

NOTICE: NOT FOR PUBLICATION.
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

ALIMAS THOMAS, *Petitioner,*

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*
PHOENIX ELEMENTARY SCHOOL DISTRICT #1, *Respondent Employer,*
ARIZONA SCHOOL ALLIANCE FOR WORKER'S COMPENSATION,
Respondent Carrier.

No. 1 CA-IC 13-0009
FILED 11-21-2013

Special Action - Industrial Commission
ICA Claim No. 20120-250177 Carrier Claim No. 2011025549A
Administrative Law Judge Allen B. Shayo

AFFIRMED

COUNSEL

Alimas Thomas, Phoenix

Petitioner in Propria Persona

Andrew Wade, Chief Counsel, Phoenix
The Industrial Commission of Arizona

Counsel for Respondent

Klein Doherty Lundmark Barberich & LaMont PC, Phoenix
By R. Todd Lundmark

Counsel for Respondents Employer and Carrier

MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Patricia A. Orozco joined.

T H U M M A, Judge:

¶1 Alimas Thomas challenges an award of the Industrial Commission of Arizona (ICA) finding: (1) medical, surgical and hospital benefits should be paid from January 13, 2012 through February 27, 2012 and (2) temporary total or temporary partial disability benefits should be provided from January 13, 2012 through February 27, 2012. Because the Administrative Law Judge (ALJ) did not err, relief is denied.

FACTS AND PROCEDURAL HISTORY

¶2 On January 13, 2012, Thomas was working as a long-term substitute teacher for Phoenix Elementary School District No. 1. Thomas struck her forehead above her right eyebrow on a television cart that extended out from the wall in her classroom. The incident caused Thomas pain and resulted in a small laceration on her head that bled. The school nurse applied ointment and a bandage, and Thomas completed her work day without incident.

¶3 The next day, Thomas complained of a bad headache and sought emergency room treatment. A computed tomography (CT) scan of her head and a neurological examination did not reveal any abnormalities. Thomas continued to seek treatment for symptoms of dizziness, headaches, crying spells, memory loss and nausea and, by January 31, 2012, had seen five different medical professionals for her symptoms.

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Although additional tests were performed during these visits, no abnormalities were found.

¶4 On January 31, Thomas began to receive treatment from neurologist Dr. Javier Cardenas. Dr. Cardenas performed magnetic resonance imaging (MRI), which was normal. Dr. Cardenas diagnosed Thomas with a concussion and noted that she had symptoms of post-concussive syndrome. Dr. Cardenas prescribed an anti-depressant and pain-relievers, although Thomas refused to take the medicines based on a concern about potential side-effects.

¶5 Dr. Cardenas saw Thomas about a month later. During that visit, Thomas reported feeling 70 percent improved. Dr. Cardenas recommended Thomas see a number of specialists, including an occupational therapist, physical therapist and consult with a psychiatrist and psychologist because of her continued symptoms. Thomas continued to see Dr. Cardenas about once a month through August 2012. At the time of the hearings, Thomas had been seeing a speech and physical therapist to help with her symptoms as Dr. Cardenas recommended.

¶6 Thomas was examined by a number of other doctors, including Dr. Leo Kahn, who performed an independent medical examination at the request of the Respondent's carrier, Arizona School Alliance for Worker's Compensation. Dr. Kahn found that Thomas had not suffered a concussion and did not have post-concussive syndrome, and that "[t]he subjective symptomatology does not correlate with objective physical findings." Dr. Kahn concluded that Thomas had reached a permanent and stable status as it related to the January 13 incident. Thomas went back to work as a substitute teacher at the end of February 2012 and resumed her regular duties.

¶7 During testimony at the ALJ hearing, Dr. Cardenas testified his "objective findings were inconsistent with [Thomas'] subjective reports." Dr. Cardenas also testified that Thomas' reported symptoms were not consistent with a typical pattern of post-concussive syndrome, and that the symptoms were not attributed to the industrial injury. Dr. Cardenas opined that Thomas reached a level of maximum medical improvement on February 27, that she had no permanent impairment related to the January 13 incident and that she was not in need of any supportive care. By agreement of the parties, Dr. Kahn's report was admitted into evidence but he did not testify at the hearing.

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¶8 The ALJ found the evidence established Thomas' condition was medically stationary as of February 27 and that she failed to establish by a preponderance of the evidence that she was in need of further active medical care or had a permanent impairment as a result of the January 13 incident. The ALJ awarded Thomas medical, surgical, hospital and temporary disability compensation benefits from January 13 through February 27.

¶9 Thomas requested review, and the ALJ affirmed the prior decision. Thomas timely appealed. This court has jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(2), 23-951(A) (2013)¹ and Arizona Rule of Procedure for Special Actions (ARCAP) 10.

DISCUSSION

¶10 Thomas' opening brief fails to identify or discuss any specific legal grounds or arguments for vacating the ALJ's decision. The failure of her brief to include citations to the record could constitute abandonment and waiver of her claims. *See* ARCAP 13(a)(6). In exercising the court's discretion, however, Thomas' appeal will be considered on the merits. *See Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984) (courts prefer to decide cases on their merits rather than dismissing on procedural grounds).

¶11 Thomas' appeal is based on an allegation that the ALJ's decision was not supported by sufficient evidence. When reviewing a workers' compensation award, this court views "the evidence in the light most favorable to sustaining the [ALJ's] decision," which will not be set aside if reasonably supported by the evidence. *Delgado v. Indus. Comm'n*, 183 Ariz. 129, 131, 901 P.2d 1159, 1161 (App. 1994). Thomas has the burden of proof by a preponderance of the evidence on all elements of the claim. *See Malinski v. Indus. Comm'n*, 103 Ariz. 213, 216, 439 P.2d 485, 488 (1968); *Bishop v. Indus. Comm'n*, 17 Ariz. App. 42, 44, 495 P.2d 482, 484 (1972). To show an entitlement to continuing benefits, Thomas must establish that her current medical condition was caused by the industrial accident. *See Spears v. Indus. Comm'n*, 20 Ariz. App. 406, 407, 513 P.2d 695, 696 (1973). Thomas also has the burden to show that her injury is not medically stationary, or that if it is stationary, she has sustained a permanent

¹ Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

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impairment. See *Timmons v. Indus. Comm'n*, 83 Ariz. 74, 79, 316 P.2d 935, 938 (1957).

¶12 The record supports the ALJ's decision that Thomas' medical condition was medically stationary and that she did not sustain any permanent impairment and did not need supportive care. The ALJ considered the evidence, including testimony, medical records and other documents that were in the industrial commission file.

¶13 Thomas asserts that the ALJ decision was incorrect because Dr. Cardenas' "testimony did not match his medical notes nor what he told [her]." Additionally, Thomas asserts Dr. Cardenas did not include information about the findings of the therapy team who treated Thomas, in his testimony. Thomas asks this court to "study the medical documents yourself to get the truth and the court will see that Dr. Cardenas testimony is odd considering what is in his documentation."

¶14 Thomas is essentially asking this court to reweigh the evidence presented to the ALJ, something this court will not undertake. See *Pac. Fruit Express v. Indus. Comm'n*, 153 Ariz. 210, 214, 735 P.2d 820, 824 (1987) (appellate courts will not reweigh the evidence and consider all evidence in light most favorable to sustaining ALJ's decision); *Walters v. Indus. Comm'n*, 134 Ariz. 597, 599, 658 P.2d 250, 252 (App. 1982) (same). Thomas questioned Dr. Cardenas during the hearing before the ALJ. Thomas also testified and called into question many of Dr. Cardenas' findings. Accordingly, Thomas had a full and fair opportunity to call into question Dr. Cardenas' findings or to seek additional clarification with regard to the therapist's findings. Furthermore, the ALJ was aware that Thomas was attending therapy, expressly noting Thomas "indicated that she pursued occupational, physical, and speech therapy." Given the evidence presented, the ALJ did not err in concluding that Thomas was not entitled to continuing medical benefits or compensation.

CONCLUSION

¶15 Because the ALJ did not err, the resulting award and decision are affirmed.



Ruth A. Willingham - Clerk of the Court
FILED: mjt