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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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DONNA WILHELM,  
*Petitioner Employee,*

*v.*

THE INDUSTRIAL COMMISSION OF ARIZONA,  
*Respondent,*

PAPILLON AIRWAYS DBA GRAND CANYON AIRLINES,  
*Respondent Employer,*

NEW HAMPSHIRE INSURANCE CO,  
*Respondent Carrier.*

No. 1 CA-IC 21-0020  
FILED 12-23-2021

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Special Action - Industrial Commission  
ICA Claim No. 20171-520465  
Carrier Claim No. 572-008520  
The Honorable J. Matthew Powell, Administrative Law Judge

**AFFIRMED**

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APPEARANCES

Donna Wilhelm, Brooksville, FL  
*Petitioner Employee*

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

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

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**MEMORANDUM DECISION**

Judge James B. Morse Jr. delivered the decision of the Court, in which Presiding Judge D. Steven Williams and Judge David B. Gass joined.

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**M O R S E**, Judge:

¶1 The Industrial Commission of Arizona ("ICA") issued an award closing Petitioner Donna Wilhelm's claim with no permanent impairment. She now seeks special action review. We have reviewed the record for legal error and affirm the award.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Wilhelm injured her left shoulder while working for Grand Canyon Airlines in May 2017. She and two other workers lifted a heavy airplane engine onto a cart. Wilhelm did not feel pain in her shoulder until later that night. She received treatment over the next 18 months, including injections and surgeries. Orthopedic surgeon Dr. Torey Botti performed arthroscopic debridement surgery in 2018, and Wilhelm recovered. In late November 2018, Dr. Botti discharged Wilhelm as maximally medically improved with no permanent impairment or work restrictions and recommended supportive care. New Hampshire Insurance Company immediately issued a notice closing her claim with supportive care as recommended by Dr. Botti. In February 2019, Wilhelm sought a hearing on the closure of the claim.

¶3 Wilhelm began seeing orthopedic surgeon Dr. George Myo about seven months after Dr. Botti discharged her. She initially complained of wrist and arm pain and not about her shoulder. In November 2019, she complained to Dr. Myo about her shoulder and told him for the first time about her work injury. He diagnosed her with "osteoarthritis of the left

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sternoclavicular joint, which is the joint of the collarbone attaching to the sternum." He gave her an injection to the joint. He testified at the hearing that the injection was necessary because of the work injury. She never followed up with him, but he testified that she needed supportive care and might need surgery because of the work injury. At the hearing, he could only give a generalized estimated opinion as to whether she was permanently impaired, saying she was impaired "probably more than [one] percent." He also opined that her neck complaints were related to the work injury.

¶4 Dr. Anthony Theiler, an orthopedic surgeon, performed Independent Medical Examinations ("IMEs") in March 2018 and May 2019. He reviewed Wilhelm's documented medical history, including Dr. Myo's records, physically examined Wilhelm, and issued a written report.<sup>1</sup> He concluded that her complaints "were consistent with rotator cuff and shoulder pathology" but that she needed no active treatment and had no permanent impairments due to the shoulder injury. He also testified that she did not need supportive care. Concerning Dr. Myo's records, Dr. Theiler testified the area Dr. Myo was treating was not an area that one would typically injure in a lifting incident. Instead, he opined the condition Dr. Myo was treating was degenerative in nature and not related to her work injury.<sup>2</sup>

¶5 The administrative law judge ("ALJ") issued an award finding the opinions of Drs. Botti and Theiler were "more probably correct" than Dr. Myo's. Thus, Wilhelm's claim was closed with no permanent impairment, no work restrictions, and no supportive care. This special action review followed.

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<sup>1</sup> He also issued an addendum discussing his review of records from neurologist Dr. Andrea An, who Wilhem saw for neck pain in the months before she saw Dr. Myo. Dr. Theiler did not find anything in those records significant to the work injury because Wilhelm's neck issues first arose almost two years after the work incident, she had a pre-existing cervical spinal fusion, and he saw no evidence of a cervical injury in May 2017.

<sup>2</sup> Based on Dr. Theiler's IME report, the supportive care award was rescinded.

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DISCUSSION

¶6 In reviewing ICA's findings and awards, "we defer to the ALJ's factual findings but review questions of law de novo." *Avila v. Indus. Comm'n*, 219 Ariz. 56, 57, ¶ 2 (App. 2008). We view the evidence in the light most favorable to upholding an award. *Id.* The ALJ has the primary responsibility to resolve conflicts in medical opinion evidence. *Carousel Snack Bar v. Indus. Comm'n*, 156 Ariz. 43, 46 (1988); *see also Kaibab Indus. v. Indus. Comm'n*, 196 Ariz. 601, 609, ¶ 25 (App. 2000) (reviewing court is bound by ALJ's resolution of conflicting testimony when reasonable evidence supports the ALJ's conclusion). We defer to the ALJ's resolution of conflicting evidence and affirm the ALJ's findings if any reasonable theory of the evidence supports them. *Perry v. Indus. Comm'n*, 112 Ariz. 397, 398-99 (1975). We will not disturb an award based on conflicting medical testimony. *Smiles v. Indus. Comm'n*, 2 Ariz. App. 167, 168 (1965).

¶7 Here, the evidence presented the ALJ with two opposing medical opinions about the ongoing condition of Wilhelm's injury. Based on the evidence presented, the ALJ concluded Drs. Botti's and Theiler's opinions were more credible. The ALJ was not required to follow Dr. Myo's opinion, and we will not disturb the ALJ's resolution of the conflict. When two different inferences may be drawn from the evidence, the ALJ has the discretion to resolve those conflicts and choose either inference; a reviewing court will not disturb that choice unless it is wholly unreasonable. *Waller v. Indus. Comm'n*, 99 Ariz. 15, 18 (1965).

¶8 In her brief, Wilhelm essentially reargues the evidence. As an appellate court, however, we do not reweigh the evidence. *Kaibab Indus.*, 196 Ariz. at 608, ¶ 21. The ALJ's resolution of the conflict between the expert opinions is reasonable and supported by evidence in the record.

CONCLUSION

¶9 We affirm.



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