IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

TROY L. HOLBROOK, *Petitioner Employee*,

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent*,

GARDEN OASIS LLC, Respondent Employer,

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

No. 1 CA-IC 17-0073
FILED 9-20-2018

Special Action from the Industrial Commission of Arizona
ICA Claim No. 20162-000005
Carrier Claim No. None
The Honorable C. Andrew Campbell, Administrative Law Judge

AFFIRMED

APPEARANCES

Troy L. Holbrook, Lakewood, Washington
Petitioner Employee

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

Cross & Lieberman, P.A., Phoenix
David W. Earl
Counsel for Respondent Employer

Industrial Commission of Arizona, Phoenix
Afshan Peimani
Counsel for Respondent Party in Interest

MEMORANDUM DECISION

Presiding Judge James P. Beene delivered the decision of the Court, in which Judge Michael J. Brown and Judge James B. Morse Jr. joined.

B E E N E, Judge:

¶1 This is a special action review of an Industrial Commission of Arizona ("ICA") award and decision upon review finding the claim of the petitioner employee, Troy Holbrook, not compensable. The administrative law judge ("ALJ") resolved the issues in favor of the respondent employer, Garden Oasis LLC, and the Arizona Special Fund Division. Because the ALJ's determinations are reasonably supported by substantial evidence, we affirm the award and decision upon review.

FACTS AND PROCEDURAL HISTORY

¶2 Troy Holbrook worked as a groundskeeper for Garden Oasis, a mobile home and RV park. On May 18, 2016, he was shoveling, spreading, and transferring a delivery of rocks when he felt a burning pain in his back. He reported the incident to a coworker two days later. On May 25, 2016, Holbrook was terminated from Garden Oasis.

¶3 Holbrook visited his pain management specialist on May 31, 2016, but did not mention the alleged injury or a worsening of his chronic back pain. He then sought medical attention for back pain at an emergency room on June 18, 2016, in Washington. Again, Holbrook did not inform his examining physicians that he believed he sustained an industrial injury. He

was referred for an MRI and underwent surgery on his C3 through C7 discs in April 2017.

¶4 Holbrook filed a Worker's Report of Injury with the ICA in July 2016. A Notice of Determination was issued denying the claim the next month and Holbrook filed a timely Request for Hearing. Before the hearing, Holbrook submitted hundreds of pages of medical records. The medical records showed that Holbrook had a long history of back problems, but the records did not demonstrate a link between the alleged industrial incident and a worsening of symptoms.

¶5 At the hearing, Holbrook testified that he had problems with his back before the incident and had undergone four previous back surgeries. He acknowledged that his MRI report from 2016 noted an unchanged degenerative retrolisthesis of L4/L5 from MRI findings from 2009. Holbrook testified that he has degenerative disc disease and arthritis. Holbrook did not subpoena any medical experts to testify on his behalf.

¶6 In its decision, the ALJ found that Holbrook did not present medical evidence sufficient to meet his burden of proof in establishing that the alleged industrial incident caused an injury. Holbrook requested review and the ALJ affirmed the decision. This timely special action followed.

¶7 We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(2), 23-951(A), and Arizona Rule of Procedure for Special Actions 10.

DISCUSSION

¶8 In reviewing the Commission's awards and findings, we defer to the ALJ's factual findings and review any questions of law *de novo*. *Young v. Indus. Comm'n*, 204 Ariz. 267, 270, ¶ 14 (App. 2003). "If there is any substantial evidence to support the [ALJ's] factual findings, we must affirm his determination." *Gomez v. Indus. Comm'n*, 148 Ariz. 575, 576 (App. 1985). The ALJ has discretion to resolve any conflicts in the evidence. *See Perry v. Indus. Comm'n*, 112 Ariz. 397, 398 (1975). We consider the evidence in the light most favorable to upholding the award. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16 (App. 2002). So long as the ALJ's findings are not unreasonable, we will not disturb them. *Hackworth v. Indus. Comm'n*, 229 Ariz. 339, 343, ¶ 9 (App. 2012).

¶9 Holbrook asks us to reconsider a number of facts pertaining to his employment status at the time of the alleged incident and whether

there was sufficient proof that he performed the work he contends caused his injury. We do not reweigh facts on appeal. *See Perry*, 112 Ariz. at 398. Moreover, the ALJ based its decision on the medical evidence presented and never made credibility determinations on the facts that Holbrook now argues.

¶10 Holbrook contends that the ALJ should have been more accommodating towards him throughout the proceeding because he does not have legal training. This argument fails as it is a well-established rule that in Arizona a *pro per* litigant "is entitled to no more consideration from the court than a party represented by counsel, and is held to the same standards expected of a lawyer." *Kelly v. NationsBanc Mortg. Corp.*, 199 Ariz. 284, 287, ¶ 16 (App. 2000).

¶11 Holbrook makes several arguments contending that he was not fully informed of the formal processes of the ICA. He argues the ALJ did not inform him that he had to subpoena his own medical experts and that he should have been allowed a second hearing to present medical testimony. The record does not support Holbrook's arguments. A letter from the ALJ to Holbrook on October 21, 2016, stated:

> As the applicant you have the burden of proof, which must be met by a preponderance of the evidence. In many instances expert medical evidence is necessary to establish one or more elements of the claim. You may file into evidence and request subpoenas for witnesses to appear. It is your responsibility to follow through on this. **Medical witnesses** must be requested no later than **20 days** before the hearing.

(Emphasis in original).

¶12 The October 21 letter also included a Frequently Asked Question packet that explained the burden of proof and the process for subpoenaing medical witnesses. Moreover, at a preliminary hearing, the ALJ noted in his written order that Holbrook had not filed any medical documentation, nor had he requested subpoenas for medical witnesses. The ALJ again instructed Holbrook on the burden of proof and ordered him to submit all medical documentation and request subpoenas for medical witnesses by April 18, 2017.

¶13 After the evidence was presented at the hearing, the ALJ told Holbrook that that none of the medical records that he submitted connected the treatment to his injury in any way. The ALJ confirmed with Holbrook

that he had no medical witnesses to call and that he was not requesting any additional hearings; Holbrook said, "That is correct."

¶14 The claimant has the burden to prove the elements of the claim by a preponderance of the evidence. *Lawler v. Indus. Comm'n*, 24 Ariz. App. 282, 284 (App. 1975). Here, the ALJ's finding that Holbrook did not prove his injury was compensable is supported by substantial evidence.

CONCLUSION

¶15 For the foregoing reasons, we affirm the award and decision upon review.

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