IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

CARLOS L. CULLENS,
Petitioner,

v.

THE INDUSTRIAL COMMISSION OF ARIZONA,
Respondent,

TUCSON UNIFIED SCHOOL DISTRICT NO. 1,
Respondent Employer,

AZ SCHOOL ALLIANCE FOR WORKERS COMPENSATION POOL,
Respondent Insurer.

No. 2 CA-IC 2021-0007
Filed August 25, 2022

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NOT FOR PUBLICATION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. 20181150550
Insurer No. 2017004569A
Robert E. Trop, Administrative Law Judge

AWARD AFFIRMED

COUNSEL

Carlos L. Cullens, Tucson
In Propria Persona

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

Moeller Law Office, Tucson
By M. Ted Moeller
Counsel for Respondents Employer and Insurer

MEMORANDUM DECISION

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

B R E A R C L I F F E, Judge:

¶1 Petitioner Carlos Cullens challenges the dismissal of his claims for compensation for injuries that he alleged had occurred while he was employed with respondent employer Tucson Unified School District (TUSD). For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to sustaining the award. *Perry v. Indus. Comm'n*, 112 Ariz. 397, 398 (1975). Cullens alleged, among other things, that he had sustained injuries between August 4 and September 2, 2016, while working for TUSD. His claims were denied, and, in May 2017, the administrative law judge (ALJ) found his injuries to be non-compensable because he had not been injured while working for TUSD. In this decision upon hearing and award, the ALJ noted that if a party was dissatisfied with the decision, he could "file a written request for review of the same with the Administrative Law Judge Division of the Industrial Commission within **THIRTY (30) DAYS** after the mailing of this Award . . . . Unless such written request is made within the time provided, this award is final."

¶3 Cullens did not request review. Instead, in July 2017, he requested a hearing to protest the denial of his claim. After Cullens failed to appear at a hearing scheduled in November 2017, the ALJ denied his request for a hearing and dismissed the matter, stating that his claim was "really an attempt to relitigate a matter which has already been litigated."

¶4 Cullens then filed two worker's reports of injury in January and April 2021, alleging he had sustained injuries at work on September 2, 2016, November 8, 2017, and September 1, 2016. He also requested a "new hearing" in April 2021, and, in his request, he asserted that his claims in 2016 had been "dropped." In October 2021, the ALJ dismissed Cullens' request for hearing, finding that Cullens was "seek[ing] to once again litigate the non-compensable claim from 2016" and that "[t]he claim at issue was 'actually decided' and therefore claim preclusion applies to bar this proceeding." Cullens then requested review of the October 2021 dismissal, and the ALJ affirmed the findings and the dismissal. This special action followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(2), 23-951(A), and Rule 10(a), Ariz. R. P. Spec. Act.

Analysis

¶5 On review, Cullens requests that we reverse affirmance of the dismissal of his claims and remand. He challenges the ALJ's decision that Cullens' "level one traumatic hernia is not compensable."[1] TUSD argues in its answering brief that Cullens' claims were properly precluded because they had been litigated and decided in May 2017 and that decision had become final thirty days after it was issued.[2]

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[1]The decision being challenged did not determine that Cullens' injuries were non-compensable. Rather, the ALJ dismissed Cullens' claims in October 2021, finding they were precluded because the issues had already been decided in May 2017, and then he affirmed the dismissal later that same month. Therefore, we presume Cullens is challenging the October 2021 dismissal of his claims. But, even if we were to consider this a challenge to the other rulings below, we will not reweigh the evidence, *Post v. Indus. Comm'n*, 160 Ariz. 4, 7 (1989) ("We must refrain from taking the factfinder's role, especially in industrial commission cases."), and we find no legal error.

[2]TUSD also argues that Cullens' opening brief largely did not comply with the Arizona Rules of Civil Appellate Procedure. We agree. "We hold unrepresented litigants in Arizona to the same standards as attorneys." *Flynn v. Campbell*, 243 Ariz. 76, ¶ 24 (2017). Cullens' opening brief does not comply with the length allotment in Rule 14(a)(1), Ariz. R. Civ. App. P., nor did it include a certificate of compliance or a certificate of service, violating Rules 14(a)(5) and 4(g) respectively. Cullens also included new evidence in his opening brief, which we cannot consider because it was not presented below, *see Best v. Edwards*, 217 Ariz. 497, n.1 (App. 2008), and he did not include proper citations to the record, as required by Rule

¶6 Claim preclusion occurs "when a party has brought an action and a final, valid judgment is entered after adjudication or default." *Circle K Corp. v. Indus. Comm'n*, 179 Ariz. 422, 425 (App. 1993). Issue preclusion results when a party had the opportunity to, and did, litigate the issue, and the issue was essential to the final judgment. *Id.* The issue of preclusion in a workers' compensation claim is a mixed question of fact and law; therefore, "we apply a deferential standard of review to the determination of disputed facts supported by reasonable evidence, and apply an independent standard of review to the ultimate determination of whether these facts trigger preclusion." *Miller v. Indus. Comm'n*, 240 Ariz. 257, ¶ 9 (App. 2016).

¶7 In the award for which Cullens seeks review—the October 12, 2021 decision—the ALJ dismissed Cullens' request for hearing on the September 2, 2016 claim. In its decision, the ALJ outlined that Cullens' claim for injuries from September 2, 2016 had not been accepted and that the denial had been litigated, resulting in the May 16, 2017 decision finding the claim to be non-compensable. Cullens, the decision noted, "attempted to relitigate" the claim resulting in the May 16, 2017 decision, "again without success when it was denied a second time by the [November 22, 2017] Decision." The ALJ concluded by stating that because Cullens was "for a third time . . . seek[ing] to relitigate the claim from September 2, 2016," and the "claim at issue was 'actually decided,'" his claim was precluded.

¶8 We agree with TUSD and the ALJ that Cullens' claims were properly precluded below. Claim preclusion applies here because the same claims Cullens has attempted to relitigate—the compensability of his injuries that allegedly occurred on September 2, 2016—were decided in May 2017. Cullens did not request review of that decision, and, therefore, it became final thirty days after entry. *See* A.R.S. § 23-942(D). Cullens instead requested a hearing, which he did not attend and which the ALJ ultimately found to be "an attempt to relitigate a matter which has already been litigated." Additionally, although Cullens' second and third claims alleged different injury dates—November 8, 2017 and September 1, 2016—that does not change the preclusive effect of the May 2017 decision. As to the November 2017 date, Cullens acknowledges in his opening brief that he

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13(a)(5). Despite these and other violations of the Rules of Civil Appellate Procedure, in our discretion, we do not dismiss Cullens' special action and choose to address the procedural issue raised by TUSD. *See* Ariz. R. Civ. App. P. 25 ("appellate court . . . *may* impose sanctions . . . for a violation of these Rules") (emphasis added); *see also Lederman v. Phelps Dodge Corp.*, 19 Ariz. App. 107, 108 (1973).

was not employed with TUSD at that time, making that injury date irrelevant. And, regarding the September 1, 2016 injury date, Cullens still alleged the same injuries as those he had alleged in his previous claim, which were determined in the final May 2017 decision to not have occurred while he was working for TUSD. Furthermore, if he had been injured on September 1, 2016, he could have made such a claim when he first litigated the issue, but he did not, and therefore it is precluded. *See Circle K Corp.*, 179 Ariz. at 425 (claim preclusion does not require that the claim have actually been litigated); *cf. Aldrich v. Indus. Comm'n*, 176 Ariz. 301, 306 (App. 1993) ("Claim preclusion . . . applies to issues that could have been litigated."). Because Cullens is merely reasserting concluded and precluded claims, the ALJ properly dismissed them.

¶9 Issue preclusion also applies to Cullens' claims. Cullens asserts in his opening brief that "once this case is heard for the second time or 3rd time or 4th time you will see this is not the exact issues as [the] first case." We disagree. First, we will not reweigh evidence on review. *See Castro v. Ballesteros-Suarez*, 222 Ariz. 48, ¶ 11 (App. 2009) ("We will not reweigh the evidence or substitute our evaluation of the facts."). And second, based on the record, we do not see that he has raised any issues different from those originally decided in May 2017. Each of Cullens' claims allege the same injuries: a hernia and a back injury. He even admits in his opening brief that "[t]hese are all identical issues from (2017)" and that he is refiling his claim because he disagrees with the May 2017 decision and wants to submit new evidence. We do not consider new evidence on review, *Kessen v. Stewart*, 195 Ariz. 488, ¶ 26 (App. 1999), and agree with TUSD that Cullens was properly precluded from relitigating matters already resolved.

Disposition

¶10 For the foregoing reasons, we affirm the dismissal of Cullens' claims.