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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

LINDA K. HADLEY, *Petitioner*,

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent*,

REVOLUTIONARY SERVICES LLC, DBA STOUT WELLNESS CENTER,
Respondent Employer,

SPECIAL FUND DIVISION/NO INSURANCE SECTION,
Respondent Party in Interest.

No. 1 CA-IC 16-0033
FILED 2-2-2017

Special Action - Industrial Commission
ICA Claim No. 20140-230516
The Honorable Paula R. Eaton, Administrative Law Judge

AWARD AFFIRMED

COUNSEL

Linda K. Hadley, Bullhead City
Petitioner

Jason M. Porter, Phoenix
Counsel for Respondent ICA

Aiken Schenk Hawkins & Ricciardi P.C., Phoenix
By James Burr Shields
Counsel for Respondent Employer

Lundmark, Barberich, LaMont & Slavin, P.C., Phoenix
By Lisa M. LaMont, Danielle S. Vukonich
Counsel for Respondent Party in Interest Special Fund Division/No Insurance Section

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MEMORANDUM DECISION

Judge Maurice Portley[1] delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Lawrence F. Winthrop joined.

P O R T L E Y, Judge:

¶1 Linda Hadley seeks special action review of an Industrial Commission of Arizona's ("ICA") award and decision upon review denying her industrial injury and bad faith claims. For the following reasons, we affirm.

BACKGROUND

¶2 Hadley was employed by Revolutionary Services, LLC, d/b/a Stout Wellness Center ("Stout") as a family nurse practitioner. Hadley claims that on August 27, 2013, she suffered stress fractures in her hips, pelvis, and coccyx at work after "physically mov[ing] [the] 'C' ARM [machine] to position for client procedures" . . . and "reposition[ing] the x-ray table with patients on it." She contends she reported the injury to Stout the next day, and subsequently filed a claim with the ICA in December 2013. Dr. Allen Stout, the business owner, and the staff denied knowledge that Hadley suffered any injury in August 2013, stating in the report of injury that "nothing happened in [the] office," but noted she "[i]njured [her] back by picking up a case of water at her home," in May 2013, "felt a crack +

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[1] The Honorable Maurice Portley, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

collapsed." After the ICA denied Hadley's claim, she filed a protest, and her case was transferred to the ICA's No Insurance/Special Fund Division ("Special Fund") because Stout did not have workers' compensation insurance.

¶3 In April 2015, Hadley filed a motion for sanctions for bad faith and unfair claim processing practices under Arizona Revised Statutes ("A.R.S.") section 23-930[2] against Stout, the Special Fund, and their respective counsel ("bad faith claim"). Hadley argued, among other things, that (1) Stout falsified its report to the ICA by referencing her May 2013 injury at home and not the alleged August 2013 work injury; (2) Dr. Stout instructed his staff to write perjured letters claiming they were unaware of any August 2013 work injury, only a May 2013 home injury; (3) Stout's counsel submitted a tainted employment contract between Stout and Hadley, by filing a sample contract with redacted language; (4) Stout's counsel delayed the case by claiming Hadley had not provided the names of all of her medical providers; (5) a Special Fund employee denied Hadley access to her file; and (6) Special Fund's counsel requested Hadley sign a medical release form when one was already on file. After the motion was denied, Hadley protested the denial, and her injury and bad faith claims were consolidated.

¶4 The Administrative Law Judge ("ALJ") heard testimony from Hadley, her husband, and her adult son, as well as Dr. Stout, and Stout employees Sandra Steinhardt and Tanci Colburn; Jarem Lloyd, M.D., and Stephen Weiss, M.D., over three days in September 2015 and February 2016. The ALJ issued a Decision Upon Hearing and Findings and Award on April 11, 2016, denying both Hadley's injury and bad faith claims.

¶5 Hadley requested review of the ALJ's decision, and after the ALJ affirmed the award and findings in May 2016, she sought special action review by this court. We have jurisdiction under A.R.S. §§ 12-120.21(A)(2), 23-951(A), and Arizona Rule of Procedure for Special Actions 10.

DISCUSSION

I. Industrial Injury.

¶6 Hadley first argues that because Dr. Jarem Lloyd testified that her stress fracture "could have" been caused by work activities, she

[2] We cite to the current version of statutes and rules unless otherwise noted.

established a causal relationship between her injury and a work accident and therefore her injury is compensable. We disagree.

¶7 The Arizona Constitution provides employees with workers' compensation for injuries from accidents arising "out of and in the course of" their employment that are "caused in whole, or in part" by a necessary risk or danger attributed to such employment. Ariz. Const. art. 18, § 8. But "[i]t is the complainant's burden" to prove she is entitled to compensation, *Keovorabouth v. Indus. Comm'n*, 222 Ariz. 378, 380, ¶ 7, 214 P.3d 1019, 1021 (App. 2009) (citation omitted), by a preponderance of the evidence, *Hahn v. Indus. Comm'n*, 227 Ariz. 72, 74, ¶ 9, 252 P.3d 1036, 1038 (App. 2011) (citation omitted).

¶8 While we review questions of law de novo, we will defer to the ALJ's factual findings and view the evidence "in the light most favorable to upholding the award." *Sun Valley Masonry, Inc. v. Indus. Comm'n*, 216 Ariz. 462, 463-64, ¶ 2, 167 P.3d 719, 720-21 (App. 2007) (citation omitted). And we will not reverse unless the award is unsupported by any reasonable theory of evidence. *Wal-Mart v. Indus. Comm'n*, 183 Ariz. 145, 147, 901 P.2d 1175, 1177 (App. 1995).

¶9 "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) (citation omitted). While legal causation is focused on the elements of the claim, medical causation is established "by showing that the accident caused the injury." *Id.* at ¶¶ 19-20. And when the cause of the injury is not clearly apparent to a lay person, as it is here, *causation must be established by expert testimony and proven to a "reasonable degree of medical probability*." *Hackworth v. Indus. Comm'n*, 229 Ariz. 339, 343, ¶ 9, 275 P.3d 638, 642 (App. 2012) (emphasis added) (citation omitted). The fact that work activities could or may be related to an alleged injury is insufficient to establish compensability. And, medical opinion must be established based on findings of medical fact, and "these findings [typically] come from the claimant's history, medical records, diagnostic tests, and examinations." *T.M.W. Custom Framing v. Indus. Comm'n*, 198 Ariz. 41, 47, ¶ 18, 6 P.3d 745, 751 (App. 2000).

¶10 Hadley testified she reported her August 27, 2013 injury to Dr. Stout, and the next day had Tanci Colburn, Stout's office manager and medical assistant, give her a pain injection in her hip. She testified that Colburn gave her injections for pain "almost on a daily basis" and that was the only treatment she received after the alleged work injury until her

hospital visit on September 23. Hadley admitted, however, that when she sought treatment on September 23, she complained of back pain that she had been experiencing for 18 months; she did not mention hip, pelvis, or coccyx pain, or an injury or accident occurring in August at work. And when she sought treatment at the hospital two days later, she only complained of lumbar pain which began a week prior and later developed into groin pain.[3]

¶11 Dr. Stout testified[4] that Hadley never reported her alleged August 2013 workplace injury to him, or anyone in the office, and that pursuant to Arizona law and office policy, Hadley was not permitted to move the machine because only licensed medical providers are permitted to move the C-ARM machine and position patients. Stout explained that he and Hadley worked in tandem when a patient's treatment required use of the C-ARM machine; he would position the patient and the C-ARM machine, and Hadley would prepare the medication and perform the injection, which Tanci Colburn confirmed as the office practice. Moreover, Stout testified that he examined Hadley after she hurt her back at home in May 2013, took x-rays, and after determining she fractured her back, referred her to the hospital for appropriate medical treatment. Stout then testified that if Hadley had fractured her hip, pelvis, and coccyx on August 27, 2013, she would not have been able to come to work the next day, as she did, because she would have been hospitalized.

¶12 Stout further testified that he reviewed Hadley's medical records, and nothing from those records suggested she was injured in August 2013. He explained that Hadley's late September 2013 medical records showed she underwent a kyphoplasty procedure in June 2013 for her back fracture, and was doing fine until a week prior (mid-September), when she began experiencing pain in her right hip, and the diagnosis was right hip pain, most likely due to bursitis, a chronic inflammatory condition not generally associated with acute injury. Hadley's medical records from December 2013 revealed that she said she had a history of multiple

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[3] Hadley denied filing the workers' compensation claim against Stout in retaliation for Stout firing her son. She, however, admitted filing against Dr. Stout an EEOC claim, a federal lawsuit, an injunction for harassment, and a complaint with the Attorney General's Office.

[4] Dr. Stout testified as a fact witness, but was also allowed over Hadley's objection, to testify as one of Hadley's treating doctors, and as an expert, given that in addition to being a licensed chiropractor, he had a master's degree in nursing.

fractures, including her wrist and pelvis, but she denied any specific trauma except for her wrist injury. Stout testified that the first medical record indicating Hadley may have suffered the August 2013 workplace injury was not until June 2015. The June 2015 report only stated that Hadley "does not know how she sustained the [pelvis] fracture but she was working for a chiropractor in Arizona at the time," and "she [] is looking for someone to say that the fractures could have been the result of her work in the chiropractor's office in Arizona."

¶13 Sandra Steinhardt, Stout's billing manager and bookkeeper, testified that Hadley never reported any workplace injury to her, and, because the office is very small, if something happened at work, even a "paper cut," the office staff knew. Steinhardt stated she was aware of Hadley's back injury in May 2013, but not of any workplace injury in August 2013.

¶14 Tanci Colburn's testimony mirrored Steinhardt's. Colburn testified that Hadley never reported a workplace injury to her, and, as the office manager, events that happen in the office are brought to her attention. Additionally, because the office is so small, and she and Hadley worked closely together (Colburn was Hadley's medical assistant), if something happened, such as an injury, she would have known. Colburn testified that the only injury she was aware of was when Hadley fractured her back at home in May 2013. She further testified that she gave Hadley only one pain injection after the May 2013 incident, and would not provide daily injections to anyone because it is harmful.

¶15 Dr. Lloyd, board-certified in emergency medicine and board-eligible in sports medicine, testified that in October 2015 he performed a physical examination of Hadley and reviewed her medical history. He noted Hadley had a history of fragility fractures and osteoporosis, and underwent a kyphoplasty procedure in June 2013. He diagnosed her with osteoporosis, muscle weakness of the hip abductors, and pelvic pain. Dr. Lloyd testified that due to Hadley's osteoporosis, fragility fractures "can even occur from simple activities just being at home," and "more activity could potentially increase the likelihood of having an injury" . . . but he could not "place a good definitive number on the odds of that happening." Although Dr. Lloyd testified that Hadley's stress fracture "could have" been caused by moving the C-ARM machine and repositioning the x-ray table, he was unable to testify with any reasonable degree of medical probability that her injury resulted from work activity.

¶16 Orthopedic surgeon Dr. Weiss testified that in May 2015, he performed an independent medical examination of Hadley. He conducted a physical examination, reviewed her medical records, and took her medical history. Dr. Weiss diagnosed her with osteoporosis and insufficiency fractures. He stated that moving a C-ARM as Hadley described is not a highly repetitive or forceful activity, and even if she moved the entire C-ARM machine, such action would not have caused her fractures because the machine is on rollers and "fairly easy" to move. Dr. Weiss testified that to a reasonable degree of medical probability, Hadley's "insufficiency fractures were the result of her [osteoporosis] disease process and had nothing to do with her work activities on that day."

¶17 The ALJ found Hadley's testimony "to be insufficient to establish the compensability of her claim in light of her obvious self-interest in expressing a medical opinion." The ALJ found that "the testimony of Dr. Lloyd and Dr. Weiss fails to establish [] compensability;" therefore, Hadley failed to prove that she suffered a compensable industrial injury. Because the ALJ is bound to accept medical testimony when "no conflict exists in the medical testimony," we find that the evidence supported the ALJ's conclusions and denial of Hadley's injury claim. *Hackworth*, 229 Ariz. at 343, ¶ 9, 275 P.3d at 642 (citation omitted).[5]

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[5] Hadley also appears to argue that because the ALJ only received Dr. Coswin Saito's June 2015 report into evidence and did not hear his live testimony, she was unable to prove compensability of her injury. At all three hearings, the ALJ discussed Dr. Saito's possible testimony, advising Hadley, among other things, that she would need to complete whatever forms he required, coordinate his schedule with the ALJ's, and agree to pay him any additional amount he requested in excess of the $110 per hour fee the ICA is authorized to pay. The ALJ further advised Hadley that because Dr. Saito is in Hawaii, she is unable to subpoena him and it would be up to Hadley to secure his testimony.

In March 2016, the ALJ held a phone conference for the sole purpose of ascertaining the status of Dr. Saito's testimony. After again advising Hadley of the requirements, Hadley agreed to submit Dr. Saito's report in lieu of his live testimony. Dr. Saito's report stated that "there might be a possibility that her work in August and September 2013 may have contributed to the fractures that she sustained, especially given the degree of her osteoporosis." Because Dr. Saito did not find that Hadley's injury was caused by a workplace injury to a "reasonable degree of medical

II. Bad Faith.

¶18 Hadley makes numerous assertions that Stout, the Special Fund, and their respective counsel committed acts of bad faith and unfair claims processing throughout this process. Hadley had, under the Arizona Administrative Code ("A.A.C."), the burden of showing that Stout or the Special Fund engaged in the prohibited conduct.

¶19 Hadley filed her bad faith claim under A.A.C. R20-5-163(A), which states that under A.R.S. § 23-930 an employer, insurance carrier, or claims processing representative commits "bad faith" if they:

> 1. Institute[ ] a proceeding or interpose[ ] a defense that is not: a. Well-grounded in fact; b. Warranted by existing law; or c. A good faith argument for the extension, modification, or reversal of existing law;
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> 2. Unreasonably delay[ ]: a. Payment of benefits; or b. Authorization for, or receipt of, medical benefits or treatment;
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> 3. Unreasonably underpay[ ] benefits;
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> 4. Unreasonably terminate[ ] benefits;
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> 5. Intentionally mislead[ ] a claimant as to applicable statutes of limitation, benefits, or remedies available to the claimant under the Act or under this Article; or
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> 6. Unreasonably interfere[ ] with or obstruct[ ] the claimant's right to choose the claimant's attending physician, except in cases involving a self-insured employer under A.R.S. § 23-1070.

Hadley filed her unfair claims processing practices claim under A.A.C. R20-5-163(B), which states that under A.R.S. § 23-930 an employer, insurance carrier, or claims processing representative commits "unfair claim processing practices" if they:

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probability," the report was insufficient to allow Hadley to meet her burden of proof to establish compensability. *Hackworth*, 229 Ariz. at 343, ¶ 9, 275 P.3d at 642 (citation omitted).

> 1. Unreasonably issue[ ] a notice of claim status without adequate supporting information in its possession or available to it;
>
> 2. Unreasonably fail[ ] to acknowledge communications from the Commission, an unrepresented claimant, or a claimant's attorney with respect to a claim;
>
> 3. Fail[ ] to act reasonably and promptly upon communications from the Commission, an unrepresented claimant, or a claimant's attorney with respect to a claim;
>
> 4. Directly advise[ ] a claimant not to consult or obtain the services of an attorney; or
>
> 5. Communicate[ ] directly, for an improper purpose, with a claimant represented by an attorney.

¶20 Here, the ALJ heard testimony from Hadley, Dr. Stout, Steinhardt, and Colburn. In concluding that Stout had not committed bad faith, the ALJ found that Hadley's testimony was not credible, but the testimony of Stout and the employees was credible. Given that the ALJ "is the sole judge of witness credibility," we do not reweigh the evidence. *Holding v. Indus. Comm'n*, 139 Ariz. 548, 551, 679 P.2d 571, 574 (App. 1984); *see Ritland v. Ariz. State Bd. Of Med. Exam'rs*, 213 Ariz. 187, 190, ¶ 10, 140 P.3d 970, 973 (App. 2006). Moreover, although Hadley complains about some matters, there was no evidence that her claim was denied without an arguable factual or legal basis. And none of the actions Hadley alleged Stout, the Special Fund, or their respective counsel committed, encompass conduct listed as bad faith or unfair claim processing practices. *See* A.A.C. R20-5-163.[6]

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[6] Hadley filed two additional motions for sanctions for bad faith and unfair claim processing practices, and argues that neither have been addressed by the ALJ. She filed a second motion in August 2015, arguing (1) Stout failed to properly address her workplace injury; (2) Stout improperly furnished a copy of Hadley's CT scan in May 2013 after her back injury pursuant to her signed medical release; (3) a conflict of interest existed because Stout hired attorney Jerry Gaffaney (husband of ALJ Gaffaney at the time when she was presiding on the case) to consult on another matter; (4) Stout's counsel was being disingenuous by saying she did not receive some documents; (5) Dr. Weiss's examination was a

CONCLUSION

¶21 For the foregoing reasons, we affirm the ALJ's award and decision upon review.

AMY M. WOOD • Clerk of the Court
FILED: AA

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question-and-answer session only, not a medical exam; (6) a Special Fund employee denied her access to her file; (7) the file Hadley received from her attorney when he withdrew from the case does not include Special Fund's interrogatory answers; and (8) the file she received from Special Fund did not include everything. Hadley filed a third bad faith/unfair claim processing motion in March 2016. Hadley argued that Stout committed bad faith because it did not follow the rules as a foreign company registered with the Arizona Corporation Commission, such as file an annual report or pay its fees. Although we agree that the ALJ did not address the allegations in her second motion during the hearing, or her third motion, which was filed after the hearings concluded in February 2016, none of the allegations alleged fall within the definition of bad faith or unfair claims processing practices under A.A.C. R20-5-163.