

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JEFFREY BADE, *Petitioner Employee,*

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*

MUSD DBA MOHAVE VALLEY SCHOOL DISTRICT, *Respondent
Employer,*

AZ SCHOOL ALLIANCE FOR WORKERS COMPENSATION POOL,
Respondent Carrier,

No. 1 CA-IC 20-0043
FILED 9-28-2021

Special Action - Industrial Commission
ICA Claim No. 20163-640362
Carrier Claim No. 2016002019A

The Honorable Marceline A. Lavelle, Administrative Law Judge

AWARD AFFIRMED

COUNSEL

Jeffrey Bade, Topock
Petitioner Employee

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

MEMORANDUM DECISION

Chief Judge Kent E. Cattani delivered the decision of the Court, in which Judge Samuel A. Thumma and Judge Brian Y. Furuya joined.

C A T T A N I, Chief Judge:

¶1 Jeffrey Bade challenges an Industrial Commission of Arizona award temporarily suspending compensation based on his refusal to submit to recommended surgery. For reasons that follow, we affirm the award.

FACTS AND PROCEDURAL BACKGROUND

¶2 Bade hurt his back in an industrial accident in 2016. During his treatment, he received an epidural steroid injection performed by Dr. Mandeep Powar in May 2017. A few days later, he went to an emergency room with symptoms consistent with a stroke. Bade later sued Dr. Powar, her surgical staff, and the local hospital involved, claiming that something in the injection caused his symptoms.

¶3 Bade's treating neurosurgeon, Dr. Chad Hartley, recommended back surgery to address his industrial injury. At the insurance carrier's request, orthopedic surgeon Dr. Terry McLean conducted a medical records review and agreed with the surgery recommendation. The carrier authorized the surgery in November 2018. Although Bade agreed to the surgery in principle, he failed to follow up with Dr. Hartley to schedule the procedure, and in March 2019, the carrier moved to suspend Bade's benefits until he moved forward with surgery.

¶4 Bade was the sole witness at the resulting hearing before an administrative law judge ("ALJ"). Bade testified that he had wanted surgery from the beginning, but various circumstances got in the way. Initially, he refused to proceed because he was under the (mistaken) impression that Dr. McLean (whom he had never met) would perform the surgery, not Dr. Hartley. After receiving clarification that Dr. Hartley would perform the surgery, Bade still refused to proceed because he did

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not want to have the surgery at the local hospital, against which he had a pending lawsuit related to the injection that he reacted to in May 2017. By the time of the hearing, however, Bade testified that he no longer wanted Dr. Hartley to perform the surgery because of Dr. Hartley's links to the medical personnel and entities that he had sued.

¶5 After the carrier authorized surgery at a different facility, Bade still refused to proceed because he believed he did not have a complete and accurate medical record that would disclose the substance he reacted to at the time of the spinal injection in May 2017, and he wanted his surgeon to have that information. He testified that Dr. Powar had "altered" a record relating to the May 2017 procedure, and he wanted to have the original version of the record.

¶6 Bade admitted that his condition was getting worse without the recommended surgery, and he confirmed that he was willing to have the surgery—but only if he could get the information he believed was missing or removed from his medical records. During the hearing, counsel for the carrier pointed out a single alteration Dr. Powar had made to Bade's April 2017 medical record (removing a potentially ambiguous heading "confusion" from the "Neurologic" section of a progress note), but Bade denied that was the alteration that concerned him.

¶7 A few days after testifying, Bade withdrew an outstanding subpoena for Dr. Powar and stated that he had no more evidence to submit, although he also requested a continuance to develop evidence about "unlawful concealment of material medical information" related to the changed record. The parties apparently participated in a telephonic conference in October 2019, but the substance of the conference does not appear in the record. Bade later agreed to have the surgery, which was performed at a Phoenix-area facility by Dr. Christopher Yeung in February 2020.

¶8 No decision had yet been rendered, and in June 2020, the ALJ gave Bade 10 days to submit any additional evidence before ruling. Bade did not submit anything further, and the ALJ issued an award suspending Bade's benefits "until such time as [he] submits to surgery," without mentioning that Bade had already completed the surgery. The ALJ found that the surgery was reasonably necessary for Bade's recovery and concluded that Bade had failed to show good cause for his refusal to proceed with the surgery. The ALJ found no medical basis for Bade's insistence on receiving injection-related records before proceeding to surgery and found Bade's lawsuit irrelevant to the issue. Bade sought

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administrative review, and the ALJ summarily affirmed the award, again without mentioning that Bade had already received the surgery.

DISCUSSION

¶9 On review of a workers' compensation award, we defer to the ALJ's factual findings but independently review legal conclusions. *Young v. Indus. Comm'n*, 204 Ariz. 267, 270, ¶ 14 (App. 2003). We will affirm if, when considered in the light most favorable to upholding the decision, reasonable evidence supports the award. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16 (App. 2002). We defer to the ALJ's resolution of conflicting evidence and will affirm findings supported by "any reasonable theory of the evidence." See *Perry v. Indus. Comm'n*, 112 Ariz. 397, 398–99 (1975).

¶10 A workers' compensation claimant is obligated to submit to reasonably necessary medical treatment. See *Mullins v. Indus. Comm'n*, 15 Ariz. App. 283, 284 (App. 1971). Accordingly, benefits may be suspended if the claimant, without a reasonable basis, "refuses to submit to medical or surgical treatment reasonably necessary to promote the [claimant's] recovery." A.R.S. § 23-1026(E); see also A.R.S. § 23-1027; *Hamlin v. Indus. Comm'n*, 77 Ariz. 100, 104 (1954); *Arthur G. McKee & Co. v. Indus. Comm'n*, 24 Ariz. App. 218, 220, 222 (App. 1975). The carrier has the burden to prove that the claimant's refusal is unreasonable, thereby justifying suspension of benefits. *Garza v. Indus. Comm'n*, 17 Ariz. App. 525, 530 (App. 1972).

¶11 Bade does not dispute that the surgery was reasonably necessary but rather argues that his refusal to proceed was reasonable in light of a then-unknown alteration to his medical record—Dr. Powar's deletion of the word "confusion" from a progress note. Bade now asserts that (contrary to the ALJ's analysis) his refusal was based solely on needing to know the substance of that change, not on collateral concerns about the substance he believed caused an allergic reaction in May 2017 or about his lawsuit against Dr. Powar.

¶12 But Bade testified that both of those concerns motivated his reluctance to proceed with surgery. Moreover, the only record alteration Bade now highlights was known to him well before the proceedings at issue here, and the change was only marginally (if at all) relevant to the recommended back surgery. As Bade acknowledged at the hearing, he never asked Dr. Hartley to find out if the information was relevant or essential to the back surgery. Although Bade asserts that the ALJ should have allowed him to introduce additional evidence about altered medical records after the hearing, he did not submit any such evidence when the

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ALJ give him an opportunity to do so before ruling. And in any event, evidence of the single alteration he now asserts was the basis for refusal was available and admitted at the hearing.

¶13 In short, the record supports the ALJ's conclusion that Bade's refusal to proceed with back surgery was unreasonable – based on any of Bade's various rationales. We therefore affirm. *See Perry*, 112 Ariz. at 398-99.

CONCLUSION

¶14 The award is affirmed.



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