

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

STEVEN W. WALKER, *Petitioner Employee,*

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*

FRIDGCO REFRIGERATION AND HEATING, *Respondent Employer,*

HARTFORD INSURANCE COMPANY OF
THE MIDWEST, *Respondent Carrier.*

No. 1 CA-IC 17-0070
FILED 10-23-2018

Special Action - Industrial Commission
ICA Claim No. 20140-030185
Carrier Claim No. YMQC37806
The Honorable Marceline A. Lavelle, Administrative Law Judge

AFFIRMED

COUNSEL

Steven Walker, Seligman
Petitioner Employee

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Industrial Commission of Arizona, Phoenix
By Gaetano J. Testini
Counsel for Respondent

Lester Norton & Brozina PC, Phoenix
By Christopher S. Norton
Counsel for Respondent Employer/Respondent Carrier

MEMORANDUM DECISION

Judge David D. Weinzwieg delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge Peter B. Swann joined.

WEINZWEIG, Judge:

¶1 Steven W. Walker petitions for special action review of an Industrial Commission of Arizona decision finding his condition to be stationary without permanent impairment and imposing sanctions for failing to attend an independent medical examination. He argues the findings and award are incorrect. We affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Walker was a master air conditioning technician for Fridgco Refrigeration and Heating on September 26, 2012, when he fell from a ladder while lifting an air conditioner onto a roof. He alleged various injuries from the accident, including to his ankles, shoulders, left arm and leg, and back.

¶3 Walker filed a workers' compensation claim in December 2013, which the insurance carrier denied. Walker protested the denial and requested a hearing, which was held before Administrative Law Judge ("ALJ") Allen Shayo over three days between June and August 2015. ALJ Shayo considered medical records and testimony from Walker, his family and work associates. ALJ Shayo awarded temporary disability benefits to Walker from September 26, 2012 until his condition was "determined to be medical stationary," but made no findings on the nature or extent of Walker's injuries.

¶4 The insurance carrier issued a notice of claim in March 2016, closing Walker's claim without permanent disability, effective November

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21, 2012. Walker again protested and requested a hearing, which was set before ALJ Marceline Lavelle.

¶5 Before the first day of the hearing, Walker was required to attend an independent medical examination (“IME”) but failed to show. He appeared for the second scheduled IME, but the examining doctor terminated the exam, alleging Walker was hostile to the doctor and his office staff.

¶6 Walker and six medical doctors testified before ALJ Lavelle over seven days from November 2016 to July 2017. The record indicates that Walker endured serious medical issues even before the industrial accident at issue occurred. For instance, he was hit and then dragged by a car when he was only three to four years old. His left arm was nearly amputated as a result and he has suffered back pain ever since. Walker later sustained multiple fractures to his left leg in a car-related accident when he was 20 years old. He also developed ankle issues, including a history of sprains, and his shoulders eventually developed age-related problems.

¶7 ALJ Lavelle issued her decision in September 2017, determining that the injury related to the industrial accident was limited to an “aggravation of the pre-existing condition in [Walker]’s ankles,” which became “medically stationary by April 4, 2013, without the need for supportive care, and without any ratable impairment related to the industrial injury.” Accordingly, ALJ Lavelle concluded the “industrial injury did not result in any ratable permanent impairment or disability, or need for work restrictions,” and awarded Walker temporary disability benefits from September 26, 2012 to April 4, 2013. She also penalized Walker for not attending the first IME, debiting \$500 from his temporary disability benefits. Walker petitioned for review.

¶8 We have jurisdiction pursuant to A.R.S. § 12-120.21(A)(2) and § 23-951(A), as well as Arizona Rule of Procedure for Special Actions 10.

DISCUSSION

¶9 Walker appears to raise three central arguments, including (1) ALJ Lavelle improperly revisited issues that ALJ Shayo had already decided, (2) the record does not support ALJ Lavelle’s decision and (3) ALJ

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Lavelle improperly sanctioned him for missing the first IME. We find no error.¹

¶10 First, ALJ Shayo's initial decision did not preclude ALJ Lavelle from addressing causation and determining whether the industrial accident caused Walker's injuries. We review the preclusive effect of ALJ Shayo's prior decision under the de novo standard. *See Brown v. Indus. Comm'n*, 199 Ariz. 521, 523, ¶ 11 (App. 2001). ALJ Shayo did not determine which of Walker's specific injuries resulted from the industrial accident.² He needed expert medical testimony to tackle causation because of Walker's prior injuries and medical history. *See id.*; *W. Cable v. Indus. Comm'n*, 144 Ariz. 514, 518 (App. 1985) (claim preclusion applies to matters that were decided or could have been decided). We have recognized that the causal connection between a worker's injury and employment "must be determined by expert medical testimony" when "the result of an accident is not clearly apparent to a layman." *W. Bonded Prod. v. Indus. Comm'n*, 132 Ariz. 526, 527 (App. 1982). The causation issue thus remained open for ALJ Lavelle to consider and decide.

¶11 Second, the record includes ample evidence to support ALJ Lavelle's decision.³ We defer to the ALJ's factual determinations, *Brown*, 199 Ariz. at 523, ¶ 10, and 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). The ALJ has the exclusive duty of resolving conflicts in expert medical testimony. *See Kaibab Indus. v. Indus. Comm'n*, 196 Ariz. 601, 609, ¶¶ 25-26 (App. 2000).

¹ Walker waived these arguments by providing no record or legal citations in support under ARCAP 13(a)(7), *Polanco v. Indus. Comm'n*, 214 Ariz. 489, 491 n.2, ¶ 6 (App. 2007), but we consider them in our discretion.

² ALJ Shayo simply found that it was "reasonable to conclude that [the industrial accident] would result in injuries of some sort."

³ Walker spends much of his opening brief challenging specific factual findings of the ALJ, but that approach fails. Our task is not to reweigh the evidence on appeal and revisit discrete findings of fact based on Walker's recharacterization of the evidence. *Jaramillo v. Indus. Comm'n*, 203 Ariz. 594, 596, ¶ 6 (App. 2002). In addition, Walker provided no record citations for the arguments under ARCAP 13(a)(7) and thus waived them. *Polanco*, 214 Ariz. at 491 n.2, ¶ 6.

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¶12 ALJ Lavelle received conflicting expert medical testimony on the issue of causation and resolved the conflicts. She relied on the expert medical opinions that attributed Walker's ankle injury to the September 2012 industrial accident, but did not attribute Walker's spine, shoulder and left arm injuries to the accident.

¶13 The record also supports ALJ Lavelle's findings that Walker's ankle injury was medically stationary as of April 4, 2013, he was not permanently impaired and did not need supportive care or work restrictions. ALJ Lavelle received conflicting medical evidence on the issues and resolved the conflicts based on expert medical testimony.

¶14 Third, ALJ Lavelle did not abuse her discretion by deducting the reasonable expense of Walker's missed IME appointment from his temporary disability benefits. *Nolden v. Indus. Comm'n*, 127 Ariz. 501, 503-04 (App. 1980) (abuse of discretion standard). The record indicates that Walker missed a properly-noticed IME without advising of his inability to attend. The ALJ deducted \$500 from Walker's benefits, which represented a quarter of the IME physician's \$2,000 charge for the missed appointment. Ariz. Admin. Code ("A.A.C.") R20-5-114(B) ("any reasonable expense" of a missed examination may be deducted from Walker's temporary disability benefits if he "unreasonably fails to attend or promptly advise of [his] inability to attend an examination").⁴

CONCLUSION

¶15 We affirm the ALJ's award and decision.



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

⁴ ALJ Lavelle miscited A.R.S. § 23-1026(C) as authority for the sanction because that provision only provides for the suspension of benefits. We still affirm under A.A.C. R20-5-114(B). *Salt River Project v. Indus. Comm'n*, 126 Ariz. 196, 200 (App. 1980) (we affirm an award if legally correct for any reason).