

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JOHN W. MEST,
Petitioner Employee,

v.

THE INDUSTRIAL COMMISSION OF ARIZONA,
Respondent,

SEA RAY BOATS INC,
Respondent Employer,

INS. CO. OF NORTH AMERICA,
Respondent Carrier.

No. 1 CA-IC 20-0010
~~FILED 10-29-2020~~

Special Action - Industrial Commission
No. ICA 0000F-138004
INSCA 520C4106135
The Honorable Paula R. Eaton, Administrative Law Judge

AFFIRMED

COUNSEL

John W. Mest, Potosi, Wisconsin
Petitioner

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

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Lundmark, Barberich, La Mont & Slavin, Phoenix
By Kirk A. Barberich
Counsel for Respondent Employer & Carrier

MEMORANDUM DECISION

Judge David D. Weinzweig delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge D. Steven Williams joined.

WEINZWEIG, Judge:

¶1 John Mest petitions for special action review of an Industrial Commission of Arizona (the “Commission”) award denying his request for additional supportive medical care benefits. Because he has shown no error, we affirm.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 Mest injured his lower back in 1982 while working for Sea Ray Boats. Sea Ray’s carrier, Insurance Company of North America, accepted Mest’s claim for worker’s compensation benefits and he had surgery. The carrier closed Mest’s claim in 1984 with an unscheduled permanent partial impairment and ongoing supportive medical care, including leg braces, custom shoes and four annual physician visits. The carrier reopened Mest’s claim in 1986 and 2001, altering his supportive care and accepting his request for a spinal cord stimulator.

¶3 In February 2018, based on updated medical reports from Dr. Paul Cederberg and Dr. Morris Soriano, the carrier reduced Mest’s supportive care award to “three office visits per year to evaluate [his] spinal cord stimulator.” Mest argued he was “entitle[d] to several other forms of treatment” and requested a hearing to contest the revised supportive care award under A.R.S. § 23-1061(J).

¶4 An ALJ conducted the evidentiary hearing over five days. The ALJ received medical records and heard testimony from Mest and

¹ Because our review is limited to evidence in the record, we will not consider the materials attached to Mest’s opening brief that were not provided to the Commission. *Pac. Fruit Express v. Indus. Comm’n*, 153 Ariz. 210, 214 (1987).

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several medical witnesses. Mest complained of “continuing lower back pain as well as a drop foot,” “tingling in his legs and restless leg syndrome,” sexual dysfunction and “radiating pain down both legs.” The ALJ found Mest’s testimony “lack[ed] credibility.”

¶5 Dr. Morris Soriano testified for the carrier. He was a board-certified neurosurgeon with 31 years of neurologic surgery. Dr. Soriano personally examined Mest and reviewed his medical records before concluding that Mest “does not require . . . braces, injections, assistive devices or medications” and that the carrier’s reduced, supportive care award was appropriate. Dr. Soriano found Mest was “exaggerat[ing]” his symptoms, which were “more likely cause[d]” by an unrelated surgery in 1992 rather than the 1982 industrial injury. The carrier also offered the independent medical examination report of Dr. Cederberg, who reached the same conclusion on continued supportive care.

¶6 Mest countered with testimony from his primary care physician (Dr. Andrew Klann), treating physician (Dr. Joshua Lindsey) and a nurse practitioner. Dr. Klann concluded that Mest needed “epidural steroid injections[,] maintenance of his spinal cord stimulator[,]” medication, “braces and shoes for both feet,” and three to four physician visits per year. Still, he described Mest’s condition as “very stable.” Dr. Lindsey found Mest should receive “brace[s] for both feet as well as custom orthotics,” “shoes for both feet,” and “two physician visits per year.” The nurse practitioner suggested “facet injections” and “epidural injections,” but did not have a good understanding of Mest’s industrial injury.

¶7 The ALJ upheld the carrier’s reduced, supportive care benefits, which were limited to “intermittent evaluation[s] of [Mest’s] spinal cord stimulator.” The ALJ found that Dr. Soriano’s opinion was “more probably correct and well founded” and that Mest “lacked credibility.” Mest timely petitioned for special action review. We have jurisdiction under A.R.S. §§ 12-120.21(A)(2), 23-951(A) and Arizona Rule of Procedure for Special Actions 10.

DISCUSSION

¶8 We defer to the ALJ’s factual findings and consider record evidence in the light most favorable to upholding a Commission award. *Young v. Indus. Comm’n*, 204 Ariz. 267, 270, ¶ 41 (App. 2003); *Lovitch v. Indus. Comm’n*, 202 Ariz. 102, 105, ¶ 16 (App. 2002). An ALJ has the sole duty to resolve conflicting testimony of medical experts, *Kaibab Indus. v. Indus. Comm’n*, 196 Ariz. 601, 609, ¶ 25 (App. 2000), and we will affirm the ALJ’s

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resolution unless it “cannot be reasonably supported on any reasonable theory of [the] evidence,” *Phelps v. Indus. Comm’n*, 155 Ariz. 501, 506 (1987).

¶9 Mest raises two arguments on appeal. He first contends his medical experts were more persuasive than the carrier’s experts. But the ALJ heard and weighed the evidence, including Dr. Soriano’s opinion. We cannot reweigh the evidence on appeal. *Wal-Mart v. Indus. Comm’n*, 183 Ariz. 145, 147 (App. 1995).

¶10 Mest next contends the Commission could not reduce his supportive care benefits, arguing it guaranteed him the same level of benefits “for [the] rest of [his] life.” We disagree. Supportive care benefits are voluntary and not expressly authorized by the Arizona Worker’s Compensation Act. *Bank One Corp. v. Indus. Comm’n*, 226 Ariz. 134, 136, ¶ 7 (App. 2010). The Commission may adjust supportive care benefits at any time based on a material change in a claimant’s physical condition. *Capuano v. Indus. Comm’n*, 150 Ariz. 224, 227 (App. 1986); see also *Brown v. Indus. Comm’n*, 199 Ariz. 521, 524, ¶ 14 (App. 2001). The ALJ found that Mest’s physical condition only required the “intermittent evaluation[s] of his spinal cord stimulator.”

CONCLUSION

¶11 We affirm the Commission’s award.



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