

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);  
Ariz.R.Crim.P. 31.24



DIVISION ONE  
FILED: 04-01-2010  
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BY: GH

**IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE**

JOHN R. RUHE, ) 1 CA-IC 09-0029  
)  
Petitioner, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
THE INDUSTRIAL COMMISSION OF ) Rule 28, Arizona Rules  
ARIZONA, ) of Civil Appellate  
) Procedure)  
Respondent, )  
)  
HOMETOWN FLOORING LLC, )  
)  
Respondent Employer, )  
)  
SCF ARIZONA, )  
)  
Respondent Carrier. )

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Special Action--Industrial Commission

ICA CLAIM NO. 20080-500294

CARRIER NO. 0802358

Administrative Law Judge J. Matthew Powell

**AWARD AFFIRMED**

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John R. Ruhe  
Petitioner in Propria Persona

Chino Valley

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The Industrial Commission of Arizona  
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**I R V I N E**, Presiding Judge

¶1 Petitioner John R. Ruhe ("Ruhe") seeks special action review of an Industrial Commission of Arizona ("ICA") award and decision upon review of non-compensability for a right hip condition. For the following reasons, we affirm the award.

**JURISDICTION AND STANDARD OF REVIEW**

¶2 This court has jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(2) (2003), 23-951(A) (1995), and Rule 10 of the Arizona Rules of Procedure for Special Actions. In reviewing findings and awards of the ICA, we consider the evidence in the light most favorable to upholding the award. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16, 41 P.3d 640, 643 (App. 2002). We will accept the administrative law judge's resolution of conflicting medical opinions unless it is not reasonably supported by the evidence. *Fry's Food Stores v. Indus. Comm'n*, 161 Ariz. 119, 121, 776 P.2d 797, 799 (1989).

**FACTS AND PROCEDURAL HISTORY**

¶3 On January 5, 2008, Ruhe filed a claim for gradual industrial injury. No specific traumatic injury occurred; he claimed his low back and hip pain was caused by forty-three years of installing floors. Floor covering installation includes

moving heavy material, bending, and stooping. At the time of filing, he had been working as a floor covering installer for Respondent Employer for a little over two years.

¶14 On March 21, 2008, Respondent SCF Arizona ("Carrier") accepted Ruhe's claim as a no loss claim and limited liability to a low back sprain/strain. Ruhe filed a Request for Hearing on May 12, 2008, stating that Carrier's liability should include the right hip.

¶15 On August 29, 2008, November 19, 2008, and December 1, 2008, the parties participated in formal hearings before the ALJ at the ICA. At the hearings, Ruhe testified that his hip and back pain was getting progressively worse in recent months. Ruhe's history included two industrial injuries to his lower back in 2004 and 2005.

¶16 Two doctors who examined Ruhe testified at the hearings. Dr. Daniel Burchfield, a board-certified orthopedic surgeon, examined Ruhe on April 2, 2008, and reviewed his x-rays. He concluded that Ruhe's degenerated hip was caused by avascular necrosis, a condition that causes bone collapse and cartilage wear in the hip. He could not say when the bone collapse occurred but determined that Ruhe's only option to resolve the hip pain was hip replacement surgery. Dr. Burchfield was familiar with flooring installation work and concluded that work activities associated with it did not cause the avascular

necrosis. He explained that it is "not known or recognized in the orthopedic community that [floor covering work] is a cause of avascular necrosis, nor is heavy manual labor necessarily associated with -- typically with carpet installation . . . I'm not familiar with any association between the flooring industry and avascular necrosis as a recognized industrial problem."

¶17 Dr. Burchfield stated it was possible that degeneration of the hip caused by avascular necrosis would probably progress faster in someone performing heavy manual labor as compared to someone working a desk job. He could not, however, agree or disagree with the second doctor's conclusion that Ruhe's work did not cause or contribute to Ruhe's hip degeneration.

¶18 A second doctor, Dr. Anthony Theiler, a board-certified orthopedic surgeon who specialized in joint replacements, examined Ruhe on July 31, 2008, and reviewed his x-rays. Dr. Theiler also concluded that Ruhe needed hip replacement surgery. Dr. Theiler concluded that Ruhe's hip condition was caused by a developmental disorder called dysplasia. He explained that developmental dysplasia is an early childhood congenital condition that prevents the hip from fully developing before the body reaches maturity. He concluded that Ruhe had severe dysplasia of the right hip and mild dysplasia of the left hip.

¶9 Dr. Theiler said he was familiar with floor installing work and the work activities associated with it do not increase pressure across the hip joint. Ruhe "was going to need a total hip replacement whether or not he did flooring." If flooring work was responsible for Ruhe's problems, Dr. Theiler would expect to see severe degeneration of both hips. In this case, he concluded, Ruhe's everyday activities would have caused the hip degeneration because his hip did not fully develop. Dr. Theiler explained that Ruhe's work might have aggravated the symptoms but did not cause or contribute to the need for hip replacement surgery.

¶10 The ALJ issued his Decision Upon Hearing and Findings and Award Regarding Benefits on February 18, 2009. He concluded that based on the medical evidence, including testimony, records from the two testifying doctors, and reports from other healthcare providers, "applicant's activities as a flooring installer did not cause or contribute to the degenerative condition in his left<sup>1</sup> hip or his need for total hip replacement surgery." He determined that to the extent their opinions differ, Dr. Theiler's were probably more correct than those of Dr. Burchfield. Therefore, Ruhe's industrial claim coverage was limited to his low back condition.

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<sup>1</sup> The ALJ later issued an Order Nunc Pro Tunc to replace all references to "left" hip with "right" hip.

¶11 Ruhe timely requested administrative review, and the ALJ summarily affirmed his award. Ruhe subsequently brought this appeal.

#### DISCUSSION

¶12 Ruhe argues that there is no proof for the doctors' conclusions that a pre-existing condition caused the degeneration of his right hip. He also contends that the parties and doctors "only focused on one part of the work performed by a floor coverer." Moreover, he argues, the doctors have no firsthand experience with the floor covering trade "nor have they ever experienced long term load bearing stress on their joints."

##### *I. Substantial Evidence*

¶13 "[A]n appellate court will affirm an award of the Industrial Commission when there is substantial evidence to support the Commission's decision." See *Price v. Indus. Comm'n*, 23 Ariz. App. 1, 4, 529 P.2d 1210, 1213 (1975). In this case, Ruhe needed to present expert medical testimony to establish a causal connection between his injury and work activity to a reasonable degree of medical certainty. See *Payne v. Indus. Comm'n*, 136 Ariz. 105, 108, 664 P.2d 649, 652 (1983).

¶14 Ruhe did not establish with reasonable medical certainty that his years of work as a floor coverer caused his hip condition. Although the two doctors differed on the

condition that caused the hip degeneration, neither concluded that it was caused by floor covering work. Dr. Theiler, whose opinion was ultimately accepted by the ALJ, was familiar with Ruhe's line of work. After careful review, he concluded that Ruhe's hip condition was entirely attributable to developmental dysplasia. Although Dr. Burchfield's testimony was equivocal<sup>2</sup> as to whether the work activity contributed to the degeneration of the hip, he was unable to state with a reasonable degree of medical certainty that Ruhe's work activities caused the hip condition. At best, Dr. Burchfield determined it was "possible" that heavy manual labor aggravated the condition. Therefore, substantial evidence was presented to support the ALJ's decision that Ruhe's work as a floor coverer did not cause or contribute to his need for hip replacement surgery.

## *II. Medical Conflict*

¶15 Ruhe also argues that "both doctors offer far different unproven theories pointing to an unproven pre-existing condition petitioner never had." "It is the duty of the administrative law judge to resolve all conflicts in the evidence and to draw inferences from that evidence. When more than one inference may be drawn, the administrative law judge

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<sup>2</sup> "Testimony is 'equivocal' if it is subject to two or more interpretations or if the expert avoided committing to a particular opinion." *Rosarita Mexican Foods v. Indus. Comm'n*, 199 Ariz. 532, 536, ¶ 13, 19 P.3d 1248, 1252 (App. 2001).

may choose either, and we will not reject that choice unless it is wholly unreasonable." *Johnson-Manley Lumber v. Indus. Comm'n*, 159 Ariz. 10, 13, 764 P.2d 745, 748 (App. 1988).

¶16 Both doctors agreed that Ruhe had end-state degeneration in his right hip that would require hip replacement surgery. They both agreed that a pre-existing condition, not Ruhe's work activities, caused the degeneration. They differed, however, on the specific pre-existing condition as well as whether Ruhe's work activities *contributed* to the hip condition. The ALJ determined Dr. Theiler's opinion that Ruhe's work neither caused nor contributed to the condition to be correct. This conclusion was not "wholly unreasonable" based on the evidence. Therefore, we affirm.

#### CONCLUSION

¶17 For the foregoing reasons, we affirm the ALJ's award and decision upon review.

/s/

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PATRICK IRVINE, Presiding Judge

CONCURRING:

/s/

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MICHAEL J. BROWN, Judge

/s/

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DONN KESSLER, Judge