IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

CITY OF TUCSON POLICE DEPARTMENT,
Petitioner Employer,

CITY OF TUCSON,
Petitioner Carrier,

v.

THE INDUSTRIAL COMMISSION OF ARIZONA,
Respondent,

MICHAEL CONTO,
Respondent Employee.

No. 2 CA-IC 2025-0006
Filed March 27, 2026

Special Action – Industrial Commission
ICA Claim Nos. 20240820664 and 20241360034
Carrier Claim Nos. 241142590 and 241138007
Karen E. Karl, Administrative Law Judge

AWARD AFFIRMED

COUNSEL

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By M. Ted Moeller and Trevor Hansen
Counsel for Petitioners Employer and Carrier

The Industrial Commission of Arizona, Phoenix
By Afshan Peimani, Chief Legal Counsel
Counsel for Respondent

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By Laura Clymer
Counsel for Respondent Employee

MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Gard and Judge O'Neil concurred.

E C K E R S T R O M, Judge:

¶1 In this statutory special action, the City of Tucson Police Department and its insurance carrier, the City of Tucson (collectively, "the City") challenge the decision upon hearing and the decision upon review by the administrative law judge (ALJ). Those decisions affirmed the hearing, findings, and award for Michael Conto's compensable cancer injury claim. On review, the City argues the ALJ erred in determining that Conto timely filed his workers' compensation claim. The City also maintains that the ALJ made inadequate factual findings and incorrectly interpreted the "peace officer" statute. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the ALJ's award. *Hackworth v. Indus. Comm'n*, 229 Ariz. 339, ¶ 2 (App. 2012). In 1985, the City of Tucson Police Department hired Conto. Conto worked as a patrol officer in multiple divisions, including the SWAT team and the

bomb squad. Conto's employment exposed him to explosive materials. In February 2008, Conto underwent surgery for a work-related shoulder injury he had sustained several months before. Following his surgery, Conto began to work from home, including training his assigned police dog. In June 2008, Conto fulfilled his last day of employment.

¶3 In February 2023, Conto underwent a CT scan that showed a nodule on his lung that his pulmonologist noted was "concerning for carcinoma in situ." The pulmonologist noted that if the following biopsy was not diagnostic, then a PET scan may become necessary. On March 10, 2023, Conto underwent a biopsy per his pulmonologist's referral. On March 16, 2023, Conto met with his pulmonologist and learned that his biopsy results were "consistent with adenocarcinoma." The pulmonologist noted that Conto needed a PET scan and referred Conto to an oncologist. On March 22, 2023, the oncologist diagnosed Conto with lung cancer.

¶4 On March 20, 2024, Conto filed an industrial claim for his lung cancer without a date of injury. Upon request from the Claims Division of the Industrial Commission of Arizona, Conto resubmitted his claim with a listed date of injury: March 10, 2023. The City denied Conto's claim. Conto submitted another claim for his lung cancer with the date of injury listed as September 29, 2023, the date he became aware of the peace officer presumption statute, A.R.S. § 23-901.01. The City also denied Conto's second claim.

¶5 Conto asked to consolidate his two claims and requested a hearing to challenge their denials. The City raised the affirmative defense that Conto's claim was not timely filed. Conto amended his date of injury to March 22, 2023. The ALJ granted the City's uncontested motion for a hearing to be held regarding the statute of limitations and the applicability of the peace officer presumption. At that hearing, Conto was the sole witness to testify. Both Conto and the City filed post-hearing memoranda.

¶6 The ALJ found that Conto had timely filed his claim, the peace officer presumption applied, and Conto was entitled to an award. The City sought review of the ALJ's award. The ALJ affirmed the award, and the City filed this petition for special action from that decision. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(2), 23-951(A), and Rules 21(c) and 26(a), Ariz. R. P. Spec. Act.

Discussion

I. Statute of Limitations

¶7 The City argues the ALJ erred in holding that the City failed to meet its burden of proving Conto's claim was untimely. Specifically, the City contends that the ALJ misapplied the statute of limitations for bringing a claim. We review questions of law de novo. *Krol v. Indus. Comm'n*, 259 Ariz. 261, ¶ 19 (2025).

¶8 A workers' compensation claim must be filed within one year "after the injury occurred or the right thereto accrued." A.R.S. § 23-1061(A). "The time for filing a compensation claim begins to run when the injury becomes manifest or when the claimant knows or in the exercise of reasonable diligence should know that the claimant has sustained a compensable injury." *Id.* This standard applies to determine the date of injury for an occupational disease claim. *See Villegas v. Indus. Comm'n*, 149 Ariz. 382, 383 (App. 1986). Under the peace officer presumption, lung cancer is presumed to be an occupational disease arising out of employment if the requisite statutory elements are met. § 23-901.01(B)-(C) (including, as relevant here, "adenocarcinoma . . . of the respiratory tract"). A party disputing the claimant's timeliness of filing under § 23-1061(A) must raise the issue as an affirmative defense. *Pitts v. Indus. Comm'n*, 246 Ariz. 334, ¶ 13 (App. 2019). In particular, the party challenging timeliness bears the burden of producing evidence to support a finding that the claimant's injury manifested or that the claimant knew or should have known the injury was compensable more than one year prior to filing the claim. *See Pitts*, 246 Ariz. 334, ¶¶ 13, 22.

¶9 In 2021, the Arizona legislature amended the presumptive burden for peace officers to establish a compensable injury for certain occupational diseases, such as cancer. *See* 2021 Ariz. Sess. Laws, ch. 229, § 5; § 23-901.01(B)-(D) (2021). Relying on *Krol*, the City mistakenly asserts that this amended peace officer presumption establishes a different standard for an ALJ to determine the date a claimant's injury became manifest.

¶10 In *Krol*, our supreme court distinguished the effects of the 2021 amendment on a claimant's burden to establish a compensable injury under the presumption and a respondent's burden to overcome the presumption. 259 Ariz. 261, ¶¶ 13, 21, 33, 36-39 (interpreting analogous statutory presumption for firefighters as amended in § 23-901.09 (2021)). However, *Krol* does not alter a respondent's evidentiary burden to dispute

the timeliness of a claimant's filing. *Id.* Absent certain exceptions not applicable here, the one-year statute of limitations and the respondent's burden upon raising such an affirmative defense applies to all workers' compensation claims. *See* § 23-1061(A) ("Notwithstanding § 23-908, subsection E, *no claim for compensation* shall be valid or enforceable unless the claim is filed . . . in writing within one year after the injury occurred or the right thereto accrued." (emphasis added)).

¶11 Accordingly, to establish its affirmative defense, the City was responsible for producing sufficient evidence to support a determination of when Conto's compensable injury manifested, triggering the one-year statute of limitations set by § 23-1061(A). *See Pitts*, 246 Ariz. 334, ¶ 13. A compensable injury manifests when the claimant recognizes "the nature of [the] injury, the seriousness of the injury, *and* the probable causal relationship between the injury and the employment." *Id.* ¶ 12 (emphasis added). The ALJ must consider all three factors together to determine when the claimant "knew or should have known" that he had sustained a compensable injury. *Id.* (quoting *Pac. Fruit Exp. v. Indus. Comm'n*, 153 Ariz. 210, 214 (1987)); *see* § 23-1061(A).

¶12 As emphasized in the City's argument, the ALJ found that Conto "should have known by March 10, 2023 the nature and seriousness of his condition." However, the ALJ also found that the City's evidence "did not establish when [Conto] knew or should have known the probable causal relationship between the injury and his employment," the third factor an ALJ must weigh to determine when a compensable injury manifests. *See Pitts*, 246 Ariz. 334, ¶ 12; *Pac. Fruit Exp.*, 153 Ariz. at 214. Thus, the ALJ did not err in concluding that the City failed to meet its burden of presenting evidence of when the claim accrued.

II. Sufficiency of Findings

¶13 The City argues that the ALJ erred by failing to make sufficient factual findings regarding Conto's date of injury. Specifically, the City contends that the ALJ implicitly "default[ed]" to Conto's amended date of injury—March 22, 2023—without evaluating the evidence, making findings of fact, or applying the factual findings to law. On appeal, our review is limited to whether the record supports the ALJ's finding as to when the injury manifested. *Pitts*, 246 Ariz. 334, ¶ 14. We will affirm an ALJ's award if it is reasonably supported by the evidence. *Turner v. Indus. Comm'n*, 251 Ariz. 483, ¶ 7 (App. 2021). We defer to the ALJ's factual findings. *Hackworth*, 229 Ariz. 339, ¶ 2.

¶14 An ALJ's lack of findings does not necessarily invalidate an award. *Post v. Indus. Comm'n*, 160 Ariz. 4, 7 (1989). Rather, the "ultimate test of the sufficiency of findings" is whether the appellate court can discern the factual basis for the ALJ's determination and whether it was legally sound. *Hester v. Indus. Comm'n*, 178 Ariz. 587, 589-90 (App. 1993); *see also Sun Valley Masonry, Inc. v. Indus. Comm'n*, 216 Ariz. 462, ¶ 27 (App. 2007). An ALJ must resolve conflicting evidence, find the ultimate facts, and apply the law to the facts on all material issues. *Post*, 160 Ariz. at 7; *see also Douglas Auto & Equip. v. Indus. Comm'n*, 202 Ariz. 345, ¶ 9 (2002) (ALJ must do more than "simply state conclusions," but findings need not be "exhaustive"). Appellate courts must refrain from taking on the factfinder's role. *Post*, 160 Ariz. at 7. Further, the ALJ is the "sole judge of witness credibility." *Holding v. Indus. Comm'n*, 139 Ariz. 548, 551 (App. 1984).

¶15 On this record, the ALJ's factual findings and legal conclusions support the award. In the Decision Upon Hearing, the ALJ summarized the hearing testimony and noted its review of the medical records and all documents in the industrial claim's hearing file. Before Conto's testimony began, the City's counsel declined to object to Conto's amended date of injury: March 22, 2023. During the hearing, the ALJ heard Conto's testimony about his cancer-related medical appointments, including that he understood he had developed lung cancer at his oncology appointment on March 22, 2023. Conto's medical records show that the pulmonologist did not diagnose his lung cancer; rather, the medical records reflect—and the ALJ found—that the oncologist confirmed the diagnosis to Conto at his appointment. Viewing the record in the light most favorable to the ALJ's decision, reasonable evidence supports the ALJ's conclusion that March 22, 2023 was the date that Conto became aware of his injury.

III. "Peace Officer" Definition

¶16 The City argues the ALJ misapplied the definition of "full-time" peace officer in § 23-901.01. That statute sets forth a presumption that, under certain conditions, specified diseases are occupational and arise out of employment. *See* § 23-901.01(B)-(C). Those provisions apply only to "full-time" peace officers. § 23-901.01(G). In particular, the City contends that the term "full-time" refers to the "character" of the claimant's "actual work activities" and that, by this definition, Conto did not qualify for compensation. Conto argues that "full-time" refers to the claimant's official employment status. We review questions of law de novo, including the interpretation and application of a statute. *Krol*, 259 Ariz. 261, ¶ 19.

¶17 "Absent ambiguity, we interpret statutes according to their plain language." *In re Drummond*, 257 Ariz. 15, ¶ 5 (2024). Where possible, we give meaning to every word and provision such that no part of the statute is void or trivial. *Planned Parenthood Ariz., Inc. v. Mayes*, 257 Ariz. 137, ¶ 15 (2024); *Nicaise v. Sundaram*, 245 Ariz. 566, ¶ 11 (2019). General terms must be given their general meaning. *See Phillips v. O'Neil*, 243 Ariz. 299, ¶ 11 (2017); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 101 (2012) ("[G]eneral words are general words, and they must be given general effect.").

¶18 Arizona courts consistently construe workers' compensation laws "liberally, remedially, and in a manner ensuring that injured employees receive maximum available benefits." *Aitken v. Indus. Comm'n*, 183 Ariz. 387, 392 (1995). A statutory application that would exclude an employee from a workers' compensation protection requires specific language to that effect. *Marriott Corp. v. Indus. Comm'n*, 147 Ariz. 116, 122 (1985). We presume that if the legislature intends to limit a statute's application, it does so clearly and expressly. *State v. Sanchez*, 209 Ariz. 66, ¶ 11 (App. 2004); *see also Padilla v. Indus. Comm'n*, 113 Ariz. 104, 106 (1976) (noting presumption that "what the [l]egislature means, it will say").

¶19 Section 23-901.01 provides a statutory presumption to reduce a peace officer's burden to make an industrial claim for occupational injuries. *See Krol*, 259 Ariz. 261, ¶¶ 13, 21, 33, 36-39 (interpreting the analogous statutory presumption for firefighters as amended in § 23-901.09 (2021)). Viewed in context of the workers' compensation statutory scheme, "full-time" is a general term that can encompass both claimants' employment status and the character of their work so as to effectuate the statute's purpose of compensating employees for work-related injuries.

¶20 We need not choose between the parties' respective interpretations because under either interpretation proffered, the ALJ properly found that Conto was a full-time employee. The ALJ did consider the character of Conto's actual work activities. Based on Conto's testimony and hearing documents, the ALJ found that, between his initial surgery in February 2008 and his retirement in June 2008, Conto worked from home, went into work, and trained his assigned explosive detection canine. The ALJ also considered Conto's employment status. Per Conto's testimony and his personnel file with the City, the ALJ found that Conto's official employment status remained "full-time" between February 2008 and June 2008. In sum, we conclude that the evidence supports a finding that Conto

was a "full-time" peace officer under either party's proffered definition of that term, and the ALJ did not err on this record.

¶21 Claimants must also show that, as full-time peace officers, they were "regularly assigned to hazardous duty as a part of a special operations, special weapons and tactics, explosive ordinance disposal or hazardous materials response unit" to qualify for the presumption under § 23-901.01(B). *See* § 23-901.01(G). The City suggests that the term "regularly assigned to hazardous duty" should refer to the claimant's active assignments up to their last date of employment. Without deciding the definitive interpretation of the term, the record supports that the ALJ did consider Conto's active assignments up to his last date of employment and still ultimately determined that Conto was regularly assigned to hazardous duty until he retired. Thus, even assuming the City's interpretation is correct, the ALJ did not err.

Disposition

¶22 For the foregoing reasons, we affirm the award.