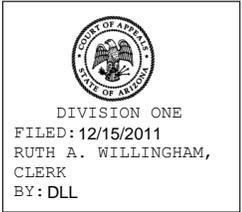


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE
CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DENISE STRAYER,) No. 1 CA-IC 11-0011
)
Petitioner Employee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
)
THE INDUSTRIAL COMMISSION OF ARIZONA,) (Not for Publication -
) Rule 28, Arizona Rules
Respondent,) of Civil Appellate
) Procedure)
REGIONAL CARE SERVICES CORPORATION,)
)
Respondent Employer,)
)
SCF ARIZONA,)
)
Respondent Carrier.)

Special Action - Industrial Commission

ICA Claim No. 20052-420084

Carrier Claim No. 05-40285

Deborah A. Nye, Administrative Law Judge

AWARD AFFIRMED

Schiffman Law Office, P.C.
By Alan M. Schiffman
and Javier Puig
and Tye S. Smith
Attorneys for Petitioner Employee

Phoenix

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

Phoenix

James B. Stabler, Chief Counsel
SCF Arizona

Phoenix

By Chiko F. Swiney
Attorneys for Respondents Employer and Carrier

N O R R I S, Judge

¶1 This is a special action review of an Industrial Commission of Arizona ("ICA") award and decision upon review for a scheduled permanent partial impairment. Petitioner employee Denise Strayer argues the administrative law judge ("ALJ") should not have found she sustained a scheduled injury without making a finding about her credibility. Because the evidence of record supports the ALJ's conclusion Strayer sustained a scheduled injury and no additional finding was necessary, we affirm the award.

JURISDICTION AND STANDARD OF REVIEW

¶2 This court has jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(2) (2003), 23-951(A) (1995), and Arizona Rule of Procedure for Special Actions 10. In reviewing findings and awards of the ICA, we defer to the ALJ's factual findings, 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).

FACTS AND PROCEDURAL BACKGROUND

¶13 On July 4, 2005, Strayer was employed as a nurse technician for the respondent employer, Regional Care Services Corporation, when she sustained an industrial injury to her left wrist. Strayer filed a workers' compensation claim, which the respondent carrier, SCF Arizona, accepted for benefits. Strayer received extensive medical and surgical treatment. When the carrier eventually closed her claim with a scheduled permanent partial impairment and supportive care, she timely requested a hearing. Strayer and three physicians testified at the hearings.

¶14 As relevant here, Strayer testified that after an upper extremity specialist, Sebastian Ruggeri, M.D., operated on her left wrist, her symptoms gradually worsened and extended from her left thumb and wrist up her arm and into her shoulder and back. Despite receiving nerve blocks for her shoulder symptoms, her symptoms continued unabated and raising her left arm caused excruciating pain. Strayer had numbness, tingling, and pain in her thumb, forearm, and shoulder, which made it impossible for her to return to her regular work. She explained she was unable to raise her arm and could not "reach above [her] shelves to get [her] dishes out."

¶15 Mitchell Lipton, M.D., a board-certified orthopedic surgeon with a practice limited to the upper extremity, evaluated Strayer on September 20, 2009. He reviewed Strayer's relevant

medical records and performed a physical examination. He diagnosed chronic regional pain syndrome ("CRPS"),¹ and concluded Strayer's CRPS was stationary with a 7% impairment. Dr. Lipton testified Strayer had a median nerve abnormality, which increased her impairment rating to a minimum of 10%. Dr. Lipton also confirmed the symptoms Strayer reported regarding her left shoulder were consistent with a diagnosis of CRPS. Nevertheless, he acknowledged that although Strayer's complaints of pain extended into her left shoulder, "there [was] no objective abnormality of the left shoulder," and she had "promobility and no atrophy."²

¶6 Peter John Campbell, M.D., a board-certified orthopedic surgeon specializing in hand surgery, and Stephen Borowsky, M.D., a board-certified anesthesiologist specializing in pain medicine, jointly conducted an independent medical examination ("IME") of Strayer on October 1, 2008. Dr. Campbell testified Strayer complained of pain and numbness in her left upper extremity. He also diagnosed CRPS. Dr. Campbell rated Strayer a 1% permanent

¹The medical experts used CRPS and reflex sympathetic dystrophy ("RSD") interchangeably.

²Consistent with his testimony regarding Strayer's left shoulder, Dr. Lipton noted in his September 2009 independent medical examination report: "[b]ased on the patient's history, her symptoms extend up to her left shoulder relating to the CRPS, yet there is no objective abnormality of the left shoulder. These symptoms are, however, consistent with the surgery involving her left superficial radial nerve and I suspect it will need to be determined by an administrative law judge whether it becomes scheduled or unscheduled."

impairment of the left upper extremity based on "radial sensory nerve deficits."

¶17 Dr. Campbell also testified that if Strayer had residuals from Dr. Ruggeri's 2006 thumb stabilization surgery, she would rate an additional 5% impairment to her left upper extremity. He stated he had not evaluated Strayer's left shoulder and would defer to Dr. Borowsky regarding the appropriate treatment and impairment rating for Strayer's CRPS. He testified Dr. Borowsky had rated Strayer's CRPS at 7%, so she had a combined 13% impairment to her left upper extremity.

¶18 Dr. Borowsky testified Strayer complained of having excruciating, burning pain in her left upper extremity and aching pain from her shoulder girdle into her arm. He stated this was typical of and consistent with a diagnosis of CRPS, which he related to her industrial injury. In his opinion, Strayer's CRPS was stationary with a 7% impairment to her left upper extremity and that she required supportive care as recommended by Dr. Steven Laitin on February 24, 2010. Dr. Borowsky also testified he had not found any evidence of pathology or "any mechanical defect or non-function in [Strayer's] shoulder" during his examination. Following the hearings, the ALJ entered an award for a scheduled permanent partial impairment. She resolved the medical conflict in favor of Drs. Campbell and Borowsky. The ALJ subsequently affirmed

the award on review, noting she had previously resolved the medical conflict.

DISCUSSION

¶9 Strayer argues the ALJ should have determined whether her subjective complaints of left shoulder pain and resulting functional difficulties to her shoulder were credible, and that if the ALJ had determined she was credible she would have been entitled to an unscheduled award pursuant to *Dye v. Industrial Commission*, 153 Ariz. 292, 736 P.2d 376 (1987). Relying on *Villanueva v. Industrial Commission*, 148 Ariz. 285, 714 P.2d 455 (App. 1985), Strayer further argues the ALJ's failure to resolve her credibility rendered the award legally insufficient. We disagree.

¶10 In *Dye*, the issue before the court was whether residual effects of a compensable injury primarily affecting a scheduled portion of the body, but also affecting an unscheduled portion of the body, rendered a claimant's disability scheduled or unscheduled. 153 Ariz. at 293, 736 P.2d at 377. After analyzing prior case law that had relied on the existence of "disabling pain" to decide this question, the court held it was "illogical to distinguish between scheduled and unscheduled disabilities on the basis of whether the pain in the unscheduled body part is 'disabling.'" *Id.* at 294, 736 P.2d at 378. The court reasoned "[w]hat is disabling to one person may be tolerable to another.

The law should not work to the advantage of those who either have low pain tolerance or are willing to exaggerate." *Id.* The court then established the following rule for determining whether a disability should be scheduled or unscheduled in such a situation:

In determining whether a disability is scheduled or unscheduled, the combined effects of the original injury on all portions of the body should be considered. Pain, swelling, or any other impairment to an unscheduled portion of the body, *if it affects function at all*, transforms a scheduled injury into an unscheduled injury.

Id. (emphasis added) (citation omitted).

¶11 Here, under the rule articulated in *Dye*, whether the ALJ should have classified Strayer's disability as unscheduled turned on whether the CRPS and other effects of her industrial injury affected the "function" of her left shoulder. Dr. Borowsky as well as Dr. Lipton testified that even though Strayer had reported left shoulder pain and such pain was consistent with CRPS, they nevertheless had not found any functional abnormality in her left shoulder. This evidence reasonably supported the ALJ's finding Strayer had sustained a scheduled injury.

¶12 And, given this evidence, the ALJ was not required to decide whether Strayer was credible. An ALJ is not required to make specific findings on every issue as long as the ALJ makes findings that resolve all material issues. *Villanueva*, 148 Ariz. at 288, 714 P.2d at 458; *see also Cavco v. Indus. Comm'n*, 129 Ariz. 429, 435, 631 P.2d 1087, 1093 (1981) (specific findings not necessary

provided reviewing court can determine from the evidence whether ultimate basis given by ALJ for conclusion was legally sound). The ultimate issue here was whether Strayer had sustained a scheduled or an unscheduled injury. The ALJ resolved this issue and, as noted, the evidence supported her resolution of this issue. Further, unlike the situation in *Villanueva*, where only if the ALJ found the claimant not credible could he find a conflict in the medical evidence, see 148 Ariz. at 287, 714 P.2d at 457, Strayer's testimony about her shoulder was immaterial to the testimony of Drs. Borowsky and Lipton that, on examination, they had been unable to detect a functional abnormality in her shoulder.

CONCLUSION

¶13 For all of the foregoing reasons, we affirm the award for a scheduled permanent impairment.

_____/s/_____
PATRICIA K. NORRIS, Judge

CONCURRING:

_____/s/_____
MICHAEL J. BROWN, Presiding Judge

_____/s/_____
PHILIP HALL, Judge