ISSUES

I. Did Claimant prove by a preponderance of the evidence that he sustained compensable injuries within the course of his employment with Respondent-Employer?

II. Whether the care received by claimant from Alliance Health Partners and Easy Orthopedics was reasonable, necessary and related to the compensable injury?

III. Who is the Authorized Treating Physician?

FINDINGS OF FACT

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

1. Claimant has been employed by Employer for approximately 1 year and 3 months. Claimant is a systems administrator whose duties include maintaining confidentiality, integrity, and availability of the systems within the corporation.

2. On September 11, 2024, at approximately 1:00 P.M., Claimant took his regular 10-minute break and headed to the parking lot to get in his car to go to the convenience store to get a snack and some water.

3. Claimant's office is at 360 Wooten Rd. in Colorado Springs, Colorado. The building nearest to claimants' office is a similar style office building located at 320 Wooten Rd. the parking lot where claimant was instructed to park is a shared parking lot that employees and patrons of the two-office buildings park. When the Claimant first started working for the employer, he was shown a little printout map that showed the areas where the people with the employer park.

4. As Claimant was driving his vehicle through the parking lot heading for the exit to Wooten Rd. he was backed into by a Lexus Sedan. Claimant was struck on the passenger side of his vehicle. When the Lexus collided with claimant's vehicle, Claimant testified that body rocked back and forth, and he hit his head on the support bar of his soft top convertible. Immediately thereafter Claimant heard a ringing in his ears along with pain in his left shoulder from where it hit the door of the car. In addition, claimant had pain in his back, knee, and hip.

5. The photographs submitted of Claimant's Mazda convertible depict damage to the side of the Claimant's vehicle. The passenger side door was dented in from the middle of the door all the way to the rear quarter panel.

6. Claimant was seen by Cody Hoover, RN at Complete Care for care on September 12, 2024, Claimant had complaints about the head, neck, right hip, left leg, and rated his pain a 6/10 on a scare of 1 to 10. Mr. Hoover found a Sprain of ligament in the cervical spine, unspecified sprain of the right hip and strain of muscle, fascia and tendon at neck level. The record states that the Claimant's vehicle was hit by a truck instead of a Lexis. It also states the truck was going approximately 30 – 45 mph. This information is obviously incorrect and puts into question the diagnoses and extent of any injuries.

7. On October 1, 2024, Claimant saw James Thatcher, D.C. Presumably Claimant was referred to Dr. Thatcher by his attorneys, Heuser and Heuser since they are listed as his insurance company. Dr. Thatcher took a history that Claimant was leaving a parking lot and was backed into by a Lexus sedan. The patient struck his right knee on the dashboard of the vehicle and his left shoulder on the door of the vehicle. Claimants' chief complaints were of head pain, neck pain and back pain. After examination Dr. James Thatcher's diagnoses in part was Cervical disc disorder with radiculopathy, mid-cervical region sprain of hip, Knee sprain/strain. Dr. Thatcher provided Chiropractic care and Claimant was referred to Dr. Daniel Paull for evaluation of his shoulder and knee.

8. Claimant presented to Dr. Daniel Paull for evaluation October 7, 2024. On assessment Dr. Paull found Claimant had left shoulder impingement, left subscapular bursitis, and a likely a right knee MCL sprain. Dr. Paull administered corticosteroid injections to the claimants left subacromial, and claimants left subscapular bursa.

9. On October 21, 2024, Claimant returned to Dr. Thatcher after the injections. Dr. Thatcher's note reflects that over the last 3 weeks, the patient has had stiffness at the cervical spine and an increase in his upper back tightness. In addition, Claimant has had a gradual decrease in his headache pain and felt improvement in his left shoulder pain after an injection administered by Dr. Paull on October 7, 2024.

10. Claimant continued to treat with Dr. Thatcher from October 23, 2024, to December 10, 2024. Dr. Thatcher notes over that period reflect that Claimant cervical and upper thoracic symptomology decreased overall in terms of frequency and intensity. In addition, Claimant's headaches have largely resolved, and his left shoulder pain had decreased.

11. Claimant returned to Dr. Paull on December 17th reevaluation. Dr. Paull found that Claimant was doing well with regards to his left shoulder and right knee with minimal pain in those areas. Dr. Paull recommended that Claimant continue physical therapy and follow up with him on an as needed basis. Claimant was also presented to Dr. Thatcher on that day and reported improved range of motion in the upper cervical spine.

12. Claimant was seen by Dr. Thatcher on December 23, and December the 30, 2024, Claimant stated he was no longer having any headaches since his last visit and felt that he was showing improvement in the cervicothoracic and limbo pelvic regions, he believed that Physical therapy was helping his right hip right knee and shoulder pain as well. Dr. Thatcher's initial diagnosis remained largely unchanged from the first visit by Claimant.

13. Claimant was evaluated by Dr. Allison Fall at Respondents' request on January 31, 2025. Dr. Fall reviewed all the medical records and completed a physical examination of Claimant on that day. In her report, she opined that Claimant had a left shoulder contusion, right knee contusion, and diffuse myofascial pain with temporary aggravation of anxiety. According to her report the mechanism of injury was a parking lot motor vehicle collision. Dr. Fall noted that Claimant had been receiving conservative care since the accident and has made gradual improvement overtime. Dr. Fall recommended a follow-up with an occupational medicine provider and additional physical therapy prior to MMI. A follow up with Dr. Paull would also be appropriate prior to MMI.

14. Dr. Paull testified as an expert in Orthopedic surgery on February 6, 2024. Dr. Paull testified on accordance with his records that Claimant had sustained injury to his left right knee. It is his perspective is that cars are very heavy objects and even moving at slow speeds impart a tremendous amount of force, more than enough to injure somebody depending on the position they are in. Dr. Paul further testified that in analyzing a patient he relies on pain levels before and after the event, as well as prior history to provide the care he believes his patient needs.

15. Dr. Paull testified that he primarily treats patients that were injured in automobile accidents. When asked if these injuries are the type of injuries typically result from an automobile accident, Dr. Paul testified:

a. "left shoulder injuries are super common. Left shoulder impingement, your neck and back issues are very common. Same thing with the subscapular bursitis when the shoulder blade gets jammed up."

b. "It's often missed but common source of pain generator. People complain of mid-back pain when its actually coming from the shoulder blade."

c. "Same thing with the knee. If the knee – if there is any sort of twisting motion, if the knee impacts anything, you can get all kinds of contusions, or depending on the position the knee was in, you can get an MCL sprain or meniscus injury or that sort of thing. So, there was no injuries that I saw that were surprising."

16. Dr. Fall testified by deposition on February 25, 2025, as an expert in physical medicine. Dr. Fall testified that according to her report on the day she saw claimant reviewed the medical record and examined Claimant and she found left shoulder contusion, right knee contusion, diffusion myofascial and temporary aggravation of anxiety. Dr. Fall also testified that on the day of the examination she found those injuries to result from the auto accident. (Depo. Of Allison Fall P. 31 Line 19 through P.32 Line 3)

17. During the deposition Dr. Fall changed her opinion and testified that Claimant did not sustain an injury. She further testified that there is no objective evidence that claimant required physical therapy, or massage therapy because of the auto accident on September 11, 2024. The reason for her change in opinion was based on her review of the photos of the damage to the Claimant's vehicles in the accident.

18. Dr. Fall testified that there are three points to her mechanism of injury analysis 1. Whether is biologically possible, 2. Is there a temporal relationship between, 3. There is no other cause determined. Dr. Fall testified that the Claimant did not sustain any injuries as the result of the automobile collision.

19. Lisa Muehler testified that Lockheed Martin does not own the parking lot, nor are they responsible for the care and maintenance of the parking lot where the accident took place. Lockheed Martin also does not own the building that they operate out of. However, she further testified that all Lockheed Martin employees do park there.

20. Claimant has proven by preponderance of the evidence he was within the course and scope of his employment when he was involved in the automobile collision in the parking lot outside his office.

21. However, Claimant has failed to sustain his burden of proof that he sustained any injuries as the result of the automobile collision.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the ALJ draws the following Conclusions of Law:

Generally

A. The purpose of the Workers' Compensation Act of Colorado (Act), *Sections 8-40-101, C.R.S. 2007, 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. *Section 8-40-102(1), C.R.S.* In general, the Claimant has the burden of proving entitlement to benefits by a preponderance of the evidence. *Section 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).* 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 the Respondents. *Section 8-43-201, C.R.S.*

B. In rendering this decision, the ALJ has made credibility determinations, drawn plausible inferences from the record, and resolved essential conflicts in the evidence. See *Davison v. Industrial Claim Appeals Office, 84 P.3d 1023 (Colo. 2004).* This decision does not specifically address every item contained in the record; instead, incredible or implausible testimony or unpersuasive arguable inferences have been implicitly rejected. *Magnetic Engineering, Inc. v. Industrial Claim Appeals Office, 5 P.3d 385 (Colo. App. 2000).*

C. 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. When determining credibility, the fact finder shoulder 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 P3d 684 (Colo. App. 2008); Kroupa v. Industrial Claim Appeals Office, 53 P.3d 1192 (Colo. App. 2002).*

Compensability

D. To sustain his burden of proof concerning compensability, Claimant must establish that the condition for which he seeks benefits was proximately caused by an "injury" arising out of and in the course of employment. *Loofbourrow v. Industrial Claim Appeals Office, 321 P. 3d 548 (Colo. App. 2001),* aff'd *Harman-Bergstedt, Inc. v. Loofbourrow, 320 P.3d 327 (Colo. 214); Section 8-45-301(1)(b), C.R.S.*

E. The phrases "arising out of" and "in the course of" are not synonymous and a Claimant must meet both requirements for the injury to be compensable. *Younger v. City and County of Denver, 810 P.2d 647, 649 (Colo. 1991); In re Question Submitted by U.S. Court of Appeals, 759 P.2d 1720 (Colo. 1988).* The latter requirement refers to the time, place, and circumstances under which a work-related injury occurs. *Popovich v. Irlando, 811 P2d 379, 381 (Colo. 1991).* An injury occurs in the course of employment when it takes place within the time and place limits of the employment relationship and during and activity connected with the employee's job-related functions. *In Re Question submitted*

by U.S. Court of Appeals, supra; Deterk v. Times Publishing Co., 38 Colo. App. 48, 51, 552 P.2d 1033, 1036 (1976).

F. Generally, an injury sustained while traveling to or from work is not considered to have occurred within the scope of employment. *Varsity Contractors v. Baca 709 P.2d 55 (Colo. App. 1985); Berry's Coffee Shop, Inc. v. Palomba, 161 Colo. 369, 423 P.2d 2 (1967).* However, there is an exception when "special circumstances" create a causal relationship between the employment and the travel beyond the sole fact of the employee's arrival at work. *Madden v. Mountain West Fabricators, 977 P.24 861,863 (Colo. 1992); Staff Administrators, Inc. v. Reynolds, 977 P.2d 866 (Colo. 1999).*

G. In *Madden v. Mountain West Fabricators, Inc.,* supra. The Supreme Court set forth four categories of evidence that may establish a travel injury to be an exception to the coming and going exclusion:

1.) Whether the travel occurred during working hours,

2.) Whether the travel occurred on or off the employer's premises,

3.) Whether the travel was contemplated by the employment contract.

4.) Whether the obligations or conditions of the employment created a "zone of special danger" out of which the injury arose.

H. Injuries sustained in parking lots which are provided by the employer for the benefit of employees arise out of the employment because they are a normal incident to the employment relationship. *Seltzer v. Foley's Department Store*, W. C. No. 4-432-260 (September 21, 2000). In the Matter of the Claim of Elaine Wilson, Claimant's parking lot injury was compensable even though it occurred while claimant was off the clock, and at a place where the risk was shared by the general public. *In the Matter of the Claim of Elaine Wilson, Claimant*, No. W.C. No. 4-937-322-01, (Colo. Ind. Cl. App. Off. Mar. 16, 2015).

The claimant must also satisfy the "arising out of" requirement for compensability. The "arising out of" element is narrower than the "course" element and requires the claimant to prove that the injury had its "origin in an employee's work-related functions and is sufficiently related thereto to be considered part of the employee's service to the employer." *See Finn v. Industrial Commission*, 165 Colo. 106, 437 P.2d 542 (1968) In order to satisfy the arising out of requirement, it is not necessary that the claimant actually be engaged in performing job duties at the time of the injury. *In the Matter of the Claim of Elaine Wilson, Claimant*, No. W.C. No. 4-937-322-01, (Colo. Ind. Cl. App. Off. Mar. 16, 2015)

As in *Wilson*, Claimant was in a parking lot that shared by more than just employees. Claimant was parked where all other Lockheed Martin employees park. Claimant was parked where he was directed to park on his first day of work. Additionally, Claimant was on the clock.

Therefore, based on the totality of the evidence the ALJ concludes that Claimant has proven by a preponderance of the evidence he sustained an injury that was within the course and scope of his employment.

Alternatively, since the Claimant was on a paid 10-minute break to obtain a snack and a bottle of water from a nearby convenience store, the injury sustained during that break can be and is considered to be within the course and scope of employment. *Roach v. Industrial Commission of the State of Colorado*, 792 P.2d 991 (Colo. App. 1986).

Medical Benefits

Compensable injuries involve an "injury" which requires medical treatment or causes disability. H & H Warehouse v. Vicory, 805 P.2d 1167 (Colo. App. 1990). Whether a compensable injury has been sustained is a question of fact to be determined by the ALJ. Eller v. Industrial Claim Appeals Office, 224 P.3d 397 (Colo. App. 2009).

It is concluded as a matter of law Claimant failed to meet his burden of proof. It is concluded as a matter of law the incident in question did not cause a compensable injury.

Respondents are liable for medical treatment reasonably necessary to cure or relieve the employee from the effects of the injury. C.R.S. § 8-42-101. However, the right to workers' compensation benefits, including medical benefits, arises only when an injured employee establishes by a preponderance of the evidence that the need for medical treatment was proximately caused by an injury arising out of and in the course of the employment. Section 8-41-301(1)(c), C.R.S.; Faulkner v. Indus. Claim Appeals Office, 12 P.3d 844, 846 (Colo. App. 2000). The question of whether a particular medical treatment is reasonable and necessary is one of fact for determination by the ALJ. Kroupa v. Industrial Claim Appeals Office, supra; Wal-Mart Stores, Inc. v. Industrial Claims Office, 989 P.2d 251 (Colo. App. 1999). The claimant bears the burden of proof to establish the right to specific medical benefits. HLJ Management Group, Inc. v. Kim, 804 P.2d 250 (Colo. App. 1990).

It is concluded as a matter of law Claimant failed to meet his burden of proof and establish the healthcare he sought/obtained after the incident was reasonably needed to cure and relieve the effects from and related to the incident.

Contrary to Claimant's assertion that he sustained injuries as the result of the automobile collision, Dr. Fall, after review of the photographs of the vehicles involved, testified that the Claimant sustained no injuries from the collision. This testimony from Dr. Fall is credible and persuasive. It is concluded that since Claimant sustained no injuries, Respondents are not liable for any medical treatment after the incident on September 12, 2024.

ORDER

It is therefore ordered that:

1.) The September 11, 2024 incident was within the course and scope of employment.

2.) Respondents are not liable the medical expenses rendered by Cory Hoover at Complete Care, Dr. James Thatcher at Alliance Health Partners, and Dr. Daniel Paull at Easy Orthopedics since the treatment rendered was not necessary and did not result from the incident on September 11, 2024

3.) All matters not determined herein are reserved for future determination.

Dated this 22nd day of April, 2025.

Michael A. Perales

Michael A. Perales
Administrative Law Judge
Office of Administrative Courts
2864 S. Circle Dr., Ste. 810
Colorado Springs, CO 80906

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: http://www.colorado.gov/dpa/oac/forms-WC.htm.