

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

PATRICIA A. GONZALES,
Petitioner Employee,

v.

THE INDUSTRIAL COMMISSION OF ARIZONA,
Respondent,

LA POSADA AT PARK CENTRE, INC.,
Respondent Employer,

AMERISURE INSURANCE,
Respondent Insurer.

No. 2 CA-IC 2016-0002
Filed October 2, 2017

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Spec. Act. 10(k).

Special Action-Industrial Commission
ICA Claim No. 2014-3080029
Insurer No. 1387041
LuAnn Haley, Administrative Law Judge

AWARD AFFIRMED

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COUNSEL

Patricia A. Gonzales, Green Valley
In Propria Persona

The Industrial Commission of Arizona, Phoenix
By Jason M. Porter
Counsel for Respondent Industrial Commission of Arizona

Jones, Skelton & Hochuli, P.L.C., Phoenix
By Gregory L. Folger and Jennifer B. Anderson
Counsel for Respondents Employer and Insurer

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Staring and Judge Kelly¹ concurred.

ESPINOSA, Judge:

¶1 Patricia Gonzales appeals the determination of the Administrative Law Judge (“ALJ”) that her workers’ compensation claim was properly closed by her employer’s insurance carrier. For the reasons that follow, we affirm the ALJ’s award.

Factual and Procedural Background

¶2 We review the evidence in the light most favorable to upholding the ALJ’s determination. *Hackworth v. Indus. Comm’n*, 229 Ariz. 339, ¶ 2, 275 P.3d 638, 640 (App. 2012). In October 2014,

¹The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

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Gonzales injured her back while placing a garbage bag into a dumpster at her place of employment, La Posada at Park Centre. Her injury was referred to Amerisure, who accepted the claim as compensable. Gonzales continued to work “light duty” for several weeks after her injury, during which time she sought treatment from Green Valley Urgent Care and Concentra Medical Centers and was prescribed pain medications, muscle relaxers, and physical therapy.

¶3 Gonzales attended a physical therapy session at her workplace on November 25, 2014, where she was placed in a traction harness. Documents from the outpatient physical therapy clinic indicated Gonzales “did not respond well to trial of mechanical traction” and “demonstrated strange symptoms that appeared neurologic in nature and were very concerning to [the] supervising Physical Therapist.” Gonzales contended the physical therapists did not know how to use the traction machine they had received just a week earlier, specifically claiming they “didn’t know where to put the harness” on her and then “dropped a portion of the table from [her] hip area to [her] shoulder blades.”

¶4 As a result of the therapists’ attempts to place Gonzales in traction, Gonzales claimed she “went numb from [the] neck down” and “screamed because the pain was so unbearable.” La Posada’s records noted that immediately afterwards she exhibited an “involuntary head tremor or shake” that “did not pass,” and although Gonzales was “oriented,” she “did not appear entirely alert to her normal capacity.” Clinic personnel suggested calling an ambulance, which Gonzales “adamantly refused,” and they arranged for her to be picked up by her son after “her head shaking stopped and her ‘grogginess’ appeared to clear.”

¶5 Gonzales followed up with Concentra Medical Centers four days later, and reported having developed a tremor from the traction incident. At that visit, the nurse practitioner noted a “[b]ilateral palpable muscle spasm.” In December 2014, Gonzales was again seen at Concentra where the doctor noted “a persistent unusual tremor” but “[n]o numbness, paresthesias, or radicular pain in the lower extremities.” The same Concentra doctor in January again noted Gonzales’s report of “tremors of the head and neck,” as well as, apparently for the first time, reports of numbness from the

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waist down. That same day, Gonzales saw a doctor at the Tucson Neuroscience Center where she indicated, also for the first time, “pain into the back of both legs” and “a tremor that involved the lower limbs.” That doctor too noted Gonzales’s head tremor, which he suspected to be “benign senile type.” In February, an MRI² scan of Gonzales’s lumbar spine indicated disc pathology, including disc bulging, osteophytosis, and mild facet arthropathy.

¶6 In May 2015, Gonzales met with an independent medical examiner (“IME”) who evaluated her for complaints attributed to the work-related injuries. The IME noted that Gonzales had no tremors at the time of the evaluation, and concluded that because they had “resolved without specific treatment,” the IME could not “attribute them to a specific incident that occurred as a result of the traction therapy.” Regarding the lower back pain and reported numbness in her lower extremities, the IME concluded that Gonzales “had appropriate treatment for her low back condition . . . , and her lower extremity symptoms [we]re non-physiologic.” Notwithstanding her conclusions, the IME recommended an additional evaluation from a neurologist to confirm her findings.

¶7 A neurologist who examined her in July 2015 concluded, “Gonzales has no neurologic diagnosis” because the “symptoms of numbness and pain that she reports do not follow a dermatomal or radicular distribution.” Regarding tremors, the neurologist further concluded there was “no physiologic mechanism whereby a tremor disorder would have feasibly developed from the traction Ms. Gonzales received,” thus it was her medical opinion Gonzales “ha[d] reached a permanent and stationary status.”

¶8 Amerisure issued a Notice of Claim Status closing Gonzales’s claim. Gonzales protested the closure, alleging she was entitled to continuing benefits, and represented herself at a hearing before the Industrial Commission in May 2016. The ALJ’s written ruling following the hearing cited “a careful review of the reports regarding [Gonzales’s] multiple examinations as well as [her] testimony at [the] hearing,” and found “that her representations

²Magnetic Resonance Imaging.

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regarding the circumstances of her work event [we]re not credible." Likewise, the ALJ determined that Gonzales's description and exhibition of her symptoms appeared to be "embellished" and lacked credibility. To the extent the ALJ found any conflicts in the medical evidence, she determined that the opinions of the IMEs were "most probably correct and well founded" and that Gonzales's claim was appropriately closed.

¶9 Gonzales requested review, but provided no argument or additional evidence. The ALJ nevertheless reviewed the transcript from the hearing, but found no reason to change her determination and upheld the award. Gonzales then filed this petition for special action, over which we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(2), 23-951(A), and Rule 10, Ariz. R. P. Spec. Act.

Discussion

¶10 This court deferentially reviews reasonably supported factual findings of the Industrial Commission, but independently reviews its legal conclusions. *Kelly Servs. v. Indus. Comm'n*, 210 Ariz. 16, ¶ 7, 106 P.3d 1031, 1033 (App. 2005). Because the trier of fact "is in the most advantageous position to weigh the evidence, judge credibility, and evaluate the nuances of witness demeanor," *Walters v. Indus. Comm'n*, 134 Ariz. 597, 599, 658 P.2d 250, 252 (App. 1982), an ALJ "is the sole judge of witness credibility," *Holding v. Indus. Comm'n*, 139 Ariz. 548, 551, 679 P.2d 571, 574 (App. 1984).

¶11 The burden of proof as to all elements of a claim rests with the claimant. See *Lawler v. Indus. Comm'n*, 24 Ariz. App. 282, 284, 537 P.2d 1340, 1342 (1975). In this case, Gonzales was required to prove, by a preponderance of the evidence, that either her condition was not stationary, or that she had sustained a permanent disability. See *id.* To the extent she sought supportive care from her current medical provider, it was her burden to prove a continuing need for care causally related to the industrial injury. See *Capuano v. Indus. Comm'n*, 150 Ariz. 224, 226, 722 P.2d 392, 394 (App. 1986). Gonzales did not meet that burden.

¶12 First, Gonzales presented no evidence at her hearing before the ALJ that her ongoing medical complaints related to her

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industrial injury. But even if she had, on appeal she has provided no argument or support for the implied contention that the medical conclusions relied on by the ALJ were wrong. In fact, Gonzales's arguments on appeal lack any citations to the record, and are devoid of any legal authority. Accordingly, we cannot conclude she established the elements of her claim. *See Hopkins v. Indus. Comm'n*, 176 Ariz. 173, 177, 859 P.2d 796, 800 (App. 1993) (uncontroverted medical findings binding on Industrial Commission).

¶13 Second, Gonzales has provided no support or authority for rejecting the ALJ's credibility determination. The ALJ noted that Gonzales had "carried herself in such a fashion and exhibited such deportment" that her testimony was not credible, and that her "inconsistent reporting of tremors and total numbness from the waist down" supported that conclusion. The record before us suggests Gonzales was, at a minimum, inconsistent in reporting her pain and tremor complaints, and, at worst, untruthful in her accounts to the several medical providers. Because the ALJ's credibility determination is reasonably supported, we must accept it. *See Kelly Servs.*, 210 Ariz. 16, ¶ 7, 106 P.3d at 1033; *Holding*, 139 Ariz. at 551, 679 P.2d at 574.

¶14 Third, we reject Gonzales's implied due process claims. To the extent she contends she did not receive a fair hearing because the ALJ felt Gonzales was not "showing the Judge or her courtroom respect" and because she "was late to [the ALJ's] courtroom," we disagree. Although the ALJ apparently did not allow several of Gonzales's witnesses to testify as to the cause and nature of her injuries, as explained at the hearing, the proceeding was limited to determining whether the continuing care that Gonzales believed she needed was related to her industrial injury. That is, the ALJ had "accepted" that Gonzales was injured while at work, and thus no evidence on that point was necessary.

¶15 Moreover, Gonzales has not suggested that the ALJ precluded any relevant medical evidence in her case. To the extent we understand Gonzales's opening brief as alleging that her inability to subpoena witnesses constituted a procedural defect because she did not understand "the legalities of law," we find that claim to also lack merit. Self-represented litigants are held to the same standards

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as an attorney, *see Old Pueblo Plastic Surgery, P.C. v. Fields*, 146 Ariz. 178, 179, 704 P.2d 819, 820 (App. 1985), and Gonzales's claims of ignorance are no excuse for her failure to follow proper procedures. Moreover, even if her current medical providers had been properly subpoenaed, Gonzales makes no claim that their testimony would have been any different from what they documented in their medical records. Because the reports from Gonzales's current medical providers appear in the record and were considered by the ALJ, and because our review of those records reveals nothing that attributes Gonzales's complaints of pain, numbness, or tremors to the work-related injury, we cannot say any procedural defects contributed to the ALJ's ruling.

¶16 Finally, Gonzales raises a number of claims not cognizable in a proceeding before the Industrial Commission. She first alleges her former employer was negligent in allowing the garbage bags to be overloaded, and additionally asserts the physical therapists were negligent in their use of the traction machine. But such claims were waived upon the filing of a workers' compensation claim, and thus were properly not considered by the Industrial Commission. *See A.R.S. § 23-1022(A)* (absent allegations of willful misconduct, right to compensation under workers' compensation scheme is "exclusive remedy against the employer"); *see also Anderson v. Indus. Comm'n*, 147 Ariz. 456, 457, 711 P.2d 595, 596 (1985) (employee seeking compensation from her employer for an injury must choose between pursuing a statutory claim with the Industrial Commission and filing a common law tort action). We therefore do not address these claims further.

Disposition

¶17 For the foregoing reasons, the ALJ's award is affirmed.