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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

CARMELITA DONALDSON, *Petitioner*,

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent*,

CONCENTRIC HEALTHCARE SOLUTION, *Respondent Employer*,

COPPERPOINT GENERAL INSURANCE COMPANY, *Respondent Carrier*.

No. 1 CA-IC 17-0042

FILED 2-6-2018

Special Action - Industrial Commission

ICA Claim No. 20153-290377

Carrier Claim No. 15G02474

The Honorable Paula R. Eaton, Administrative Law Judge

AFFIRMED

COUNSEL

Carmelita Donaldson, Higley
Petitioner

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

CopperPoint Mutual Insurance Company, Phoenix
By Chiko F. Swiney
Counsel for Respondent Employer/Carrier

MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge Kenton D. Jones and Judge James B. Morse Jr. joined.

H O W E, Judge:

¶1 Carmelita Donaldson appeals the Industrial Commission of Arizona’s finding that her injury was not work-related and its subsequent order affirming the denial of Donaldson’s requests for payment for her orthotics, surgery, and ultrasound testing. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In October 2015, Donaldson injured her right foot while working at Concentric Healthcare Solution. Dr. Charles Peterson initially treated Donaldson and opined that Donaldson’s foot condition “must have happened a long time ago[.]” Donaldson then changed doctors because Dr. Peterson made her feel uncomfortable, and Dr. Allison Kaplan became her primary physician.

¶3 In March 2016, Dr. Brian Allen, a foot specialist, treated Donaldson. When Dr. Allen first examined Donaldson, he diagnosed her with a peroneal tendon tear, some swelling, edema, and inflammation around the posterior tibial tendon. Dr. Allen opined that these diagnoses were related to Donaldson’s work injury. He recommended physical therapy and a platelet-rich plasma filtration injection; Donaldson participated in physical therapy, but she did not receive the injection. Dr. Allen saw Donaldson four times, with the last visit in August 2016. His diagnosis never changed, and he continued to recommend physical therapy. He also ordered orthotics for Donaldson and scheduled a date for surgery to repair the torn tendon.

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¶4 In June 2016, Dr. Jason Lake, an orthopedic surgeon specializing in foot and ankle treatment, evaluated Donaldson's foot. Dr. Lake diagnosed Donaldson with a right midfoot contusion/sprain without fracture and a peroneal brevis tendon tear. Unlike Dr. Allen, however, Dr. Lake also diagnosed Donaldson with complex regional pain syndrome ("CRPS"), an injury in which the pain is out of proportion to the severity of the injury. In contrast to Dr. Allen, Dr. Lake did not relate the peroneal tendon tear to the work incident and instead opined that the work injury resulted only in the CRPS. At that time, Dr. Lake opined that Donaldson's injury was not medically stationary, and he recommended that she receive a sympathetic block injection, physical therapy, and pain medication. Dr. Lake did not recommend that Donaldson have orthotics or any surgery relating to the work injury. He also opined that an ultrasound would be appropriate for Donaldson's peroneal tendon tear, but it would not be related to her work injury. Dr. Lake further opined that if Donaldson was unwilling to follow his recommended treatment for the work-related injury, CRPS, then her foot injury would become stationary. In August 2016, Donaldson received a discharge from physical therapy because she did not make significant progress.

¶5 In October 2016, Donaldson filed a Request for Hearing under A.R.S. § 23-1061(J), alleging that CopperPoint Mutual Insurance Company had denied insurance coverage for her visits with Dr. Allen and also declined to pay for her orthotics and diagnostic testing. In November, Donaldson filed a second Request for Hearing alleging that the insurance company had declined to pay for her foot surgery.

¶6 At the hearing, Donaldson, Dr. Allen, and Dr. Lake testified to the aforementioned facts. The administrative law judge ("ALJ") issued her decision on April 27, 2017. The ALJ noted the conflicting medical evidence presented by Dr. Allen and Dr. Lake and found that Dr. Lake's opinions were "more probably correct and well founded." Thus, the ALJ found that Donaldson was not entitled to payment for her orthotics, surgery, or the ultrasound testing.

¶7 Donaldson untimely requested review on June 12, 2017. On July 7, 2017, the ALJ excused Donaldson's untimely filing and considered all documents that Donaldson presented. Thereafter, the ALJ concluded that the documents presented did not change the ultimate outcome and that she continued to find Dr. Lake's opinions to be more persuasive. Thus, the ALJ affirmed her earlier decision denying Donaldson's requests for payments for her orthotics, surgery, and ultrasound testing. Donaldson timely petitioned for special action on July 12. On September 11, Donaldson

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moved to admit notes from Dr. Kaplan and other doctors, some of which were presented to the ALJ while others were not.

DISCUSSION

¶8 Donaldson argues that the ALJ erred by adopting Dr. Lake's medical opinions instead of the medical opinions of other doctors that treated her, including Dr. Allen who testified on her behalf.¹ In reviewing the findings and award the ALJ made, we view the evidence in the light most favorable to upholding the ALJ's award. *Wozniak v. Indus. Comm'n*, 238 Ariz. 270, 273 (App. 2015). We will not disturb the ALJ's findings unless the conclusions "cannot be reasonably supported on any reasonable theory of evidence." *Phelps v. Indus. Comm'n*, 155 Ariz. 501, 506 (1987). Any conflicts in medical evidence are resolved by the ALJ. *Carousel Snack Bar v. Indus. Comm'n*, 156 Ariz. 43, 46 (1988). Here, sufficient evidence supported the ALJ's findings and award.

¶9 In this case, foot specialists Dr. Allen and Dr. Lake provided conflicting testimony regarding Donaldson's injury and her need for orthotics, surgery, and ultrasound testing. Dr. Allen diagnosed Donaldson with a peroneal tendon tear that he deemed to be work-related, and he made no CRPS diagnosis. In contrast, Dr. Lake diagnosed Donaldson with CRPS in addition to the peroneal tear. Moreover, Dr. Lake opined that the CRPS was work-related while the peroneal tear was not. After receiving the conflicting medical opinions, the ALJ resolved the conflict by finding that Dr. Lake's opinion was more persuasive. The ALJ's decision was supported by the record, and thus, we will not disturb the ALJ's findings and award.

¹ Donaldson's September 11 motion included some medical notes that were not presented to the ALJ. Records that were not part of the evidence considered by the ALJ are not properly presented before this Court and will not be considered on review. *See Shockey v. Indus. Comm'n*, 140 Ariz. 113, 116 n.1 (App. 1983).

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CONCLUSION

¶10

For the foregoing reasons, we affirm.



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