

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

PATRICIA JAMES, *Petitioner Employee,*

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*
DYSART UNIFIED SCHOOL DISTRICT NO 89, *Respondent Employer,*
AZ SCHOOL ALLIANCE FOR WORKERS COMPENSATION POOL,
Respondent Carrier.

No. 1 CA-IC 21-0002
FILED 7-27-2021

Special Action - Industrial Commission
ICA Claim No. 20191-680183
Carrier Claim No. 218004761A
The Honorable J. Matthew Powell, Administrative Law Judge

AFFIRMED

COUNSEL

Patricia James, Surprise
Petitioner Employee

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

MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Jennifer B. Campbell and Chief Judge Kent E. Cattani joined.

T H U M M A, Judge:

¶1 Patricia James appeals an Award of the Industrial Commission of Arizona (ICA) in which an administrative law judge (ALJ) denied her claim for workers' compensation. The ALJ found James had not shown that her work stressors caused a compensable mental injury. Because James has shown no reversible error, the Award is affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 James was a school bus driver for Dysart Unified School District No. 89 from May 2018 to September 2019. After her employment ended, James filed a workers' compensation claim based on a "hostile, stressful work environment" that built up stress over time because of a lack of support, a lack of feeling valued as an employee and frustration with her supervisors. After the Arizona School Alliance for Workers Compensation Pool (Carrier) denied compensability for her claim, the parties presented the following evidence at a hearing before the ALJ.

¶3 James has been a school bus driver for several decades. Before working for Dysart, James had filed two other workers' compensation claims against two employers, both derived from stressful work environments. Neither succeeded. James also filed a claim against Dysart for a physical injury (heat exhaustion) that the Carrier accepted. James never received a poor performance rating from Dysart. After a parent made a formal complaint about James, Dysart investigated and found no basis for the complaint.

¶4 As a result of an Independent Medical Examination in December 2019, Dr. Joel Parker diagnosed James with "paranoid personality traits," based on psychological testing and his interview with

JAMES v. DYSART/AZ SCHOOL
Decision of the Court

her. He explained that persons with this condition “consider their views that others are trying to harm them in some ways as incontrovertible facts and they have essentially . . . little or no insight into the problematic nature of their thinking.”

¶5 James identified eight instances from work that caused her stress, thoroughly summarized by the ALJ: (1) James’ first trainer/mentor “eventually refused to work with her,” delaying her training; (2) James once “drove past a destination,” did not call in to report the error (as required) and performed a U-turn to get to the destination; (3) James and another driver were at an intersection where they had a “face off,” blocking each other’s view, causing James’ supervisor to report an avoidable traffic jam; (4) a “check engine” light issue resulting in her being assigned a different bus; (5) James being assigned a bus with faulty air conditioning, leading to a physical injury and an accepted workers’ compensation claim; (6) an incident, while James was assigned to drive a bus equipped to transport students with special needs, where an assistant refused to keep working with James and James refused an instruction to cover the assistant’s duties along with her own; (7) when James was first selected to drive for a summer field trip, but did not drive when the bus was not needed, James met with a counselor complaining of work-related stress and anxiety and was told to take some time off; and (8) for the 2019-20 school year, James was assigned to a regular route rather than a special needs route she had the year before.

¶6 James’ counselor, Gail Harper, LPC, testified but could not say that the stressors James experienced were unique to her or were the cause of or contributed to an emotional or mental injury. Dr. Parker, agreed with Ms. Harper’s diagnosis of “Adjustment Disorder, [w]ith anxiety” but stated that it had resolved. He found no specific psychiatric injury because of the events at James’ workplace. The ALJ also heard testimony from two of James’ co-workers and the district transportation director.

¶7 The ALJ analyzed the compensability of James’ claim by applying A.R.S. § 23-1043.01(B), which governs claims of mental injury:

A mental injury, illness or condition shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this chapter unless some unexpected, unusual or extraordinary stress related to the employment or some physical injury related to the

JAMES v. DYSART/AZ SCHOOL
Decision of the Court

employment was a substantial contributing cause of the mental injury, illness or condition.

After considering the evidence, the ALJ found that James was not targeted for persecution by the employer and that much of the stress was because of a shortage of resources and people. The ALJ found that the stress James experienced was not unexpected, unusual or extraordinary and did not cause or contribute to a mental injury.¹ Thus, the ALJ found the claim was not compensable. James timely challenges that Award.

DISCUSSION

¶8 In reviewing the Award, this court defers to the factual findings of the ALJ but reviews questions of law de novo. *Young v. Indus. Comm'n*, 204 Ariz. 267, 270 ¶ 14 (App. 2003). The evidence is considered in the light most favorable to upholding the ALJ's findings, *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105 ¶ 16 (App. 2002), which will be disturbed only if the conclusions cannot be "supported on any reasonable theory of evidence," *Phelps v. Indus. Comm'n*, 155 Ariz. 501, 506 (1987).

¶9 The Arizona Supreme Court recently discussed cases in which claims of gradual work-related stress build-up, stating that "an employee's mental injuries are generally non-compensable because 'there is neither an articulable work-related event nor an increase in stressful activity,' but rather 'the resulting disability is caused by "gradual emotional stress" related' to the common stresses and strains of the work regimen." *France v. Indus. Comm'n*, 250 Ariz. 487, 490 ¶ 16 (2021) (quoting *Archer v. Indus. Comm'n*, 127 Ariz. 199, 204 (App. 1980)). As an example, *France* noted *Muse v. Industrial Commission*, where a commercial bus driver's claim for a mental injury that built up over time was denied because it was caused by "'tension and stress derived from the responsibilities of driving' a bus" and "nothing other than the usual, ordinary and expected incidents of his job as a bus driver," not some extraordinary stress. *France*, 250 Ariz. at 490 ¶ 17 (quoting *Muse v. Indus. Comm'n*, 27 Ariz. App. 312, 313-14 (1976)). *France* also pointed to *Shope v. Industrial Commission*, where a mental injury was non-compensable because it had been caused, in part, by difficulty getting

¹ It is unclear whether the ALJ found that James had a mental injury. Ms. Harper did not address that issue in her testimony. Dr. Parker testified that he saw no specific psychiatric injury to James caused by work stressors. The evidence at the hearing and the ALJ's findings focus on whether James experienced some objectively "unexpected, unusual or extraordinary" stress related to the employment.

JAMES v. DYSART/AZ SCHOOL
Decision of the Court

cooperation with co-workers. *France*, 250 Ariz. at 490–91 ¶ 17 (citing *Shope v. Indus. Comm’n*, 17 Ariz. App. 23, 25 (1972)). This difficulty was said to be the type of conflict that was part of the “usual, ordinary and expected incidents of . . . employment.” *Id.* at 491 (quoting *Shope*, 17 Ariz. App. at 25).

¶10 James had the burden of proving compensability. *Ibarra v. Indus. Comm’n*, 245 Ariz. 171, 174 ¶ 14 (App. 2018). The record presented supports the ALJ’s factual findings and conclusion that James failed to meet that burden. The ALJ considered all the testimony, including James’ perceptions and feelings about the events. For example, even though evidence shows that Dysart listened to James and changed its position when shown it had erred, the ALJ noted that James perceived Dysart as not supporting her. The ALJ did not err in concluding that James failed to show the stressors she experienced were *objectively* “unexpected, unusual or extraordinary” but were, instead, a key part of driving a school bus for a large school district in the Arizona desert climate.

CONCLUSION

¶11 The Award is affirmed.



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