

**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.

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MAY 20 2013
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ALEXANDRINA OCEJO,)
)
Petitioner Employee,)
)
v.)
)
THE INDUSTRIAL COMMISSION OF)
ARIZONA,)
)
Respondent,)
)
TUCSON UNIFIED SCHOOL DISTRICT,)
)
Respondent Employer,)
)
TRISTAR RISK MANAGEMENT,)
)
Respondent Insurer.)
_____)

2 CA-IC 2012-0015
DEPARTMENT B

MEMORANDUM DECISION
Not for Publication
Rule 28, Rules of Civil
Appellate Procedure

SPECIAL ACTION – INDUSTRIAL COMMISSION

ICA Claim Nos. 20101320234 and 20113270346

Insurer Nos. 10278792 and 11324631

Gary M. Israel, Administrative Law Judge

AWARD AFFIRMED

Alexandrina Ocejo

Tucson
In Propria Persona

The Industrial Commission of Arizona
By Andrew F. Wade

Phoenix
Attorney for Respondent

Frank W. Frey

Tucson
Attorneys for Respondents
Employer and Insurer

V Á S Q U E Z, Presiding Judge.

¶1 In this statutory special action, petitioner Alexandrina Ocejo challenges the decision of the Administrative Law Judge (ALJ) denying her claim for workers' compensation benefits and her petition to reopen. Ocejo contends the ALJ's decision was not supported by substantial evidence. For the reasons set forth below, we affirm.

Factual Background and Procedural History

¶2 "On review, we consider the evidence in the light most favorable to upholding the award, and we deferentially review all factual findings made by the ALJ."¹ *Hackworth v. Indus. Comm'n*, 229 Ariz. 339, ¶ 2, 275 P.3d 638, 640 (App. 2012) (citation omitted). In April 2010, while working as a teacher for the respondent Tucson Unified School District at Van Buskirk Elementary School, Ocejo fell, injuring her left wrist, left knee, and left ankle. Ocejo's claim for workers' compensation benefits was accepted and subsequently closed with no permanent disability. She requested a hearing,

¹Because Ocejo's opening brief does not contain a statement of facts with appropriate references to the record as required by Rule 13(a)(4), Ariz. R. Civ. App. P., we draw all facts on appeal from the answering brief and our review of the record. See *Flood Control Dist. v. Conlin*, 148 Ariz. 66, 68, 712 P.2d 979, 981 (App. 1985).

after which, the ALJ concluded Ocejo's industrial injury was medically stationary with no permanent impairment.

¶3 In November 2011, Ocejo again fell at the elementary school, this time injuring her left wrist, right knee, left foot, and lower back. A parent of a student testified that she had first noticed Ocejo lying on the sidewalk but stated others had told her Ocejo had fallen because she stepped on one of the small decorative rocks scattered in the area. However, the doctor who evaluated Ocejo that day noted that she fell because "her left knee gave out." Ocejo filed a workers' compensation claim, which was denied in December 2011. She requested a hearing on the denial of that claim. In February 2012, Ocejo filed a petition to reopen her 2010 claim on the basis of a new, additional, or previously undiscovered disability or condition causing pain with her right knee. The petition to reopen also was denied, and Ocejo requested a hearing. At Ocejo's request, the two claims were consolidated, and a combined, three-day hearing was held. Ocejo, her medical expert, Dr. Jeri Hassman, and Dr. Jon Abbott, who performed an independent medical evaluation, all testified at the hearing.

¶4 Ocejo testified that, in addition to other injuries, she had injured her right knee when she fell in November 2011. Both medical experts confirmed the knee showed signs of injury. Hassman stated she observed a subtle subcutaneous edema of Ocejo's right knee caused by the fall, and Abbott opined that Ocejo suffered from a right knee patellofemoral contusion. Regarding the cause of the injury, Ocejo testified that she had fallen in November 2011 because she "step[ped] on one of those rocks again." On cross-examination, however, Ocejo admitted she previously had said she was not sure what

caused the fall but thought it occurred when she stepped on a rock. Although Hassman had examined Ocejo shortly after the fall, she testified that Ocejo did not report until May 2012 that the rock had caused her to fall. And, Ocejo admitted on cross-examination that her left knee had been unstable since 2008 and that in November 2002 another doctor had noted problems with her left knee buckling. Abbott testified that, because Ocejo “couldn’t say exactly what happened” and she reported chronic left knee instability, “it would seem most likely that her left knee gave out as opposed to a problem related to the rock itself.” Abbott also stated he did not find any “new, additional or previously undiscovered” injury related to the April 2010 fall.

¶5 In October 2012, the ALJ issued a decision denying Ocejo benefits for the 2011 claim and denying her petition to reopen the 2010 claim. The ALJ noted the compensability of the 2011 claim “rests on whether [Ocejo] tripped on rocks on the school’s sidewalk, in which case it is a compensable claim, or whether her left knee gave way causing her to fall, in which case it would be a noncompensable claim.” Finding “the latter explanation to be more likely,” the ALJ concluded Ocejo had not met her burden in proving an industrial injury. As to the 2010 claim, the ALJ found Ocejo “d[id] not have any new, additional or previously undiscovered condition or disability related to that accident.”

¶6 Ocejo filed a request for hearing, which the ALJ treated as a request for review. *See* A.R.S. § 23-943. The ALJ affirmed the prior decision, and Ocejo petitioned this court for review. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(2), 23-951(A), and Rule 10, Ariz. R. P. Spec. Actions.

Discussion

¶7 As a preliminary matter, we address the respondents' contention that Ocejo's opening brief does not comply with Rule 13(a), Ariz. R. Civ. App. P., and that she therefore has "waived any argument made in her [b]rief." Rule 13(a) requires the appellant's brief to "concisely and clearly set forth under the appropriate headings" a statement of the case, the facts relevant to the appeal, and the issues presented for review.² In addition, the brief must include an argument containing "the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on." Ariz. R. Civ. App. P. 13(a)(6).

¶8 We agree that Ocejo has failed to comply with Rule 13(a). Her brief does not contain a statement of the case or the issues presented for review, *see* Ariz. R. Civ. App. P. 13(a)(3), (5), and, although it contains an abbreviated discussion of the facts, Ocejo has not included references to the record, *see* Ariz. R. Civ. App. P. 13(a)(4). Ocejo also has failed to develop her argument or to support it with any case law or statutes. *See* Ariz. R. Civ. App. P. 13(a)(6). Despite Ocejo's pro se status, she is held to the same standards as an attorney. *See Kelly v. NationsBanc Mortg. Corp.*, 199 Ariz. 284, ¶ 16, 17 P.3d 790, 793 (App. 2000). Ocejo's lack of compliance with Rule 13(a) thus could constitute a waiver of the issues on appeal. *See Polanco v. Indus. Comm'n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393 n.2 (App. 2007) (appellant's failure to support argument

²Pursuant to Rule 10(k), Ariz. R. P. Spec. Actions, the Arizona Rules of Civil Appellate Procedure apply to appeals from ICA awards. *See also Heredia v. Indus. Comm'n*, 190 Ariz. 476, 478, 949 P.2d 969, 971 (1997).

waives issue on appeal); *Sholes v. Fernando*, 228 Ariz. 455, ¶ 16, 268 P.3d 1112, 1118 (App. 2011) (same). However, in our discretion and because we prefer to resolve cases on their merits, *Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984), we address Ocejo's argument.

¶9 Ocejo contends the ALJ's findings were "contrary to the evidence" and requests that we consider the April 2010 and November 2011 claims separately but sequentially. Contrary to her testimony before the ALJ, she now maintains that as a result of her fall in April 2010 she suffers from a weak left knee, which caused the November 2011 fall. Ocejo essentially is challenging the sufficiency of the evidence to support the ALJ's decision.³ We will affirm the award if it is reasonably supported by the evidence. *Carousel Snack Bar v. Indus. Comm'n*, 156 Ariz. 43, 46, 749 P.2d 1364, 1367 (1988); *Chapman v. Indus. Comm'n*, 14 Ariz. App. 437, 438, 484 P.2d 206, 207 (1971).

¶10 Ocejo has the burden of proving that she has a compensable claim, *LaRue v. Indus. Comm'n*, 16 Ariz. App. 482, 483, 494 P.2d 382, 383 (1972), and that she is entitled to reopen a claim "by showing a new, additional, or previously undiscovered condition and a causal relationship between that new condition and the prior industrial injury," *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, ¶ 17, 41 P.3d 640, 643-44 (App. 2002).

³The respondents argue Ocejo "did not preserve any issue for review" because "[she] did not specify any grounds for review" in her request for review to the ALJ. But a "request for review of an [ICA] award need only state that the party requests a review of the award." A.R.S. § 23-943(A). And, when a summary request is made, it preserves for appellate review a challenge to the sufficiency of the evidence. *See Spielman v. Indus. Comm'n*, 163 Ariz. 493, 496, 788 P.2d 1244, 1247 (App. 1989).

“To receive workers’ compensation benefits, an injured employee must demonstrate both legal and medical causation.” *Grammatico v. Indus. Comm’n*, 211 Ariz. 67, ¶ 19, 117 P.3d 786, 790 (2005). Legal causation is established when the employee suffered an injury that arose out of and in the course of employment and was caused in whole or part by a necessary risk of the employment. *Id.* “Medical causation, in contrast, is established by showing that the accident caused the injury.” *Id.* ¶ 20; *see also* A.R.S. § 23-1021(A).

¶11 The ALJ determines witness credibility, and the “testimony of a witness may be disregarded where [it] has been impeached or contradicted” in a manner that casts doubt on its credibility. *Royal Globe Ins. Co. v. Indus. Comm’n*, 20 Ariz. App. 432, 434, 513 P.2d 970, 972 (1973). In addition, the ALJ resolves conflicts in the evidence, and, when more than one inference may be drawn, the ALJ may choose either. *Johnson-Manley Lumber v. Indus. Comm’n*, 159 Ariz. 10, 13, 764 P.2d 745, 748 (App. 1988). Such a conclusion will not be disturbed unless it is wholly unreasonable. *Id.*

¶12 Here, reasonable evidence supports the ALJ’s determinations that Ocejo did not prove the November 2011 fall was work-related or a new, additional, or previously undiscovered condition or disability in relation to the April 2010 fall. *See Carousel Snack Bar*, 156 Ariz. at 46, 749 P.2d at 1367. Although Ocejo, Hassman, and Abbott seemingly agreed that Ocejo suffered a right knee injury as a result of the November 2011 fall, the cause of that fall was disputed. The ALJ’s finding that Ocejo fell because her left knee gave out is reasonably supported by the evidence, particularly in light of Ocejo’s inconsistent testimony. *See Royal Globe Ins. Co.*, 20 Ariz. App. at 434, 513 P.2d

at 972. And, there was evidence that Ocejo’s left knee problems existed before the April 2010 fall. The ALJ resolved any conflicts in the medical evidence by “adopting the testimony, report and opinions of Dr. Abbott as being most probably correct and well founded.” We cannot say that determination was wholly unreasonable. *See Johnson-Manley Lumber*, 159 Ariz. at 13, 764 P.2d at 748. To the extent Ocejo asks us to reweigh the evidence on appeal, we will not do so. *See Jaramillo v. Indus. Comm’n*, 203 Ariz. 594, ¶ 6, 58 P.3d 970, 972 (App. 2002).

Disposition

¶13 For the foregoing reasons, the award is affirmed.

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

CONCURRING:

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

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