

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

SUNRENU SOLAR, LLC,
Petitioner Employer,

AUTO-OWNERS INSURANCE,
Petitioner Insurer,

v.

THE INDUSTRIAL COMMISSION OF ARIZONA,
Respondent,

FRANK BALTAZAR,
Respondent Employee.

No. 2 CA-IC 2021-0002
Filed September 22, 2021

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NOT FOR PUBLICATION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. 20192370015
Insurer No. 24500001322019
J. Matthew Powell, Administrative Law Judge

AWARD AFFIRMED

COUNSEL

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The Industrial Commission of Arizona, Phoenix
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By Adam P. Palmer
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MEMORANDUM DECISION

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

V Á S Q U E Z, Chief Judge:

¶1 In this statutory special action, petitioners SunRenu Solar, LLC and Auto-Owners Insurance (collectively, SunRenu) challenge the administrative law judge's (ALJ) award finding respondent Frank Baltazar sustained a compensable injury. SunRenu essentially argues there was insufficient evidence to support the award. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the ALJ's award. *Hackworth v. Indus. Comm'n*, 229 Ariz. 339, ¶ 2 (App. 2012). In May 2019, Baltazar sought medical attention in the emergency room for pain in his right shoulder, which he asserted he had sustained while working as a solar panel installer for SunRenu. In June and July 2019, Baltazar was seen by Dr. Verdugo, who ordered an MRI,¹ prescribed medications for pain, and referred him to an orthopedic surgeon. Baltazar was then seen by Dr. Heap, an orthopedic surgeon, who diagnosed him with significant bilateral rotator cuff tendonitis and treated him with a steroid injection in his right shoulder. In August 2019, Baltazar reported his shoulder and knee injuries to the Industrial Commission of Arizona (Commission). In November 2019, SunRenu denied his claim.

¹Magnetic resonance imaging.

¶3 Baltazar challenged the denial and requested a hearing with the Commission. After conducting evidentiary hearings, at which Baltazar represented himself, the ALJ found Baltazar did not prove a compensable left knee injury but did establish a compensable injury to his shoulders. SunRenu sought review of that decision, which the ALJ affirmed. SunRenu then filed this petition for special action, over which we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(2), 23-948, and Rule 10, Ariz. R. P. Spec. Act.

Discussion

¶4 SunRenu argues the ALJ's findings regarding Baltazar's work activities and Dr. Heap's opinions are unsupported "by any rational interpretation of the facts." Our review is limited to "determining whether or not the [ALJ] acted without or in excess of its power" and whether any findings of fact support the award. A.R.S. § 23-951(B). We defer to the ALJ's findings of fact but review questions of law de novo. *SCF Gen. Ins. Co. v. Indus. Comm'n*, 236 Ariz. 545, ¶ 2 (App. 2015). To establish a compensable workplace injury, the claimant must prove both legal and medical causation. See *DeSchaaf v. Indus. Comm'n*, 141 Ariz. 318, 320 (App. 1984). "Legal causation concerns whether the injury arose out of and in the course of the employment," while "medical causation ordinarily requires expert medical testimony to establish that the industrial accident caused the injury." *Id.* It is the ALJ's duty to "resolve all conflicts in the evidence, especially when the conflicts involve expert medical testimony." *Post v. Indus. Comm'n*, 160 Ariz. 4, 8 (1989). When the evidence is susceptible to conflicting inferences, the ALJ may decide which is more probably correct, and we will not disturb that finding unless it is wholly unreasonable. *Henderson-Jones v. Indus. Comm'n*, 233 Ariz. 188, ¶ 9 (App. 2013).

¶5 In this case, the ALJ found that Baltazar "worked as an installer for a solar panel company" and "performed repetitive overhead work installing panels." The ALJ further found that Baltazar "testified that during the 2-4 weeks preceding May 4, 2019, the repetitive overhead work was more intense and sustained than previously," and that he was a credible witness. The ALJ also determined that Dr. Heap's medical opinion regarding Baltazar's shoulder injuries was "most probably correct" and that Baltazar's "repetitive work in the weeks leading into May of 2019 contributed" to his shoulder injuries.

¶6 SunRenu argues the finding that Baltazar engaged in "repetitive overhead work" is unsupported by any rational interpretation of the evidence because there was no such testimony from Baltazar. It

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further contends Dr. Heap's medical opinion lacked foundation as he did not have a full or accurate history regarding Baltazar's work activity and relied on his credibility. Lastly, it maintains the ALJ should have found its medical expert's opinion more probably correct than Heap's because Heap "faltered back and forth" and failed to relate Baltazar's "hypothetical work activities to his shoulder conditions to a reasonable degree of medical probability."

¶7 The ALJ did not err in finding Baltazar engaged in repetitive overhead work. Baltazar testified that "[a] few weeks before March and April," he was "doing a lot of excavating and groundwork" when he injured his shoulders. Additionally, he testified his injury "was gradual over a month or two of running the equipment and working in the trenches." SunRenu argues this testimony was insufficient to support the ALJ's finding because it did not describe any "repetitive heavy lifting or prolonged overhead work." Later, on redirect after SunRenu asked Dr. Heap about how much overhead work Baltazar had done in his job, Baltazar stated:

I would just like to say that we hadn't discussed that. And there were days we were working overhead. It was not like we worked a few hours and then we got to break. We worked overhead. It was for two to three weeks straight. And we worked in trenches and it was overhead. I wasn't like on the ground working. It was a couple of weeks straight.

¶8 Following this statement, SunRenu objected, asserting Baltazar did not provide that additional information when he first testified. Although the ALJ overruled SunRenu's objection, the ALJ rephrased Baltazar's statements into questions for Dr. Heap. SunRenu claims Baltazar "misstated the facts" when he was essentially attempting to introduce new information during his questioning of Heap. To the extent SunRenu contends the ALJ erred by considering Baltazar's statement, we disagree. The ALJ "may conduct the hearing in any manner that will achieve substantial justice." A.R.S. § 23-941(F); *see also Gordon v. Indus. Comm'n*, 23 Ariz. App. 457, 460 (1975) (statute permits liberal application of common law and rules of evidence "so that the greatest amount of competent evidence would be available"); *Lugar v. Indus. Comm'n*, 9 Ariz. App. 44, 49 (1968) (procedure before Industrial Commission should be "less cumbersome and time consuming than formal court action").

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¶9 Furthermore, the ALJ stated it would determine if Baltazar's statement was supported by facts from previous testimony and the record. The record supports Baltazar's statement and the ALJ's consideration of it. Baltazar's injury report specifically describes his injury as resulting from "heavy lifting, reaching up and doing overhead repetitive work activi[ti]es." Although Dr. Heap testified he did not have anything in his records detailing Baltazar's work, he nevertheless stated those facts would affect his opinion. Heap testified an increased level of repetitive overhead work over a few weeks would "definitely relate to the problem." He added if Baltazar had sought treatment within a month or so, his injury was probably industrial. Baltazar confirmed that he had sought treatment ten days after his reported date of injury. Also, Dr. Verdugo's notes from June 20, 2019, describe his shoulder pain as "progressive over the past 2 months," and during a hearing, Baltazar testified his pain began in April when he was busiest and working long hours.

¶10 SunRenu cites *Desert Insulations, Inc. v. Indus. Comm'n*, 134 Ariz. 148, 151 (App. 1982), for the premise that an inaccurate factual background can undermine an ALJ's reliance on medical testimony. In *Desert Insulations*, this court determined that the ALJ had erred by relying on the opinion of the employee's attending physician about when the injury had become stationary because the opinion was both equivocal and not supported by the evidence. *Id.* at 149, 150-51. The doctor in that case testified the employee could not return to work after his injury, and the employee admitted he had in fact returned to work after his injury. *Id.* at 151. We concluded the ALJ had erred by basing his decision on the doctor's testimony without addressing the foundational problem. *Id.* There is no such problem in this case because such an inaccuracy does not exist. Dr. Heap testified that Baltazar had informed him he "did a lot of overhead repetitive lifting activities." And Heap's clinic notes provide additional evidentiary support, including multiple references to Baltazar's overhead activities – specifically that his "symptoms are worsened by any attempted overhead activities," that his work over the past several years included "reaching up and doing overhead repetitive activities," and that Baltazar's "significant overhead repetitive work" is "most likely directly related to his current complaints."

¶11 SunRenu nevertheless argues Dr. Heap "did not provide an opinion to a reasonable degree of medical probability that Baltazar's shoulder conditions were related to his work activities." It maintains Heap's "opinions are foundationally insufficient" because he relied "on Baltazar's credibility to establish medical causation and his opinions were not based on findings of fact." But "magic words" are not required to prove

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medical causation. *Skyview Cooling Co. v. Indus. Comm'n*, 142 Ariz. 554, 559 (App. 1984). SunRenu's argument essentially asks us to reweigh the evidence, which we will not do. As stated above, we will not "disturb the ALJ's resolution of medical conflicts unless it is 'wholly unreasonable.'" *Sw. Desert Images, LLC v. Indus. Comm'n*, 236 Ariz. 189, ¶ 13 (App. 2014) (quoting *Stainless Specialty Mfg. Co. v. Indus. Comm'n*, 144 Ariz. 12, 19 (1985)). In its findings, the ALJ noted Heap's opinion was dependent on the accuracy of Baltazar's assertions regarding his work history and treatment timeline. However, it is entirely appropriate for a doctor's opinion to be based in part on the history given by a claimant, and we found nothing in the record to suggest that Baltazar lied or provided inaccurate information to Heap. *See, e.g., Royal Globe Ins. Co. v. Indus. Comm'n*, 20 Ariz. App. 432, 434 (1973).

¶12 To the extent SunRenu claims Dr. Heap's opinions were uncertain, we have previously stated that a doctor's opinion need not be absolute and that "[q]ualifications of medical opinions do not necessarily make them uncertain or equivocal." *Harbor Ins. Co. v. Indus. Comm'n*, 25 Ariz. App. 610, 612 (1976). When doctors do not use the "magic words" in expressing their opinions, we "thoroughly and carefully review such testimony" to determine if it supports the claimant's burden of establishing substantial causation. *Skyview Cooling Co.*, 142 Ariz. at 559. While Heap at one point suggested that the injury was "maybe related" to Baltazar's work and that additional specificity about the amount of Baltazar's overhead work activities could change his opinion, he also testified that "the work definitely contributed to" Baltazar's injuries as repetitive activity with a tight shoulder like his "commonly leads to chronic tendonitis bursitis symptoms." Thus, Heap's testimony supports the conclusion that Baltazar's repetitive overhead work activities substantially contributed to his shoulder injuries and it was not wholly unreasonable for the ALJ to find Heap's medical opinion most probably correct.

Disposition

¶13 For the foregoing reasons, we affirm the ALJ's award.