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IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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CITY OF SURPRISE, *Petitioner Employer*,  
ARIZONA MUNICIPAL RISK RETENTION POOL, *Petitioner Carrier*,

*v.*

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent*,  
JOSEPH M. SPECTOR, *Respondent Employee*.

No. 1 CA-IC 19-0012  
FILED 3-31-2020

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Special Action - Industrial Commission  
ICA Claim Nos. 20052-660509, 20173-340378  
Carrier Claim Nos. 14006912, 14019849  
Colleen Marmor, Administrative Law Judge

**AWARD IN 20052-660509 AFFIRMED;  
AWARD IN 20173-340378 SET ASIDE**

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COUNSEL

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**MEMORANDUM DECISION**

Judge David B. Gass delivered the decision of the Court, in which Presiding Judge David D. Weinzweig and Chief Judge Peter B. Swann joined.

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**G A S S**, Judge:

¶1 Respondent Joseph Spector (Spector) applied to the Industrial Commission of Arizona (ICA) for disability benefits for two claims: (1) a 2005 car accident (No. 20052-660509) and (2) a 2017 incident when Spector was struck by a golf bag (No. 20173-340378). The administrative law judge (ALJ) found: (1) Spector’s injuries in the 2005 car accident claim are not medically stationary and (2) Spector’s 2017 golf bag incident caused a compensable injury.

¶2 This court must decide if substantial evidence supports those findings. Substantial evidence supports the ALJ’s finding regarding Spector’s need for continued active care for injuries he sustained in the 2005 car accident. The evidence, however, does not support the ALJ’s finding Spector sustained a compensable injury in the 2017 golf bag incident. The 2005 award, therefore, is affirmed. The 2017 award is set aside.

**FACTUAL AND PROCEDURAL HISTORY**

I. The 2005 car accident claim

¶3 On September 4, 2005, Spector was involved in a car accident while working as a police officer for petitioner City of Surprise (Surprise). During the accident, Spector’s head hit the car window. Spector does not remember if he lost consciousness or was just dazed, but he was taken to an emergency room and released later with head and neck pain.

¶4 Spector experienced pain and stiffness in his neck after he returned to work. For a time, he managed the pain and stiffness with over-

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the-counter medications, massage, and physical therapy exercises. He later developed muscle spasms around his left eye where his head hit the window. He also had trouble sleeping. Spector filed a worker's compensation claim in 2007. Petitioner Arizona Risk Municipal Retention Pool accepted the claim.

¶5 Spector started seeing Dr. Stephen Flitman, a neurologist, in 2007. Dr. Flitman prescribed pain medication for the muscle spasms and nerve pain. Initially, Dr. Flitman suspected trauma from a brain injury caused a sleep disorder. Later, Dr. Flitman diagnosed Spector with dystonia—a condition in which muscles spasm and twitch—caused by the 2005 accident. Botox injections and other therapies kept Spector's symptoms under control, allowing him to continue working full time. Spector used his acute care health care benefits for the treatment he needed.

¶6 In 2007, Spector began working for the Surprise Fire Department. He continued managing his symptoms with help from Dr. Flitman and others. In 2011 and 2012, Spector noticed his condition declined. He stepped up his efforts to control the symptoms and continued working. In November 2017, after a comprehensive medical evaluation, an MRI showed a new bulged disc. Dr. Flitman restricted Spector from returning to work as a firefighter. Spector subsequently took medical disability retirement because of his dystonia.

¶7 In January 2018, petitioners issued a notice of claim status closing Spector's 2005 car accident claim after determining (1) Spector had reached maximum medical improvement as of May 2017, (2) he had no permanent disability, and (3) he needed no further active care. Spector timely requested a hearing.

II. The 2017 golf bag claim

¶8 On February 14, 2017, while working for the Surprise Fire Department, Spector medically assisted a woman at a golf course. As Spector knelt to put away equipment, someone hit him in the head with a golf bag. Spector sustained a contusion to his head and felt a painful shock go down his neck, shoulder, and right arm to the end of his fingers. The shock passed, but he had residual neck and shoulder pain and stiffness. Spector reported immediate radiculopathy down his right arm, but that resolved at the scene.

¶9 Later that day, Spector's supervisor made him contact a triage nurse provided by Surprise. The triage nurse told Spector to use heat, cold, and over-the-counter medications to care for his symptoms. Spector did not

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see a doctor the day of the golf bag incident and continued his routine self-care for his neck.

¶10 Spector’s supervisor convinced him to file an injury report. In the report, Spector described the symptoms he experienced as “not uncommon” for him. His overall symptoms grew worse over the next several weeks and months. When Spector filed a claim based on the golf bag incident, petitioners denied compensability. Spector timely requested a hearing.

III. The expert testimony

¶11 The ALJ conducted an evidentiary hearing. Dr. Flitman, Spector’s treating neurologist, and others testified on Spector’s behalf. The ALJ also heard from other physicians who conducted independent medical examinations (IMEs) of Spector.

A. Dr. Flitman

¶12 Dr. Flitman testified about Spector’s condition and treatment since 2007. Spector originally presented with pain in his back and between his shoulder blades, which developed into neck pain. Spector also had muscle spasms in his neck and back. Dr. Flitman thought Spector’s sleep problems were preventing his muscles from fully resting, causing fibromyalgia. Dr. Flitman prescribed pain medication and a sleep aid. Dr. Flitman believed the spasms stemmed from a brain injury Spector suffered when his head hit the car window in the 2005 car accident.

¶13 Concerning the 2017 golf bag incident, Dr. Flitman testified as follows:

Q: Okay . . . the treatments that you have continued to provide after that incident in February of 2017, do you believe that the treatment that you have been providing and the diagnoses you made are related to the – either the original injury of 2005 or the aggravation that may have occurred as a result of the February 2017 incident?

A: I don’t have sufficient information to be able to tell you that the second incident was an aggravating factor. I can see how it could be given the mechanism of injury, but I have been treating him for these continuing problems . . . from the 2005 incident, that’s the primary source. It’s possible that he could have now resulting more neck dystonia, and that’s – that’s an

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exacerbation to the lateral head movement, but I don't really know that I can prove that.

....

A: I cannot be 100 percent certain; however, it's likely given the presence of instant neck pain and the pain regarding his right arm, these are symptoms that make me think about neck injury and possible radicular injury affecting the neck, so it would certainly be suggestive that there was more things happening that would be an aggravating type of injury.

¶14 Dr. Flitman was asked if Spector needed ongoing treatment for his neck conditions generally, and Dr. Flitman answered "Yes." This exchange followed:

Q: . . . And is that related to the February 14, 2017, injury or a combination of both?

A: I believe it's more of a combination of both, but — .

B. IMEs

¶15 Several doctors conducted IMEs of Spector. They testified about examining Spector and his medical records. They disagreed with Dr. Flitman's conclusion that Spector's back and neck pain were related to the 2005 car accident. They also disagreed with Dr. Flitman's opinion about Spector needing ongoing treatment. None of them concluded the 2017 golf bag incident resulted in an injury or aggravation of Spector's 2005 car accident injury.

¶16 Dr. Crandall, who conducted an IME on Spector, specifically testified as follows on cross-examination:

And so in this particular case the data points to a muscular strain/sprain that was not an exacerbation of a preexisting arthritic joint or multiple joints in the neck. So that's how come my opinion is to a reasonable degree of medical probability that in this particular case *this is not an exacerbation of a preexisting condition*, but rather this was a soft tissue strain/sprain in 2005 and a *contusion* in the back of his head in 2017.

(Emphasis added.)

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¶17 Dr. Crandall clarified his position as follows:

And just to be clear it is my view that when he got hit in the back of the head or the side of the head with the golf bag, that may have caused momentary or very short lived self-limited symptoms but that all of the treatment that he received after that and particularly the injections have nothing to do with getting hit on the back, or the side of the head with a golf bag.

IV. The ALJ's findings

¶18 The ALJ found Dr. Flitman's testimony the most credible of the expert witnesses. She, therefore, found Spector's 2005 car accident injury was not medically stationary and accordingly awarded him continuing benefits.

¶19 For the 2017 golf bag incident, the ALJ rendered the following finding:

With regard to Applicant's industrial injury of February 14, 2017, the issue is the compensability of Applicant's claim, and whether he was injured by accident arising out of and in the course of his employment. Capt. Morris testified that he witnessed Applicant receive a blow to the head. No evidence was submitted to contradict this eyewitness testimony and Applicant's own account of how the injury occurred. Dr. Crandall concluded that Applicant sustained a contusion to the back of his head. There is little, if any, conflict in the evidence regarding the compensability of Applicant's claim. When all the evidence is considered in its entirety and upon the resolution of the conflicts in the evidence, it is found herein that the evidence clearly indicates Applicant sustained an industrial injury on February 14, 2017.

Based on these findings, she awarded benefits on the 2017 golf bag incident.

¶20 Petitioners timely requested special action review of the ICA's decisions and awards. This court has jurisdiction under A.R.S. §§ 12-120.21(A)(2), 23-951(A), and Arizona Rule of Procedure for Special Actions 10.

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**ANALYSIS**

¶21 When reviewing an ICA decision, this court views the evidence in the light most favorable to sustaining the award. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16 (App. 2002). “When multiple inferences may be drawn, the ALJ is at liberty to choose whichever he or she finds most credible, and this court will not disturb the ALJ’s conclusion unless it is wholly unreasonable.” *Henderson-Jones v. Indus. Comm’n*, 233 Ariz. 188, 191-92, ¶ 9 (App. 2013).

¶22 The ALJ has a duty to resolve conflicting expert medical testimony and must determine “which opinion is more probably correct.” *Kaibab Indus. v. Indus. Comm’n*, 196 Ariz. 601, 609, ¶ 25 (App. 2000). In doing so, the ALJ may consider “whether or not the testimony is speculative, consideration of the diagnostic method used, qualifications in backgrounds of the expert witnesses and their experience in diagnosing the type of injury incurred.” *Carousel Snack Bar v. Indus. Comm’n*, 156 Ariz. 43, 46 (1988). This court is bound by the ALJ’s resolution of conflicting evidence if supported by reasonable evidence. *Kaibab Indus.*, 196 Ariz. at 609, ¶ 25.

I. Closure of the 2005 car accident claim

¶23 To prevail on appeal, petitioners must show the ALJ unreasonably found Dr. Flitman’s opinion more credible than those of the other expert witnesses. The record does not support petitioners’ argument. Dr. Flitman has been treating Spector since 2007. He is well-acquainted with Spector’s conditions and has been treating them with some success.

¶24 Dr. Flitman explained the medical bases for his conclusions and tied them to the specific facts of Spector’s case. Even if others in the medical community debate some of Dr. Flitman’s conclusions, the ALJ’s adoption of his testimony is not unreasonable. Petitioners’ attempt to impeach Dr. Flitman’s testimony on appeal is unavailing because this court does not re-weigh the evidence. *See Simpson v. Indus. Comm’n*, 189 Ariz. 340, 342 (App. 1997).

¶25 Substantial evidence supports the ALJ’s adoption of Dr. Flitman’s medical opinion over the opinions of the other experts. The evidence, therefore, supports the award in favor of Spector regarding the 2005 car accident injury.

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II.     Compensability of the 2017 golf club claim

¶26           To be compensable, a work-related incident must result in an injury. A.R.S. § 23-1021; *see also Yates v. Indus. Comm'n*, 116 Ariz. 125, 127 (App. 1977). Not every minor injury is compensable. *Yates*, 116 Ariz. at 128. To be cognizable under worker's compensation law, an injury must be accompanied by some loss or expense. *Id.* When the nature of the injury is not readily apparent to a layperson, a claimant must provide expert medical testimony. *W. Bonded Prods. v. Indus. Comm'n*, 132 Ariz. 526, 527 (App. 1982). Though this court defers to an ALJ's resolution of conflicts in the evidence, "[e]quivocal or speculative medical testimony is insufficient to support an award or create a conflict in the evidence." *Hackworth v. Indus. Comm'n*, 229 Ariz. 339, 343, ¶ 10 (App. 2012).

¶27           Here, the ALJ found Spector suffered a compensable injury from the 2017 incident based on (1) the uncontested testimony he was hit in the head with a golf bag and (2) Dr. Crandall's use of the word "contusion" to describe Spector's condition just after the golf bag hit his head. The ALJ's reliance on the mere use of the word "contusion" is unreasonable.

¶28           Dr. Crandall testified he saw no evidence the golf bag incident caused Spector anything but temporary symptoms. Dr. Crandall specifically said, "to a reasonable degree of medical probability . . . *this is not an exacerbation of a preexisting condition*, but rather this was a soft tissue strain/sprain in 2005 and a *contusion* in the back of his head in 2017." (Emphasis added.) This testimony is the only place in the record the word "contusion" is used to describe the 2017 incident. The record shows no treatment for any contusion or bruising as a result of the 2017 golf bag incident.

¶29           In context, the record shows Dr. Crandall believed the golf bag incident produced only minor symptoms. The symptoms went away and left no significant impact on Spector. Dr. Crandall went on to say Spector's subsequent treatment had "nothing to do with getting hit on the back, or the side of the head with a golf bag."

¶30           This court accepts the ALJ's factual finding regarding the 2017 golf bag incident causing a contusion. But finding the contusion caused an aggravation of Spector's condition is not the type of injury readily apparent to a layperson. *See Lamb v. Indus. Comm'n*, 27 Ariz. App. 699, 701 (1976). The record, therefore, must provide unequivocal medical testimony linking the 2017 incident with a compensable injury. *See id.* On that issue, Dr. Flitman's testimony falls short.



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¶31 Regarding the 2017 golf bag incident, Dr. Flitman said he did not “have sufficient information to be able to [say it] was an aggravating factor.” Dr. Flitman confirmed Spector’s 2005 car accident was the primary source of Spector’s ongoing need for treatment. He went on to say Spector could have more neck dystonia as “an exacerbation to [Spector’s 2017] lateral head movement, but I don’t really know that I can prove that.” Dr. Flitman said Spector’s instant pain following the 2017 incident “would certainly be suggestive that there [were] more things happening that would be an aggravating type of injury.”

¶32 However suggestive this might be, it is not unequivocal. Dr. Flitman focused on treating Spector’s symptoms, not identifying causation. Dr. Flitman admitted he did not have enough information and could not prove the 2017 golf bag incident resulted in Spector having “more neck dystonia.” Rather, Dr. Flitman testified the symptoms Spector experienced were “suggestive” of an aggravation of the original 2005 injury.

¶33 In short, Dr. Flitman’s testimony is equivocal, but Dr. Crandall’s is not. *See Hackworth*, 229 Ariz. at 343, ¶ 10. Dr. Crandall said the 2017 golf bag incident was minor and produced “short lived self-limited symptoms.” Those symptoms left no significant impact on Spector. Dr. Crandall further explained Spector’s subsequent treatment had “nothing to do with getting hit” by the golf bag in 2017.

¶34 Based on the above, the evidence sufficiently supports the ALJ’s finding Spector’s injuries from the 2005 car accident were not medically stable. The evidence does not, however, support the ALJ’s finding the 2017 golf bag incident aggravated Spector’s 2005 injuries.

III. Severability of the 2005 car accident claim from the 2017 golf bag claim

¶35 During oral argument, the parties addressed whether this court may sever the two claims. *See Prof'l Furniture Serv. v. Indus. Comm'n*, 133 Ariz. 206 (App. 1982) (analyzing severance under A.R.S. § 23-951(D)). Section 23-951, in part, limits this court to “either affirming or setting aside the award, order or decision.” A.R.S. § 23-951(D). Here, as in *Professional Furniture*, the ALJ separately addressed the two claims.

¶36 Throughout the decision, the ALJ discussed the expert testimony and the evidence as it applied to each claim. Paragraph 15 of her findings specifically addressed Spector’s 2005 car accident injury, while paragraph 16 specifically addressed the 2017 golf bag incident. The same is

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true of the awards. Paragraphs one and two under the award section addressed the 2005 injuries and paragraphs three and four of that section addressed the 2017 golf bag incident. Because the findings and awards are separate and stand alone, A.R.S. § 23-951(D) does not prohibit severing the two claims. *See Prof'l Furniture*, 133 Ariz. at 209.

**CONCLUSION**

¶37 Because the record supports the award in ICA Claim No. 20052-660509, finding Spector's 2005 injuries was not medically stationary, that award is affirmed. Because the record does not support the award in ICA Claim No. 20173-340378, finding the 2017 golf bag incident compensable, that award is set aside.



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