2025 CASE REVIEW

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FORMAT OF PRESENTATION

- We will provide the facts of the case
- Poll the audience - Can you predict what the COA does?
- Present questions for the attorneys to discuss

FACTS OF THE CASE

- Applicant worked for Superstition as a firefighter for 18 years. In August 2020, he was diagnosed with oligodendroglioma, a rare form of brain cancer. He filed a workers' comp claim in January 2021, listing the date of injury as October 28, 2020, the date of his surgery.
- Defendants argued that the claim was controlled by the 2017 firefighter-cancer presumption statute. Under that statute, cancer is presumed to be industrially related if:
- 1. The firefighter passed a physical examination before employment and the examination did not indicate evidence of cancer.
- 2. The firefighter was assigned to hazardous duty for at least five years.
- 3. The firefighter was exposed to a known carcinogen as defined by the IARC, and the carcinogen is reasonably related to the cancer.
- The presumption may be rebutted by evidence that there is a specific cause of the cancer other than an occupational exposure to a carcinogen.
- In September 2021, the presumption statute was amended to remove requirement 3. The applicant argued that, under the 2021 version, the cancer was presumptively work related and that he was entitled to compensation.
- The ALJ applied the 2017 statute and found the claim to be non-compensable.
- The Court of Appeals reversed, ruling that the 2021 statute applied retroactively. The ruling was based on the class of people the statute identified (current or former firefighters diagnosed with cancer within 15 years of employment), the fact that the 2021 statue became effective before the hearing, and a finding that the statute was procedural rather than substantive.

DID THE SUPREME COURT AGREE WITH THE COURT OF APPEALS?

NO – THE COURT OF APPEALS OPINION WAS VACATED. *VANDE KROL V. SUPERSTITION/ BENCHMARK*, NO. CV-23-0211-PR (ARIZ. SUP. CT. MAR. 26, 2025)

- The law presumes that statutes do not apply retroactively, and the 2021 amendment did not include express language stating that it applied to claims brought before it was enacted. The statute "simply defines the general class of people eligible for the statutory presumption . . . and provides an end date for their eligibility... It does not, however, express when the statutory presumption applies or that it should have retroactive application."
- The presumption in the 2021 statute is substantive, not procedural. Substantive law "creates, defines and regulates rights," whereas procedural law "prescribes the method of enforcing such rights or obtaining redress." Procedural law can be applied retroactively, even if the text does not say so explicitly. And evidentiary presumptions are generally procedural in nature.

VANDE KROL V. SUPERSTITION/ BENCHMARK

- The 2021 statute,was substantive in effect:"the 2017 statute required firefighters to prove the cancer was job-related . . . whereas the 2021 statute required respondents to prove the cancer was not job related." Thus, the 2021 statute substantially defined and regulated the firefighter's right to WC benefits for certain diseases, not just the manner of enforcing those rights.
- The substantive right of respondents vests upon the filing of the claim. "When a firefighter files a workers' compensation claim, respondents gain an immediate fixed right... to assert application of then-existing substantive law pertaining to the statutory presumption."
- Case remanded to COA to decide appeal under the 2017 statute.

QUESTIONS FOR THE AUDIENCE

- Do you agree that the 2021 amendment made a substantive, rather than procedural, change to the presumption statute?
- This opinion seems to incentivize applicants to wait to file claims if they expect favorable changes to the law. Can you foresee any positive or negative results to this?

FACTS OF THE CASE (1/2)

- Applicant was a firefighter diagnosed with PTSD in 2017 after responding to a fatal accident. He received treatment under the Officer Craig Tiger Act.
- In 2022, he received verbal warnings and other workplace discipline due to performance issues. Subsequently, he filed a workers' compensation claim for mental stress injury, due to an "Active Shooter Incident resulting in acute post-traumatic stress."
- The claim was based on a series of incidents in April 2022, involving the shooting of a DPS officer and subsequent response by paramedics. In the first incident, the applicant arrived on scene after the wounded officer had been taken to the hospital. Later that day, he was dispatched to Mohave Community College, where the police had shot a suspect and were looking for others. He administered care and returned to the station. He testified his anxiety was "through the roof" and he couldn't sleep for two days. One week later, he was dispatched to another shooting scene, with the victim already dead in his car.

FACTS OF THE CASE (2/2)

- After hearing testimony from the applicant and lay witnesses, the ALJ determined that the stress was not "unexpected, unusual or extraordinary" and denied compensation.
- On appeal, the applicant challenged the ALJ's denial of compensation. He also argued that the mental injury statute, A.R.S. 23-1043.01(B), violated the equal protection act by treating applicants with a mental injury differently from those with a physical injury. In essence, he argued that, because he was already receiving mental health care under the Craig Tiger Act, his worker's comp claim should have been treated as a petition to reopen, not as a new claim for a mental injury.

DID THE COURT OF APPEALS AGREE WITH THE ALJ?

YES – THE AWARD WAS AFFIRMED *LAWLESS V. NORTHERN/ SECURIS*, NO. 1 CA-IC 24-0009 (ARIZ. CT. APP. APRIL 29, 2025)

- Ample evidence supported the ALJ's finding that the events of April 1 and April 7 were not unexpected, unusual or extraordinary. Witnesses testified that the events of those days were "completely mundane." The scenes were secure before the applicant arrived, no shots were fired while he was present, and there is no evidence that armed men were nearby when he arrived. His colleagues testified that they were not afraid for their own physical safety.
- "Although Lawless may have subjectively experienced fear while on-scene on April 1 and April 7, Section 23-1403.01(B)'s test for compensability is an objective one in which the inquiry focuses on the stress imposed on the worker rather than how the worker experienced it."

LAWLESS V. NORTHERN/SECURIS

- The court rejected the equal protection argument, finding that it improperly conflated disability benefits under the WCA with traumatic-event mental health benefits under the Craig Tiger Act. “The two are distinct statutory schemes serving distinct purposes.”
- Lawless’s receipt of services under the Craig Tiger Act did not preclude him from applying for benefits under the WCA, but it did not excuse him from satisfying the WCA’s eligibility requirements.

QUESTION FOR THE AUDIENCE

- Lawless was diagnosed with PTSD in 2017 but did not file a claim until 2022. Should his claim have been barred by the one-year statute of limitations?
- Lawless was already receiving services under the Craig Tiger Act for work-related mental health problems. Why, then, did the ALJ have the discretion to decide that he did *not* have a work-related mental injury? Isn't this an inconsistent result?

FACTS OF THE CASE

- The injured worker was employed by a contractor for the AZ Dept. of Corrections (ADCRR), running a call center at a prison. He was injured on the job and received workers' comp benefits from his employer. He then sued the State and the ADCRR, claiming negligence, premises liability, and negligent hiring.
- The State moved for summary judgment, arguing that the worker was a statutory employee of the State and that the State was immune from his tort claims. It also argued that the ADCRR was a non-jural entity that could not be sued. The superior court granted the State's motion.
- The plaintiff moved for a new trial, arguing that the State and the ADCRR were distinct legal entities, and that his employer only had a contract with the ADCRR. Therefore, he argued, he could still sue the State for negligence.
- The trial court affirmed, holding that the worker had contracted with the State, which was therefore a statutory employer and could not be sued. The plaintiff appealed.

DID THE COURT OF APPEALS AGREE WITH THE ALJ?

YES – THE JUDGMENT WAS AFFIRMED *PRUITT V. STATE*, 1 CA-CV 24-0418 (ARIZ. APP. MAY 6, 2025)

- By statute, the ADCRR is the State.
- The ADCRR was Pruitt's statutory employer:
  - It retained supervision or control over Televerde's work
  - The work entrusted to the contractor was a "part or process" of ADCRR's trade or business.

QUESTION FOR THE AUDIENCE

- What kind of contract work would not make the State/ADCRR a statutory employer of the contractor's employees?
- Is operation of a for-profit call center *really* "part or process in the trade or business" of ADCRR?

FACTS OF THE CASE

- Applicant rolled her ankle while working as a flight attendant, and the claim was accepted. Two months later, she rolled her ankle again at home. Three months after that, she again injured her ankle at work while jumping over another flight attendant.
- The claim was closed after an IME found that she initially sustained a "very low grade" sprain, the second injury was unrelated, and the third injury was a mild exacerbation of the second. The applicant protested closure, and at hearing, the treating physician testified that the original injury "set everything off" and contributed to the next two ankle accidents.
- During the hearing process, one ALJ heard the testimony of the applicant and the treating physician, but a second ALJ conducted the hearing for the direct exam and part of the cross of the defense expert. The original ALJ then returned to finish the cross-examination.
- an issue arose concerning the meaning of a word in a different physician's report. The AA requested a subpoena for that physician, which the ALJ denied.

FACTS OF THE CASE

- On cross-examination before the 2nd ALJ, an issue arose concerning the meaning of a word in a different physician's report.
- When the 1st ALJ returned, the AA requested a subpoena for that physician to explain his notes. The ALJ denied the request, adopted the opinions of the defense expert, and upheld the closure of the claim.

DID THE COURT OF APPEALS AGREE WITH THE ALJ?

NO – THE AWARD WAS SET ASIDE *YANT V. ICA*, 1 CA-IC 24-0057 (ARIZ. APP. AUG. 12, 2025)

- The ALJ erred by denying the request to call the second treating physician as a witness.
- The meaning of the disputed word was raised for the first time during the testimony of the defense expert, who himself testified that "we would have to ask [the other doctor] what he meant by his statements." The interpretation of the disputed word "was a substantive part of his medical opinion."
- Additionally, "substantial justice requires that the resolver of testimonial conflicts, for either expert or non-expert witnesses, directly hear all conflicting testimony." But here, two separate ALJs heard the testimony.

QUESTIONS FOR THE AUDIENCE

- The IME doctor's opinion was supported by a physical exam and review of imaging, in addition to his review of the medical records. Why wasn't this enough to provide a substantial factual basis for his opinions?

FACTS OF THE CASE

- Moreno worked for ME Global for over 16 years at the time of the injury. On February 1, 2022, he said he was lifting a metal bar that was about 40 to 60 pounds when he heard a pop in his back.
- Moreno testified that at the time of the injury he did tell his Supervisor and coworker although his Supervisor did not tell him to see a doctor. There is no evidence of this reporting other then Moreno's testimony.
- In June 2022, Moreno had a new Supervisor to whom he complained about his lower back to (no indication that it was related to the February injury). The HR rep took him to urgent care. Urgent care did not relate it to a work injury and gave no work restrictions. In July 2022, Moreno filed a WC claim for the February injury, which was denied. He was subsequently fired in October of the same year for excessive absences.
- ME Global argued that Moreno's failure to timely report the injury caused prejudice because it resulted in a "delay in medical care." ME Global further argued that it "was not given [a] full opportunity to investigate" the alleged injury "immediately" due to Moreno's reporting delay, and that, instead, "could only begin its investigation months later."
- ALJ agreed with the Defense and its denial of the claim.

DID THE COURT OF APPEALS AGREE WITH THE ALJ?

NO, THE COA SET ASIDE THE AWARD

MORENA V. ME GLOBAL, INC./TRAVELERS
1 CA-IC 23-0032
10/10/2024

- The COA set aside the award not for reasons you may think. An ALJ "must make factual findings that are sufficiently comprehensive and explicit for a reviewing court to glean the basis for their conclusion."
- Here, "the ALJ did not set forth factual findings to support her conclusion that Moreno "has not met his burden of establishing…that his failure to report 'forthwith' should be excused."
- She did not cite as to whether the delay in reporting 'impeded' the employer's ability to conduct a proper investigation, nor did she cite evidence as to whether Moreno's injury was aggravated by the delay in treatment.
- The COA found that they could not determine the factual basis of the ALJ's conclusion or whether it was legally sound and for that reason they set aside the award.

FACTS OF THE CASE

- Pro se applicant protested the closure of his claim without permanent disability. Subsequently, the parties reached a compromise and settlement, in which the petitioner agreed that all outstanding medical bills had been paid, that he had no permanent impairment, and that he was entitled to one office visit under supportive care. The applicant signed a statement that the agreement was in his best interests, and the ALJ approved the settlement.
- The defendants then sent the petitioner a waiver, but the applicant didn't sign. Instead, he requested review, stating that he believed signing the waiver would result in a full and final settlement, waiving his ability to reopen the claim.
- The ALJ affirmed the settlement, noting that it was not full and final.
- On appeal, the applicant argued that the agreement was inadequate to compensate him for his injuries.

DID THE COURT OF APPEALS AGREE WITH THE ALJ?

YES – THE AWARD WAS AFFIRMED *THOMPSON V. ICA*, 1 CA-IC 24-0046 (ARIZ. APP. JUNE 3, 2025)

- Settlements are governed by contract principles.
- The record shows that Thompson "knowingly and voluntarily agreed to settle the disputes."

QUESTION FOR THE AUDIENCE

- Thompson's request for review was based on a confusion between a C&S and F&F agreement. He did not argue that the settlement was inadequate or that he did not want to settle closure. Would the result have been different if he had asked the ALJ to void the settlement agreement?

FACTS OF THE CASE

- Pro se applicant injured her right arm, shoulder, and the side of her head when an ice cream container fell off a shelf in a walk-in refrigerator at a fast-food restaurant. Her claim was accepted and then closed without a permanent impairment. After a hearing, the ALJ affirmed the closure.
- On appeal, the applicant did not cite to the record, but outlined the factual history of the case and concluded by stating: "Please do not allow labor abuses to continue. I only ask for what is fair, that they take care of the medical expenses." She asked the court to "review the award of the Industrial Commission" and the decision upon review.

DID THE COURT OF APPEALS AGREE WITH THE ALJ?

YES – THE AWARD WAS AFFIRMED *JASSO V. ICA*, 2 CA-IC 2025-0002 (ARIZ. APP. JUNE 12, 2025)

- Applicant waived appellate review by failing to comply with the applicable rules.
- She did not cite to the record or any legal authority.
- "It is not this court's responsibility to conduct an independent review of the record to discern whether some error possibly occurred."
- "Despite being self-represented, Jasso is held to the same standards as an attorney."

QUESTION FOR THE AUDIENCE

- Is this result unduly harsh to unrepresented applicants?
- The court of appeals routinely disregards the waiver rule in favor of resolving cases on the merits—what's different here?

DIVISION 1 VS. DIVISION 2

- Division 2 (Tucson) is stricter when it comes to applying the waiver rule.
- Division 1 (Phoenix) will typically not apply waiver, and will conduct an independent review of the record to determine whether the ALJ award was supported.

SUHRHEINRICH V. ICA (NO. 2 CA-IC 2025-0001, JUL. 8, 2025)

E P P I C H, Vice Chief Judge:

¶1 Petitioner Danira Suhrheinrich seeks review of an Industrial Commission award and denial of her petition to reopen her claim. In her brief, petitioner notes that she has not cited legal authority in support of her arguments because she is not a lawyer. But courts hold unrepresented litigants in Arizona to the same standards as attorneys and do not afford them special leniency. *Flynn v. Campbell*, 243 Ariz. 76, ¶ 24 (2017). Under Rule 13, Ariz. R. Civ. App. P., an opening brief must set forth an appellant's contentions concerning each issue presented for review with supporting reasons, citations to legal authorities, and appropriate references to the record. *In re Aubuchon*, 233 Ariz. 62, ¶ 6 (2013). Because petitioner's brief contains no references to the record, no explanation of any legal errors by the administrative law judge, and no citations to supporting legal authority, her arguments are waived. *See id.*

¶2 Accordingly, we affirm the award.

GUTIERREZ V. ICA (NO. 1 CA-IC 24-0042, MAY 15, 2025)

[1] Gutierrez's opening and reply briefs cite neither the record nor legal authorities in support of his arguments and so do not comply with applicable rules. *See* ARCAP 13(a)(4)-(5), (7). Although the deficiencies in Gutierrez's briefing could support a finding of waiver, *see Polanco v. Indus. Comm'n*, 214 Ariz. 489, 491, ¶ 6 n.2 (App. 2007) (citations omitted), our preference for resolving cases on their merits leads us to exercise our discretion to address his arguments. *See Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 342 (App. 1984) (citation omitted).

FACTS OF THE CASE

- Employee (Sherman) was working at a furniture sales store packing a twin mattress in plastic for delivery on June 5, 2022.
- Sherman claimed he fell while wrapping the mattress and ended up on his back. He claimed he hit his head and does not remember the exact account of how he fell but that the mattress caught onto the bed and he lost his balance. (a store camera recorded the entire incident)
- Sherman reported that he developed many health issues due to this fall including: hip, leg, and elbow pain; extreme pain while walking; occipital neuralgia, major anxiety, chest pain, a dislocated clavicle, shoulder and neck pain, facial twitches, electric shocks in his back, extreme nausea, vomiting, dizziness, herniated disc, spinal tear, nerve damage, and a concussion.
- Sherman's physicians testified that he did recall much in regards to the incident but that he may have experienced a concussion. They also stated there was no way for them to know for sure if the concussion was related to the fall (he saw this physician approximately 5 months after the incident).
- The IME doctor testified that the way Sherman fell did not correspond with his recollection nor the video of the fall and determined the fall was benign.
- The ALJ found the claim to be non-compensable in that the video showed that the fall did not result in an injury and the IME doctor's account was found to be more credible.

DID THE COURT OF APPEALS AGREE WITH THE ALJ?

YES – THE COA AFFIRMED THE ALJ'S DECISION

SHERMAN V. CONN'S INC./TRAVELERS,
1 CA-IC 24-0017, 12/24/2024

- Sherman tried to argue in his appeal that the ALJ improperly sided with the IME doctor. However, the COA did not find this to be the case.
- Furthermore, Sherman tried to argue that the IME doctor had a conflict of interest in this claim because 1) the doctor used to work at the CORE institute where Sherman had once been seen for this injury, and 2) because the doctor was Facebook friends with one of Sherman's treating physicians. The COA found that Sherman did not show an impermissible conflict of interest and if he was prejudiced by a conflict.
- Sherman made other arguments such as the court did not consider the 'material properties of the mattress' which contributed to the severity of the injury but did not provide any supporting evidence of therefore these arguments were waived.

QUESTIONS FOR THE ATTORNEYS

- Do you think the decision would have been different had there not been a video showing the fall?

FACTS OF THE CASE

- Ibrahim was seriously injured when a semi-tractor trailer truck he was driving rolled over on a haul for MKTS. It was Ibrahim's first trip with MKTS, he filed a WC claim for his injuries but the employer denied he was an employee. MKTS referred to an Independent Contractor Agreement signed by its drivers.

- The IC agreement stated that Ibrahim would provide his own truck and any equipment he needed. It stated that he would follow the speed limits, keep a log, comply with licensing and permitting requirements and that MKTS will not provide unemployment or WC insurance. Of note, only Ibrahim signed the agreement.

- Ibrahim rented a truck from Penske and MKTS provided electronic equipment on the truck to help keep track of mileage etc. MKTS argued that most of the requirements they had for Ibrahim were mandated by federal regulations.

- MKTS argued Ibrahim not only signed the IC agreement but also that they did not control his work, he could take other jobs while working for them and could potentially grow his business with other drivers working under him. Ibrahim argued that the IC agreement did not comply with ARS §23-902D and that it was not signed by MKTS.

- ALJ found that Ibrahim was not an employee on the date of injury citing different factors including not starting work until two months later, providing his own truck, and Ibrahim could determine his own hours and routes. Also the ALJ applied the statutory presumption in analyzing the IC agreement.

DID THE COURT OF APPEALS SET ASIDE THE AWARD?

NO – THE COA AFFIRMED THE AWARD.

IBRAHIM V. MKTS, LLC/SPECIAL FUND.
1CA-IC-24-0004
10/08/2024

- The COA found that the ALJ erred by applying the statutory presumption of the IC agreement.
- The COA analyzed the control aspect of this matter extensively. It looked at the different indicia of control in this case and determined that MKTS did not exercise much control over Ibrahim's work.
- Further, Ibrahim had argued that the nature of the work being provided to MKTS was the heart of their business. However, the COA determined that while that is one of many factors in determining an IC relationship, the control aspect far outweighs this factor, and here MKTS exercised very little control (mostly only those required by federal regulations).

FACTS OF THE CASE

- Franzmeier worked as a paramedic and firefighter for a City for over two decades. In August of 2020 he returned on a flight from Maryland to Arizona after visiting family. The next day, he returned to work. A few days later a coworker tested positive for COVID-19 and five days later Franzmeier tested positive. He quarantined at home for 10 days and then returned to work experiencing mild symptoms.

- More than a year later, Franzmeier experienced a "sudden altercation in his mental state" that made him feel confused and disoriented, and caused him to hallucinate. After seeing a psychiatrist, he was diagnosed with PTSD. However, Franzmeier attributed this to his COVID-19 saying that it was the result of long COVID and that his COVID-19 was contracted from work rather than traveling.
- Franzmeier filed a WC claim in May of 2022 (bodily exposure to COVID) and again in December of 2022 (cognitive impairment) for related symptoms that he attributed to COVID.

- Franzmeier did not provide any expert medical testimony to the ALJ and stated that the incident speaks for itself as far as mathematical probability.

- The ALJ barred the claim stating that it was not filed within the requisite one year period and also Franzmeier did not show medical causation.

DID THE COURT OF APPEALS AGREE WITH THE ALJ?

YES – THE COA AFFIRMED THE AWARD

FRANZMEIER V. CITY OF TOLLESON
NO. 1 CA-IC 23-0013
NO.1 CA-IC 23-0037
, (9-26-2024).

- The COA found that the ALJ erred in determining that the claim did not fall under the one year period. Since his symptoms did not appear until November of 2021 and since he filed his claim in May of 2022, his claim was filed within the required one-year period.
- However, the COA stated that Franzmeier had the burden to prove medical causation. Yet, he did not offer any competent evidence to show with a reasonable degree of medical probability, that his COVID-19 infection contributed to his mental inquiry.

QUESTION FOR THE ATTORNEYS

- Have you seen any COVID-19 cases recently and what are the issues you are seeing around these types of claims?

FACTS OF THE CASE

- The applicant worked as a landscaper for the employer.
- Was injured first on July 20, 2021, when he was thrown from a lawn mower.
- That claim was accepted, and he received PT.
- Had surgery in 2021 and 2023 to repair torn ACL and MCL in his Right knee.
- Found to have a 7% permanent partial impairment.
- As the Appeals Court summarized, there were no records provided that indicated Applicant claimed left knee pain.
- IME in 2022 noted from radiographs in 2021 that there was ongoing degeneration in the left knee, and pain in left knee and left hip were attributed to preexisting arthrosis.
- In March 2023, Applicant complained of constant pain and discomfort in left knee, "hypothesizing" that it was overuse and compensation for the right knee injury.
- Treating doctor found torn ACL in Left Knee in May 2023.
- IME doctor noted degenerative ACL was not recently torn, pain consistent with arthritis.
- ALJ found the opinions of IME doctor more probably correct and well-founded.

DID THE COURT OF APPEALS AGREE WITH THE ALJ?

YES – THE COA AFFIRMED THE AWARD

MILLIGAN V. INDUSTRIAL COMM'N, NO. 1 CA-IC 24-0033 (3-6-2025) (MEMO).

- Failed to establish his left knee injury resulted from an industrial accident
- No Abuse of Discretion
- No Reversable Error

QUESTION FOR THE ATTORNEYS

- How many times do we see a case that is just one doctor versus another?
- I would say most often, and I think David would agree with me, we see these types of cases taken up by unrepresented applicants.
- These are tough to take up, and even though this Applicant was represented, could not overcome the factual findings made by the ALJ.
- Would it have been different if the records did show complaints earlier in the history, right after the accident?

FACTS OF THE CASE

- The applicant worked on a "curb crew" when he was struck in the face by a coworker in 2002. Face was bruised and cut, several teeth chipped and dislodged.
- Over the next 20 years, had 4 root canals, 2 crowns, wore retainers and aligners to hold the damaged teeth in place.
- Had other jaw problems, temporomandibular disorder ("TMD"). This continued as he had face cramp when removing his aligners, and then the symptoms stopped.
- Saw a jaw expert in 2023, said this incident may have actually corrected his jaw alignment, which had likely been out of place for 20 years.
- His expert did think he would need continued treatment to keep his jaw stable.
- There was a criminal assault trial where that judge "promised him 'lifetime dental care.'" He was seeking that continued treatment.
- Applicant's expert "had no strong opinion on whether [] dental problems related to the original 2002 industrial injury.
- Expert for Defendants stated he was at MMI, and nothing left to be done related to the injury. Many of these things would have been need within a year after the injury, but not 20 years later.

DID THE COURT OF APPEALS AGREE WITH THE ALJ?

YES – THE COA AFFIRMED THE AWARD

BOWSER V. INDUSTRIAL COMM'N, NO. 1 CA-IC 23-0033, (3-4-2025) (MEMO).

- Stationary with no permanent impairment.
- Further treatment unrelated to industrial injury.
- Sufficient evidence to support the Award.
- This was an unrepresented Applicant.

QUESTION FOR THE ATTORNEYS

- Unrepresented Applicant here, and it appears just has a misunderstanding of the law a little, which is quite common of course when people don't do this day in and day out.
- Applicant's expert did not testify strongly to support needing more treatment, or relating it to the injury.
- Not sure what else would have made a difference here, obviously if he is not stationary, he would need more treatment.
- If he had a permanent impairment, still may not have needed more treatment related to the claim.
- Importantly here, there is still always the option to reopen, but sometimes decisions like this make it tough, as the Applicant must still prove the relationship to the original injury or treatment thereafter.

FACTS OF THE CASE

- In December 2022, the owner of the company asked the applicant to clean a piece of grading equipment to prepare it for transport.
- The applicant climbed on the equipment, but fell, sustaining injuries.
- Applicant testified that the owner was her employer, and had the right to hire her and fire her.
- The owner testified that there were only independent contractors, and her employment was “open-ended”.
- The “Control Test” in Paragraph 6, 11, 12 of COA.

DID THE COURT OF APPEALS AGREE WITH THE ALJ?

YES – THE COA AFFIRMED THE AWARD

J-KING EXCAVATING (CONLEY), NO. 1 CA-IC 24-0025, (2-27-2025) (MEMO).

- The ALJ found that the Applicant was an employee.
- The Court will defer to ALJ factual findings, but whether the factual findings adequately support that she was an employee is reviewed *de novo*.
- The "Control Test" is a "totality of the facts and circumstances of each case, examining various indicia of control."
- "Because the ALJ correctly concluded Conley was J-King's employee, we affirm the award."

QUESTION FOR THE ATTORNEYS

- These types of cases are interesting, and really the crux of the employer-employee relationship lies with how much control the employer is exerting.
- Here the Court explicitly walks through some of these things: "instructed Conley on her responsibilities, which included watering the ground at excavation sites…, picking up equipment or tools for other workers, and cleaning and fueling excavation equipment." This all seems like it could be an employee, or perhaps not.
- Importantly the Court continued: "provided Conley with a truck, company debit card, and the tools and equipment required for her job."
- Note that paying her per hour on a weekly basis without deducting taxes was not a real issue.
- The permanency, length of relationship, and whether they are working elsewhere also seem very important.

FACTS OF THE CASE

- Applicant broke his right leg while driving a forklift in September 2021. He then performed light duty.
- On December 6, 2022, he injured his back and right leg after stepping down from a step ladder while cleaning windows at work. He continued working the normal light duty position he was in at the time.
- On May 19, 2023, he filed a worker's report of injury.
- On July 3, 2023, the carrier "denied his claim because there was 'no employer or medical evidence of industrially related injury.'"
- Applicant testified that he did not tell anybody that he feel, but said he told an employee in the office he got injured.
- He sought medical attention 2 weeks after the injury.
- Applicant's manager said she was never informed, and did not know until he filed the worker's report in May 2023.

DID THE COURT OF APPEALS AGREE WITH THE ALJ?

YES – THE COA AFFIRMED THE AWARD *GURASHI V. INDUSTRIAL COMM'N*, NO. 1 CA-IC 24-0005, (2-4-2025) (MEMO).

- ALJ found for Defendants, as the Applicant failed to promptly report his injury.
- COA agreed that the ALJ's findings were supported by the record, and did not overturn that finding.

QUESTION FOR THE ATTORNEYS

- There is ample law in Arizona that the cases should be decided on the merits.
- We see this time and time again, usually so held by the COA.
- However, in this case the Court seemed to indicate really a lack of due diligence and effort on the part of the Applicant.
- Again, the fact-finding by the ALJ plays a huge role.
- Notably, the Applicant tried in his Brief to indicate that the employer was negligent by putting him on a step ladder, but his manager had testified she told him specifically not to do that.
- Interestingly here the Defendants never responded to the Brief?

FACTS OF THE CASE

- Applicant sustained an injury from a slip-and-fall accident at work in July 2022.
- In May 2023 an IME concluded that his injuries had resolved; no supportive care or permanent impairment.
- June 1, 2023, notice mailed to Applicant terminating his benefits.
- September 7, 2023, 98 days later, a request for hearing was filed by Applicant.
- He testified at hearing that he could not recall when he received the notice. He also had relocated twice in the summer of 2023. He did acknowledge he never filed a change of address.
- The ALJ held a hearing on the timely filing, and then dismissed the hearing request about closure.

DID THE COURT OF APPEALS AGREE WITH THE ALJ?

YES – THE COA AFFIRMED THE AWARD

MITCHELL V. INDUSTRIAL COMM'N, NO. 1 CA-IC 24-0012, (12-31-24) (MEMO).

- Interesting here for a few reasons, the most important of which is that the ALJ did hold a hearing on the timeliness matter.
- Consistently the COA likes when things are decided on the merits, but the ALJ did allow the Applicant to testify as to why the filing was late.

QUESTION FOR THE ATTORNEYS

- There is ample law in Arizona that the cases should be decided on the merits.
- We see this time and time again, usually held up by the COA, however they agreed with the ALJ here, and I think a big reason is that a hearing was held.
- This does seem to be close, but the COA in my reading of it thought that the Applicant really did not pursue this. Not filing changes of address, not only not doing due diligence, but was not specific about dates, or "trying" to get treatment, or "trying" to successfully bring this case,.
- Again, the fact-finding by the ALJ plays a huge role.

FACTS OF THE CASE

- Special Fund actually filed this appeal about apportionment under A.R.S. §23-1065(B)(2).
- The only issue is whether the employer and carrier are entitled to partial reimbursement from the Special Fund.
- Applicant had an injury in 2003 and closed in 2005 with a scheduled permanent partial impairment of 10% to his right upper extremity.
- In 2015 Applicant injured right foot and ankle with the same employer and underwent surgery.
- This claim was closed in 2017, with an impairment, and as you all know this would now unschedule the impairment.
- Given the combination, the carrier requested apportionment, which was accepted. The ICA concurrently determined no LEC, and the Applicant received a vocational rehabilitation bonus, but no ongoing benefits.

FACTS OF THE CASE

- The Applicant and carrier agreed that he needed to reopen the 2015 ankle injury for surgery.
- While recovering, using crutches, he developed an injury to his right elbow. It was determined to be causally related to the ankle injury and compensable.
- When this was closed, there was now a 5% impairment to his right upper extremity, less than the 10% originally attributed to the 2003 injury.
- However, as this would now move to LEC, the ALJ did not separately determine an impairment for the elbow.
- The ALJ reasoned that Applicant's 'pre-existing industrially-related ten percent impairment to the right upper extremity' (2003) combined with the additional impairment to his right lower extremity, made the 2015 claim unscheduled and eligible for apportionment.
- Special Fund argued that the ankle and elbow from 2015 make that injury independently unscheduled.

DID THE COURT OF APPEALS AGREE WITH THE ALJ?

YES – THE COA AFFIRMED THE AWARD

ICA SPECIAL FUND DIVISION V. INDUSTRIAL COMM'N (REY), NO. 1 CA-IC 22-0040, (1-23-25) (MEMO).

- The COA reasoned that the "additional" impairment resulting from Applicant's 2015 injury – even after reopening – was to his ankle.
- There was no "additional" impairment to his elbow, especially given the prior 10% finding, and the new 5% finding, meaning it did not increase.

QUESTION FOR THE ATTORNEYS

- Very interesting here, as it does seem that had the elbow impairment been *increased at all*, i.e. it was now 15%, then perhaps the COA would have disallowed the apportionment.
- Not sure how often this comes up where one body part is reinjured, but the impairment does not increase, so you do have just two separate scheduled type injuries again, and it can be eligible for apportionment.

FACTS OF THE CASE

HONORABLE MENTIONS

- *Gabriel v. Industrial Comm'n*, No. 2 CA-IC 2024-0005 (4-2-25) (Memo).

- This involved the VA providing treatment. The Applicant argued that the industrial carrier had not paid outstanding medical bills.

- The ALJ issued a decision finding the carrier was not responsible for the medical bills because the VA had not sent the correct billings within 2 years as required by A.R.S. §23-1062.01.
  - However, the ALJ also concluded that Applicant was not responsible for the medical bills because 'the provider knew [it] was work related.'
  - Upon Review, the ALJ also stated Applicant never presented the actual bills or proof of payment despite ample time.

- *Tang v. Industrial Comm'n*, No. 2 CA-IC 2024-0002 (3-28-25) (Memo).

- The Applicant was awarded 8 mental health sessions under supportive care, but a PTR was denied.

DID THE COURT OF APPEALS AGREE WITH THE ALJ?

YES – THE COA AFFIRMED BOTH AWARDS