IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

MADELINE CANFIELD,
Petitioner Employee,

v.

THE INDUSTRIAL COMMISSION OF ARIZONA,
Respondent,

TUCSON UNIFIED SCHOOL DISTRICT,
Respondent Employer,

ARIZONA SCHOOL ALLIANCE FOR WORKERS' COMPENSATION, INC.,
Respondent Insurer.

No. 2 CA-IC 2020-0002
Filed October 9, 2020

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NOT FOR PUBLICATION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).

Special Action – Industrial Commission
ICA Claim No. 91252106487
Insurer No. 91001657
C. Andrew Campbell, Administrative Law Judge

AWARD AFFIRMED

COUNSEL

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MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Judge Brearcliffe and Judge Eppich concurred.

V Á S Q U E Z, Chief Judge:

¶1 In this statutory special action, Madeline Canfield challenges the Industrial Commission's award denying her petition to modify her workers' compensation benefits. She argues the administrative law judge (ALJ) erred in determining that the prior award had conclusively denied chiropractic care for her jaw, barring her from relitigating that issue absent a material change in her condition. She further contends the ALJ's award denying her petition lacks findings that would allow us to review that determination. For the following reasons, we affirm the award.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the award. *Hackworth v. Indus. Comm'n*, 229 Ariz. 339, ¶ 2 (App. 2012). Canfield, a former special-education teacher, suffered back, neck, and shoulder workplace injuries in 1990 while restraining a student, and head and jaw injuries in 1991 when a student assaulted her. In 1994, the Industrial Commission awarded her medical care for her injuries, including weekly chiropractic care. In 1997, Canfield filed petitions to reopen the award as to both the 1990 and 1991 injuries, and the parties resolved that proceeding by stipulating to supportive care, including chiropractic care for the 1990 injuries but not the 1991 injuries.

¶3 In 2016, Canfield requested a hearing before the Industrial Commission, contending, among other things, that her supportive care benefits did not provide adequate treatment for the 1991 jaw-related injury.

At a hearing, Canfield's doctor testified that chiropractic care "for some patients is very helpful, and in some instances quite necessary," but he never indicated that Canfield was such a patient. On cross-examination, the insurer questioned Canfield's doctor to pin down "a complete and accurate list of what [he was] recommending at this point." The insurer asked the doctor about several particular types of treatment, and the doctor indicated whether he recommended each one. The insurer then asked whether the treatment he had been asked about comprised "all of the supportive care [he was] recommending," and the doctor replied that it was. The list of recommended treatments did not include chiropractic care.

¶4 In October 2017, the ALJ issued her decision, awarding care "as recommended by" Canfield's doctor for her jaw injury. The decision listed the treatments Canfield's doctor had recommended, and consistent with his testimony, the list did not include chiropractic care. The ALJ noted that the doctor hired by the insurer to examine Canfield had testified that there was "no evidence that [chiropractic] treatment [wa]s effective for [Canfield]'s conditions" and did not recommend that care.

¶5 Canfield filed a request for review, seeking to have the award revised to include chiropractic treatment for her jaw. She pointed out that chiropractic care had been included in her supportive care benefits for many years, and argued that the opinion of the insurer's doctor was insufficient to "extinguish[] one of the most essential components [of her supportive care], her specialized jaw chiropractic care." In December 2017, the ALJ issued a decision on review affirming the award. Canfield did not appeal the 2017 decision.

¶6 In August 2018, Canfield petitioned to reopen her award, claiming her condition had deteriorated. At the same time, she requested a hearing under A.R.S. § 23-1061(J) to investigate the insurer's "refus[al] to approve needed chiropractic care that the treating physician is recommending." After hearings on the requests, a different ALJ denied relief, finding that the parties had "fully litigated the supportive care issue" in the proceedings resulting in the 2017 award, and chiropractic care was not among the awarded therapies. The ALJ further concluded there had "not been a change in [Canfield]'s medical condition" that allowed the issue to be relitigated. Canfield requested review of the decision, which the ALJ affirmed.

¶7 This special action followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(2) and 23-951(A), and Rule 10, Ariz. R. P. Spec. Act.

Issue Preclusion

¶8 Canfield contends the ALJ erred in finding that the issue over chiropractic care was precluded, maintaining that the 2017 award either provided for chiropractic care for her jaw injury or did not decide the issue. "Issue preclusion prevents a party from relitigating an issue that has already been decided." *Brown v. Indus. Comm'n*, 199 Ariz. 521, ¶ 11 (App. 2001). It generally applies when an issue was "actually litigated, decided, and essential to a final judgment." *Id.* In a workers' compensation case, however, we do not rigidly apply issue preclusion if the claimant's condition has materially changed. *Id.* ¶¶ 12-15. We review de novo whether issue preclusion applies. *Id.* ¶ 10.[1]

¶9 In the 2017 proceedings, the ALJ awarded the specific treatments Canfield's doctor had recommended, and because her doctor had not recommended chiropractic care, it was not included in the award. Although Canfield maintains that the 2017 award "d[id] not squarely address whether or not chiropractic care for the jaw was to be provided," the absence of chiropractic care in the specific list of awarded treatments creates an inference that chiropractic care was intentionally excluded from the award. *See Brown*, 199 Ariz. 521, ¶ 16 (issue need not be explicitly determined for issue preclusion to apply; determination may be inferred as necessarily decided); *cf. Rodgers v. Huckelberry*, 243 Ariz. 427, ¶ 19 (App. 2017) (enumeration of several items implies intentional exclusion of unlisted item).

¶10 Canfield argues that her doctor's notes, submitted in the 2017 proceedings, showed that he "clearly endorse[d] chiropractic care." She suggests that the 2017 award should be interpreted to provide that care, or at worst we should conclude that the ALJ "inadvertently left the issue undecided." The doctor's testimony belies Canfield's assertion that he clearly recommended chiropractic care, however, and the text of the ALJ's decision shows that she did not adopt this purported recommendation in

[1]Canfield contends that the ALJ erred by failing to support his issue preclusion ruling, arguing that the decision "lacks the requisite findings" and is "without any analysis that would allow this court to review his decision." In general, the Industrial Commission must support its awards with findings of fact sufficient to allow us to "evaluat[e] the basis of the . . . award." *Post v. Indus. Comm'n*, 160 Ariz. 4, 7 (1989). But because we review issue preclusion de novo, our review does not hinge on the ALJ's stated analysis of this issue (or lack thereof).

any event. Moreover, the ALJ declined to amend her award on review even after Canfield explicitly requested that it be amended to add chiropractic care. Thus, even were we to conclude that the ALJ's 2017 award somehow left open the issue of chiropractic care, its decision to affirm the award on review conclusively closed it.

¶11 The remaining elements of issue preclusion are uncontested. Canfield does not contest that the parties litigated her chiropractic care in the 2017 proceeding; indeed, in Canfield's request for review in those proceedings, she asserted that "[w]hether the chiropractic care was to be included in her continuing supportive care was squarely at issue in th[at] matter." Finally, the decision to exclude chiropractic care was necessary to the award in that proceeding, because deciding the specific items to include in the award necessitated deciding what to leave out.

¶12 Because all elements of issue preclusion are met by the 2017 proceeding, the ALJ in the current proceeding correctly precluded Canfield from relitigating coverage for chiropractic care absent a showing that her condition had materially changed. *See Brown*, 199 Ariz. 521, ¶¶ 11-14. The ALJ explicitly found no such change in Canfield's condition—a finding she does not contest in this special action. In sum, the ALJ did not err in denying Canfield's request to modify her award.

Disposition

¶13 For the foregoing reasons, we affirm the Industrial Commission's decision and award.