

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

LARRY PARR, *Petitioner*,

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent*,
UNITED CIVIL GROUP CORPORATION, *Respondent Employer*,
VALLEY FORGE INSURANCE COMPANY, *Respondent Carrier*.

No. 1 CA-IC 18-0007
FILED 12-18-2018

Special Action - Industrial Commission
ICA Claim No. 20150-820059
Carrier Claim No. E3A46729 VG
The Honorable Marceline A. Lavelle, Administrative Law Judge

AFFIRMED

COUNSEL

Larry Parr, Tempe
Petitioner

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

Jones Skelton & Hochuli PLC, Phoenix
By Gregory L. Folger, Sean M. Moore
Counsel for Respondent Employer/Carrier

MEMORANDUM DECISION

Judge Randall M. Howe delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Maria Elena Cruz joined.

H O W E, Judge:

¶1 Larry Parr appeals the Industrial Commission of Arizona's ("ICA") award and decision upon review closing his industrial claim without permanent impairment. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Parr worked for United Civil Group Corporation for about ten years. In February 2015, Parr sustained an industrial injury while driving home from work in a company-provided truck. According to Parr, the truck's tire suddenly burst and caused the vehicle to flip over. Immediately after the accident, he received treatment at St. Joseph's Hospital. Upon discharge, he was diagnosed with a fracture of his fourth cervical vertebrae "with delayed healing, shoulder pain, hypertension and obesity as well as loss of consciousness and concussion following a motor vehicle accident." He then filed a workers' compensation claim, which respondent carrier, Valley Forge Insurance, accepted. Numerous physicians and psychologists subsequently treated him. In January 2017, Valley Forge terminated Parr's medical benefits and closed his claim with no permanent impairment. Parr protested the closure and requested an ICA hearing.

¶3 At the resulting evidentiary hearing, the parties disputed whether Parr sustained any permanent impairment and whether his work-related injuries were medically stationary or required further medical care. The administrative law judge ("ALJ") heard testimony from Parr,

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several of his treating physicians, and other physicians who had performed independent medical examinations of Parr.

¶4 Parr testified briefly about his conditions and symptoms. Parr claimed that he broke his back, humerus, shoulder, arm, and collarbone, and ruptured a bicep tendon. He also claimed numerous symptoms, including vision problems, dizziness, headaches, neck pain, lower back pain, leg pain, hip pain, hair loss, gastrointestinal issues, and various neuropsychological difficulties. Parr further claimed that he never had these symptoms before his industrial injury.

¶5 Dr. Joel Edward Parker, a board-certified psychiatrist, testified that after his initial review of Parr's industrially related medical records, he diagnosed Parr with an "unspecified depressive disorder." Dr. Parker noted, however, that the neuropsychological evaluations that he had reviewed showed "substantial non-credibility" and "symptom embellishment." He therefore found it appropriate to have Parr evaluated by Dr. John Walker, a board-certified neuropsychologist. Dr. Walker performed two neuropsychological evaluations of Parr. According to Dr. Walker, Parr "was not producing credible neuropsychological data" and was "over-reporting" symptoms. Dr. Parker therefore determined that Parr did not suffer from any work-related psychiatric conditions and that further treatment was not necessary.

¶6 Dr. Nancy Yeamans, a clinical psychologist, testified that she diagnosed Parr with an adjustment disorder with depression and a neurocognitive disorder. She testified that she had seen Parr for 27 treatment sessions between October 2015 and October 2016. She further testified that his level of depression had not significantly improved during that time. She opined that his depression and neurocognitive disorder were related to Parr's industrial injury and that he would benefit from ongoing psychiatric or psychological care.

¶7 Dr. Javier Cardenas, a board-certified neurologist, first treated Parr in March 2015. After his initial evaluation, Dr. Cardenas diagnosed Parr with a mild traumatic brain injury causally related to his industrial accident and recommended further evaluation. Between March 2015 and August 2017, Dr. Cardenas conducted several physical and neurological evaluations, MRIs, a psychological consultation, and an EMG and nerve conduction study. He also treated Parr with several medications for his headaches. He opined that although Parr's mild head trauma had become medically stationary, he would benefit from ongoing psychiatric

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and psychological treatment. He also recommended continued medication treatment to control Parr's headaches.

¶8 Dr. Leo Kahn, a board-certified neurologist, conducted a physical examination of Parr and reviewed Parr's medical history and other pertinent medical records. Dr. Kahn testified that Parr's behaviors during the physical examination were inconsistent with the MRI and the other scans, which showed no signs of any "structural abnormality." He further testified that Parr had suffered minor head trauma and a cervical spine fracture in the accident. After reviewing Parr's most recent CT scan, Dr. Kahn opined that Parr's cervical fracture was completely healed and he was "medically stationary without ratable permanent impairment." Dr. Kahn further opined that Parr could return to work without restrictions. The only medical treatment related to the industrial injury that Dr. Kahn believed would benefit Parr was one visit with Dr. Cardenas to discuss tapering Parr off his medication.

¶9 Dr. James Andry, an orthopedic surgeon, examined Parr twice in September 2016. He opined that Parr had suffered a shoulder and elbow injury in the accident. He stated that "[Parr's] physical exam was also consistent with a distal biceps tendon rupture . . . in his elbow[.]" Dr. Andry could not testify about the details of Parr's shoulder injury because Parr did not return to him for treatment after September 2016. Regarding the tendon injury, Dr. Andry stated that he did not recommend surgery "for a multitude of reasons[.]" He also stated that he was unable to provide a definitive treatment plan. Furthermore, Dr. Andry could not testify about whether Parr's orthopedic conditions were medically stationary because he had not had the opportunity to evaluate Parr since September 2016. Ultimately, Dr. Andry testified that if he were to make any conclusions, such conclusions "would be without complete information."

¶10 The ALJ also reviewed several medical reports authored by physicians who did not testify at the hearing. Dr. Stephen Borowsky's September 2016 report concluded that, from a pain management perspective, Parr had reached maximum medical improvement without any permanent impairment or need for ongoing care. In his February 2017 report, Dr. Brian Klinck, a neuropsychologist, diagnosed Parr with amnesia and a traumatic brain injury and recommended further psychiatric treatment. In November 2015, Dr. Sheba Shah, board certified in anesthesia and pain medicine, noted in her report that Parr had reached maximum medical improvement for his right shoulder complications. In April 2016, Dr. Shah noted that Parr was "medically stationary with no permanent impairment as it relates to pain management" but "will need continued

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supportive care." In November 2016, she noted that Parr had torn his right bicep tendon while getting out of bed. In the same report she also noted issues pertaining to Parr's lumbar spine but did not include a specific diagnosis nor indicate whether Parr's lumbar spine issues were work-related. Based on Dr. Shah's reports, the ALJ found that Parr's issues regarding his lumbar spine and bicep rupture were not work-related and that his shoulder condition reached maximum medical improvement.

¶11 The ALJ noted conflicts among the medical experts' opinions regarding Parr's brain injury, neuropsychological conditions, and orthopedic injuries. The ALJ resolved those conflicts by crediting the opinions of Drs. Cardenas, Parker, Walker, and Kahn. She therefore determined that Parr's work-related medical conditions did not require further medical care beyond one visit with Dr. Cardenas and had become medically stationary without permanent impairment. Parr subsequently requested review of the decision. He attached several medical reports that were not part of the record in the original decision. Upon review, the ALJ did not consider the medical records Parr submitted for the first time with his request for review. The ALJ also addressed Parr's arguments concerning the medical symptoms and conditions that he had raised during the hearing. She noted, however, that although Parr had suffered from several ongoing medical conditions, such as gastrointestinal issues, the record did not support a finding that those conditions were causally related to Parr's industrial accident. The ALJ affirmed the award and Parr subsequently brought this appeal.

DISCUSSION

1. Conflicting Evidence

¶12 Parr argues that the ALJ erred in determining that he was medically stationary without permanent impairment because her resolution of conflicting medical opinions was unreasonable. Parr also contends that the ALJ erred by not "reviewing the evidence" he provided. We view the evidence in the light most favorable to sustaining the award and we will not disturb the decision if reasonable evidence supports the ALJ's findings. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105 ¶ 16 (App. 2002). We may only review the evidence which was before the Commission. *O'Neal v. Indus. Comm'n*, 13 Ariz. App. 550, 552 (1971). Additionally, the ALJ resolves any conflicts in medical evidence, and the ALJ's "resolution will not be disturbed unless it is wholly unreasonable." *Ortega v. Indus. Comm'n*, 121 Ariz. 554, 557 (App. 1979). The ALJ, and not this Court, is better able to

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resolve issues of credibility and consistency of evidence. *S.L.C. Leasing v. Indus. Comm'n*, 25 Ariz. App. 366, 367 n.* (1975).

¶13 A workers' compensation claimant bears the burden to prove by a preponderance of evidence that he is entitled to compensation. *Hahn v. Indus. Comm'n*, 227 Ariz. 73, 74 ¶ 9 (App. 2001). In doing so, the claimant must show that the injury arose out of and in the course of employment. *Id.* The claimant must also establish that the condition is not medically stationary, or, if the condition is stationary, that the claimant has sustained a permanent impairment. *Stephens v. Indus. Comm'n*, 114 Ariz. 92, 94 (App. 1977). Determining whether a condition is medically stationary requires deciding whether the injured party has reached a relatively stable medical status such that no further treatment is reasonably indicated to improve the condition. *Savage Welding Supplies v. Indus. Comm'n*, 120 Ariz. 592, 594 (App. 1978).

¶14 Here, the ALJ was presented with multiple medical conflicts and disputes. The ALJ resolved those conflicts by adopting the opinions of Drs. Cardenas, Kahn, Parker, and Walker as "more probably correct" and demonstrably "well founded." In her resolution, the ALJ properly considered the methodology, testimony, qualifications, and experience of the experts. *See Carousel Snack Bar v. Indus. Comm'n*, 156 Ariz. 43, 46 (1988). Furthermore, as the record reflects, the opinions of those physicians support the ALJ's determination that any work-related injuries Parr suffered were medically stationary and did not require further medical care beyond one visit with Dr. Cardenas. Therefore, because the medical conflicts were resolved "in such a way that [the ALJ's] findings are reasonably supported by the evidence," we will not disturb the ALJ's findings and award. *See Condos v. Indus. Comm'n*, 92 Ariz. 299, 301-02 (1962).

2. New Evidence

¶15 Parr also contends that the ALJ erred by not reviewing all the evidence that he had submitted. Parr's argument fails, however, because we presume that the ALJ considered all relevant evidence in reaching an award, and Parr has not overcome that presumption. *See Perry v. Indus. Comm'n*, 112 Ariz. 397, 398 (1975). Moreover, we find no error in the ALJ's refusal to consider medical records that Parr submitted for the first time with his request for administrative review. *See Epstein v. Indus. Comm'n*, 154 Ariz. 189, 195 (App. 1987) ("As a general rule, the fact-finding process in workers' compensation claims ends at the conclusion of the last scheduled hearing.").

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CONCLUSION

¶16 For the foregoing reasons, we affirm.



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