

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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DEXTER FARLOUGH,  
*Petitioner/Employee,*

*v.*

THE INDUSTRIAL COMMISSION OF ARIZONA,  
*Respondent,*

LIBERTY TRANSPORT,  
*Respondent Employer,*

GREAT WEST CASUALTY COMPANY,  
*Respondent Carrier.*

No. 2 CA-IC 2019-0007  
Filed March 26, 2020

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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NOT FOR PUBLICATION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)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);  
Ariz. R. P. Spec. Act. 10(k).

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Special Action – Industrial Commission  
ICA Claim No. 20190-040552  
Insurer No. P34806-W-655  
Jonathan Hauer, Administrative Law Judge

**AWARD AFFIRMED**

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COUNSEL

Dexter Farlough, Tucson  
*In Propria Persona*

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The Industrial Commission of Arizona, Phoenix  
By Gaetano Testini  
*Counsel for Respondent*

Jardine, Baker, Hickman & Houston P.L.L.C., Phoenix  
By Charles G. Rehling  
*Counsel for Respondent Employer/Carrier*

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**MEMORANDUM DECISION**

Judge Espinosa authored the decision of the Court, in which Presiding Judge Eppich and Judge Eckerstrom concurred.

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ESPINOSA, Judge:

¶1 In this statutory special action, Dexter Farlough challenges the order of the administrative law judge (ALJ) dismissing his request for a hearing on his workers' compensation claim. For the following reasons, we affirm.

**Procedural Background**

¶2 In December 2018, Farlough filed a workers' compensation claim, alleging he had injured his right knee while working as a truck driver for Liberty Transport. In January 2019, Great West Casualty Company, Liberty Transport's insurance carrier, issued notices of claim status purportedly denying the claim, although stating it remained under investigation.<sup>1</sup> Farlough protested the denial of his claim and requested a hearing, which initially was set for a date in June 2019, and later reset to a date in July.

¶3 Farlough was sent medical release forms, which he annotated by hand and returned unsigned. He also filed objections to interrogatories

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<sup>1</sup>Also that month, Farlough filed a wage complaint, which was dismissed on January 7, 2019.

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six months after being served with them.<sup>2</sup> In March 2019, the ALJ directed Farlough to execute the medical release, produce medical records, and answer all interrogatories. Farlough did not comply, instead filing a complaint against the ALJ with the Arizona Commission on Judicial Conduct. The Commission informed him it lacked jurisdiction and directed Farlough to file his complaint with the Industrial Commission. During this time, Farlough refused to participate in his scheduled deposition and also failed to appear for an independent medical examination (IME).

¶4 The following month, the ALJ once more ordered Farlough to execute the medical authorizations, answer interrogatories, and produce his medical records. Farlough appeared for his IME in May 2019, but refused to answer certain questions about his medical history. The doctor's report observed that Farlough's examination was "fraught with symptom magnification and subjective complaints that outweigh the objective findings, regardless of causation, and are consistent with nonanatomic/nonphysiologic behaviors." The doctor concluded that, at most, Farlough may have sustained a right wrist sprain and a right knee sprain, but that he would not have required "specific medical treatment."

¶5 In May 2019, the respondent employer and insurance carrier filed a motion requesting that the ALJ dismiss Farlough's request for a hearing due to his refusal to cooperate with the investigation. In June 2019, the ALJ granted the motion as a sanction for Farlough's failure to cooperate or comply with orders, finding he had abandoned his claim. Farlough thereafter filed a document captioned, "Conflicts of Interest; and Ethical Considerations in Workers' Comp Cases," which the ALJ treated as a request for review. Upon review, the ALJ issued a decision affirming the dismissal order. Farlough then initiated this statutory special action. We have jurisdiction pursuant to A.R.S. § 23-948.

**Discussion**

¶6 Farlough appears to challenge the ALJ's dismissal of his request for a hearing, complaining, "there never was going to be a hearing held on this at all." He further asserts dismissal was not warranted as he "complied with all requests for medical reports," and he was subject to "unfair claim processing or bad faith." He also contends "it appears anyone [involved in his case] would exercise an abuse of power to violate the rights

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<sup>2</sup>The Arizona Administrative Code requires a party to serve answers to interrogatories within ten days after service of the interrogatories. A.A.C. R20-5-144(C).

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of others protected under the [C]onstitution of the United States at any cost.” Farlough requests that we “review this case” and “provide [him] with the necessary benefits of workers’ compensation due him in order to obtain the treatment, surgeries and recovery.”<sup>3</sup>

¶7 When reviewing an Industrial Commission decision, we view the evidence in the light most favorable to sustaining the award and will not disturb it if reasonably supported by the evidence. *Lovitch v. Indus. Comm’n*, 202 Ariz. 102, ¶ 16 (App. 2002). An ALJ’s “imposition of a sanction will not be overturned absent a showing of abuse of discretion,” *King v. Indus. Comm’n*, 160 Ariz. 161, 163 (App. 1989), which requires a showing that the ALJ committed an error of law or reached a conclusion without substantial evidence to support it, *see Varco Inc. v. UNS Elec. Inc.*, 242 Ariz. 166, ¶ 12 (App. 2017).

¶8 We need not, however, review the ALJ’s decision here. Farlough has failed to comply with the rules of appellate procedure to such an extent that even if we could discern his claims, we would find them waived. *See Polanco v. Indus. Comm’n*, 214 Ariz. 489, n.2 (App. 2007) (arguments not properly developed waived on review); *see also* Ariz. R. P. Spec. Act. 10(k) (Arizona Rules of Civil Appellate Procedure apply to special-action review of Industrial Commission awards). Specifically, his opening brief lacks a lucid statement of the case, facts, and issues. *See* Ariz. R. Civ. App. P. 13(a). Further, an opening brief must contain an adequately developed argument with “contentions concerning each issue presented for review, with supporting reasons for each contention, and with citations of legal authorities and appropriate references to the portions of the record on which the [petitioner] relies.” Ariz. R. Civ. App. P. 13(a)(7)(A).

¶9 Each issue raised on appeal must also contain appropriate references to the record and articulate the applicable standard of review with citation to supporting authority. Ariz. R. Civ. App. P. 13(a)(7)(B). Farlough has failed to even minimally comply with any of these requirements. For instance, his brief contains citations to certain statutes, rules, and cases but he has failed to explain how any of them supports his various claims. Farlough also refers to a request for a protective order, which the ALJ denied, but he argues only that it was denied “without due cause simply because he was not afforded one.” We are unable to review

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<sup>3</sup>Farlough additionally complains that the respondents filed their answering brief late. The answering brief, however, was timely filed by the extended due date set in our December 9, 2019 order.

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this claim because not only is it vague and conclusory, but Farlough has not provided a citation to the record of the denial of his protective order, as required by Rule 13(a)(7)(B), Ariz. R. Civ. App. P. See *In re Aubuchon*, 233 Ariz. 62, ¶ 6 (2013) (argument not supported by adequate explanation, citations to the record, or authority is waived).

¶10 Although appearing in propria persona, Farlough is “held to the same familiarity with required procedures and the same notice of statutes and local rules as would be attributed to a qualified member of the bar,” and he “is entitled to no more consideration than if he had been represented by counsel.” *Copper State Bank v. Saggio*, 139 Ariz. 438, 441 (App. 1983). Accordingly, we deem Farlough’s claims waived and do not address them.<sup>4</sup> See *Polanco*, 214 Ariz. 489, n.2. Moreover, regardless of waiver, the ALJ here was well within its discretion to order dismissal of Farlough’s claim and request for hearing in light of his repeated obstruction and noncompliance with its orders. The ALJ properly considered the *Brown v. Industrial Commission*<sup>5</sup> factors—whether the applicant has exhibited a pattern of failure to cooperate with defendants, whether he acted with due diligence, whether there is evidence in the record tending to support the claim, and whether defendants have suffered prejudice from the applicant’s actions or omissions. The ALJ found those factors to warrant the ultimate sanction of dismissal, a finding that is supported by the record.

**Disposition**

¶11 The ALJ’s dismissal order is affirmed.

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<sup>4</sup>To the extent Farlough attempts to challenge a separate industrial commission case purportedly arising in a different state, our review is limited to only those issues relevant to the case from which he has initiated special-action review. See A.R.S. § 23-951(A), (B) (A party affected by an industrial commission decision may apply for a writ of certiorari to review, which review “shall be limited to determining whether or not the commission acted without or in excess of its power.”).

<sup>5</sup>154 Ariz. 252, 254 (App. 1987).