

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000344-001 DT

05/14/2026

HONORABLE JULIE A. LAFAVE

CLERK OF THE COURT
J. Eaton
Deputy

HAMED RAMDOUM
THOMAS INMON
JEREMY DOUCETTE
CORY KREUZER
MATTHEW J HARRISON
DIRK S BARTO
FERNANDO TAPIA GONZALEZ
EMANUEL A SERRANO
GEORGE EDMUND CAFFEE III
JEFFERY PRIDE
ROBERT J ROSE
ADRIAN M BUCHHOLDT
KYLE ROBERT WITHAM
KEVIN GRAHAM
ROBIN EITEL HESPELT
BRETT JAMES KURTH
DARREN MINORU KIMURA
IAN EDWARD EVANS
MICHAEL LEWIS SRAMEK
GARRETT ELLIS WILLIAMS
AQUILES MARTINEZ
EVAN SCOTT ZISKA
FREDERIC BISHOP
RUSSELL LEE DAVIS
FABIAN ARAMBULA
ROSS BERVIN
ABRAHAM FAKHOURY

KATYA M NORRIS

v.

SOUTHWEST AIRLINES CO (001)
LABOR DEPARTMENT OF THE INDUSTRIAL
COMMISSION OF ARIZONA (001)

PETER C PRYNKIEWICZ
SOPHIA COX

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000344-001 DT

05/14/2026

AFSHAN PEIMANI
COMM. LAFAVE
REMAND DESK-LCA-CCC
INDUSTRIAL COMMISSION OR
ARIZONA
ATTN DIRECTOR
800 W WASHINGTON ST STE 402
PHOENIX AZ 85007
INDUSTRIAL COMMISSION OF
ARIOZNA
LABOR DEPARTMENT
PO BOX 19070
PHOENIX AZ 85005

RULING-DENYING MOTION FOR EVIDENTIARY HEARING

In this case, the best indicator of how to resolve the request for an evidentiary hearing is found in Southwest Airlines Co's ("SWA") Reply in Support of Motion for Evidentiary Hearing ("Reply") filed January 5, 2026. It argues an evidentiary hearing is necessary "to resolve the issues raised in the Notice of Appeal"¹("NOA"). Reply at 2:21-22. That may well be true statement of fact. As to the Constitutional issues raised in the NOA for the first time however, it is an incorrect statement of the role of this Court. This Court's review is limited to resolving the issues raised in the administrative proceedings; not those newly raised in a NOA. Having considered SWA's Motion for Evidentiary Hearing ("Motion") filed December 5, 2025, Claimant's Opposition to Appellee Request for Evidentiary Hearing ("Response") and Declaration filed December 19, 2025, and the accompanying Exhibits thereto, the Reply, and the documents provided in the certificate of record, the Motion is denied.

Claimants also filed a Motion for an Evidentiary Hearing asking only for the opportunity to "present evidence and testimony *in response* to any evidence and testimony offered by Appellant". See Motion for an Evidentiary Hearing, filed December 19, 2025, at 2:6-7 (*Emphasis added*). Because that motion was contingent on the granting of SWA's, it is denied as moot.

The NOA raises a number of constitutional issues which it claims to be properly submitted for this Court's review. Those include interpretations and applications of the Railway Labor Act

¹ There is also an Amended Notice of Appeal in the record and the two will be referred to herein in the singular as "NOA".

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000344-001 DT

05/14/2026

(“RLA”), the Airline Deregulation Act (“ADA”), the Federal Aviation Act (“FAA”), and Dormant Commerce Clause preemption. *See* Motion at 2:25-3:9

Arizona law permits evidentiary hearings in administrative appeals and SWA notes the use of the word “shall” in the relevant rules and law. However, the granting of an evidentiary hearing remains discretionary and should only be granted if the testimony and exhibits are *relevant* and then only to the extent necessary to assist the Court in determining whether “the agency's action is contrary to law, is not supported by substantial evidence, is arbitrary and capricious or is an abuse of discretion”. *See* A.R.S. §12-910 (A).

A. An action to review a final administrative decision shall be heard and determined with convenient speed. If requested by a party to an action within thirty days after filing a notice of appeal, the court shall hold an evidentiary hearing, including testimony and argument, *to the extent necessary to make the determination required by subsection F of this section*. The court may hear testimony from witnesses who testified at the administrative hearing and witnesses who were not called to testify at the administrative hearing.

B. *Relevant* and admissible exhibits and testimony that were not offered during the administrative hearing shall be admitted, and objections that a party failed to make to evidence offered at the administrative hearing shall be considered, unless either of the following is true:

- 1. The exhibit, testimony or objection was withheld for purposes of delay, harassment or other improper purpose.**
- 2. Allowing admission of the exhibit or testimony or consideration of the objection would cause substantial prejudice to another party.**

A.R.S. § 12-910(emphasis added).

The proposed new evidence and testimony must be relevant to the decision made by the administrative law judge (“ALJ”) and must assist the Court in determining if that Decision upon Hearing and the Decision upon Review (collectively “Decision”) was in error. SWA admits much of the evidence cannot be relevant to the Decision as, accepting its argument, the ALJ improperly refused to consider it. SWA believes the error was in that refusal and thus it should be permitted to introduce evidence on appeal that the ALJ refused to consider. If that refusal was proper, or if the evidence sought is already contained in the record (albeit perhaps not as SWA would like it to be), there is no legal basis for an evidentiary hearing. It is through that lens that this Court determined the need for the proposed testimony or evidence.

The Court notes as a threshold matter that the Motion ignores SWA’s obligations under Judicial Rules of Administrative Decision (“JRAD”) Rule 10 and A.R.S. § 12-911(A)(7):

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000344-001 DT

05/14/2026

(a) Motion Required. Any party seeking to introduce exhibits or testimony (or both) not offered during the administrative hearing must file a written motion with the clerk of the superior court.

(b) Contents of Motion. The motion *must identify the evidence sought to be introduced and set forth the appropriate legal authority in support of its admission* as required by A.R.S. § 12-910. The moving party also *must address the application of A.R.S. § 12-911(A)(7)*, relating to a remand to the agency, to the party's motion. Form 9 is a template of the motion to introduce additional evidence.

JRAD Rule 10

SWA was required to address the application of statute and failed to do so:

A. The superior court may:

7. When a hearing has been held by the agency, remand for the purpose of taking additional evidence when from the state of the record of the administrative agency or otherwise it appears that such action is just.

A.R.S. § 12-911

I. THE MOTION IS INSUFFICIENT ON ITS FACE

The Motion offers only general categories of proposed evidence and testimony. It does not identify what the evidence would be on any issue and fails to cite to any law which would support the admission of the general categories it seeks. As to each of the categories identified in the Motion, SWA was required to indicate not that it sought to introduce “exhibits and testimony regarding...” each of those categories, but what that evidence and testimony would be. And what law supported its inclusion. The Motion is therefore deficient in its obligations pursuant to JRAD Rule 10.

On this record, that lack of specificity is not a mere technical defect. The motion seeks to reopen a consolidated administrative record that already includes stipulations, a protected-hours hearing, a merits hearing, post-hearing briefing, and the Decision—over 14,000 pages of documents and transcripts have been provided. Without a concrete proffer, the court cannot reliably determine whether the proposed evidence is necessary, admissible, previously available, or unfairly prejudicial. Claimants’ objection on this point is substantial and well taken. (Response at 9-10.) A cursory review of the record indicates it is not necessary to introduce more evidence to determine any error in the ALJ Decision. The proposed testimony and evidence either addresses untimely NOA issues, or is sufficiently addressed in the record.

Further, the Motion states only in a footnote that because the ALJ declined to hear the evidence, remand to allow it to do so would be “futile”. Motion at 4:FN1. There is no legal

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000344-001 DT

05/14/2026

argument presented that the ALJ would refuse to consider evidence at the direction of this Court. Therefore, SWA's unsupported contention that the statute "does not apply", without more fails to address how a remand to the ALJ for further inquiry would not be the legally correct response--to allow that jurisdiction to consider evidence it erroneously excluded and make a substantive decision on those merits presented. The Motion could have been denied relying on this procedural failure alone.

II. THE MISTAKE OF LAW REGARDING THE ALJ'S ABILITY TO CONSIDER THE CONSTITUTIONAL ISSUES AS A LEGAL CONCEPT DID NOT MAKE THE DECISION UNSUPPORTED.

The ALJ erred in the interpretation of the law regarding the general scope of his jurisdiction. However, declining to consider the constitutional questions posed for the first time at the Review, was a correct application of the law. The Motion argues the ALJ misapplied relevant law when it stated it had no legal authority to consider the constitutional issues. Motion at 4:10-23. The Court agrees. The ALJ has the right to consider constitutional arguments. *See Golob v. Ariz. Med. Bd.*, 217 Ariz. 505 (App. 2008).

However, in this case the Court finds the proposed evidence would not be properly considered by the ALJ on remand, nor here on appeal, as it was either not raised during the case at the administrative level, or already considered and abandoned.

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 after the date of filing in which to respond. Failure to respond will not be deemed an admission against interest.

E. The review shall be made by the presiding administrative law judge and *shall be based on the record and the memoranda submitted* under the provisions of subsection A of this section.

A.R.S. § 23-943 (emphasis added)

The Constitutional issues were raised on review and are not the proper subject of this appellate review. In short, to the extent any issues raised in the NOA are not properly before the Court, they will similarly not be considered.

A review of the process for the administrative proceeding helps shape the understanding of what was properly before the ALJ for determination and what therefore is properly before this one. Complainants filed the action "with the Labor Department within one year from the date the wages, earned paid sick time, or equivalent paid time off were due.". Ariz. Admin. Code R20-5-

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000344-001 DT

05/14/2026

1211. The Commission issued its Findings and Order. See R20-5-1213. If a party disputes the Findings and Order, it is entitled to seek review of that Decision. See R20-5-1214. If it does, the Commission must issue a written decision after any hearing or review. Id. That decision is final unless a request for a rehearing is filed pursuant to R20-5-1215 or an administrative appeal is filed. Id. Here, a Request for Rehearing was filed, and the Commission had an obligation to review the rulings thus far in the case, with the following limitations:

B. A request for rehearing or review shall be based upon any of the following causes that materially affected the rights of an aggrieved party:

1. Irregularities in the hearing proceeding or any order, or abuse of discretion that deprives a party seeking review of a fair hearing;

2. Accident or surprise that could not have been prevented by ordinary prudence;

3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;

4. Error in the admission or rejection of evidence, or errors of law occurring at the hearing;

5. Bias or prejudice of the Department or administrative law judge; and

6. The findings of fact or conclusions of law contained in the decision are not justified by the evidence or are contrary to law.

Ariz. Admin. Code R20-5-1215

SWA argues the ALJ's refusal to consider the constitutional issues on review was an abuse of discretion. It was not. By the time of the review, the ALJ lacked jurisdiction to hear those issues, due to their untimeliness. The rehearing decision may be appealed to this Court as occurred here. However, the argument that the ALJ should have heard new evidence at that review hearing is not supported in the law. The ALJ properly refused to consider them as part of a review proceeding. As this Court does here.

III. PROCEDURAL BACKGROUND

This case was litigated at the administrative level for the better part of two years. For purposes of this Motion, the Court does not consider or take a position on the merits of the arguments presented to the ALJ, or to his rulings on those arguments. That said, in reviewing all the hearings and briefings conducted, it is clear the parties knew which issues were to be presented to the ALJ, and limited their arguments consistent with those positions. A brief review of the procedural history to date therefore was instructive in this Court's determination that denying the Motion was proper. That history should also be considered by the parties in limiting their briefing on appeal.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000344-001 DT

05/14/2026

A. The Summary Judgment proceedings

SWA moved for summary Judgment in August 2023. One claimant responded in September 2023 with a filing the ALJ treated as a cross-motion for summary judgment, and the cases were consolidated for resolution of shared legal questions (collectively “MSJs”). (Decision Upon Hearing at 1-2; Summary Judgment (“SJ”) Order at 1-3.)

There was a lengthy oral argument on the legal issues raised in the MSJs. At the February 16, 2024, oral argument, SWA argued that the dispute presented what it called “a -- strictly a legal issue,” namely whether leave taken beyond the statutory minimum, or beyond SWA’s more generous policy, remained protected earned paid sick time (“EPST”). (2/16/24 Hrg. Tr. at 10:24-11:8.) Claimants argued that the presumption did not vanish simply because an employee crossed the company’s threshold. (*Id.* at 32:17-24, 33:1-13.)

The MSJ argument raised several of the issues listed in the NOA. The parties squarely litigated the presumption issue, the effect of A.R.S. §§ 23-378(A) and 23-379(B), and SWA’s contention that a disciplinary action taken after the protected threshold could not be retaliatory as a matter of law. (*Id.* at 12:1-16:18, 19:13-24:16, 51:1-53:14.) The conference also developed the parties’ competing views on whether the Collective Bargaining Agreement (“CBA”)’s accrued leave bank, or SWA’s nine-day or ninety-hour policy, supplied the operative protected amount. (*Id.* at 36:15-40:10, 41:1-43:8, 55:10-56:10.)

It did not, however, raise any of the constitutional issues or the later broad federal-preemption theories identified in the NOA. There was one passing reference by SWA that if the tribunal had to interpret the CBA, “then it is preempted,” SWA also avowed that it did not think such interpretation was necessary. (*Id.* at 55:20-56:10.) That exchange preserved the fact that preemption was mentioned, but it did not amount to a developed RLA, ADA, FAA or Dormant Commerce Clause presentation. Nor did it make clear how any of those federal laws impacted the issues of this case. The Excessive Fines, Due Process, continuing-violation, attorneys’ fees, or “LOI (Letter of Instruction) as adverse action” issues that appear in the NOA we also not referenced. The question presented was whether SWA’s disciplinary theory could be resolved as a matter of law. (*Id.* at 10:24-16:18, 32:17-33:14, 52:14-53:14.)

ALJ Hauer denied both MSJs. *See* March 8, 2024, Order. The March order is material because it framed the issues that carried forward into the evidentiary phases. The ALJ concluded the record was insufficient to establish that the CBA itself was intended to constitute a more generous EPST policy, but also recited SWA’s agreement that its attendance policy and later memorandum allowed employees to use nine days or ninety hours of leave protected in the same manner as earned paid sick time. (SJ Order at 4-7.) The Decision later incorporated this Order by reference. (Decision Upon Hearing at 1-2.)

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000344-001 DT

05/14/2026

B. The Stipulation of Facts and Continued Development of the Record

On June 7, 2024, SWA and the represented Claimants executed a detailed stipulation of facts. The stipulation established that the represented claimants were covered by the same CBA; that Article 13 provided accrual of eight hours of sick leave per month and permitted accrual up to 2,000 hours; that Southwest's 2019 attendance policy and March 24, 2023, memorandum were unilateral policies rather than products of bargaining; that the policy used a nine-absence threshold in a rolling twelve-month period; and that each represented claimant had enough accrued leave to cover the time at issue when discipline issued. (Stipulation at 1-5.)

ALJ Hauer's July 11, 2024, letter approved the Stipulation, deferred attorney-fee evidence, allocated burdens of proof for the represented Claimants and the Labor Department, and expressly limited the August 7, 2024, hearing to the threshold issue of which leave hours were protected under the Act. (Hauer Letter (7/11/24) at 1-3.)

C. June 10, 2024 Procedural Conference

At the June 10, 2024, hearing, SWA again framed the matter as a legal dispute over whether leave beyond the statutory minimum, or beyond Southwest's policy, remained protected and again argued that after the protected amount was exhausted "anything beyond that is not protected, and there cannot be retaliation." (6/10/24 Hrg. Tr. at 10:20-16:18.)

The June transcript shows the same statutory issues presented in the NOA, namely the RLA presumption issue, the A.R.S. §§ 23-378(A) and 23-379(B) issue, and the dispute over whether SWA's nine-day or ninety-hour policy, or the CBA's broader leave bank, supplied the operative protected amount. (*Id.* at 10:20-16:18, 36:15-43:8, 52:14-53:14.) It again contains only a passing reference to federal-preemption argument. (*Id.* at 55:20-56:10)

D. The August 7, 2024, Protected-Hours Hearing

The August 7, 2024 hearing was an evidentiary proceeding focused on the narrow protected-hours question. ALJ Hauer stated that the purpose of the hearing was to "hear arguments and testimony concerning which leave hours are protected" and then to issue a preliminary decision that would determine the burdens and course of the later litigation. (8/7/24 Hrg. Tr. at 10:16-12:8, 13:1-14:18.)

The principal witnesses were Ken Patrick, Christopher Leidahl, and Christopher Maberry, all SWA employees. Patrick testified about the union's understanding of the CBA and the unilateral character of the attendance policy. Leidahl testified about bargaining history and the reason for increasing sick-leave accrual caps. Maberry testified that Southwest revised its policy in response to multiple state and local sick-leave laws and intentionally selected a nationwide policy protecting nine days because that number would satisfy the most generous applicable legal regime. (Protected-Hours Order at 5-7.)

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000344-001 DT

05/14/2026

Nothing in the record addressed Excessive Fines, Due Process, RLA, ADA, FAA, or Dormant Commerce preemption. The hearing instead remained focused on the protected-hours dispute and the content and intent of the three governing leave-related documents. (8/7/24 Hrg. Tr. at 20:16-24:4, 24:13-27:20, 105:2-110:5.)

E. December 12, 2024, Pre-Hearing Proceeding

ALJ Hauer conducted a proceeding on December 12, 2024, as pre-hearing conference. (12/12/24 Hrg. Tr. at 4:7-12, 5:2-8.) The parties addressed opening statements, post-hearing briefs, use of the existing stipulation, the possibility of a new chart covering the expanded claimant group, the need for claimant testimony, attendance and abandonment, the status of the Labor Department files and Findings and Orders, attorneys' fees after the award, hearing scheduling, reliance on prior transcripts, and disclosure deadlines. (12/12/24 Hrg. Tr. at 11:5-12:22, 13:13-14:25, 15:1-16:18, 16:19-19:25, 20:1-28:15.) The conference developed the architecture of the case moving forward.

F. April 17, 2025, Final Evidentiary Hearing on the Merits

The final merits hearing occurred on April 17, 2025. The Decision summarizes testimony from Kerry Amsbaugh and Josh Hand concerning the enforcement of Southwest's attendance policy, the issuance of letters, the review of prior discipline, and the way attendance information was used in deciding whether to issue discipline. (Decision Upon Hearing at 3-7.)

SWA framed the merits issue as whether any discipline had been imposed "in retaliation for the exercise of rights that are protected under the Fair Wages and Healthy Families Act." (4/17/25 Hrg. Tr. at 19:19-25.) Claimants answered that the protected-hours question had already been decided and that the focus now was retaliation.

Three SWA employees testified at the hearing. The April 17, 2025, hearing developed the presumption issue, the "other permissible reasons" issue, and Southwest's contention that every letter was issued only for the first unprotected absence after protected leave had been exhausted. (*Id.* at 24:9-25:25, 25:20-26:18, 30:18-31:25.) It also developed, through Amsbaugh's testimony, Southwest's later "LOI is not adverse action" position, because he testified that "the letter of instruction is not considered disciplinary." (*Id.* at 50:5-12.)

The transcript does not, however, show a developed presentation of Excessive Fines, Due Process, RLA preemption, ADA preemption, FAA preemption, Dormant Commerce preemption, or attorneys' fees. The hearing instead remained focused on whether the attendance letters were retaliatory under the already-decided protected-hours framework and whether Southwest could prove that it acted only on unprotected absences. (*Id.* at 19:19-26:18, 30:18-32:20, 45:1-50:12, 131:13-137:22.) The "continuing violation" issue also was not expressly argued although the hearing clearly examined the content, maintenance, and progression of the attendance letters. (*Id.* at 48:3-9, 49:7-16, 72:4-12, 75:19-76:7, 140:1-8.)

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000344-001 DT

05/14/2026

On August 25, 2025, ALJ Hauer issued the consolidated decision upon hearing. SWA filed a request for review on September 10, 2025. The October 16, 2025, Decision upon Review modified the Arambula award, stated that SWA had recently raised constitutional challenges, and held that administrative bodies cannot rule on the constitutionality of the statutes they are charged with enforcing. The decision otherwise affirmed the final award. (Decision Upon Review at 2-4.)

IV. DISCUSSION

A. SWA Seeks to Develop Issues It Did Not Meaningfully Litigate Before ALJ Hauer

Arizona preservation principles generally disfavor consideration of arguments not meaningfully presented below. *See Englert v. Carondelet Health Network*, 199 Ariz. 21, 26-27, ¶ 13 (App. 2000); *Reisch v. M & D Terminals, Inc.*, 180 Ariz. 356, 360 (App. 1994). The present record supports the Claimants' position that the Motion goes well beyond supplementation on a preserved issue. At the MSJ phase, the parties litigated the relationship among the CBA, the attendance policy, and the March 24, 2023, memorandum. (SJ Order at 4-7.) At the August 7, 2024, hearing, SWA developed evidence about the purpose of the attendance policy and why it chose a nine-day nationwide standard. (Protected-Hours Order at 5-7.) At the April 17, 2025, merits hearing, SWA litigated how the policy was enforced and why letters issued in the individual claims. (Decision Upon Hearing at 3-7, 22-27.) SWA never meaningfully developed the broad new evidentiary subjects now identified in its motion, especially RLA, ADA, FAA, Dormant Commerce, and multi-jurisdictional compliance burdens. (Motion at 3-4.)

SWA's errata conceded that it did not reassert its RLA preemption arguments (the only preemption arguments raised in the ALJ proceeding) in the September 10, 2025, request for review. (Errata at 2.) It has therefore waived same. The record no longer supports SWA's earlier preservation narrative on that issue. Moreover, the claimants' reliance on *Estate of Bohn v. Waddell*, 174 Ariz. 239, 249-50 (App. 1992), has force insofar as it undercuts SWA's broader claim that it was categorically disabled from developing preemption-related facts or arguments before the administrative tribunal. (Response at 11-12.) Even if ALJ Hauer was correct that he could not declare the Act unconstitutional, the present record does not show that SWA tried to do so during the evidentiary process.

This same reasoning applies even more strongly to SWA's request to present new evidence about whether LOIs and warning were placed in, and later removed from, personnel files. That issue concerns the very disciplinary actions and alleged adverse acts already litigated on the merits. (Motion at 3-4; Decision Upon Hearing at 22-27.) There is testimony directly related to that issue in the record. SWA presents no persuasive reason why it could not have offered alternative or supplemental evidence in the merits phase, during the examination of its witnesses.

B. The Court Can Address Any Preserved Constitutional Questions Through Briefing on the Existing Record Without Reopening the Evidence

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000344-001 DT

05/14/2026

The existence of a constitutional issue does not automatically make an evidentiary hearing necessary. A.R.S. § 12-910(A) speaks in terms of necessity. Here, the constitutional issues most clearly identified in the later administrative proceedings are the Excessive Fines and Due Process issues tied to the size and nature of the administrative awards. (NOA at 4-5; Decision Upon Review at 3-4.) Yet SWA's proposed new evidence about airline operations, collective bargaining, federal regulation, and the burdens of multiple state and municipal laws are unrelated to those two issues. (Motion at 3-4.) Those categories align more closely with preemption and Dormant Commerce theories which the record does not contain. This is, after all, a court of review only.

Appellate court jurisdiction is "limited to final judgments which dispose of all claims and all parties." *Harris v. Cochise Health Sys.*, 215 Ariz. 344, 347, 160 P.3d 223, 226 (Ct. App. 2007); *Musa*, 130 Ariz. at 312, 636 P.2d at 90; *see also* A.R.S. § 12-2101(B). Generally, "an appellate court will not consider issues not raised in the trial court." *Hawkins v. Allstate Ins. Co.*, 152 Ariz. 490, 503, 733 P.2d 1073, 1086 (1987). Although this rule is one of procedure, not jurisdiction, it is "established for the purpose of orderly administration and the attainment of justice." *Id.* Our court has observed that the consideration of belatedly urged issues undermines "sound appellate practice," *id.*, and violates the interests of the party against whom the claim is newly asserted on appeal. *Stokes v. Stokes*, 143 Ariz. 590, 592, 694 P.2d 1204, 1206 (App.1984); *see also* *Chilton v. Center for Biological Diversity, Inc.*, 214 Ariz. 47, ¶ 11, 148 P.3d 91, 96 (App.2006) (argument waived on appeal when not briefed at trial court level and trial court had no opportunity to consider it). Thus, although Arizona appellate courts have the discretion to hear arguments first raised on appeal, we rarely exercise that discretion. *See, e.g., Hawkins*, 152 Ariz. at 503, 733 P.2d at 1086.

For the foregoing reasons, we apply our standard practice when encountering arguments raised for the first time on appeal and decline to address Angel Team's well-briefed contention that it was not required by regulation, statute, or contract to exhaust its administrative remedies before filing its contract claims against CHS. *See Hawkins*, 152 Ariz. at 503, 733 P.2d at 1086.

Harris v. Cochise Health Sys., 215 Ariz. 344, 351 (App. 2007)

While SWA properly argues that ALJ erred in refusing to substantively consider the constitutional issues raised, it's argument fails because at the time they were proffered to the ALJ for that consideration, it was already too late. While the ALJ erred in its stated authority to hear those issues, the result would have been the same. *E.g., Arnold v. Knettle*, 10 Ariz. App. 509, 511 (1969) (stating that "if the trial court was correct in its ruling for any reason, the reviewing court is bound to affirm"); *see also Glaze v. Marcus*, 151 Ariz. 538, 540 (App. 1986) (stating that appellate court "will affirm the trial court's decision if it is correct for any reason, even if that reason was not considered by the trial court"); *City of Tucson v. Morgan*, 13 Ariz. App. 193, 195

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000344-001 DT

05/14/2026

(1970) (stating that "if the trial court based its ruling upon wrong reasons but was correct in its ruling for any reason, the appellate court is bound to affirm").

Here, the ALJ erroneously believed deciding the constitutional issues was beyond his jurisdiction. It was not. However, the constitutional arguments were not raised until the review period (in essence, the agency level "appeal"). It was too late to ask to be heard on those issues at the review. The new issues were properly precluded at the review albeit for an erroneous reason—the ALJ had jurisdiction to decide them; they were however untimely and thus waived. They are similarly waived here.

There is nothing in the governing law which permits this Court to decide issues which were not before the administrative agency; it is a court of review. An issue not raised before the Industrial Commission either as part of the hearing process or in a request for review is not subject to appellate review. *Stephens v. Industrial Commission*, 114 Ariz. 92, 94, 559 P.2d 212, 214 (App.1979); *Norsworthy v. Industrial Commission*, 24 Ariz.App. 73, 535 P.2d 1304 (1975). This rule stems from the requirement that an aggrieved party must exhaust his administrative remedies before seeking judicial relief, and is based on the assumption that an administrative agency will decide a matter correctly if given the opportunity to do so. *Stephens*, 114 Ariz. at 94, 559 P.2d at 214 (citing *Ross v. Industrial Commission*, 82 Ariz. 9, 11–12, 307 P.2d 612, 614 (1957)). If an issue presented for appellate review was not raised before the Commission in a request for review, we will review the record for “(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.” *Stephens*, 114 Ariz. at 95, 559 P.2d at 215.

Obersteiner v. Indus. Comm'n of Arizona, 161 Ariz. 547, 549, 779 P.2d 1286, 1288 (Ct. App. 1989)

While *Obersteiner* permitted additional evidence, it was only because the record clearly showed the movant asked to enter that evidence into the record at the hearing and the administrative law judge denied that request “repeatedly”. *Id.* Here, no request was made until the review hearing. By that time, all evidence had been properly admitted. SWA failed to raise the issues of the NOA at any of the multiple hearings in this case. As a result, it failed to exhaust its administrative remedies by failing to raise them in a timely manner to the ALJ.

V. DISPOSITION AND ORDERS

Because the Motion articulates the issues raised in the NOA, this Court’s ruling regarding new evidence on those issues would also be the ruling in determination of whether to consider those issues if briefed on appeal. In the interest of judicial economy and to allow the parties to argue only those issues which will be considered, the Court has attempted to address what is properly before it based on the review necessary to determine this Motion. To the extent the issue was not presented to the ALJ, it will not be considered on appeal and SWA is encouraged not to

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2025-000344-001 DT

05/14/2026

brief those issues. To the extent those issues appear in the record, SWA is encouraged to brief those issues pursuant to the record testimony only.

Any issues raised for the first time at the Review will not be considered here. Any evidence SWA proposes, to the extent it is defined with enough specificity to determine, is either related to an issue not properly before this Court, or sufficient evidence on those issues already exists in the record.

For the reasons set forth above, The Motion is denied. Claimants Motion is also denied.

Accordingly,

IT IS ORDERED denying the Motion for an Evidentiary Hearing

IT IS FURHTER ORDERED denying Claimant's conditional Motion for an Evidentiary Hearing.

IT IS FURTHER ORDERED the parties are to file their Opening Briefs on Appeal pursuant to JRAD Rule 6 within 45 days of the date of this Order. Answering Briefs due within 45 days of service of Appellate Briefs, Replies due within 20 days of service of Answering Briefs

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any filings.