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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

MICHAEL L. CHARLESTON, *Petitioner,*

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*

SCHUCK AND SONS CONSTRUCTION, *Respondent Employer,*

SCF ARIZONA, *Respondent Carrier.*

No. 1 CA-IC 13-0020

FILED 11-26-2013

Special Action – Industrial Commission

ICA Claim No. 97325202296

Carrier Claim No. XX070301

The Honorable Robert F. Retzer Jr., Administrative Law Judge

AFFIRMED

COUNSEL

Michael L. Charleston, Phoenix
Petitioner In Propria Persona

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

State Compensation Fund, Phoenix
By James B. Stabler, Chief Counsel, Deborah E. Mittelman
Counsel for Respondent Carrier

MEMORANDUM DECISION

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

H O W E, Presiding Judge:

¶1 This is a special action review of an Industrial Commission of Arizona decision by an administrative law judge (ALJ) finding Michael Charleston’s medical condition to be stationary without permanent impairment. For the following reasons, we affirm the ALJ’s decision.

FACTS AND PROCEDURAL HISTORY

¶2 On November 10, 1997, Charleston sustained injuries to his head, neck, shoulders, back, and left hip when an 18-foot frame wall fell on him. Charleston filed a workers’ compensation claim, which was accepted for benefits.

¶3 When Charleston’s claim closed with no permanent impairment on December 29, 1998, he appealed. On October 28, 1999, an ALJ found that Charleston’s condition was stationary, without permanent impairment, and that he was no longer entitled to additional workers’ compensation benefits. The ALJ considered testimony from several physicians, and concluded that “contradictions in the testimony of the medical care providers . . . cast doubt on [Charleston’s] credibility.”

¶4 On April 25, 2000, Charleston petitioned to reopen his claim, alleging that he experienced severe and unresolved pain in his neck, face, shoulders, as well as spasms. On December 19, 2000, an ALJ denied Charleston’s petition to reopen the claim, finding that Charleston “has not met his burden of proving that he has a new, additional or previously undiscovered condition or disability casually related to his industrial

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injury of November 10, 1997. On January 17, 2001, Charleston appealed from the denial of his petition to reopen. The December 19, 2000, decision was affirmed on review.

¶5 Charleston again petitioned to reopen his claim on October 3, 2001. He claimed that his “symptoms were getting worse, with increased pain and spasms resulting in numerous visits to the emergency room. . . .” Finding that Charleston had “no new, additional, or previously undiscovered condition causally related to the [November 10, 1997] injury,” an ALJ denied Charleston’s request to reopen on January 30, 2003. On February 26, 2003, Charleston appealed the denial of his second petition to reopen. The denial of Charleston’s second petition to reopen was affirmed on review.

¶6 On October 30, 2012, Charleston petitioned to reopen his claim a third time, which was denied. In a consolidated decision and order issued on March 1, 2013, the ALJ affirmed the denial of Charleston’s third petition, concluding that Charleston “has failed to provide any medical documentation containing sufficient medical facts to establish a prima facie showing of an objective change to this physical condition since his claim was last closed and that such change is related to his November 10, 1997[,] industrial injury.”

¶7 On March 5, 2013, Charleston sought review of the March 1, 2013, decision. On April 19, 2013, the ALJ denied Charleston’s request and affirmed the March 1, 2013 decision. Charleston then filed a special action petition on April 23, 2013, and this court issued a writ of review.

¶8 Charleston moved to supplement the appendix to his opening brief and later filed a motion to supplement his opening brief. This court denied both motions, finding that the court could only consider records that the ALJ considered and that were part of the certified record on appeal.

DISCUSSION

¶9 As an initial matter, Charleston’s opening brief fails to identify or discuss any specific legal grounds or arguments for vacating the ALJ’s 2013 decisions; nor does his brief include citations to the record, which could constitute abandonment and waiver of his claim. *See* Arizona Rule of Civil Appellate Procedure 13(a)(6) (requiring the appellant’s brief to contain arguments that include “citations to the authorities, statutes and parts of the record relied on”). In our discretion, we decide this appeal on its merits based on our own review of the record. *See Adams v.*

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Valley Nat'l Bank of Ariz., 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984) (recognizing that courts prefer to decide each case upon its merits rather than dismissing on procedural grounds).

¶10 Charleston first claims that his privately-retained attorney provided inadequate representation. As with civil judgments, Industrial Commission decisions may not be challenged for inadequate representation. See *Panzino v. City of Phoenix*, 196 Ariz. 442, 448 ¶ 19, 999 P.2d 198, 204 (2000) (“Permitting relief from judgments entered as a result of an attorney’s actions clearly undermines the undeniable public policy that recognizes the finality of judgments and discourages multiplicitous litigation.”), (quoting *Smith v. Saxon*, 186 Ariz. 70, 74 n.3, 918 P.2d 1088, 1092 n.3 (App. 1996)) (quotation marks omitted).

¶11 We construe the remainder of Charleston’s opening brief as a general challenge to the sufficiency of the evidence. We also construe Charleston’s claim that the State Compensation Fund of Arizona “is liable and has shown bad faith” to be a general challenge to the sufficiency of the evidence.

¶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 ALJ’s finding and award, *Polanco v. Indus. Comm’n*, 214 Ariz. 489, 490-91 ¶ 2, 154 P.3d 391, 392-93 (App. 2007), 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).

¶13 Charleston has the burden of proving that he has a compensable claim, *LaRue v. Indus. Comm’n*, 16 Ariz. App. 482, 483, 494 P.2d 382, 383 (App. 1972), and that he is entitled to reopen a claim “by showing a new, additional, or previously undiscovered condition and a causal relationship between that new condition and the prior industrial injury,” *Lovitch v. Indus. Comm’n*, 202 Ariz. 102, 105-06 ¶ 17, 41 P.3d 640, 643-44 (App. 2002). “To receive workers’ compensation benefits, an injured employee must demonstrate both legal and medical causation.” *Grammatico v. Indus. Comm’n*, 211 Ariz. 67, 71 ¶ 19, 117 P.3d 786, 790 (2005). Legal causation is established when the employee suffered an injury that arose out of and in the course of employment and was caused in whole or part by a necessary risk of the employment. *Id.* “Medical causation, in contrast, is established by showing that the accident caused the injury.” *Id.* ¶ 20; see also A.R.S. § 23-1021(A).

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¶14 Charleston has failed to meet his burden. Although he has submitted dozens of medical records that describe various medical conditions, Charleston has failed to establish with any clarity how the ALJ erred in its determination that Charleston's medical condition was stationary without permanent impairment. Rather, his opening brief consists of a stitching of various medical records that neither rebuts nor contradicts findings made by the ALJ. Thus, Charleston has failed to meet his burden of proving a change in condition from his last award, and his petition before us is denied.

CONCLUSION

¶15 For the foregoing reasons, we affirm the ALJ's findings.



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