

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

CORINNE R. CLARK, *Petitioner,*

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*

FRY'S FOOD AND DRUG STORES OF ARIZONA, INC.,
Respondent Employer,

SEDGWICK, *Respondent Carrier.*

No. 1 CA-IC 15-0068
FILED 10-4-2016

Special Action - Industrial Commission
ICA Claim No. 20140-580248
Carrier Claim No. 30141781973-001
The Honorable Layna Taylor, Administrative Law Judge

AWARD AFFIRMED

COUNSEL

Corinne R. Clark, Surprise
Petitioner

Industrial Commission of Arizona, Phoenix
By Jason Porter
Counsel for Respondent

MEMORANDUM DECISION

Presiding Judge Kent E. Cattani delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge Samuel A. Thumma joined.

C A T T A N I, Judge:

¶1 This is a special action review of an Industrial Commission of Arizona (“ICA”) award and decision upon review by an administrative law judge (“ALJ”) finding that Corinne Clark’s shoulder injury was not work-related, and thus not compensable. For reasons that follow, we affirm the award.

FACTS AND PROCEDURAL BACKGROUND

¶2 Clark worked as a pharmacy technician at a grocery store. Each workday she would rotate every two to three hours from pick-up window, to medication dispensing, and then to data entry. Her tasks at the pick-up window and product dispensing stations involved repeated, light-weight overhead reaching throughout the day.

¶3 Clark began to experience pain in her left shoulder in June 2013. The pain began without any specific triggering event or injury, and Clark did not know what caused it. Over the following months, however, the pain became progressively worse. Clark later testified she felt a popping in her shoulder on certain occasions, which seemed to reduce her pain temporarily.

¶4 In September 2013, Clark sought treatment from Dr. Arash Araghi, a board-certified orthopedic surgeon specializing in elbow and shoulder surgery. Dr. Araghi noted Clark’s limited range of motion and weakness and pain when moving her shoulder. Based on Clark’s history, a physical examination, and a review of x-rays, Dr. Araghi diagnosed rotator cuff syndrome. He explained that, when not associated with trauma, rotator cuff syndrome was generally caused by repetitive overhead movements, which he attributed to Clark’s work activities.

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¶5 Dr. Araghi provided a treatment plan including a corticosteroid injection, stretching exercises, and a referral to physical therapy, but Clark's pain continued to worsen. Dr. Araghi ordered an MRI, which showed minor arthritis in Clark's acromioclavicular (AC) joints but no rotator cuff tear. Dr. Araghi gave Clark another set of injections in December 2013, which provided only temporary relief, and by February 2014 he recommended arthroscopic surgery.

¶6 After Clark reported the injury to her employer in February 2014, the insurance carrier sent her for an independent medical examination by Dr. Neal Rockowitz, a board-certified orthopedic surgeon specializing in hip, knee, and shoulder reconstructive surgery. Dr. Rockowitz took Clark's history, reviewed her medical records, and conducted a physical examination. He noted that Clark's left shoulder had a significantly limited range of motion in all directions, accompanied by pain. He opined that Clark had a frozen shoulder and that the injury was not related to her work activities. Dr. Rockowitz explained that frozen shoulder was quite common in women Clark's age, and that the "vast majority" of such cases were idiopathic and not related to any specific injury or activity (such as repetitive motion). Dr. Rockowitz also noted that Clark's experience of lessening symptoms after feeling and hearing a popping in her shoulder was consistent with frozen shoulder, specifically with breaking soft tissue adhesions in the shoulder that were causing the restricted motion.

¶7 The carrier denied Clark's claim based on Dr. Rockowitz's evaluation, and Clark challenged the denial. After an evidentiary hearing at which Clark and both doctors testified, the ALJ adopted Dr. Rockowitz's medical opinion over Dr. Araghi's and thus found that Clark's injury was noncompensable because it did not result from her employment. The ALJ affirmed the decision on review, and Clark timely filed this special action. We have jurisdiction under Arizona Revised Statutes ("A.R.S.") §§ 12-120.21(A)(2), 23-951(A), and Arizona Rule of Procedure for Special Actions 10.¹

DISCUSSION

¶8 On review of a workers' compensation award, we defer to the ALJ's factual findings, but consider questions of law de novo. *Young v. Indus. Comm'n*, 204 Ariz. 267, 270, ¶ 14 (App. 2003). We will affirm the award unless, viewing the evidence in the light most favorable to sustaining

¹ Absent material revisions after the relevant date, we cite a statute's current version.

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the award, there is no reasonable basis for the ALJ's decision. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16 (App. 2002).

¶9 The claimant has the burden to prove that her claim is compensable by showing (1) she suffered an injury and (2) the injury was caused by her work. *Yates v. Indus. Comm'n*, 116 Ariz. 125, 127 (App. 1977); *Lawler v. Indus. Comm'n*, 24 Ariz. App. 282, 284 (App. 1975). Expert medical testimony is generally necessary to establish causation. *Noble v. Indus. Comm'n*, 140 Ariz. 571, 574 (App. 1984). The ALJ has primary responsibility for resolving any conflict in the medical experts' testimony, and we will not disturb the ALJ's resolution of a conflict unless it is "wholly unreasonable." *Stainless Specialty Mfg. Co. v. Indus. Comm'n*, 144 Ariz. 12, 19 (1985). When resolving such a conflict, the ALJ may consider many factors, including each expert's relevant qualifications and experience, whether each expert's testimony is speculative, and each expert's diagnostic methods. *Carousel Snack Bar v. Indus. Comm'n*, 156 Ariz. 43, 46 (1988).

¶10 Here, both experts agreed that Clark's left shoulder was injured, but disagreed as to the cause of that injury. Dr. Araghi characterized Clark's injury as rotator cuff syndrome, which he attributed to repetitive overhead movements that Clark undertook throughout the day as a pharmacy technician. In contrast, Dr. Rockowitz diagnosed Clark with frozen shoulder, a condition that was unrelated to her work activities (and unrelated to repetitive motion, even assuming Clark's relatively varied work activities required repetitive motion) and instead was simply a common condition in Clark's demographic that generally developed without a specific cause. The ALJ resolved this conflict regarding causation in favor of Dr. Rockowitz, and we defer to that resolution unless it had no reasonable basis. *Stainless Specialty*, 144 Ariz. at 19.

¶11 Clark contends that Dr. Rockowitz's opinion was unreliable because his assessment was based on an in-person examination lasting less than one hour and because he did not review the MRI results. But nothing in the record suggests that Dr. Rockowitz's single, hour-long independent medical examination was insufficient to provide a diagnosis. And although Dr. Rockowitz was unable to view the MRI scan itself, he reviewed the MRI report which noted only minimal abnormality. Moreover, Dr. Rockowitz's assessment of the MRI results – mild tendinosis of the rotator cuff and mild degenerative joint disease of the AC joint – was consistent with the findings noted by Dr. Araghi, which Clark does not challenge.

¶12 Dr. Rockowitz's qualifications (board-certified orthopedic surgeon, fellowship trained in joint replacement, and a medical practice

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that includes a focus on shoulder reconstruction) establish the necessary foundation for his expert opinion regarding Clark's shoulder condition. And Dr. Rockowitz's diagnosis explained the repeated sound and feeling of popping Clark experienced, which was consistent with breaking adhesions in a frozen shoulder. Accordingly, the record provides a reasonable basis for the ALJ's resolution of the conflict in medical testimony as to causation. *See Stainless Specialty*, 144 Ariz. at 19. Because the decision is supported by reasonable evidence, the ALJ did not err. *See Lovitch*, 202 Ariz. at 105, ¶ 16.

CONCLUSION

¶13 The award is affirmed.



AMY M. WOOD • Clerk of the Court
FILED: AA