ISSUES

1. Whether Respondents have established by clear and convincing evidence that the date of maximum medical improvement MMI, assigned by the Division Independent Medical Examination (DIME) physician is incorrect.

2. Whether Respondents have established by clear and convincing evidence that the permanent impairment rating assigned by the DIME physician is incorrect.

FINDINGS OF FACT

Pre-July 11, 2023 Medical Treatment

1. Claimant has a history of multiple motor vehicle accidents in 2012, 2017 and 2019. No records of treatment related to the 2012 or 2017 accidents were admitted into evidence. The 2019 accident resulted in injuries to her back and neck, for which she received treatment. Claimant characterized her 2019 treatment as "minor," and indicated it did not affect her activities of daily living. Claimant apparently referred herself to physical therapy at Spine & Sport Physical Therapy on October 9, 2019, for her lower back, neck, and headaches. At physical therapy, Claimant reported intermittent neck and low back pain for the previous six months, and that the pain had improved significantly since her physician prescribed meloxicam (Mobic)[1]. Claimant reported that her neck pain was constant, and resulted in an inability to move her neck. She was noted to have limited range of motion of her upper lumbar and mid cervical region, with trigger points in the paraspinals and trapezius. (Ex. J). Records from two treatment dates were admitted into evidence. Claimant was recommended to undergo physical therapy two times per week for eight weeks, although no further records of treatment related to the 2019 accident were admitted into evidence. (Ex. J).

2. On December 27, 2021, Claimant saw Gregory Holman, N.P., at CHPG Meridian Neighborhood Health Center for back pain, reporting that it began on December 25, 2021. X-rays showed mild left convex scoliosis at L2, and multilevel disc degeneration and facet degenerative joint disease at L3-4 and L4-5. Mr. Holman diagnosed Claimant with acute low back pain without sciatica, and degenerative disc disease. He prescribed Claimant Robaxin and Flexeril (muscle relaxants), and noted that Claimant would continue to take Mobic, from which the ALJ infers that Claimant had an active prescription for Mobic at the time of the December 2021 injury. (Ex. 14).

3. Claimant returned to Mr. Holman on October 10, 2022, for multiple issues, including chronic low back pain. He noted that Claimant was taking Flexeril and

[1] No records from Claimant's prescribing physician were offered or admitted into evidence.

Meloxicam on a daily basis and refilled both medications. Claimant was also noted to be taking Ambien for insomnia. (Ex. 14).

July 11, 2023 Auto Accident and Associated Treatment

4. On July 11, 2023, Claimant was involved in a side-impact auto accident at approximately 10:40 a.m., in Aurora, Colorado. (Ex. 26). Respondents admitted the accident arose out of the course of Claimant's employment with Employer. (Ex. 4).

5. At the scene of the accident, Claimant was recommended to go to the emergency room, but declined to do so. Instead, she sought treatment at Concentra where she saw David Hnida, D.O., at approximately 1:30 p.m., on July 11, 2023. Claimant reported her vehicle's airbag did not deploy in the accident and that she struck her head. Claimant reported headaches, neck discomfort, left knee pain, lower back pain, fatigue, slight nausea, and general body pain. Although Claimant reported striking her head, she did not believe she experienced a loss of consciousness, and she had no signs of head trauma on examination. Dr. Hnida diagnosed Claimant with headache, neck pain, knee pain, and back pain. He documented that Claimant requested imaging of her head, neck, low back, hips and knees, and placed an "Emergency Medicine Referral." (Ex. F).

6. Claimant then went to the Sky Ridge Medical Center Urgent Care Center where she underwent a head CT scan and cervical spine imaging, neither of which showed acute injuries. At Sky Ridge, Claimant reported that her vehicle's airbag did deploy in the collision, and that she was experiencing right-sided neck and left-sided lumbar pain. She reported no loss of consciousness and denied significant headaches. On physical examination, Claimant's head was noted to be atraumatic. She was diagnosed with cervical and lumbar strains, and discharged. (Ex. E).

7. Claimant returned to Concentra on July 12, 2023, and saw Michael Pete, P.A. Mr. Pete noted that Claimant had the cervical/head CT and that an MRI was recommended but she was unable to get it due to availability. Claimant reported being most concerned with her left lower back, and that she was sore in her neck and upper back, and continued headaches. Mr. Pete referred Claimant for physical therapy. (Ex. F).

8. The lumbar MRI, performed on July 13, 2023, was compared to a May 20, 2019 lumbar MRI, and showed some worsening of some pre-existing conditions, including interval changes, such as new right central disc protrusion at L5-S1, worsening canal stenosis at L3-4 and L4-5, and mild L2-3 canal stenosis. (Ex. 18). The May 20, 2019 MRI report was not included in the hearing record.

9. Claimant attended two physical therapy visits at Concentra PT on July 13 and 14, 2023.[2] At the July 13, 2023 physical therapy visit, Claimant reported left-sided lower back pain into the glute region, and that her head and neck were "good." The following day,

[2] Exhibits 16 & K include a Concentra physical therapy note from July 17, 2023 from someone other than Claimant.

Claimant reported right-sided lower back pain, and that her neck was “doing very well.” (Ex. K). Claimant did not return to Concentra physical therapy after July 14, 2023.

10. On July 14, 2023, Claimant returned to Dr. Hnida. On examination, Dr. Hnida noted tenderness in the right lateral shoulder, left knee, cervical spine, and lumbosacral spine, and documented that her head was atraumatic. Dr. Hnida indicated Claimant was “transferring care out of the work comp system,” and see her primary care provider at Concentra, noting that Claimant had an appointment “Wednesday.” He opined that Claimant had reached her “functional goal” and released her to work without restrictions, and placed her at MMI effective July 14, 2023. Dr. Hnida’s assessment at discharge was neck strain, low back strain, knee pain and headache. (Ex. F). No credible evidence was admitted explaining whether Dr. Hnida placed Claimant at MMI because Claimant decided to transfer her care to her Concentra, or whether Claimant elected to transfer her care because Dr. Hnida placed her at MMI.

11. On July 19, 2023, Claimant saw Gregory Holman, NP at CHPG Meridian Neighborhood Health Center, outside the workers’ compensation system. Claimant reported she “was already having back pain” that was made worse by the motor vehicle accident. Claimant’s physical examination was normal, with the only reported symptom being back pain. Mr. Holman noted that Claimant was “negative for headaches.” He prescribed Flexeril and referred Claimant for an orthopedic evaluation. (Ex. C).

12. Between July 21, 2023 and September 26, 2023, Claimant attended 16 physical therapy visits at CACC for evaluation and treatment of her left hip and left leg, on referral from Mr. Holman. At the initial visit, Claimant completed a patient intake form, and did not indicate headaches were one of her chief complaints. Similarly, Claimant did not report experiencing, and was not treated for headaches at these visits. (Ex. 16).

13. On July 30, 2023, Claimant saw Raewin Shell, D.O., at On Point Urgent Care. Claimant reported feeling dizziness, lightheadedness, ringing in her ears, and sensitivity to both noise and light starting. Claimant told Dr. Shell she was in a T-bone accident on July 11, 2023 “at rapid speed” and that her car airbags deployed. She also reported that she had “severe low back pain which occasionally shoots down her left leg and leg gives way.” Claimant indicated she had “not mentioned her concussion” to her doctor. Dr. Shell’s examination was normal with the exception of reported tenderness in the paraspinal muscles. Dr. Shell diagnosed Claimant with post-concussion syndrome and recommended concussion therapy. (Ex. 15).

14. On August 1, 2023, Claimant saw Euna Kim, NP at an urgent care clinic in California, after flying to for a business trip. Claimant reported an onset of headaches with nausea, light and sound sensitivity starting the day before, and that she was advised by her primary care provider to go to urgent care to obtain Fiorcet (a migraine medication). Ms. Kim’s examination was unremarkable, and Claimant was discharged after a Ketorolac injection. (Ex. H).

15. On August 3, 2023, Claimant returned to Mr. Holman, reporting that she was having severe headaches that “turned into migraines.” Claimant also reported for the first time experiencing anxiety. (Ex. C).

16. Claimant then began attending physical therapy at Spine & Sport Physical Therapy on August 4, 2023, and ultimately attended 38 visits between August 4, 2023 and November 13, 2023. From August through September 2023, Claimant attended physical therapy at both Spine & Sport and CACC. Treatment at Spine & Sport was for post-concussion issues. Claimant reported to Spine & Sport that she began to experience a drastic increase in her symptoms when she flew on an airplane for work the week of August 4, 2023. (Ex. 13).

17. On August 10, 2023, Claimant saw Kaitlyn Angeletti, PA-C at Centura Orthopedics on referral from Mr. Holman. Claimant reported a 4 to 5-year history of left low back pain radiating into her left buttocks, posterolateral thigh, and posterolateral lower leg with an exacerbation about a month ago. On examination, Claimant had an equivocal straight leg test on the left, and subjective reports of back and neck pain. Ms. Angeletti recommended continued physical therapy, and a transforaminal epidural steroid injection (TESI). She noted that Claimant may ultimately require a decompression and fusion surgery, but recommended continued non-operative treatment.

18. Claimant returned to Mr. Holman on September 11, 2023, reporting blurred vision, vertigo, lightheadedness, and multiple resulting falls. Claimant also reported extreme anxiety due to post-concussion syndrome, and requested medication for anxiety. (Ex. 14).

19. On September 25, 2023, Claimant returned to Mr. Holman reporting daily migraine headaches, and lower back pain. He ordered a brain MRI, which showed no acute intracranial abnormality. (Ex. 14).

20. Claimant's last documented treatment was a physical therapy visit at Spine & Sport on November 13, 2023. (Ex. 13).

21. On December 1, 2023, Claimant saw Barry Ogin, M.D., for a Respondent-requested independent medical examination (IME). Dr. Ogin indicated that Claimant's clinical presentation was consistent with cervical and lumbar strain injuries, resulting in aggravation of pre-existing conditions. He noted that there was no evidence of any significant new disc pathology or radicular complaints. At the IME, Claimant reported that she had received an epidural steroid injection in October 2023, and that her back pain had resolved. Claimant did report intermittent leg symptoms but was unable identify the dermatomal distribution, and Dr. Ogin's neurologic examination was normal. He opined that to the extent Claimant had radicular complaints, they were due to her preexisting spinal stenosis and not the result of her work-related auto accident.

22. Dr. Ogin further opined that there was no indication that Claimant had suffered a traumatic brain injury (TBI). He noted that Claimant's contemporaneous medical records did not document any signs of a head injury, and she did not develop significant headaches, vision problems, balance issues, or other signs of a concussion until more than two weeks after the accident. Instead, he indicated that it would be extremely unlikely for concussion-like symptoms to present suddenly more than two weeks after the accident when there was no specific head trauma, or concerns regarding a traumatic brain injury. He further noted that Claimant's progressive worsening of concussion-like symptoms after the accident was not the typical course for concussion symptoms. He therefore

opined that Claimant's reported concussion symptoms could not be attributed to a traumatic brain injury. (Ex. A).

23. On January 1, 2024, Respondents filed a Final Admission of Liability, admitting Claimant reached MMI on July 14, 2023, without permanent impairment. (Ex. 4).

24. On February 5, 2024, Claimant objected to the FAL, and requested a DIME examination. (Ex. 5 & 6).

25. On May 30, 2024, Claimant saw Caroline Gellrick, M.D., for a DIME examination. The parties conducted Dr. Gellrick's deposition on February 25, 2025, and the transcript was submitted in lieu of live testimony. Claimant reported to Dr. Gellrick that the airbags in her vehicle did not deploy and that she struck her head on the steering wheel. In conjunction with the IME, Claimant presented Dr. Gellrick with a list of physicians whom she had seen, and apparently whose treatment Claimant attributed to her work-injury, including neurologists and neurosurgeons. However, Claimant provided no records from these providers, and no records of their treatment or assessment were offered or admitted into evidence. Dr. Gellrick testified that Claimant's neurological records would be "very important," in her assessment.

26. Dr. Gellrick's examination of Claimant was fairly benign. Claimant reported no neck pain or decreased cervical range of motion, no headaches, and no other symptoms consistent with a TBI (*i.e.*, no dizziness, vision issues, or balance issues). Claimant reported taking Tylenol for headaches 2-3 times per week, and that she had no more migraines. Dr. Gellrick noted tenderness in the lower back radiating from L5 to the sacroiliac area, but negative provocative tests. Claimant was noted to be extremely flexible in the lumbar spine, with the exception of lateral side bending on the left which produced pain down the left leg. Claimant reported fearing a loss of balance when walking in her neighborhood. Dr. Gellrick found no evidence of ongoing TBI issues, and no evidence of current cervical spine issues. She noted that the cause of Claimant's previously reported TBI symptoms was unclear and that her symptoms did not manifest until more than two weeks after the auto accident, and became progressively worse. She indicated that TBI symptoms typically progressively improve over time, unlike Claimant's symptoms which reportedly worsened over time.

27. Based on her review of records and examination, Dr. Gellrick placed Claimant at MMI effective December 1, 2023. She attributed five diagnoses to Claimant's auto accident: aggravation of pre-existing lower back pain; cervical strain; cephalgia (*i.e.*, headaches); reactive adjustment disorder; and post-concussive syndrome. Of these, she assigned impairment ratings for her lower back and cephalgia. Specifically, she assigned Claimant a 7% rating for her lumbar spine, and a 5% rating for headaches, which combine for a 12% whole person impairment. She found no other ratable conditions.

28. Dr. Gellrick's lumbar spine rating was based on her opinion that the July 11, 2023 auto accident aggravated Claimant's pre-existing back issues. She noted that there were no previous range of motion measurements to compare and assigned an impairment rating based on the range of motion measurements obtained at the DIME examination. She indicated that although Claimant was able to touch her toes on examination, range

of motion measurements of lumbar flexion demonstrated a deficit. Dr. Gellrick's rationale for assigning a lumbar impairment rating was credible.

29. Dr. Gellrick based Claimant's headache rating on the AMA Guides' section for Episodic Neurological Disorder, which provides for a 5 to 15% rating for disorders resulting in "slight interference with daily living." (AMA Guides, p. 109). Dr. Gellrick cited the Division's Desk Aid #11, as the basis for this rating. Paragraph 10 of the Desk Aid provides that "Headaches that qualify for a separate work-related impairment rating should be rated using the Episodic Neurological Disorders section in Table 1 – Section B (Chapter 4, p. 109)." And she noted in testimony that she elected not to provide Claimant with an impairment for TBI. However, the DIME report indicates "TBI region impairment would be consideration of cephalgia, still occurring on medication of Gabapentin." The report offers no cogent explanation for this statement.

30. Dr. Gellrick offered a confusing and seemingly inconsistent explanation for causation, indicating that Claimant's headaches could be caused either by a cervical strain or a TBI (*i.e.*, either a direct blow to the head or a contrecoup injury resulting from violent shaking of the head). However, Dr. Gellrick found no evidence of ongoing TBI or cervical spine issues, and offered no credible explanation for attributing her headaches to these apparently resolved injuries. She also testified that there was no difference in the diagnoses of TBI, post-concussion syndrome, and cephalgia, and that the condition from which the headaches derived (*i.e.*, cervical strain or a TBI) did not change anything with respect to causation.

31. Dr. Gellrick testified that she believed Claimant's cephalgia was the result of the July 11, 2023 accident because she became symptomatic within two weeks of the accident, and was initially documented to have soreness on the right side of her neck, which could be causing headaches. Later, she testified that she believed Claimant's headaches were the result of her head striking the steering wheel. When addressing the fact that Claimant's head was atraumatic after the accident and there was no evidence of an acute injury on imaging studies, Dr. Gellrick opined that Claimant could have sustained a contrecoup lesion as a result of violent shaking of the head during the collision, and opinion not expressed in her report.

32. Dr. Gellrick testified that she assigned Claimant a 5% rating for headaches under the AMA Guides' Episodic Neurological Disorders table, because Claimant "didn't focus on her headaches. And her current ADL's and what she was doing, didn't seem that the headaches were impacting her life." The only aspect of Claimant's life Dr. Gellrick identified as potentially being impacted was Claimant's reported fear of walking in her neighborhood alone. However, Dr. Gellrick admitted she did not know the cause of Claimant reported fear, and her report indicates it was related to reported balance issues. She offered no credible explanation for attributing Claimant's issues with walking alone to headaches.

33. Dr. Ogin testified at hearing that he believed Dr. Gellrick had erred in assigning Claimant impairment ratings for her lumbar spine and for headaches. With respect to the lumbar spine, Dr. Ogin indicated that he believed Dr. Gellrick erred in assigning an impairment rating because Claimant had recovered from any lower back injury and her

range of motion was unaffected. He further testified, credibly, that he could not rationalize Dr. Gellrick's statement that Claimant had no ongoing TBI issues, but also had headaches caused by a TBI. He noted that Claimant's headache symptoms were initially minor, until July 30, 2023, after which she began reporting progressively worse and varied symptoms. He testified that Claimant's ongoing headache symptoms cannot be attributed to her motor vehicle accident because there is no defined cause of the condition, and that the symptoms did not begin until weeks after the accident.

34. Claimant testified at hearing that she was "knocked out" as a result of the collision and that she continues to have headaches for which she takes multiple medications. She indicated that she continues to experience back pain going down her left leg into her toes. Claimant's testimony that she was "knocked out" in the collision is inconsistent with her reports to medical providers. The medical records also demonstrate that Claimant reported to some providers that the airbags in her vehicle were deployed and reported to others that they did not.

CONCLUSIONS OF LAW

Generally

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. 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 proceedings is the exclusive domain of the administrative law judge. *University Park Care Center v. Indus. 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 Ins. Co. v. Cline*, 57 P.2d 1205 (Colo. 1936); *Bodensieck v. Indus. 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. Indus. 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. Indus. Comm'n*, 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 Eng'g, Inc. v. Indus. Claim Appeals Office*, 5 P.3d 385 (Colo. App. 2000).

Overcoming DIME on MMI and Impairment

The Act defines MMI as "a point in time when any medically determinable physical or mental impairment as a result of injury has become stable and when no further treatment is reasonably expected to improve the condition." § 8-40-201(11.5), C.R.S. Where disputes exist on whether a Claimant has reached MMI, the ALJ must resolve that issue.

Under § 8-42-107 (8)(b)(III), C.R.S., a DIME physician's opinions concerning MMI and whole person impairment carry presumptive weight and may be overcome by clear and convincing evidence. "Clear and convincing evidence means evidence which is stronger than a mere 'preponderance;' it is evidence that is highly probable and free from serious or substantial doubt." *Metro Moving & Storage Co. v. Gussert*, 914 P.2d 411, 414 (Colo. App. 1995). Accordingly, a party seeking to overcome a DIME's MMI determination and/or whole person impairment rating must present "evidence demonstrating it is 'highly probable' the DIME physician's MMI determination or impairment rating is incorrect and such evidence must be unmistakable and free from serious and substantial doubt. *Adams v. Sealy, Inc*., W.C. No. 4-476-254 (ICAO Oct. 4, 2001); *Leming v. Indus. Claim Appeals Office*, 62 P.3d 1015, 1019 (Colo. App. 2002). Whether a party has overcome the DIME physician's opinion is a question of fact to be resolved by the ALJ. *Metro Moving & Storage*, 914 P.2d at 414.

The mere difference of medical opinion does not constitute clear and convincing evidence to overcome the opinion of the DIME physician. *Javalera v. Monte Vista Head Start, Inc*., W.C. Nos. 4-532-166 & 4-523-097 (ICAO July 19, 2004); *see Shultz v. Anheuser Busch, Inc*., W.C. No. 4-380-560 (ICAO Nov. 17, 2000). Rather, it is the province of the ALJ to assess the weight to be assigned conflicting medical opinions on the issue of MMI. *Oates v. Vortex Indus.,* WC 4-712-812 (ICAO Nov. 21, 2008); *Licata v. Wholly Cannoli Café*, W.C. No. 4-863-323-04 (ICAP, July 26, 2016).

As a matter of diagnosis, the assessment of permanent medical impairment inherently requires the DIME physician to identify and evaluate all losses that result from the injury. *Mosley v. Indus. Claim Appeals Office,* 78 P.3d 1150 (Colo. App. 2003); *Sharpton v. Prospect Airport Serv.,* W.C. No. 4-941-721-03 (ICAO Nov. 29, 2016). Consequently, a DIME physician's finding that a causal relationship does or does not exist between an injury and a particular impairment must be overcome by clear and convincing evidence. *Cordova v. Indus. Claim Appeals Office,* 55 P.3d 186 (Colo. App. 2002); *Qual-Med, Inc. v. Indus. Claim Appeals Office,* 961 P.2d 590 (Colo. App. 1998); *Watier-Yerkman v. Da Vita, Inc.*, W.C. No. 4-882-517-02 (ICAO Jan. 12, 2015); *compare In re Yeutter*, 2019 COA 53 ¶ 21 (determining that a DIME physicians opinion carries presumptive weight only with respect to MMI and impairment). The rating physician's determination concerning the cause or causes of impairment should include an

assessment of data collected during a clinical evaluation, and the mere existence of impairment does not create a presumption of contribution by a factor with which the impairment is often associated. *Wackenhut Corp. v. Indus. Claim Appeals Office,* 17 P.3d 202 (Colo. App. 2000).

MMI

Respondents have failed to establish that the DIME physician erred in assigning Claimant an MMI date of December 1, 2023. Dr. Gellrick testified that she assigned the date of MMI based on her examination of Claimant and review of records, which included Dr. Ogin's report. Although Dr. Ogin's report indicated Claimant had reached MMI, he did not assign a specific date in the report. Notwithstanding, Dr. Ogin testified at hearing that he did not disagree with the date assigned by Dr. Gellrick. The rationale for Dr. Hnida's assigned MMI date of July 14, 2023 is unclear from the medical record. The record contains no credible evidence demonstrating that Dr. Gellrick's assigned MMI date is highly probably incorrect.

Impairment Rating

Lumbar Spine

Respondents have failed to establish by clear and convincing evidence that Dr. Gellrick erred in assigning Claimant an impairment rating for her lumbar spine. Dr. Gellrick assigned Claimant an impairment rating for her lower back based on an aggravation of a pre-existing condition. Dr. Ogin's opinion that Claimant has recovered amounts to a mere difference of opinion and does not rise to the level of clear and convincing evidence that Dr. Gellrick's impairment rating is incorrect.

Headaches

Respondents have established by clear and convincing evidence that Dr. Gellrick's assignment of an impairment rating for cephalgia is incorrect. Dr. Gellrick assigned Claimant an impairment rating for cephalgia under the Episodic Neurological Disorder impairment table in the AMA Guides, which allows an impairment rating for "slight" interference with daily living. The Desk Aid provides that Table 1 is to be used for "headaches that qualify for a separate work-related impairment." To qualify for an impairment rating, there must be a specific diagnosis and objective pathology. See Desk Aid #11, General Principles, ¶ 1, and § 8-42-107 (8)(c), C.R.S.. Moreover, to qualify for an impairment rating, the condition for which the rating is assigned must be causally-related to a work injury.

Dr. Gellrick's rationale for assigning a headache impairment rating was unpersuasive. She offered no credible explanation for determining that Claimant's cephalgia was caused by either a cervical strain or TBI, when Claimant had no ongoing issues associated with either of these conditions at the DIME, beyond speculation that Claimant struck her head on the steering wheel. She therefore assigned a separate rating for "cephalgia" based on the Claimant's report that she was experiencing headaches and a conclusion that Claimant struck her head on the steering wheel (*i.e*., a TBI).

Although Claimant initially reported to Dr. Hnida that she struck her head in the auto accident, there is no credible evidence in the record demonstrating that this occurred. The only evidence that Claimant struck her head during the collision was her own report. None of the providers who examined her noted any trauma to Claimant's head following the collision, and all imaging studies were negative. Moreover, no physician diagnosed Claimant with a concussion until July 30, 2023, when Dr. Shell, whom Claimant saw once, diagnosed a concussion apparently based solely on Claimant's report that she sustained a concussion. Dr. Gellrick offered no credible medical rationale for determining that Claimant's headaches, which did not begin to significantly manifest until 19 days after her work injury were causally-related to her motor vehicle accident. The ALJ finds credible Dr. Ogin's opinion that Claimant's cephalgia is unrelated to her accident.

Even if Claimant's cephalgia is causally-related to her work injury, no credible evidence exists indicating that she meets the criteria for an impairment rating under the AMA Guides for "slight interference with daily living." In her testimony, Dr. Gellrick indicated that Claimant's headaches were not impacting her life. The only potential impact was Claimant's reported fear of walking alone, which Dr. Gellrick indicated that she did not know the cause. In short, Dr. Gellrick offered no rational basis for attributing Claimant's purported difficulties with activities of daily living to her headaches. As a result, the assignment of an impairment rating for headaches was incorrect.

Considering the delayed emergence of headaches, the lack of a coherent explanation for ongoing cephalgia, and the lack of credible evidence indicating headaches have impacted Claimant's daily living, the ALJ concludes that it is highly likely that Dr. Gellrick erred in assigning Claimant an impairment rating for cephalgia.

Determination of Claimant's Impairment Rating

Once an ALJ finds that the DIME physician's rating has been overcome, the claimant's correct medical impairment rating becomes a question of fact for the ALJ to determine based on a preponderance of the evidence. *Garlets v. Memorial Hosp.*, W.C. No. 4-336-566 (ICAO Sep. 5, 2001). Once the DIME is overcome, the DIME's opinion regarding impairment is not given any special weight, and the ALJ is free to consider other medical evidence of the claimant's permanent impairment. *Id.*; *Mosely v. Indus. Claim Appeals Office*, 78 P.3d 1150 (Colo. App. 2003). "The only limitation is that the ALJ's finding must be supported by the record and consistent with the AMA Guides and other rating protocols." *Serena v. Pueblo Belmont OP Co. LLC*, W.C. No. 4-922-344-01 (ICAO Dec. 1, 2015).

Claimant reached MMI on December 1, 2023, consistent with Dr. Gellrick's opinion. The ALJ finds credible Dr. Gellrick's lumbar spine impairment rating of 7%. No credible evidence was admitted demonstrating that Dr. Gellrick erred in assigning this rating, and no credible evidence was admitted demonstrating a different, more appropriate impairment rating. With respect to cephalgia, the ALJ finds that there is insufficient evidence to attribute Claimant's cephalgia to her July 11, 2023 work injury, and thus, no impairment rating is appropriate for that condition. Claimant is entitled to a 7% lumbar spine impairment.

ORDER

It is therefore ordered that:

1. Respondent has established by clear and convincing that the DIME physician erred in assigning Claimant an impairment rating for cephalgia.

2. Respondents failed to establish by clear and convincing evidence that the MMI date assigned by the DIME physician was incorrect.

3. Claimant reached MMI on December 1, 2023.

4. Claimant is entitled to receive permanent partial disability benefits based on a 7% impairment rating for the lumbar spine.

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: April 29, 2025

Steven R. Kabler
Administrative Law Judge
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