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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.34



DIVISION ONE
FILED: 02/28/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

MICHAEL RUSSO,) No. 1 CA-IC 11-0042
)
Petitioner,)
) DEPARTMENT A
v.)
)
THE INDUSTRIAL COMMISSION OF) **MEMORANDUM DECISION**
ARIZONA,)
)
Respondent,) Not for Publication -
) (Rule 28, Arizona Rules
MANHEIM AUTO AUCTION,) of Civil Appellate Procedure)
)
Respondent Employer,)
)
INS. CO. OF THE STATE OF PA.)
BROADSPIRE SERVICES, INC.,)
)
Respondent Carrier.)
)

Special Action - Industrial Commission

ICA Claim No. 20093-200376

Carrier Claim No. 152-12609-LO

The Honorable Deborah A. Nye, Administrative Law Judge

AFFIRMED

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T I M M E R, Judge

¶1 This is a special action review of an Industrial Commission of Arizona ("ICA") award and decision upon review denying Michael Russo additional workers' compensation benefits upon a finding that his industrial injury is stationary with no permanent impairment. Russo contends the Administrative Law Judge ("ALJ") erred by entering findings and an award that are not reasonably supported by the evidence. For the following reasons, we disagree and therefore affirm.

BACKGROUND

¶2 On July 16, 2009, Russo tripped on a torn carpet while on a business trip and fell onto his left side, injuring his left shoulder and neck. His employer's insurance carrier accepted the claim as compensable. The accident resulted in pain and limited mobility in Russo's left shoulder and neck, numbness in his left hip and leg, and some loss of strength in his left leg. Although he acknowledges some improvement, Russo continues to report pain in his left shoulder area, which he attributes to the fall.

¶13 Over the ten months following the accident, Russo sought testing and treatment from a variety of doctors. The carrier then sent Russo for an independent medical evaluation ("IME") on May 3, 2010 with two orthopedic surgeons: Dr. Jason Datta, a spinal specialist, and Dr. James C. Nauman, a shoulder specialist. Dr. Datta and Dr. Nauman took Russo's medical history, physically examined his neck and shoulder, and reviewed his injury-related medical records, including MRIs of Russo's shoulder, hip, lumbar region, and cervical spine. They did not review the chiropractor's records predating the trip-and-fall injury. The doctors recognized that Russo had a pre-existing degenerative arthritic condition affecting his spine and concluded Russo's ongoing symptoms were not related to his industrial injury. They found "no documentation of aggravation of [the pre-existing condition]" by Russo's fall and concluded Russo's condition was stationary without any industrial-related permanent impairment.

¶14 The carrier terminated Russo's benefits on the basis of the IME, and Russo challenged the termination, claiming a continuing need for neck treatment. At the subsequently scheduled hearing, the parties presented testimony from Russo, Russo's new physician, Dr. Mark Siegel, and Dr. Datta. Dr. Siegel, a family practice doctor of osteopathy with experience assisting in spinal surgery, evaluated Russo during three

appointments after the IME. He testified that Russo's fall had aggravated a pre-existing degenerative spinal condition and that his condition related to the fall was not yet stationary.

¶15 Dr. Datta, in contrast, recognized that Russo continued to have left-sided neck pain and an approximately twenty-five percent decrease in neck rotational mobility, but he attributed the ongoing symptoms to the pre-existing degenerative spinal condition rather than to the industrial injury. Dr. Datta opined that the fall had led to "an acute strain of both [Russo's] neck and back," but that the acute strain was resolved and Russo's "continued neck pain symptoms were related to his underlying degenerative condition." The doctor explicitly testified that Russo's fall did not permanently aggravate the pre-existing spinal condition, and that the injury-related condition had become stationary without permanent impairment.

¶16 The ALJ found a conflict between Dr. Siegel's and Dr. Datta's opinions, determined Dr. Datta's opinion to be "more probably correct," and issued an award finding Russo medically stationary without permanent impairment as of May 3, 2010. After the ALJ affirmed the decision upon review, this timely special action followed.

DISCUSSION

¶17 Russo claims the ALJ's findings are unsupported by the evidence, arguing it was wholly unreasonable for the ALJ to

adopt Dr. Datta's medical opinion over Dr. Siegel's. The respondent carrier counters the ALJ was justified in adopting Dr. Datta's opinion.¹

¶18 On special action review of a workers' compensation award, we consider de novo questions of law but defer to the ALJ's factual findings. *Young v. Indus. Comm'n*, 204 Ariz. 267, 270, ¶ 14, 63 P.3d 298, 301 (App. 2003). We view the evidence in the light most favorable to sustaining the award, *Perry v. Indus. Comm'n*, 112 Ariz. 397, 398, 542 P.2d 1096, 1097 (1975), and we will set aside the award only if it has no reasonable basis, *Ortega v. Indus. Comm'n*, 121 Ariz. 554, 557, 592 P.2d 388, 391 (App. 1979).

¶19 A claimant bears the burden of proving his condition is causally related to the industrial injury and is not medically stationary or has resulted in a permanent disability. *E.g.*, *Lawler v. Indus. Comm'n*, 24 Ariz. App. 282, 284, 537 P.2d 1340, 1342 (1975). Medical expert testimony is necessary if the injury is not readily apparent to a lay person. *Yates v. Indus. Comm'n*, 116 Ariz. 125, 127, 568 P.2d 432, 434 (App. 1977). If a conflict in the medical evidence arises, the ALJ has primary

¹ The carrier also asserts no conflict existed in the doctors' testimony because Dr. Siegel recommended further testing only. We reject this contention because Dr. Siegel explicitly testified that the fall caused Russo's continuing symptoms; this opinion directly contrasts with Dr. Datta's opinion on the matter.

responsibility for resolving it, and we will not disturb the ALJ's resolution of such a conflict unless it is wholly unreasonable. *Phelps v. Indus. Comm'n*, 155 Ariz. 501, 505-06, 747 P.2d 1200, 1204-05 (1987); *Perry*, 112 Ariz. at 398-99, 542 P.2d at 1097-98. The ALJ may consider many factors when resolving a conflict in medical evidence, "including whether or not the testimony is speculative, consideration of the diagnostic method used, qualifications in backgrounds of the expert witnesses and their experience in diagnosing the type of injury incurred." *Carousel Snack Bar v. Indus. Comm'n*, 156 Ariz. 43, 46, 749 P.2d 1364, 1367 (1988).

¶10 Russo contends the ALJ erred by adopting Dr. Datta's opinion because the doctor based his opinion on a ten-minute-long physical examination and an incomplete review of Russo's medical records. But Russo provides no evidence that, in these circumstances, a ten-minute physical examination is insufficient. Nor does Russo explain why review of his pre-injury medical records is, in his view, critical. Both experts agreed that Russo suffered from a pre-existing degenerative spinal condition. Their dispute lay in whether the industrial injury continued to aggravate the underlying pre-existing condition in a manner contributing to Russo's continuing symptoms. Because the evidence does not support a conclusion that Dr. Datta was required to conduct a lengthier examination

or more extensive record review in order to offer an opinion on the issue, we reject Russo's argument.

¶11 As Russo correctly states, "medical *opinion* alone is not enough upon which to base an award; the medical evidence must consist of findings of medical facts concerning the condition of the petitioner." *Hemphill v. Indus. Comm'n*, 91 Ariz. 322, 325, 372 P.2d 327, 329 (1962). Here, however, Dr. Datta's opinion was not devoid of a medical factual basis. In addition to the physical examination, Dr. Datta reviewed the records of Russo's post-injury treating physicians, including a pain management physician, an orthopedic surgeon, a neurologist, and an orthopedic spinal surgeon. He also inspected Russo's shoulder, lumbar region, and hip MRIs, as well as both MRIs of Russo's cervical spine region. We cannot conclude Dr. Datta's testimony lacked basis in medical fact.

¶12 The ALJ's resolution of the conflict in the medical testimony has a reasonable basis in the record. Dr. Datta's qualifications (board-eligible orthopedic surgeon, fellowship-trained and specializing in spinal surgery) contrasted with Dr. Siegel's qualifications (family practice osteopath with experience assisting in spinal surgeries) weighed in favor of Dr. Datta's opinion. See *Carousel Snack Bar*, 156 Ariz. at 46, 749 P.2d at 1367. Indeed, Dr. Siegel admitted at the hearing he would defer to the opinion of a spinal surgeon who had reviewed

Russo's most recent MRI regarding Russo's need for further testing or treatment; Dr. Datta, a spinal surgeon, provided just such an opinion when he testified that, even considering the most recent MRI, he still found Russo's fall-related condition medically stationary. Moreover, Dr. Nauman, who participated in the IME, reached the same conclusion as Dr. Datta, as reflected in the IME report in evidence.

¶13 Russo finally asserts the ALJ's ruling does not have a reasonable basis because it ignored the fact Russo experienced new symptoms since his fall. Phrased as a logical syllogism, Russo contends he was asymptomatic before his fall; he continues to suffer symptoms after his fall; therefore the fall caused the ongoing symptoms. The flaw in this logic is that the new symptoms have an alternate potential cause - Russo's degenerative condition. The ALJ did not ignore Russo's claims of new, ongoing symptoms by adopting Dr. Datta's opinion; she merely agreed with Dr. Datta that these symptoms were caused exclusively by Russo's pre-existing degenerative condition.

¶14 Because the decision is supported by reasonable evidence, the ALJ did not err. *See, e.g., Stainless Specialty Mfg. Co. v. Indus. Comm'n*, 144 Ariz. 12, 19, 695 P.2d 261, 268 (1985).

CONCLUSION

¶15 For the foregoing reasons, we affirm.

/s/
Ann A. Scott Timmer, Judge

CONCURRING:

/s/
Maurice Portley, Presiding Judge

/s/
Andrew W. Gould, Judge