OFFICE OF ADMINISTRATIVE COURTS STATE OF COLORADO
WORKERS' COMPENSATION NO. 5-130-043-005

ISSUES

1. Whether the claimant has demonstrated, by a preponderance of the evidence, that recommended medical treatment is reasonable and necessary to maintain the claimant at maximum medical improvement (MMI). The specific medical treatment at issue includes:

   a. a referral from Dr. Craig Stagg for a neurosurgical consultation;

   b. a referral from NP Sara Winsor for a consultation with physiatrist Dr. Bain;

   c. a referral from NP Winsor for magnetic resonance imaging (MRI) of the claimant's lumbar spine; and

   d. a referral from NP Winsor for lumbar spine transforaminal epidural steroid injections {TFESIs).

2. Whether the claimant has demonstrated, by a preponderance of the evidence, that he is entitled to reimbursement of costs pursuant to Section 8-42-101(5), C.R.S.

3. Whether the claimant has demonstrated, by a preponderance of the evidence, that he is entitled to additional mileage reimbursement from the respondents.

FINDINGS OF FACT

1. On February 1, 2020, the claimant was injured while working for the employer. Specifically, the claimant's left foot and ankle were crushed between two pieces of steel. The respondents have admitted liability for the February 1, 2020 work injury.

2. Immediately following the injury the claimant underwent surgery to his left foot and ankle. Initially, the claimant's authorized treating provider (ATP) was Dr. Robert McLaughlin. The claimant has also seen Dr. Craig Stagg as his ATP.

3. On April 7, 2021, the claimant attended an independent medical examination (IME) Dr. Katherine Mccranie. In connection with the IME, Dr. Mccranie reviewed the claimant's medical records, obtained a history from the claimant, and performed a physical examination. In her IME report, Dr. Mccranie opined that the

claimant suffered a left lower extremity crush injury resulting in the need for surgical intervention. Dr. Mccranie also listed a diagnosis of left lower extremity peroneal neuropathy. These diagnoses were identified as being related to the claimant's work injury. Dr. Mccranie further opined that the claimant did not suffer a lumbar spine injury as a result of the February 1, 2020 incident. With regard to maximum medical improvement (MMI), Dr. Mccranie opined that the claimant would be placed at MMI at his next appointment with Dr. McLaughlin. Dr. Mccranie assessed a permanent impairment rating of 15 percent for the claimant's left lower extremity. She did not assess any other permanent impairment.

4. On May 3, 2021, Dr. McLaughlin placed the claimant at MMI. In addition, Dr. Mclauglin assessed permanent impairment of 17 percent for the claimant's left lower extremity, and 15 percent for the claimant's lumbar spine. With regard to maintenance medical treatment, Dr. McLaughlin recommended chiropractic treatment (12 visits); physical therapy (12 visits); use of a TENS unit; and topical creams.

5. On September 2, 2021, the respondents filed a Final Admission of Liability (FAL) reflecting Dr. McLaughlin's May 3, 2021 report.

6. After reviewing additional medical records, on February 14, 2022, Dr. Mccranie authored a second report. Dr. Mccranie was asked to state an opinion regarding recommendations for the claimant to undergo a neurologic consultation and medical massage. With regard to both modes of treatment, Dr. Mccranie opined that the treatment was neither reasonable nor necessary. With regard to her recommendations for maintenance medical treatment, Dr. Mccranie stated: 12 visits of physical therapy over 12 to 18 months; 12 chiropractic visits over 12 to 18 months; a TENS unit; one to three follow-ups with specialists Dr. Matsumura and/or Dr. Githens. Dr. Mccranie reiterated her opinion that the claimant did not suffer an injury to his lumbar spine. Therefore an lumbar ESI would not be related to the work injury.

7. Additional maintenance medical treatment has been recommended for the claimant. specifically, Dr. Craig Stagg has recommended a neurosurgical consultation. In addition, NP Sara Winsor had recommended the claimant see physiatrist Dr. Bain; undergo a lumbar spine MRI; and receive lumbar spine transforaminal epidural steroid injections (TFESIs). These modes of treatment have each been denied by the respondents.

8. After reviewing additional medical records, on June 15, 2022, Dr. Mccranie authored a third report. Dr. Mccranie was specifically asked to address whether the recommendations of NP Winsor for a consultation with Dr. Bain; a lumbar spine MRI; and lumbar spine TFESIs. Dr. McCranie was also asked to opine regarding the reasonableness and relatedness of Dr. Stagg's recommendations for a neurosurgery evaluation and injections. With regard to these recommended treatments, Dr. Mccranie opined that the treatment was neither reasonable nor necessary.

9. Dr. McCranie's deposition testimony was consistent with her written reports. Dr. Mccranie testified that it continues to be her opinion that the claimant's lumbar spine issues are not related to his work injury. In support of this opinion, Dr. Mccranie noted that when Dr. McLaughlin placed the claimant at MMI "he could not say with certainty whether or not the disc herniation was due to [the claimant's] work injury". Dr. Mccranie specifically testified that a consultation with a neurosurgeon would not be related to the claimant's work injury. Dr. Mccranie testified that the claimant's lumbar spine was a new body part unrelated to the injury. Dr. Mccranie also testified that the claimant does not need to undergo treatment with a physical medicine and rehabilitation specialist. Likewise, the recommended lumbar spine MRI is not related to the work injury. Dr. Mccranie further testified that the claimant does not require lifetime medical maintenance treatment. She explained that the claimant's work injury was to his ankle, and those injuries have stabilized. It is Dr. McCranie's opinion that an altered gait would not cause a lumbar disc protrusion.

10. Dr. Mccranie testified that with regard to maintenance medical treatment, claimants generally stabilize within six months to a year after MMI. Therefore, it is Dr. McCranie's recommendation that the claimant have maintenance treatment of a total of 12 physical therapy visits over 18 months; 12 chiropractic visits total over 12 months; a TENS unit for 18 months; and one to three visits total with a physical medicine doctor, with no further follow ups beyond 18 months.

11. With regard to the recommended neurosurgical consultation, Dr. Mccranie explained such a consultation is not related to the work injury because his lumbar disc herniation is not related to the February 1, 2022 work injury. Dr. Mccranie also testified that the treatment with a neurologist would be duplicative. Dr. Dean evaluated the claimant and performed electrodiagnostic testing. It is Dr. McCranie's opinion that there is no reason for it to occur again.

12. Dr. Mccranie explained the referral for the lumbar spine injection would not be indicated as she explained that the lumbar disc herniation was not related to the accident. Dr. Mccranie elaborated that the claimant's EMG testing ruled out lumbar radiculopathy and the MRI demonstrated degenerative disc disease consistent with his age. Dr. Mccranie explained that while an altered gait may cause some temporary discomfort in the sacroiliac region, the claimant's mechanism of injury would not cause a disc protrusion with radiculopathy. Therefore, lumbar ESIs would not be related to the claimant's work injury.

13. The ALJ credits the medical records and the opinions of Dr. Mccranie regarding the recommended maintenance medical treatment. The ALJ finds that the claimant has failed to demonstrate that it is more likely than not that the recommended maintenance medical treatment (including a neurosurgical consultation; consultation with physiatrist Dr. Bain; a lumbar spine MRI; and lumbar spine TFESIs) is reasonable and necessary to maintain the claimant at MMI.

14. The claimant requests reimbursement of costs related to the medical treatment at issue at this time, pursuant to Section 8-42-101(5) C.R.S. The amount requested is $384.82.

15. On June 17, 2022, the claimant submitted a request for mileage to the respondents. This request was for a total of $582.08 for 1,144 miles. This mileage was for dates from September 27, 2021 through January 12, 20221. On June 23, 2022, the insurer issued a payment to the claimant in the amount of $152.00 for mileage. The respondents agree that they did not provide the claimant with written notification that mileage requests must be submitted within 120 days of the date of service.

CONCLUSIONS OF LAW

1. The purpose of the Workers' Compensation Act of Colorado is to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of any litigation. Section 8-40-102(1), C.R.S. A claimant in a Workers' Compensation claim has the burden of proving entitlement to benefits by a preponderance of the evidence. Section 8-43-201, C.R.S. A preponderance of the evidence is that which leads the trier-of-fact, after considering all of the evidence, to find that a fact is more probable than not. *Page v. Clark,* 197 Colo. 306, 592 P.2d 792 (1979). The facts in a Workers' Compensation case are not interpreted liberally in favor of either the rights of the injured worker or the rights of the employer. Section 8-43-201, *supra.* A Workers' Compensation case is decided on its merits. Section 8-43-201, *supra.*

2. When determining credibility, the fact finder should consider, among other things, the consistency or inconsistency of the witness's testimony and actions; the reasonableness or unreasonableness (probability or improbability) of the testimony and action; the motives of the witness; whether the testimony has been contradicted; and bias, prejudice, or interest. *See Prudential Insurance* Co. *v. Cline,* 98 Colo. 275, 57 P.2d 1205 (1936); CJI, Civil 3:16.

3. The ALJ's factual findings concern only evidence that is dispositive of the issues involved. The ALJ has not addressed every piece of evidence that might lead to a conflicting conclusion and has rejected evidence contrary to the above findings as unpersuasive. *Magnetic Engineering, Inc. v. Industrial Claim Appeals Office,* 5 P.3d 385 (Colo. App. 2000).

4. Respondents are liable for authorized medical treatment reasonably necessary to cure and relieve an employee from the effects of a work related injury. Section 8-42-101, C.R.S.; *see Sims v. Industrial Claim Appeals Office,* 797 P.2d 777 (Colo. App. 1990).

[1] The request was for mileage rates of $0.52 per mile for 2021, and $0.50 per mile for 2022.

5. The need for medical treatment may extend beyond the point of maximum medical improvement where claimant requires periodic maintenance care to prevent further deterioration of his physical condition. *Grover v. Industrial Commission,* 759 P.2d 705 (Colo. 1988). An award for *Grover* medical benefits is neither contingent upon a finding that a specific course of treatment has been recommended nor a finding that claimant is actually receiving medical treatment. *Holly Nursing Care Center v. Industrial Claim Appeals Office,* 992 P.2d 701 (Colo. App. 1999); *Stollmeyer v. Industrial Claim Appeals Office,* 916 P.2d 609 (Colo. App. 1995). Section 8-42-101, C.R.S., thus authorizes the ALJ to enter an order for future treatment if supported by substantial evidence of the need for such treatment. *Grover v. Industrial Commission, supra.*

6. As found, the claimant has failed to demonstrate, by a preponderance of the evidence, that the recommended maintenance medical treatment (including a neurosurgical consultation; consultation with physiatrist Dr. Bain; a lumbar spine **MRI;** and lumbar spine TFESIs) is reasonable and necessary to maintain the claimant at **MMI. As** found, the medical records and the opinions of Dr. Mccranie are credible and persuasive.

7. The claimant has requested costs related to the current Application for Hearing. Section 8-42-101(5), C.R.S. provides:

> If any party files an application for hearing on whether the claimant is entitled to medical maintenance benefits recommended by an authorized treating physician that are unpaid and contested, and any requested medical maintenance benefit is admitted fewer than twenty days before the hearing or ordered after application for hearing is filed, the court shall award the claimant all reasonable costs incurred in pursuing the medical benefit. Such costs do not include attorney fees.

8. **As** the ALJ has not ordered any of the requested medical treatment, Section 8-42-101(5), C.R.S. is not applicable at this time. The claimant's request for costs is denied and dismissed.

9. On September 7, 2021, Section 8-42-101(7) C.R.S.[2] became effective. That section states, in pertinent part:

> A claimant must submit a request for mileage expense reimbursement for travel reasonably necessary and related to obtaining compensable treatment, supplies, or services specified in subsection (1)(a} of this section to the employer or, if insured, to the employer's insurer no later than one hundred twenty days after the date the expense is incurred,

[2] This section was further amended effective August 10, 2022 to include language regarding advance mileage. As the claimant's request in this matter was made on June 17, 2022, the ALJ does not address that version of the statute.

unless good cause for a later submission is shown. Good cause includes a failure by the employer or employer's insurer to provide the notice in the brochure required by section 8-43-203 (3)(c)(IV).

10. WCRP 16-8-2(8) provides similar language, specifically: "Injured workers shall submit requests for mileage reimbursement within 120 days of the date of service or reimbursement may be denied unless good cause exists."

11. The claimant has demonstrated that he is entitled to the full amount of mileage reimbursement requested ($582.08). Here, the respondents have admitted their failure of notifying the claimant of the 120 day requirement. Section 8-42-101(7) C.R.S. specifically identifies this failure to act as good cause for a late request for mileage reimbursement. Therefore, the claimant is entitled to the balance of the mileage reimbursement requested of $370.08.

ORDER

It is therefore ordered:

1. The claimant's requests for maintenance medical treatment of a neurosurgical consultation; consultation with physiatrist Dr. Bain; a lumbar spine MRI; and lumbar spine TFESIs; is denied and dismissed.

2. The respondents shall pay the claimant mileage reimbursement of $370.08.

3. The claimant's request for costs is denied and dismissed.

4. All matters not determined here are reserved for future determination.

Dated January 3, 2023.

Cassandra M. Sidanycz
Administrative Law Judge
Office of Administrative Courts
222 S. 6th Street, Suite 414
Grand Junction, Colorado 81501

If you are dissatisfied with the ALJ's order, you may file a Petition to Review the order with the **Denver Office of Administrative Courts,** 1525 Sherman St., 4th Floor,

Denver, CO 80203. You must file your Petition to Review within twenty (20) days after service of the order, as indicated on the certificate of mailing or service; otherwise, the

ALJ's order will be final. Section 8-43-301(2), C.R.S. and OACRP 26. You may access a petition to review form at: https://oac.colorado.gov/resources/oac-forms.

You may file the Petition to Review by mail, as long as the certificate of mailing attached to your petition shows: (1) That you mailed it within twenty (20) days after mailing or service of the order of the ALJ; and (2) That you mailed it to the above address for the **Denver Office of Administrative Courts.** You may file your Petition to Review electronically by emailing the Petition to Review to the following email address: **oac-ptr@state.co.us.** If the Petition to Review is emailed to the aforementioned email address, the Petition to Review is deemed filed in Denver pursuant to OACRP 26(A) and Section 8-43-301, C.R.S. If the Petition to Review is filed by email to the proper email address, it does not need to be mailed to the Denver Office of Administrative Courts.

In addition, it is recommended that you send an additional copy of your Petition to Review to the Grand Junction OAC via email at oac-gjt@state.co.us.