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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ERICA WHITE WILSON, *Petitioner Employee,*

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*

ALARYS HOME HEALTH, *Respondent Employer,*

AMERICAN LIBERTY INSURANCE CO, *Respondent Carrier.*

No. 1 CA-IC 21-0028

FILED 11-30-2021

Special Action - Industrial Commission

ICA Claim No. 20202300111

Carrier Claim No. 7107262

The Honorable Marceline A. Lavelle, Administrative Law Judge

AFFIRMED

APPEARANCES

Erica White Wilson, Phoenix
Petitioner Employee

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

Norton & Brozina, P.C., Phoenix
By Kevin E. Karges
Counsel for Respondent Employer and Carrier

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MEMORANDUM DECISION

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

WILLIAMS, Judge:

¶1 The issue presented by this special-action review of an Industrial Commission of Arizona (“ICA”) Decision Upon Review is whether Petitioner, Erica White Wilson, is entitled to a waiver from the one-year limitation for filing worker’s compensation claims. The ICA administrative law judge (“ALJ”) denied a waiver and dismissed her claim as untimely. Based on the record before us, we agree and affirm.

BACKGROUND

¶2 In 2011, Wilson worked for Respondent Employer Alarys Home Health as a caregiver for her 78-year-old grandmother. On July 30, 2011, an SUV crashed through the wall of her home, causing debris to hit and injure Wilson and her grandmother. A police officer described Wilson’s injuries as “superficial.” Both women were transported to the hospital for treatment. The EMT report notes Wilson had a “golf ball size hematoma” on her forehead and a half-inch laceration to her temple. Her grandmother sustained severe injuries requiring immediate surgery. At the hospital, Wilson received stitches for lacerations on her face and scalp. She also had a small cut on her thumb. She complained of head pain, presumably related to the golf-ball size bruise, but the records show she was “normocephalic,” oriented and responsive, suffered no loss of consciousness, and “not amnestic.” She was admitted to the hospital and kept overnight for observation. A CT scan of her head showed no “intracranial process or fracture.” She was discharged the next day with a prescription for Percocet but no restrictions on her activities. Her only diagnosis upon discharge was “head lacerations.”

¶3 Nine years later, in August 2020, Wilson filed a worker’s report of injury, stating that she was working for Respondent Employer Alarys Home Health as a caregiver for her grandmother at the time of her injury in 2011. Respondent Carrier American Liberty Insurance Co. denied the claim, asserting that Wilson’s claim was untimely under A.R.S.

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§ 23-1061(A), which requires that a claim be filed within one year of the date of injury or accrual of the right to compensation.

¶4 The ICA held a hearing on the issue of the one-year limitation statute. The only witness at the hearing was Wilson, who testified that she did not file a claim after the accident because she “did not know that [she] was working at the time” of the injury. She also claimed she did not remember being hospitalized, and was not even aware she had been in an accident until she had a dream about it in 2020 and talked to a counselor about her dream. Her counselor then told her that she had been in an accident in 2011. At the hearing she could not remember the name of the counselor who gave her that information, nor did she file any records from that counselor that document the session in which it happened. She also testified a psychic told her in 2020 that she had been in “a major accident” in the past, implying that this also was how she learned about the basis for her claim. She denied that she ever discussed the accident with her grandmother or other family members after her injury. On cross-examination, Wilson admitted that after the incident she hired a lawyer and discussed filing “a claim” but did not do so. Wilson explained that the claim she discussed with the lawyer was a claim against the driver, not a worker’s compensation claim. Although she worked for Alarys Home Health another year after her injury, she doesn’t remember ever talking with her employer about the accident. In July 2020, Wilson was referred for an electroencephalogram (“EEG”) due to complaints of memory loss. The EEG results were normal.

¶5 In a Decision Upon Review, the ALJ found that Wilson was not a credible witness and she had not presented evidence to excuse her failure to comply with the one-year filing requirement. This special-action review followed.

DISCUSSION

¶6 In Arizona, injured workers must file a claim for worker’s compensation within one year after a compensable injury. A.R.S. § 23-1061(A). That time “begins to run when the injury becomes manifest or when the claimant knows or in the exercise of reasonable diligence should know that the claimant has sustained a compensable injury.” *Id.*; see also *Pac. Fruit Exp. v. Indus. Comm’n*, 153 Ariz. 210, 214 (1987) (stating “the time for filing a workers’ compensation claim begins to run when the injured employee perceives the nature and seriousness of the injury and recognizes the causal relationship between his injury and his employment”). If the injury is initially “slight or trivial” but subsequently

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“develops unexpected results for which the employee could not have been expected to make a claim and receive compensation, then the statute runs . . . from the date the results of the injury became manifest and compensable.” *Pac. Fruit Exp.*, 153 Ariz. at 213-214 (quoting *Hartford Accident and Indem. Co. v. Indus. Comm’n*, 43 Ariz. 50, 55-56 (1934)).

¶7 The statute allows waiving the time limitation if an injured worker misses the deadline because she relies on representations from the ICA, the employer, or the insurance carrier. A.R.S. § 23-1061(A). The statute also allows a waiver if the injured worker is legally incompetent or incapacitated at the time of the injury, when the claim accrues, or during the one year after the injury. *Id.*

¶8 Here, Wilson filed her claim nine years after the accident. The ALJ did not find sufficient evidence to support waiving or tolling the one-year limitation period. The medical records submitted by Wilson do not indicate a loss of memory, mental incapacitation, or legal incompetency. To the extent Wilson testified that she did not remember the event or was unaware that she was at work when she sustained the injury, the ALJ was free to accept or reject her testimony. *See Muchmore v. Indus. Comm’n*, 81 Ariz. 345, 351-52 (1957) (stating that the “testimony of interested witnesses may be disregarded” by the trier of fact).

¶9 It is the province of the ALJ to resolve conflicts and weigh the evidence; and we must affirm so long as the ALJ’s decision is not “wholly unreasonable.” *Id.* The ALJ reasonably found that if Wilson was working at the time of the accident, her injuries were manifest on July 30, 2011, and her claim filed more than nine years later was untimely.

CONCLUSION

¶10 Without a timely filed claim, neither the ICA nor this court has the authority to assess the merits of Wilson’s claim. A.R.S. § 23-1061(A) (“[N]either the commission nor any court shall have jurisdiction to consider a claim that is not timely filed under this subsection.”). We affirm.



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