

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

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 10/25/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

MODESTO AGUILERA,) 1 CA-IC 10-0080
)
Petitioner,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication
THE INDUSTRIAL COMMISSION OF ARIZONA,) - Rule 28, Arizona
) Rules of Civil
Respondent,) Appellate Procedure)
)
3-G CONSTRUCTION,)
)
Respondent Employer,)
)
SEABRIGHT CONSTRUCTION COMPANY,)
)
Respondent Carrier.)
)
)
)

Special Action--Industrial Commission

ICA CLAIM NO. 20082-960355

CARRIER NO. PH000476207

Administrative Law Judge Steven W. Pogson

AWARD AFFIRMED

Modesto Aguilera
Petitioner, *In Propria Persona*

Phoenix

Andrew Wade, Chief Counsel

Phoenix

The Industrial Commission of Arizona
Attorney for Respondent
Klein, Lundmark, Barberich & La Mont, P.C.
by R. Todd Lundmark
and Eric Slavin
Attorneys for Respondent Employer and Carrier

Phoenix

B A R K E R, Judge

¶1 *Pro se* Petitioner Modesto Aguilera ("Aguilera") seeks special action review of an Industrial Commission of Arizona ("ICA") award and decision upon review for a denial of supportive medical maintenance. For the following reasons, we affirm.

Jurisdiction and Standard of Review

¶2 We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(B), 23-951(A), and Arizona Rule of Procedure for Special Actions 10. In reviewing findings and awards of the ICA, we defer to the factual findings of the Administrative Law Judge ("ALJ"), but review questions of law de novo. *Young v. Indus. Comm'n*, 204 Ariz. 267, 270, ¶ 14, 63 P.3d 298, 301 (App. 2003). We consider the evidence in a light most favorable to upholding the ALJ's award. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16, 41 P.3d 640, 643 (App. 2002).

Procedural and Factual History

¶13 Aguilera fell off a roof and injured his back during the course of his employment as a construction worker on September 30, 2008. This injury was deemed compensable, but his benefits were later terminated. Aguilera, who at the time was represented by counsel, requested a hearing pursuant to A.R.S. § 23-1061(J). He alleged that respondents failed to provide the supportive maintenance benefits he required for his injury.

¶14 Based on testimony that the pain medication Aguilera had been taking was medically unnecessary, the ALJ found that Aguilera was "not entitled to supportive medical maintenance benefits at this time." Aguilera filed a request for review of this decision; upon review, the decision was affirmed. Aguilera now requests this court to re-examine the ALJ's determination.

Discussion

¶15 In his opening brief, Aguilera requests: (1) two years of unpaid worker's compensation claims, (2) reimbursement for medical and medical-related travel expenses, (3) reimbursement for the money his insurer paid for his medical expenses (because he alleges these should have been covered by worker's compensation), (4) "[a finding of] 100% disability [and a monthly payment of] [\$]2,236.18," and (5) "a compensation of 2

million dollars." Although these are Aguilera's requests, he makes no specific reference to how the ALJ erred in considering his case, which is the only appropriate issue for this court's consideration.

¶16 Even assuming that Aguilera meant to argue that the ALJ's award was unsupported by the evidence, as respondents suggest, substantial evidence exists to support the award of the ALJ. *Mengel v. Indus. Comm'n*, 18 Ariz. App. 541, 542, 504 P.2d 72, 73 (1972) ("[A]n appellate court will affirm awards of the Industrial Commission when there is any substantial evidence to support the Commission's decision.").

¶17 Here, Dr. Peairs, a pain management specialist who had evaluated Aguilera twice, testified that "in [Aguilera's] case, not only are these medicines not indicated, [but she believed that they were] doing him more harm than good." She noted that her recommendation was given not "because [she didn't] believe him or [she thought] poorly of him," but because she wanted to help him and she believed he would do better without the medications in question. Her report further explained that Aguilera himself reported that the medications were ineffective. She wrote:

I strongly recommend that the opioid products be tapered and discontinued, due

both to the bizarre nonorganic nature of the complaints, the absence of complaints or findings reasonably attributed to the industrial injury, the possibility that these medications are contributing to his cognitive and mood issues, and his own reports that these medications are ineffective.

¶18 Another doctor, Dr. Beghin, an orthopedic surgeon, stated in his report that he "would expect that any intermittent pain associated with the status-post fracture state and associated with vigorous activity would be most appropriately . . . treated with over-the-counter analgesics and nonsteroidal anti-inflammatory drugs." He further noted that "healed fractures of this nature rarely require chronic daily opioid management."

¶19 Thus, even assuming Aguilera meant to argue that the ALJ's decision was unsupported by the evidence, this argument fails.

¶10 Finally, the court has received two letters from Aguilera filed September 27, 2011 and October 4, 2011. It is not procedurally appropriate for the court to respond to such letters.

Conclusion

¶11 For the foregoing reasons, we affirm.

/s/

DANIEL A. BARKER, Judge

CONCURRING:

/s/

ANN A. SCOTT TIMMER, Presiding Judge

/s/

PATRICK IRVINE, Judge