ISSUES

1. Whether Claimant has established by a preponderance of the evidence that he suffered a compensable injury on June 13, 2024, during the course and scope of his employment with Employer.

2. Whether Claimant has demonstrated by a preponderance of the evidence that he is entitled to receive reasonable, necessary, and causally related medical benefits for his industrial injuries.

3. Whether Claimant is entitled to select his authorized treating physician.

4. Claimant's Average Weekly Wage.

FINDINGS OF FACT

1. Claimant was hired by Employer in May, 2023, to fulfill orders for restaurants. He was paid in checks in the amount of $1,360.00 bi-weekly. The checks provided by employer entered into evidence total $32,640 over a period of 52 and 2/7 weeks. The Claimant's average weekly wage is $624.26.

2. Amardeep Dham testified that Respondent-Employer did not have workers' compensation insurance at the time of the injury because the insurance broker used by Respondent-Employer did not offer the business workers' compensation insurance or inform the business that it needed workers' compensation insurance.

3. On June 13, 2024, while working for Employer, Claimant injured his back when he lifted a heavy bag of flour. As he lifted the bag of flour, he felt a crack in his back and lost feeling to his leg. He fell to the ground. Claimant reported the injury that same day. Employer advised him to take Tylenol for his pain. However, Claimant's pain continued to increase, and he called a family member to pick him up and take him to a hospital.

4. Claimant was taken to the Denver Health Urgent Care Center. He was evaluated by Kendall Mulvaney, P.A., for complaints of low back pain and numbness/weakness in his bilateral lower extremities. He was diagnosed with severe low back pain. He was transferred to the emergency room for further pain management and advanced imaging including MRI to evaluate source of severe symptoms. (Claimant's Exhibit 3, pages 110 to 115).

5. Claimant was transferred to the Emergency Department where an MRI of the lumbar spine was completed. The lumbar MRI showed mild multilevel spondylosis with posterior disc bulges at L4-5 and L5-S1 and associated annular fissure at L5-S1, mild effacement of the left subarticular zones at L4-5, and mild bilateral foraminal narrowing at L5-S1. He was referred to Neurosurgery. (Claimant's Exhibit 3, pages 32 to 35).

6. Claimant was evaluated by Andrea Coder, P.A., at the Neurosurgery Department of Denver Health. Claimant was diagnosed with acute low back pain and L4-5 herniated disc with lumbar radiculopathy. He was prescribed Medrol and Flexeril, physical therapy, and was advised to follow up in 4 - 6 weeks. He was discharged that same day. (Claimant's Exhibit 3, page 54).

7. Claimant returned to work on June 17, 2024, but was informed by Employer he was not employed anymore.

8. Claimant has received physical therapy treatment at the Denver Health Outpatient Rehabilitation Services for his lower back pain and bilateral lower extremity pain. (Claimant's Exhibit 3, pages 138 to 149).

9. Claimant was never provided a list of designated providers by Respondent.

10. Claimant continues to experience lower back pain, as well as left lower extremity pain and numbness. Claimant returned to work cleaning at a court. However, he has difficulty performing his job duties.

11. The testimony of Claimant is credible.

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 any litigation. Section 8-40-102(1), C.R.S. (2021). The facts in a Workers' Compensation case are not interpreted liberally in favor of either the rights of the injured worker or the rights of the employer. Section 8-43-201, *supra*. A Workers' Compensation case is decided on its merits. Section 8-43-201, *supra*.

The ALJ's factual findings concern only evidence that is dispositive of the issues involved. This decision does not specifically address every item contained in the record and the ALJ has not addressed every piece of evidence that might lead to a conflicting conclusion. The ALJ has specifically rejected evidence contrary to the above findings as not credible or unpersuasive. *Magnetic Engineering, Inc. v. Industrial Claim Appeals Office*, 5 P.3d 385 (Colo. App. 2000). In general, the claimant has the burden of proving

entitlement to benefits by a preponderance of the evidence, including the causal relationship between the work-related injury and the medical condition for which Claimant is seeking benefits. Sec. 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, 592 P.2d 792 (1979). Claimant is not required to prove causation by medical certainty. Rather it is sufficient if the claimant presents evidence of circumstances indicating with reasonable probability that the condition for which they seek medical treatment resulted from or was precipitated by the industrial injury, so that the ALJ may infer a causal relationship between the injury and need for treatment. See *Industrial Commission v. Riley*, 165 Colo. 586, 441 P.2d 3 (1968).

In deciding whether a party has met the burden of proof, the ALJ is empowered "to resolve conflicts in the evidence, make credibility determinations, determine the weight to be accorded to expert testimony, and draw plausible inferences from the evidence." See *Bodensieck v. ICAO*, 183 P.3d 684 (Colo. App. 2008). The ALJ determines the credibility of the witnesses. *Arenas v. ICAO*, 8 P.3d 558 (Colo. App. 2000). Assessing weight, credibility and sufficiency of evidence in a workers' compensation proceeding is the exclusive domain of administrative law judge. *University Park Care Center v. Industrial Claim Appeals Office*, 43, P.3d 637 (Colo. App. 2001). The weight and credibility assigned to evidence is a matter within the discretion of the ALJ. *Cordova v. ICAO*, 55 P.3d 186 (Colo. App. 2002). The same principles for credibility determinations that apply to lay witnesses apply to expert witnesses as well. See *Burnham v. Grant*, 24 Colo. App. 131, 134 P. 254 (1913); see also *Heinicke v. ICAO*, 197 P.3d 220 (Colo. App. 2008). 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 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 Ins. Co. v. Cline*, 98 Colo. 275, 57 P.2d 1205 (1936); *Kroupa v. Industrial Claim Appeals Office*, 53 P.3d 1192 (Colo. App. 2002). A workers' compensation case is decided on its merits. Sec. 8-43-201, C.R.S.

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).

Claimant has proven that it was more likely than not he was injured in the course and scope of his employment with Employer on June 13, 2024, when he injured his low back while lifting a bag of flour. Claimant's claim is determined to be compensable.

Medical benefits

Employer is liable for authorized medical treatment reasonably necessary to cure and relieve an employee from the effects of a work-related injury. Section 8-42-101, C.R.S.; *Sims v. Industrial Claim Appeals Office*, 797 P.2d 777 (Colo. App. 1990). A claimant must establish the causal connection between the compensable event and the need for medical care with reasonable probability but need not establish it with reasonable medical certainty. *Ringsby Truck Lines, Inc. v. Industrial Commission*, 491 P.2d 106 (Colo. App. 1971); *Industrial Commission v. Royal Indemnity Co.,* 236 P.2d 293 (1951). A causal connection may be established by circumstantial evidence and expert medical testimony is not necessarily required. *Industrial Commission v. Jones*, 688 P.2d 1116 (Colo. 1984); *Industrial Commission v. Royal Indemnity Co., supra*, 236 P.2d at 295-296. All results flowing proximately and naturally from an industrial injury are compensable. See *Standard Metals Corp. v. Ball,* 172 Colo. 510, 474 P.2d 622 (1970).

Authorization refers to the physician's legal authority to treat the injury at the respondents' expense. *Popke v. Industrial Claim Appeals Office*, 944 P.2d 677 (Colo. App. 1997). Section 8–43–404(5), C.R.S.2011, gives employers or insurers the right to choose treating physicians in the first instance in order to protect their interest in overseeing the course of treatment for which they could ultimately be held liable. The initial right to select a treating physician is an obligation that must be met forthwith upon notice of an injury, *Bunch v. Indus. Claim Appeals Office*, 148 P.3d 381, 383 (Colo.App.2006), and if medical services are not timely tendered by the employer or insurer, the right of selection passes to the employee, *Andrade v. Indus. Claim Appeals Office*, 121 P.3d 328, 330 (Colo.App.2005).

Claimant has shown he is entitled to medical benefits that are reasonably necessary and related to Claimant's low back injury on June 13, 2024. Claimant's injuries were treated by the various providers at Denver Health. Claimant had a lumbar MRI which showed mild multilevel spondylosis with posterior disc bulges at L4-5 and L5-S1 and associated annular fissure at L5-S1, mild effacement of the left subarticular zones at L4-5, and mild bilateral foraminal narrowing at L5-S1. Claimant received physical therapy and had follow up appointments with the outpatient clinic. Claimant has proven by a preponderance of the evidence that Claimant's medical care through Denver Health was authorized, reasonably necessary and causally related to the June 13, 2024, incident. However, Respondent is not liable for medical treatment unrelated to the low back injury.

Authorized Treating Physician

Under § 8-43-404(5), the employer has the right to choose the treating physician in the first instance. The employer must tender medical treatment "forthwith," or the right of selection passes to the claimant. *Rogers v. Industrial Claim Appeals Off.,* 746 P.2d 565 (Colo. App. 1987). To properly exercise its right of selection, the employer must give the claimant a list of at least four providers from which he can choose. Section 8-43-404(5)(a)(I)(A).

In this case, the employer did not provide the claimant with a list, at any time, of at least four providers from which the claimant could choose to treat for his work injury. Claimant received emergency treatment at the Denver Health Hospital. He has also received medical treatment at the outpatient clinic. As a result, the claimant has established by a preponderance of the evidence that he may select a physician to treat him from the effects of his work injury.

ORDER

Based upon the preceding findings of fact and conclusions of law, the following order is entered:

1. Claimant has established by a preponderance of the evidence that he suffered a compensable injury on June 13, 2024, during the course and scope of his employment with Employer.

2. Claimant has demonstrated by a preponderance of the evidence that he is entitled to receive reasonable, necessary, and causally related medical benefits for his June 13, 2024, injury.

3. Claimant has established by the preponderance of the evidence he is entitled to select a physician to treat his work-related injuries.

4. Claimant's Average Weekly Wage is $624.26.

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

DATED: April 23, 2025.

Michael A. Perales

Michael Perales
Administrative Law Judge
Office of Administrative Courts
1525 Sherman Street, 4th Floor
Denver, CO 80202

If you are a party dissatisfied with the Judge's order, you may file a Petition to Review the order with the Denver Office of Administrative Courts, 1525 Sherman Street, 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. (as amended, SB09-070). For further information regarding procedures to follow when filing a Petition to Review, see Rule 26, OACRP. You may access a form for a petition to review at http://www.colorado.gov/dpa/oac/forms-WC.htm.*