, 527, 647 P.2d 657, 658 (App. 1982); see also *Polanco v. Indus. Comm'n*, 214 Ariz. 489, 492, ¶ 7, 154 P.3d 391, 394 (App. 2007) (noting that in addition to proving legal causation, the worker must prove medical causation to receive worker's compensation); *DeSchaaf*, 141 Ariz. at 320, 686 P.2d at 1290 (noting that medical causation is established by showing that the industrial accident caused the injury, which ordinarily requires expert medical testimony). The ALJ found that Fernandez did not establish medical causation. Because Fernandez' condition was not readily apparent to a lay person, evidence from a medical expert was necessary to establish that she contracted MRSA at the workplace.

¶8 Here, Fernandez failed to present any medical evidence to establish that she contracted MRSA in the workplace. Fernandez initially thought that the bump on her tail bone was a spider bite. Fernandez' own expert, Dr. Felipe N. Gutierrez reported: "After careful consideration of the facts surrounding this case, I was unable to conclude 'to a reasonable degree of medical probability' what the likely source of Ms. Fernandez' MRSA infection was. Her coworker, [K.L.], could have very well transmitted MRSA to Ms.

Fernandez [sic] but I did not have sufficient evidence to make that determination." Dr. Peter P. McKellar also examined Fernandez. His report concluded: "It is difficult for me to say where she acquired the MRSA that caused her buttock abscesses, presumably her sepsis, and involved her lower lip area. MRSA has become a relatively common community acquired organism and is usually transmitted by person to person contact. Personal hygiene is a major contributor to colonization with this bacterium becoming infection." Based on the evidence, we conclude that the ALJ did not err in finding that Fernandez failed to establish medical causation.<sup>3</sup>

---

<sup>3</sup> Fernandez also argues that the ALJ erred by not invoking Rule "501.1" of the Arizona Rules of Evidence, which she claims would have compelled K.L. to submit his medical records into testimony. Fernandez did not raise this issue in her Administrative Request for Review. Therefore, we will not consider this issue. See *Brown v. Indus. Comm'n*, 168 Ariz. 287, 288, 812 P.2d 1105, 1106 (App. 1991) ("As parties to an administrative proceeding are required to exhaust their administrative remedies before seeking relief in this court, we will not review an issue which has not been raised in a request for review.").

**CONCLUSION**

¶19 For the reasons set forth above, we affirm the ALJ's award and decision upon review.

/s/

---

PATRICK IRVINE, Judge

CONCURRING:

/s/

---

DIANE M. JOHNSEN, Presiding Judge

/s/

---

PHILIP HALL, Judge