

## Supreme Court

STATE OF ARIZONA

ROBERT BRUTINEL  
Chief Justice

ARIZONA STATE COURTS BUILDING  
1501 WEST WASHINGTON STREET, SUITE 402  
PHOENIX, ARIZONA 85007  
TELEPHONE: (602) 452-3396

JANET JOHNSON  
Clerk of the Court

November 14, 2019

RE: TANYA WINTERS v ICA/FNF/ZURICH  
Arizona Supreme Court No. CV-19-0157-PR  
Court of Appeals, Division One No. 1 CA-IC 19-0010  
Industrial Commission of Arizona No. 98155-295758  
Insurance Carrier No. 2620028906

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on November 14, 2019, in regard to the above-referenced cause:

ORDERED: Plaintiff's Motion for Summary Judgment = DENIED.

FURTHER ORDERED: Motion for Summary Judgment = DENIED.

FURTHER ORDERED: Motion for Summary Judgment or Partial Judgment = DENIED.

FURTHER ORDERED: Petition for Special Action (Treated as Motion) = DENIED.

FURTHER ORDERED: Motion and Memorandum Supporting Motion for Summary or Partial Judgment = DENIED.

FURTHER ORDERED: (Second) Petition for Special Action (Treated as Motion) = DENIED.

**RECEIVED**

JAN 28 2020

United States Court of Appeals  
For The Federal Circuit

FURTHER ORDERED: (Second) Motion for Summary Judgment or Partial Judgment = DENIED.

FURTHER ORDERED: (Second) Motion and Memorandum Supporting Motion for Summary or Partial Judgment = DENIED.

FURTHER ORDERED: (Third) Motion for Summary or Partial Judgment = DENIED.

FURTHER ORDERED: (Third) Motion and Memorandum Supporting Motion for Summary or Partial Judgment) = DENIED.

FURTHER ORDERED: (Third) Petition Special Action (Treated as Motion) = DENIED.

FURTHER ORDERED: Petition for Review = DENIED.

A panel composed of Vice Chief Justice Timmer, Justice Gould, Justice Beene and Justice Montgomery participated in the determination of this matter.

Janet Johnson, Clerk

TO:

Tanya Winters

Gaetano J Testini

Rachel Parise Brozina

Amy M Wood

lg

IN THE  
COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 4/9/19  
AMY M. WOOD,  
CLERK  
BY: RB

TANYA WINTERS,	)	Court of Appeals
	)	Division One
Petitioner Employee,	)	No. 1 CA-IC 19-0010
	)	
v.	)	ICA Claim
	)	No. 98155-295758
THE INDUSTRIAL COMMISSION OF	)	
ARIZONA,	)	Carrier Claim
	)	No. 2620028906
Respondent,	)	
	)	
FNF CONSTRUCTION,	)	
	)	
Respondent Employer,	)	
	)	
ZURICH AMERICAN INSURANCE	)	
COMPANY,	)	
	)	
Respondent Carrier.	)	
	)	

**ORDER DISMISSING SPECIAL ACTION**

The court has considered petitioner employee's Petition for Special Action - Industrial Commission, filed in this court on March 4, 2019.

This court's review of an ICA award is commenced by the filing of a Petition for Special Action - Industrial Commission with the clerk of this court. See Rule 10, R.P.S.A. The petition for special action must be filed within 30 days after the administrative law judge's decision upon review is mailed to the parties. A.R.S. § 23-943(H). The timely filing of the petition for special action is jurisdictional. *Hall v. Indus. Comm'n*, 106 Ariz. 221, 223 (1970), overruled on other grounds, *Watts v.*

*Indus. Comm'n*, 180 Ariz. 512, 514 (1994) (treating failure to pay filing fees as non-jurisdictional defect).

In this case, the decision upon review was mailed to the parties on November 1, 2016. A petition for special action therefore had to be filed by December 1, 2016. The petition for special action was filed with this court on March 4, 2019. For that reason, claimant's petition for special action was untimely and this court lacks jurisdiction to review the merits of the special action. Therefore,

IT IS ORDERED dismissing the special action and quashing the writ of review.

\_\_\_\_\_/s/\_\_\_\_\_  
Barbara Vidal Vaught, Judge Pro Tempore

A copy of the foregoing  
was sent to:

Tanya Winters (mailed)  
Gaetano J Testini  
Rachel Parise Brozina  
Hon Paula R Eaton

2015

LAW OFFICES  
LONG, LUNDMARK & POPPE P.A.  
POST OFFICE BOX 33997  
PHOENIX, ARIZONA 85067-3997  
(602) 279-9777

Melinda K. Poppe  
Bar No: 011554  
Defendants Employer  
and Carrier

BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

TANYA WINTERS,

Applicant,

vs.

FNF CONSTRUCTION,

Defendant Employer,

CRAWFORD & COMPANY,

Defendant Insurance  
Carrier.

ICA CLAIM NO.: 9563

CARRIER CLAIM NO.: 763-905957

DATE OF INJURY: 06/01/98

STIPULATION

(Assigned to the Honorable Layna Taylor)

Pursuant to A.A.C. R20-5-152, the parties hereby stipulate as follows:

1. The applicant's June 1, 1998 industrial injury was medically stationary effective August 24, 1999 with a 5% right lower extremity scheduled permanent partial disability which was properly calculated based upon 50% of the applicant's average monthly wage.

2. The applicant is entitled to the remainder of any supportive care as authorized by the defendants in their September 23, 1999 supportive medical care award which included two office visits for one year and medications prescribed by Dr. Brad Bruns. This award will terminate effective August 3, 2000.

3. The applicant has received all medical, temporary and permanent partial disability benefits to which she was entitled through the closure of her June 1, 1998 claim effective August 24, 1999.

ICA CLAIM RECEPTION  
06 SEP - 7 PM - 1H

1 4. The defendants' rights pursuant to A.R.S. §23-1023 shall apply to all third-party claims or  
2 actions related to the applicant's June 1, 1998 industrial injury.

3  
4 The parties respectfully request that the above stipulations be approved by the presiding  
5 Administrative Law Judge.

6 RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of ~~March~~ <sup>April</sup>, 2000.

7 LONG, LUNDMARK & POPPE, P.A.

8  
9 By Melinda K. Poppe  
10 Melinda K. Poppe  
11 100 West Clarendon  
12 Suite 2180  
13 Phoenix, Arizona 85013  
14 Attorneys for Defendants  
15 Employer and Carrier

16 TAYLOR & ASSOCIATES

17 By: Brian A. Weekley  
18 Brian A. Weekley  
19 814 W. Roosevelt  
20 Phoenix, Arizona 85007  
21 Attorneys for Applicant

22 ORIGINAL of the foregoing  
23 DELIVERED this 7 day of  
24 ~~March~~ <sup>April</sup>, 2000, to:

25 The Hon. Layna Taylor  
26 Administrative Law Judge  
Industrial Commission of Arizona  
800 West Washington Street  
Phoenix, Arizona 85007

[Signature]

*Date 4-10-00*

①

# BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

TANYA WINTERS,

Applicant,

vs.

FNF CONSTRUCTION,

Defendant Employer,

MARYLAND CASUALTY CO c/o CRAWFORD  
& CO,

Defendant Insurance Carrier.

ICA Claim No. 98155295758  
Social Security # 7-9563  
Ins. Claim No. 557-62227-CS  
Date of Injury: 06/01/1998

## FINDINGS AND AWARD APPROVING STIPULATION

On June 1, 1998, the applicant sustained an industrial injury. The claim was accepted for benefits. On September 23, 1999, the carrier issued a Notice of Claim Status closing the applicant's claim effective August 24, 1999, with a permanent disability. The applicant filed a timely Request for Hearing and a formal hearing was initially scheduled to be held on January 18, 2000, in Phoenix, Arizona. In lieu of proceeding with formal hearing, the parties filed a stipulation and requested approval of same. The applicant is represented by Brian Weekley. The defendants are represented by Melinda Poppe.

The undersigned, having fully considered the file, records and all related matters, now enters her Findings and Award as follows:

### FINDINGS

1. On June 1, 1998, the applicant sustained an industrial injury. The claim was accepted for benefits. On September 23, 1999, the carrier issued a Notice of Claim Status closing the applicant's claim effective August 24, 1999, with a permanent disability. The applicant filed a timely Request for Hearing and a formal hearing was initially scheduled to be

TANYA WINTERS

held on January 18, 2000, in Phoenix, Arizona. In lieu of proceeding with formal hearing, the parties filed a stipulation on April 7, 2000, wherein the parties stipulated to the following facts to form the basis of this Award.

2. The parties stipulated, and it is found, that the applicant's condition was medically stationary with a five percent scheduled right lower extremity permanent partial disability which was properly compensated based upon fifty percent of the applicant's average monthly wage. The parties further stipulate that the applicant is entitled to any remaining supportive care authorized in the September 23, 1999, supportive medical award which included two medical office visits and medications prescribed by Dr. Bruns, and that she has received all medical and temporary and permanent partial disability benefits to which she was entitled through the closure of her claim effective August 24, 1999.

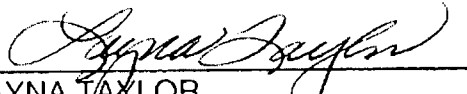
3. The parties to a proceeding before the Industrial Commission may stipulate orally or in writing to any facts or issues, and any such stipulation shall be considered binding upon the parties. Arizona Administrative Code, R20-5-152.

A W A R D

IT IS ORDERED approving the stipulation of the parties.

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NOTICE: Any party dissatisfied with this Award may file a written request for review of the same with the Administrative Law Judge Division of the Industrial Commission within THIRTY (30) DAYS after the mailing of this Award as provided by Arizona Revised Statutes, Sec. 23-942 (D) and 23-943 (A) and (B). Unless such written request is made within the time provided, this Award is final.

By   
LAYNA TAYLOR  
Administrative Law Judge

DATED AND MAILED IN PHOENIX, ARIZONA THIS 10TH DAY OF APRIL, 2000.



## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other documents required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

United States Court of Appeals  
For The Federal Circuit

## I. (a) PLAINTIFFS

Tanya Winters

(b) County of Residence of First Listed Plaintiff Gila  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

## DEFENDANTS

Industrial Commission of Arizona Industrial Commission of Arizona - FNF Const./Zurich Ins.  
County of Residence of First Listed Defendant Maricopa

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input checked="" type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

SSR 73-7C: SECTION 223(d) -- (42 U.S.C. 443(d)).

Brief description of cause:

Wrongly denied disability benefits in Arizona

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

## FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE