

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: 09/21/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

CORA M. DANIELS,) 1 CA-IC 09-0079
)
Petitioner,) Department D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
THE INDUSTRIAL COMMISSION OF) Rule 28, Arizona Rules
ARIZONA,) of Civil Appellate
) Procedure)
Respondent,)
)
ROOSEVELT ELEMENTARY SCHOOL)
DISTRICT *, **, ***,)
)
Respondent Employer,)
)
ARIZONA SCHOOL ALLIANCE *, **,)
***,)
)
Respondent Carrier.)
_____)

Special Action - Industrial Commission

ICA Claim Nos. 20063-460840***
20082-670007*
20083-010463**

Carrier Claim No. 2008015131

Deborah A. Nye, Administrative Law Judge

AWARD AFFIRMED

Cora M. Daniels, Petitioner
In Propria Persona

Phoenix

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The Industrial Commission of Arizona
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N O R R I S, Judge

¶1 This is a special action review of an Industrial Commission of Arizona Award and Decision upon Review denying reopening and compensability. Petitioner employee Cora M. Daniels argues the administrative law judge ("ALJ") should not have, first, removed her left shoulder condition from the scope of her original November 7, 2006 claim in ruling on her petition to reopen that claim and, second, rejected medical evidence supporting both her petition to reopen and the compensability of two subsequent claims. As to the former, the record reflects no legal error and, as to the second, the ALJ's decision was supported by reasonable evidence. We therefore affirm the ALJ's decision.

I. Removal of the Left Shoulder Injury from the Original November 7, 2006 Claim

¶2 In November 2006, Daniels filed a claim alleging she had suffered a work-related injury on November 7, 2006 ("original injury"). On September 13, 2007, an ALJ found she had sustained a gradual work-related injury while working for the Respondent Employer, Roosevelt Elementary School District.

Although the ALJ found Daniels had suffered a compensable injury, he did not specify the extent of her injuries and what injuries were compensable. Respondent Carrier Arizona School Alliance ("Carrier") closed the original claim effective March 4, 2008, without permanent disability, and the closure eventually became final.

¶3 Daniels subsequently filed a petition to reopen the November 7, 2006 claim. At a consolidated hearing on this and two other subsequent claims, *see infra* ¶¶ 7-8, the ALJ correctly noted the original award failed to specify the extent of Daniels's original injury. The parties, represented by counsel, agreed the ALJ could determine the extent of the original injury and requested the ALJ review the records from the prior proceeding. After reviewing these records, the ALJ concluded Daniels's original injury "resulted in pain to the right shoulder, back, right upper arm and left forearm, with the right shoulder being the predominant injury." (Footnote omitted.) In making these express findings, the ALJ implicitly rejected Daniels's assertion the original injury included her left shoulder.

¶4 On appeal, Daniels asserts the doctrine of res judicata barred the ALJ from removing her left shoulder condition from the original injury. We disagree.

¶15 First, the doctrine of res judicata, or claim preclusion, prohibits a party from subsequently relitigating the same claim. *W. Cable v. Indus. Comm'n*, 144 Ariz. 514, 518, 698 P.2d 759, 763 (App. 1985). Here, the ALJ was not redetermining Daniels's original claim, but rather determining a specific issue -- the extent of her original injury.

¶16 Second, even assuming the doctrine of res judicata is applicable, Daniels, through counsel, agreed the ALJ should determine the extent of Daniels's original injury. See Ariz. Admin. Code R. 20-5-152(A) (parties may stipulate to any fact or issue; stipulation may be in writing or made orally at the time of hearing). Having agreed the ALJ could determine this issue, Daniels cannot, on appeal, argue the ALJ was barred by res judicata from doing so.

II. Sufficiency of the Evidence

¶17 Daniels next asserts the evidence failed to support the ALJ's determination she had not met her burden of proving the existence of a new, additional, or previously undiscovered condition causally related to the original injury. Similarly, she also argues the evidence failed to support the ALJ's factual determination she had not sustained compensable work-related injuries on July 31, 2008, or September 26, 2008 (collectively, the "subsequent incidents"). We disagree with both assertions.

¶18 At the consolidated hearing on the petition for review and the subsequent incidents, the parties presented the ALJ with conflicting medical evidence. Daniels's treating physician, Jeffrey Levine, M.D., a board-certified orthopedic surgeon, testified the original injury had caused her left shoulder injury, the subsequent incidents had caused and aggravated her left shoulder pathology, and the September 2008 incident had "provoked" her right shoulder symptoms. Neal Rockowitz, M.D., a board-certified orthopedic surgeon, examined Daniels twice at the request of the Carrier and testified, however, that when he first examined her on March 4, 2008, her pain complaints were unfocused and inconsistent and her injuries medically stationary without permanent impairment or the need for work restrictions, and when he examined her on February 5, 2009, her description of the subsequent incidents was vague and, as correctly characterized by the ALJ, "without sufficient mention of a mechanism of injury that could have re-injured her shoulders." Based on his examinations of Daniels, review of MRIs taken after the subsequent incidents, and review of Dr. Levine's medical records "since" June 2008, Dr. Rockowitz concluded Daniels's shoulder conditions were not new, additional, or previously undiscovered conditions related to the original injury, and the subsequent incidents "don't even equate to a shoulder event. So I see no indication to link those to any pathology in the

[right] shoulder [and] I don't think there was an injury [to her left shoulder]. So I don't see any reason to equate any pathology now to those so-called events."

¶19 When an ALJ, charged with the responsibility of resolving conflicts in medical testimony, adopts one expert's opinion over another, "we will not disturb that resolution unless it is 'wholly unreasonable.'" *Gamez v. Indus. Comm'n*, 213 Ariz. 314, 316, ¶ 15, 141 P.3d 794, 796 (App. 2006) (quoting *Ortega v. Indus. Comm'n*, 121 Ariz. 554, 557, 592 P.2d 388, 391 (App. 1979)). Further, when reviewing the appropriateness of an ALJ's ruling, we are not allowed to weigh the evidence; we are obligated to consider it in the light most favorable to sustaining the award. *Perry v. Indus. Comm'n*, 112 Ariz. 397, 398, 542 P.2d 1096, 1097 (1975). Pursuant to these authorities, the ALJ's adoption of Dr. Rockowitz's opinions and her resolution of the conflict in the medical testimony were not wholly unreasonable, and we are not at liberty to reject her determinations.¹

¹The ALJ found Daniels's description of her injuries and the subsequent incidents "to be unreliable and not credible." The ALJ, not this court, is in the best position to resolve issues of credibility and consistency. *S.L.C. Leasing v. Indus. Comm'n*, 25 Ariz. App. 366, 367 n.*, 543 P.2d 795, 796 n.* (1975).

CONCLUSION

¶10 For the foregoing reasons, we affirm the ALJ's award denying Daniels's petition to reopen and determining she had failed to meet her burden of proving compensable injuries from the subsequent incidents.

/s/

PATRICIA K. NORRIS, Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Presiding Judge

/s/

PATRICK IRVINE, Judge