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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 03/01/11
RUTH WILLINGHAM,
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BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

CRAIG MACPHEE,) 1 CA-IC 10-0034
)
Petitioner,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
THE INDUSTRIAL COMMISSION OF) Rule 28, Arizona Rules
ARIZONA,) of Civil Appellate
) Procedure)
Respondent,)
)
LIFE CARESERVICES*/FRIENDSHIP)
VILLAGE**,)
)
Respondent Employer,)
)
NATIONAL UNION FIRE INSURANCE)
CO.*/ BROADSPIRE, INC.,**,)
)
Respondent Carrier.)
_____)

Appeal from the Superior Court in Maricopa County

ICA Claim 20021-990054** and 20032-610012*
Carrier Claim 717204926001* and UNKNOWN**

Administrative Law Judge Karen G. Calderon

AFFIRMED

Craig MacPhee
Appellant

Phoenix

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O R O Z C O, Judge

¶1 Craig MacPhee (MacPhee) appeals from the denial of his petition to reopen two claims by the Industrial Commission of Arizona (the ICA). Finding no error, we affirm.

¶2 In March 2002, MacPhee, while working, was cleaning a loading dock and was injured.¹ In June 2002, MacPhee had surgery and was able to return to work even though he continued to experience some pain. MacPhee filed a workers' compensation claim in July 2002 (the 2002 claim), which was denied.

¶3 MacPhee alleges that in August 2003 he was attempting to lift a garbage can with a co-worker, and began to experience a recurrence of his back and leg pain. In November 2003, after filing a second workers' compensation claim (2003 Claim), MacPhee was referred to Dr. Maric for an independent medical examination. Dr. Maric opined that MacPhee's MRI did not indicate an injury of significance as a result of the August 2003 incident. Based on this report the 2003 claim was closed that December.

¹ MacPhee has provided several versions of how he was injured.

¶4 In January MacPhee filed a request for hearing on the 2003 claim. In March 2004, MacPhee filed a request for hearing on the 2002 claim. The ICA set the matter for a consolidated hearing on the two claims for May 2004. However, in April 2004 MacPhee withdrew his request and the hearing scheduled for the consolidated cases was cancelled.

¶5 Five years later, MacPhee filed petitions to reopen both claims, which were subsequently denied. MacPhee protested the ICA's denial to reopen his 2002 and 2003 claims.

¶6 MacPhee submitted to a psychological evaluation by G.M. Reyes, Ph.D. in November 2008. Dr. Reyes wrote a report based on that evaluation (Psychological Evaluation). MacPhee submitted the Psychological Evaluation to the ICA with his request for hearing. The administrative law judge (ALJ) found that MacPhee had not presented sufficient new evidence regarding his injuries to reopen the claims.

¶7 Appellant filed this special action. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 23-120.21.A.1, -951.A (2003).

DISCUSSION

¶8 Workers' compensation decisions are reviewed in the light most favorable to sustaining the ICA's decision. *Lovitch v. Indus. Comm'n of Ariz.*, 202 Ariz. 102, 105, ¶ 16, 41 P.3d 640, 643 (App. 2002). We defer to the ALJ's findings of fact, but

review questions of law *de novo*. *Young v. Indus. Comm'n of Ariz.*, 204 Ariz. 267, 270, ¶ 14, 63 P.3d 298, 301 (App. 2003).

Denial to Reopen Claims

¶9 On appeal, MacPhee claims the ALJ committed error by refusing to reopen his consolidated ICA claims. "We will affirm a Commission decision if it is reasonably supported by the evidence." *Lovitch*, 202 Ariz. at 105, ¶ 16, 41 P.3d at 643. "[An appellant] has the burden to prove [his] entitlement to reopen [his] claim by showing a new, additional, or previously undiscovered condition and a causal relationship between that new condition and the prior industrial injury." *Id.* at 105-06, ¶ 17, 41 P.3d 643-44. In other words, MacPhee must present competent evidence that he has developed a new or previously undiscovered condition and that the new condition is causally related to his prior industrial injuries.

¶10 MacPhee is correct in stating the 2002 claim was never *fully* litigated, in the sense that testimony was not taken or a decision on the merits rendered. However, by withdrawing his request to reopen the 2002 claim, MacPhee lost his opportunity to fully litigate that claim. The ALJ determined that in November 2003, Dr. Maric found significant disc degeneration and related it to the 2002 accident. Dr. Maric's findings were available to MacPhee at the time he withdrew his claims in April 2004. Thus, MacPhee's request was properly denied because he failed to

present evidence of a new or previously undiscovered condition that was not available to him after he withdrew his claims in April 2004.

¶11 In regards to reopening the 2003 claim, the ALJ stated, "Dr. Maric did not find 'an actual injury occurred on August 25, 2003' and found no permanent impairment, no work restrictions and no need for supportive care." MacPhee has not presented any evidence to show that he has developed a new or previously undiscovered condition that has a causal relationship with the 2003 claim.

¶12 Therefore, we find the ALJ's decision to deny the reopening of both claims to be sufficiently supported by the record.

Discussion of Psychological Evaluation

¶13 On appeal, MacPhee claims the ICA erred by not considering the Psychological Evaluation of Dr. Reyes as a valid assessment of his injuries under A.R.S. § 23-1061. Furthermore, he challenges the interpretation of the medical evidence.

¶14 "This court deferentially reviews factual findings of the ALJ, but independently reviews any legal conclusions." *Young*, 204 Ariz. at 270, ¶ 14, 63 P.3d at 301. It is the sole responsibility of the ALJ to resolve any medical conflicts. *Stainless Specialty Mfg. Co. v. Indus. Comm'n of Ariz.*, 144 Ariz. 12, 19, 695 P.2d 261, 268 (1985).

¶15 The ALJ did not mention MacPhee's Psychological Evaluation in its findings. The ALJ's findings did discuss MacPhee's previous medical evaluations wherein his physical injuries were outlined. However, the Psychological Evaluation did not contain any new or previously undiscovered medical evidence that was causally related to MacPhee's prior injuries. Instead the only mention of MacPhee's physical condition was MacPhee's own account as to the cause of his physical injuries. Because the Psychological Evaluation did not present any new or additional evidence of MacPhee's injury related to his condition, we find no error in the absence of any mention of MacPhee's Psychological Evaluation in the ALJ's decision.

CONCLUSION

¶16 For the above stated reasons, we affirm the ALJ's decision to deny the reopening of MacPhee's consolidated claims.

/S/

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

PATRICIA K. NORRIS, Presiding Judge

/S/

JOHN C. GEMMILL, Judge