

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



DIVISION ONE
FILED: 03/29/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ROBERT GONZALES,) 1 CA-IC 11-0059
)
Petitioner,) DEPARTMENT B
)
v.)
) **MEMORANDUM DECISION**
) (Not for Publication -
THE INDUSTRIAL COMMISSION OF) Rule 28, Arizona Rules
ARIZONA,) of Civil Appellate
) Procedure)
Respondent,)
)
DATS TRUCKING,)
)
Respondent Employer,)
)
PINNACLE RISK MANAGEMENT,)
)
Respondent Carrier.)

Special Action - Industrial Commission

ICA Claim No. 20090-550146

Carrier Claim No. WCAWC 2009563974

The Honorable Joseph L. Moore, Administrative Law Judge

AWARD AFFIRMED

Robert Gonzales
In Propria Persona

Albuquerque, N.M.

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

Phoenix

K E S S L E R, Judge

¶1 Claimant Robert Gonzales ("Gonzales") seeks special action review of an Industrial Commission of Arizona ("ICA") Administrative Law Judge's ("ALJ") dismissal of his Request for Hearing for failure to comply with "rules governing participation of parties in the hearing process." Gonzales concedes he missed deadlines set for interrogatories and depositions and that "[t]he judge had no choice but to dismiss [his] case." However, he "feel[s] that it is unlawful to have [his] case dismissed because [he has] missed the deadlines that were set forth." He asks this Court to reverse the ALJ's dismissal. We affirm the dismissal.

FACTUAL AND PROCEDURAL HISTORY

¶2 In February 2009, Gonzales was injured in the course and scope of his employment with DAT Trucking. The ICA determined Gonzales had a permanent disability of seven percent in his upper left arm, which was his minor arm. From February 2009 until November 2010, Gonzales received medical and monetary compensation benefits from the ICA. The ICA closed Gonzales's claim effective November 2010.

¶3 Gonzales filed a Request for Hearing in January 2011, and the ALJ scheduled a hearing for March 2011. Because Gonzales was attempting to find legal counsel to represent him at the hearing, the ICA continued the hearing until May 2011.

¶4 Between March and April 2011, DAT Trucking, through Pinnacle Risk Management ("Respondents") served interrogatories upon Gonzales and notified him of a scheduled telephonic deposition in mid-March 2011. Because the hearing was continued, Respondents rescheduled the deposition to late April 2011. Respondents twice called Gonzales to conduct the deposition at the scheduled time, but Gonzales did not answer the telephone. Also, even after the ALJ ordered Gonzales to respond to the interrogatories, Gonzales failed to do so.

¶5 In late April 2011, Respondents filed a motion to dismiss for failure to answer the interrogatories. Respondents then filed a supplement to the motion to dismiss, asking the ALJ to dismiss on the additional ground that Gonzales failed to appear for the telephonic deposition. Gonzales did not respond to either motion.

¶6 In May 2011, the ALJ dismissed Gonzales's Request for Hearing for "noncompliance with rules governing participation of parties in the hearing process." The ALJ determined Gonzales abandoned his Request for Hearing and that dismissal was the

appropriate sanction. Gonzales filed a timely Request for Review.

¶7 The ALJ affirmed his decision, and Gonzales timely filed his Petition for Special Action. 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 Rule of Procedure for Special Actions 10.

STANDARD OF REVIEW

¶8 We review an ALJ's decision to impose sanctions against a party for noncompliance with the rules of procedure for an abuse of discretion. *Nolden v. Indus. Comm'n*, 127 Ariz. 501, 503-04, 622 P.2d 60, 62-63 (App. 1980). We consider the evidence in the light most favorable to sustaining the award. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16, 41 P.3d 640, 643 (App. 2002). We will uphold the ALJ's decision if there is reasonable evidence to support it and we will not reweigh the evidence upon review. *Jaramillo v. Indus. Comm'n*, 203 Ariz. 594, 596, ¶ 6, 58 P.3d 970, 972 (App. 2002).

DISCUSSION

¶9 Arizona Administrative Code ("A.A.C.") R20-5-145(E)(2) allows an ALJ to "[d]ismiss [an] action or proceeding" if a party "willfully fails to appear for a deposition after being served with proper notice of the deposition, or fails to serve answers to interrogatories after proper service of the

interrogatories." See also A.A.C. R20-5-157(A)(1) (allowing sanctions "against any party . . . who fails to comply with [the administrative rules] or fails to comply with an order of the presiding" ALJ, including "[d]ismissal of [a] party's request for hearing"). An ALJ may lift a sanction if the party shows good cause. A.A.C. R20-5-157(B).

¶10 Here, Gonzales states he missed the discovery deadlines because of the time it took for him to consult with legal counsel. After his request for a continuance in March, and despite having two months to find counsel, Gonzales failed to ask the ALJ for a second continuance or even provide an update regarding his search for counsel. Neither the ALJ nor Respondents heard from Gonzales until his Request for Review, filed in June. In his Request for Review, Gonzales conceded he "failed to respond to all court documents in a timely manner," but asked that Respondents pay for his medical expenses. Gonzales did not provide a reason why he failed to timely comply with the requests for interrogatories and deposition, ask for a continuance, update the ALJ, or respond to Respondents' motion to dismiss. Nor did Gonzales argue that he was improperly served.

¶11 Gonzales also alleges he misunderstood Respondent's counsel's letter, dated June 27, 2011, in which counsel stated she had jury duty; Gonzales alleges he believed he "had to wait

