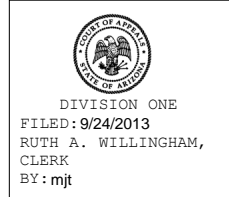


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

LINDA F. DRINKER,) 1 CA-IC 12-0057
)
Petitioner,) DEPARTMENT A
v.)
) **MEMORANDUM DECISION**
THE INDUSTRIAL COMMISSION OF) (Not for Publication -
ARIZONA,) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
Respondent,)
)
SOWIN LOVE SHELTERS,)
)
Respondent Employer,)
)
SCF ARIZONA,)
)
Respondent Carrier.)
_____)

Special Action - Industrial Commission

ICA Claim No.: 98365-402155

Carrier Claim No.: 9835466

The Honorable James B. Long, Administrative Law Judge

AWARD AFFIRMED

Linda F. Drinker
Petitioner *In Propria Persona*

Phoenix

Andrew F. Wade, Chief Counsel
Industrial Commission of Arizona
Attorney for Respondent

Phoenix

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") finding Linda F. Drinker's medical condition resulting from an ankle injury to be stationary, with 16 percent permanent impairment. Drinker contends the ALJ erred by entering an award that is not reasonably supported by the evidence. For the following reasons, we affirm the ALJ's decision.

FACTS AND PROCEDURAL BACKGROUND

¶2 Drinker worked as a child care counselor at the Sowin Love Shelters. In 1998, a child kicked Drinker's leg, injuring her right ankle. The workers' compensation carrier accepted the claim as compensable.

¶3 Drinker sought treatment for the injury, including subtalar joint fusion surgery in 2008. In 2010 and 2011, in response to Drinker's complaints of chronic pain, the carrier sent Drinker for independent medical evaluations with Dr. William J. Leonetti, D.P.M., a board-certified physician in foot and ankle surgery. In 2010, Dr. Leonetti opined that the 2008 fusion attempt had failed; the failed fusion was the direct

cause of her chronic pain; and her right ankle required re-fusion. In 2011, Dr. Leonetti noted that Drinker was unwilling to participate in additional surgical procedures, namely the recommended re-fusion of her right ankle joint. With Drinker's only remaining option being palliative measures, Dr. Leonetti opined that this could be provided under a supportive care award. Dr. Leonetti concluded that Drinker's condition arising from the industrial accident was stationary, and she would remain on permanent work restrictions due to her loss of balance and an abnormal gait. Dr. Leonetti recommended awarding her 16 percent impairment of her right lower extremity based on American Medical Association Guidelines.

¶4 The carrier terminated Drinker's benefits on the basis of the 2011 evaluation, and Drinker challenged the termination, claiming a continuing need for ankle treatment and that her permanent impairment was more than 16 percent. At the subsequently-scheduled hearing, Drinker testified that due to her industrial injury and the failed subtalar joint fusion surgery, she suffers from various medical conditions, including: teeth and hair loss, congestive heart failure, fibromyalgia, rheumatoid arthritis, neurological disease, hallux abducto valgus (bunions), bowing leg muscle, diabetic mellitus, hypertension, osteoarthritis, dysuria (painful urination), allergies, migraines, gout, liver disease, anxiety, autoimmune

disease, chronic pain, permanent loss of balance, and altered body temperature. She argued that the surgeon who performed the 2008 fusion surgery put radium in her body and that she had developed 15 diseases "from that alone." She submitted various medical records in support of her testimony.

¶15 The ALJ found that although Drinker submitted medical records that describe various medical conditions, she failed to prove a causal relationship between the conditions and her industrial injury. The ALJ adopted Dr. Leonetti's conclusions from his 2011 evaluation report and issued an award finding Drinker medically stationary with 16 percent permanent impairment of her right lower extremity. After Drinker sought reconsideration, the ALJ affirmed the decision upon review.

¶16 This timely special action followed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(2) and 23-951(A) and Arizona Rule of Procedure for Special Actions 10.¹

DISCUSSION

¶17 On special action review of a workers' compensation award, we defer to the ALJ's factual findings, but consider questions of law de novo. *Young v. Indus. Comm'n*, 204 Ariz. 267, 270, ¶ 14, 63 P.3d 298, 301 (App. 2003). We view the

¹ Absent material revisions after the relevant date, we refer to a statute's current version.

evidence in the light most favorable to sustaining the award and will affirm the award unless there is no reasonable basis for the ALJ's decision. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16, 41 P.3d 640, 643 (App. 2002).

¶18 Drinker argues that her condition is not stationary and her permanent impairment is more than 16 percent. An applicant has the burden to prove her claim by a preponderance of the evidence. *Brooks v. Indus. Comm'n*, 24 Ariz. App. 395, 399, 539 P.2d 199, 203 (1975). To receive continuing benefits, an applicant must establish that it is more likely than not that the condition is not medically stationary, or, if the condition is stationary, she has sustained a permanent impairment. *Timmons v. Indus. Comm'n*, 83 Ariz. 74, 79, 316 P.2d 935, 938 (1957).

¶19 During the hearing before the ALJ, Drinker claimed that she needed additional benefits because she is "very sick." She acknowledged Dr. Leonetti's recommendation that she undergo a re-fusion surgery, but reiterated her unwillingness to attempt further surgical treatment of her right ankle. Although she provided medical records to the ALJ, none of these records support her contentions that her condition is not stationary or that her permanent impairment is greater than 16 percent.

¶10 Drinker asserts that she suffers from numerous other medical conditions as a result of her industrial injury or the

treatment thereof. For a claim to be compensable, the applicant must not only suffer an injury, but must show that the current medical condition was caused by the industrial injury. *Yates v. Indus. Comm'n*, 116 Ariz. 125, 127, 568 P.2d 432, 434 (App. 1977). The causal relationship must be established by expert medical testimony when not apparent to a layperson. *Id.* Although Drinker's medical records describe some of the conditions she attributes to the workplace injury,² the records do not establish a causal relationship between her medical conditions and her industrial injury. See *W. Bonded Prods. v. Indus. Comm'n*, 132 Ariz. 526, 527, 647 P.2d 657, 658 (App. 1982) (noting that a layperson lacks the required knowledge "to make an accurate diagnosis or to describe a condition's etiology," making expert medical testimony establishing causation indispensable).

¶11 In Drinker's opening brief, she argues that her right ankle is not stationary as she requires surgery to remove internal hardware. She did not, however, raise this issue before the ALJ and provided no medical evidence to support her

² The Heart & Vascular Center of Arizona records for a February 20, 2012 visit indicate that Drinker suffers from chest pain, dyspnea (shortness of breath), abnormal electrocardiogram, fibromyalgia, migraines, degenerative joint disease, gout, abnormal liver function tests, and anxiety. Contrary to Drinker's assertion, there is no evidence reflecting the use of radium in her medical treatment or of the existence of conditions caused by exposure to radium.

contention. Her assertion is also contrary to Dr. Leonetti's 2010 and 2011 reports that recommended re-fusion as the appropriate surgical option, which Drinker has repeatedly rejected.

¶12 Dr. Leonetti's 2011 evaluation report supports the ALJ's decision. Drinker's right ankle has reached maximum medical improvement, without additional surgery, which she has rejected. Thus, her right lower extremity work injury is stationary. In determining the degree of impairment, Dr. Leonetti properly followed the American Medical Association Guidelines, see Ariz. Admin. Code R20-5-113(B)(1), and recommended a 16 percent permanent impairment award. Because the ALJ's decision is supported by reasonable evidence, the ALJ did not err. See *Lovitch*, 202 Ariz. at 105, ¶ 16, 41 P.3d at 643.

CONCLUSION

¶13 For the foregoing reasons, we affirm the award.

/S/

KENT E. CATTANI, Judge

CONCURRING:

/S/

MAURICE PORTLEY, Presiding Judge

/S/

JOHN C. GEMMILL, Judge