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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 3/5/2013  
RUTH A. WILLINGHAM,  
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BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

MARLENA J. DOTIN, ) No. 1 CA-IC 12-0028  
)  
Petitioner, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
)  
THE INDUSTRIAL COMMISSION OF ARIZONA, ) (Not for Publication -  
) Rule 28, Arizona Rules  
Respondent, ) of Civil Appellate  
) Procedure)  
DZ ATLANTIC GROUP, )  
)  
Respondent Employer, )  
)  
NEW HAMPSHIRE INSURANCE CO. C/O )  
CHARTIS CLAIMS, INC., )  
)  
Respondent Carrier. )  
)

Special Action - Industrial Commission

ICA Claim No. 20103-340050

Carrier Claim No. 710725179

Administrative Law Judge J. Victor Stoffa  
Administrative Law Judge Margaret A. Fraser

**AWARD AFFIRMED**

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**S W A N N**, Judge

¶1 This is a special action review of an Industrial Commission of Arizona ("ICA") award and decision upon review denying the petitioner employee ("Claimant") additional temporary partial disability benefits and travel expenses and finding her stationary with no permanent impairment. One issue is presented on appeal: whether the administrative law judge ("ALJ") erred by concluding that Claimant was not entitled to receive continuing medical benefits for her residual pain complaints. Because the medical testimony of Dr. Gary Dilla, M.D., supported the ALJ's award, we affirm.

*FACTS AND PROCEDURAL HISTORY*

¶2 DZ Atlantic Group employed Claimant as an electrical helper and materials coordinator at a nuclear-power plant. On October 24, 2010, Claimant, attending a plant status meeting, sat in a high chair by a workbench. The chair fell apart and collapsed under her, causing her to fall to the floor. She

struck her head on the workbench and then struck her head, neck, and left elbow on the concrete floor.

¶13 Claimant received medical care for her injuries and filed a workers' compensation claim that was accepted for benefits. In April 2011, the respondent carrier sent Claimant for an independent medical examination ("IME") with Dr. Dilla, a board-certified doctor of physical medicine and rehabilitation. Based on Dr. Dilla's IME report, the carrier closed Claimant's claim with no permanent impairment. Claimant timely requested an ICA hearing. Two separate ALJs held five hearings. Testimony was received from Claimant, her supervisor, a lay witness, Dr. Dilla, and two doctors from whom Claimant had sought treatment after the IME, Drs. Daniel Lieberman, M.D., and Michael Castillo, M.D.<sup>1</sup>

¶14 Claimant testified that after the industrial injury, she experienced novel physical problems with her neck, head, lumbar area, and heel. Before Dr. Dilla's IME, Claimant received conservative treatment for her injuries, including prescription medication, trigger point injections, and physical

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<sup>1</sup> The ALJ initially assigned to the case resigned after all witnesses had testified but before a decision was rendered. Claimant requested and received the opportunity to testify in person before the new ALJ. But she did not object to the new ALJ's consideration of the other witnesses' testimony based on written transcripts, and expressly disclaimed any such objection at oral argument on appeal.

therapy, from an urgent care facility and from Dr. Rene A. Lucas, M.D.

¶15 Dr. Dilla testified that at the IME, he reviewed Claimant's industrially related medical history. Reviewing Claimant's MRI, he saw multiple levels of degenerative changes in the vertebrae from C2-3 through C7-T1, with facet arthritis and bone spurs at all of those levels, but no disc herniations or disc extrusions. Claimant told him that the trigger point injections had given her minimal symptom relief.

¶16 Dr. Dilla testified that on physical examination, he found that Claimant's injuries to her elbow, ankle, and heel were medically stationary and needed no further treatment, and her lumbar spine was normal. Claimant complained of headaches and diffused neck tenderness, and demonstrated associated decreased range of motion. A neuromuscular examination and radiculopathy testing of Claimant's cervical spine were normal and showed no nerve root involvement.

¶17 Dr. Dilla testified that the nature of Claimant's stated neck tenderness suggested that her pain complaints were not "completely organic" and "might be functional in nature." Dr. Dilla diagnosed a soft tissue strain and arthritis in Claimant's cervical spine. He opined that the industrial injury had not caused any permanent aggravation of Claimant's

arthritis, and that Claimant required no additional medical treatment for cervical, lumbar, elbow, or heel problems related to the industrial injury.

¶8 On cross-examination, Dr. Dilla was questioned about the records of other physicians who had examined or treated Claimant for her complaints following the industrial injury. Dr. Dilla testified that he disagreed with those physicians. He acknowledged that Claimant complained of pain and stated that he had no reason to disagree with her claim that the pain was causing her problems. He also acknowledged that Claimant complained of headaches, and he agreed that the industrial injury was the precipitating cause of the headaches. But he reiterated his belief that Claimant's continuing pain complaints were exaggerated by a functional overlay problem. At the conclusion of the cross-examination, he summarized:

Q. [By Claimant's counsel] Let me see if I really understand what you're saying. As far as you're concerned, she has no problems which need treatment on April 12th, 2011?

A. [Dr. Dilla] That's related to her industrial injury, that's correct. She already had a nice course of treatment. That's my opinion.

Q. But she does have residual pains, correct?

A. That's what she indicates, yes.

Q. You don't have any reason to disbelieve that?

A. That's correct.

Q. It's just that you can't relate it to the injury of 10/24/10?

A. That's correct.

On redirect, Dr. Dilla added that he did not believe Claimant was reasonably likely to benefit from additional treatment even assuming she had the residual symptoms of which she complained.

¶19 Claimant, however, introduced evidence that she did benefit from additional treatment after Dr. Dilla's examination. After the IME, Claimant sought additional medical treatment from Dr. Vandian, a neurologist, and Dr. Lieberman, a neurosurgeon. Dr. Lieberman recommended a cervical rhizotomy and referred her to Dr. Castillo. Dr. Castillo performed nerve blocks in Claimant's cervical spine, and, when her condition improved, performed radiofrequency ablation of the nerves. He later performed the same type of treatment in her lumbar spine, which caused her to experience an improvement in her left heel pain. Dr. Castillo testified that in his opinion, Claimant's complaints required treatment and were at least partially related to the industrial injury.

¶10 At the conclusion of the hearings, the parties filed legal memoranda. The ALJ then entered an award resolving the conflict in medical opinions in favor of Dr. Dilla's testimony,

and concluding that Claimant was not entitled to continuing medical benefits.

¶11 Claimant requested administrative review of the award, and the ALJ summarily affirmed upon review. Claimant then brought this special action.

#### *JURISDICTION AND STANDARD OF REVIEW*

¶12 We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(2) and 23-951(A), and Ariz. R. P. Spec. Act. 10. We defer to the ALJ's factual findings, but review questions of law de novo. *Young v. Indus. Comm'n*, 204 Ariz. 267, 270, ¶ 14, 63 P.3d 298, 301 (App. 2003). We consider the evidence in a light most favorable to upholding the ALJ's award. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16, 41 P.3d 640, 643 (App. 2002).

#### *DISCUSSION*

¶13 To receive continuing medical benefits, a claimant has the burden of proving that her physical condition is causally related to her industrial injury. *See, e.g., W. Bonded Products v. Indus. Comm'n*, 132 Ariz. 526, 527, 647 P.2d 657, 658 (App. 1982); *Lawler v. Indus. Comm'n*, 24 Ariz. App. 282, 284, 537 P.2d 1340, 1342 (1975). A preexisting condition's symptomatic aggravation that requires additional medical treatment, or results in additional disability, can constitute a compensable claim. *See Indus. Indem. Co. v. Indus. Comm'n*, 152 Ariz. 195,

199, 731 P.2d 90, 94 (App. 1986); *Mandex, Inc. v. Indus. Comm'n*, 151 Ariz. 567, 570, 729 P.2d 921, 924 (App. 1986). But to establish a permanent impairment, the claimant must show more than a temporary aggravation of an underlying condition; she must show that the industrial injury caused an aggravation that has not terminated and continues to contribute to her ongoing disability. *Arellano v. Indus. Comm'n*, 25 Ariz. App. 598, 603-04, 545 P.2d 446, 451-52 (1976).

¶14 Unless the causal relationship between the industrial accident and the injury or aggravation is readily apparent, the relationship must be established by expert medical testimony. See *McNeely v. Indus. Comm'n*, 108 Ariz. 453, 455, 501 P.2d 555, 557 (1972). Typically, back and spine injuries require expert medical testimony to demonstrate the causal connection. *W. Bonded Products*, 132 Ariz. at 527-28, 647 P.2d at 658-59. To support an award, a medical opinion must be premised on findings of medical fact. *Royal Globe Ins. Co. v. Indus. Comm'n*, 20 Ariz. App. 432, 434, 513 P.2d 970, 972 (1973). If not premised on an accurate factual background, medical testimony may be insufficient to support the award. *Desert Insulations v. Indus. Comm'n*, 134 Ariz. 148, 151, 654 P.2d 296, 299 (App. 1982).

¶15 Claimant contends that upon cross-examination, Dr. Dilla's testimony became so equivocal, speculative, and



inconsistent that it was insufficient to support the award. Claimant relies on Dr. Dilla's testimony acknowledging her ongoing complaints of pain and headaches, and acknowledging the industrial accident as a precipitating cause of the headaches. But, contrary to Claimant's contention, those acknowledgements did not clearly contradict Dr. Dilla's plainly stated opinion that her complaints were not industrially related.

¶16 First, Dr. Dilla's acknowledgment that the industrial accidents precipitated Claimant's headaches was not equivalent to a statement that her continuing complaints were attributable to the industrial injury, especially when viewed in light of his opinion that her continuing complaints were functional in nature. See *Balbuze v. Indus. Comm'n*, 15 Ariz. App. 309, 310, 488 P.2d 665, 666 (1971) (affirming resolution of conflicting medical testimony in favor of neurosurgeon who opined that claimant's dizziness and headaches after industrial accident were initially caused by accident, but after physical trauma subsided were due to claimant's preexisting condition, and unrelated to accident). Second, Dr. Dilla's testimony established that Claimant had preexisting arthritis that could cause discomfort, and the doctor expressly opined that the industrial accident did not permanently aggravate the arthritis.

¶17 Dr. Dilla's testimony was not equivocal. His opinion

was based on an adequate factual background, and constituted substantial evidence that provided sufficient support for the ALJ's findings and conclusions. Though we might have reached a different conclusion, the conflict in the expert testimony was for the ALJ to resolve.<sup>2</sup> *Stainless Steel Specialty Mfg. v. Indus. Comm'n*, 144 Ariz. 12, 19, 695 P.2d 261, 268 (1985). We do not reweigh the evidence. *Perry v. Indus. Comm'n*, 112 Ariz. 397, 398-99, 542 P.2d 1096, 1097-98 (1975). The ALJ did not err by concluding that Claimant was not entitled to continuing medical benefits.

*CONCLUSION*

¶18 For the reasons set forth above, we affirm the ALJ's award.

/s/

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PETER B. SWANN, Judge

CONCURRING:

/s/

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PHILIP HALL, Presiding Judge

/s/

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SAMUEL A. THUMMA, Judge

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<sup>2</sup> We note with some concern that the ALJ who decided this case was not the ALJ who heard Dr. Dilla testify. In such circumstances, the principles underlying appellate deference to lower courts' credibility determinations have tenuous application. At oral argument, however, Claimant's counsel disclaimed any challenge to this aspect of the proceedings.