

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

CESAR AGUILAR, *Petitioner,*

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*

FRY REGLET CORPORATION, *Respondent Employer,*

AMERICAN ZURICH INSURANCE COMPANY, *Respondent Carrier.*

No. 1 CA-IC 15-0056
FILED 5-31-2016

Special Action - Industrial Commission
ICA Claim No. 20120-580103
Carrier Claim No. 2080264795
The Honorable J. Matthew Powell, Administrative Law Judge

AWARD AFFIRMED

COUNSEL

Cesar Aguilar, Phoenix
Petitioner

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

Lester Norton & Brozina, PC, Phoenix
By Rachel P. Brozina
Counsel for Respondent Employer and Carrier

MEMORANDUM DECISION

Presiding Judge Margaret H. Downie delivered the decision of the Court, in which Judge Kent E. Cattani and Judge Donn Kessler joined.

D O W N I E, Judge:

¶1 Cesar Aguilar seeks special action review of an Industrial Commission of Arizona (“ICA”) award and decision upon review denying a petition to reopen his workers’ compensation claim. The sole issue on appeal is whether the administrative law judge (“ALJ”) erred in determining that Aguilar failed to establish grounds to reopen. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In February 2012, Aguilar lacerated his thumb on a table saw while working for Fry Reglet. Four weeks post-injury, Aguilar was discharged from medical care with no permanent impairment. In January 2013, Aguilar petitioned to reopen his claim, stating, “My finger still hurts.” Fry Reglet’s insurance carrier – American Zurich (“Zurich”) – denied the petition in February 2013.

¶3 In October 2014, Aguilar filed a second petition to reopen, which Zurich also denied. Aguilar requested a hearing to protest that denial. After a hearing, the ALJ concluded that Aguilar had not carried his burden of proof and denied the petition to reopen; the ALJ subsequently affirmed the denial on review. Aguilar timely sought this Court’s review. We have jurisdiction pursuant to Arizona Rule of Procedure for Special Actions 10 and Arizona Revised Statutes (“A.R.S.”) sections 12-120.21(A)(2) and 23-951(A).

DISCUSSION

¶4 On appeal, we view the evidence in the light most favorable to upholding the ALJ's award. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16 (App. 2002). "In reviewing a workers' compensation award, we defer to the ALJ's factual determinations, but review conclusions of law *de novo*." *Tabler v. Indus. Comm'n*, 202 Ariz. 518, 522, ¶ 14 (App. 2002).

¶5 Aguilar contends that the ALJ erred by rejecting his assertion that residual pain from his 2012 injury will result in a loss of income until his projected retirement at age 65. His workers' compensation claim, however, could only be re-opened if he established a "new, additional, or previously undiscovered condition and a causal relationship between that new condition and the prior industrial injury." *Lovitch*, 202 Ariz. at 105-06, ¶ 17. During the proceedings before the ALJ, Aguilar failed to carry his burden of proof.¹

¶6 "A claim shall not be reopened because of increased subjective pain if the pain is not accompanied by a change in objective physical findings." A.R.S. § 23-1061(H); *see also Polanco v. Indus. Comm'n*, 214 Ariz. 489, 494, ¶ 12 (App. 2007) ("[S]ubjective pain alone cannot support a petition to reopen a claim. Rather, subjective pain must be directly related to the degree of impairment resulting from an objective physical change."). The medical evidence Zurich presented at the hearing supports the ALJ's decision. After performing an independent medical examination and reviewing Aguilar's medical records, Dr. Campbell – a hand surgeon – testified that there was "no change in objective findings compared to the previous [evaluation]." Although Aguilar testified that his pain had "been consistent since 2013," he did not present any medical testimony, and the medical records he produced did not demonstrate "a change in objective physical findings," but merely noted his pain, speculated about potential causes, and identified possible treatment options.

¹ After briefing in this Court was complete, Aguilar filed a medical record dated March 18, 2016. Because that document was not part of the record before the ALJ when he ruled, we do not consider it. *See Lovitch*, 202 Ariz. at 105, ¶ 15.

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¶7 Because Aguilar failed to prove a change in objective physical findings supporting a “new, additional, or previously undiscovered disability,” the ALJ did not err in denying his petition to reopen.

CONCLUSION

¶8 For the foregoing reasons, we affirm the ALJ’s award.



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