DIVISION ONE
FILED: 11/03/2011
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

KARMA L. HOUSTON-HUGHES, Petitioner, v. THE INDUSTRIAL COMMISSION OF ARIZONA, Respondent, KYRENE ELEMENTARY SCHOOL DISTRICT, Respondent Employer, ARIZONA SCHOOL ALLIANCE FOR WORKERS' COMPENSATION, Respondent Carrier.	)	No. 1 CA-IC 11-0007 DEPARTMENT B **MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)

Special Action – Industrial Commission

ICA Claim No. 20091-330373

Carrier Claim No. 20090-017052

Administrative Law Judge James B. Long

AWARD AFFIRMED

Karma L. Houston-Hughes *in propria persona* — Chandler
Petitioner Employee

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

Jones, Skelton & Hochuli, P.L.C. Phoenix
By Terrence Kurth
Attorneys for Respondent Employer and Carrier

S W A N N, Judge

¶1 Karma Houston-Hughes ("Petitioner") filed an industrial injury claim after an eighth-grader stepped on her foot. Her employer and its insurance carrier ("Respondents") accepted her claim for benefits, but they issued a Notice of Claim Status that terminated Petitioner's temporary compensation and medical treatment on September 3, 2009. In Petitioner's award, the Industrial Commission of Arizona ("ICA") affirmed that date. On appeal, Petitioner argues that the ICA's Administrative Law Judge ("ALJ") decided her case improperly because of conflicting medical testimony. Because we find that the ALJ's resolution of the conflict was not unreasonable, we affirm the award.

FACTS AND PROCEDURAL HISTORY

¶2 On May 6, 2009, Petitioner was working as an eighth-grade science teacher in the Kyrene Elementary School District. As her class was preparing for dismissal, one of her students stepped backward while he was preparing to leave his desk. He accidentally stepped on Petitioner's left foot. Petitioner estimated the student's weight to be somewhere between 135 and 180 pounds. The sensation was "very painful" and Petitioner needed to spend the rest of the school day sitting while she taught.

¶3 Petitioner had injured the same foot a few years earlier, twisting it on the sidewalk in May 2007. Following that accident, Petitioner underwent two surgeries on her foot: one in February 2008 and another in March 2009. On the day of the classroom accident, Petitioner was still wearing a stiff-soled surgical shoe and, because the foot was often swollen at the end of a work day, taking medication. Petitioner's "regular doctor" for foot treatment,[1] Dr. Discont, had earlier rated her with a continued 12.5% partial permanent disability as a result of that injury.

¶4 On May 7, the day after the student stepped on her foot, Petitioner saw Dr. Discont. During that visit Petitioner told him: "My foot was completely okay before this injury . . . ." He treated her again on May 14 and ruled out the possibility of a stress fracture. His report described her injury as a contusion or a sprain. He continued to treat Petitioner's foot over the summer with steroid injections, a brace, and physical therapy.

¶5 In September 2009, Dr. Discont believed that the injured foot had reached "a level of maximum improvement" but that issues with Petitioner's foot were not "completely resolved for sure." He recommended continuing evaluations and ongoing treatments. These recommendations were based on the assumption -- an assumption Dr.

[1] At the time of her classroom injury, Petitioner was being treated by at least three podiatrists: Dr. Hansen, Dr. Discont, and Dr. Rampertab.

Discont acknowledged on the record -- that Petitioner "had recovered fully from her prior problem before May 6, 2009."

¶6 On July 30, 2009, Petitioner was examined by Dr. Leonetti, a podiatrist hired by Respondents. Dr. Leonetti reviewed records of Petitioner's classroom injury as well as records discussing her foot's prior condition. He believed that even before the classroom accident "it was quite obvious that she still was in a considerable amount of pain and had not regained complete function of her left foot as a result of her preexisting condition."

¶7 To determine "what extent of pathology was actually caused [by] the incident," Dr. Leonetti ordered a diagnostic MRI. Based on the MRI and his clinical examination, Dr. Leonetti concluded that Petitioner had reached a "stationary and permanent status" and that there was "no ratable impairment . . . as a result of the [classroom] incident." He recommended neither ongoing care nor any work restrictions.

¶8 The ALJ heard arguments and received evidence from both sides. He found that the medical opinions of Drs. Discont and Leonetti conflicted. He accepted Dr. Leonetti's expert opinion as "more well founded and correct." As a consequence, the ALJ's award stated that Petitioner "was stationary without permanent disability no later than September 3, 2009."

¶9 Petitioner requested a review of that award, and the ALJ, after performing the review, affirmed it. Petitioner timely appeals. This court has jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(2) and 23-951(A), and Ariz. R. P. Spec. Act. 10.

STANDARD OF REVIEW

¶10 This court considers the evidence in the light most favorable to sustaining an ICA award. *Micucci v. Indus. Comm'n*, 108 Ariz. 194, 195, 494 P.2d 1324, 1325 (1972) (citation omitted). As a general rule, the ALJ's findings will be sustained if they are reasonably supported by the evidence. *Id.*

DISCUSSION

¶11 There is no dispute that Petitioner's classroom injury was compensable. The issue is whether the classroom injury aggravated her preexisting condition, thereby entitling her to benefits beyond the September 3 termination date, or whether Petitioner's current condition reflects her preexisting foot problems without aggravation from the classroom injury.

¶12 When an employee is injured in an accident and a lay person cannot tell how far the accident's effects extend, then the relationship between the accident and the injured employee's physical condition must be determined by expert medical testimony. *Johnson-Manley Lumber v. Indus. Comm'n*, 159 Ariz. 10, 12, 764 P.2d 745, 747 (App. 1988) (citation omitted). Conflicts in expert medical testimony must be resolved by the ALJ. *Id.* (citation

omitted). This court will not reject an ALJ's resolution of conflicting medical evidence unless the resolution is "wholly unreasonable." *Id.* at 13, 764 P.2d at 748 (citation omitted); *see also Pac. Fruit Exp. v. Indus. Comm'n*, 153 Ariz. 210, 214, 735 P.2d 820, 824 (1987) (citation omitted) (explaining that courts reviewing an ICA award "do not weigh the evidence, but consider it in the light most favorable for sustaining the award").

¶13 At the beginning of one of Petitioner's hearings, the ALJ explained that whether the classroom accident put her in need of medical treatment after September 3, 2009, was "primarily a medical question." For that reason, the ALJ would need "to rely on the doctors" to make sense of what happened to Petitioner's foot when the student stepped on it.

¶14 The ALJ chose to rely on Dr. Leonetti's explanation rather than on Dr. Discont's. That choice was not unreasonable. The facts already mentioned reveal that Dr. Leonetti's investigation into Petitioner's medical history was more thorough than Dr. Discont's, which simply assumed that her foot had gotten better by the time it was stepped on. Additionally, when Petitioner challenged Dr. Leonetti during cross-examination about the effectiveness of the MRI test, he explained that he used the MRI to ensure that Petitioner was not suffering from any "underlying soft tissue or bon[e] problems that could be related to the 5/6/09 reported injury." According to him, the MRI is one of

“the most sensitive tests” available –- indeed, the “golden standard” -- for detecting the kind of “inflammatory process” that the classroom accident could have caused. And, as he testified, Petitioner’s MRI was negative.

¶15 In essence, Dr. Leonetti concluded that the classroom accident in May 2009 did not have lasting consequences and that any impairment from which Petitioner now suffers is related to her preexisting condition. Dr. Discont assumed that the preexisting condition, which had once caused an impairment of 12.5%, had resolved by May 2009 and that the new injury again caused a 12.5% impairment. There is nothing in the record to suggest that either expert lacked credibility. The ALJ did not commit reversible error by finding Dr. Leonetti’s theory, which was based on a more rigorous analysis of Petitioner’s medical history, more credible.

CONCLUSION

¶16 Because the ALJ's decision to rely on Dr. Leonetti's testimony was not unreasonable, we affirm both the October 10, 2010 Decision upon Hearing as well as the December 13, 2010 Decision upon Review.

/s/
_____
PETER B. SWANN, Judge

CONCURRING:

/s/
_____
MARGARET H. DOWNIE, Presiding Judge

/s/
_____
DONN KESSLER, Judge