IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

HOLY CROSS HOSPITAL,
Petitioner Employer,

SEDGWICK CMS - ASCENSION HEALTH,
Petitioner Insurer,

v.

THE INDUSTRIAL COMMISSION OF ARIZONA,
Respondent,

TERRI HILL,
Respondent Employee.

No. 2 CA-IC 2014-0006
Filed June 20, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c); Ariz. R. Civ. App. P. 28(c).

Special Action – Industrial Commission
ICA Claim No. 20131420402
Insurer No. 00000493596-0000
Jacqueline Wohl, Administrative Law Judge

AWARD AFFIRMED

COUNSEL

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The Industrial Commission of Arizona, Phoenix
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MEMORANDUM DECISION

Chief Judge Howard authored the decision of the Court, in which Presiding Judge Vásquez and Judge Miller concurred.

H O W A R D, Chief Judge:

¶1 In this statutory special action, petitioner employer Holy Cross Hospital and petitioner carrier Sedgwick CMS-Ascension Health (collectively "Holy Cross") challenge the administrative law judge's (ALJ) award of benefits to respondent Terri Hill. Holy Cross contends the judge erred in applying the "coming and going" rule of law to the facts of this case. Because the ALJ did not err, we affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to affirming the Industrial Commission's findings and award. *Polanco v. Indus. Comm'n*, 214 Ariz. 489, ¶ 2, 154 P.3d 391, 392-93 (App. 2007). Hill worked as a registered nurse in Nogales, Arizona, although she lived in and commuted from Tucson, Arizona. As part of her compensation, she "was paid $50.00 each day (or $150.00 per week)

for the time spent traveling in the commute to and from Nogales." In November 2012, during her return trip to Tucson, another vehicle rear-ended her vehicle, causing injuries to Hill's back, neck, and right knee.

¶3 She reported her injury in May 2013, and her claim was denied later that month. In June 2013, Hill timely protested this decision and requested a hearing before the Industrial Commission, claiming that the injury was compensable because it occurred during the course and scope of her employment with Holy Cross Hospital. Rather than hold a hearing, the parties filed a joint stipulation of facts and separate memorandums of authority in support of their positions and submitted the claim for decision by the ALJ.

¶4 The ALJ found the claim compensable, as occurring in the course of Hill's employment, and awarded her temporary disability compensation and "[m]edical, surgical and/or hospital benefits." Following Holy Cross's request for review, the ALJ reaffirmed her decision. We have jurisdiction over Holy Cross's petition for special action pursuant to A.R.S. §§ 23-951 and 12-120.21(A)(2). *See also* Ariz. R. P. Spec. Actions 10.

Coming and Going Rule

¶5 Holy Cross argues the ALJ erroneously interpreted and applied the "coming and going" rule to the facts of this case.[1] We review de novo the interpretation and application of the common law. *See Strojnik v. Gen. Ins. Co. of Am.*, 201 Ariz. 430, ¶ 11, 36 P.3d 1200, 1203 (App. 2001).

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[1]Holy Cross fails to cite the record for many facts contained in its brief. This failure alone justifies affirming the ALJ's award. *See Ariz. Laborers v. Hatco, Inc.*, 142 Ariz. 364, 369-70, 690 P.2d 83, 88-89 (App. 1984) (we need not consider arguments unsupported by citations to the record); *see also* Ariz. R. Civ. App. P. 13(a)(6) (argument "shall contain . . . [the] parts of the record relied on"); Ariz. R. P. Spec. Actions 10(k).

¶6 Stated generally, the "coming and going" rule provides that injuries sustained while an employee is going to or coming from work do not arise out of or occur in the course of employment, and are therefore not compensable. *Serrano v. Indus. Comm'n*, 75 Ariz. 326, 329, 256 P.2d 709, 710 (1953). Arizona recognizes two exceptions to this rule. *Brooks v. Indus. Comm'n*, 136 Ariz. 146, 149, 664 P.2d 690, 693 (App. 1983). The first, known as the "travel time exception," applies "'when the employer pays for the time involved,'" and creates a conclusive inference "'that the travel is included within the course of employment.'" *Id.*, *quoting Fisher Contracting Co. v. Indus. Comm'n,* 27 Ariz. App. 397, 399-400, 555 P.2d 366, 368-69 (1976).

¶7 The second, known as the "substantial benefits exception," applies when "the employer furnishes transportation or expenses, in lieu thereof, to its employees, and it appears from the facts that the travel time benefits the employer." *Id.* No conclusive inferences apply to this exception; instead the trier of fact must examine the "'total employment picture'" to determine whether this exception applies. *Id.* at 151, 664 P.2d at 695, *quoting Fisher Contracting Co.*, 27 Ariz. App. at 400, 555 P.2d at 369. Whether the employee's compensation is for "travel time" or for "expenses" is an issue of fact "'for the Commission to resolve, and the conclusions drawn will not be set aside unless there is no reasonable basis for the determination.'" *Id.* at 149, 664 P.2d at 693, *quoting Kerr v. Indus. Comm'n*, 23 Ariz. App. 106, 108, 530 P.2d 1139, 1142 (1975).

¶8 Here the parties stipulated that Hill "was paid . . . for the time spent traveling in the commute to and from Nogales." That stipulation was binding on the parties, Ariz. Admin. Code R20-5-152(B), and the ALJ relied on this evidence in concluding that the compensation was, in fact, for time spent traveling. This evidence constituted a "reasonable basis" for the ALJ's conclusion. *See Brooks*, 136 Ariz. at 149, 664 P.2d at 693.

¶9 Moreover, in both *Kerr* and *Brooks* we were reviewing factual determinations by an ALJ who denied an award. More specifically, in *Kerr* appellant contended the length of the drive constituted special hazard; further, the per diem was not linked to the travel itself. 23 Ariz. App. at 108, 530 P.2d at 1141. In *Brooks*, the

ALJ determined the employee was awarded travel expense reimbursement rather than payment for travel time. 136 Ariz. at 149, 664 P.2d at 693. But here, the ALJ found and the record supports that the payment was for "time spent traveling."

¶10 Therefore, the ALJ correctly determined a conclusive inference arose that the travel was "within the course of the employment." *See Fisher Contracting Co.*, 27 Ariz. App. at 400, 555 P.2d at 369. Because Hill sustained her injury during this period of travel, the ALJ did not err in determining she sustained a compensable injury. *See Serrano*, 75 Ariz. at 329, 256 P.2d at 710.

Disposition

¶11 For the foregoing reasons, we affirm the ALJ's award.