ISSUES

1. Whether Claimant proved by a preponderance of the evidence that he sustained a compensable injury on April 7, 2022, arising out of and in the course of his employment with Respondent-Employer.

2. Whether Claimant has proved by a preponderance of the evidence that there exists fraud, overpayment, error, mistake, or a change of condition such that there exists cause for reopening his claim pursuant to § 8-43-303, C.R.S.

FINDINGS OF FACT

1. Claimant alleges that he sustained burn injuries while working for Respondent-Employer on April 7, 2022, as a dishwasher. Specifically, Claimant alleges that he attempted to pick up a pot of hot chicken broth that had only one handle and the hot chicken broth spilled over his knee and ankle causing burns.

2. Respondents filed a Notice of Contest (NOC) on September 23, 2022, denying the claim for further investigation. A copy was mailed to Claimant's home address.

3. Claimant obtained legal counsel. However, that counsel moved to withdraw from the case on February 3, 2023. The Division of Workers' Compensation granted the motion on February 17, 2023.

4. At some point in time, roughly in May 2023, Respondents filed a motion with the Division to close the claim for failure to prosecute. On June 2, 2023, the Director issued an Order to Show Cause, ordering that Claimant's failure to respond to the Order within thirty days would result in the claim being automatically closed. The Order was sent to Claimant's home address.

5. There is no evidence in the record that Claimant ever responded to the June 2, 2023 Order. The Court finds that the claim was automatically closed effective July 3, 2023.

6. At hearing, Claimant testified that on the date of injury he was working a twelve-hour shift as a dishwasher. He testified that he was wearing pants, shoes, and socks at the time of the injury, and that after spilling the chicken broth on his leg, he continued to work for only a few more days before he was no longer able to. At the time of the injury, Claimant had concurrent employment with Amici's Pizza. Claimant acknowledged that he later sustained a separate injury with another employer, Firstwatch.

7. Claimant also confirmed in his testimony that his address was that which was documented on the certificates of mailing of the NOC and the Director's June 2, 2023 Show Cause Order.

8. The Court finds Claimant's testimony credible.

9. The claims adjuster, Ronda Hackett, also testified at hearing. She testified that she was assigned to this matter on December 20, 2024. However, she reviewed the file and the log notes and found that no mail that Respondent-Insurer ever sent to Claimant's home address was ever returned as undeliverable. She also testified that she had spoken with Claimant approximately ten times over the phone and that Claimant had never provided her with any medical records documenting him being taken off work.

10. The Court finds Ms. Hackett's testimony credible.

11. The Court finds that there does not exist cause to reopen the claim on the bases of fraud, overpayment, error, nor mistake. Furthermore, the Court does not find any credible evidence that Claimant's alleged work injury has worsened so as to cause a change in the degree of Claimant's permanent disability or his need for medical or temporary disability benefits since the time the claim was closed. Therefore, the Court also does not find cause to reopen the matter on the basis of a change in condition.

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).

Reopening

Once a claim is closed, it may be reopened only on grounds of fraud, overpayment, error, mistake, or change in condition. Section 8-43-303, C.R.S. (2024). The reopening authority granted to ALJs by § 8-43-303 "is permissive, and whether to reopen a prior award when the statutory criteria have been met is left to the sound discretion of the ALJ." *Cordova v. Indus. Claim Appeals Off.*, 55 P.3d 186, 189 (Colo.App.2002).

A "change in condition" refers to a "change in the condition of the original compensable injury or to a change in claimant's physical or mental condition which can be causally connected to the original compensable injury." *Cordova v. Industrial Claims Comm'n*, 55 P.3d 186, 189 (Colo. 2002); *In re Caraveo*, W.C. No. 4-358-465 (October 25, 2006). Reopening is appropriate when the claimant's degree of permanent disability has changed since MMI or where the claimant is entitled to additional medical or temporary disability benefits that are causally connected to the compensable injury. *See Duarte v. Glen Ayr Health Center*, W.C. No. 4-521-453 (June 8, 2007).

As found, this matter closed effective July 3, 2023, as a result of the Director's June 2, 2023 Order. At the time, the compensability of Claimant's claim was at issue.

Claimant has not put forth any cogent or persuasive argument that there exists a factual basis warranting reopening of his claim under § 8-43-303. Indeed, as found, the Court does not find cause to reopen the claim on the bases of fraud, overpayment, error, mistake, or change of condition. The Court finds no credible evidence that Claimant's alleged work injury has worsened so as to cause a change in the degree of Claimant's permanent disability or his need for medical or temporary disability benefits since the time the claim was closed.

Therefore, the Court finds that Claimant has not proved by a preponderance of the evidence that there exists cause for reopening his claim under § 8-43-303, C.R.S.

Compensability

As Respondents filed a NOC in this matter, and the matter remains closed, the Court does not address compensability.

ORDER

It is therefore ordered that:

1. Claimant has failed to prove by a preponderance of the evidence that there exists cause for reopening his claim.

2. 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 22, 2025.

Stephen J. Abbott
Administrative Law Judge
Office of Administrative Courts
1525 Sherman Street, 4th Floor
Denver, Colorado, 80203