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Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 12/4/2012
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JOSEPH ARCHAMBEAULT,) No. 1 CA-IC 12-0009
)
Petitioner Employee,) DEPARTMENT E
)
v.) **MEMORNADUM DECISION**
) Not for Publication -
THE INDUSTRIAL COMMISSION OF) (Rule 28, Arizona
ARIZONA,) Rules of Civil
) Appellate Procedure)
Respondent,)
)
BSG,)
)
Respondent Employer,)
)
)
INDEMNITY INSURANCE COMPANY OF)
NORTH AMERICA,)
)
Respondent Carrier.)
_____)

Special Action--Industrial Commission

ICA CLAIM NO. 20110-840197

CARRIER NO. 684CBEFK0296A

Administrative Law Judge Paula R. Eaton

AWARD AFFIRMED

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G E M M I L L, Judge

¶1 Joseph Archambeault seeks special action review of an Industrial Commission of Arizona ("ICA") decision denying workers' compensation benefits for an injury he alleges he sustained while working for Beauty Systems Group ("BSG"). Because the record supports the credibility determination and ultimate conclusion of the Administrative Law Judge (ALJ), we affirm the award.

FACTS AND PROCEDURAL HISTORY

¶2 Archambeault began work as a salon design consultant with BSG in 2006. On January 30, 2011, Archambeault was working a trade show in Long Beach, California, when he tripped and fell to the floor face-first. He claimed he hurt his back and promptly reported the incident to his supervisor. He completed his shift that day.

¶13 On March 22, 2011, Archambeault filed a claim with BSG's workers' compensation insurance carrier. On April 16, 2011, his claim was denied and he thereafter timely protested the denial and requested a hearing.

¶14 Archambeault had a preexisting lower back problem. He sustained a previous injury and had undergone four back surgeries before the date of the current incident. Several years preceding this incident, Archambeault had hardware placed in his back in conjunction with surgery to relieve pressure on a nerve at the L5-S1 level to prevent the pain. After the hardware was removed, Archambeault began taking a decreased amount of pain medication and testified he was "doing really well" emotionally. During the period immediately preceding this incident, Archambeault was walking up to 2 miles a day but said he still had very limited mobility due to the pain. After the fall, Archambeault began to take more pain medication and started running out of his pain medication between appointments. In May 2011, BSG terminated Archambeault for his failing to reach his sales goals.

¶15 After Archambeault returned to Phoenix following the accident, he saw his primary care physician, Dr. Craine, at a regularly scheduled visit on February 17, 2011. On March 15, 2011, Archambeault again visited Dr. Craine. Archambeault

failed to mention his fall at either of these visits. In fact, he did not mention his fall to Dr. Craine until his visit on April 14, 2011. Dr. Craine testified that Archambeault's examination was "essentially unchanged" from his examinations prior to the January 30, 2011 incident. During one visit, Archambeault complained specifically of increased pain down his right leg, but Dr. Craine clarified that he "always ha[d] pain down his right leg". Dr. Craine put Archambeault on a new pain medication, but stopped the prescription within a month because it was ineffective. Dr. Craine additionally stated that Archambeault's fall, at most, caused a soft tissue injury that had resolved by April 14, 2011.

¶16 On August 4, 2011, Dr. Terry McLean conducted an independent medical examination of Archambeault at the request of BSG and its carrier. Following his examination of Archambeault and his review of available prior medical records, Dr. McLean testified that Archambeault did not exhibit any "abnormal pain behaviors or Waddell signs of nonorganic signs".¹ Based on Archambeault's history and description of symptoms, Dr. McLean testified that Archambeault may have new pain in his right thigh after the incident, indicative of an injury at the

¹ Waddell tests are conducted to determine whether the patient is malingering.

L4 level. Archambeault was ordered to undergo an electrodiagnostic study by Dr. Wolf, which further demonstrated some acute chronic changes or aggravation. However, the electrodiagnostic study was unable to verify that there were any nerve changes at L3 or L4, leaving Dr. McLean without any objective verifiable finding. Dr. McLean acknowledged concern regarding the validity of Archambeault's complaints since Archambeault did not promptly report the fall to his primary care physician, Dr. Craine. Based on the history provided by Archambeault, Dr. McLean attributed an aggravation of Archambeault's prior symptoms to the recent fall. At the same time, he did not find any reason to disagree with Dr. Craine's determination that Archambeault was back to his baseline status by his last visit on November 21, 2011.² Lastly, Dr. McLean confirmed that he relied upon the accuracy of Archambeault's history in rendering his opinions regarding the aggravation of symptoms.

¶17 The ALJ received testimony from Archambeault, Dr. Craine, and Dr. McLean on August 30, 2011, November 22, 2011, and December 6, 2011, respectively. The ALJ issued a Decision

² Dr. McLean testified that: "So, as we look at the overall picture, certainly I believe that this particular episode caused a temporary aggravation and, as Dr. Craine pointed out, the claimant was back to his baseline, so I believe it was just a temporary aggravation and not a permanent aggravation."

Upon Hearing and Findings and Award on December 20, 2011. The ALJ found Archambeault not credible and accepted the testimony of Dr. McLean as more probably correct and well-founded. On January 11, 2012, Archambeault filed a request for review with the ICA. On January 24, 2012, the ALJ affirmed her prior decision.

¶8 Archambeault timely appeals to this Court. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(2) (2003), 23-951(A) (2012),³ and Arizona Rule of Procedure for Special Actions 10.

ANALYSIS

¶9 This court deferentially reviews factual findings of the ICA, but independently reviews its legal conclusions. *PFS v. Indus. Comm'n*, 191 Ariz. 274, 277, 955 P.2d 30, 33 (App. 1997). We affirm an ICA decision if it is "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, 105, ¶ 16, 41 P.2d 640, 643 (App. 2002).

¶10 The ALJ's finding that Archambeault was not credible was reasonably supported by the evidence. The ALJ is responsible for weighing the evidence and making findings on

³ We cite the current versions of statutes when no material revisions have occurred since the events in question.

questions of fact, which include the credibility of witnesses. *Villanueva v. Indus. Comm'n*, 148 Ariz. 285, 288, 714 P.2d 455, 458 (App. 1985). When the testimony of the claimant is "contradictory, inconsistent with other evidence, or directly impeached, the ALJ can reject the testimony." *Holding v. Indus. Comm'n*, 139 Ariz. 548, 551, 679 P.2d 571, 574 (App. 1984).

¶11 Archambeault's testimony appears inconsistent with the testimony of his physician. Archambeault testified that the injury sustained on January 30, 2011 caused him increased back pain and required him to take more medication. However, despite his alleged increased pain, he also testified that he failed to mention the incident to his primary care physician for months. He saw Dr. Craine, his primary care physician, two separate times before mentioning his accident on the third visit. Dr. Craine testified that Archambeault's condition remained "essentially unchanged" during these visits and that he, at most, sustained a soft tissue aggravation that resolved itself shortly after. Additionally, Dr. Craine testified that Archambeault's pain medication remained "essentially the same." Although Archambeault complained of decreased mobility following the accident, Dr. Craine did not notice any new problems during Archambeault's visits.

¶12 Dr. McLean also expressed concern with the validity of

Archambeault's complaints. When asked if Dr. Craine's testimony caused him concern, Dr. McLean stated:

Certainly it causes concern with respect to the validity of complaint then, in that we have an individual who's been treating with this particular physician for many, many years for pain management, and who's also very in tune with respect to his back and other things because he's had this chronically for many years, and yet he does not mention any potential aggravating factor to his pain management position.⁴ So, yeah, that does create some concern with respect to the validity of the complaints.

¶13 Archambeault also admitted to having performance issues at his sales position with BSG, where he was given a termination notice four days before he told his physician of the incident. On this record, the ALJ's adverse finding regarding Archambeault's credibility was supported by reasonable evidence.

¶14 Archambeault asserts that the ALJ exceeded her authority by disregarding the opinions of medical experts. He claims the ALJ not only failed to discern the opinions of the medical experts but alternatively substituted her opinion instead. We disagree. "It is the duty of the ALJ to resolve conflicts in the evidence and to determine which opinion is more probably correct." *Kaibab Indus. v. Indus. Comm'n*, 196 Ariz. 601, 609, ¶ 25, 2 P.3d 691, 699 (App. 2000). Further,

⁴ Although the transcript says "position," we suspect Dr. McLean said "physician."

"[n]othing binds the fact-finder to accept or reject an expert's entire opinion." *Fry's Food Stores v. Indus. Comm'n*, 161 Ariz. 119, 123, 776 P.2d 797, 801 (1989); *State v. Cano*, 103 Ariz. 37, 41, 436 P.2d 586, 590 (1968) (expert testimony is merely evidence the trier of fact considers and weighs).

¶15 In her finding, the ALJ accepted Dr. McLean's testimony as more probably correct. Ultimately, Dr. McLean testified that Archambeault's aggravation was not objectively verifiable and that his medical opinion regarding the aggravation of symptoms was dependent upon the accuracy of Archambeault's history. Dr. McLean's testimony, understood in conjunction with the ALJ's finding that Archambeault was not credible, supports the ALJ's decision to deny the claim. Therefore, we reject Archambeault's contention that the ALJ disregarded expert opinions and exceeded her authority.

¶16 Archambeault also asserts that the ALJ failed to make sufficient findings to explain what he characterized as conflicting findings resolving the material issue of medical causation. We disagree, however, because the findings are adequate to allow us to review the ALJ's decision.

CONCLUSION

¶17 The award is affirmed.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
DIANE M. JOHNSEN, Presiding Judge

_____/s/_____
JON W. THOMPSON, Judge