

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

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TIMOTHY JONES,  
*Petitioner Employee,*

*v.*

THE INDUSTRIAL COMMISSION OF ARIZONA,  
*Respondent,*

WALMART, INC.,  
*Respondent Employer,*

WALMART ASSOCIATES, INC.,  
*Respondent Insurer.*

No. 2 CA-IC 2021-0001  
Filed July 27, 2021

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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NOT FOR PUBLICATION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. 20193500438  
Insurer No. 9028069  
Gary M. Israel, Administrative Law Judge

**AWARD AFFIRMED**

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COUNSEL

Timothy Jones, Amado  
*In Propria Persona*

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

Ritsema Law P.C., Tempe  
By Judith Atkinson  
*Counsel for Respondents Employer and Insurer*

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**MEMORANDUM DECISION**

Presiding Judge Espinosa authored the decision of the Court, in which Vice Chief Judge Staring and Judge Eckerstrom concurred.

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ESPINOSA, Presiding Judge:

¶1 In this statutory special action, Timothy Jones challenges the order of the administrative law judge (ALJ) denying his claim for workers' compensation benefits. For the following reasons, we affirm.

**Factual and Procedural Background<sup>1</sup>**

¶2 In December 2019, Jones filed a workers' compensation claim alleging he had sustained a gradual use injury to his forearm and shoulder while working for Walmart. He claimed his injury began to develop in July 2019 and was caused by lifting heavy pallets and cardboard. Walmart, a self-insured employer, denied Jones's claim, and he requested a hearing before the Industrial Commission.

¶3 At the hearing, Jones testified he injured his arm over the course of three months and he first sought medical treatment about a month after it began to hurt. Jones stated that as a result of his injury, he wore an

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<sup>1</sup>Jones has submitted a disjointed handwritten narrative for his opening brief that fails to provide a coherent statement of facts or cite the record as required by Ariz. R. Civ. App. P. 13(a)(5). *See also* Ariz. R. P. Spec. Act. 10(k) (except as otherwise provided, Arizona Rules of Civil Appellate Procedure apply to review of Industrial Commission awards). We therefore glean the facts and procedural history of the case from Walmart's answering brief and the record before us.

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armband at work, received physical therapy, was administered at least one cortisone shot to the affected arm, and took an unpaid leave of absence from Walmart. Jones did not subpoena medical witnesses to testify at the hearing, nor did he introduce any medical records demonstrating that his work activities at Walmart caused his injuries.<sup>2</sup> During his testimony, Jones purported to read from a medical record stating that his injuries were work related, but he ultimately conceded that the document said no such thing. Additionally, Jones acknowledged he had unsuccessfully sought documentation establishing medical causation at least twice before he filed his claim or reported his injury to Walmart.

¶4 Walmart argued that Jones had failed to satisfy his burden of proof with respect to medical causation and raised the affirmative defense that Jones had failed “to forthwith report the alleged injury as required by A.R.S. § 23-908(E)” because he did not report his injury to Walmart until December 2019.

¶5 The ALJ denied Jones’s claim, finding that he had introduced “absolutely no medical evidence” to support his claim and had prejudiced Walmart by failing to “forthwith report his condition as a work-related accident.” Jones filed a request for review, and upon review, the ALJ affirmed the denial of benefits.<sup>3</sup> Jones then initiated this statutory special action. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(2), 23-948.

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<sup>2</sup>At the hearing, Jones discussed some medical paperwork, but he had not disclosed it to Walmart. And the day after the hearing, Jones submitted an untimely orthopedic record from October 26, 2020, which memorialized his complaint of shoulder pain associated with work. *See* A.A.C. R20-5-155(A) (medical reports must be filed with ALJ at least twenty-five days before first hearing). However, that record did not include an opinion as to medical causation.

<sup>3</sup>After the ALJ denied his claim but before the decision upon review was issued, Jones submitted a second orthopedic record, dated December 17, 2020, in which a doctor stated Jones’s arm injury was “work related” and Jones “required 6 months of treatment to include physical therapy and medications before he was able to return to work.” The submission of this record was untimely, *see* A.A.C. R20-5-155(A), and the ALJ correctly noted in its decision upon review that only “the record as it existed at the conclusion of the hearing” could be considered. *See* A.A.C. R20-5-159.

**Discussion**

¶6 As best we can discern from Jones's filings, he appears to challenge the ALJ's decision on both evidentiary and procedural grounds. Jones states that the hearing was "very intimidating" and he "never got to spend 3 minutes or even 2 explain[ing his] 9 month journey thr[o]u[gh] Walmart's leave of absence insurance company Sedwick and workmans comp[ensation]." Jones continues that he "even did 2 and 1/2 months of physical therapy 2 times a week" and that he "had to have medical signatures" for his leaves of absence. Jones asserts that the ALJ erred and that he "deserve[s] 6 months" of workers' compensation in the amount of "about 4800 dollars" because that is what would be "right and fair and just."

¶7 Jones's opening brief, such as it is, fails to even minimally comply with the applicable rules of procedure. An opening brief must include, among other things, a statement of the issues for review, the material facts, and properly developed arguments with citations to authority and the record. Ariz. R. Civ. App. P. 13(a); *see also* Ariz. R. P. Spec. Act. 10(k) (except as otherwise provided, Arizona Rules of Civil Appellate Procedure apply to review of Industrial Commission awards). Jones's filing lacks a lucid statement of the material facts, issues for review, citations to the record, citations to legal authority, and any coherent arguments addressing how the ALJ's decision was legally incorrect. Although appearing in propria persona, Jones 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). His arguments are therefore waived. *See Polanco v. Indus. Comm'n*, 214 Ariz. 489, n.2 (App. 2007) (arguments not properly developed waived on review).

¶8 Moreover, regardless of waiver, the ALJ's decision was supported by the record. *See Lovitch v. Indus. Comm'n*, 202 Ariz. 102, ¶ 16 (App. 2002) (when reviewing Industrial Commission decision, we view evidence in light most favorable to affirming award and will not disturb it if reasonably supported by evidence). To the extent Jones testified his injury was caused by work, his credibility was a matter for the ALJ's determination, not this court. *See Holding v. Indus. Comm'n*, 139 Ariz. 548, 551 (App. 1984). Dispositively, however, Jones failed to satisfy his burden of proof with respect to medical causation because he did not subpoena any medical experts or introduce any evidence of medical causation. *See Yates v. Indus. Comm'n*, 116 Ariz. 125, 127 (App. 1977) (party seeking workers'

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compensation must introduce competent medical evidence showing injury was causally related to an industrial incident unless medical causation would be apparent to a layperson).

¶9 Finally, Walmart established that Jones had failed to report his injury forthwith as required by statute. See § 23-908(E), (F) (failure to report work related injury to employer “forthwith” precludes compensation unless delay is justified); *Douglas Auto & Equip. v. Indus. Comm’n*, 202 Ariz. 345, ¶ 5 (2002) (prompt reporting of injury necessary to allow employer opportunity to investigate the circumstances of the alleged injury and prevent aggravation of the injury).

**Disposition**

¶10 For the foregoing reasons, the ALJ’s award denying workers’ compensation benefits to Jones is affirmed.