IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

CITY OF TUCSON,
Petitioner Employer,

TRISTAR RISK MANAGEMENT,
Petitioner Carrier,

v.

THE INDUSTRIAL COMMISSION OF ARIZONA,
Respondent,

CHRISTOPHER MERCER,
Respondent Employee.

No. 2 CA-IC 2024-0003
Filed January 27, 2025

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NOT FOR PUBLICATION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. 21(c), 26(a).

Special Action - Industrial Commission
ICA Claim No. 20222110001
Carrier Claim No. 221054594
Cathleen Fuller, Administrative Law Judge

AWARD AFFIRMED

COUNSEL

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MEMORANDUM DECISION

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

K E L L Y, Presiding Judge:

¶1 In this statutory special action, the City of Tucson and its insurance carrier, Tristar Risk Management (jointly, "the City") challenge the decision upon hearing and decision upon review by the administrative law judge (ALJ) affirming the hearing, findings and award for Christopher Mercer's compensable Post-Traumatic Stress Disorder (PTSD) injury claim. On review, the City argues the ALJ erred in determining that Mercer timely filed his workers' compensation claim. 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 and in doing so, defer to its factual findings. *See Hackworth v. Indus. Comm'n*, 229 Ariz. 339, ¶ 2 (App. 2012). Mercer began his career as a paramedic with the Tucson Fire Department in 2008. In 2017, Mercer started to have "issues regulating [his] temper, getting angry, [and] getting frustrated." Mercer's captain asked him to see a psychiatrist, and he went

to Dr. Patricia Haynes, who treated him for his mental health issues. He saw Dr. Haynes approximately six times between 2017 and 2021. Dr. Haynes diagnosed him with alcohol use disorder and told him that he was "emotionally charged" and needed to develop more methods to relax. In 2020, Mercer was relocated to a station with less frequent "high-acuity" calls in an effort to "try to slow down." Mercer also saw a nurse practitioner in 2021 who prescribed him medication typically prescribed to treat depression and anxiety.

¶3 In April 2022, Mercer attended a music festival. While there, he learned that another attendee had been severely injured after falling head-first to the ground from a height of fifteen feet. Mercer responded to provide medical assistance and found the woman not moving. He performed a trauma assessment on her, took her vitals, and "log-rolled her onto her back to open up her airway" while people were yelling at him to stop "touch[ing] her" and that they would sue him. When paramedics arrived to the scene, Mercer gave them a report and left. He then returned to his trailer, got into a fight with his wife, and began drinking alcohol. Mercer later "started breaking down crying," and entered "a very uncontrolled emotional state." He called a friend to tell him that "something [was] wrong with [him]" and that he was "getting suicidal." Mercer laid down on the couch, "put a 9 millimeter to [his] head and pulled the trigger." He regained consciousness approximately fifteen minutes later, and informed his wife of his suicide attempt. She contacted police, and Mercer was later taken to a hospital.

¶4 Mercer was admitted to an in-patient treatment facility with a "first-responder program." He spent twenty-eight days at the facility, where he was diagnosed for the first time with PTSD, and was treated for PTSD, depression, and anxiety. After he was released, he sought treatment in Tucson, and filed an industrial claim on July 30, 2022. He received treatment regularly before he returned to work in April 2023.

¶5 The City denied Mercer's claim and raised as an affirmative defense that it was not timely filed. Mercer challenged the denial and requested a hearing. Following a three-day hearing, the ALJ found Mercer had timely filed his claim, it was compensable, and he was entitled to an award. The City sought review of the ALJ's award. The ALJ affirmed the award, and the City filed this petition for special action from that decision. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(2), 23-948, and Rules 21(c) and 26(a), Ariz. R. P. Spec. Act.

Discussion

¶6 The City concedes on appeal, as it did below, that Mercer suffered a compensable injury. However, the City contends that "Mercer's industrial injury accrued more than a year before he filed his claim with the Industrial Commission," and as a result, the ALJ lacked jurisdiction to hear it. Specifically, the City asserts that "[u]ndisputed medical testimony established that [Mercer] had a diagnosable, compensable mental injury prior to July 30, 2021." Our review on appeal is limited to whether the record supports the ALJ's finding as to when the injury manifested and the statute of limitations began to run. *See Pitts v. Indus. Comm'n*, 246 Ariz. 334, ¶ 14 (App. 2019). "We will affirm so long as reasonable evidence supports the award, viewing the record in the light most favorable to the ALJ's decision." *Id.*

¶7 "A workers' compensation claim must be filed 'within one year after the injury occurred or the right thereto accrued.'" *Id.* ¶ 12 (quoting A.R.S. § 23-1061(A)). "The time for filing a compensation claim begins to run when the injury becomes manifest or when the claimant knows or in the exercise of reasonable diligence should know that the claimant has sustained a compensable injury." § 23-1061(A). A compensable injury manifests "when the injured employee recognizes the nature of his injury," the seriousness of it, and "the probable causal relationship between the injury and the employment." *Pitts*, 246 Ariz. 334, ¶ 12. "This rule allows compensation for an injury that manifests and becomes compensable sometime after the triggering event." *Id.* The party opposing the timeliness of the filing of the claim under § 23-1061(A) must raise the issue as an affirmative defense, *Allen v. Indus. Comm'n*, 152 Ariz. 405, 412 (1987), and that party bears the burden of production of evidence to support this defense, *Pitts*, 246 Ariz. 334, ¶ 13.

¶8 The City agreed that the only issue for hearing was whether Mercer's claim was timely filed. During the hearing, the ALJ heard testimony from Mercer, Dr. Joel Parker, and Dr. Stephen Streitfeld. Mercer testified that during his time as a paramedic he handled difficult calls. He regularly responded to severe trauma calls involving automobile collisions, gunshot victims, and pediatric injuries. Mercer admitted that he had been "having extreme mental health issues due to [his] job and due to the constant workload" between 2018 and 2022. He testified that from 2018 to 2020 he had a hard time regulating his emotions, "was easily agitated," not sleeping well, and argumentative. He further acknowledged that, during this same period, alcohol consumption had become a "prominent part of

[his] life," and that "[t]here would be periods where [he would] drink a lot" as a "defense mechanism." He testified that he knew he was having work-related stress; however, he "had not been diagnosed with anything so [he] didn't think at that time there was something wrong with [his] brain." He explained that he filed a workers' compensation claim in July 2022 because that was when he was first diagnosed with work-related PTSD.

¶9 Dr. Parker, a psychiatrist hired by the City, testified that he examined Mercer in March 2023. During that examination, Mercer recounted the traumatic experiences he had from being a paramedic, and said that he had some ongoing symptoms prior to 2022, but the "big event" was the April 2022 suicide attempt. Parker testified that Mercer currently suffered from PTSD, but "he's had an evolving PTSD for a number of years." Parker conceded that Mercer had never been actually diagnosed with the condition until he was admitted to an inpatient treatment facility following the suicide attempt in April 2022, but opined that he "had a trauma and stressor-related disorder as evidenced by the keywords in Dr. Haynes' report" as early as 2017 or 2018. Dr. Parker testified that the only "industrial stressor" Mercer had was PTSD, and that the other psychiatric conditions Mercer had been diagnosed with, alcohol use disorder and bipolar disorder type two, were non-industrial diagnoses.

¶10 Dr. Streitfeld testified that he treated Mercer from July 2022 through May 2023 and agreed with Dr. Parker that, based on his own review of the records, Mercer had not been diagnosed with PTSD by Dr. Haynes or at any time prior to 2022. However, he agreed that Mercer "probably had PTSD going back to when he saw Dr. Haynes in 2017."

¶11 In its written decision, the ALJ summarized the testimony and evidence presented at the hearing, acknowledged the complexity of a PTSD diagnosis, and concluded it was reasonable that Mercer "would have experienced an increase in the nature and severity of symptoms over many years, making it even more difficult to determine when precisely he should have known he had sustained a compensable psychological injury from work." The ALJ determined that he was never "officially diagnosed with PTSD" until April 2022, and there was "insufficient evidence to find that his symptoms had become serious and acute enough to meet the diagnosis for PTSD" before then. The ALJ further explained that April 2022 was also the point at which Mercer first required inpatient psychiatric treatment and first became unable to return to work. Accordingly, the ALJ determined that Mercer's July 2022 ICA claim was timely.

¶12 The City argues on appeal that the ALJ did not properly apply the law in concluding that "Mercer's industrial injury did not accrue until after July 30, 2021." The City relies on *Pitts*, which it contends "enunciated a two-part test for determining when a mental injury accrues." But the City misreads *Pitts* and misapplies its holding.

¶13 In *Pitts*, the police officer claimant was on duty in May 2013 in his patrol vehicle with his fiancée, who was participating in a ride-along, when he encountered an armed gunman outside a hospital. 246 Ariz. 334, ¶ 2. The gunman opened fire on Pitts and his fiancée, shattering the windshield of his vehicle, and continued to fire at his patrol car. *Id.* Pitts returned fire and shot the man in the shoulder, ending the gunfight. *Id.* Pitts took three weeks off after the incident, and was required to see a police department psychologist who told him to "get back on that horse." *Id.* ¶ 3. He returned to work without seeking further treatment. *Id.*

¶14 It was not until after the gunman was convicted at trial and then received a reduced sentence, that Pitts sought treatment with his primary care doctor in December 2015 to obtain sleep medication due to worsening depression, panic and anxiety attacks, insomnia and other symptoms. *Id.* ¶¶ 4-6. The doctor's note from that visit stated, "[p]robable PTSD" and opined that Pitts see a psychologist for evaluation. *Id.* ¶ 6. He did, and was diagnosed in January 2016 with "dissociative complex PTSD related to the shooting incident." *Id.* ¶ 7. Pitts filed his industrial claim for PTSD in October 2016, which the carrier denied on the basis that it was not timely filed, and the ALJ held a hearing limited to the issue of timeliness at which only Pitts and his fiancée testified. *Id.* ¶ 8. The ALJ determined Pitts' claim was untimely and that the ICA thus lacked jurisdiction. *Id.* ¶ 10.

¶15 On special action review, this court applied the legal test for determining when a compensable injury becomes manifest and the one-year period begins to run: "when the injured employee recognizes the nature of his injury, the seriousness of the injury, and the probable causal relationship between the injury and the employment." *Id.* ¶ 12. Because the party opposing the claim based on timeliness has the burden of production, and neither the employer nor the carrier offered the necessary medical evidence "to allow the ALJ to resolve when the injury became compensable or when Pitts knew or should have known that his injury had become acute enough to constitute a compensable claim," we concluded the ALJ's finding of untimeliness was not supported by the record and therefore set it aside. *Id.* ¶¶ 20, 22-23. We additionally explained that "due to the complex nature of a PTSD diagnosis, expert testimony is generally

required to assess when such a diagnosis could have been made," and no expert testimony was presented to support the conclusion that Pitts could have been diagnosed earlier than January 2016. *Id.* ¶ 21.

¶16 The City interprets this language to mean that the party opposing a claim as to timeliness first need only produce evidence that the condition "had progressed to the point that a diagnosis would have been possible" more than a year before the worker filed a claim. This means, according to the City, that a determination must be made as to whether the condition was *diagnosable* at an earlier time. And because the City contends it produced expert testimony that Mercer's PTSD was diagnosable prior to July 2021, it has satisfied some portion of the test for the accrual of mental injuries. Not so. The City must produce evidence as to "when the injured employee recognizes the nature of his injury, the seriousness of the injury, and the probable causal relationship between the injury and the employment." *Id.* ¶ 12.

¶17 Whether the condition had actually been diagnosed, or was merely diagnosable, is not dispositive. Certainly, the moment when the claimant receives a diagnosis from a healthcare provider bears on, at least, the first two factors, but the focus remains on what the claimant knew or should have known, not what the medical providers knew or should have known. As such, the City's argument on appeal that undisputed medical testimony established Mercer had a "diagnosable, compensable mental injury" more than a year before he filed his industrial claim places too much emphasis on conclusions reached by medical experts, in hindsight, which do not establish what Mercer himself knew or should have known prior to 2021.

¶18 The relevant inquiry is whether the evidence presented at the hearing demonstrated Mercer recognized the nature of his injury, its seriousness, and its probable causal relationship to his employment more than a year before he filed his claim. *See id.* ¶ 12. The City contends it did, and argues that "[n]o reasonable interpretation of the record supports a finding that Mercer did not understand the severity of his condition, its need for treatment, and its relation to his employment until a year before he filed" his claim. The City points to Mercer's treatment with Dr. Haynes in 2017 and asserts that "[s]eeking out and receiving this treatment is per se proof that [Mercer] was aware of his condition and his need for treatment" long before 2022. The City thus asserts that the ALJ erred "by finding that Mercer could not have recognized the severity of his injury and his need for treatment before receiving a formal diagnosis."

¶19 In *Pitts*, we acknowledged that, "In contrast to many physical injuries where a diagnosis is immediate and obvious, the emergence of a mental health injury is difficult to pinpoint." 246 Ariz. 334, ¶ 15. "To complicate the issue further, the concept of 'delayed expression' recognizes that while some symptoms immediately appear, there may be a delay—spanning months or even years—in meeting full criteria for a PTSD diagnosis." *Id*. ¶ 18 (quoting Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 274, 276 (5th ed. 2013)). Thus, the ALJ could readily conclude that the fact Mercer suffered from some symptoms prior to July 2021 did not establish that he fully understood the nature and seriousness of his work-related injury at that time. That is particularly so given the fact that he was not diagnosed with any trauma or stressor-related disorder until 2022, but was rather diagnosed with alcohol use disorder, a non-industrial condition.

¶20 The ALJ noted that Mercer's diagnosis was "based on not just one traumatic event but his repetitive exposure to traumatic events." Thus, the ALJ concluded, it was therefore "reasonable that Mr. Mercer would have experienced an increase in the nature and severity of symptoms over many years," making it even more challenging for him to have known when "he had sustained a compensable psychological injury from work." *See id.* ¶ 19. This conclusion is supported by the evidence. Mercer testified at hearing, "I knew I was having work-related stress, but I had not been diagnosed with anything so I didn't think at that time that there was something wrong with my brain. I knew it was just stressed out. I did not know I had any PTSD, severe depression, anxiety, or anything of that. I just knew I was stressed out and not acting in ways that I wanted to act."[1] *See*

[1]The City argues Mercer changed his testimony on this issue after his deposition, wherein he stated, "I knew I was having issues. And I knew there was something wrong with my brain. There was something going on, but nobody wanted to take the time to get me an official diagnosis or get the help I needed." The City additionally contends Mercer's pre-litigation medical records reflect his own statements that he was diagnosed with PTSD before 2022, which Mercer disputed. Mercer was cross-examined on these issues during the hearing, and the ALJ's decision was based on "considering all evidence" and "upon the resolution of any conflicts in the evidence." Because the ALJ is the sole judge of witness credibility and resolves all conflicts in the evidence, we defer to its factual findings as to Mercer's credibility. *See Ibarra v. Indus. Comm'n*, 245 Ariz. 171, ¶ 12 (App. 2018).

Henry v. Indus. Comm'n, 157 Ariz. 67, 69-70 (1988) ("The fact that claimant sought medical care for his nervousness or jumpiness as early as 1962 may indicate his knowledge of a problem, but not knowledge of a medical condition unknown at the time of the injury.").

¶21 Additionally, the ALJ noted that in 2017, Dr. Haynes recommended a "meditation app" to help Mercer meditate and provide breathing techniques. She also made no recommendations for any further mental health care. These factors weigh in favor of the ALJ's conclusion that the evidence did not prove Mercer knew or should have known the nature and seriousness of his injury based on his treatment with Dr. Haynes.

¶22 Moreover, the ALJ expressly "considered and rejected Dr. Streitfeld's opinion that Mr. Mercer probably met the criteria for PTSD in 2017 when he was seeing Dr. Haynes because that opinion was inconsistent with the evidence that he did *not* meet the criteria for a PTSD diagnosis at that time." The ALJ further concluded that "Dr. Parker's testimony actually supports that PTSD was *not* diagnosable in 2017 because he opined that Mr. Mercer could have been diagnosed with a trauma and stressor disorder at that time, not PTSD." The ALJ reasoned that while both experts "opined that Mr. Mercer probably had PTSD in 2017," they did not address "that Dr. Haynes administered a PTSD checklist" in which Mercer "did not meet the criteria for the diagnosis at that time."

¶23 Viewing the record in the light most favorable to the ALJ's decision, reasonable evidence supports its conclusion as to when Mercer became aware of the nature and seriousness of his injury and its connection to his employment. *See Pitts*, 246 Ariz. 334, ¶ 12. The ALJ did not err in weighing the doctors' testimony in conjunction with the other evidence presented and concluding that the City failed to meet its burden of presenting evidence that Mercer knew or should have known that he had a compensable injury more than one year prior to filing his claim. *See id.* ¶¶ 12, 22*; see also Henry*, 157 Ariz. at 69-70 (concluding police officer's claim filed twenty-four years after traumatic event was timely when PTSD "was not diagnosable at the time he first sought treatment").[2]

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[2]We reject the City's additional argument that "the ALJ's finding that up to all of Mercer's 'symptoms and need for treatment before 2022 was likely related to bipolar disorder,' is [not] supported by medical testimony." The ALJ acknowledged in a footnote that it could "reasonably infer that some of" Mercer's symptoms and need for treatment were likely related to

Disposition

¶24 The ICA's decision upon review affirming the ALJ's award is affirmed.

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his bipolar diagnosis, which was "preexisting and not related to work." The ALJ did not make its decision based on this inference; therefore, we find no error.