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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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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NORTON ENVIRONMENTAL, *Petitioner Employer,*

FEDERAL INSURANCE CO, *Petitioner Insurance Carrier,*

*v.*

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*

MICHAEL SAJN, *Respondent Employee.*

No. 1 CA-IC 22-0003  
FILED 9-29-2022

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Special Action - Industrial Commission  
ICA Claim No. 20172220048  
Carrier Claim No. 005616-001801-WC-01  
The Honorable Rachel C. Morgan, Administrative Law Judge

**AWARD SET ASIDE**

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COUNSEL

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Industrial Commission of Arizona, Phoenix  
By Gaetano J. Testini  
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**MEMORANDUM DECISION**

Judge James B. Morse Jr. delivered the decision of the Court, in which Presiding Judge Jennifer M. Perkins and Judge Michael J. Brown joined.

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

¶1 We consider here whether Michael Sajn's late filing of a request for hearing should be excused under one of three available statutory excuses. An Industrial Commission of Arizona ("ICA") administrative law judge ("ALJ") found that Sajn should be excused and that his claim is compensable. But the ALJ failed to make a necessary finding on whether Sajn exercised reasonable care and diligence during the filing period. Because uncontested evidence in the record shows that Sajn did not exercise reasonable care and diligence concerning his mailing address, the denial of his claim is final. Thus, we set aside the award.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Sajn injured his right hand in September 2016. He timely filed an injury report in August 2017. The following month, employer Norton Environmental ("Norton") and carrier Federal Insurance Company ("Federal") issued a Notice of Claim Status denying the claim. That notice contained a statement that, by law, Sajn had 90 days to file a hearing request. Over three years later, in October 2020, Sajn filed a hearing request. Norton and Federal raised the affirmative defense that Sajn's request was untimely. The ICA held a hearing addressing the timeliness issue.

¶3 Sajn testified that in July 2017, he was arrested while living in a hotel room on Route 66. He filed his workers' compensation claim while incarcerated at the Coconino County Jail in August 2017. He admitted that the Route 66 mailing address he gave the ICA on his claim form was the "wrong address." His mail was going to the Route 66 address, but he did not get any of that mail at the jail. He gave the ICA no other address until March 2018, when he sent correspondence from the jail to the ICA ombudsman. His March 2018 correspondence to the ICA requested information about the status of his claim. The ICA ombudsman promptly

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replied that the claim had been denied in September 2017 and had become final because "no appeal was filed." Sajn then sent another letter to the ICA ombudsman, who replied that Sajn could appeal the denial after being released from incarceration. Sajn thanked him and filed nothing else until the request for hearing in October 2020. Sajn remained in jail until August 2017, then went to prison until his release in September 2020.

¶4 The ALJ issued an award finding that Sajn was excused from the 90-day deadline because his incarceration left him legally incompetent or incapacitated. Upon review of the award, the ALJ affirmed her decision, adding that Sajn was also excused from the deadline because he justifiably relied on the statement of the ombudsman and because Sajn had presented clear and convincing evidence that he never received the denial notice. Norton and Federal then brought this statutory special action for review.

**DISCUSSION**

¶5 A claimant has 90 days to request a hearing after an insurer, self-insured employer, or the IAC issues a notice denying a workers' compensation claim. A.R.S. § 23-947(A). The notice becomes final upon failure to file a timely hearing request. A.R.S. § 23-947(B). The Arizona Legislature has identified three valid excuses for missing the 90-day deadline: (1) because the claimant justifiably relied on a statement from the employer, carrier, or ICA; (2) because the claimant suffered from insanity or legal incompetence or incapacity, including minority, when the notice was issued; or (3) because the claimant did not receive the notice, proven by clear and convincing evidence. A.R.S. § 23-947(B)(1)-(3). None of these excuses are allowed if the claimant did not exercise reasonable care and diligence such that he would have known about the notice during the 90 days. A.R.S. § 23-947(C).

¶6 Here, the ALJ made no explicit findings regarding whether Sajn exercised reasonable care and diligence during the 90 days in which he could have filed a hearing request. The award does not cite or discuss A.R.S. § 23-947(C). While the Decision Upon Review cites subsection (C), and the ALJ summarizes Sajn's testimony regarding the Route 66 address, the decision contains no finding as to whether Sajn exercised reasonable care and diligence to keep his mailing address current with the ICA during the 90 days.

¶7 The record shows that Sajn filed his claim from the Coconino County Jail, providing an address at which he was not residing and at which he would not receive mail while incarcerated. Sajn made no contact

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with Norton, Federal, or the ICA until he sent the ombudsman a letter in March 2018, well past the deadline. If he had provided a valid address during the filing period, he could have known about the notice denying his claim and been advised of the deadline.

¶8 ICA ALJs are required by law to make specific findings on all material issues. *Aguirre v. Indus. Comm'n*, 247 Ariz. 75, 77, ¶ 12 (2019). In *Post v. Indus. Comm'n*, 160 Ariz. 4, 7 (1989), our supreme court stated that "[a]lthough lack of findings on a particular issue does not invalidate an award per se, [courts] will vacate a[n] award if [they] cannot determine the factual basis of [the] conclusion or whether it was legally sound." Here, the ALJ made no explicit findings or conclusion regarding the issue of reasonable care and diligence. Without explicit findings, we must presume that the ALJ concluded that Sajn exercised reasonable care and diligence to excuse Sajn's untimeliness. *See Mace v. Indus. Comm'n*, 204 Ariz. 207, 210, ¶ 7 (App. 2003) (deducing the ALJ's basis for the award absent a sufficient explanation and reviewing that deduced basis).

¶9 The record does not support the presumed finding that Sajn acted with reasonable care and diligence. Sajn admitted that the address he provided was incorrect and knew he would not receive mail sent to that address. He did not attempt to correct the address during the 90-day filing period and offered no other evidence that he acted with reasonable care and diligence. He did not act to pursue his claim until March 2018, three months after the 90-day deadline and six months after the notice. ALJ findings must be supported by reasonable evidence. *Borsh v. Indus. Comm'n*, 127 Ariz. 303, 306 (1980). The evidence does not support a finding that Sajn acted with reasonable care and diligence. Accordingly, he cannot be excused for failing to meet the statutory time limit.

¶10 Even if Sajn was entitled to invoke the statutory excuses, the ALJ erred in finding that he proved any excuse. First, assuming that Sajn relied on the ombudsman's erroneous statement that he could file a request for a hearing upon his release from prison, that advice did not cause him to miss the deadline. *See McKaskle v. Indus. Comm'n*, 135 Ariz. 168, 171 (App. 1982) (noting reliance must lull the injured worker into inaction until the filing period has passed). Any reliance by Sajn occurred long after the deadline had passed. He does not fall within the excuse provided in A.R.S. § 23-947(B)(1).

¶11 Second, incarceration is not what A.R.S. § 23-947(B)(2) contemplates as "legal incompetence or incapacity, including minority." *See Harrelson v. Indus. Comm'n*, 144 Ariz. 369, 374 (App. 1984) (stating incapacity

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occurs when "an individual [has] a diminished mental or physical capacity to the extent of being *unable* to file a claim"). Sajn was able to file legal documents while he was in the Coconino County Jail, as he proved when he filed his claim from the jail in August 2017. Thus, he was not legally incapacitated or incompetent during the filing period.

¶12 In sum, even if Sajn had acted diligently with his address, those two excuses would not have applied to him.

**CONCLUSION**

¶13 Because Sajn did not act with reasonable care and diligence in informing the ICA of a proper mailing address where mail could reach him, he is not entitled to the excuses provided in A.R.S. § 23-947(B). As such, the Notice of Claim Status denying his claim became final and we set aside the award.



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