

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL AND
MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

WAYNE JELLISON, *Petitioner,*

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*
DOUBLE EAGLE TILE MARBLE & STONE, *Respondent Employer.*

SCF ARIZONA, *Respondent Carrier.*

No. 1 CA-IC 14-0013

FILED 1-13-2015

Special Action - Industrial Commission
ICA Claim No. 20123-480392;
Carrier Claim No. 12G02872
The Honorable JoAnn C. Gaffaney, Administrative Law Judge

AFFIRMED

COUNSEL

Wayne Jellison, Phoenix
Petitioner

SCF Arizona, Phoenix
By Chiko Swiney
Counsel for Respondents Employer/Carrier

JELLISON v. DOUBLE EAGLE/SCF
Decision of the Court

MEMORANDUM DECISION

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

H O W E, Judge:

¶1 This is a special action review of an Industrial Commission of Arizona (“ICA”) award and decision upon review for temporary disability benefits. Wayne Jellison argues that the administrative law judge (“ALJ”) erred in finding that his condition was medically stationary with no permanent impairment and that the diagnoses related to his urinary tract, kidneys, testicles, and liver enzymes were not related to the industrial injury. Finding no error, we affirm the award.

FACTS AND PROCEDURAL HISTORY

¶2 In November 2012, Jellison was setting tile as part of his job for Double Eagle Tile Marble & Stone (“Double Eagle”). While he was working, Jellison smelled a strong chemical odor and then noticed that people were painting in the adjacent hallway. As the morning progressed, Jellison felt nauseated, had difficulty breathing, and had a scratchy throat. By the end of the day, he had a headache.

¶3 The next morning, Jellison was able to still smell some of the paint fumes at work. He had symptoms from the previous day in addition to upper back and chest pains. On his way home, Jellison stopped at Maryvale Hospital. There, he was diagnosed with an upper respiratory infection. The next morning, he went to work and noticed that the paint smell “wasn’t that bad.” But on his way home, Jellison felt “pain in [his] testicle area.” He went to Maryvale Hospital again and was told he had a hydrocele cyst. He was given antibiotics. The next day he saw increased swelling and felt pain in his left testicle. As a result, he went to Banner Good Samaritan Medical Center. He was diagnosed with epididymitis inflammation and infection in the epididymis near the testicle. He was given an albuterol inhaler.

¶4 Jellison returned to work ten days after his initial exposure. By then, the pain and swelling in his testicle had stopped. Around Christmas, he developed a fever and pain in his lower back. He visited

JELLISON v. DOUBLE EAGLE/SCF
Decision of the Court

Banner Good Samaritan Medical Center and was told he had a kidney infection. In her report, Dr. Jeanine Spielberger wrote: “Epididymitis – . . . uncertain cause. Cannot exclude industrial exposure as contributing factor.” Jellison was put on oral antibiotics.

¶5 In November 2012, Jellison filed a workers’ compensation claim, and his claim was accepted for benefits. He quit his job at Double Eagle at the end of December. In February 2013, Double Eagle terminated Jellison’s benefits with no permanent impairment. Jellison requested a hearing. The ALJ heard testimony from Jellison, one of his co-workers, and Drs. John Schaller and Daniel Brooks.

¶6 The doctors had examined Jellison together. Dr. Schaller testified that Jellison’s condition was stationary with no permanent impairment related to the exposure to paint fumes. He also stated that Jellison developed transient symptoms, like headache and breathing difficulty, but the diagnoses related to his urinary tract, kidneys, testicles, and liver enzymes were unrelated to the paint fume exposure. Dr. Brooks testified that Jellison’s exposure to paint fumes caused, at most, an irritation of his upper respiratory tract and that the other diagnoses were not related to the exposure. He also stated that Jellison’s exposure did not cause permanent organ damage.

¶7 The ALJ awarded Jellison medical and temporary disability benefits. It found that to the extent that Dr. Spielberger’s opinion from her admitted medical report and Drs. Schaller and Brooks’ testimonies conflicted, it adopted the opinions of Drs. Schaller and Brooks that Jellison’s upper respiratory condition had resolved without permanent impairment and that the diagnoses related to his urinary tract, kidneys, testicles, and elevated liver enzymes were unrelated to the industrial exposure. Jellison filed a request for review, and the ALJ affirmed the award. This petition for review followed.

DISCUSSION

¶8 Jellison argues that the ALJ erred in finding that his condition was medically stationary with no permanent impairment and that his other diagnoses were unrelated to the industrial injury. 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 will sustain an award if it is reasonably supported by the evidence, *Lawson v. Indus. Comm’n*, 12 Ariz. App. 546, 547, 473 P.2d 471, 472 (1970), which is

JELLISON v. DOUBLE EAGLE/SCF
Decision of the Court

considered in a light most favorable to upholding the award, *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105 ¶ 16, 41 P.3d 640, 643 (App. 2002).

¶9 A claimant bears the burden of proving his condition is causally related to the workplace injury and that it is either not stationary or resulted in permanent impairment. *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 (1977). As the trier of fact, the ALJ has the responsibility of resolving conflicts in the medical evidence, and this Court will not disturb the ALJ's resolution unless it is wholly unreasonable. *Hackworth v. Indus. Comm'n*, 229 Ariz. 339, 343 ¶ 9, 275 P.3d 638, 642 (App. 2012). Because the ALJ's findings are reasonably supported by the record, the ALJ did not err.

¶10 Here, medical experts that examined Jellison and his medical history testified that Jellison developed transient symptoms as a result of his paint fume exposure and that the exposure, at most, caused an irritation of his upper respiratory tract. Specifically, Dr. Schaller testified that "the transient symptoms that [Jellison] had experienced . . . , headache, some nausea, lightheadedness, cough, were consistent with irritant effects from exposure to these types of chemicals. But these irritant effects or symptoms are generally short-lived and resolved once . . . removed from the exposure, which really was consistent with his history." When asked whether Jellison needed further active treatment or further diagnostic testing on an industrial basis, whether he sustained any permanent impairment as a result of his exposure, and whether he had any work restrictions as a result of this exposure, the doctor responded in the negative to all the questions. Moreover, both experts testified that the other diagnoses related to Jellison's urinary tract, kidneys, testicles, and liver enzymes were unrelated to the industrial exposure. Their conclusion was based on their joint review of Jellison and his medical history, as well as discussions, dictations, and review of their final report to the ICA.

¶11 Although the parties presented conflicting evidence, the ALJ was responsible for "resolv[ing] all conflicts in the evidence, especially when the conflicts involve expert medical testimony." *Post v. Indus. Comm'n*, 160 Ariz. 4, 8, 770 P.2d 308, 312 (1989). The ALJ resolved the conflict by adopting the opinions of Drs. Schaller and Brooks, instead of that of Dr. Spielberger. Based on the doctors' testimonies and "all of the records in the file," the ALJ concluded that Jellison's upper respiratory condition had been resolved without permanent impairment and that the

JELLISON v. DOUBLE EAGLE/SCF
Decision of the Court

other diagnoses were unrelated to the industrial exposure. Consequently, because the ALJ's resolution of the medical conflict was not wholly unreasonable, and the award was reasonably supported by evidence, we cannot find that the ALJ erred.

CONCLUSION

¶12 For the foregoing reasons, we affirm.



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