DIVISION ONE
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RUTH WILLINGHAM, ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

WILLIE A. SUBLETT, Petitioner, v. THE INDUSTRIAL COMMISSION OF ARIZONA, Respondent, REXAM, Respondent Employer/ Carrier.	No. 1 CA-IC 10-0006 DEPARTMENT E **MEMORANDUM DECISION** Not for Publication – (Rule 28, Arizona Rules of Civil Appellate Procedure)

Special Action – Industrial Commission
ICA CLAIM NO. 20090-550110
CARRIER CLAIM NO. 22WNJ44750
J. Matthew Powell, Administrative Law Judge

AWARD AFFIRMED

Willie A. Sublett — Laveen
Petitioner *in Propria Persona*

Andrew F. Wade, Chief Counsel — Phoenix
The Industrial Commission of Arizona
Attorney for Respondent

Doherty & Venezia, P.C. — Phoenix
By Julie A. Doherty, Esq.
Attorneys for Respondent Employer/Respondent Carrier

H A L L, Judge

¶1 This is a special-action review of an Industrial Commission of Arizona decision affirming the decision upon hearing, findings, and award for non-compensable claim issued. Because we find that the medical evidence of record supports the ALJ's award, we affirm.

BACKGROUND

¶2 On February 25, 2005, Petitioner Willie A. Sublett had been cleaning "the sump area, where all the waste of the chemicals flow" for Respondent Employer/Carrier Rexam. After inhaling chemical fumes, Sublett became "kind of sick," with a headache, nausea, and felt as though he "could[] hardly breathe." His supervisor advised him to stop working and sit outside in the fresh air. Despite taking a break, Sublett's symptoms persisted and he was unable to continue working that day.

¶3 The following day, Ramon Alba, D.O., examined Sublett because his symptoms had not subsided. Dr. Alba referred Sublett to a cardiologist, Alfred Rossum, M.D., who reported that Sublett presented "with a two-year history of having progressive shortness of breath." Sublett was also referred to Marvin Padnick, M.D., who performed a heart catheterization on Sublett. Dr. Padnick concluded that Sublett had "[s]evere congenital heart disease" and enlarged coronary arteries.

Sublett subsequently had a permanent pacemaker implanted in his heart in July 2005.

¶4 On February 15, 2009, approximately four years after his alleged work-related injury, Sublett filed a worker's report of injury, which was denied. *See* Arizona Revised Statutes (A.R.S.) section 23-1061(A) (Supp. 2009) (no compensation claim shall be valid or enforceable unless the claim is filed within one year after the injury occurs). Sublett then requested a hearing.

¶5 The ALJ conducted a hearing in September 2009. Sublett admitted that he had a "confrontation" with Dr. Rossum because Dr. Rossum concluded that Sublett's heart problem was congenital and Sublett believed his heart problem was the result of inhaling chemical fumes at his job. Sublett further conceded that no doctor had concluded Sublett's heart condition and surgeries were caused by the incident on February 25, 2005. Sublett requested that three lay witnesses testify at the hearing that Sublett felt sick on February 25, 2005 after inhaling chemical fumes, but because Rexam acknowledged it had no reason to doubt Sublett's credibility on these facts, the ALJ determined the witnesses' testimonies were unnecessary. The ALJ also determined that medical expert testimony was unnecessary because both Sublett and Rexam had submitted extensive medical evidence and reports from those medical experts.

¶6 The ALJ found that after "consider[ing] the evidence, file, and all related matters," Sublett "failed to present sufficient medical evidence to establish a link between his cardiac condition and his work on February 25, 2005." The ALJ further found that the claim was non-compensable and Sublett was not entitled to benefits.

¶7 Sublett requested a review of the ALJ's findings and conclusions. The ALJ affirmed the decision upon hearing and findings and award for non-compensable claim. Sublett timely appealed.[1] We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(2) (2003), 23-951(A) (1995), and Arizona Rule of Procedure for Special Actions 10.

DISCUSSION

¶8 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), and deferentially review all factual findings. *PFS v. Indus. Comm'n*, 191 Ariz. 274, 277, 955 P.2d 30, 33 (App. 1997).

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[1] When a party conducts a case *in propria persona*, "he is entitled to no more consideration than if he [were] represented by counsel." *Copper State Bank v. Saggio*, 139 Ariz. 438, 441, 679 P.2d 84, 87 (App. 1983). Sublett presented this court with a brief that lacked cohesion and he failed to formulate rudimentary arguments and reasoning. As such, we found it difficult to comprehend Sublett's precise arguments. We did, however, attempt to address each issue that Sublett presented in his brief.

¶9 Sublett has the burden of establishing that his condition is causally related to his industrial injury. *Spears v. Indus. Comm'n*, 20 Ariz.App. 406, 407, 513 P.2d 695, 696 (1973). In order to prevail, Sublett must show: (1) an accident arose out of and in the course of the employment, (2) the accident resulted in an injury, and (3) that the injury was caused by the conditions of the employment. *Dunlap v. Indus. Comm'n*, 90 Ariz. 3, 6, 363 P.2d 600, 602 (1961). When the results of an injury "are not apparent to a layman," the injury as well as its cause must be established "by competent medical evidence." *Yates v. Indus. Comm'n*, 116 Ariz. 125, 127, 568 P.2d 432, 434 (App. 1977).

¶10 "We must presume that the judge considered . . . all relevant evidence of record," *Tyree v. Indus. Comm'n*, 159 Ariz. 92, 95, 764 P.2d 1151, 1154 (App. 1988), including the medical records, Sublett's testimony detailing his ailments, his "confrontation" with Dr. Rossum, and his concession that no doctor concluded his heart condition and subsequent surgeries were the result of the February 2005 incident. We must accept the ALJ's reasonable resolution of conflicting evidence and witness credibility. *See Fry's Food Stores v. Indus. Comm'n*, 161 Ariz. 119, 121, 776 P.2d 797, 799 (1989); *see also Phelps v. Indus. Comm'n*, 155 Ariz. 501, 505, 747 P.2d 1200, 1204 (1987) ("An [ALJ] has the prerogative to resolve conflicting medical

opinions."). The ALJ weighed the medical evidence of record and Sublett's testimony and reasonably found that Sublett was not eligible for a compensable claim. In short, "[f]rom a review of the entire record we cannot say that the hearing officer abused his discretion." *Stemkowski v. Indus. Comm'n,* 27 Ariz.App. 457, 460, 556 P.2d 11, 14 (1976).

¶11 Sublett also argues that he filed a claim within the time period permitted by A.R.S. § 23-1061(A) and that Rexam failed to timely and properly report the incident. The ALJ, however, found it unnecessary to decide the merits of this claim because he concluded that Sublett's condition was not related to his work activities on February 25, 2005, and Sublett was not eligible to receive an award of a compensable claim. We will therefore not address this issue.

¶12 Sublett further asserts that he would like to file a discrimination complaint against Rexam regarding the "safety of health condition in the workplace, work hazard—unsafe or unhealthful working condition[s], working in a hazard area, exposure to asbestos in the work area from a chemical." However, because this court reviews judgments and orders on appeal, this is not the proper venue to file such a complaint. *See* A.R.S. § 12-2101 (2003).

¶13 Finally, Sublett attached a number of documents to his opening brief that were not in the record at the conclusion of

the hearing. As we have previously stated, an ALJ's review of the record is generally based upon "[t]he record as it exists at the conclusion of the hearings." *See* Ariz. Admin. Code R20-5-159(1); *see also McDuffee v. Indus. Comm'n*, 15 Ariz.App. 541, 543, 489 P.2d 1243, 1245 (1971); A.R.S. § 23-943(E) (1995). Further, a party *in propria persona* is "held to the same familiarity with [the] required procedures and the same notice of statutes and local rules as would be attribute[able] to a duly qualified member of the bar." *Smith v. Rabb*, 95 Ariz. 49, 53, 386 P.2d 649, 652 (1963). Accordingly, our jurisdiction is limited to the evidence the ALJ could consider in his review of his decision, and we will not consider newly presented evidence attached to Sublett's briefs. *See Israel v. Indus. Comm'n*, 137 Ariz. 124, 127, 669 P.2d 102, 105 (App. 1983).

CONCLUSION

¶14 For the foregoing reasons, we affirm the award.

_/s/_____
PHILIP HALL, Presiding Judge

CONCURRING:

_/s/_____
SHELDON H. WEISBERG, Judge

_/s/_____
PETER B. SWANN, Judge