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CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 02/21/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

SAFEWAY, INC.,) No. 1 CA-IC 11-0034
)
Petitioner Employer,) DEPARTMENT C
)
SAFEWAY STORES, INC,) **MEMORANDUM DECISION**
)
Petitioner Carrier,) (Not for Publication -
) Rule 28, Arizona Rules
v.) of Civil Appellate
) Procedure)
THE INDUSTRIAL COMMISSION OF ARIZONA,)
)
Respondent,)
)
LETICIA A. DELACRUZ,)
)
Respondent Employee.)

Special Action - Industrial Commission

ICA Claim No. 20093-560405

Carrier Claim No. 1700939953

Administrative Law Judge Robert F. Retzer

AWARD AFFIRMED

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Phoenix

Andrew Wade, Chief Counsel
The Industrial Commission of Arizona
Attorney for Respondent

Phoenix

H A L L, Judge

¶1 This is a special action review of an Industrial Commission of Arizona (ICA) award for a compensable claim. Two issues are presented on appeal:

- (1) whether Paul Guidera, M.D.'s opinion is legally sufficient to support the award; and
- (2) whether the administrative law judge (ALJ) abused his discretion by relying on Dr. Guidera's opinion.

Because we find Dr. Guidera's opinion in combination with the documentary medical evidence of record legally sufficient to support the award, we affirm.

I. JURISDICTION AND STANDARD OF REVIEW

¶2 This court has jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(2) (2003), 23-951(A) (1995), and Arizona Rules of Procedure for Special Actions 10. 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, 63 P.3d 298, 301 (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, 41 P.3d 640, 643 (App. 2002).

II. PROCEDURAL AND FACTUAL HISTORY

¶3 The claimant began work at Safeway in 1999. While pregnant in 2004, she developed pain and numbness in both hands. The claimant filed a workers' compensation claim for bilateral carpal tunnel syndrome. The self-insured petitioner employer, Safeway, Inc. (Safeway), denied her claim for benefits, and she allowed the denial to become final because her physician believed that her pregnancy had caused her carpal tunnel syndrome. After maternity leave, the claimant returned to work at Safeway without hand problems.¹

¶4 In September 2009, a new bakery manager assigned the claimant to perform full-time cake decorating, forty hours per week. The claimant described this work as requiring heavy use of her right hand. Between September and December 2009, the claimant gradually developed pain, numbness, and tingling in her right hand and wrist.

¶5 On December 12, 2009, she sought treatment for pain and numbness in her right hand at an urgent care center. The claimant was diagnosed with carpal tunnel syndrome. She was referred to the Banner Occupational Health Clinic. Banner's

¹ On cross-examination, the claimant agreed that she occasionally had mild hand symptoms between 2004 and 2009 with overuse. She gave the example that if her work duties required her to do a lot of bread baking, her right hand would bother her. When that occurred, she would take Tylenol or use her wrist brace at night.

doctor also diagnosed carpal tunnel syndrome in the claimant's right wrist. He placed her on modified work duties. The claimant continued to work full-time at Safeway, but performed lighter duties.

¶16 The claimant filed a new workers' compensation claim, which was denied for benefits by Safeway. She timely requested a hearing, and the ALJ heard testimony from the claimant, Dr. Guidera, and John D. Hayden, Jr., M.D., an independent medical examiner. The ALJ then entered an award for a compensable claim. Safeway timely requested administrative review, and the ALJ summarily affirmed the Award. Safeway next brought this appeal.

III. DISCUSSION

¶17 Compensability requires an injury by accident arising out of and in the course of employment. See A.R.S. § 23-1021(A) (1995). This involves both legal and medical causation. *DeSchaaf v. Indus. Comm'n*, 141 Ariz. 318, 320, 686 P.2d 1288, 1290 (App. 1984). Unless the industrial injury immediately causes injuries that are obvious to a lay person, expert medical evidence is required to establish a causal relationship between the industrial injury and its alleged consequences. *Western Bonded Prod. v. Indus. Comm'n*, 132 Ariz. 526, 527-28, 647 P.2d 657, 658-59 (App. 1982). It is the claimant's burden to prove

all elements of a compensable claim. *Toto v. Indus. Comm'n*, 144 Ariz. 508, 512, 698 P.2d 753, 757 (App. 1985).

¶18 In this case, the ALJ recognized that the medical evidence consisted of "various medical reports/documents contained in the Commission file in addition to the testimony from Paul Guidera, M.D. and John Hayden, Jr., M.D." The ALJ summarized the testimony from Drs. Guidera and Hayden. He then stated:

Also contained in the Commission file is the December 15, 2009 medical report from Vernon Williams, M.D., of Banner Occupational Health which diagnosis [sic] carpal tunnel syndrome on the right, the July 14, 2010 medical report of Gary Dilla, M.D. (board certified in physical medicine and rehabilitation) who did EMG/NCS and states that his findings are consistent with right carpal tunnel syndrome, very mild in degree electrically, effecting sensory conduction only.

Finally, the ALJ specifically adopted the opinion of Dr. Guidera as being more probably correct and well-founded.

¶19 Safeway argues that Dr. Guidera's testimony is insufficient to establish the requisite medical causation for compensability. The basis for this argument is that the doctor was unable to perform a physical examination of the claimant's right hand and wrist. This is not disputed. Dr. Guidera saw the claimant on two occasions: January 19, 2010, and February 2, 2010, and his medical records from both visits were placed in evidence. The doctor testified that he took a history from the

claimant, reviewed her medical records from Banner, and obtained EMG testing from Leo Kahn, M.D. Dr. Guidera explained that it was difficult to examine the claimant's right hand because she cried and tried to withdraw it from him during his examination.

¶10 We have recognized that positive knowledge of causation is not always possible, but that will not prevent a physician from stating an opinion that has evidentiary value. *Harbor Ins. Co. v. Indus. Comm'n*, 25 Ariz.App. 610, 612, 545 P.2d 458, 460 (1976). We believe that the ALJ specifically recognized this difficulty with Dr. Guidera's testimony and cured it by reference to the documentary evidence in the hearing file. *See Perry v. Indus. Comm'n*, 112 Ariz. 397, 398, 545 P.2d 1096, 1097 (1975) (the ALJ considers all evidence of record, both testamentary and documentary, and when that evidence conflicts, it is his duty to resolve those conflicts).

¶11 Safeway also argues that Dr. Guidera's testimony was insufficient to create a conflict with Dr. Hayden's testimony. In essence, Safeway asserts that Dr. Hayden's testimony was uncontroverted. *See Cammeron v. Indus. Comm'n*, 98 Ariz. 366, 371, 405 P.2d 802, 805 (1965) (when medical evidence is uncontroverted and based on matters peculiarly within the realm of medical knowledge, findings are conclusive on ALJ).

¶12 In this case, although the ALJ adopted Dr. Guidera's testimony over that of Dr. Hayden, he specifically referred to documentary evidence in the record as additional support for his conclusion that the claim was compensable.² We believe that the documentary evidence taken in combination with Dr. Guidera's opinion is legally sufficient to support the award and it was not an abuse of discretion to adopt Dr. Guidera's opinion. On appeal, this court will not disturb the ALJ's conclusion unless it cannot be supported by any reasonable theory of the evidence. *Phelps v. Indus. Comm'n*, 155 Ariz. 501, 506, 747 P.2d 1200, 1205 (1987). We believe that the ALJ's reasoning in Finding No. 5 establishes a reasonable basis for the award.

¶13 For all of the foregoing reasons, the award is affirmed.

/s/

PHILIP HALL, Judge

CONCURRING:

/s/

PATRICIA K. NORRIS, Presiding
Judge

/s/

MARGARET H. DOWNIE, Judge

² We note that the record before the ALJ included Dr. Hayden's extensive summary of the claimant's Banner records.