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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

BRUCE BERQUIST, *Petitioner Employee,*

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*

ITT CANNON ELECTRIC, *Respondent Employer,*

PACIFIC EMPLOYERS INSURANCE CO., *Respondent Carrier.*

No. 1 CA-IC 21-0009

FILED 12-14-2021

Special Action - Industrial Commission
ICA Claim No. 20130-600323
Carrier Claim No. C520C437285-2
C. Andrew Campbell, Administrative Law Judge

AWARD AFFIRMED

APPEARANCES

Bruce Berquist, Peoria
Petitioner Employee

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

Lundmark, Barberich, LaMont & Slavin, P.C., Phoenix
By Kirk A. Barberich
Counsel for Respondent Employer and Respondent Carrier

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MEMORANDUM DECISION

Judge Maurice Portley¹ delivered the decision of the Court, in which Presiding Judge Jennifer B. Campbell and Judge Samuel A. Thumma joined.

P O R T L E Y, Judge:

¶1 Bruce Berquist challenges the denial of his bad faith and unfair claims processing complaints against his worker’s compensation carrier, Pacific Employers Insurance Company (“Pacific Employers”). Because the evidence supports the award and decision upon review denying the allegations, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Berquist suffered a compensable injury in 1985 and receives supportive care that includes prescription medications. In 2019, he filed three separate claims of bad faith and unfair claims processing alleging essentially the same general complaint; namely, that he experiences delays and miscommunication when getting pharmacy refills of his prescription medications. The Industrial Commission of Arizona (“ICA”) Claims Division conducted investigations and found no grounds for bad faith or unfair claims processing. Berquist requested a hearing. The ICA held a hearing in September of 2020, where an administrative law judge (“ALJ”) heard testimony from Berquist and his wife and from Pacific Employers claims representative Rebecca Gao.

¶3 Berquist and his wife testified that they are regularly told by the pharmacy that his medications require prior authorization, which causes a delay in dispensing them. They sometimes contact Gao about this issue but mostly deal directly with the pharmacies they use to fill the prescriptions. For one medication, Berquist has to get blood drawn, which is then used to create a serum that is dispensed to him. This process takes time. Based on the documentation submitted, the delays occur at least once per month, sometimes more frequently. Berquist testified that the delays cause him great stress. However, he did not submit any evidence that the

¹ The Honorable Maurice Portley, Retired Judge of the Arizona Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Section 3, of the Arizona Constitution.

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delays have caused harm to his physical health or exacerbated the industrial injury. The Berquists have paid out of their own pockets a few times but are always reimbursed. Berquist identified one instance in which Gao apologized for not getting back to him right away.

¶4 Gao testified that she has been the claims representative for Berquist since 2018. She is aware of Berquist’s issues and has earmarked all his medications as “auto refill” for up to six months at a time, the most extended period allowed by the company. She testified that at one point, the lab that drew blood did not have the company’s correct mailing address on the billing invoices; since then, she has had the lab email the invoices directly to her. She has made herself available to Berquist and the pharmacists who fill his prescriptions. She is not aware of anything else she can do to address Berquist’s complaints.

¶5 After hearing the testimony and reviewing the documents submitted by the parties, the ALJ issued an award denying that Berquist had proven bad faith or unfair claims processing by Pacific Employers. The ALJ found that Pacific Employers had not unreasonably delayed authorization for medications and had not unreasonably failed to communicate with Berquist or failed to act reasonably and promptly when receiving communications from Berquist. Upon a request for administrative review, the ALJ affirmed his award. This special action review followed.

ANALYSIS

¶6 In reviewing the ICA’s findings and award, we defer to the factual findings of the ALJ but review questions of law *de novo*. *Young v. Indus. Comm’n*, 204 Ariz. 267, 270, ¶ 14 (App. 2003). We consider the evidence in the light most favorable to upholding the ALJ’s award. *Lovitch v. Indus. Comm’n*, 202 Ariz. 102, 105, ¶ 16 (App. 2002).

¶7 On appeal, Berquist re-argues the evidence by urging this court to render a different judgment than that of the ALJ. As an appellate court, however, we do not re-weigh the evidence. *Kaibab Indus. v. Indus. Comm’n*, 196 Ariz. 601, 608, ¶ 21 (App. 2000). Instead, we review the lawfulness of the award by “determining whether or not the [ICA] acted without or in excess of its power” and whether the findings of fact support the ALJ’s decision. Ariz. Rev. Stat. (“A.R.S.”) § 23-951(A)-(B); *accord Special Events Serv., Inc. v. Indus. Comm’n*, 228 Ariz. 332, 334, ¶ 6 (App. 2011).

¶8 Here, to prevail on his claims, Berquist needed to prove that Pacific Employers engaged in bad faith or unfair claims processing. *See*

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A.R.S. § 23-930(A). The ICA defined those terms by promulgating rules. Under those rules, in the context of Berquist's claims, bad faith occurs when a carrier unreasonably delays authorization or payment of benefits. A.A.C. R20-5-163(A)(2). In the context of Berquist's allegations, unfair claims processing occurs when a carrier unreasonably fails to acknowledge communications from a claimant. A.A.C. R20-5-163(B)(2).

¶9 On this record, Gao's testimony and her supporting affidavits support the ALJ's findings and conclusions. The evidence submitted by Berquist does not compel the conclusion that Pacific Employers unreasonably delayed authorizations or payments, nor that Pacific Employers failed to acknowledge any communications or failed to respond within a reasonable time. The ALJ's findings are reasonable and supported by evidence in the record.

CONCLUSION

¶10 For the foregoing reasons, we affirm the award and decision upon review denying Berquist's claims of bad faith and unfair claims processing.



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