

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK
SEP 20 2010
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

RAUL M. LOPEZ,)
)
Petitioner Employee,)
)
v.)
)
THE INDUSTRIAL COMMISSION)
OF ARIZONA,)
)
Respondent,)
)
US CARPENTRY,)
)
Respondent Employer,)
)
AMERICAN HOME ASSURANCE CO.,)
)
Respondent Insurer.)
_____)

2 CA-IC 2010-0005
DEPARTMENT B

MEMORANDUM DECISION
Not for Publication
Rule 28, Rules of Civil
Appellate Procedure

SPECIAL ACTION – INDUSTRIAL COMMISSION

ICA Claim No. 20072-530069

Insurer No. 710 459 282

Thomas A. Ireson, Administrative Law Judge
LuAnn Haley, Administrative Law Judge

AWARD AFFIRMED

Raul Lopez

Tucson
In Propria Persona

The Industrial Commission of Arizona
By Andrew F. Wade

Phoenix
Attorney for Respondent

Jardine, Baker, Hickman & Houston
By Scott H. Houston

Phoenix
Attorneys for Respondents
Employer and Insurer

V Á S Q U E Z, Presiding Judge.

¶1 In this statutory special action, petitioner Raul Lopez challenges the ruling of the Administrative Law Judge (ALJ) that Lopez’s claim for workers’ compensation benefits was noncompensable because his back injury did not arise out of and in the course of employment. For the reasons stated below, we affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to upholding the Industrial Commission’s award. *Polanco v. Indus. Comm’n*, 214 Ariz. 489, ¶ 2, 154 P.3d 391, 392-93 (App. 2007). While employed with US Carpentry, Raul Lopez injured his right knee in a work-related accident on July 23, 2007. On August 22, 2007, he was descending some stairs when the same knee “gave out” and he stumbled. Lopez then reported the knee injury and sought medical attention. On October 4, 2007, after several doctor visits, Lopez attended a physical therapy appointment, at which he first reported that he suffered back pain as a result of the initial knee injury. In December 2007, the respondent insurer issued a notice of claim status denying Lopez’s claim.

¶3 Lopez filed a request for hearing on April 16, 2008, and subsequently underwent an independent medical examination by Dr. Grimes, a board-certified orthopedic surgeon. Dr. Grimes reported that Lopez’s back was stationary, but his right knee required further treatment for a meniscal tear. After a hearing, the ALJ found Lopez’s knee injury compensable and ordered temporary disability benefits from July 23, 2007, until the knee condition became medically stationary. On December 11, 2008, Lopez filed a second request for a hearing, stating that he was requesting treatment for both his knee and back. After a second hearing conducted over three separate dates, the ALJ concluded Lopez’s back injury was not work related and thus not compensable. The ALJ affirmed her decision on review, and this statutory special action followed. We have jurisdiction pursuant to A.R.S. § 23-951 and Rule 10, Ariz. R. P. Spec. Actions.

Standard of Review

¶4 “We deferentially review the ALJ’s factual findings but independently review [her] legal conclusions.” *Grammatico v. Indus. Comm’n*, 208 Ariz. 10, ¶ 6, 90 P.3d 211, 213 (App. 2004). The ALJ determines witness credibility, *Royal Globe Ins. Co. v. Indus. Comm’n*, 20 Ariz. App. 432, 434, 513 P.2d 970, 972 (1973), and resolves conflicts in the evidence, *Johnson-Manley Lumber v. Indus. Comm’n*, 159 Ariz. 10, 13, 764 P.2d 745, 748 (App. 1988). “When more than one inference may be drawn, the [ALJ] may choose either, and we will not reject that choice unless it is wholly unreasonable.” *Id.* The petitioner has the burden of proving that he has a compensable claim. *LaRue v. Indus. Comm’n*, 16 Ariz. App. 482, 483, 494 P.2d 382, 383 (1972).

Discussion

¶5 Preliminarily, Lopez's opening brief does not comply with Rule 13(a), Ariz. R. Civ. App. P., or Rule 10(k), Ariz. R. P. Spec. Actions. It contains no table of contents, table of citations, statement of the issues presented for review, statement of facts with appropriate references to the record, or argument with citations to authorities; nor does it articulate a standard of review. Lopez's failure to comply with those rules would justify our summary dismissal of his petition for special action review. *See In re \$26,980.00 U.S. Currency*, 199 Ariz. 291, ¶ 28, 18 P.3d 85, 93 (App. 2000) (court does not consider bare assertion offered without elaboration or citation to legal authority); *Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, ¶ 50, 977 P.2d 807, 815 (App. 1998) (same); *Allen v. Chon-Lopez*, 214 Ariz. 361, n.1, 153 P.3d 382, 384 n.1 (App. 2007) (statement of facts disregarded for failure to comply with Rule 7(e), Ariz. R. P. Spec. Actions); *see also* Ariz. R. P. Spec. Actions 10(k) (Arizona Rules of Civil Appellate Procedure apply to special action review of industrial commission awards). And, even though Lopez is a nonlawyer representing himself, he is held to the same standards as a qualified attorney. *See Old Pueblo Plastic Surgery, P.C. v. Fields*, 146 Ariz. 178, 179, 704 P.2d 819, 820 (App. 1985). Nonetheless, because we prefer to resolve cases on their merits, *Clemens v. Clark*, 101 Ariz. 413, 414, 420 P.2d 284, 285 (1966), and because US Carpentry has provided us useful guidance in its response, we will attempt to discern and address the substance of Lopez's petition.

¶6 Lopez contends the ALJ erred in finding his back condition was stationary. However, he mischaracterizes the ALJ's ruling. In the decision on review, the ALJ concluded Lopez's back pain was a degenerative condition and not caused by either of the workplace accidents. She did not, as Lopez suggests, base her decision on a finding that his back condition had stabilized.

¶7 Lopez also argues his "knee problem had a lot to do with [his] back injury," which "is getting worse." And he asserts that, "if [his] back isn't taken care of[, he is] not going to progress with [his] knee treatment." To the extent he is arguing the ALJ erred in ruling his back condition was not work related, the record does not support this contention. "To receive workers' compensation benefits, an injured employee must demonstrate both legal and medical causation." *Grammatico*, 211 Ariz. 67, ¶ 19, 117 P.3d at 790. Legal causation is established where the employee suffered an injury that arose out of and in the course of employment. *Id.* "Medical causation, in contrast, is established by showing that the accident caused the injury." *Id.* ¶ 20; *see* A.R.S. § 23-1021(A).

¶8 The ALJ heard testimony from two medical experts, Drs. Dzioba and Beghin, who agreed that Lopez had degenerative arthritis in his lower back. The doctors disagreed, however, about the cause of Lopez's back condition. Dr. Beghin testified the workplace accidents could not have caused the back condition because Lopez did not report back pain to any physician until several weeks after the accidents despite having had "opportunities to report lower back pain on multiple occasions." Although Dr.

Dzioba testified the degenerative arthritis could have been triggered by the accidents, he conceded he would have expected Lopez's back pain to begin within days or at most a week of the accidents.

¶9 The ALJ resolved the conflicting medical testimony by accepting “the opinion of Dr. Beghin . . . as most probably correct.” Based on Beghin's testimony and Lopez's “failure to express low back symptoms from either work event to any medical provider until . . . several months after the injury,” the ALJ concluded that Lopez had not sustained a work-related injury to his lower back when he injured his right knee. “It is the ALJ's responsibility to resolve conflicts in the medical evidence, and we will not disturb that resolution unless it is ‘wholly unreasonable.’” *Gamez v. Indus. Comm'n*, 213 Ariz. 314, ¶ 15, 141 P.3d 794, 796 (App. 2006), quoting *Ortega v. Indus. Comm'n*, 121 Ariz. 554, 557, 592 P.2d 388, 391 (App. 1979). Because the ALJ's decision is supported by the evidence, we affirm the award.

¶10 Lopez maintains, however, that he still needs surgery on his back and treatment for his knee. In support of this argument, he relies on statements from a physical therapist that were not admitted at the hearing and on additional statements and incidents that occurred after the ALJ issued her decision. Because none of this information was available to the ALJ when she made her ruling, we do not consider it. See *Epstein v. Indus. Comm'n*, 154 Ariz. 189, 195, 741 P.2d 322, 328 (App. 1987) (“As a general rule, the fact-finding process in workers' compensation claims ends at the

conclusion of the last scheduled hearing.”); *Lovitch v. Indus. Comm’n*, 202 Ariz. 102, ¶ 15, 41 P.3d 640, 643 (App. 2002) (we cannot consider evidence not presented to ALJ).

Disposition

¶11 For the reasons stated above, we affirm the award.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge