ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

Aguirre v. Industrial Commission of Arizona, CV-19-0001-PR

PARTIES:

Petitioners: City of Goodyear ("Goodyear") and Copperpoint Insurance Company ("Carrier")

Respondent: Gilbert Aguirre, Jr.

FACTS:

Aguirre has worked as a firefighter since 2000 and for Goodyear since 2007. In May 2015, he was diagnosed with chronic myeloid leukemia ("CML") and filed a workers' compensation claim, contending that his CML arose out of his work as a firefighter. The Carrier denied the claim, finding that Aguirre had not established that his CML was "reasonably related" to his exposure to any known carcinogen during his firefighting as required by A.R.S. § 23-901.01(B), (C)(3). Aguirre challenged the claim denial in proceedings before the Industrial Commission (the "ICA"); he requested a hearing before an ICA administrative law judge ("ALJ").

At the hearing, Aguirre testified regarding his past exposure to carcinogenic substances he encountered during his firefighting. Aguirre's medical expert testified and also submitted a report that concluded Aguirre "developed CML as a result of the exposure to carcinogens he experienced during his work as a firefighter." The Carrier's medical expert also testified and submitted a report; the Carrier's expert concluded that there was a "probable association between leukemia and firefighter occupational exposure" for those "with more than 30 years" experience firefighting, but that "it is not possible to make this association with a reasonable degree of medical probability" for firefighters, such as Aguirre, with less than 30 years of such experience.

The ALJ issued a brief award decision (the "Award") that summarized the hearing testimony and the doctors' reports but did not resolve any of the conflicts between the two. The legal analysis in the Award was one sentence long and stated that Aguirre had "failed to carry his burden of proving by a reasonable preponderance of the evidence that he sustained a work related injury." The Award thus denied Aguirre's claim for workers' compensation.

Aguirre then requested that the ALJ review the Award. Aguirre filed a "Post-Hearing Memorandum" under A.R.S. § 29-943(A), which argued that Aguirre had established that he sustained an industrial injury which arose out of his employment as a firefighter. The ALJ summarily affirmed the Award. Aguirre appealed.

On appeal, Aguirre argued that the Award lacked sufficient detail to permit appropriate appellate review by the court of appeals as required by *Post v. Industrial Commission*, 160 Ariz.

4 (1989). He contended that the Award did not resolve the conflicting factual issues at the heart of the case, primarily the differences in the medical experts' opinions regarding whether Aguirre's work as a firefighter had exposed him to a known carcinogen that was "reasonably related" to his CML diagnosis as required under A.R.S. § 23-901.01(C)(3).

The Carrier argued that Aguirre should be precluded from obtaining appellate review of the sufficiency of the Award under *Post* because Aguirre had not raised that issue before the ALJ during the review portion of the ICA proceedings. The Carrier also contended that under *Stephens v. Industrial Commission*, 114 Ariz. 92 (App. 1977), the court of appeals could not reach Aguirre's argument that the Award did not comply with *Post*; according to the Carrier, *Stephens* held that the failure to file a memorandum of points and authorities as permitted by A.R.S. § 23-943 necessarily limited the court of appeals' review "to two areas: (1) those matters which are extant in the record, such as objections to evidence, and (2) the issue which is fundamental on review, that is, the sufficiency of the evidence to support the decision." 114 Ariz. at 95.

The court of appeals rejected the Carrier's argument that the court should not reach the merits of Aguirre's challenge to the legal sufficiency of the Award. *Aguirre v. Indus. Comm'n*, 245 Ariz. 587, 591–92 ¶¶ 15–20 (App. 2018). The court of appeals stated: "First, nothing in *Post* suggests a party is required to challenge the sufficiency of findings in a request for review as a condition of asserting that argument on appeal." *Id.* at 591 ¶ 15. Second, the court of appeals indicated that A.R.S. § 23-943(A) "makes it clear that a party has no obligation to include any specific arguments in the request to preserve them for appellate review." *Id.* ¶ 16.

And, third, the court of appeals held that the Carrier's reliance on *Stephens* was "misplaced" because "*Stephens* did not address the question presented here—whether the failure to raise a challenge to the sufficiency of findings must be raised in a request for review." *Id.* ¶ 17. Rather, according to the court of appeals, "*Stephens* centered on the claimant's argument that the hearing officer erred by addressing whether a permanent disability had been proven." *Id.* Instead, citing *Southwest Paint & Varnish Co. v. Arizona Department of Environmental Quality*, 194 Ariz. 22, 24 ¶ 14 (1999), the court of appeals held:

> Here, Aguirre had no obligation to challenge the sufficiency of the findings in the ICA proceedings to preserve it for appeal because the only action he was required to take under § 23-943 was to file a request for review; he was not required to raise any specific argument. Thus, unlike the issue in *Stephens*, the exhaustion of administrative remedies doctrine does not apply here because § 23-943 is permissive as to whether a party may challenge the sufficiency of the ALJ's findings in a request for review.

Id. 591–92 ¶ 18. Thus, the court of appeals held that it could reach the merits of Aguirre's challenge to the sufficiency of the ALJ's Award decision.

And, on the merits, the court of appeals agreed with Aguirre that the "lack of findings" in the Award left the court of appeals "unable to meaningfully review the ALJ's decision" as required by *Post*. *Id.* at 594 ¶ 30. Consequently, the court of appeals set aside the Award.

ISSUE:

Did the court of appeals err in holding that Aguirre was not required to challenge the sufficiency of the findings in the ICA proceedings to preserve it for appeal?

STATUTORY REFERENCES:

A.R.S. § 23-901.01(B)(1) provides that any "disease, infirmity or impairment . . . that is caused by . . . leukemia" and occurs in a firefighter, "is presumed to be an occupational disease . . . and is deemed to arise out of employment."

A.R.S. § 23-901.01(C)(3) provides that the presumption in subsection (B)(1) only applies if, among other things, the firefighter "was exposed to a known carcinogen as defined by the international agency for research on cancer and . . . the carcinogen is reasonably related to the cancer."

A.R.S. § 23-943 governs review of an administrative law judge's award and it provides:

> A. The request for review of an administrative law judge award need only state that the party requests a review of the award. The request may be accompanied by a memorandum of points and authorities, in which event any other interested party shall have fifteen days from the date of filing in which to respond. Failure to respond will not be deemed an admission against interest.
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> E. The review shall be made by the presiding administrative law judge and shall be based upon the record and the memoranda submitted under the provisions of subsection A of this section.