ISSUES

1. Whether Claimant proved by a preponderance of the evidence that he sustained a compensable injury to his neck on August 5, 2024, arising out of and in the course of his employment with Respondent-Employer.

2. Whether Claimant proved by a preponderance of the evidence that his treatment at Midtown Occupational Health Services on August 14, 2024, was reasonably necessary to cure and relieve him of the effects of his August 5, 2024 injury.

FINDINGS OF FACT

1. Claimant is a forklift driver and bricklayer's assistant for Respondent-Employer who alleges a neck injury while physically assisting a coworker with an unstable stack of bricks. Claimant alleges that on August 5, 2024, while working on scaffolding near the end of his shift, Claimant identified an unstable stack of bricks, at which point he braced the bricks with his body while he and a coworker unstacked and restacked the bricks for better stability. Claimant alleged that he developed pain which gradually worsened while carpooling home with coworkers. Claimant reported the injury to his supervisor the next morning.

2. On August 14, 2024, Claimant obtained treatment at Midtown Occupational Health Services where he was attended by Ashley Cary, NP-BC. Claimant reported through an interpreter that "he was attempting to lift and pull towards himself 100 [bricks], which weigh[ed] 400 pounds. He reports the [left side of] his body was well-positioned on the ground but the right side was somewhat unsteady. Patient reports as a result he developed immediate right-sided neck pain." Claimant was referred for and began undergoing massage therapy.

3. Claimant had a follow-up appointment on August 21, 2024, with Dr. Lori Rossi at Midtown, again with the assistance of an interpreter. Dr. Rossi noted that Claimant had been tasked on the date of injury with performing duties such as lifting twenty-pound buckets and climbing ladders as well as lifting two hundred fifty pounds of bricks and that Claimant experienced a significant increase in pain at the end of the day. The Court finds that this is in reference to worsening symptoms Claimant had experienced since returning to work after the injury, as Dr. Rossi later noted that Claimant reported increasing issues with return to work following the injury.

4. Over the next several weeks, Claimant underwent massage therapy, physical therapy, and chiropractic care.

5. Claimant underwent a cervical spine MRI on September 3, 2024, which showed significant multilevel degenerative changes and spondylosis through the cervical spine.

6. On October 2, 2024, Respondents obtained a physician-advisor independent medical record review by Dr. Albert Hattem. Based on the review of the medical records, Dr. Hattem understood the mechanism of injury to be that Claimant attempted to lift and pull toward himself one hundred bricks, weighing a total of four hundred pounds, thus developing immediate right-sided neck pain. Dr. Hattem reviewed Claimant's medical records and ultimately concluded that it was not likely that Claimant's cervical spine complaints were work-related. He reasoned that the August 21, 2024 report with Dr. Rossi documented that Claimant reported neck pain beginning at the end of the workday after lifting twenty-pound buckets and climbing ladders. Dr. Hattem noted that the AMA Guides to the Evaluation of Disease and Injury Causation, Second Edition advised that there was insufficient evidence for heavy physical work as a risk factor for neck pain. Dr. Hattem also reasoned that Claimant's work was not of a repetitive or precision-type involving prolonged neck flexion, a type of work for which there has been some evidence that it is a risk factor as noted by the Medical Treatment Guidelines, Rule 17, Exhibit 8. Dr. Hattem felt that there was "no documentation whatsoever" that Claimant sustained a cervical spine injury at work, noting that he was not involved in a motor vehicle accident, did not suffer a whiplash event, and did not suffer any type of head injury. He also felt that the September 3, 2024 MRI showed only preexisting and age-related degeneration.

7. On October 28, 2024, Claimant obtained his own independent medical examination (IME) with Dr. Sander Orent with the assistance of an interpreter. The mechanism of injury, as Dr. Orent understood it, was that Claimant saw an unstable cube of bricks on the scaffolding and that Claimant lifted and pulled the 280-pound cube of bricks back onto the scaffolding. Claimant reported to Dr. Orent that this occurred approximately one half hour prior to the end of the shift. Claimant told Dr. Orent that he had a three-way call with a nurse who told him to stay home, take ibuprofen, and ice his neck for four or five days. Claimant reported that the only treatment that had been helpful thus far had been massage. Dr. Hattem noted that Claimant had undergone a left shoulder rotator cuff repair fourteen years earlier. On physical examination, Dr. Hattem noted that Claimant's cervical range of motion was markedly restricted and that Claimant exhibited cervical spine tenderness about the paraspinal musculatures. Claimant had a negative Spurling's maneuver. Dr. Orent reviewed the medical history and ultimately disagreed with Dr. Hattem's analysis. He felt that Claimant sustained a substantial strain to his neck that aggravated preexisting underlying arthritic problems which had been previously asymptomatic. Dr. Orent felt that Claimant was entirely

sincere, that there were no confounders or pain behaviors, and that Claimant provided maximum effort in his ranges of motion.

8. On November 1, 2024, Michelle K. Hart, FNP, responded to an inquiry from Respondent-Employer regarding Claimant's temporary work restrictions. NP Hart responded that Claimant was unable to lift more than fifteen pounds due to significant multilevel degenerative disc disease and spondylosis throughout the cervical spine.

9. Dr. Lawrence Lesnak performed an IME of Claimant on November 13, 2024, with the assistance of an interpreter. As part of that IME, Dr. Lesnak conducted a computerized outcome assessment to determine the presence of any potential psychosocial factors that may be influencing his symptoms, recovery, or perceived level of function. The psychosocial-evaluation portion of the assessment was assessed using the Distress Risk and Assessment Method (DRAM) evaluation, and Claimant's results placed him in the "normal" category for psychosocial functioning. The portion concerning self-reported functional assessment showed that Claimant scored "60/102 on the Activities of Daily Living index, a 65/100 on the Work/Leisure index, a 20/100 on the Anxiety/Depression index, and a 10/100 on the Social Interest index." Based on the totality of the testing, Dr. Lesnak concluded that "may be some mild to moderate psychosocial factors that could be influencing the patient's symptoms." Dr. Lesnak conclusion appears to be based on Claimant exhibiting mild-to-moderate level of somatic pain complaints, which he noted "may suggest some degree of symptom somatic disorder/somatoform disorder." However, Dr. Lesnak did not specifically address the significance of the self-reported functional assessment results.

10. Dr. Lesnak took Claimant's subjective history of the mechanism of injury. Claimant's description was substantially the same as that which he provided to Dr. Orent, including that the injury occurred near the end of Claimant's work shift. Claimant described his current symptoms as involving constant mild right lateral neck pains, sharper when rotating the neck to the right. Claimant also complained of right arm weakness and frequent right middle, ring, and little finger numbness diffusely. Claimant denied mid-back or left upper extremity symptoms. Claimant also denied any history of neck or right upper extremity symptoms prior to the injury.

11. On physical examination, Claimant exhibited limited cervical extension and limited right cervical side bending. Cervical root tension maneuvers on the right produced some right lateral neck pain, but the pain was not reported as radiating to his right suprascapular region or right upper extremity. Claimant also exhibited tenderness to palpation in the right distal lateral neck. However, Dr. Lesnak noted that no distinct trigger points or muscle spasms were identified. Dr. Lesnak also noted that Claimant exhibited no specific pain behaviors or nonphysiologic findings during examination.

12. Dr. Lesnak concluded that Claimant may have sustained a mild soft tissue strain or sprain to the right cervical paraspinal musculature based on Claimant's reported history of lifting and sliding a stack of bricks at work on August 5, 2024. He noted that this diagnosis was made in the absence of clinical or imaging evidence of acute cervical spine injury, radiculopathy, or other neurological or joint pathology, as imaging revealed only multilevel degenerative disc disease and spondylosis unrelated to trauma. Dr. Lesnak felt that Claimant's mild-to-moderate somatic pain complaints were possibly indicative of a somatoform disorder and found no medical evidence supporting the need for extensive treatment or permanent work restrictions. However, he recommended a limited physiatry consultation to explore acupuncture or trigger point therapy, stating that maximum medical improvement might be achieved within a month. Dr. Lesnak hedged that if the coworker's account that Claimant did not perform the physical task described is accurate, then the reported symptoms would be unrelated to occupational activities, negating the need for any further care or work-related causation.

13. Claimant testified that, on the date of injury, he was working on a jobsite in Colorado Springs for Respondent-Employer as a bricklayers' assistant. Claimant had been working for Respondent-Employer for about two and a half years.

14. His job duties included helping the bricklayers, including having the material ready, ensuring that the project would proceed, keeping the workspace clean, and maintaining safety.

15. Just prior to the injury, everything had been going normally. When the workers were almost finished with their shift, the supervisor asked that they work an extra hour of overtime. Claimant testified that his shift normally ended at 3:30 P.M.

16. Claimant testified that his injury occurred when he was helping a coworker, [redacted] [redacted] with a bundle of bricks that was at risk of toppling from the scaffolding and falling on coworker [redacted] Claimant testified that he used his hands, knees, and feet to prop the stack of bricks up. Claimant testified that he and [redacted] worked together to reduce the hazard by [redacted] tossing Claimant bricks while Claimant would restack the bricks in a new stack. Claimant testified that he lifted and pulled. He experienced a jerking pain, but it was not an intense pain in the moment. Claimant continued to work until finishing his shift around 4:00 P.M.

17. Claimant testified that his pain began to worsen while he was carpooling home with [redacted] and [redacted] in [redacted] pickup truck. Claimant began feeling the neck pain increase, and his coworkers provided him with ibuprofen.

18. Claimant testified that he did not report his injury at the end of the shift because the foreman was no longer on the jobsite. It was not until the next morning that he notified his employer when he contacted [redacted] [redacted] by telephone. Claimant testified that David Padilla then asked him to talk with Eduardo Rivas about his

reported injury. Claimant testified that when he spoke with Mr. Rivas around 7:20 A.M., Mr. Rivas advised him to rest at home and remain calm and that Mr. Rivas did not direct him to a doctor.

19. Claimant testified that the pain gradually worsened over the next several days. Claimant testified that around August 13, 2024, Mr. Rivas gave him the "green light" to go to the clinic for treatment, and Claimant sought treatment on August 14.

20. In his testimony, Claimant denied any prior neck problems or right shoulder problems, though he acknowledged that he had previously had a torn tendon in his left shoulder and corresponding surgeries. However, Claimant testified, those problems resolved and never resulted in neck pain, and that he was able to perform his work just normally prior to his date of injury with no restrictions.

21. Dr. Orent testified at hearing as well as an expert in occupational and environmental medicine and internal medicine. Dr. Orent testified largely consistently with his IME report. He added that the degenerative conditions identified on the MRI can occur asymptomatically and can be caused to flare up as a result of trauma. Regarding Claimant's delayed onset of pain, Dr. Orent explained that it is due to the delay inherent in inflammation as well as the pain-masking characteristic of adrenaline. Regarding Dr. Hattem's interpretation of the August 21 Dr. Rossi report, Dr. Orent opined that Dr. Hattem had misinterpreted Dr. Rossi's description of the mechanism of injury. Last, Dr. Orent clarified that he did not find any indication during the IME of an exaggeration of symptoms.

22. Dr. Lesnak also testified at hearing as an expert in physical medicine and rehabilitation. Dr. Lesnak testified that he listened again to the IME audio and that Claimant's description of the injury was that he put his hands in the holes of the pallet to help lift the bricks, that it occurred near the end of the shift, and that it was just one instance that Claimant described. Dr. Lesnak further added that Claimant's symptoms were not consistent with a specific diagnosis, that the physical examination was "fairly benign," and that the mechanism described by Claimant's coworker, [redacted] would not cause a cervical spine injury. Dr. Lesnak testified that he himself had worked as a bricklayer prior to medical school and that such work, in the absence of any pushing or pulling, would not be a cause of a work injury. However, he acknowledged that the mechanism—if it had occurred as Claimant described—could cause a mild neck strain.

23. At hearing, Claimant's coworker [redacted] testified as well. [redacted] testified that, at the time of Claimant's alleged injury, Claimant was holding the bricks back so they would not fall. He testified that Claimant did not apply force on the bricks to move the bricks. [redacted] also did not recall tossing bricks to Claimant, though he acknowledged that tossing bricks is a technique sometimes used. He testified that each brick weighed about five pounds. [redacted] testified

that his shift ended at 3:30 P.M. that day and that he did not recall working past that time.

24. Respondents called Eduardo Rivas to testify at hearing as well. Mr. Rivas testified that he was the safety manager for Respondent-Employer and had been working for Respondent-Employer for six years, though he had been doing that type of work for the past nineteen or twenty years.

25. Mr. Rivas testified that employees were not working overtime on the date of injury, and that there are specific rules for working overtime.

26. Mr. Rivas testified that he learned of Claimant's injury only after hearing about it from Claimant's supervisor, though he acknowledged that an injury could be reported to one's supervisor. Mr. Rivas testified that Claimant told him he was alone at the time of the injury, and Mr. Rivas denied telling Claimant to rest at home.

27. The Court finds the testimony of Claimant more credible than those of Mr. Rivas and [redacted] The events on Claimant's date of injury and shortly thereafter would have been of substantial significance to Claimant, as they marked the onset of a physical injury that resulted in pain, medical treatment, and ultimately, temporary disability. Given the personal impact of the incident, Claimant is more likely to have accurately remembered the details of those events. In contrast, for Mr. Rivas and [redacted] the events would not likely hold comparable significance, making it less likely that their recollections would be as detailed or reliable. Moreover, Claimant's account has remained substantially consistent across multiple settings, including medical histories and sworn testimony, further reinforcing its credibility.

28. To the extent that Claimant's account of the work injury varied somewhat among the several records and testimony, the Court finds the accounts substantially similar and the differences to be inconsequential. Minor discrepancies in Claimant's descriptions of the mechanism of injury—such as the exact weight or number of bricks involved—are immaterial and do not undermine the overall consistency of his account. The essential elements of the injury, including the timing, the physical exertion involved in stabilizing and repositioning bricks, and the subsequent onset of pain, remained consistent throughout his reports to medical providers and during testimony. These minor variations are reasonably attributed to differences in interpretation by medical providers, language translation issues, or the natural imprecision of recollection rather than any intent to mislead.

29. The Court also finds Dr. Orent's and Dr. Lesnak's testimonies credible insofar as both agree that Claimant sustained or may have sustained a work-injury to his neck if Claimant's account of events is to be credited, which this Court does. The opinions of Drs. Orent and Lesnak both support the occurrence of at least a mild

soft-tissue injury causally related to the work incident. Dr. Orent attributed the onset of symptoms to a strain that aggravated preexisting, asymptomatic degenerative conditions, while Dr. Lesnak concluded that Claimant may have sustained a mild strain or sprain to the right cervical musculature. Both experts identified objective findings consistent with Claimant's reported symptoms and neither identified non-physiological findings nor pain behaviors.

30. While Dr. Orent and Dr. Lesnak disagree regarding the extent of the injury, the Court finds that Claimant's injury was sufficient that it necessitated medical treatment that included, at the very least, the August 14, 2024 visit at Midtown.

31. The Court finds that Claimant sustained a compensable neck injury on August 5, 2024, arising out of and in the course of his employment with Respondent-Employer.

32. The Court finds that the August 14, 2024 treatment at Midtown was reasonably necessary to cure and relieve Claimant of the effects of his August 5, 2024 neck injury.

CONCLUSIONS OF LAW

Generally

The purpose of the Workers' Compensation Act of Colorado, §§ 8-40-101, C.R.S., 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. *See* § 8-40-102(1), C.R.S. 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). 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 respondents; and a workers' compensation claim shall be decided on the merits. § 8-43-201, C.R.S.

Assessing weight, credibility, and sufficiency of evidence in Workers' Compensation proceeding is the exclusive domain of the 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. *Id*. at 641. 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. *Prudential Insurance Co. v. Cline*, 57 P.2d 1205 (Colo. 1936); *Bodensieck v. Industrial Claim Appeals Office*, 183 P.3d 684 (Colo.App.2008). 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).

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).

Compensability

To receive compensation or medical benefits, a claimant must prove they are a covered employee who suffered an injury arising out of and in the course of employment. Section 8-41-301(1); *Faulkner v. Industrial Claim Appeals Office*, 12 P.3d 844 (Colo.App.2000). The question of whether the claimant met the burden of proof is one of fact for determination by the ALJ. *City of Boulder v. Streeb*, 706 P.2d 786 (Colo. 1985).

The existence of a preexisting condition will not prevent an injury from "arising out of" the employment. *Peter Kiewit Sons' Co. v. Indus. Comm'n of Colo.*, 124 Colo. 217, 220, 236 P.2d 296, 298 (1951); *Subsequent Injury Fund v. Thompson*, 793 P.2d 576, 579 (Colo. 1990). Generally, an injury will be found compensable if the employment aggravated, activated, caused, or accelerated a medical disability or need for medical treatment. *Id*.

An incident which merely elicits pain symptoms caused by a preexisting condition does not compel a finding that the claimant sustained a compensable aggravation. *F. R. Orr Construction v. Rinta*, 717 P.2d 965 (Colo. App. 1985); *Barba v. RE 1J 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). Rather, a claimant must establish to a reasonable degree of probability that the need for additional medical treatment is proximately caused by the aggravation and is not simply a direct and natural consequence of the preexisting condition. *Merriman v. Indus. Comm'n*, 210 P.2d 448 (Colo.1949); *Rockwell Intl. v. Turnbull*, 802 P.2d 1182 (Colo.App.1990).

The Court concludes that Claimant has proved by a preponderance of the evidence that, as found, Claimant sustained a compensable injury to his neck arising out of and in the course of his employment with Respondent-Employer on August 5, 2024, and that the injury caused a temporary disability and a need for medical treatment.

Medical Benefits

The Act provides that an employer must provide medical care "as may reasonably be needed . . . to cure and relieve the employee from the effects of the injury." Section 8-42-101(1)(a), C.R.S.

The parties stipulated at hearing that the reasonableness and necessity of the August 14, 2024 visit at Midtown would be at issue. The Court concludes that, as found, Claimant's injury was sufficient that it necessitated medical treatment that included, at the very least, Claimant's initial visit at Midtown.

ORDER

It is therefore ordered that:

1. Claimant has proved by a preponderance of the evidence that he sustained a compensable neck injury on August 5, 2024, arising out of and in the course of his employment with Respondent-Employer.

2. Claimant has proved by a preponderance of the evidence that the treatment he received on August 14, 2024, at Midtown was reasonably necessary to cure and relieve him of the effects of his August 5, 2024 neck injury.

3. All issues 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 26, OACRP. You may access a petition to review form at: http://www.colorado.gov/dpa/oac/forms-WC.htm.

DATED: April 21, 2025.

Stephen J. Abbott
Administrative Law Judge
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