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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

GEORGE CLIFTON, *Petitioner Employee,*

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*

INTEGRITY STAFFING SOLUTIONS, *Respondent Employer,*

ZURICH AMERICAN INSURANCE CO., *Respondent Carrier.*

No. 1 CA-IC 20-0002

FILED 9-29-2020

Special Action - Industrial Commission

ICA Claim No. 20153-490136

Carrier Claim No. 001627102932WC01

The Honorable Michael A. Mosesso, Administrative Law Judge

AFFIRMED

COUNSEL

George W. Clifton, Palmdale, California
Petitioner Employee

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

MEMORANDUM DECISION

Judge Maria Elena Cruz delivered the decision of the Court, in which Presiding Judge James B. Morse Jr. and Judge Paul J. McMurdie joined.

C R U Z, Judge:

¶1 George Clifton challenges an order issued by the Industrial Commission of Arizona (“ICA”) designating him a “vexatious litigant” as provided in Arizona Revised Statutes (“A.R.S.”) section 23-941.02. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Clifton was injured at work in 2015.¹ After a hearing in 2017, his claim was accepted and closed with temporary benefits but no permanent impairment. In 2018, Clifton filed two successive “bad faith” complaints, one in March and the other in April, about the handling of his temporary benefits. He also filed a request for investigation regarding payment of wages. Dissatisfied with the outcomes of those requests issued by the ICA claims division, he asked for hearings. The three matters were consolidated for the hearing, but when Clifton failed to cooperate with the discovery process, the consolidated cases were dismissed with prejudice. We affirmed that dismissal on review. *Clifton v. Indus. Comm’n*, 1 CA-IC 19-0014, 2019 WL 7177726 (Ariz. App. Dec. 24, 2019) (mem. decision).

¶3 Clifton filed another administrative complaint in June 2019, again alleging bad faith in the handling of his claim by the carrier, Zurich American Insurance Co. (“Zurich”). That complaint constituted the third bad faith complaint filed against the carrier by Clifton. In response, Respondents Integrity Staffing Solutions and Zurich filed a motion to designate Clifton a “vexatious litigant” under A.R.S. § 23-941.02. The motion referenced “repetitive filings of bad faith complaints, *which are the*

¹ The facts in this paragraph are taken from *Clifton v. Indus. Comm’n*, 1 CA-IC 19-0014, 2019 WL 7177726 (Ariz. App. Dec. 24, 2019) (mem. decision).

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subject of previous Rulings by the ICA, pertaining to the same date of injury.” (Emphasis added.) The motion further alleged that Clifton had continuously used insulting and disrespectful language in his filings. Respondents asked that Clifton be precluded from filing any more bad faith complaints without getting prior approval from the ICA Chief Administrative Law Judge (“Chief ALJ”).

¶4 The first complaint, filed with the ICA in March 2018, alleged multiple violations in the processing of Clifton’s claim by the carrier, including denial or delay in approving appointments with doctors, failure to respond to a request to see a psychologist, delay in approving medications, failure to pay independent medical exam (“IME”) travel expenses, and delay in paying benefits. The ICA claims division found a violation for unreasonable delay in paying IME travel expenses but denied the other alleged violations.

¶5 The second complaint, filed in April 2018, alleged that Respondents were refusing to respond to Clifton’s inquiry about whether he was entitled to wages for November 30, 2015 through December 3, 2015. The ICA claims division summarily denied that complaint.

¶6 The third complaint repeated the allegations of the second complaint and further complained about a check for \$142.08 dated September 6, 2018, for TTD benefits for November 30, 2015 to December 3, 2015, and the Respondents’ alleged lack of responsiveness to him when he asked for an explanation of what the amount was for. In response, Respondents argued Clifton

is once again disputing his temporary compensation benefits with his latest complaint. He still inquires whether he is owed for the 6.75 hours missed on the date of injury and for work missed on December 1st, 2nd, and 3rd[.] 2015, and questions his TTD check in the amount of \$142.08 that was issued for the period 11/30/15-12/03/15 . . . the applicant’s average monthly wage was correctly set by the Industrial Commission of Arizona, thus the TTD check was calculated correctly. This issue has been addressed and resolved by Judge Lavelle’s May 25, 2017 Award and the ICA’s May 29, 2018 [re: bad faith] and June 1, 2018 Awards [re: bad faith].

The complaint was denied by the ICA claims division in November 2019.

¶7 Upon receiving Respondents’ June 2019 motion to designate Clifton a “vexatious litigant,” the ICA Chief ALJ issued a letter giving

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Clifton until July 29, 2019, to file a response. On October 7, 2019, the Chief ALJ issued a formal order designating Clifton a vexatious litigant.

¶8 He noted that Clifton had not filed a response to the June 2019 motion. He also found that the third complaint filed by Clifton raised “the same or similar issues as previously filed” but did not identify or articulate those issues in the Order. Based on A.R.S. § 23-941.02(D)(1)(f), which makes repeated filing of claims that have already been adjudicated “[v]exatious conduct,” he designated Clifton a vexatious litigant. He ordered that Clifton be prohibited from filing any “new requests for relief including a new Request for Hearing, new Petition to Reopen, pleading, motion[,] Bad Faith Complaints, or other documents” without the approval of the Chief ALJ.

¶9 Clifton filed a request for review on November 5, 2019. He claimed that he had filed a response to the “vexatious litigant” motion and provided a copy of a receipt from a United States Postal Station that purports to show that an item was mailed on July 27, 2019, for two-day delivery to the Phoenix ZIP Code at which the ICA gets mail. He claimed that the item was his response to the motion. Clifton also claimed that the ICA received his response on July 29, 2019, at 7:50 a.m., but does not say how he obtained that information. He included a copy of the response, in which he argued that the three complaints he filed were not about the same issue. Respondents countered by arguing that the issues complained about by Clifton were the same issues and that Clifton was harassing them. Respondents did not address the evidence purporting to show a timely received response to the original motion from Clifton.

¶10 The Chief ALJ made his ruling in a Decision Upon Review Supplementing and Affirming Order, issued on December 18, 2019, which made the following finding, among others:

In Applicant’s November 5, 2019 Request for Review he argues that he is not vexatious. He further argues that he did respond to the July 29, 2019 [sic] Motion.² Applicant also states that he has voiced different issues.

² Clifton makes no argument on appeal concerning his response to the July 29, 2019 motion. We note, however, that because the response was attached to the request for review and the Chief ALJ acknowledged receiving it, he implicitly rejected Clifton’s arguments in the response.

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No other findings concerning the substance of the request for review were made. The order was summarily affirmed, and Clifton filed this statutory special action.

DISCUSSION

¶11 In 2016, the Arizona Legislature enacted A.R.S. § 23-941.02³ to address “vexatious litigant[s]” in workers’ compensation cases. 2016 Ariz. Sess. Laws, ch. 26, § 1 (2d Reg. Sess.). The statute gives the ICA Chief ALJ, or ALJ designee, the authority to identify a *pro se* litigant as a vexatious litigant if the litigant engages in “vexatious conduct.” Vexatious conduct is defined as engaging in any one of six separate patterns of conduct, including repetitive filings. See A.R.S. § 23-941.02(D)(1)(f). When a motion alleging vexatiousness is filed, the *pro se* litigant must be given thirty days to respond. A vexatious litigant designation “applies only to the claim at issue before the administrative law judge.” *Id.* § 23-941.02(A). Once identified as a vexatious litigant, a *pro se* litigant “may not file a new request for hearing, pleading, motion or other document without prior leave of the administrative law judge.” *Id.* § 23-941.02(B).

¶12 As noted, in this case, the Chief ALJ relied upon A.R.S. § 23-941.02(D)(1)(f) for his conclusion that Clifton is a vexatious litigant. That statutory subsection defines vexatious conduct as “[r]epeated filing of documents or requests for relief that have been the subject of previous rulings by the commission in the same claim.” In his initial order, the Chief ALJ found that Clifton’s third bad faith complaint “raises the same or

³ The statute, in its entirety, reads as follows:

- A. In a workers’ compensation case before the commission, on the motion of a party, the chief administrative law judge or an administrative law judge designated by the chief administrative law judge may designate a *pro se* litigant a vexatious litigant. The *pro se* litigant shall respond within thirty days after the motion. The chief administrative law judge, or administrative law judge if designated by the chief administrative law judge, shall issue an order within thirty days after the *pro se* litigant’s response is received or the time for response has elapsed. The vexatious litigant designation applies only to the claim at issue before the administrative law judge.

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similar issues as previously filed.” Those issues are not articulated in the order.⁴

¶13 Clifton argues on appeal that he did not raise the same issues in his bad faith complaints and therefore we should overturn the finding that he was a vexatious litigant. We disagree.

¶14 Our review of the claims file in its entirety and the bad faith complaints supports the Chief ALJ’s conclusion that Clifton repeatedly filed documents or requests for relief that were subject to previous rulings by the ICA in the same claim. In May 2017, the ALJ closed Clifton’s claim without impairment, awarded Clifton TTD or TPD benefits from November 30, 2015 to February 4, 2016, and set his average monthly wage at \$2123.17. The award became final.

¶15 In March and April 2018, Clifton filed the first two bad faith complaints. In August 2018, Clifton filed a request for investigation regarding payment of wages, raising the same issue about whether he should receive payment for November 30 to December 3, 2015, that he raised in the second bad faith claim. Clifton requested hearings on all three matters; the matters were consolidated and dismissed with prejudice. We affirmed the dismissal on review. The third complaint repeated the allegations of the second complaint and the request for investigation, and further complained about a check issued to him for \$142.08 for TTD benefits for November 30, 2015 to December 3, 2015, as well as the Respondents’ alleged lack of responsiveness to him when he asked for an explanation of what the amount was for. The issues raised in the second and third complaint and the request for investigation were sufficiently similar to be considered repetitive. Accordingly, the record supports the Chief ALJ’s order.

⁴ We note that our review would have been significantly aided if the ALJ had made more comprehensive findings in this matter.

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CONCLUSION

¶16 For the foregoing reasons, we affirm the order and decision upon review.



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