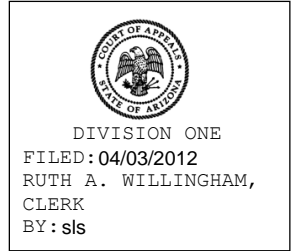


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

BILLY R. BURNLEY,) No. 1 CA-IC 11-0054
)
Petitioner,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
)
THE INDUSTRIAL COMMISSION OF) (Not for Publication -
ARIZONA,) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
Respondent,)
)
SHAW PIPELINE SERVICE, INC.,)
)
Respondent Employer,)
)
ZURICH AMERICAN INSURANCE CO.,)
)
Respondent Carrier.)

Special Action - Industrial Commission

ICA Claim No. 20082-590577

Carrier Claim No. 2080194604

The Honorable Robert F. Retzer, Jr., Administrative Law Judge

AWARD AFFIRMED; REMANDED

Billy R. Burnley
In Propria Persona

Tyler, TX

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

Phoenix

J O H N S E N, Judge

¶1 This is a special action review of an Industrial Commission of Arizona ("ICA") award and decision upon review denying Billy Burnley additional workers' compensation benefits upon a finding that his industrial injury is stationary with no permanent impairment. For the following reasons, we affirm the award but remand for further proceedings.

FACTS AND PROCEDURAL BACKGROUND

¶2 Burnley was injured on September 2, 2008 while working for Shaw Pipeline Service, Inc. He filed a report of injury, and the carrier issued a Notice of Claim Status approving him for temporary partial disability benefits, effective September 8, 2008. On April 14, 2010, a Notice of Claim Status was issued terminating benefits because Burnley had been discharged and had been found to suffer no permanent impairment. Burnley protested the discharge and requested a hearing. At the hearing, the administrative law judge ("ALJ") heard testimony of Burnley, his treating physician and another doctor called by the carrier. Both doctors testified Burnley was stationary with regard to the September 2 injury, and the carrier's witness testified the

injury had not caused permanent impairment. In his Decision Upon Hearing and Findings and Award for Temporary Disability, the ALJ found Burnley did not prove by a reasonable preponderance of the evidence that his condition was not stationary as of April 14, 2010 nor that his injury resulted in a permanent impairment. The ALJ awarded Burnley "Medical, surgical and hospital benefits from September 2, 2008 through April 14, 2010" and "Total temporary and/or temporary partial compensation benefits from September 2, 2008 through April 14, 2010." Burnley requested review of the decision. The ALJ summarily affirmed the decision, and this special action followed.

¶3 This court has jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(2), 23-951 (2012) and Rule 10 of the Arizona Rules of Procedure for Special Actions.¹

DISCUSSION

¶4 In his opening brief, Burnley does not challenge the ALJ's findings. His only contention is that he did not receive the wage compensation to which he was entitled for the period during which he was approved for disability benefits. Burnley mentioned his concern about receiving compensation during the

¹ Absent material revision after the relevant date, we cite a statute's current Westlaw version.

hearing before the ALJ, and he raised the issue explicitly in his request for review of the ALJ's decision and his brief to this court. The ALJ did not address the issue in his decision or in his review of the decision. Neither do the respondents address the issue in their answering brief. As this issue was raised by Burnley at every stage of the proceedings, the ALJ should have examined it. Accordingly, we affirm the award and decision insofar as they concluded Burnley's condition was stationary as of April 14, 2010 and that he did not have a permanent impairment as a result of the September 2 injury. We remand, however, so that the ALJ may address Burnley's argument that he has not received the wage compensation he was awarded.

CONCLUSION

¶15 For the foregoing reasons, we remand the matter for proceedings consistent with this decision.

/s/
DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/
DONN KESSLER, Judge

/s/
JON W. THOMPSON, Judge