

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JANICE HILDEBRANDT, *Petitioner,*

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*

SAFEWAY, INC., *Respondent Employer,*

SAFEWAY STORES, INC., *Respondent Carrier.*

No. 1 CA-IC 16-0076
FILED 9-19-2017

Special Action - Industrial Commission
ICA Claim No. 20152-360191
Carrier Claim No. W1406922-0001
The Honorable Paula R. Eaton, Administrative Law Judge

AFFIRMED

COUNSEL

Janice Hildebrandt, Chandler
Petitioner

Industrial Commission of Arizona, Phoenix
By Jason M. Porter
Counsel for Respondent Industrial Commission of Arizona

Lundmark Barberich La Mont & Slavin, PC, Phoenix
By Lisa M. LaMont
Counsel for Respondent Employer and Respondent Carrier

MEMORANDUM DECISION

Acting Presiding Judge Peter B. Swann delivered the decision of the court, in which Judge Maria Elena Cruz and Judge Margaret H. Downie joined.

S W A N N, Judge:

¶1 Janice Hildebrandt filed this special action requesting a review of the Industrial Commission's closure of her worker's compensation claim against respondent, self-insurer and employer Safeway. She challenges the Administrative Law Judge ("ALJ")'s factual findings, and we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 On August 10, 2015, Hildebrandt, a refrigeration dispatcher for Safeway, suffered an ankle injury while at work. She went to urgent care two days later, complaining of swelling and moderate to severe pain. She was instructed to ice the injury and take ibuprofen. A week later, she returned to urgent care and was released from active care with instructions to follow up as needed.

¶3 Safeway accepted the claim and terminated benefits on October 10, 2015 (later amended to terminate benefits on November 14, 2015). Hildebrandt filed a petition to reopen, which was treated as a request for a hearing. The ALJ heard testimony from Hildebrandt; Dr. Leonetti, Safeway's independent medical examiner; and Dr. Evans, who examined Hildebrandt and testified as her expert.

¶4 The ALJ ruled that Hildebrandt's condition was "medically stationary as of October 10, 2015, with no permanent impairment and no need for supportive care." Hildebrandt filed a request for review, and the ALJ affirmed. Hildebrandt petitions for special-action review.

DISCUSSION

¶5 Hildebrandt argues that her injury was caused by an animal bite and that she has ongoing medical problems.¹ We give deference to the Industrial Commission on factual conclusions but review legal questions de novo. *Young v. Indus. Comm’n*, 204 Ariz. 267, 270, ¶ 14 (App. 2003). We review the ALJ’s resolution of conflicting expert opinions for an abuse of discretion. *Kaibab Indus. v. Indus. Comm’n*, 196 Ariz. 601, 605, ¶ 10 (App. 2000).

¶6 The first medical record to mention a “bit[e] by something” was from an appointment with Hildebrandt’s primary-care physician on January 14, 2016, when she claimed she was bit by a snake. Records from her visit to the same physician a month earlier do not mention a “bit[e]”, nor do the August 2015 urgent-care records. Even if we assume Hildebrandt was bit, the ALJ did not abuse her discretion by finding that Hildebrandt had no ongoing medical needs.

¶7 Dr. Leonetti testified that after consulting Hildebrandt’s urgent-care records, primary-care records, and photos of the injury provided by Hildebrandt, and conducting his examination on May 2, 2016, he could not confirm a compensable injury to her ankle or identify any type of bite or wound. He identified a red area on Hildebrandt’s left calf that “looked more of a rash than any type of . . . bite.”

¶8 Conversely, Dr. Evans testified, based on his April 27, 2016 examination of Hildebrandt, that she had arthralgia of and chronic pain in her left ankle. His review of the photographs found a red mark and swelling consistent with a bite or sting. He acknowledged that his diagnoses were based on Hildebrandt’s self-reported medical history and that he had not reviewed any of her medical records. He recommended an MRI of Hildebrandt’s foot to look for possible problems with the nerve.

¶9 The ALJ found Dr. Leonetti’s testimony more credible and adopted his determination that Hildebrandt did not require additional medical care. It is not our function to reweigh evidence, and we discern no abuse of discretion.

¹ Hildebrandt also alleges that Safeway requested a specific judge be assigned to the case, but we see no such request in the record — only a request to reschedule a hearing due to a conflict. There was no change of judge.

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CONCLUSION

¶10

For the foregoing reasons, the ALJ's decision is affirmed.



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