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

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

RONNIE PRATT, Petitioner, v. THE INDUSTRIAL COMMISSION OF ARIZONA, Respondent, A & D TRENCHING, INC., Respondent Employer, SCF ARIZONA, Respondent Carrier.	No. 1 CA-IC 11-0003 DEPARTMENT A **MEMORANDUM DECISION** (Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure)

Special Action—Industrial Commission

ICA CLAIM NO. 20092-290051

CARRIER CLAIM NO. 0833046

The Honorable Stephen W. Pogson, Administrative Law Judge

AWARD SET ASIDE

Taylor & Associates PLLC — Phoenix
By Dennis R. Kurth
Roger A. Schwartz
Attorneys for Petitioner

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

James B. Stabler, Chief Counsel — Phoenix
State Compensation Fund
By Brandyn L. Stewart
Kenna L. Finch
Attorneys for Respondent Employer and Carrier

T I M M E R, Presiding Judge

¶1 This is a special action review of an Industrial Commission of Arizona ("ICA") award and decision upon review finding Ronnie Pratt stationary without permanent impairment. He argues the administrative law judge ("ALJ") erred because the medical evidence established that his condition was not stationary as he required arthroscopic surgery. For the following reasons, we agree and therefore set aside the award.

BACKGROUND

¶2 Pratt, a backhoe operator for approximately thirty years, filed a notice of claim for left-knee problems in August 2009. Dr. Raymond Roffi, Pratt's treating orthopedic surgeon, included in the claim a Physician's Initial Report diagnosing "[p]robable medial and lateral meniscus tears" that were "[r]elated to running equipment at work," with further treatment "undeterminable @ this date." The State Compensation Fund ("SCF") issued a notice of claim status in September 2009 accepting Pratt's claim with no time lost. The determination

became final ninety days later with no objection. Ariz. Rev. Stat. ("A.R.S.") § 23-947(A)-(B) (Supp. 2010).

¶3 After Dr. Roffi recommended arthroscopic surgery in January 2010, SCF sent Pratt for an independent medical examination with orthopedist Dr. David Bailie. When Dr. Bailie's report "[could] not attribute [Pratt's] current condition to anything industrial related," SCF issued a notice of claim status in March 2010 terminating Pratt's treatment and compensation with no permanent disability. Pratt filed a timely hearing request, and hearings were held before the ALJ on "only the issue of whether [Pratt] sustained a permanent impairment."[1]

¶4 The ALJ heard testimony from both Dr. Roffi and Dr. Bailie as medical experts. In his October 4 decision, the ALJ found "an obvious difference of opinion" between the doctors and accepted Dr. Bailie's opinion that "[Pratt]'s medial meniscus tear was degenerative in nature and the subject injury played no role in it." The ALJ issued an award declaring Pratt's condition stationary without permanent impairment as of February 25, 2010. After the ALJ affirmed the decision upon review, this timely special action followed.

[1] The parties entered, and the ALJ approved, a stipulation pursuant to Arizona Administrative Code ("A.A.C.") R20-5-152 disposing of two other unrelated issues, explicitly leaving as the sole issue for hearing "whether [Pratt]'s claim should remain closed without permanent impairment."

DISCUSSION

¶5 On special action review of a workers' compensation award, we generally defer to the ALJ's factual findings but consider de novo questions of law. *Young v. Indus. Comm'n*, 204 Ariz. 267, 270, ¶ 14, 63 P.3d 298, 301 (App. 2003). The ALJ has primary responsibility for resolving any conflict in the medical experts' testimony. *Stainless Specialty Mfg. Co. v. Indus. Comm'n*, 144 Ariz. 12, 19, 695 P.2d 261, 268 (1985). We will not displace the ALJ's resolution of a conflict unless it is "wholly unreasonable," *id.*, or unless there is, in fact, no conflict in the testimony, *see Walters v. Indus. Comm'n*, 134 Ariz. 597, 600 & n.1, 658 P.2d 250, 253 & n.1 (App. 1982). We will not set aside the award unless, viewing the evidence in the light most favorable to sustaining the award, there is no reasonable basis for the ALJ's determination. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16, 41 P.3d 640, 643 (App. 2002).

¶6 Pratt advances a two-step argument for setting aside the October 4 award. First, he contends SCF is barred from relitigating the compensability of his knee injury because it accepted Pratt's claim without protest or limitation in September 2009. Second, he asserts that Dr. Bailie's medical opinion, when limited to addressing the need for surgery rather than the underlying compensability of Pratt's knee condition, is consistent with Dr. Roffi's opinion that Pratt's condition

requires surgery. The ALJ, he argues, therefore erred in finding conflicting medical opinions and then crediting Dr. Bailie's opinion that Pratt's medial meniscus tear was not work related. We address the contentions in turn.

¶7 Arizona's workers' compensation system is designed to allow carriers to make unilateral benefit determinations, which are subject to the claimant's right to request a hearing. A.R.S. § 23-1061(F) (Supp. 2010); *Nelson v. Indus. Comm'n*, 115 Ariz. 293, 295, 564 P.2d 1260, 1262 (App. 1977). If none of the parties requests a hearing, a notice of claim status becomes final and binding at the expiration of a ninety-day protest period. A.R.S. § 23-947(A)-(B) (Supp. 2010); *Church of Jesus Christ of Latter Day Saints v. Indus. Comm'n*, 150 Ariz. 495, 498, 724 P.2d 581, 584 (App. 1986) (holding claimant may "void the binding effect" of notice of claim status by filing a hearing request, and carrier can do so by unilaterally issuing a new notice). Once a notice of claim status becomes final, it is treated the same as any other final ICA award. *County of Maricopa v. Indus. Comm'n*, 134 Ariz. 159, 162, 654 P.2d 307, 310 (App. 1982).

¶8 A final ICA award has res judicata effect by application of principles of issue preclusion and claim preclusion. *See Circle K Corp. v. Indus. Comm'n*, 179 Ariz. 422, 428, 880 P.2d 642, 648 (App. 1993). Issue preclusion bars

relitigation of an issue of fact that is actually litigated and becomes essential to a final judgment. *Red Bluff Mines, Inc. v. Indus. Comm'n*, 144 Ariz. 199, 204-05, 696 P.2d 1348, 1353-54 (App. 1984). Claim preclusion bars relitigation of the claim actually decided or that could have been decided after a timely protest. *W. Cable v. Indus. Comm'n*, 144 Ariz. 514, 518, 698 P.2d 759, 763 (App. 1985). Pratt argues that SCF was barred by claim preclusion from relitigating the compensability of his meniscus tear because SCF accepted the claim in September 2009, and it became final and binding ninety days later. We thus turn to the ramifications of SCF's acceptance of the claim.

¶9 A claim is compensable if (1) the claimant suffered an injury and (2) the injury was caused by his work. *Yates v. Indus. Comm'n*, 116 Ariz. 125, 127, 568 P.2d 432, 434 (App. 1977). Unless obvious to a lay person, medical evidence is necessary to establish these elements. *Noble v. Indus. Comm'n*, 140 Ariz. 571, 574, 683 P.2d 1173, 1176 (App. 1984). Once the notice becomes final, however, "the elements of a compensable claim may not be relitigated at a subsequent claim stage." *Aldrich v. Indus. Comm'n*, 176 Ariz. 301, 307, 860 P.2d 1354, 1360 (App. 1993) (citation omitted).

¶10 SCF accepted as compensable Pratt's claim for injury to his left knee. The medical evidence establishing the elements of compensability was Dr. Roffi's report included in

Pratt's initial claim filing. This report described an injury: "[p]robable medial, lateral meniscus tears . . . w/ articular cartilage defects & ACL injury" in the left knee with "[g]radually ↑ [increased] symptoms w/ activities @ work." It described the requisite work-related causation: findings of left knee problems "[r]elated to running equipment at work" and increasing with work activities. Dr. Roffi's notes attached to the report reflected that an MRI had revealed the tear and that a better MRI was recommended to determine the extent of injury and appropriate treatment. SCF had the opportunity to dispute that Pratt's knee injury, including the meniscus tear, was a work-related injury. Having accepted Pratt's injury as compensable, however, SCF was barred from relitigating that issue. *Aldrich*, 176 Ariz. at 307, 860 P.2d at 1360.

¶11 SCF argues that, because Pratt's August 2009 claim did not specify that surgery was needed, SCF was not precluded from later disputing that Pratt's meniscus tear was work related. SCF conflates two distinct issues: causation of the injury and appropriate treatment for the injury. Upon receipt of Pratt's claim, nothing prevented SCF from litigating whether the tear was caused by work regardless of what treatment might be warranted in the future. SCF was free, however, to dispute the need for surgery because the claim stated that treatment had not then been determined. Consequently, the need for surgery could

not have been litigated at the time of acceptance, and claim preclusion did not apply to bar litigation of that issue. *W. Cable*, 144 Ariz. at 518, 698 P.2d at 763. Indeed, the parties' stipulation and the ALJ award accepting that stipulation reflected the viability of that issue.

¶12 For these reasons, we conclude SCF was precluded from relitigating whether Pratt's meniscus tear was work related. The ALJ therefore erred by adopting Dr. Bailee's opinion that the injury was not work related.

¶13 After discounting Dr. Bailee's opinion regarding causation, the remaining medical evidence fails to support the award. Both Drs. Roffi and Bailie agreed that Pratt's meniscus tear should be actively treated.[2] Thus, no conflict in the medical evidence existed concerning Pratt's need for further

---

[2] SCF interprets Dr. Bailie's testimony concerning this issue as merely "speculat[ion] as to the legal and/or administrative implications" of SCF's acceptance of Pratt's claim, not as Dr. Bailie's expert medical opinion. Dr. Bailie testified:

> Well, if [SCF] accepted it, then yeah, it should be treated. I didn't find, based on his history, that there's anything in the history that led me to believe that his symptoms could have been caused by the injury that was claimed; but if it was already accepted, then yeah, it needs to be treated.

Dr. Bailie himself expressly distinguished his medical opinion as to causation from his medical opinion as to need for treatment. He drew the same distinction in his written report, before he was informed SCF had accepted the claim: "I do think an arthroscopy may be beneficial . . . . however [Pratt's] need for surgery would be non[-]industrial." The mere fact he used a legal term ("accepted") while testifying does not convert his medical conclusion regarding treatment into a legal comment.

treatment, and the ALJ erred in the award. *See Stainless Specialty*, 144 Ariz. at 19, 695 P.2d at 268; *Walters*, 134 Ariz. at 600-01, 658 P.2d at 253-54; *see also* A.R.S. § 23-951(D) (Supp. 2010).

CONCLUSION

¶14 For the foregoing reasons, we set aside the award.

/s/
Ann A. Scott Timmer, Presiding Judge

CONCURRING:

/s/
Patrick Irvine, Judge

/s/
Daniel A. Barker, Judge