ISSUE

I. Whether Claimant established, by a preponderance of the evidence that the need for surgery recommended by Dr. Barker is due to her compensable work related injury or is it preexisting?

FINDINGS OF FACT

Based upon the evidence presented at hearing, the ALJ enters the following findings of fact:

1. In a previous hearing, ALJ Spencer determined that Claimant sustained a compensable injury to her back. That order was issued on August 18, 2023. That order was not appealed. In that order, the ALJ noted that Claimant did not request approval for a lumbar fusion, and that issue was reserved.

2. Following the issuance of that order, Claimant returned to Dr. Brianna Fox on September 5, 2023. She reiterated that Claimant had lumbar radiculopathy, spondylolistesis at L5-S1 and lumbar spinal stenosis with neurogenic claudication. She also indicated that a TLIF from L3-S1 was recommended previously by two separate neuro spine surgeons, but she could not get it authorized through workers compensation. Dr. Fox recommended a referral back to Physician's Assistant (PA) Schweid at Rocky Mountain Spine Clinic to get the surgery scheduled.

3. Following the visit with Dr. Fox, Claimant was seen by Mr. Schweid on September 27, 2023. He indicated that the surgery that had been denied had now been approved.[1] However, due to the age of the prior MRI, he wanted to do an updated MRI of the low back.

4. On March 7, 2024, a request for prior authorization of the fusion surgery from Dr. Barker's office was sent to Respondents. The surgery was denied as unrelated.

5. Dr. Ogin's deposition was taken by Respondents on July 22, 2024. With respect to the causal connection of the proposed surgery to the compensable work injury, he testified "Well, [Redacted, hereinafter HN] has the record - as subsequently demonstrated, had a long history of preexisting back issues, dating back at least to 2010, if not before that. Indeed, she had already been referred for a spine surgeon, I believe, in 2016 or 2017, and was having similar complaints of debilitating back pain, numbness and tingling in her feet. It's expected that those degenerative changes, which were

[1] This statement regarding authorization of the surgery appears to be inaccurate based on correspondence from Respondents' counsel date March 18, 2024 to Dr. Barker indicating that the surgery was denied as unrelated.

pronounced on MRI in 2014 and 2015, would have progressed over time, as degenerative changes typically do. She then had a minimal exposure, which was simply bending down to pick up a vacuum tube, on the date of injury. Her subsequent MRI, which was performed in September 23rd, 2022, revealed multilevel degenerative changes, many of which were already previously present from her prior MRIs. But there is certainly some progression at the L5-S1 level, mainly having to do with posterior element arthropathy and thickening, which was producing stenosis or tightness at that level, particularly on the right side affecting, potentially, the S1 nerve root and possibly along the L5 nerve roots."

6. Dr. Rook initially performed an IME on January 23, 2023 to determine causation for the Claimant's low back pain. He performed a second IME via teleconference on June 26, 2024. After review of Dr. Ogin's report, he opined with a reasonable degree of medical certainty that Ms. Hanson is in need of surgery at this point in time because of the injury she sustained on August 16, 2022. He disagreed with Dr. Ogin that the need for surgery was preexisting. In support of his opinion, Dr. Rook noted that Claimant only had occasional flare ups prior to the work injury and was working full duty with no restrictions since February 24, 2017.

7. I find that the incident on August 16, 2022 aggravated and accelerated Claimant's low back pain and resulted in the recommendation for fusion surgery.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the ALJ draws the following conclusions of law:

Generally

A. The purpose of the Workers' Compensation Act of Colorado, §§ 8-40-101, *et seq.*, C.R.S., 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 litigation. *See* § 8-40-102(1), C.R.S. The claimant shoulders the burden of proving entitlement to benefits by a preponderance of the evidence. *See* § 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 probably true than not. *Page v. Clark*, 592 P.2d 792 (Colo. 1979).

B. Assessing weight, credibility, and sufficiency of evidence in Workers' Compensation proceeding is exclusive domain of administrative law judge. *University Park Care Center v. Industrial Claim Appeals Office*, 43 P.3d 637 (Colo. App. 2001). Even if other evidence in the record may have supported a contrary inference, it is for the ALJ to resolve conflicts in the evidence, make credibility determinations, and draw plausible inferences from the evidence. 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 actions; the motives of the witness; whether the testimony has been contradicted; and bias, prejudice, or interest. See *Prudential Insurance Co. v. Cline*, 57

P.2d 1205 (Colo. 1936); *Bodensieck v. Industrial Claim Appeals Office*, 183 P.3d 684 (Colo. App. 2008); *Kroupa v. Industrial Claim Appeals Office*, 53 P.3d 1192 (Colo. App. 2002). The weight and credibility to be assigned expert testimony is a matter within the discretion of the ALJ. *Cordova v. Industrial Claim Appeals Office,* 55 P.3d 186 (Colo. App. 2002). To the extent expert testimony is subject to conflicting interpretations, the ALJ may resolve the conflict by crediting part or none of the testimony. *Colorado Springs Motors, Ltd. v. Industrial Commission,* 441 P.2d 21 (Colo. 1968).

C. The ALJ's factual findings concern only evidence and inferences found to be dispositive of the issues involved; the ALJ has not addressed every piece of evidence or every inference that might lead to conflicting conclusions 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).

D. The fact that Claimant may have experienced an onset of pain while performing job duties does not mean that he/she sustained a work-related injury or occupational disease. Indeed, an incident which merely elicits pain symptoms without a causal connection to the industrial activities does not compel a finding that the claim is compensable. *F.R. Orr Construction v. Rinta*, 717 P.2d 965 (Colo. App. 1985); *Parra v. Ideal Concrete,* W.C. No. 3-963-659 and 4-179-455 (April 8, 1988)*; Barba v. RE1J School District,* W.C. No. 3-038-941 (June 28, 1991); *Hoffman v. Climax Molybdenum Company,* W.C. No. 3-850-024 (December 14, 1989).

E. Assuming that Dr. Ogin is correct that Claimant may have suffered from pre-existing degeneration in her low back, the presence of a pre-existing condition "does not disqualify a claimant from receiving workers compensation benefits." *Duncan v. Indus. Claims Appeals Office*, 107 P.3d 999, 1001 (Colo. App. 2004). To the contrary, a claimant may be compensated if his or her employment "aggravates, accelerates, or "combines with" a pre-existing infirmity or disease "to produce the disability and/or need for treatment for which workers' compensation is sought". *H & H Warehouse v. Vicory*, 805 P.2d 1167, 1169 (Colo. App. 1990). Even temporary aggravations of pre-existing conditions may be compensable. *Eisnack v. Industrial Commission*, 633 P.2d 502 (Colo. App. 1981). Pain is a typical symptom from the aggravation of a pre-existing condition. Thus, a claimant is entitled to medical benefits for treatment of pain, so long as the pain is proximately caused by the employment–related activities and not the underlying pre-existing condition. *See Merriman v. Industrial Commission*, 120 Colo. 400, 210 P.2d 488 (1940).

F. While pain may represent a symptom from the aggravation of a pre-existing condition, the fact that Claimant may have experienced an onset of pain while performing job duties does not require the ALJ to conclude that the duties of employment caused the symptoms, or that the employment aggravated or accelerated any pre-existing condition. Rather, the occurrence of symptoms at work may represent, as asserted by Respondents in this case, the natural progression of a pre-existing condition that is unrelated to the employment. *See F.R. Orr Construction v. Rinta,* 717 P.2d 965 (Colo. App. 1995); *Cotts v. Exempla, Inc.,* W.C. No. 4-606-563 (August 18, 2005). Based upon the evidence

presented, the ALJ is convinced that the increased symptoms and disability Claimant experienced on August 16, 2022 were a consequence of an aggravation and the industrially based acceleration of her underlying lumbar degeneration. I conclude that Dr. Rooks's analysis is credible and persuasive. The ALJ rejects Dr. Ogin's contrary opinions as unpersuasive.

Medical Benefits

G. Once a claimant has established the compensable nature of his/her work injury, he/she is entitled to a general award of medical benefits and respondents are liable to provide all reasonable and necessary and related medical care to cure and relieve the effects of the work injury. *Section 8-42-101, C.R.S.*; *Grover v. Industrial Commission*, 759 P.2d 705 (Colo. 1988); *Sims v. Industrial Claim Appeals Office*, 797 P.2d 777 (Colo. App. 1990). However, Claimant is only entitled to such benefits as long as the industrial injury is the proximate cause of his need for medical treatment. *Merriman v. Indus. Comm'n*, 210 P.2d 448 (Colo. 1949); *Standard Metals Corp. v. Ball, 172 Colo. 510, 474 P.2d 622 (1970); § 8-41-301(1)(c), C.R.S.* Ongoing benefits may be denied if the current and ongoing need for medical treatment or disability is not proximately caused by an injury arising out of and in the course of the employment. *Snyder v. City of Aurora*, 942 P.2d 1337 (Colo. App. 1997). In other words, the mere occurrence of a compensable injury does not require an ALJ to find that all subsequent medical treatment and physical disability was caused by the industrial injury. To the contrary, the range of compensable consequences of an industrial injury is limited to those which flow proximately and naturally from the injury. *Standard Metals Corp. v. Ball*, *supra*.

H. Where the relatedness, reasonableness, or necessity of medical treatment is disputed, Claimant has the burden to prove that the disputed treatment is causally related to the injury, and reasonably necessary to cure or relieve the effects of the injury. *Ciesiolka v. Allright Colorado, Inc*., W.C. No. 4-117-758 (ICAO April 7, 2003). The question of whether a particular medical treatment is reasonably necessary to cure and relieve a claimant from the effects of the injury is a question of fact. *City & County of Denver v. Industrial Commission*, 682 P.2d 513 (Colo. App. 1984). I conclude that the surgery recommended by Dr. Barker and P.A. Schweid is reasonable, necessary and related to the compensable work injury of August 16, 2022.

ORDER

It is therefore ordered that:

1. Respondents are liable for Claimant's surgery recommended by Dr. Barker and P.A. Schweid.

2. All matters not determined herein are reserved for future determination.

DATED: September 3, 2024

/s/ Michael A. Perales
Michael A. Perales
Administrative Law Judge
Office of Administrative Courts
2864 S. Circle Drive, Suite 810
Colorado Springs, CO 80906

NOTE: 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 mailing or service of the order, as indicated on certificate of mailing or service; otherwise, the ALJ's order will be final. 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. For statutory reference, see Section 8-43-301(2), C.R.S. For further information regarding procedures to follow when filing a Petition to Review, see Rule 26, OACRP. You may access a petition to review form at: http://www.colorado.gov/dpa/oac/forms-WC.htm.

OFFICE OF ADMINISTRATIVE COURTS
STATE OF COLORADO
WORKERS' COMPENSATION NO. 5-248-992-001

ISSUE

I. Whether Claimant established, by a preponderance of the evidence that the need for surgeries recommended by Dr. Walden are reasonable, necessary and related to his compensable work related injury?

FINDINGS OF FACT

Based upon the evidence presented at hearing, the ALJ enters the following findings of fact:

1. Claimant sustained an admitted injury to his left knee on August 2, 2023. He was working as a prison guard at the prison at the time of the incident. As he was walking in the cafeteria, he slipped on water on the floor left from the mopping of the floor. He did not fall but his left foot slides out and heard a crack in his knee. Two short videos of the incident and of the Claimant after the incident were submitted and reviewed by the ALJ. More importantly, the videos were reviewed by the Respondent's IME doctor as noted in his report.

2. Claimant underwent conservative care with Concentra. He treated with physical therapy and receive a PRP injection. The physical therapy, according to Claimant did not help and the PRP injection made his condition worse. Claimant came under the care of David Walden, orthopedic surgeon. There were two MRIs done. The first MRI scan showed increased signal in the posterior horn of the medial meniscus which did not meet strict MR imaging criteria for meniscal tear. Additionally there was a proximal patellar tendinosis with low-grade interstitial tearing. The tearing had improved. After unsuccessful conservative care, a second MRI was ordered. The second MRI showed the area as inflamed at the proximal midportion of the patellar tendon. It also was interpreted as "questionable evidence of a possible medial meniscus tear".

3. Based on his reviews of the MRIs Dr. Walden recommended exploratory arthroscopic surgery to evaluate the meniscus and open patella tendon debridement with drilling of the inferior pole of the patella.[1]

4. The surgeries were denied.

[1] It appears that two different surgeries are recommended, namely an open patellar surgery and an arthroscopic surgery regarding the meniscus. It is unclear as to whether these surgeries are contemplated to be performed simultaneously or separately. To be clear, the reasonableness and necessity of the surgeries are considered herein, regardless of the sequence.

5. Claimant was seen by orthopedic surgeon, Scott Resig, M.D. at the request of Respondent. He performed an IME on March 15, 2024. He concluded that Claimant would not benefit from surgery and the knee arthroscopy was not indicated. After review of additional medical records and an issues letter from Respondent's attorney dated June 19, 2024, he issued an undated addendum. He concluded that Claimant appears to have continued pain at the patellar tendon and quadriceps tendon and these conditions are work related. He maintained his opinion that surgical intervention was not necessary.

6. The opinions of Dr. Resig that the meniscus surgery is not warranted based on the MRI and physical examinations is credible and persuasive. His opinion that the open patellar surgery may damage the patella and is not reasonable is also credible and persuasive. Specifically, I credit his opinion that the open surgery around the patella with drilling and creation of bleeding bone and additional scar tissue could potentially make the patient worse. At the time Dr. Walden recommended the surgery, he wrote "The patient understands that no guarantees are made that this will necessarily eliminate all of his symptoms and in some instances can make symptoms worse". This statement creates doubt as to whether Dr. Walden considers the surgeries to be reasonable.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the ALJ draws the following conclusions of law:

Generally

A. The purpose of the Workers' Compensation Act of Colorado, §§ 8-40-101, *et seq.*, C.R.S., 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 litigation. *See* § 8-40-102(1), C.R.S. The claimant shoulders the burden of proving entitlement to benefits by a preponderance of the evidence. *See* § 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 probably true than not. *Page v. Clark*, 592 P.2d 792 (Colo. 1979).

B. Assessing weight, credibility, and sufficiency of evidence in Workers' Compensation proceeding is exclusive domain of administrative law judge. *University Park Care Center v. Industrial Claim Appeals Office*, 43 P.3d 637 (Colo. App. 2001). Even if other evidence in the record may have supported a contrary inference, it is for the ALJ to resolve conflicts in the evidence, make credibility determinations, and draw plausible inferences from the evidence. 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 actions; the motives of the witness; whether the testimony has been contradicted; and bias, prejudice, or interest. See *Prudential Insurance Co. v. Cline*, 57 P.2d 1205 (Colo. 1936); *Bodensieck v. Industrial Claim Appeals Office*, 183 P.3d 684 (Colo. App. 2008); *Kroupa v. Industrial Claim Appeals Office*, 53 P.3d 1192 (Colo. App. 2002). The weight and credibility to be assigned expert testimony is a matter within the

discretion of the ALJ. *Cordova v. Industrial Claim Appeals Office,* 55 P.3d 186 (Colo. App. 2002). To the extent expert testimony is subject to conflicting interpretations, the ALJ may resolve the conflict by crediting part or none of the testimony. *Colorado Springs Motors, Ltd. v. Industrial Commission,* 441 P.2d 21 (Colo. 1968).

C. The ALJ's factual findings concern only evidence and inferences found to be dispositive of the issues involved; the ALJ has not addressed every piece of evidence or every inference that might lead to conflicting conclusions 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).

D. The fact that Claimant may have experienced an onset of pain while performing job duties does not mean that he/she sustained a work-related injury or occupational disease. Indeed, an incident which merely elicits pain symptoms without a causal connection to the industrial activities does not compel a finding that the claim is compensable. *F.R. Orr Construction v. Rinta*, 717 P.2d 965 (Colo. App. 1985); *Parra v. Ideal Concrete,* W.C. No. 3-963-659 and 4-179-455 (April 8, 1988)*; Barba v. RE1J School District,* W.C. No. 3-038-941 (June 28, 1991); *Hoffman v. Climax Molybdenum Company,* W.C. No. 3-850-024 (December 14, 1989).

Medical Benefits

E. Once a claimant has established the compensable nature of his/her work injury, he/she is entitled to a general award of medical benefits and respondents are liable to provide all reasonable and necessary and related medical care to cure and relieve the effects of the work injury. *Section 8-42-101, C.R.S.*; *Grover v. Industrial Commission*, 759 P.2d 705 (Colo. 1988); *Sims v. Industrial Claim Appeals Office*, 797 P.2d 777 (Colo. App. 1990). However, Claimant is only entitled to such benefits as long as the industrial injury is the proximate cause of his need for medical treatment. *Merriman v. Indus. Comm'n*, 210 P.2d 448 (Colo. 1949); *Standard Metals Corp. v. Ball, 172 Colo. 510, 474 P.2d 622 (1970); § 8-41-301(1)(c), C.R.S.* Ongoing benefits may be denied if the current and ongoing need for medical treatment or disability is not proximately caused by an injury arising out of and in the course of the employment. *Snyder v. City of Aurora*, 942 P.2d 1337 (Colo. App. 1997). In other words, the mere occurrence of a compensable injury does not require an ALJ to find that all subsequent medical treatment and physical disability was caused by the industrial injury. To the contrary, the range of compensable consequences of an industrial injury is limited to those which flow proximately and naturally from the injury. *Standard Metals Corp. v. Ball*, *supra*.

F. Where the relatedness, reasonableness, or necessity of medical treatment is disputed, Claimant has the burden to prove that the disputed treatment is causally related to the injury, and reasonably necessary to cure or relieve the effects of the injury. *Ciesiolka v. Allright Colorado, Inc.*, W.C. No. 4-117-758 (ICAO April 7, 2003). The question of whether a particular medical treatment is reasonably necessary to cure and relieve a claimant from the effects of the injury is a question of fact. *City & County of Denver v. Industrial Commission*, 682 P.2d 513 (Colo. App. 1984). I conclude that the

surgeries recommended by Dr. Walden are not reasonable and necessary based upon the evidence presented. The Claimant has failed to sustain his burden of proof that the need for the surgeries are reasonable and necessary.

ORDER

It is therefore ordered that:

1. Claimant's request for the surgeries recommended by Dr. Walden based on the state of the current evidence presented are denied.

2. All matters not determined herein are reserved for future determination.

DATED: September 5, 2024

/s/ Michael A. Perales
Michael A. Perales
Administrative Law Judge
Office of Administrative Courts
2864 S. Circle Drive, Suite 810
Colorado Springs, CO 80906

NOTE: 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 mailing or service of the order, as indicated on certificate of mailing or service; otherwise, the ALJ's order will be final. 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 27(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. For statutory reference, see Section 8-43-301(2), C.R.S. For further information regarding procedures to follow when filing a Petition to Review, see Rule 27, OACRP. You may access a petition to review form at: http://www.colorado.gov/dpa/oac/forms-WC.htm.

OFFICE OF ADMINISTRATIVE COURTS
STATE OF COLORADO
WORKERS' COMPENSATION NO. WC 5-185-760-003

ISSUE

- Did Claimant prove by a preponderance of the evidence that his right upper extremity rating should be "converted" to a whole person equivalent?

FINDINGS OF FACT

1. Claimant sustained admitted injuries on October 15, 2021, to his right hand and fingers. As a result of the industrial injuries, the Claimant underwent treatment, including partial amputation of his right middle finger.

2. Claimant was transported to the emergency room immediately after his work injury where he was diagnosed with a right-hand crush injury that resulted in a displaced fracture of the distal phalanx of his right middle finger, a displaced fracture of the middle phalanx of his right middle finger as well as a displaced fracture of the middle phalanx of his right ring finger. An open reduction and internal fixation surgery was performed that day to salvage as much of Claimant's hand as possible. However, it was determined that Claimant's right middle finger would have to be amputated at the level of the PIP joint.

3. On October 26, 2021, Claimant underwent surgery to amputate his right middle finger at the level of the PIP joint.

4. On February 22, 2023, Claimant underwent surgery to have the hardware removed that had been installed during his initial surgery on October 15, 2021.

5. On November 23, 2022, Claimant was placed at Maximum Medical Improvement (MMI) by Dr. Gregg Martyak without medical restrictions or medical maintenance care.

6. Dr. Karl Larsen, in his June 28, 2023, MMI Report, opined that the extent of Claimant's injury symptoms were limited to the right hand at the wrist. He did not provide impairment ratings for any body parts beyond Claimant's right wrist.

7. On June 28, 2023, Dr. Larsen assigned Claimant an impairment rating, during which he affirmed the pre-existing MMI date opined by Dr. Martyak and assigned a 33% impairment rating to Claimant's hand, which converts to a 30% upper extremity impairment rating and an 18% whole person impairment rating.

8. On December 5, 2023, Claimant attended an Independent Medical Examination (IME) with Dr. F. Mark Paz. In his IME Report, Dr. Paz confirmed Dr. Martyak's MMI date and assigned a 34% impairment rating to Claimant's hand, which

converts to a 31% upper extremity impairment rating. Dr. Paz did not find a medical basis for converting the right upper extremity impairment to a whole person impairment rating.

9. Dr. Paz noted in his IME Report that Claimant continued to have difficulty gripping with his right hand. He was functional at work, within the limitations of the right-hand gripping. He was also "experiencing a stinging sensation when gripping without radiation of the symptoms proximally into the right upper extremity. He denies symptoms in the right wrist, elbow, or shoulder. He has difficulty using hand tools of smaller diameter with the right hand."

10. On direct examination, Claimant gave testimony that he had difficulty performing certain tasks with his right hand, such as brushing his teeth, buttoning his jeans, holding smaller tools, bowling, and shooting. However, he indicated that he could still perform those tasks. There are no medical restrictions regarding his active daily living routines. Additionally, all the tasks that Claimant listed he had difficulty performing post-injury are limited to a disability of the hand below the wrist.

11. On direct examination, Claimant did not provide any credible testimony that indicated his injury and symptoms extended beyond his right hand at the wrist.

12. Dr. Paz testified persuasively and credibly consistent with his IME report. On direct examination of Dr. Paz, he testified that Claimant's injury symptoms were limited to his right hand. Dr. Paz stated that during his IME with Claimant, they had discussed whether Claimant's injury symptoms radiated beyond the right hand, and Claimant had said, both verbally and in his written evaluation, that his injury related symptoms were limited to his right hand at the wrist. Specifically, Dr. Paz' report indicates that "He denies any symptoms above/proximal to the level of the right wrist".

CONCLUSIONS OF LAW

A. Claimant failed to prove whole person impairment due to his injured right hand.

When evaluating whether a claimant has sustained scheduled or whole person impairment, the ALJ must determine "the situs of the functional impairment." This refers to the "part or parts of the body which have been impaired or disabled as a result of the industrial accident," and is not necessarily the site of the injury itself. *Strauch v. PSL Swedish Healthcare System*, 917 P.2d 366, 368 (Colo. App. 1996). The term "injury" has been defined to refer to the manifestation in a part or parts of the body which have been functionally impaired or disabled as a result of the industrial accident. . *Strauch v. PSL Swedish Healthcare System*, *supra.* Where the claiant suffers an injury not enumerated in C.R.S. §8-42-107(2), the claimant is entitled to whole person impairment benefits under §8-42-107(8).

There is no requirement that functional impairment take any particular form, and "pain and discomfort which interferes with the claimant's ability to use a portion of the

body may be considered 'impairment' for purposes of assigning a whole person impairment rating." *Martinez v. Albertson's LLC*, W.C. No. 4-692-947 (June 30, 2008). Referred pain from the primary situs of the initial injury may establish proof of functional impairment to the whole person. *E.g., Latshaw v. Baker Hughes, Inc.*, W.C. No. 4-842-705 (December 17, 2013); *Mader v. Popejoy Construction Co., Inc.*, W.C. No. 4-198-489 (August 9, 1996). Although the opinions of physicians can be considered when determining this issue, the ALJ can also consider lay evidence such as the claimant's testimony regarding pain and reduced function. *Olson v. Foley's*, W.C. No. 4-326-898 (September 12, 2000). In this case the Claimant has failed to sustain his burden of proof that his injury results in a loss that falls outside the list of scheduled injuries under C.R.S. §8-42-107(8). Although the consideration of whether the impairment requires consideration of the Claimant's physical limitations in addition to medical impairment, in this case I am persuaded more by Dr. Paz' opinions as to Claimant's medical/physical limitations than by the Claimant's testimony.

ORDER

It is therefore ordered that:

1. Claimant's request to convert the impairment rating from a scheduled rating to a whole person rating is denied and dismissed.

2. All issues not decided herein are reserved for future determination.

DATED: September 10, 2024

Michael A. Perales
Michael A. Perales
Administrative Law Judge
Office of Administrative Courts

If you are dissatisfied with this order, you may file a Petition to Review 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 mailing or service of the order, as indicated on the certificate of mailing or service; otherwise, the ALJ's order will be final. You may file the Petition to Review by mail by sending it to the above address for the **Denver Office of Administrative Courts** within twenty (20) days after mailing or service of the ALJ's order. In the alternative, you may file your Petition to Review electronically by email to the following email address: oac-ptr@state.co.us. If the Petition to Review is timely served via email, it is deemed filed in Denver pursuant to OACRP 27(A) and § 8-43-301, C.R.S. If the Petition to Review is filed by email to the proper email address, it need not also be mailed to the Denver Office of Administrative Courts. For

statutory reference, see § 8-43-301(2), C.R.S. For further information regarding procedures to follow when filing a Petition to Review, see Rule 27, OACRP. You may access a petition to review form at: https://oac.colorado.gov/resources/oac-forms

OFFICE OF ADMINISTRATIVE COURTS
STATE OF COLORADO
WORKERS' COMPENSATION NO. 5-265-304-001

ISSUES

I. Whether Claimant established, by a preponderance of the evidence, that she sustained a compensable injury to her left foot.

II. If Claimant established that she suffered a compensable left foot injury, whether she also established, by a preponderance of the evidence, an entitlement to reasonable and necessary medical benefits to cure or relieve the effects of this industrial injury.

III. If Claimant established that she is entitled to reasonably necessary and related medical benefits, whether she also established the right of selection passed to her and whether Dr. Douglas McFarland and any referrals stemming therefrom are authorized providers.

IV. Claimant's Average Weekly Wage ("AWW")

VI. If Claimant established that she suffered a compensable left foot injury, whether she also established, by a preponderance of the evidence, that she was entitled to temporary disability benefits from and including June 27, 2023 through and including August 17, 2023.

FACTS

Based on the evidence presented at hearing, the ALJ finds the following:

1. Claimant was employed as a bartender by the employer [Redacted, hereinafter MY] on June 26, 2023,. During the course of her employment, Claimant was carrying a box of fruit down a flight of stairs at the worksite when she tripped and fell. As

a result, Claimant suffered a fractured foot. Claimant was engaged in an activity directly related to her job duties. The fall occurred on the employer's premises and within her normal working hours. *See* CHE 8, p. 84.

2. Immediately after the fall, Claimant sought treatment at a local emergency room, where she was diagnosed with a fractured foot. This was paid for by Medicaid. She was instructed to receive follow-up care, including evaluations, x-rays, and treatment. She sought this treatment from Dr. Douglas McFarland. Dr. McFarland treated Claimant until October 26, 2023, at which point she was released from further care. Claimant testified that her employer did not provide her with access to an authorized treating physician (ATP) or a designated provider list. As a result, Claimant sought medical care on her own. The treatment the Claimant received resulted in a Medicaid lien, which remains unpaid. (CHE 6).

3. Claimant was unable to return to work immediately following the injury. Her treating physician, Dr. McFarland, placed her on temporary restrictions and instructed her not to bear weight on her injured foot. (CHE 8, p. 85). Dr. McFarland cleared the Claimant to return to full duty on August 18, 2023. However, until that time, the Claimant was unable to perform her regular work duties as a bartender for the period from June 27, 2023, through August 17, 2023, during which she was medically unable to perform the full duties of her employment.

4. Claimant testified that she worked an average of 28 hours per week at a rate of $13.65 per hour, which was the applicable minimum wage at the time. In addition to her hourly wage, Claimant earned tips as a bartender, which made up a significant portion of her income. Employer did not provide any wage records, or any information

whatsoever to be precise, despite repeated requests by Claimant's counsel. As a result, Claimant's testimony regarding her hours worked and earnings is the primary source of information for calculating her AWW. Based on Claimant's testimony, her AWW is calculated as follows: 28 hours per week x $13.65 per hour = $382.20 (weekly base wage). Additionally, the Claimant estimates an average of $100 per week in tips. However, Claimant did not provide evidence that the tips were reported to the federal internal revenue service (IRS) as provided in C.R.S. §8-40-201(19)(b).

5. The Employer did not attend the hearing and did not present any defense or witnesses. Claimant's attorney attested on the record to multiple attempts to contact the employer to no avail. The employer was uninsured at the time of the accident, in violation of C.R.S. § 8-43-409, which mandates workers' compensation insurance coverage for all employers in Colorado.

CONCLUSIONS OF LAW

General Legal Principles

The purpose of the Workers' Compensation Act of Colorado (Act), Sections 8-40-101, C.R.S. 2007, *et seq*., 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 litigation. Section 8-40-102(1), C.R.S. The facts in a workers' compensation case must be interpreted neutrally, neither in favor of the rights of the claimant nor in favor of the rights of the respondents. Section 8-43-201, C.R.S. In accordance with §8-43-215 C.R.S., this decision contains specific Findings of Fact, Conclusions of Law and an Order. In rendering this decision, the ALJ has made credibility determinations, drawn plausible inferences from the record, and resolved essential conflicts in the evidence. *See Davison*

v. Industrial Claim Appeals Office, 84 P.3d 1023 (Colo. 2004). This decision does not specifically address every item contained in the record; instead, incredible or implausible testimony or unpersuasive arguable inferences have been implicitly rejected. *Magnetic Engineering, Inc. v. Industrial Claim Appeals Office*, 5 P.3d 385 (Colo. App. 2000).

Assessing weight, credibility and sufficiency of evidence in Workers' Compensation proceeding is the exclusive domain of the ALJ. *University Park Care Center v. Industrial Claim Appeals Office*, 43, P.3d 637 (Colo. App. 2001). Even if other evidence in the record may have supported a contrary inference, it is for the ALJ to resolve conflicts in the evidence, make credibility determinations, and draw plausible inferences from the evidence. 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 actions; the motives of the witness; whether the testimony has been contradicted; and bias, prejudice, or interest. See *Prudential Insurance Co. v. Cline*, 57 P.2d 1205 (Colo. 1936); *Bodensieck v. Industrial Claim Appeals Office*, 183 P.3d 684 (Colo. App. 2008); *Kroupa v. Industrial Claim Appeals Office*, 53 P.3d 1192 (Colo. App. 2002). The weight and credibility to be assigned expert testimony is a matter within the discretion of the ALJ. *Cordova v. Industrial Claim Appeals Office,* 55, P.3d 186 (Colo. App. 2002).

Compensability

A "compensable injury" is one that requires medical treatment or causes disability. *Romero v. Industrial Commission*, 632 P.2d 1052 (Colo. App. 1981); *Aragon v. CHIMR, et al.*, W.C. No. 4-543-782 (ICAO, Sept. 24, 2004); *H & H Warehouse v. Vicory*, 805 P.2d 1167, 1169 (Colo. App. 1990). No benefits flow to the victim of an industrial accident

unless the accident results in a compensable “injury.” *Romero, supra*; § 8-41-301, C.R.S. To sustain her burden of proof concerning compensability, Claimant must establish that the condition for which she seeks benefits was proximately caused by an “injury” arising out of and in the course of employment. *Loofbourrow v. Industrial Claim Appeals Office*, 321 P.3d 548 (Colo. App. 2011), *aff’d Harman-Bergstedt, Inc. v. Loofbourrow*, 320 P.3d 327 (Colo. 2014); Section 8-41-301(I)(b), C.R.S.

The phrases "arising out of” and "in the course of" are not synonymous and a claimant must meet both requirements for the injury to be compensable. *Younger v. City and County of Denver*, 810P.2d 647, 649 (Colo. 1991); *In re Question Submitted by U.S. Court of Appeals*, 759P.2d 17, 20 (Colo. 1988). The latter requirement refers to the time, place, and circumstances under which a work-related injury occurs. *Popovich v. Irlando*, 811P.2d 379, 381 (Colo. 1991). An injury occurs in the course and scope of employment when it takes place within the time and place limits of the employment relationship and during an activity connected with the employee's job-related functions. *In re Question Submitted by U.S. Court of Appeals, supra*; *Deterts v. Times Publ'g Co*., 38 Colo. App. 48, 51, 552 P.2d 1033, 1036 (1976). Conversely, the "arising out of" test is one of causation. It requires that the injury have its origins in an employee's work related functions, and be sufficiently related thereto so as to be considered part of the employee's service to the employer. *Horodyskyj v. Karanian*, 32 P.3d 470, 475 (Colo. 2001). Here, there is little question that Claimant’s alleged injury occurred within the time and place limits of her employment and during an activity related to Claimant’s job duties. Moreover, the mechanism of injury (MOI) does not appear to be in question in this case.

The determination of whether there is a sufficient "nexus" or causal relationship between the Claimant's employment related duties and the alleged injury is one of fact which the ALJ must determine based on the totality of the circumstances. *In Re Question Submitted by the United States Court of Appeals*, 759 P.2d 17 (Colo. 1988); *Moorhead Machinery & Boiler Co. v. Del Valle*, 934 P.2d 861 (Colo. App. 1996). In this case, the totality of the evidence presented supports a conclusion that Claimant's left foot injury arose out of her work related duties during her usual working hours. The evidence and testimony presented during the hearing make it clear that Claimant sustained a compensable injury while performing work-related duties at her job on June 26, 2023. She was carrying a box of fruit down a flight of stairs for her employer when she tripped over improperly placed boxes and fell, resulting in a fractured foot. This accident occurred during her normal working hours and on the employer's premises, thus meeting the requirements for an injury that "arose out of and in the course of employment" under Colorado law.

Claimant's Entitlement to Medical Benefits and Right of Selection

Once a claimant has established the compensable nature of his/her work injury, he/she is entitled to a general award of medical benefits and respondents are liable to provide all reasonable, necessary, and related medical care to cure and relieve the effects of the work injury. Section 8-42-101, C.R.S.; *Grover v. Industrial Commission*, 759 P.2d 705 (Colo. 1988); *Sims v. Industrial Claim Appeals Office*, 797 P.2d 777 (Colo. App. 1990). However, Claimant is only entitled to such benefits as long as the industrial injury is the proximate cause of his need for medical treatment. *Merriman v. Indus. Comm'n*, 210 P.2d 448 (Colo. 1949); *Standard Metals Corp. v. Ball*, 172Colo. 510, 474 P.2d 622

(1970); § 8-41-301(1)(c), C.R.S. Ongoing benefits may be denied if the current and ongoing need for medical treatment or disability is not proximately caused by an injury arising out of and in the course of the employment. *Snyder v. City of Aurora*, 942 P.2d 1337 (Colo. App. 1997).

Authorization to provide medical care refers to a medical provider's legal authority to provide treatment to the claimant with the expectation that the provider will be compensated by the insurer for said services. *Bunch v. Industrial Claim Appeals Office*, 148 P.3d 381 (Colo. App. 2006); *One Hour Cleaners v. Industrial Claim Appeals Office*, 914 P.2d 501 (Colo. App. 1995); *In re Bell*, W.C. No. 5-044-948-01 (ICAO, Oct. 16, 2018). Authorized providers include those medical personnel to whom the claimant is directly referred by the employer, as well as providers to whom an authorized provider refers the claimant in the normal progression of care. *Town of Ignacio v. Industrial Claim Appeals Office*, 70 P.3d 513 (Colo. App. 2002); *City of Durango v. Dunagan*, 939 P.2d 496 (Colo. App. 1997).

In this case, the employer failed to provide any list, as confirmed by Claimant's testimony and lack of contradictory evidence. As a result, the right of selection passed to Claimant to select her own authorized provider. She selected Dr. Douglas McFarland as her ATP. Claimant underwent a reasonable course of care with Dr. McFarland after the initial emergency room visit, which is also considered reasonably necessary care. All treatment provided to Claimant through the initial emergency room, Dr. McFarland, and any referrals stemming therefrom are the financial responsibility of the Employer.

Claimant's Average Weekly Wage

The overall purpose of the average weekly wage (AWW) statute is to arrive at a fair approximation of a claimant's wage loss and diminished earning capacity resulting from the industrial injury. *See Campbell v. IBM Corp*., 867 P.2d 77 (Colo. App. 1993); *National Fruit Prod. v. Crespin*, 952P.2d1207 (Colo. App. 1997). Sections 8-42-102(3) and (5)(b), C.R.S. (2013), give the ALJ discretion to calculate an AWW that will fairly reflect a claimant's wage loss and diminished earning capacity. *Campbell v. IBM Corp., supra; Avalanche Industries, Inc. v. Clark*, 198 P.3d 589 (Colo. 2008).

As found *supra*, Claimant testified she worked an average of 28 hours per week at a rate of $13.65 per hour and earned tips as a bartender. The Employer did not provide wage records or otherwise participate in the proceedings in any fashion, thus leaving the AWW to be determined based on Claimant's testimony. Based on her testimony, her AWW is calculated as follows: 28 hours per week x $13.65 per hour = $382.20. Claimant's tips are not included since no evidence was provided that the tips were reported to the IRS.

Claimant's Entitlement to Temporary Disability Benefits

To receive temporary disability benefits, Claimant must prove that her injuries caused a disability lasting more than three work shifts, that she left work as a result of the disability, and that the disability resulted in an actual wage loss. *PDM Molding, Inc. v. Stanberg*, 898 P.2d 542 (Colo. 1995); *City of Colorado Springs v. Industrial Claim Appeals Office*, 954 P.2d 637 (Colo. App. 1997). Section 8-42-103(1), C.R.S. 2001; *PDM Molding, Inc. v. Stanberg*, 898 P.2d 542 (Colo. 1995). As stated in PDM, the term "disability" refers to the claimant's physical inability to perform regular employment. *See also McKinley v.*

Bronco Billy's, 903 P.2d 1239 (Colo. App. 1995). Section 8-42-103(1)(a), C.R.S., requires Claimant to establish a causal connection between a work-related injury and a subsequent wage loss in order to obtain TTD benefits. *PDM Molding, Inc. v. Stanberg, supra*. The term disability connotes two elements: (1) Medical incapacity evidenced by loss or restriction of bodily function; and (2) Impairment of wage earning capacity as demonstrated by Claimant's inability to resume his prior work. *Culver v. Ace Electric*, 971 P.2d 641 (Colo. 1999). The impairment of the earning capacity element of disability may be evidenced by a complete inability to work, or by restrictions which impair the claimant's ability to effectively and properly perform his/her regular employment. *Ortiz v. Charles J. Murphy & Co*., 964 P.2d 595 (Colo. App. 1998). Because there is no requirement that a claimant must produce evidence of medical restrictions, a claimant's testimony alone is sufficient to demonstrate a disability. *Lymburn v. Symbios Logic*, 952 P.2d 831, 833 (Colo. App. 1997).

Claimant testified that following her injury, she was unable to work from June 27, 2023, through August 17, 2023, as her doctor placed her on temporary restrictions. The records and testimony reflect that she was unable to perform her duties as a bartender, including carrying items and serving customers, due to the use of crutches a medical boot, and other limitations. The Employer failed to provide alternative work or accommodate her restrictions, justifying her claim for TTD benefits during this period to be paid based on an AWW of $382.20.

Mileage

The Colorado Workers' Compensation Act provides that mileage reimbursement is covered when travel is reasonably necessary and related to obtaining compensable treatment, supplies, or services. Specifically, section 8-42-101(7)(a) of the Act states that Claimant must submit a request for mileage expense reimbursement to the employer or the employer's insurer no later than 120 days after the expense is incurred unless good cause for later submission is shown. This includes travel for medical appointments or other necessary services related to the work injury.

The mileage submitted into evidence by Claimant coincides with her medical appointments and is thus reasonable travel for related medical treatment. Claimant received her treatment from Dr. McFarland. The treatment is authorized and necessary to treat her compensable injury. Therefore, the submitted related mileage would also be considered reimbursable under Colorado law.

ORDER

1. Claimant has established by a preponderance of the evidence that she sustained a compensable injury to her left foot on June 26, 2023
2. Claimant has established by a preponderance of the evidence that the compensable injury resulted in a need for treatment for her left foot. All treatment associated with the injurious event is the financial responsibility of Respondents. This includes, but is not necessarily limited to, all treatment from the initial emergency room visit and all treatment provide by Dr. McFarland and any referrals stemming therefrom. Respondent is liable to reimburse Medicaid for the expenses documented in the Medicaid lien.

3. Claimant established she sustained wage loss as a direct result of the work injury from and including June 27, 2023 through and including August 17, 2023. Claimant is entitled TTD benefits for the above dates and shall be paid to Claimant based on an AWW of $382.20 with all past due benefits paid with 8% interest *per annum*.
4. Claimant has established by a preponderance of the evidence that she is entitled to mileage reimbursement as requested. Respondents shall reimburse Claimant for the mileage submitted.
5. All matters not determined herein are reserved for future determination.

If you are dissatisfied with the Judge'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 mailing or service of the order, as indicated on certificate of mailing or service; otherwise, the Judge's order will be final. 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 Judge; and (2) That you mailed it to the above address for the Denver Office of Administrative Courts. For statutory reference, see section 8-43-301(2), C.R.S. For further information regarding procedures to follow when filing a Petition to Review, see Rule 27, OACRP. You may access a petition to review form at: http://www.colorado.gov/dpa/oac/forms-WC.htm.

DATED: September 19, 2024

/s/ Michael A. Perales
Michael Perales
Administrative Law Judge
Office of Administrative Courts
2864 S. Circle Drive, Suite 810
Colorado Springs, CO 80906

OFFICE OF ADMINISTRATIVE COURTS
STATE OF COLORADO
WORKERS' COMPENSATION NO. WC 5-010-153-010

ISSUES

- Whether Claimant has proven by a preponderance of the evidence that Respondents are subject to penalties pursuant to Section 8-43-304(1), C.R.S. for failure to for his Skyrizi prescription on February 25, 2024?

- Whether Claimant has sufficiently plead his claim for penalties pursuant to Section 8-43-304(4), C.R.S.?

- Whether Respondents have proven by a preponderance of the evidence that they cured the penalty within 20 days of the Application for Hearing pursuant to Section 8-43-304(1), C.R.S.?

- If Respondents have proven by a preponderance of the evidence that they cured the penalty within 20 days of the Application for Hearing pursuant to Section 8-43-304(1), C.R.S., whether Claimant has proven by clear and convincing evidence that Respondents knew or reasonably should have known of the penalty violation prior to the Application for Hearing being filed?

FINDINGS OF FACT

1. Claimant sustained a work related injury while he was employed by Employer on March 12, 2016 when a back hoe tire he was replacing exploded causing significant injuries to Claimant. Claimant's injuries included a severe traumatic brain injury, requiring an extensive hospital stay including rehabilitation at Craig Hospital in Englewood, Colorado. Claimant testified at hearing that the injury resulted in a loss of hearing, loss of his sense of taste and smell, fatigue, loss of balance, moments of confusion and difficulty handling emotion.

2. For purposes of the issues before the court, Claimant testified that the injury also caused issues with psoriasis. The psoriasis causes clumps on his knuckles along with both elbows and knee caps in addition to his thigh and calf. For purposes of treating the psoriasis, Claimant has been prescribed Skyrizi. Claimant was initially prescribed the Skyrizi in May 2021 by Dr. Gaughan after Dr. Gaughan found that Claimant's topical medications provided inadequate control of Claimant's psoriasis. The Skyrizi is prescribed to Claimant as an injectable form. Claimant receives the injection through the pharmacy every three months.

3. After Claimant was prescribed Skyrizi, Respondents sought an opinion from Dr. Contreras to determine whether the Skyrizi was reasonable and necessary medical treatment related to Claimant's work injury. Dr. Contreras reviewed Claimant's medical records and issued a report dated August 30, 2021 that discussed potential other treatments, but noted that methotrexate was contraindicated for patients who were

taking a non-steroidal anti-inflammatory ("NSAID") medication. Dr. Contreras noted that Claimant had been prescribed Toradol, an NSAID, for his headaches. Dr. Contreras noted that biologic medications (such as Skyrizi) have better safety profile and are much more effective in clearing psoriasis and have become the mainstay in treatment of patients with moderate-to-severe disease that has failed topical management. Dr. Contreras noted that Skyrizi was just one of many options and it was possible that Claimant would be able to obtain another biologic through his health insurance or government assistance program.

4. After receiving Dr. Contreras' report, Respondents denied treatment involving the prescription for Skyrizi. Claimant then applied for hearing on the issue of the reasonableness and necessity of the Skyrizi prescription, in addition to numerous other issues including penalties against Respondents. The parties subsequently entered into a stipulation on March 3, 2023 that provided in pertinent part:

> "6. The parties agree that Respondents will in the future promptly authorize and pay for the Skyrizi until otherwise agreed upon in writing or ordered by a workers' compensation judge."
>
> "7. Respondents shall reconcile with and reimburse payments to Medicare and Medicare Advantage and claimant as reimbursements for the September and December 2022 medications within 30 days of the Order."
>
> "8. Claimant's claim for penalties against Respondents for failure to authorize the Skyrizi treatment is withdrawn and the April 19, 2023 hearing is canceled."

5. The Order was approved by ALJ Sidanycz on April 4, 2023. Based on the approval of the stipulation, the hearing on the issue of the reasonableness and necessity of the Skyrizi prescription that was set for April 19, 2023 was vacated.

6. An amended stipulation was entered into by the parties on April 17, 2024 that reiterated paragraphs 6-9 referenced above.

7. While the hearing on the Skyrizi was pending, the parties agreed to settle Claimant's indemnity benefits but specifically kept Claimant's medical benefits open. The settlement was reached on February 24, 2023 and approved by PALJ Mueller on February 24, 2023 (the Order approving the settlement is incorrectly dated February 24, 2022, but clearly references the settlement agreement being drafted in 2023).

8. Claimant testified his when his Skyrizi was denied he was required to provide the pharmacy a co-pay of $4.30 in order to get the Skyrizi. Claimant filed another Application for Hearing on May 25, 2023 endorsing the issue of authorization of the Skyrizi and penalties against Respondents for failing to authorize the Skyrizi as required by the Order approving the Stipulation of the Parties.

9. Respondents obtained a second medical records review independent medical examination ("IME") from Dr. Contreras on July 28, 2023. Dr. Contreras opined

in his July 28, 2023 report that he agreed with Dr. Gaughan that Claimant should not try another medical treatment because approximately 16% of treatments fail to recapture the previous response to the medication, and the potential cost savings of switching medications was not worth risking the effective treatment the Skyrizi was providing for Claimant's psoriasis.

10. After receiving the report from Dr. Contreras, the parties entered into a second stipulation which provided in pertinent part:

> "5. The medical treatment for psoriasis has been provided by respondents from authorized treating physician, dermatologist Dr. Laurence Gaughan. The treatment included a variety of topical ointments. Due to their ineffectiveness, Dr. Gaughan prescribed the injectable systemic biologic medicine, Skyrizi. Skyrizi is injected by the patient every three months. This medication proved effective and is deemed by claimant and Dr. Gaughan to be successful treatment to cure and relieve claimant's psoriasis.
>
> 6. Claimant has for twenty-six months received the Skyrizi injectable medication through the US Postal Service from [Redacted, hereinafter WS].
>
> 7. Because Skyrisis is expensive, respondents investigated alternative methods of treatment. They consulted with Dr. Michael Contreras, who issued two reports, 8/30/2021 and 7/28/2023.
>
> 8. Dr. Contreras opined in his 7/28/2023 report that he agreed with Dr. Gaughan that claimant should stay on Skyrizi because: (a) it had proven successful when topical treatment had been unsuccessful, (b) there are no other injectable biologic medications that are less expensive and proven defective, and (c) that studies show that once a paitient stops treatment with Skyrizi there is an unacceptable high risk that the patient will no longer respond well if Skyrizi is re-started.
>
> 9. Claimant had applied for a hearing on medical benefits (the authorization of Skyrizi) and penalties concerning respondents' alleged failure to comply with the Stipu8lation and Order dated April 17, 2023 concerning respondents' obligation to reimburse [Redacted, hereinafter CS] for its payment for Skyrizi on two prior occasions during a prior dispute concerning Skyrizi. Respondents added the issue of their obligation to pay ongoing for Skyrizi.
>
> 10. The parties now agree that
>
> (a) Respondents have shown that CS[Redacted] has issued a document stating the respondents' inquiry dated 7/28/2023 about conditional payments has received a response that no conditional

payments have been made by CS[Redacted], and thus, there is no way for respondents to reimburse CS[Redacted].

(b) Respondents shall continue to inquire about reimbursing whatever entity paid for the Skyrizi on the two prior occasions when respondents did not pay for Skyrizil.

(c) Respondents shall continue to authorized and pay for Skyrizi, provided to WS[Redacted].

(d) All parties have no more need to go to hearing to resolve the disputed hearing issues because the issues are resolved by this stipulation and requested order."

11. The Stipulation was signed by ALJ Sidanycz on August 16, 2023 and the hearing set for August 17, 2023 was vacated.

12. Claimant testified at hearing in this matter that issues arose in 2023 in that he would go to the pharmacy to fill his prescription and would be advised by the pharmacist that he had a co-pay for the Skyrizi because the workers' compensation insurer had not approved the Skyrizi. Claiimant testified he made a co-payment on March 2, 2023 before the August 17, 2023 stipulation. Claimant testified that Respondents stopped paying for Skyrizi on September 26, 2022. Claimant testified he agreed to the April 17, 2023 stipulation because he felt content that he would his Skyrizi covered by the workers' compensation insurer. Claimant testified that when his Skyrizi is not approved by the workers' compensation insurer, he is required to cover the co-pay that he puts on his credit card so he can receive his medication. Claimant testified that the remaining cost of the medication is covered by [Redacted, hereinafter WE]

13. Claimant testified that after the August 17, 2023 stipulation he was able to get his Skyrizi paid for up until February 2024 when he went to the pharmacy and the Skyrizi was not approved. Claimant testified he paid his co-pay of $4.60 in order to get the Skyrizi in a timely manner. Claimant testified he has not been reimbursed for the $4.60 co-pay he incurred in February 2024.

14. Claimant testified that the failure to have his prescription for Skyrizi paid brings on stress and anxiety which then brings on headaches for Claimant.

15. Respondents presented the testimony of [Redacted, hereinafter KN] at hearing. KN[Redacted] is the claims adjuster for Insurer assigned to the claim. KN[Redacted] testified that it is her responsibility to authorize benefits and oversee the claim. KN[Redacted] testified that Insurer contracts with a third party vendor to help coordinate the medical benefits. KN[Redacted] testified that SmithRx manages the prescription medications for Insurer. KN[Redacted]testified that when a claim is accepted SmithRx will give a prescription card to the injured worker and bills are then processed as being within the diagnostic code that is plugged into the system. KN[Redacted] testified that any prescriptions that come in that correspond to the diagnostic codes are then approved by SmithRx.

16. KN[Redacted] testified that she did not receive a request from SmithRx on February 19, 2024 seeking to authorize the Skyrizi prescription. KN[Redacted] testified that the first time she became aware of the issue with the February 19, 2024 prescription was when she received communication from Claimant's attorney on February 27, 2024. KN[Redacted] testified she then called SmithRx to authorize the Skyrizi as the Insurer had agreed to pay for the Skyrizi prescription.

17. KN[Redacted] testified that the denial of the Skyrizi was due to a clerical error in the system. KN[Redacted] explained that the February 19, 2024 Skyrizi had changed the delivery system of the medicine from a pre-filled pen to a single dose pen, which caused a change in the code resulting in the Skyrizi being denied. KN[Redacted] testified that it was possible for SmithRx to override the denial, but it wasn't done in Claimant's case. KN[Redacted] testified that the issue involving the denial of the Skyrizi was fixed on February 28, 2024 and the Skyrizi prescriptions since that time have been paid by Insurer. KN[Redacted] testified that she did not intend to deny Claimant's prescription for Skyrizi.

18. With regard to the reimbursement of Medicare, KN[Redacted] testified that they sought information from CS[Redacted] regarding reimbursement for the Skyrizi prescriptions that have been filled, but have not received information yet from CS[Redacted] regarding the reimbursement. KN[Redacted] testified that she has worked with a third party vendor, [Redacted, hereinafter VK], to request information regarding the Medicare liens, but has not received information that would allow her to reimburse the appropriate parties for the cost of the Skyrizi that was paid by an entity other than Insurer.

19. KN[Redacted] testified that she has the ability to pay Claimant for reimbursement for his co-pays and was made aware of Claimant's co-pays for the Skyrizi in the stipulations. However, KN[Redacted] did not testify that she has made any effort to reimburse Claimant for his co-pay that he incurred based on Respondents denial of the February 19, 2024 Skyrizi prescription.

20. Claimant filed an Application for Hearing on March 22, 2024 seeking penalties against Respondents for failure to "authorize and pay for Skyrizi when requested by historical pharmacy, in violation of earlier orders, inc. 4/17/2023. CRS 8-43-304 & 304 & 401/2/a." Claimant indicated in the application for hearing that the penalties begin on 2/13/24 and are ongoing.

21. The ALJ credits the testimony of the Claimant and KN[Redacted] and finds that Claimant has established that it is more probable than not that Respondents violated the Order approving the stipulation that required Respondents to pay for Claimant's prescription of Skyrizi on February 19, 2024. The ALJ notes that the issue of the Skyrizi was denied on multiple prior occasions by Respondents resulting in Respondents seeking medical opinions from Dr. Contreras and two stipulations being entered into by the parties in which Respondents agreed to authorize and pay for the Skyrizi prescription. Respondents inactions on February 19, 2024 resulted in Claimant's prescription medications being denied despite a specific agreement between

the parties that was subject to multiple orders signed by an ALJ wherein Respondents agreed to pay for the prescription for Skyrizi. The ALJ therefore finds that Respondents are subject to penalties pursuant to Section 8-43-304.

22. Respondents argue in their position statement that even if they are found to have violated the order requiring Respondent to pay for the Skyrizi, the actions of Respondents in this case were reasonable based on an argument that the denial of Skyrizi was the result of a "minor clerical error". The ALJ is not persuaded.

23. Respondents' argument here is that they paid for the Skyrizi "throughout 2021, early 2022, and 2023". This argument fails to mention that Claimant's Skyrizi was again denied on March 2, 2023 before the second stipulation was entered into which resulted in Claimant incurring a co-pay of $4.30 as testified to by Claimant at hearing. While the issue of Respondents' liability for the Skyrizi was to be addressed at the August 17, 2023 hearing, Respondents at that time were still under the obligation of the first stipulation to pay for the cost of the Skyrizi until otherwise agreed upon in writing or ordered by a workers compensation judge. While this issue of failure to authorize the March 2023 Skyrizi prescription is not pending before the court, the ALJ may take it into consideration when determining the "reasonableness" of Respondents' actions and their knowledge of the facts giving rise to the penalty violation.

24. The ALJ further notes that this issue regarding Respondents failure to pay for the Skyrizi was the subject of prior applications for hearing and prior claims for penalties against Respondents. The ALJ therefore determines that Claimant has established that the Application for Hearing sufficiently pled the penalty issue to Respondents.

25. Moreover, Respondents argument that the minor clerical error was quickly corrected is likewise without merit. Each time Respondents fail to authorize the Skyrizi, Claimant is required to pay out of pocket for the co-pay on his prescription medication. Claimant testified at hearing that he has not been reimbursed for his out of pocket co-pays he incurs when the Skyrizi is denied at the pharmacy. Respondents specifically acknowledged in the April 4, 2023 stipulation that Claimant was having to pay his own money for the Skyrizi that was denied in September and December 2022 and were aware that Claimant would be out of pocket the cost of his co-pay each time they deny the prescription. Yet no credible evidence was presented as to actions taken by Insurer to reimburse Claimant for his out of pocket expenses that were incurred when Respondents failed to authorize Claimant's Skyrizi.

26. Based on the foregoing the ALJ finds that Respondents actions in this case in denying the Skyrizi were not reasonable. Regardless of whether the denial of the Skyrizi was intentional or not, Respondents were aware of the importance of Claimant receiving the Skyrizi prescription in a timely manner based on the report of their own IME physician, Dr. Contreras. The system established by Insurer to address prescription claims failed in a way that resulted in Respondents violating an Order requiring that they pay for Claimant's Skyrizi as agreed to in the stipulations. The ALJ

finds that the actions of Respondents that set up a system that led to this failure are not reasonable under the circumstances of this case.

27. Respondents further argue that they "cured" the penalty in this case as allowed pursuant to Section 8-43-304(4) by virtue of the fact that the Skyrizi was paid for after February 19, 2024. The ALJ is not persuaded.

28. First, Respondents argument that by approving the Skyrizi on the next prescription refill date three months later should absolve them of any penalties for their failure to approve the Skyrizi on February 19, 2024 is wholly without merit. Taking Respondents argument on its face, Respondents in this case could avoid penalty claims on each Skyrizi prescription by simply approving every other Skyrizi prescription and arguing that by paying for the next prescription, they have cured the actions that led to the original penalty claim. This is not the intent of Section 8-43-304.

29. Furthermore, the Application for Hearing was filed on March 22, 2024. Respondents would have needed to cure the penalty violation by April 11, 2024 in order to cure the penalty within 20 days of the Application for Heairng. However, Claimant's Skyrizi is administered every 3 months (Claimant's next prescription was scheduled for May 2024) and there is a lack of credible evidence presented at hearing that the payment for the next Skyrizi prescription was paid by April 11, 2024.

30. Moreover, this argument completely ignores the fact that Respondents had still not reimbursed Claimant for his out of pocket co-pay expenses, despite being aware that he would incur a co-pay expense each time they deny the Skyrizi prescription. No credible testimony was presented at hearing as to why Respondents felt that they did not need to reimburse Claimant for his out of pocket expenses Claimant incurred in filling his Skyrizi prescription despite being under an Order to pay for the Skyrizi.

31. The ALJ therefore finds that Claimant has proven that it is more likely than not that Respondents violated an Order that required them to pay for the Claimant's Skyrizi prescription medication. The ALJ further finds that Claimant properly pled the penalty claim and that Respondents were on notice as to the facts giving rise to the penalty. The ALJ further finds that Respondents have failed to establish that they cured the penalty violation within 20 days for the Application for Hearing being filed.

32. Because Respondents are liable for penalties for violating an Order of an ALJ under Section 8-43-304(1), the analysis then becomes what is the appropriate amount of the penalty. In this regard, the ALJ finds that the disregarding of a tribunal's order is a more egregious offense than violating a statute or a procedural rule.

33. Moreover, the issue in this case is that Respondents have been successful in avoiding liability for at least three (3) of the Skyrivi prescription refills obtained by Claimant. And despite stipulations that require Respondents to reimburse CS[Redacted] and Claimant for his out of pocket expenses, there was no credible evidence presented at hearing that Respondents had successfully made any payments

to any parties for the expenses they avoided by failing to authorize the prescription refills and specifically the February 19, 2024 Skyrizi prescription that is the issue in this case.

34. Additionally, the penalty in this case must be sufficient to ensure that these issues do not arise again. Notably, Claimant's testimony in this case with regard to the stress and anxiety that he incurs when the prescription medications are not approved is found to be credible and persuasive.

35. Additionally, the ALJ notes that the parties agreed in the stipulation that because the cost of the Skyrizi is expensive, Respondents investigated alternative methods of treatment, but were advised by their IME doctor to continue with the Skyrizi medication. If the penalty is not sufficient in this case, Respondents may have a financial incentive to attempt to pass the cost of the Skyrizi prescription on to the Medicare Part D provider, as they have on previous occasions. Therefore, the penalty must be sufficient to ensure that this does not continue to occur.

36. The ALJ therefore finds that the penalty for failure to pay for the Skyrizi commences on February 19, 2024 and continues for three months, until the next prescription, ending on May 19, 2024, when Respondents pay for the next prescription. This represents a period of 90 days.

37. Respondents are also subject to a penalty for their failure to reimburse Claimant for his out of pocket co-pay of $4.60. The ALJ finds that both violations in this case are egregious. Respondents should have been award of the importance of authorizing Claimant's Skyrizi in this case based on the history of the case and the risk that Claimant experiences with regard to his treatment in the event that he does not receive the prescribed medication as outlined in the report by Dr. Contreras.

38. Moreover, once it was determined by KN[Redacted] that Claimant's prescriptions had been denied, there was no action taken by Respondents to ensure that Claimant was reimbursed for his out of pocket costs. Claimant's testimony in this case that he was required to put the cost of his co-pay on his credit card is found to be credible and persuasive.

39. In determining that Respondents are liable for penalties to Claimant for failing to reimburse Claimant for his out of pocket expenses related to the denial of the February 19, 2024 Skyrizi the ALJ considers the fact that Respondents failure to approve the Skyrizi has adverse effects on Claimant as he testified to at hearing including increased stress and anxiety in addition to headaches.

40. The ALJ further finds that there is no appropriate explanation for the denial of the Skyrizi by Respondents. The argument that the denial was not intentional and occurred because of a coding error is without merit. It is not the responsibility of the Claimant or the pharmacy to approve Claimant's Skyrizi. It is the responsibility of the Insurer to approve the Skyrizi as agreed to in the Stipulation and required by the Order approving the Stipulation.

41. The ALJ further notes that Respondents stipulated in March 2023 that they would reimburse CS[Redacted] for the cost of the Skyrizi that was paid by CS[Redacted] within 30 days. The parties entered into a stipulation in August 2023 in which Respondents noted that they had not figured out how to reimburse CS[Redacted] for the cost of the Skyrizi and KN[Redacted] testified at hearing that well over a year after the March 2023 stipulation, Insurer had still not figured out how to reimburse CS[Redacted].

42. However, if Respondents had figured out how to reimburse CS[Redacted] in the 11 months between the March 2023 stipulation and the denial of Skyrizi in February 2024, they may have been able to mitigate the penalties in this case. The ALJ finds that there is insufficient evidence of appropriate actions by Respondents to mitigate the exposure to penalties in this case.

43. And even if Respondents could not ascertain how to reimburse CS[Redacted] for their cost of filling the Skyrizi prescriptions, nothing prevented Respondents from investigating and insuring that Claimant's out of pocket expenses related to the denial of Skyrizi were taken care of. Instead, Respondents took no action to attempt to reimburse Claimant for his out of pocket expenses in this case.

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., 2013 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, C.R.S. A Workers' Compensation case is decided on its merits. Section 8-43-201, *supra*.

2. 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). 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 (2006).

3. Pursuant to Section 8-43-304(1), a claimant must first prove by a preponderance of the evidence that the disputed conduct constituted a violation of statute, rule, or order before a court can assess penalties against a respondent. *Allison v. Industrial Claim Appeals Office*, 916 P.2d 623 (Colo. App. 1995). If respondents committed a violation of the statute, rule or order, penalties can be imposed only if respondents actions were not reasonable under an objective standard. *Pioneers*

Hospital of Rio Blanco County v. Industrial Claim Appeals Office, 114 P.3d 97 (Colo. App. 2005); *Jiminez v. Industrial Claim Appeals Office*, 107 P.3d 965 (Colo. App. 2003). The standard is "an objective standard measured by reasonableness of the insurer's action and does not require knowledge that the conduct was unreasonable." *Colorado Compensation Insurance Authority v. Industrial Claim Appeals Office*, 907 P.2d 676 (Colo. App. 1995).

4. Section 8-43-304(4), C.R.S., provides that an application for hearing on penalties "shall state with specificity the grounds on which the penalty is being asserted." The purpose of requiring that an application for hearing on penalties specifically state the grounds on which the penalty is being asserted, is to provide notice of the alleged conduct which must be corrected so as to afford an opportunity to cure. *See Delta City Memorial Hospital v. Industrial Claim Appeals Office,* 495 P.3d 984 (Colo.App. 2021)(broad statement of request for penalties sufficient to put hospital on notice); *Stilwell v. B &B Excavating Inc.*, W.C. No. 4-337-321 (July 28, 1999); *see Hendricks v. Industrial Claim Appeals Office, supra; Carson v. Academy School District # 20,* W.C. No. 4-439-660 (April 28, 2003).

5. Because Respondents have raised the issue with regard to the sufficiency of the pleading, the ALJ must first address whether the penalty claim was sufficiently plead before addressing whether a penalty is appropriate.

6. As found, Claimant filed an application for hearing alleging penalties for "Respondents failure to authorize and pay for Skyrizie" and referenced Section "8-43-304 & 305 & 401/2/a." Claimant further noted the date the penalty was to start as being February 13, 2024. While this date is a bit off from the February 19, 2024 denial that was discussed at hearing, the ALJ finds that the description of the penalty put Respondents on notice regarding the acts that gave rise to the penalty violation. The ALJ finds this notice to be sufficient to comply with the requirements of Section 8-43-305, C.R.S.

7. Respondents also raised the affirmative defense that the action giving rise to the penalty had been cured pursuant to Section 8-43-304(4), C.R.S. Section 8-43-304(4) provides that any party alleged to have committed a violation of the Act subject to penalties shall have twenty days to cure the violation from the date of mailing of the application for hearing in which penalties were alleged. Section 8-43-304(4) provides that if the violation cures the violation within such twenty-day period, and the party seeking such penalty fails to prove by clear and convincing evidence that the alleged violator knew or reasonably should have known such person was in violation, no penalty shall be assessed. Section 8-43-304(4) further states that the curing of the violation within the twenty-day period shall not establish that the violator knew or should have known that such person was in violation.

8. In this case, however, there is insufficient evidence to establish that the penalty was cured within 20 days. As noted, Respondents did not approve Appellant's Skyrizi until his next refill that occurred 90 days later and 58 days after the Application for Hearing was filed.

9. As found, the ALJ credits the testimony of Claimant and KN[Redacted] who testified that Respondents have not reimbursed Claimant's co-pay for having to fill the prescription for either the August 2023 denial nor the February 2024 denial of Skyrizie. While KN[Redacted] testified that Insurer has reached out through a third party to reimburse Medicaid for the cost of the Skyrizie that was covered by Medicaid, no such reimbursement has occurred as of the date of the hearing for either the March 2023 or the February 2024 denial of service. As such, the argument that the facts giving rise to the penalty in this case have been cured is rejected.

10. Moreover, Claimant had filed multiple applications of hearing requesting penalties for the exact same conduct, which has been an ongoing issue in this case. Insurer was aware of the issue with the denial of Skyrizie and was aware that this conduct had resulted in claims for penalties. Therefore, insofar as there could be an argument that the facts giving rise to the penalty had been "cured" the ALJ finds that Claimant has established by clear and convincing evidence that Respondents knew or reasonably should have know of the facts giving rise to the penalty claim in this case.

11. After determining that the conduct constituted a violation of an Order, the ALJ must next determine if the actions were "reasonable". The reasonableness of the violator's actions depends on whether the actions were predicated on rational argument based in law or fact, and this determination is to be made by the ALJ. *See Jiminez v. Industrial Claim Appeals Office, supra*. Further, where the violator fails to offer a reasonable factual or legal explanation for its actions, it may be inferred that the violation was objectively unreasonable. *See Human Resource Co. v. Industrial Claim Appeals Office,* 984 P.2d 1194 (Colo. App. 1999).

12. As found, Respondents actions in this case were unreasonable in that they denied authorization for the Skyrizi despite having specifically stipulated that they would continue to pay for the Skyrizi.

13. As found, the egregiousness of the failure to approve the Skyrizi is significant. Respondents actions result in Claimant having to bear additional costs that have been resolved by the parties by an Order approved by an ALJ. Moreover, after Respondents have avoided having to pay for prescription medication they are ordered to pay for, Respondents also fail to reimburse Claimant for his out of pocket expenses.

14. As found, the penalty in this case must be significant enough to ensure that future violations of this nature do not occur. As found, if the penalty is not significant enough to deter future violations of the Order requiring Respondents to pay for the Skyrizi medication, Respondents may have a financial incentive to continue to attempt to defer the cost of the Skyrizi to Claimant and his Part D Medicare insurance coverage.

15. The ALJ finds that Respondents are liable for penalties of $300 per day for the period of February 19, 2024 through May 19, 2024 for a period of 90 days for failure to authorize Claimant's Skyrizi prescription.

16. The ALJ finds that Respondents are liable for additional penalties of $300 per day for the period of February 19, 2024 and ongoing for Respondents failure to reimburse Claimant his out of pocket co-pay Claimant was required to pay when his Skyrizi was improperly denied by Respondents on February 19, 2024. This penalty shall continue until such time as Respondents reimburse Claimant his co-pay.

17. The ALJ notes that the penalty of $300 per day for failing to reimburse Claimant's out of pocket expenses of $4.60 for filling the prescription may seem excessive. However, the issue in this case is not the amount Claimant has to pay out of pocket, but the fact that he continues to have to pay out of pocket after being involved in protracted litigation involving the issue of the Skyrizi and the fact that there is a lack of credible evidence that Respondents took action to attempt to reimburse Claimant his out of pocket expenses that were incurred by their failure to approve the Skyrizi.

18. Section 8-43-304(1) provides that the ALJ shall apportion any award of penalties, in whole or in part, at the discretion of the Administrative Law Judge, between the aggrieved party and the Colorado uninsured employer fund created in Section 8-67-105; except that the amount apportioned to the aggrieved party must be at least twenty-five percent of any penalty assessed.

19. Pursuant to Section 8-43-304(1), the ALJ apportions the penalty in this case 50% to the Claimant and 50% to the Colorado uninsured employer fund created in Section 8-67-105, C.R.S.

ORDER

It is therefore ordered that:

1. Respondents' shall pay penalties to Claimant in the amount of $300 per day for failure to authorize Claimant's Skyrizi for the period of February 19, 2024 through May 19, 2024.

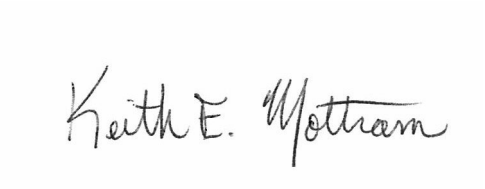
2. Respondents shall pay penalties to Claimant in the amount of $300 per day for the period of February 19, 2024 and continuing for failure to reimburse Claimant for his out-of-pocket co-pay that Claimant was forced to pay when the authorization for Skyrizi was denied by Respondents on February 19, 2024.

3. The penalty shall be apportioned 50% to the Claimant and 50% to the Uninsured Employer Fund established a Section 8-67-105, C.R.S. pursuant to Section 8-43-304(1), C.R.S.

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 mailing or service of the order, as indicated on certificate of mailing or service; otherwise, the ALJ's order will be final. You may file the Petition to Review by email at oac-ptr@state.co.us, or at oac-dvr@state.co.us. 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**. For statutory reference, see section 8-43-301(2), C.R.S. For further information regarding procedures to follow when filing a Petition to Review, see Rule 27, OACRP. You may access a petition to review form at: http://www.colorado.gov/dpa/oac/forms-WC.htm. **In addition, it is recommended that you send a copy of your Petition to Review to the Grand Junction OAC via email at oac-gjt@state.co.us.**

DATED: September 25, 2024



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