ISSUES

I. Did Claimant prove by a preponderance of the evidence that the spinal cord stimulator trial is reasonable and necessary?

II. Whether the referral from Dr. Malinky to a surgeon is reasonable and necessary?

FINDINGS OF FACT

Based on the evidence received at hearing, the ALJ makes the following Findings of Fact:

1. Claimant sustained an admitted injury to his low back on January 6, 2014 while transferring a patient from a wheel chair to an x-ray table. The patient was heavy, and she grabbed Claimant and pulled him over her wheelchair.

2. Claimant had a L5-S1 laminectomy, microdiscectomy, and decompression performed by Dr. Castro on December 12, 2019.

3. Claimant was placed at MMI on July 30, 2020, by Dr.Centi. He was referred to Dr. Malinky for maintenance care.

4. Dr. Caufield performed a DIME on January 12, 2021, and determined that the Claimant was not at MMI.

5. After receiving additional injections (ESI) and rhizotomies (RFA), Claimant was again placed at MMI on August 4, 2021.

6. Due to gastrointestinal issues, Claimant refrains from taking medications and therefore has to utilize epidural steroid injections.

7. Dr. Malinky has recommended a referral to a surgeon, Dr. Lundgren, to determine if the Claimant is a candidate for additional surgery. Dr. Malinky also recommended a spinal cord stimulator trial to determine if he is a candidate for a spinal cord stimulator (SCS).

8. Claimant wants the SCS trial because the relief he is getting from ESIs and RFAs is diminished. In a questionnaire submitted to Dr. Primack for his second IME on August 28, 2024, Claimant indicated that he was seeing him for "Re-evaluation for my lower back pain. Injections have failed to a point. Wanting re-evaluation for possible second opinion. He also indicated that his pain levels ranged from 3 to 8 on a scale of 1 to 10.

9. Dr. Primack has mistakenly opined that the Claimant is doing better in the interval from 2022 to 2024, which is contrary to the Claimant's testimony and the information supplied to Dr. Primack in the second questionnaire.

CONCLUSIONS OF LAW

Generally

A. 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. The 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).

B. Assessing weight, credibility, and sufficiency of evidence in Workers' Compensation proceeding is exclusive domain of 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. 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. See *Prudential Insurance Co. v. Cline*, 57 P.2d 1205 (Colo. 1936); *Bodensieck v. Industrial Claim Appeals Office*, 183 P.3d 684 (Colo. App. 2008); *Kroupa v. Industrial Claim Appeals Office*, 53 P.3d 1192 (Colo. App. 2002). 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).

C. 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).

Medical Benefits

D. Once a claimant has established the compensable nature of his/her work injury, he/she is entitled to a general award of medical benefits and respondents are liable to provide all reasonable and necessary and related medical care to cure and relieve the effects of the work injury. *Section 8-42-101, C.R.S.*; *Grover v. Industrial Commission*, 759 P.2d 705 (Colo. 1988); *Sims v. Industrial Claim Appeals Office*, 797 P.2d 777 (Colo. App. 1990). However, Claimant is only entitled to such benefits as long as the industrial injury is the proximate cause of his need for medical treatment. *Merriman v. Indus. Comm'n*, 210 P.2d 448 (Colo. 1949); *Standard Metals Corp. v. Ball, 172 Colo. 510, 474 P.2d 622 (1970); § 8-41-301(1)(c), C.R.S.* Ongoing benefits may be denied if the current and ongoing need for medical treatment or disability is not proximately caused by an injury arising out of and in the course of the employment. *Snyder v. City of Aurora*, 942 P.2d 1337 (Colo. App. 1997). In other words, the mere occurrence of a compensable injury does not require an ALJ to find that all subsequent medical treatment and physical disability was caused by the industrial injury. To the contrary, the range of compensable consequences of an industrial injury is limited to those which flow proximately and naturally from the injury. *Standard Metals Corp. v. Ball*, *supra*.

E. Where the relatedness, reasonableness, or necessity of medical treatment is disputed, the Claimant has the burden to prove that the disputed treatment is causally related to the injury, and reasonably necessary to cure or relieve the effects of the injury. *Ciesiolka v. Allright Colorado, Inc*., W.C. No. 4-117-758 (ICAO April 7, 2003). The question of whether a particular medical treatment is reasonably necessary to cure and relieve a claimant from the effects of the injury is a question of fact. *City & County of Denver v. Industrial Commission*, 682 P.2d 513 (Colo. App. 1984). I conclude that the recommendation for a SCS trial by Dr. Malinky and referral to Dr. Lundgren are reasonable, necessary and related to Claimant's work injury.

ORDER

Based on the forgoing findings of fact, it is ORDERED:

1. Claimant's request for referral to Dr. Lundgren for a surgical evaluation is granted.

2. Claimant's request for a Spinal Cord Simulator trial is granted.

3. Any issue not resolved herein is reserved for future determination.

Dated April 29, 2025

Michael A. Perales
Administrative Law Judge

NOTE: If you are dissatisfied with the ALJ'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 ALJ'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 ALJ; and (2) That you mailed it to the above address for the **Denver Office of Administrative Courts**. You may file your Petition to Review electronically by emailing the Petition to Review to the following email address: oac-ptr@state.co.us. If the Petition to Review is emailed to the aforementioned email address, the Petition to Review is deemed filed in Denver pursuant to OACRP 27(A) and Section 8-43-301, C.R.S. If the Petition to Review is filed by email to the proper email address, it does not need to be mailed to 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: https://www.colorado.gov/dpa/oac/forms-WC.htm.