OFFICE OF ADMINISTRATIVE COURTS
STATE OF COLORADO
WORKERS' COMPENSATION NO. WC 5-277-475-001

ISSUES

1. Whether Claimant proved by a preponderance of the evidence that he suffered a compensable injury at work on July 3, 2024.

2. Whether Claimant proved by a preponderance of the evidence that he is entitled to medical benefits reasonably necessary to cure and relieve him of the effects of his July 3, 2024 injury.

FINDINGS OF FACT

1. Claimant is 20 years old. Claimant works for Employer's Stormwater Department as a Utility Water Worker. As a Utility Water Worker, Claimant's job duties include general maintenance, trimming trees, driving small and heavy equipment, shoveling snow, and inspecting grates and manhole covers.

2. Claimant testified at hearing. The ALJ found Claimant's demeanor to be open and honest and credits his testimony in full.

3. On July 3, 2024, Claimant started working at 7:00 a.m. He was assigned to a three-man crew conducting manhole inspections, which requires removing, inspecting, and cleaning the manhole and its cover. From approximately 7:30 a.m. to 2:30 p.m., Claimant worked outside on streets where the manholes were located.

4. Manhole inspections include removing the manhole covers which weigh up-to 100 pounds. On July 3, 2024, Claimant and his crew removed and inspected 50 manhole covers and it was 97 degrees out.

5. Luke Stolpmann drove the truck used by the crew to do manhole inspections. During the day Claimant was feeling extremely hot with the weather, was "super sweaty"/drenched in sweat, and felt light-headed. Employer had previously sent out an email that it was "hitting record highs" that week in the United States. Claimant had his own water bottle with him and there was an additional jug of water in the back of the truck. When he felt thirsty, Claimant would drink from the water bottle as advised by Employer.

6. Shortly before 3:00 p.m., Claimant rode as a passenger back to Employer's facility. The plan was to put away the equipment the crew used and complete their paperwork. After the truck pulled into the facility, Claimant stepped down from the truck steps, felt very light-headed, loss consciousness, and fell to the ground and hit the back of his head on concrete.

7. No one directly observed Claimant losing consciousness and striking his head on concrete.

8. Mr. Stolpmann helped Claimant get up after he regained consciousness, and they went inside to their supervisor's office. One of Claimant's supervisors got ice for Claimant's head while another supervisor grabbed paper towels to stop the head wound from bleeding.

9. Christian Lerch, the emergency manager for Aurora Water, called an ambulance which took Claimant to AdventHealth Parker Hospital. Ex. A p. 4.

10. At AdventHealth Parker Hospital, Claimant saw Keith Benson, P.A. Claimant told P.A. Benson he had "been outside all day, had a syncopal episode when he stood up falling backwards striking his head, has pain in his neck, posterior scalp." Ex. 5 p. 16.

11. Upon arriving at the emergency room, Claimant was observed to have a "3-centimeter laceration to the occiput scalp" and minimal tenderness along his cervical spine. Ex. 5 p. 21. Claimant received 4 staples for the head laceration and electrolyte and fluid repletion through an IV. Ex. 5.

12. Claimant underwent a CT of his head, a CT of his cervical spine, and an EKG. The EKG showed "atrial fibrillation versus multiple ectopic beats" and Claimant was found to be "clinically dehydrated." Ex. 5 p. 21-22. Claimant's dehydration normalized with electrolyte and fluid repletion. *Id.* The CT scan of head showed no acute intracranial findings and no underlying fracture. *Id.* at p. 24. Similarly, the CT of cervical spine showed no acute findings. *Id.* at p. 26.

13. P.A. Benson diagnosed Claimant's syncopal episode as "unspecified" and did not reach a conclusion as to why Claimant loss consciousness. Ex. 5 p. 22. Claimant's differential diagnoses included "cardiogenic syncope, dehydration, electrolyte abnormality, intracranial hemorrhage, skull fracture, cervical spine fracture, [and] cardiac arrhythmia." *Id.*

14. Luke Stolpmann testified at hearing. Mr. Stolpmann confirmed that it was extremely hot on the day in question and that he was part of the three-man team inspecting manhole covers with Claimant. Mr. Stolpmann testified that the team spent about half the day inside their work truck and half the day outside in the heat. The job lifting the manhole cover at each location was distributed evenly between himself, Claimant, and the third team member.

15. Around 2:30 p.m. Mr. Stolpmann drove the work truck back to Employer's facility and he went inside the facility to complete paperwork. Having realized he forgot the paperwork, Mr. Stolpmann walked back towards the truck at which time he saw Claimant unconscious on the ground ten to twelve feet in front of the front grill of the truck. After Claimant regained consciousness, he helped Claimant up and brought him into the facility where a supervisor called an ambulance.

16. The ALJ finds Mr. Stolpmann's testimony generally credible. However, to the extent Mr. Stolpmann's testimony conflicts with testimony given by Claimant, the ALJ credits Claimant's testimony as more credible.

17. After the incident, Claimant took four days off of work. Employer gave Claimant "compensation time" for two of the days and Claimant had to use paid time off for the other two days.

18. Lane Swink, Claimant's supervisor at the time of the injury, emailed Claimant after his injury with a list of authorized treating physicians. *See* Ex. A (ATP form electronically signed by Claimant August 12, 2024). Mr. Swink testified at hearing that he left early on July 3, 2024, and, therefore, he did not see Claimant after he was injured on July 3.

19. On July 8, 2024, Claimant was seen at Colorado Occupational Medical Partners by Tom Chau, P.A. Ex. 6. At that visit Claimant reported "continued visual disturbances, dizziness, nausea and headaches." *Id.* at p. 126. Claimant's staples were removed, and he was referred to a concussion clinic for further evaluation of post-concussive syndrome and to cardiology "due to abnormal EKG findings from the Emergency Room." *Id.* at p. 127-128. "Due to ongoing dizziness, vision changes and headaches, it was recommended that Claimant remains off work." *Id.* at p. 128.

20. P.A. Chau noted "[a]t this time, it is difficult for me to determine with any degree of medical probability or certainty that this is a work-related injury or exposure. Causality, therefore, is pending further evaluation." Ex. 6 p. 127.

21. Claimant was previously seen by Colorado Occupational Medical Partners in July 2023 for a separate work-related head injury. Ex. B p. 17. On July 18, 2023, Claimant was struck in the back of the head by a heavy metal ramp dropped by a coworker. *Id.* Claimant lost consciousness and was transported by ambulance to Anschutz Medical Campus Emergency Department (Children's Hospital) where he received treatment. *Id.*

22. On July 9, 2024, Claimant went to Anschutz Medical Campus Emergency Department (Children's Hospital) and was seen by Julia Brant, M.D. Ex. 7. Claimant was seen for "evaluation of headache, nausea after recent syncopal episode of head strike." *Id.* at p. 139. Claimant complained of a worsening headache, nausea, and blurry vision. *Id.* at p. 140. Claimant reported his headache pain as "10/10" despite taking ibuprofen and Tylenol. *Id.*

23. At Children's Hospital Claimant received an IV cocktail for his headache, nausea, and dizziness and he underwent a repeat EKG. Ex. 7 p. 143. Claimant's EKG was normal. Claimant underwent an EKG, which was normal. *Id.*

24. Dr. Brant diagnosed Claimant with "concussion, head injury, vasovagal syncope." Ex. 7 p. 139. Claimant's differential diagnoses included "arrhythmia, skull fracture, intracranial injury, electrolyte abnormality." *Id.* Dr. Brant noted there was "[n]o clear etiology of the syncope." *Id.* at p. 140. It was recommended that Claimant follow up with cardiology to determine if his syncopal episode was vasovagal or cardiac. *Id.* at p. 147.

25. Claimant credibly testified that he went to Children's Hospital on July 9, 2024, because the day before he spoke to Russell Hendrix, a claims adjuster for Employer, and during that call Mr. Hendrix told him that if he had any severe symptoms it was okay to follow up with an emergency department. When he felt sick on July 9, Claimant went to Children's Hospital specifically because he had previously been treated there and he was comfortable with the hospital. *See* Ex. F (Claimant's medical records for Children's Hospital). While he was at Children's Hospital, Mr. Hendrix called Claimant to inform him that Employer was denying his workers' compensation claim.

26. Russell Hendrix, a now-retired claims adjuster for Employer, testified that he spoke with Claimant on either July 8 or July 9, 2024, before he electronically submitted the Employer's First Report of Injury. Mr. Hendrix testified that when discussing the claim with Claimant, Claimant told him that when he got to the facility on the afternoon of July 3, 2024, he got out of the truck and "walked outside to either take or make a phone call," and that he passed out and hit his head on the concrete. Mr. Hendrix could not recall if he told Claimant it was okay to go to the emergency room if he felt worse, but as a general practice he would tell an employee that it is okay to go to the emergency room if they do not feel well.

27. Based on Claimant's reported pain, his continued concussive symptoms, and his history of head trauma, the ALJ finds Claimant's visit to Children's Hospital was an emergency.

28. Respondent introduced Claimant's medical records from Children's Hospital from July 24, 2020 to July 9, 2024. Ex. F. Claimant's records indicate that:

a. On December 11, 2019, he had a concussion without loss of consciousness, *id.* at p. 56, and in July 2020, he experienced dizziness "primarily with changes in position" and "had one episode of fainting but reports it was almost a year ago and could not recall the circumstances." *Id.* at p. 61.

b. In June 2022, Claimant reported dizziness that "does not occur with vigorous physical activity which is somewhat reassuring against cardiac etiology. Neurological etiology unlikely in the absence of symptoms such as headache, loss of consciousness or seizure-like activity. Able to play soccer and basketball without symptoms. Most noticeable with heavy weight lifting. May be vasovagal response." *Id.* at p. 55.

c. In July 2023, Claimant was struck in the head at work and loss consciousness. *Id.* at p. 52. Claimant was seen for post-concussion syndrome and his symptoms included migraines, foggy vision, difficulty focusing, slower reflexes, dizziness when standing up or going down stairs, nausea, vomiting, and fatigue. *Id.*; *Id.* at p. 48-49.

29. Claimant also has been diagnosed with "mild intermittent asthma without complication." Ex. F p. 38. On cross-examination, Claimant attributed his episodes of dizziness to his asthma.

30. Respondent filed its Employer's First Report of Injury on July 9, 2024. Ex. A p. 2; Ex. B. p. 9. On July 11, 2024, Respondent filed a Notice of Contest and indicated that the injury/illness was not work-related. Ex. C.

CONCLUSIONS OF LAW

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 litigation. § 8-40-102(1), C.R.S. Claimant shoulders the burden of proving entitlement to benefits by a preponderance of the evidence. § 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*, 197 Colo. 306, 318 (1979). The facts in a workers' compensation case must be interpreted neutrally and a workers' compensation claim shall be decided on the merits. § 8-43-201, C.R.S.

Assessing the weight, credibility, and sufficiency of evidence in workers' compensation proceedings is the exclusive domain of the administrative law judge. *Univ. Park Care Ctr. v. Indus. Claim Appeals Off.*, 43 P.3d 637, 641 (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. *Id.* 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. *Bodensieck v. Indus. Claim Appeals Off.*, 183 P.3d 684, 687 (Colo. App. 2008).

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 Eng'g, Inc. v. Indus. Claim Appeals Off.*, 5 P.3d 385, 389 (Colo. App. 2000).

Compensability

To establish a compensable injury an employee must prove by a preponderance of the evidence that his injury arose out of the course and scope of employment with his employer. § 8-41-301(1)(b), C.R.S.; see *City of Boulder v. Streeb*, 706 P.2d 786, 791 (Colo. 1985). An injury occurs "in the course of" employment when a claimant demonstrates that the injury occurred within the time and place limits of his employment and during an activity that had some connection with his work-related functions. *Triad Painting Co. v. Blair*, 812 P.2d 638, 641 (Colo. 1991). The "arising out of" requirement is narrower and requires the claimant to demonstrate that the injury has its "origin in an employee's work-related functions and is sufficiently related thereto to be considered part of the employee's service to the employer." *Popovich v. Irlando*, 811 P.2d 379, 383 (Colo.

1991). The claimant must prove a causal nexus between the claimed disability and the work-related injury. *Singleton v. Kenya Corp.*, 961 P.2d 571, 574 (Colo. App. 1998).

Claimant proved by a preponderance of the evidence that he sustained a compensable work injury on July 3, 2024. First, a preponderance of the evidence supports a conclusion that Claimant's injury occurred "in the course of" his employment because his injury occurred within the time and place limits of his employment and during an activity that had some connection with his work-related functions. After a day of lifting heavy manhole covers in 90-degree heat, Claimant stepped out of a work truck at Employer's facility and lost consciousness, striking his head on concrete. Respondent suggests that perhaps Claimant was on his way to make a personal phone call when he passed out, and, therefore, was engaging in an activity that was not connected to his work-related functions. But there is no credible direct evidence and little circumstantial evidence to support that suggestion. Instead, the weight of the evidence supports the finding that Claimant was at work during working hours and had just stepped out of a work truck in order to complete paperwork detailing the work done that day when he passed out and struck his head.

Second, Claimant has established it is more probable than not that his injury arose out of his employment. Claimant's assigned task that day was to go outside and inspect manhole covers in severe heat conditions. Claimant completed that task and upon returning to Employer's facility he passed out and struck his head. When Claimant was evaluated at AdventHealth Parker Hospital, he was found to be clinically dehydrated. The weather, the heavy manual labor Claimant was performing, and Claimant's extreme sweating (along with a later finding of clinical dehydration) more likely than not caused Claimant to lose consciousness, strike his head, and need medical treatment. The ALJ is mindful of the logical fallacy of mistaking temporal proximity for a causal relationship. *See Washburn v. City Market*, W.C. No. 5-109-470 (ICAO, June 3, 2020); *Shaffstall v. Champion Technologies*, W.C. No. 4-820-016 (ICAO, Mar. 2, 2011) (discussing *Scully v. Hooters of Colo.*, W.C. No. 4-745-712 (ICAO, Oct. 27, 2008)). But in this case, the ALJ finds and concludes that the temporal proximity of Claimant's loss of consciousness after spending the day lifting heavy manhole covers in high heat with excessive sweating and later confirmation that he was clinically dehydrated establishes by a preponderance that Claimant's injury arose out of his employment.

In their position statements both parties discuss whether a special hazard of employment contributed to Claimant's injury. *See, e.g.*, *Austin v. Walmart*, W.C. No. 5-191-762 (ICAO, Feb. 22, 2024) ("The rationale for the special hazard rule is that unless a special hazard of employment increases the risk or extent of injury, than an injury due to the claimant's pre-existing condition does not bear sufficient causal relationship to the employment to 'arise out of' the employment."); *Raley v. Atlas Cold Logistics*, W.C. No. 4-841-323 (ICAO, Nov. 15, 2012) (discussing the special hazard rule). However, the ALJ is unconvinced that Claimant's injury was precipitated by a pre-existing nonindustrial condition. Respondent focuses on Claimant's reported history of dizziness in an attempt to establish a history of syncopal episodes but simply put, being dizzy is not the same as fainting. Claimant's medical history supports a single "episode of near fainting," Ex. F p. 61, sometime prior to July 2020, which does not compel a conclusion that Claimant suffers

from a pre-existing nonindustrial condition such that Claimant needs to establish a special hazard of employment in order to establish a compensable injury. As the ALJ has determined there is no pre-existing nonindustrial condition precipitating Claimant's injury, the special hazard doctrine does not apply.

Based on the totality of the evidence, Claimant proved it is more likely than not he suffered a compensable work injury on July 3, 2024 arising out of and in the course of his employment, resulting in disability and the need for medical treatment.

Medical Treatment

Respondents are liable for medical treatment that is causally related, reasonable, and necessary to cure and relieve the effects of the industrial injury. § 8-42-101(1)(a), C.R.S. "The employer has the right, in the first instance, to designate the authorized treating physician." *Williams v. Team Panels Int'l, Inc.*, W.C. No. 4-452-283 (ICAO, June 13, 2001) (citing § 8-43-404(5)(a), C.R.S.). "If the claimant obtains unauthorized care, the employer and insurer are not liable to pay for it." *Id.* (citing *Yeck v. Indus. Claim Appeals Off.*, 996 P.2d 228 (Colo. App. 1999)).

> Colorado recognizes an "emergency" exception to the ordinary rules governing authorization. Thus, in an "emergency situation," an employee need not give notice to the employer nor await the employer's choice of a physician before seeking medical treatment. However, when the emergency has ended, the claimant must notify the employer of the need for continuing medical services so that the employer may exercise its right of selection.

Id. (citing *Sims v. Indus. Claim Appeals Off.*, 797 P.2d 777 (Colo. App. 1990)).

"There is no precise legal test for determining the existence of a medical emergency. Rather, the question of whether a bona fide emergency exists is one of fact and is dependent on the circumstances of the particular case." *Delfosse v. Home Servs. Heroes Inc.*, W.C. No. 5-075-625-001 (ICAO, Apr. 26, 2021). The question of whether the claimant proved treatment is reasonable and necessary is one of fact for the ALJ. *Hobirk v. Colo. Springs School District #11*, W.C. No. 4-835-556-01 (ICAO, Nov. 15, 2012).

Respondent concedes that if the ALJ determines, as she has, that Claimant's injury is compensable, then Claimant's medical treatment at AdventHealth Parker Hospital and Colorado Occupational Medical Partners is covered pursuant to section 8-43-404, C.R.S. and *Sims*. However, Respondent contends that Claimant's visit to Children's Hospital emergency room on July 9, 2024 was unauthorized and not an emergency and, therefore, it should not be liable for the medical expense incurred from that visit.

On July 8, 2024, Claimant was seen by P.A. Chan who recommended Claimant remain off work "[d]ue to ongoing dizziness, vision changes and headaches." Claimant was referred to a concussion clinic to address his post-concussion symptoms. Just one day later, Claimant was experiencing "10/10" headache pain with continued nausea and dizziness. And Claimant had previously suffered a head trauma with loss of consciousness and post-concussive symptoms requiring care. Under these circumstances, the ALJ concludes that Claimant has established by a preponderance that he was experiencing an "emergency" such that he was entitled to seek immediate medical care rather than contact Colorado Occupational Medical Partners for emergent care.

Further, Claimant credibly testified that when he spoke to Employer's claims adjuster Mr. Hendrix, he was told that if he was experiencing severe symptoms that he should go to an emergency room. From this conversation, Claimant was under the impression that he could select what emergency room to visit if he was experiencing severe symptoms. Additionally, Claimant was previously taken by ambulance to Children's Hospital emergency department when he suffered his July 18, 2023 work-related head injury and loss of consciousness. Lastly, when he experienced "10/10" pain with nausea and dizziness, Claimant went to the hospital he was most familiar with.

Claimant's July 9, 2024 emergency room visit was reasonable, necessary, and causally related to his July 3, 2024 injury. Claimant sought treatment for headache, nausea, and blurry vision that was directly related to his head trauma from striking the concrete on July 3, 2024. Indeed, Claimant reported to P.A. Chan just the previous day that he was still experiencing headaches, nausea, and dizziness.

For the foregoing reasons, the ALJ finds and concludes that Respondent is liable for Claimant's July 9, 2024 emergency room visit to Children's Hospital, as well as his visit to AdventHealth Parker Hospital and Colorado Occupational Medical Partners.

ORDER

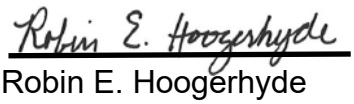
It is therefore ordered that:

1. Claimant suffered a compensable industrial injury on July 3, 2024 arising out of and in the course and scope of his employment with Employer.

2. Respondent shall pay for Claimant's reasonable and necessary medical treatment causally related to the July 3, 2024 injury, including the cost of Claimant's July 9, 2024 emergency room visit to Children's Hospital.

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

SIGNED: April 30, 2025.



Robin E. Hoogerhyde
Administrative Law Judge

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 OACRP Rule 27. You may access a petition to review form at: http://www.colorado.gov/dpa/oac/forms-WC.htm.