

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

ERIC E. LINDEN,
Petitioner Employee,

v.

THE INDUSTRIAL COMMISSION OF ARIZONA,
Respondent,

ALL PRO ROOFER & HOME IMPROVEMENTS,
Respondent/Employer,

SCF OF ARIZONA,
Respondent Insurer.

No. 2 CA-IC 2013-0014
Filed December 17, 2013

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NOT FOR PUBLICATION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); Ariz. R. Civ. App. P. 28(c).

SPECIAL ACTION - INDUSTRIAL COMMISSION
ICA Claim No. 20113200125
Insurer No. 1106267
The Honorable Jacqueline Wohl,
Administrative Law Judge

AWARD AFFIRMED

COUNSEL

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Eric E. Linden, Tucson
Pro Se

The Industrial Commission of Arizona, Phoenix
By Andrew F. Wade
Counsel for Respondent

SCF Arizona, Phoenix
By James B. Stabler, Chief Counsel and
Joseph N. Lodge, Assistant Counsel, Tucson
Counsel for Respondent/Insurer

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Presiding Judge Vásquez and Chief Judge Howard concurred.

MILLER, Judge:

¶1 In this statutory special action, petitioner Eric Linden challenges the decision of the administrative law judge (ALJ) denying him compensation for a knee injury and recalculating his temporary compensation. He also contends the ALJ erred in denying him a continuance of his hearing. We affirm the award.

Factual and Procedural Background

¶2 On review, we consider the evidence in the light most favorable to upholding the ALJ's findings and award. *Polanco v. Indus. Comm'n*, 214 Ariz. 489, ¶ 2, 154 P.3d 391, 392-93 (App. 2007). In October 2011, Linden was working at All Pro Roofer and Home Improvement (All Pro) when he fell off a ladder. Linden filed a claim for benefits with SCF Arizona, All Pro's insurance carrier, reporting that he had injured his left wrist, elbow, and shoulder. SCF accepted the claim and provided Linden with compensation

benefits for temporary total disability.¹ On February 21, 2012, Linden's physical therapist sought authorization for therapy on Linden's left knee, but SCF denied authorization because the knee injury was not part of the claim.

¶3 Linden requested a hearing before the ALJ, claiming that SCF failed to pay the compensation benefits he was owed and incorrectly refused to authorize medical treatment, testing, and physical therapy for his knee. The ALJ held formal hearings in July and November 2012. In a decision issued in April 2013, she denied medical benefits related to Linden's left knee and concluded Linden's compensation benefits had been correctly calculated. Linden requested administrative review in May, and the ALJ affirmed the award on June 4, 2013. Linden filed a petition for special action. We have jurisdiction pursuant to A.R.S. § 12-120.21(A)(2).

Temporary Compensation Payments

¶4 Linden first contends SCF has been underpaying his temporary compensation. He does not dispute the calculation of his benefits; rather, he disputes the timing and amount of each payment.

¶5 An ALJ's computation of workers' compensation will not be set aside if it is reasonably supported by the evidence presented. *See Bratz v. Indus. Comm'n*, 178 Ariz. 359, 360, 873 P.2d 697, 698 (App. 1994) (calculation of average monthly wage); *Schneidewind v. Indus. Comm'n*, 120 Ariz. 363, 365, 586 P.2d 208, 210 (App. 1978) (calculation of loss of earning capacity). Questions of law related to the computation, however, are reviewed de novo. *See*

¹In February 2012, SCF notified Linden that he had been released to modified work and would only receive temporary partial compensation reflecting the difference between his actual wages and the authorized compensation. It does not appear that SCF ever required an offset of its payments after the notification, and Linden was placed back on total disability status effective August 7, 2012.

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Bulk Transp. v. Indus. Comm'n, 232 Ariz. 218, ¶ 7, 303 P.3d 529, 531 (App. 2013).

¶6 SCF granted Linden temporary total disability compensation and calculated his monthly compensation at \$2,638.83.² SCF paid Linden \$1,214.64 every fourteen days. Linden does not dispute these figures. In his opening brief, however, Linden contends he was underpaid because he only received two checks per month, totaling \$2,429.38. Linden's error is in the difference between semimonthly and biweekly payments; he will occasionally receive three payments in one month, making up for any apparent shortfall. The ALJ did not err in its determination that SCF's calculations were correct.

¶7 Linden appears to recognize his mathematical error in his reply brief, stating that he should be receiving a total of \$2,638.81 per month "regardless of how many checks [SCF] want[s] to send to get it to that amount each **month**." He further contends "the statutes are clear that compensation is to be paid monthly."

¶8 "In interpreting a statute, we look to the statute's language as the most reliable indicator of its meaning"; and we give words their ordinary meaning. *Bulk Transp.*, 232 Ariz. 218, ¶ 8, 303 P.3d at 531. Section 23-1062(B), A.R.S., provides that compensation "shall be paid at least once each two weeks during the period of temporary total disability and at least monthly thereafter."

¶9 Linden has received all payments biweekly even though his status has alternated between temporary total and temporary partial disability. Biweekly payments are required by the statute during Linden's total disability status. A.R.S. § 23-1062(B). While on partial disability status, SCF was required to pay Linden "at least monthly," and the continued biweekly payments met this minimum requirement. *Id.* The ALJ did not err in finding the payments were properly calculated and timely distributed.

² Linden argues the compensation amount was \$2,638.81. The two-cent difference is not material to Linden's arguments or our conclusions.

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Left Knee Injury

¶10 Linden next argues the ALJ erred in determining his left knee injury was not related to the industrial accident. We limit our review of the ALJ's ruling to "a determination of whether or not there is evidence in the record which would justify the finding of the Commission." *Pac. Fruit Exp. v. Indus. Comm'n*, 153 Ariz. 210, 214, 735 P.2d 820, 824 (1987). We will not disturb the ALJ's ruling if supported by sufficient evidence. *Id.*

¶11 Linden contends he injured his knee when he fell off the ladder and had reported the injury to his treating physicians in the emergency room and at subsequent appointments. He provided a prescription from Dr. Ty Endean, dated November 10, 2011, suggesting he "workout [his] lower extremities," as well as a December 2011 letter to SCF from Dr. Endean, which stated he was treating Linden "for shoulder and knee problems" and suggested "ongoing rehabilitation of [Linden's] knee." Dr. Endean also testified that he concluded the knee injury was related to the industrial accident based on what Linden had told him.

¶12 Linden's contention that he immediately told the emergency room doctors and other treating physicians about the knee pain is not reflected in the record. The emergency room report from October 16, 2011, does not mention a knee injury. Neither does a letter Linden sent to his employer on October 17, 2011, informing the company of his injuries. Dr. Endean's October 20 and November 10, 2011 reports do not refer to a knee injury, and the November 2011 advice for exercise of Linden's lower extremities is unexplained.

¶13 Further, during cross examination, Dr. Endean admitted he could not remember his individual visits with Linden and stated his only point of reference was Linden's medical chart. He acknowledged that the first time he clearly documented any knee complaint was during a visit on February 21, 2012, and admitted that he would expect someone to complain of knee pain closer to the date of injury if the knee had been injured during the October industrial accident. He also conceded, "Within a reasonable degree

of medical probability, I cannot relate [the knee injury] [to the industrial accident] based on my documentation.”

¶14 Dr. Jon Abbott, the independent medical examiner, testified that the knee injury was not related to the industrial accident. Dr. Abbott said that during his examination, Linden told him he did not know if he hit or twisted his knee in the fall. Abbott concluded the left knee complaints were not caused by the industrial injury because Linden had no knee complaints immediately after he was injured, and the first clear reference to knee complaints was not until February 2012. Further, he stated there was “no definite mechanism of injury,” because Linden could not explain how he might have injured his knee in the fall.

¶15 When there is a difference of opinion between medical experts, the ALJ must resolve any conflict. *Stainless Specialty Mfg. Co. v. Indus. Comm'n*, 144 Ariz. 12, 19, 695 P.2d 261, 268 (1985). The ALJ concluded Dr. Abbott’s testimony was “more probably correct and well founded.” Given that finding, the lack of documentary support for Linden’s assertion that he immediately reported the knee injury, and Dr. Endean’s agreement that the documents do not indicate that the knee pain relates back to the injury, we find that the ALJ’s decision was supported by substantial evidence.

Denial of Request for Continuance

¶16 Finally, Linden contends the ALJ should have granted him a continuance during his cross-examination of Dr. Abbott to allow him time to obtain copies of transcripts. An ALJ may continue a hearing if “a party shows good cause.” Ariz. Admin. Code R20-5-156. We review the ALJ’s decision to deny a continuance for an abuse of discretion. *Cf. Cash v. Indus. Comm'n*, 27 Ariz. App. 526, 530, 556 P.2d 827, 831 (1976) (“The time of commencement of a hearing, the examination and cross-examination of witnesses and delays and continuances relevant thereto are matters within the sound discretion of the hearing officer . . .”).

¶17 Linden appeared in propria persona. While he was cross-examining Dr. Abbott, Linden began a question by stating that Dr. Endean previously testified that he wrote a prescription for

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Linden to exercise his extremities at the same time he wrote a prescription for anti-inflammatory medication. Linden then asked, "Is that something that would be standard to do for a knee injury?" All Pro objected that Dr. Endean did not testify to prescribing anti-inflammatories. The ALJ did not remember the testimony and suggested that Linden pose the question as if Dr. Endean hypothetically prescribed an anti-inflammatory. Linden requested a continuance until he could get the transcript of Dr. Endean's testimony, and the ALJ denied it. Linden ultimately asked Dr. Abbott, "Would it be standard practice to issue a . . . muscle working program along with anti-inflammatories when the knee was reported early on in November of 2011?" Dr. Abbott answered, "Yes, it could."

¶18 Linden is correct that Dr. Endean testified that he prescribed exercises and anti-inflammatory medications for Linden's knee. Linden, however, does not explain how Dr. Abbott's answer may have been different had it not been hypothetical or even why the question was necessary to his case. Further, Linden had an opportunity to review the transcript before filing his request for review of the ALJ's award, and did not offer further argument at that point. The trial court did not abuse its discretion in denying the request for a continuance.

Disposition

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