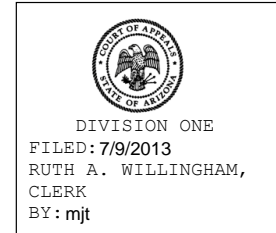


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



JULIE E. ROCKWELL, ) 1 CA-IC 12-0043  
)  
Petitioner, ) DEPARTMENT A  
v. )  
) **MEMORANDUM DECISION**  
THE INDUSTRIAL COMMISSION OF ) (Not for Publication -  
ARIZONA, ) Rule 28, Arizona Rules of  
) Civil Appellate Procedure)  
Respondent, )  
)  
PRESCOTT UNIFIED SCHOOL DISTRICT, )  
)  
Respondent Employer, )  
)  
SCF WESTERN INSURANCE COMPANY, )  
)  
Respondent Carrier. )  
)

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Special Action - Industrial Commission

ICA Claim Nos. 20090-910402\* and 20093-080157\*\*

Carrier Claim Nos. 0904724\* and 09W00260\*\*

The Honorable Paula R. Eaton, Administrative Law Judge

**AWARD AFFIRMED**

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Julie E. Rockwell  
Petitioner *In Propria Persona*

Prescott

The Industrial Commission of Arizona  
By Andrew F. Wade  
Attorney for Respondent

Phoenix

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**C A T T A N I**, Judge

¶1 This is a special action review of an Industrial Commission of Arizona award and decision upon review by an administrative law judge ("ALJ") denying Julie E. Rockwell additional workers' compensation benefits. Rockwell contends the ALJ erred by engaging in prejudicial procedural irregularities and by finding that her industrial injuries were medically stationary with no permanent impairment. For the following reasons, we affirm the ALJ's decision denying additional benefits.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Rockwell was a school teacher. On March 13, 2009, a student who was running in a hallway collided with her, knocking her to the floor and leaving her with "loss of vision, blurred [vision] + double vision, severe neck pain" and general soreness. The workers' compensation carrier accepted this claim as compensable.

¶3 On October 20, 2009, Rockwell was again injured at work when shelves and their contents fell off a classroom wall, striking Rockwell's head. Rockwell experienced pain in the left

side of her head and jaw, and she had issues with her vision. The carrier also accepted this claim as compensable.

¶14 Rockwell continued to report various ongoing symptoms, including bilateral jaw pain, neck pain, pain across the bridge of her nose, numbness in her left cheek, and some numbness in her fingers. The carrier sent Rockwell for an independent medical evaluation ("IME") on December 18, 2009 by Dr. Leo Kahn, a board-certified neurologist. Dr. Kahn concluded Rockwell's condition as it related to the workplace incident was stationary without permanent impairment.

¶15 The carrier closed Rockwell's March claim effective December 31, 2009 and Rockwell's October claim effective December 29, 2009, finding that neither accident resulted in permanent impairment. Rockwell challenged the termination of benefits as to both claims, and the cases were consolidated for hearing.

¶16 At the subsequently scheduled hearing, the parties presented testimony from Rockwell, two of Rockwell's treating physicians, and two independent medical evaluators. Rockwell described the March and October incidents, what treatment she had sought, and what ongoing symptoms she attributed to the workplace injuries. Rockwell testified twice, once initially and again after the case was reassigned to a different ALJ.

¶17 Dr. Eric Baumann, a physician board-certified in physical medicine and rehabilitation as well as interventional spine and pain management, testified regarding his treatment of Rockwell following the March incident and continuing after the October incident.<sup>1</sup> Dr. Baumann initially diagnosed Rockwell with myofascial pain syndrome after the March incident. At the hearing, he recommended Rockwell receive one to two cervical epidurals to address her ongoing left neck and arm pain from the March incident. Dr. Baumann expressed no opinion regarding the October incident, and testified only that "it is a possibility" that Rockwell's ongoing symptoms are related to the March incident.

¶18 Dr. Reed Day, a board-certified oral and maxillofacial surgeon, began treating Rockwell's jaw condition in October 2010. He testified that Rockwell had a preexisting derangement of her temporomandibular joints and bite deformity and that the October incident had aggravated both conditions. Dr. Day stated Rockwell needed braces, jaw reconstruction surgery, and possibly future temporomandibular joint surgery resulting from the October incident.

¶19 The carrier presented testimony from Dr. Gary Gradke, a maxillofacial surgeon and board-certified dentist, who

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<sup>1</sup> Although Dr. Baumann testified before the case was reassigned, Rockwell through counsel elected not to recall him to testify before the new ALJ.

performed an independent medical evaluation of Rockwell in July 2011. As part of the evaluation, Dr. Gradke took Rockwell's medical history, considered Rockwell's medical records from treatment following the March and October incidents, and conducted a physical examination with radiographic imaging. Dr. Gradke acknowledged hypothetically that trauma to certain parts of the skull and jaw could "possib[ly]" (but "[n]ot probab[ly]" ) cause symptoms comparable to those Rockwell reported. Given the manner of the October incident, however, Dr. Gradke testified the shelf incident "could have caused [Rockwell] to have some generalized jaw achiness for a few days to a couple of weeks," but that it was "[a]t most" a temporary aggravation of her preexisting temporomandibular joint condition. Dr. Gradke concluded that Rockwell had no ongoing condition or need for treatment causally related to either the March or October incidents.

¶10 The carrier also presented testimony from Dr. Kahn based on the December 2009 IME. During the evaluation, Dr. Kahn took Rockwell's medical history, performed a physical neurological examination, and reviewed Rockwell's medical records related to the October incident, as well as earlier records. Rockwell's neurological examination was normal and MRIs of Rockwell's brain and cervical spine from December 2, 2009 similarly showed no abnormalities. Dr. Kahn concluded

there was no objective basis for any ongoing symptoms related to the workplace incidents, and he testified that both the March and October injuries were stationary without permanent impairment. Dr. Kahn further suggested, based on his review of records, that Rockwell's continuing symptoms might be psychologically rather than physically based.

¶11 The ALJ found Rockwell's testimony not to be credible, found a conflict between the doctors' opinions, determined Dr. Gradke's and Dr. Kahn's opinions to be "more probably correct and well founded," and issued awards finding Rockwell medically stationary without permanent impairment as to both workplace injuries. After the ALJ affirmed the decision upon review, this timely special action followed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21 and 23-951(A) and Arizona Rule of Procedure for Special Actions 10.<sup>2</sup>

#### DISCUSSION

¶12 On special action review of a workers' compensation award, we consider questions of law de novo but defer to the ALJ's factual findings. *Young v. Indus. Comm'n*, 204 Ariz. 267, 270, ¶ 14, 63 P.3d 298, 301 (App. 2003). We view the evidence in the light most favorable to sustaining the award, *Perry v. Indus. Comm'n*, 112 Ariz. 397, 398, 542 P.2d 1096, 1097 (1975),

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<sup>2</sup> Absent material revisions after the relevant date, we refer to a statute's current version.

and will set aside the award only if it has no reasonable basis. *Ortega v. Indus. Comm'n*, 121 Ariz. 554, 557, 592 P.2d 388, 391 (App. 1979).

### **I. Procedural Claims.**

¶13 Rockwell first argues that the ALJ improperly violated court rules and court orders, effectively denying her a meaningful opportunity to present her case. Rockwell claims the ALJ impermissibly allowed the carrier -- but not Rockwell -- to add additional witnesses after ordering no further changes to the witness list as of January 19, 2011. To the contrary, after the case was reassigned to a different ALJ as of May 2011, the newly assigned ALJ allowed both parties, not just the carrier, to submit medical evidence and request medical subpoenas anew.

¶14 Rockwell also contends the ALJ erred by not allowing her to undergo a psychological evaluation to rebut any psychological evidence presented by the carrier. The ALJ in fact issued an order allowing testimony from Rockwell's psychologist Dr. Karen Sullivan, but Rockwell through counsel withdrew the request to call Dr. Sullivan. In light of Rockwell's decision not to call Dr. Sullivan, the carrier withdrew its request for testimony from IME psychologist Dr. Patricia Johnson. Although Dr. Johnson's report was entered into the record, the only arguably relevant psychological evidence presented was Dr. Kahn's suggestion that, because

Rockwell's continuing symptoms were not physically caused, they might be psychological in origin. The ALJ gave Rockwell the opportunity to rebut this suggestion with Dr. Sullivan's testimony, but Rockwell chose not to do so. In any event, the ALJ's decision relied directly on Dr. Kahn's medical causation opinion, not on his alternative suggestion that Rockwell's symptoms may be psychologically based. The ALJ did not thereby err.

## **II. Sufficiency of the Evidence.**

¶15 Rockwell argues the ALJ erred by adopting the medical opinions of Drs. Gradke and Kahn over those offered by Drs. Baumann and Day. A claimant bears the burden of proving her condition is causally related to the workplace injury and that it either is not stationary or resulted in permanent impairment. *E.g., Lawler v. Indus. Comm'n*, 24 Ariz. App. 282, 284, 537 P.2d 1340, 1342 (1975). Unless an injury is readily apparent to a lay person, medical expert testimony is necessary to establish the injury's existence, causation, needed treatment, and resulting impairment. *Yates v. Indus. Comm'n*, 116 Ariz. 125, 127, 568 P.2d 432, 434 (App. 1977).

¶16 The ALJ has primary responsibility to resolve any conflicts in medical evidence, and we will accept that resolution unless it is wholly unreasonable. *Perry*, 112 Ariz. at 398-99, 542 P.2d at 1097-98. When resolving a conflict in



medical evidence, the ALJ may consider many factors, "including whether or not the testimony is speculative, consideration of the diagnostic method used, qualifications in backgrounds of the expert witnesses and their experience in diagnosing the type of injury incurred." *Carousel Snack Bar v. Indus. Comm'n*, 156 Ariz. 43, 46, 749 P.2d 1364, 1367 (1988).

¶17 Rockwell argues that Dr. Gradke offered only an equivocal opinion. Although Dr. Gradke acknowledged a possibility (although not a probability) that some kind of blow to the head and jaw could produce symptoms similar to those reported by Rockwell, he opined that the type and location of blow actually described by Rockwell would not have caused Rockwell's jaw problems and noted Rockwell's preexisting temporomandibular joint problems. He unequivocally concluded that none of Rockwell's ongoing symptoms were related to Rockwell's March or October workplace incidents.

¶18 Rockwell also claims that causation was never in dispute and, to the extent it was, Dr. Gradke lacked the requisite expertise to offer a causation opinion. But the parties' dispute as to whether the workplace injuries were medically stationary centered on the causation of Rockwell's continuing symptoms: Rockwell argued that her ongoing, developing symptoms were related to the March and October incidents and required further treatment, thus precluding a

stationary finding, whereas the carrier asserted the continuing symptoms were unrelated to the industrial injuries. As a board-certified maxillofacial surgeon, Dr. Gradke had the requisite medical expertise under Arizona law to opine on the cause of Rockwell's jaw condition. See *W. Bonded Prods. v. Indus. Comm'n*, 132 Ariz. 526, 527, 647 P.2d 657, 658 (App. 1982).

¶19 Rockwell further contends both Drs. Gradke and Kahn lacked adequate foundation for their medical opinions, arguing their failure to review all medical records reviewed by Dr. Day fatally undermines their conclusions. The record reflects that both Drs. Gradke and Kahn reviewed all medical records of Rockwell's treatment after the March and October workplace incidents. Dr. Kahn also reviewed additional medical records predating the March incident. Rockwell does not specify what additional records were provided to Dr. Day or how additional pre-incident medical records would be critical to determine industrial causation of her ongoing symptoms.

¶20 As Rockwell notes, Dr. Kahn could not have reviewed the later-conducted December 2010 MRI of Rockwell's temporomandibular joints when he first rendered an opinion in December 2009. Dr. Kahn did, however, review Rockwell's December 2, 2009 brain and cervical spine MRIs, which showed no abnormalities. Additionally, Dr. Gradke, who had expertise relevant to the jaw condition, reviewed the December 2010 MRI

and concluded the damage to Rockwell's jaw joints was unrelated to the workplace incidents.

¶21 The ALJ's resolution of the conflict in medical testimony has a reasonable basis in the record. See *Perry*, 112 Ariz. at 398-99, 542 P.2d at 1097-98. Because the decision is supported by reasonable evidence, the ALJ did not err. See, e.g., *Stainless Specialty Mfg. Co. v. Indus. Comm'n*, 144 Ariz. 12, 19, 695 P.2d 261, 268 (1985).

#### CONCLUSION

¶22 For the foregoing reasons, we affirm the award.<sup>3</sup>

/S/  
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KENT E. CATTANI, Judge

CONCURRING:

/S/  
\_\_\_\_\_  
JON W. THOMPSON, Presiding Judge

/S/  
\_\_\_\_\_  
PATRICIA K. NORRIS, Judge

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<sup>3</sup> On April 26, 2013, Rockwell filed a Motion to Correct Record with Missing Documents. Because the record already includes all of the documents Rockwell seeks to add, we deny that motion as moot.