

**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.

FILED BY CLERK

AUG 17 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

SANDRA R. SARTIN,)	
)	
Petitioner Employee,)	2 CA-IC 2011-0024
)	DEPARTMENT A
v.)	
)	<u>MEMORANDUM DECISION</u>
THE INDUSTRIAL COMMISSION)	Not for Publication
OF ARIZONA,)	Rule 28, Rules of Civil
Respondent,)	Appellate Procedure
)	
BASHAS' INC.,)	
)	
Respondent Employer)	
and Insurer.)	
_____)	

SPECIAL ACTION – INDUSTRIAL COMMISSION

ICA Claim No. 20103510408

Insurer No. 20102976

Anthony Halas, Administrative Law Judge

AWARD AFFIRMED

Sandra R. Sartin

Maricopa
In Propria Persona

The Industrial Commission of Arizona
By Andrew F. Wade

Phoenix
Attorney for Respondent

Klein, Doherty, Lundmark,
Barberich & LaMont, P.C.
By Julie A. Doherty

Phoenix
Attorneys for Respondent
Employer and Insurer

E C K E R S T R O M, Presiding Judge.

¶1 In this statutory special action, petitioner Sandra Sartin seeks review of an Industrial Commission award and decision upon review denying her compensation for an alleged industrial injury. Sartin’s argument, as we understand it, is that the administrative law judge’s (“ALJ”) decision must be reversed because she was misdiagnosed with fibromyalgia.¹ Because we conclude the ALJ’s decision is reasonably supported by the evidence, we affirm.

¶2 On review, we deferentially review factual findings of the ALJ, *Young v. Indus. Comm’n*, 204 Ariz. 267, ¶ 14, 63 P.3d 298, 301 (App. 2003), and we affirm decisions that are reasonably supported by the evidence after reviewing the evidence in a light most favorable to sustaining the award. *Lovitch v. Indus. Comm’n*, 202 Ariz. 102,

¹Sartin’s opening brief fails to identify any legal grounds for setting aside the ALJ’s decision, and the brief contains no legal authority or citations to the record. Her failure to comply with the Rules of Civil Appellate Procedure could be deemed an abandonment and waiver of her claim. *See* Ariz. R. Civ. App. P. 13(a)(6) (appellant’s brief must contain “citations to the authorities, statutes and parts of the record relied on”); *Polanco v. Indus. Comm’n*, 214 Ariz. 489, n.2, 154 P.3d 391, 394 n.2 (App. 2007) (failure to develop argument according to procedural rules may result in waiver). Exercising our discretion, however, we address the issue raised on its merits. *See Adams v. Valley Nat’l Bank of Ariz.*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984) (“[C]ourts prefer to decide each case upon its merits rather than to dismiss summarily on procedural grounds.”). We glean the facts relevant to this case from our own review of the record. *See Davies v. Beres*, 224 Ariz. 560, n.1, 233 P.3d 1139, 1140 n.1 (App. 2010).

¶ 16, 41 P.3d 640, 643 (App. 2002). While stocking groceries at work on March 23, 2010, Sartin had a sudden onset of symptoms and thought she had injured her neck, shoulders, and upper chest. But she continued to work through the rest of the week. Although she had experienced muscle issues with her shoulders before this incident, they had not been as severe. She first sought medical treatment for these symptoms on March 31, 2010, but did not tell the emergency room staff or her employer that she had been injured at work, as she thought it was only a muscle issue. Sartin did not think her symptoms were work related until her visit with Dr. Edward Song in November 2010, when Song told her she had a herniated disc that had been caused by an injury. Sartin reported the injury as work related on December 8, 2010, but did not specify a particular incident causing it.

¶ 3 One of Sartin’s treating physicians, Dr. Wladislaw Fedoriw, made neurological findings he considered to be consistent with a spinal cord abnormality. Fedoriw diagnosed Sartin with neuritis and radiculitis—nerve and nerve root inflammation caused by displacement of the intervertebral disc. Sartin reported to Fedoriw that her pain had begun “in 2009 after working.” Based on his review of Sartin’s MRI² scan and the history Sartin had provided, Fedoriw concluded Sartin had a herniated disc caused by her industrial injury on March 23, 2010.

¶ 4 Dr. Edward Dohring, an orthopedic surgeon who had conducted an independent medical examination (“IME”) of Sartin on June 15, 2011, testified that herniated discs exist in about fifty percent of people Sartin’s age who have no symptoms

²Magnetic resonance imaging.

and that “this is an extremely common finding.” He further testified that “the vast majority of disc protrusions . . . occur as a result of degenerative change over time without a specific incident being part of their eventual occurrence.” Dohring explained that, when herniated discs cause neck pain, the pain “would almost always be same sided neck pain predominantly in a specific distribution.” According to Dohring, Sartin’s reports of “diffuse tenderness” were inconsistent with this. Dohring then testified that Sartin exhibited “absolutely no spinal cord compression” or myelopathy and no abnormal reflexes, contradicting Dr. Fedoriw’s report that Sartin’s complaints could be explained by his diagnosis of cord compression injury. Dohring noted Sartin’s symptoms were consistent with fibromyalgia, not a herniated disc, and he did not believe there was a relationship between the work Sartin had performed on March 23 and her symptoms or conditions. Fedoriw disagreed with Dohring’s diagnosis, testifying that Sartin’s reflexes were not signs of fibromyalgia.

¶5 The ALJ opined that it was

difficult to reconcile the contemporaneous medical record in the six months after March 23, 2010 with . . . Sartin’s retrospective assertion in early December 2010 and again in her testimony . . . that her specific work activities on March 23, 2010—or even gradually thereafter—resulted in an industrial injury.

The ALJ further noted that a record made contemporaneously with the event is better proof of the true facts than recollection after the passage of time. And the ALJ found that Sartin’s testimony regarding her alleged industrial injury was “neither compelling nor credible enough to provide a sufficient foundation upon which a medical expert could

render an opinion regarding medical causation.” Accordingly, the ALJ determined Dr. Dohring’s conclusions and opinions were “more probably correct and well-founded,” and concluded that Sartin “failed to establish the medical causation necessary to prove a compensable industrial injury.” The ALJ affirmed his decision after Sartin filed a request for review. We have jurisdiction to review the ALJ’s ruling pursuant to A.R.S. §§ 12-120.21(A)(2), 23-951(A), and Rule 10, Ariz. R. P. Spec. Actions.

¶6 We construe Sartin’s opening brief as a challenge to the ALJ’s ruling that she “failed to establish the medical causation necessary to prove a compensable industrial injury.” Dr. Fedoriw’s conclusion that Sartin’s condition and symptoms were causally related to a work injury was contradicted by Dr. Dohring’s IME and testimony. Dohring opined that Sartin’s disc abnormality could not explain many of her subjective complaints and that there was no evidence of spinal cord compression. The ALJ received conflicting evidence, but it is the ALJ’s responsibility, not ours, to “resolve all conflicts in the evidence, especially when the conflicts involve expert medical testimony.” *Post v. Indus. Comm’n*, 160 Ariz. 4, 8, 770 P.2d 308, 312 (1989).

¶7 Furthermore, the record establishes that the ALJ’s findings were supported by the evidence. The ALJ was presented with ample evidence Sartin had fibromyalgia not caused by a work-related accident. The ALJ found “the conclusions and opinions of Dr. Dohring [were] more probably correct and well-founded,” and therefore concluded that Sartin had failed to establish the medical causation required to prove a compensable industrial injury.

¶8

For the foregoing reasons, the ALJ's award and decision are affirmed.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge