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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

EDGARD ALICEA, *Petitioner,*

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*

AARON RENTS INC., *Respondent Employer,*

TRAVELERS INDEMNITY COMPANY, *Respondent Carrier.*

No. 1 CA-IC 15-0009
FILED 1-21-2016

Special Action - Industrial Commission

ICA Claim No. 20122-750264

Carrier Claim No. 127-CB-EPE5980-H

The Honorable Paula R. Eaton, Administrative Law Judge

AWARD AFFIRMED

APPEARANCES

Edgard Alicea, Goodyear
Petitioner

Industrial Commission of Arizona, Phoenix
By Andrew F. Wade
Counsel for Respondent

Lundmark Barberick La Mont & Slavin, PC, Phoenix
By R. Todd Lundmark
Counsel for Respondent Employer and Respondent Carrier

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge John C. Gemmill joined.

C A T T A N I, Judge:

¶1 This is a special action review of an Industrial Commission of Arizona award finding Edgard Alicea medically stationary with no permanent impairment. For reasons that follow, we affirm the award.

FACTS AND PROCEDURAL BACKGROUND

¶2 In September 2012, Alicea was employed as a plant manager for Aaron Rents, Inc. While lifting a heavy roll of foam, Alicea felt a strain in his neck and shoulder (the “industrial accident”). By the next day, his pain had increased and he had stiffness in his neck. As a result of the industrial accident, Alicea filed a worker’s compensation claim and was approved for benefits in January 2013.

¶3 Alicea was diagnosed with a cervical sprain, put on light work duty, and prescribed pain relievers. Although the pain faded at first, it did not diminish completely.

¶4 Alicea was evaluated by Dr. Joshua Abrams, and over the next seven months, Alicea underwent physical therapy, epidural steroid injections, and facet injections. But the prescribed treatment did not alleviate his pain.

¶5 Dr. Abrams ordered an MRI in April 2013. The MRI revealed “mild degeneration of the thoracic spine with a small central disc protrusion.” Dr. Abrams concluded that Alicea was medically stationary¹ because he had reached “maximal medical improvement,” and that the industrial accident had caused a 5% permanent impairment.

¹ A claimant’s condition is considered to be medically stationary when it “has reached a relatively stable status so that nothing further in the way of medical treatment is indicated to improve that condition.” *Aragon v. Indus. Comm’n*, 14 Ariz. App. 175, 176 (App. 1971).

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¶6 Seeking a second opinion, Alicea underwent an Independent Medical Examination (“IME”) by Dr. Duane Pitt. Alicea told Dr. Pitt that in addition to neck and upper right shoulder pain, he began experiencing pain radiating into his arms and left side nine months after the industrial accident. Dr. Pitt concluded that the cervical strain was the result of the industrial incident, but the radiating pain into the arms and left side was unconnected.

¶7 Based on Dr. Pitt’s IME, the carrier closed Alicea’s claim with no permanent impairment. Alicea protested, requested a hearing, and sought an independent opinion from Dr. David Sanders. Dr. Sanders opined that “it is probable that the work injury exacerbated [] pre-existing [bulging] cervical discs leading to his neck and arm pain,” and recommended a consultation with an orthopedic surgeon, Dr. James Hawkins. Dr. Hawkins concluded that Alicea’s back and neck pain were “secondary to a work-related injury,” and that there was evidence of “stenosis and degenerative disc disease in the cervical spine.”

¶8 At the end of 2013, Alicea underwent an additional IME with Dr. Terry McLean. Dr. McLean initially opined that there was a causal relationship between the industrial accident and Alicea’s pain due to “his herniations and stenosis.” Following additional testing and a review of Alicea’s medical records, however, Dr. McLean arrived at the same conclusion as Dr. Pitt: that Alicea’s pain radiating into his arms and left side were not related to the industrial accident, but likely the “random onset” of symptoms from preexisting herniation and stenosis resulting from natural degeneration. Dr. McLean thus opined that Alicea was medically stationary with no permanent impairment.

¶9 An Administrative Law Judge (“ALJ”) conducted a hearing and heard testimony from Dr. Abrams, Dr. McLean, and Alicea. The ALJ found that Dr. McLean’s opinions were “more probably correct and well founded.” Therefore, she concluded that Alicea was medically stationary with no permanent impairment.

¶10 Alicea requested review, and the ALJ affirmed the decision. Alicea timely sought relief in this court, and we have jurisdiction under Arizona Revised Statutes (“A.R.S.”) § 23-951(A).²

² Absent material revisions after the relevant date, we cite a statute’s current version.

DISCUSSION

¶11 Alicea asks this court to review inconsistencies in Dr. McLean's testimony and conclude that his initial diagnosis reflected the "true results" of the case.³

¶12 A claimant bears the burden of proving that his condition is causally related to a workplace injury, and if the claimant is medically stationary he must also show that the injury resulted in permanent impairment. *See Lawler v. Indus. Comm'n*, 24 Ariz. App. 282, 284 (App. 1975). Back and spine injuries typically require expert medical testimony to demonstrate both that an industrial accident caused the claimant's medical condition and that it resulted in permanent impairment. *Gutierrez v. Indus. Comm'n*, 226 Ariz. 1, 3, ¶ 5 (App. 2010), *aff'd in relevant part*, 226 Ariz. 395 (2011). The ALJ resolves conflicts in the evidence, and we will not disturb the ALJ's resolution of such conflicts unless it is "wholly unreasonable." *Hackworth v. Indus. Comm'n*, 229 Ariz. 339, 343, ¶ 9 (App. 2012).

¶13 Dr. Abrams and Dr. McLean both testified that Alicea had suffered a cervical strain from his industrial accident and that he was medically stationary. Although Dr. Abrams found that Alicea had a 5% permanent impairment, Dr. McLean opined that Alicea was not permanently impaired, concluding instead that Alicea's ongoing symptoms (the radiating pain in his arms and left side) were the result of natural degeneration. Dr. McLean arrived at this conclusion because Alicea's pain had improved soon after the industrial accident, the pain was isolated to his neck and right side, and the pain in the left side was not reported until much later. Dr. McLean stated that had Alicea's left side pain resulted from the industrial accident, it would have appeared within a few weeks, not nine months later. Alicea addressed the timing of his left side and arm pain in his testimony, stating that although he only reported the pain at a later date, it had in fact been constant since the industrial accident and he did not realize initially that it was related to the industrial accident.

¶14 The ALJ was responsible for resolving any conflicts in the evidence, including the differences between Dr. McLean's and Dr. Abrams's reports and the conflicting testimony regarding when Alicea experienced pain in his arms and left side. *See Post v. Indus. Comm'n*, 160

³ Alicea attached two medical journal articles to his Opening Brief and asks us to consider their application to his case. Our review is limited, however, to evidence presented to the ALJ. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 15 (App. 2002).

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Ariz. 4, 8 (1989) (noting that the ALJ resolves all conflicts in the evidence, “especially when the conflicts involve expert medical testimony”). Given the evidence presented, the ALJ’s decision was supported by the record and was not “wholly unreasonable.” See *Hackworth*, 229 Ariz. at 343, ¶ 9. Accordingly, we affirm the ALJ’s finding that Alicea is medically stationary and has not suffered permanent impairment.

CONCLUSION

¶15 For the foregoing reasons, the award is affirmed.



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