

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

FILED BY CLERK

APR 18 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JULIE CORRALES,)	2 CA-IC 2012-0013
)	DEPARTMENT B
Petitioner Employee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
THE INDUSTRIAL COMMISSION OF)	Appellate Procedure
ARIZONA,)	
)	
Respondent,)	
)	
ESTATE OF LAURA ARONSON,)	
)	
Respondent Employer,)	
)	
STATE FARM FIRE AND CASUALTY,)	
)	
Respondent Insurer.)	
_____)	

SPECIAL ACTION – INDUSTRIAL COMMISSION

ICA Claim No. 20113080067

Insurer No. 03-W102-972

Gary M. Israel, Administrative Law Judge

AWARD AFFIRMED

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K E L L Y, Judge.

¶1 In this statutory special action, petitioner Julie Corrales challenges the award of the administrative law judge (ALJ) denying her claim for workers' compensation benefits on the ground it was filed outside the one-year limitation period in A.R.S. § 23-1061(A).¹ We affirm.

Background

¶2 We view the evidence “in the light most favorable to sustaining the findings and award of the Industrial Commission and will not set aside the award if it is based upon any reasonable interpretation of the evidence.” *Rent A Ctr. v. Indus. Comm’n*, 191 Ariz. 406, ¶ 1, 956 P.2d 533, 534 (App. 1998), quoting *Ariz. Dep’t of Pub. Safety v. Indus. Comm’n*, 176 Ariz. 318, 324, 861 P.2d 603, 609 (1993). Corrales began working as a home caregiver for Orville and Laura Aronson in 1991. In the late 1990s she developed pain in her shoulders, which she believed was the result of lifting

¹Although the ALJ determined the claim was untimely and barred by § 23-1061(A), he alternatively addressed the merits and concluded Corrales had not established a compensable injury. Corrales argues this conclusion was in error, but because we conclude the ALJ correctly determined the claim was barred by § 23-1061(A), we do not address this argument.

performed as part of her employment. She consulted a physician, and “tried to stop” working but felt Laura “wouldn’t let [her] leave.”

¶3 Following Orville’s death in 2000, Corrales continued to work as a caregiver for Laura. Corrales’s shoulders “gradually got worse” and while lifting at work she would “[s]ometimes . . . feel . . . a tear,” in her shoulders which she described as “very painful.” She continued to seek medical treatment and beginning around 2002 received cortisone injections in both shoulders several times a year. In 2007 she was diagnosed with a rotator cuff tear in her left shoulder. She was referred to an orthopedic surgeon in 2009, and in June 2010, she was diagnosed with, and had surgery to treat, a rotator cuff tear in her right shoulder. After a five-week recovery period, Corrales returned to work. She continued to have pain in her shoulders while lifting, and had additional surgery on her right shoulder in August 2011. Following the surgery, she continued to work until Laura’s death on October 1, 2011.

¶4 On October 31, 2011, Corrales filed a claim for workers’ compensation. The claim was denied and she requested a hearing with the Industrial Commission. Thereafter, the ALJ concluded Corrales’s claim was barred by the workers’ compensation statute of limitations, A.R.S. § 23-1061(A).² On review, the ALJ affirmed the award, and this statutory special action followed.

²The ALJ also ruled any claims regarding Corrales’s pelvic prolapse or possible injury to her back were barred by § 23-1061(A). Corrales does not challenge this ruling on appeal. See *ELM Retirement Ctr., LP v. Callaway*, 226 Ariz. 287, n.1, 246 P.3d 938, 943, n.1 (App. 2010) (“Issues not clearly raised and argued on appeal are waived.”); see also Ariz. R. Civ. App. P. 13(a)(6).

Discussion

¶5 Corrales argues the ALJ erred in finding her claim barred by application of § 23-1061(A). We limit our review to “determining whether or not the commission acted without or in excess of its power” and whether the findings of fact support the ALJ’s award. A.R.S. § 23-951(B). Although we defer to the ALJ’s factual findings, we review questions of law de novo. *Hahn v. Indus. Comm’n*, 227 Ariz. 72, ¶ 5, 252 P.3d 1036, 1038 (App. 2011).

¶6 Section 23-1061(A) provides, in relevant part, that a claim for workers’ compensation is not valid unless it is

filed . . . within one year after the injury occurred or the right thereto accrued. The time for filing a compensation claim begins to run when the injury becomes manifest or when the claimant knows or in the exercise of reasonable diligence should know [she] has sustained a compensable injury.

Based on the evidence, the ALJ found Corrales “knew or believed that she had work related shoulder . . . conditions in 2008 and 2009, if not earlier” and therefore the claim was barred by § 23-1061(A).

¶7 Corrales argues the ALJ erred in finding the claim barred by § 23-1061(A) because her shoulder injuries occurred gradually. Citing our decision in *Reilly v. Indus. Comm’n*, 1 Ariz. App. 12, 15, 398 P.2d 920, 923 (1965), she claims “a gradual injury caused or contributed [to] by work activities establishes a compensable claim.” Corrales is correct that work-related gradual injuries are generally compensable. *See id.* But such injuries nevertheless are subject to the requirements of § 23-1061(A). *See Nelson v.*

Indus. Comm'n, 134 Ariz. 369, 371-72, 656 P.2d 1230, 1232-33 (1982) (applying one-year limitation period in gradual injury case).

¶8 Corrales next asserts that, in a gradual injury case, the one-year period to file a claim begins to run on the final day of employment, and that her claim therefore is timely because she stopped working on October 1 and filed her claim on October 31. But § 23-1061(A) plainly provides that “[t]he time for filing a compensation claim begins to run when the injury becomes manifest or when the claimant knows or in the exercise of reasonable diligence should know [she] has sustained a compensable injury.” *See also Keeler v. Indus. Comm'n*, 122 Ariz. 16, 17, 592 P.2d 1282, 1283 (App. 1979). And contrary to Corrales’s assertion, as noted above § 23-1061(A) applies in the case of a gradual injury. *See Nelson*, 134 Ariz. at 371-72, 656 P.2d at 1232-33.

¶9 Ample evidence supports the ALJ’s determination that Corrales “knew or believed” she had compensable shoulder injuries in “2008 and 2009, if not earlier.”³ As the ALJ found, Corrales testified that “even back in the 1990s” she was aware she had work-related injuries to her shoulders and had discussed this with Laura. She repeatedly sought medical treatment, including surgery in June 2010. She explained she did not file a workers’ compensation claim at an earlier date because she was “very busy” with her employment and “did not have time to fill out the paperwork.” Accordingly, the ALJ did

³For this reason we likewise reject Corrales’s assertion that her claim was timely because she “re-injur[ed]” her shoulders during the one-year period before filing her claim.

not err in finding the claim barred by § 23-1061(A). *See Hahn*, 227 Ariz. 72, ¶ 5, 252 P.3d at 1038.

Disposition

¶10 The ALJ's award is affirmed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge