OFFICE OF ADMINISTRATIVE COURTS
STATE OF COLORADO
WORKERS' COMPENSATION NO. WC 5-250-904-001

ISSUES

1. Whether Claimant established by a preponderance of the evidence that she sustained a compensable occupational disease arising out of the course of her employment with Employer.

2. Whether Claimant established by a preponderance of the evidence entitlement to reasonable and necessary medical benefits.

3. Whether Claimant established by a preponderance of the evidence entitlement to temporary total disability (TTD) benefits.

STIPULATIONS

1. If Claimant's claim is compensable, Claimant's authorized treating physician ("ATP") is Barry Nelson, D.O., at Concentra.

2. If Claimant's claim is compensable, Claimant's average weekly wage is $1,998.98.

FINDINGS OF FACT

1. Claimant began working for Employer in 2006 and became a full-time delivery driver in 2011. In her role as a delivery driver, Claimant's job duties required her to drive a van and deliver packages to various residences and businesses. Claimant primarily worked as a "swing driver," meaning she had no set delivery route, but worked various routes for other drivers when necessary.

2. Claimant normally worked four 10 to 10 ½-hour days per week, driving industrial and residential routes, which required her to make between 150 and 300 stops per day and to deliver between 200 and 400 packages per day. The packages Claimant delivered varied from envelopes to larger packages weighing up to fifty pounds. For irregular-sized and heavy packages, Claimant used a wheeled dolly to deliver packages, but otherwise she carried packages for deliveries. Generally, industrial routes had fewer stops and heavier packages than residential routes. Claimant estimated that approximately 25% of the routes she drove were industrial routes. Claimant's work required significant walking, squatting, and lifting. For each delivery, Claimant was required to enter and exit the delivery van (ascending and descending three steps), walk to the delivery point, and return to the van. Claimant testified that, based on the Fitbit she wore, she walked eight to ten miles per day performing her job duties, and climbed approximately ten flights of stairs per day. Claimant's testimony regarding her job duties was credible and corroborated by other witnesses.

3. Claimant has a history of knee issues, including a left meniscectomy in 2015, a right knee sprain in 2021, and a January 11, 2023 workers' compensation injury in which she sustained sprains of both knees and a left knee meniscal tear.

4. For the January 2023 injuries, Claimant received treatment through ATP Barry Nelson, D.O., at Concentra. As part of that treatment, on March 2, 2023, Claimant had a left knee MRI which showed significant tricompartmental degenerative arthritis in her left knee, meniscal degeneration, and osteonecrosis in the femoral condyle. (Ex. L).

5. Dr. Nelson referred Claimant to orthopedist John Papillion, M.D., for evaluation of her knees. On May 11, 2023, Dr. Papillion performed a viscosupplementation injection in Claimant's left knee and later noted it provided excellent relief. On June 8, 2023, he indicated that Claimant was at MMI for her January 2023 injuries, and noted that Claimant would seek additional care through her private health insurance. He further indicated that Claimant may be a candidate for knee arthroplasty. (Ex. L).

6. On June 12, 2023, Dr. Nelson placed Claimant at MMI for the January 2023 injuries with no permanent impairment. Although he noted that Claimant would be unable to return to her regular work duties because her knees would not tolerate "jumping in and out of a…delivery vehicle multiple times per day," he released Claimant to work without restrictions and indicated she had returned to her "baseline." (Ex. L).

7. On June 15, 2023, Respondents filed a Final Admission of Liability consistent with Dr. Nelson's findings, admitting for medical care and previously paid TTD benefits from January 12, 2023 through June 11, 2023. No evidence was admitted indicating Claimant challenged the FAL. (*See* Ex. T).

8. Outside the workers' compensation system, Claimant also saw Jordan Feierman, D.O., at Orthopedics Centers of Colorado for her knee condition beginning June 6, 2023. Dr. Feierman obtained x-rays of Claimant's knees which showed severe medial compartment arthritis and patellofemoral arthritis. He also recommended viscosupplementation injections for her knees. On June 27, 2023, Dr. Feierman performed a viscosupplementation injection in her right knee, and noted Claimant would return for a second injection in two weeks. (Ex. O).

9. Although Dr. Nelson released Claimant to work on June 12, 2023, Claimant did not return to work for Employer until July 5, 2023. On that date, Claimant was joined on her route by supervisor Casey Behrendt consistent with Employer's return-to-work procedures. Mr. Behrendt testified that Claimant was able to safely perform her job duties, but that she moved slowly and reported that her knees were hurting. Claimant worked on July 6, 2023. She testified that while running her routes on that day, she experienced significant pain in her knees, and that she struggled to complete her deliveries due to knee pain. Claimant testified that, on July 7, 2023, she reported to her manager, Mario Botello, that her knees were painful, and was instructed to go home. Claimant testified that she told Mr. Botello she was going to try to have her knees replaced under short-term disability, and that she did not report an occupational injury at that time. Claimant has not returned to work for Employer since July 7, 2023.

10. On July 10, 2023, Claimant returned to Dr. Feierman reporting that the initial injection did not provide significant relief and that her knee pain was worse. Dr. Feierman documented that Claimant declined the second injection, but also documented that the second injection was performed on July 10, 2023. Claimant testified that she did not receive the injection. Dr. Feierman noted that Claimant would like to proceed with an evaluation for bilateral total knee arthroplasties, and referred her to Jared Michalson, M.D., for further evaluation. (Ex. O).

11. Also, on July 10, 2023, Claimant submitted to Employer a short-term disability claim form, in which it is indicated that Claimant had bilateral knee arthritis, and would have an evaluation with an orthopedic surgeon for knee replacements. In the section of the form apparently completed by Dr. Feierman, he indicated that Claimant's condition was not due to her employment. (Ex. S).

12. Claimant saw Dr. Michalson on July 14, 2023, reporting a multiple history of knee pain, left greater than right anteromedial and anterolateral knee pain limiting her ability to walk. Claimant indicated that her knee pain was exacerbated by her job, and that the pain was severe, occurring daily, and becoming constant. Dr. Michalson noted that Claimant had gained weight over the previous months, and her then-current body weight was 280 pounds[1] and also noted that Claimant smoked one pack of cigarettes per day. On examination, Dr. Michalson found mild swelling in both knees, and tenderness in the joint line. X-rays showed significant joint space loss, osteophyte formation, and sclerosis consistent with significant osteoarthritis. After consulting with Claimant and considering her prior treatment, Dr. Michalson recommended left total knee arthroplasty, which was scheduled for August 14, 2023. (Ex. O).

13. On August 1, 2023, Claimant was seen at New West Physicians for a pre-surgical evaluation. (Ex. Q). Claimant testified that the surgery was not performed due to insurance approval issues through Medicaid.

14. On September 20, 2023, Claimant filed a Workers' Claim for Compensation, for arthritis in both knees, and a date of injury of July 7, 2023. (Ex. A). On September 27, 2023, Employer filed a First Report of injury, indicating Claimant informed Employer of her alleged injury on September 26, 2023. (Ex. B).

15. On October 11, 2023, Claimant's counsel contacted Respondents' counsel indicating that Respondents had not authorized medical care for Claimant, and that Claimant would seek treatment outside of the workers' compensation system and outside the chain of referrals if treatment were not authorized. (Ex. 7).

16. On October 11, 2023, Respondents filed a Notice of Contest, indicating a need for further investigation. (Ex. C).

17. Thereafter, Claimant sought treatment through Kaiser Permanente for her knees. Claimant testified that she received Medicaid in fall 2023, and that Kaiser was the

[1] In 2021, Claimant's physicians documented her bodyweight as 265 pounds. (Ex. L). In March 2023, Dr. Nelson documented Claimant's bodyweight as 250 pounds. (Ex. L).

Medicaid provider. Claimant initially saw Brittney Justice, D.O, on November 14, 2023, reporting bilateral knee arthritis. Claimant also indicated that she already had an appointment with orthopedics at Kaiser to establish care for her knees.

18. On December 1, 2023, Claimant saw Avani Javer, M.D., at the Kaiser Orthopedics clinic. X-rays showed severe degenerative changes in the bilateral knees. Dr. Javer diagnosed Claimant with severe bilateral knee osteoarthritis, and referred her for a bilateral knee ablation. He noted that Claimant was not a surgical candidate due to her weight[2] (BMI in excess of 40) and being a smoker. (Ex. P). No additional records of treatment or evaluation of Claimant's knee issues at Kaiser were offered or admitted into evidence.

19. On December 13, 2023, Claimant was seen at Kaiser for a primary care visit at which multiple medical issues were addressed, including bilateral knee arthritis. Claimant was prescribed Meloxicam for knee pain and inflammation. (Ex. P).

20. The remainder of the documented treatment Claimant received between November 13, 2023 and June 3, 2023 at Kaiser was for mental health issues, and other general health issues, including hypertension, mild persistent asthma, depression, weight issues, diabetes, knee arthritis and other issues. On November 14, 2023, Claimant reported that she had been diagnosed with depressive disorder 26 years earlier, and that she was then experiencing more symptoms related to the loss of her job, her workers' compensation claim, losing housing, and a family illness. Claimant reported she had been on Prozac for more than twenty years. (Claimant's medical records demonstrate that Prozac was an active prescription through at least October 2022). Although Claimant at least partially attributed her increased depression symptoms to her worker's compensation claim, none of Claimant's health care providers offered a credible opinion indicating that Claimant's symptoms or need for mental health treatment was causally-related to her employment or her knee arthritis. (Ex. P).

21. On May 29, 2024, Claimant saw orthopedic surgeon Mark Failinger, M.D., for a Claimant-requested IME. Dr. Failinger was admitted as an expert in orthopedic surgery. Dr. Failinger opined that Claimant's job employment activities, including years of walking, climbing stairs, loading and unloading vehicles to deliver packages, combined with her pre-existing conditions, including degenerative knee conditions, knee surgery, and obesity, caused a more rapid acceleration of her arthritis, leading to the need for knee replacement surgery. Dr. Failinger testified that the load of Claimant's work activity, combined with her weight dramatically increased the force on her knees, and that those conditions, combined with her pre-existing arthritis resulted in the arthritic condition of her knees. Dr. Failinger further testified that the force of walking and using stairs increases the stress on the knee by a factor of three to five. In reaching his opinion, Dr. Failinger relied, in part, on relevant portions of the AMA Guides, noting that the Colorado Medical Treatment Guidelines for repetitive use do not address the lower extremities. Dr. Failinger also cited medical literature supporting the conclusion that workers whose jobs require

[2] Although Dr. Javer did not record Claimant's weight, on November 14, 2023 Claimant weighed 295 pounds. (Ex. P).

kneeling, squatting, lifting, and climbing stairs can develop or aggravate knee osteoarthritis. Dr. Failinger's opinion that Claimant's work activities since 2006, including walking, climbing stairs, and carrying packages, contributed to the development and acceleration of osteoarthritis in her knees is credible and persuasive.

22. Claimant's Exhibit 5 is a letter authored by Amanda Blackmon, LPCC. In that letter, Ms. Blackmon indicated that Claimant was her client, and that Claimant meets the diagnostic criteria for depression. She noted Claimant has attended sessions since September 10, 2024 and that she would continue to do so through 2025. (Ex. 5). No other records from Ms. Blackmon were offered or admitted into evidence, and no credible evidence was admitted demonstrating that the nature of the services Ms. Blackmon provided to Claimant, or that such services are causally-related to her employment or her knee issues.

23. On December 11, 2024, Dr. Javer authored a letter indicating that Claimant was unable to perform her work duties, including climbing in a truck, ascending stairs, squatting or lifting more than two pounds due to the need to have bilateral knee replacement. (Ex. 6). No credible evidence was admitted indicating that Dr. Javer had seen or evaluated Claimant since his initial visit on December 1, 2023, or that he had altered his opinion from December 2023 that Claimant was not a surgical candidate due to her weight and smoking.

24. On January 9, 2025, Claimant saw Qing-Min Chen, M.D., for a Respondent-requested independent medical examination. Dr. Chen testified in a post-hearing deposition and was admitted as an expert in orthopedic surgery. Dr. Chen opined that Claimant's knee condition, and arthritis is idiopathic in nature and unrelated to her employment. He indicated that a total knee replacement is reasonable and necessary, but unrelated to her injury. He opined that the primary factors causing or accelerating Claimant's knee arthritis are her weight and being an active smoker.

25. Dr. Chen testified that the knees are "very sensitive to weight" and that a person's body weight is one of the strongest risk factors for acceleration and development of osteoarthritis. Dr. Chen concluded that Claimant's weight and smoking, rather than her employment activities were the cause of her knee arthritis. He testified that a person's weight acts as a "force multiplier," such that, when walking one pound of weight imparts five pounds of force on the knee and fifteen pounds going up and down stairs. Thus, he opined that Claimant's weight results in increased pressure and force on her knees when she walks or climbs stairs causing and accelerating arthritis in her knee. However, he also opined that prolonged walking, climbing hills and using stairs does <u>not</u> cause or accelerate osteoarthritis, and was actually beneficial to the knees. Dr. Chen failed to reconcile this inherent contradiction in his opinion regarding the impact of walking and stair-climbing on knee arthritis. Dr. Chen's opinion that Claimant's development and aggravation of osteoarthritis is unrelated to her work activities is neither credible nor persuasive.

26. Mr. Behrent testified that he did not learn that Claimant alleged that she had sustained an occupational injury to her knees until a few months after he worked with her

on July 5, 2023. He testified that after receiving notice that Claimant was asserting a workers' compensation claim for her knees, he prepared a written statement addressing his interaction with Claimant. The statement Mr. Behrent authored was dated September 27, 2023. (Ex. I).

27. Mr. Botello testified that on July 7, 2023, Claimant reported that her knees were hurting and that she could not perform her job duties as a result. He indicated that he had a discussion with his division manager about Claimant's condition, and was instructed to send Claimant home to avoid her getting hurt on the job. Mr. Botello indicated that Claimant did not report to work on July 8, 2023, and that he became aware that Claimant was alleging a workers' compensation injury later when he received an email asking him to complete a statement. Mr. Botello authored a written statement on September 27, 2023. (Ex. I).

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).

Compensability

A claimant's right to recovery under the Workers Compensation Act is conditioned on a finding that the claimant sustained an injury while the claimant was "at the time of the injury, … performing service arising out of and in the course of the employee's employment." § 8-41-301(1)(b), C.R.S.; *Triad Painting Co. v. Blair*, 812 P.2d 638, 641 (Colo. 1991). The Claimant must prove her injury arose out of the course and scope of her employment by a preponderance of the evidence. § 8-41-301(1)(b) & (c), C.R.S.; *see City of Boulder v. Streeb*, 706 P.2d 786 (Colo. 1985). "Arising out of" and "in the course of" employment comprise two separate requirements. *Triad Painting Co.*, 812 P.2d at 641. An injury occurs "in the course of" employment where the claimant demonstrates that the injury occurred within the time and place limits of her employment and during an activity that had some connection with her work-related functions. *See Triad Painting Co. v. Blair*, 812 P.2d at 641; *Hubbard v. City Market,* W.C. No. 4-934-689-01 (ICAO, Nov. 21, 2014).

The "arising out of" element is narrower and requires claimant to show a causal connection between the employment and the injury such that the injury "has its origin in an employee's work-related functions and is sufficiently related thereto as to be considered part of the employee's service to the employer in connection with the contract of employment." *Popovich v. Irlando*, 811 P.2d 379, 383 (Colo. 1991); *City of Brighton v. Rodriguez*, 318 P.3d 496, 502 (Colo. 2014). The mere fact that an injury occurs at work does not establish the requisite causal relationship to demonstrate that the injury arose out of the employment. *Finn v. Indus. Comm'n,* 437 P.2d 542 (Colo. 1968); *Sanchez v. Honnen Equipment Company,* W.C. No. 4-952-153-01 (ICAO, Aug. 10, 2015).

The claimant must prove causation to a reasonable probability. Lay testimony alone may be sufficient to prove causation. However, where expert testimony is presented on the issue of causation it is for the ALJ to determine the weight and credibility to be assigned such evidence. *Rockwell International v. Turnbull,* 802 P.2d 1182 (Colo. App. 1990); *Marjorie Jorgensen v. Air Serve Corporation,* W.C. No. 4-894-311-03, (ICAO, Apr. 9, 2014).

The test for distinguishing between an accidental injury and occupational disease is whether the injury can be traced to a particular time, place, and cause. *Campbell v. IBM Corporation,* 867 P.2d 77 (Colo. App. 1993). "Occupational disease" is defined by § 8-40-201(14), C.R.S., as:

> [A] disease which results directly from the employment or the conditions under which work was performed, which can be seen to have followed as a natural incident of the work and as a result of the exposure occasioned by

> the nature of the employment, and which can be fairly traced to the employment as a proximate cause and which does not come from a hazard to which the worker would have been equally exposed outside of the employment.

This section imposes additional proof requirements beyond those required for an accidental injury by adding the "peculiar risk" test; that test requires that the hazards associated with the vocation must be more prevalent in the workplace than in everyday life or in other occupations. *Anderson v. Brinkhoff*, 859 P.2d 819 (Colo. 1993). The onset of a disability occurs when the occupational disease impairs the claimant's ability to perform her regular employment effectively and properly or when it renders the claimant incapable of returning to work except in a restricted capacity. *Leming v. Indus. Claim Appeals Office*, 62 P.3d 1015 (Colo. App.2002); *In re Leverenz*, W.C. No. 4-726-429 (ICAO, July 7, 2010).

The claimant bears the burden to prove by a preponderance of the evidence that the hazards of the employment caused, intensified, or aggravated the disease for which compensation is sought. *Faulkner v. Indus. Claim Appeals Office,* 12 P.3d 844 (Colo. App. 2000); *Wal-Mart Stores, Inc. v. Indus. Claim Appeals Office,* 989 P.2d 251 (Colo. App. 1999). The question of whether the claimant has proven causation is one of fact for the ALJ. *Faulkner, supra*. In this regard, the mere occurrence of symptoms in the workplace does not require the conclusion that the conditions of the employment were the cause of the symptoms or that such symptoms represent an aggravation of a preexisting condition. *See F.R. Orr Construction v. Rinta,* 717 P.2d 965 (Colo. App. 1985); *Cotts v. Exempla, Inc.,* W.C. No. 4-606-563 (ICAO Aug. 18, 2005). Once claimant makes such a showing, the burden shifts to respondents to establish both the existence of a non-industrial cause and the extent of its contribution to the occupational disease. *Cowin & Co. v. Medina*, 860 P.2d 535 (Colo. App. 1992).

Claimant has established by a preponderance of the evidence that she sustained a compensable occupational disease arising out of the course of her employment with Employer. As found, Dr. Failinger's opinion that Claimant's job activities caused or accelerated the arthritic condition in her knees is credible and persuasive. His opinion is consistent with Dr. Chen's opinion that walking and using stairs results in increased force applied to a person's knees, and can result in the development and acceleration of arthritis. Claimant's job required her to walk more than eight miles per day, climb in and out of a delivery van 150 to 300 times per day, and climb stairs throughout the day, four to five days per week for more that eleven years. These movements are a particular risk of Claimant's employment. That is, they are more prevalent in Claimant's work activities than the normal activities Claimant in which would engage absent her employment. Claimant's medical records demonstrate that since at least 2021, her body weight has fluctuated between 250 and 290 pounds. Thus, per Dr. Chen, with each step she takes, between 1250 and 1450 pounds of force is applied to each knee, and between 3,750 and 4,350 pounds when using stairs. The accumulation of these pressures over a period of years more likely than not caused or contributed to Claimant's bilateral knee osteoarthritis. The ALJ concludes that Claimant's osteoarthritis is a direct result of the

conditions of her employment and, is a natural result of the work exposure. Consequently, Claimant's bilateral knee osteoarthritis is compensable.

General Medical Benefits

Under section 8-42-101(1)(a), C.R.S., respondents are liable for authorized medical treatment that is reasonable and necessary to cure or relieve the effects of the industrial injury. *See Owens v. Indus. Claim Appeals Office*, 49 P.3d 1187, 1188 (Colo. App. 2002). The question of whether the claimant proved treatment is reasonable and necessary is one of fact for the ALJ. *Kroupa v. Indus. Claim Appeals Office,* 53 P.3d 1192 (Colo. App. 2002). All results flowing proximately and naturally from an industrial injury are compensable. *Id., citing Standard Metals Corp. v. Ball*, 474 P.2d 622 (Colo. 1970).

Because Claimant has established a compensable occupational disease to her knees, Claimant has established by a preponderance of the evidence that she is entitled to a general award of medical benefits for reasonable and necessary care related to her occupational disease.

Other Medical Benefits

Claimant requests that the ALJ order Respondents to pay for her medical care from various providers including Orthopedic Centers of Colorado (OCC), New West Physicians, Kaiser Permanente, and Ms. Blackmon. Additionally, Claimant requests authorization of bilateral knee replacements, and "weight loss support treatment."

Reimbursement of Medical Treatment

With respect to treatment previously received at OCC, New West, Kaiser, and with Ms. Blackmon, Claimant asserts that Respondents are responsible for reimbursement of Claimant's medical expenses under § 8-42-101(6), C.R.S., which provides:

> (a) If an employer receives notice of injury and the employer or, if insured, the employer's insurance carrier, after notice of the injury, fails to furnish reasonable and necessary medical treatment to the injured worker for a claim that is admitted or found to be compensable, the employer or carrier shall reimburse the claimant, or any insurer or governmental program that pays for related medical treatment, for the costs of reasonable and necessary treatment that was provided. ...
>
> (b) If a claimant has paid for medical treatment that is admitted or found to be compensable and that costs more than the amount specified in the workers' compensation fee schedule, the employer or, if insured, the employer's insurance carrier shall reimburse the claimant for the full amount paid....

Claimant has established that some, but not all, of Claimant's incurred medical expenses are compensable under 8-42-101(6), C.R.S.

Notice of Injury

The first factor to determine compensability of medical treatment under 8-42-101(6), is whether Respondents failed to furnish medical care after receiving notice of injury. An employer is deemed notified of an injury when it has "some knowledge of the accompanying facts connecting the injury or illness with the employment, and indicating to a reasonably conscientious manager that the case might involve a potential compensation claim." *Bunch v. Indus. Claim Appeals Office,* 148 P.3d 381, 383 (Colo. App. 2006).

Claimant provided Respondents with notice of an injury on September 20, 2023, when she filed her Workers' Claim for Compensation. (Ex. A). The record contains no credible evidence that Claimant notified Respondents that she attributed her condition to her employment, such that Respondents would reasonably determine that it involved a workers' compensation claim. Although Claimant informed Employer that she was experiencing knee pain on July 7, 2023, no credible evidence was admitted demonstrating that Claimant reported that she attributed her condition to her employment on that date. The evidence demonstrates that rather than report a workers' compensation injury, Claimant sought short-term disability benefits on July 10, 2023. (Ex. S). In doing so, Claimant did not attribute her condition to her employment, but completed a form . specifically indicating that her knee osteoarthritis was not work related. No other evidence was admitted indicating that Claimant otherwise informed Respondents of a potential claim until September 20, 2023. At that point, Employer knew or reasonably should have known that Claimant's condition was alleged to be work-related, and the obligation to provide medical care began. Thus, the ALJ concludes that Respondents were provided with notice of Claimant's injury on September 20, 2023. The record also demonstrates that Respondents did not provide Claimant with medical care, or a list of designated providers as required by § 8-43-404(5)(a)(I)(A), C.R.S, after receiving notice of Claimant's injury/occupational disease.

Accordingly, Respondents are responsible for the reasonable and necessary medical care Claimant required to cure or relieve the effects of her occupational disease after September 20, 2023. The ALJ addresses the care Claimant received from specific providers separately below.

Orthopedic Centers of Colorado (OCC)

Claimant has failed to establish that Respondents are liable for treatment Claimant received at OCC. The evidence demonstrates that Claimant began treatment with Dr. Feierman at OCC on June 6, 2023, and outside the workers' compensation system. Dr. Feierman referred Claimant to Dr. Michalson (also at OCC), and Claimant saw him on June 27, 2023 and July 14, 2023. No credible evidence was admitted demonstrating that Dr. Feierman, Dr. Michalson or other providers at OCC were authorized treating providers or were within the chain of referrals from an ATP. Moreover, the treatment Claimant received from these providers occurred before she notified Respondents of her condition on September 20, 2023. Because the all of the treatment Claimant at OCC was before

Respondents received notice of injury, Respondents are not responsible for reimbursement of such care under § 8-42-101 (6)(a), C.R.S.

New West Physicians

Claimant has failed to establish that Respondents are liable for treatment received at New West Physicians. Claimant's only treatment at New West was a pre-surgical evaluation on August 1, 2023. Because the treatment was before Claimant provided Respondents notice of her condition, Respondents are not responsible for reimbursement of such care under § 8-42-101 (6)(a), C.R.S.

Kaiser Permanente

Claimant sought treatment at Kaiser Permanente beginning on November 13, 2023, after providing notice of injury to Respondents. The treatment Claimant received at Kaiser was for multiple medical issues, including hypertension, mild persistent asthma, depression, weight issues, diabetes, knee arthritis and other issues. Claimant offered no credible evidence demonstrating how her hypertension, asthma, weight issues, diabetes, and other general health issues were causally related to her knee condition. Claimant has a long history of depression and attributed her depression to multiple issues including not-working, selling her house, family illness, her knee condition, and other issues. However, neither Claimant's treating providers nor Dr. Failinger offered an opinion demonstrating that such treatment was reasonable, necessary or causally-related to her knee condition.

The ALJ finds that Claimant's treatment with Dr. Javer, and her Kaiser primary care visit on December 13, 2023, at which she was prescribed medication for her knee condition were reasonable, necessary, and related to her occupational disease, and are compensable. With the exception of treatment for her knees, Claimant has failed to establish that treatment for other issues, including depression, weight issues, diabetes, asthma, hypertension, and other general health issues are reasonable, necessary, and related to her occupational disease.

Amanda Blackmon, LPCC

With respect to Claimant's treatment with Ms. Blackmon, the only evidence in the record regarding Ms. Blackmon's treatment is a December 11, 2024 letter in which she indicated that Claimant met the criteria for a depression diagnosis, and that Claimant had attended sessions with Ms. Blackmon. No credible evidence was admitted explaining the treatment Ms. Blackmon provided, whether the treatment was reasonable and necessary, or whether it is causally-related to Claimant's work injury. Because Claimant has failed to establish that her treatment with Ms. Blackmon is causally-related to her employment or occupational disease, her request to require Respondents to reimburse Claimant for treatment with Ms. Blackmon is denied.

AUTHORIZATION OF SPECIFIC MEDICAL TREATMENT

The Act imposes upon respondents the duty to furnish medical treatment "as may reasonably be needed at the time of the injury … and thereafter during the disability to

cure and relieve the employee from the effects of the injury." § 8-42-101(1)(a), C.R.S. A service is medically necessary if it cures or relieves the effects of the injury and is directly associated with the claimant's physical needs. *Bellone v. Indus. Claim Appeals Office,* 940 P.2d 1116 (Colo. App. 1997); *Parker v. Iowa Tanklines*, Inc., W.C. No. 4-517-537, (ICAO, May 31, 2006). When the respondents challenge the claimant's request for specific medical treatment the claimant bears the burden of proof to establish entitlement to the benefits. *Martin v. El Paso School Dist. No.11*, W.C. No. 3-979-487, (ICAO, Jan. 11, 2012); *Ford v. Regional Transp. Dist.,* W.C. No. 4-309-217 (ICAO, Feb. 12, 2009). The question of whether the claimant proved treatment is reasonable and necessary is one of fact for the ALJ. *Kroupa v. Indus. Claim Appeals Office,* 53 P.3d 1192 (Colo. App. 2002). *Hobirk v. Colorado Springs School Dist. #11,* W.C. No. 4-835-556-01 (ICAO Nov. 15, 2012).

Bilateral Knee Replacement

In July 2023, Dr. Michalson recommended that Claimant undergo a left total knee arthroplasty. At that point in time, Claimant had not filed a claim for workers' compensation benefits or notified Employer of an occupational disease claim, and the request for surgery was denied by Claimant's non-workers' compensation insurer. No evidence was admitted indicating that Dr. Michalson was an authorized treating provider or that the request for authorization was submitted to Respondents. Dr. Laver at Kaiser noted the potential for knee replacement surgery, but opined that Claimant was not a candidate for surgery due to her weight and smoking. The record contains no evidence of a current recommendation for bilateral knee replacement surgery by an authorized provider. Because no authorized treating provider has recommended Claimant undergo knee replacement, the ALJ is without jurisdiction to authorize such treatment. *Potter v. Ground Services Co.*, W.C. No. 4-935-523-04 (ICAO Aug. 15, 2018); *Torres v. City and County of Denver*, W.C. No. 4-937-329-03 (ICAO May 15, 2018) *citing Short v. Property Management of Telluride*, W.C. No. 3-100-726 (ICAO May 4, 1995). Claimant's request for authorization of bilateral knee replacement is denied without prejudice due to lack of jurisdiction.

"Weight Loss Support Treatment"

Claimant has failed to establish that such "weight loss support treatment," has been recommended. Although Dr. Javer indicated that Claimant was not a surgical candidate due to her weight, no credible evidence was admitted indicating that "weight loss support treatment," has been recommended or that Claimant requires any formal treatment of that nature. Because no credible evidence was admitted demonstrating that an ATP has recommended weight loss support treatment, the ALJ is without jurisdiction to authorize such treatment. *Potter, supra; Torres, supra*. Claimant's request to require Respondents to pay for "weight loss support treatment" is denied without prejudice due to lack of jurisdiction.

Temporary Total Disability Benefits

To prove entitlement to TTD benefits, a claimant must prove that the industrial injury caused a disability lasting more than three work shifts, he left work as a result of the disability, and the disability resulted in an actual wage loss. *See* § 8-42-105, C.R.S.; *Anderson v. Longmont Toyota,* 102 P.3d 323 (Colo. 2004); *City of Colorado Springs v. Indus. Claim Appeals Office,* 954 P.2d 637 (Colo. App. 1997). The Act Section 8-42-103(1)(a), C.R.S. requires the claimant to establish a causal connection between a work-related injury and a subsequent wage loss in order to obtain TTD benefits. The term "disability" connotes two elements: (1) medical incapacity evidenced by loss or restriction of bodily function; and (2) impairment of wage-earning capacity as demonstrated by claimant's inability to resume his or her prior work. *Culver v. Ace Electric*, 971 P.2d 641, 649 (Colo. 1999). The impairment of earning capacity element of disability may be evidenced by a complete inability to work or by restrictions which impair the claimant's ability effectively and properly to perform his or her regular employment. *Ortiz v. Charles J. Murphy & Co.*, 964 P.2d 595, 597 (Colo. App. 1998). Because there is no requirement that a claimant produce evidence of medical restrictions, a claimant's testimony alone is sufficient to demonstrate a disability. *Lymburn v. Symbios Logic,* 952 P.2d 831, 833 (Colo. App. 1997). TTD benefits continue until the first occurrence of any of the following: (1) the employee reaches MMI; (2) the employee returns to regular or modified employment; (3) the attending physician gives the employee a written release to return to regular employment; or (4) the attending physician gives the employee a written release to return to modified employment, the employment is offered in writing and the employee fails to begin the employment. § 8-42-105 (3)(a)-(d), C.R.S.

Claimant has established by a preponderance of the evidence an entitlement to temporary total disability benefits. The ALJ finds credible Claimant's testimony that she is unable to perform the duties of her job as a delivery driver due to her work-related knee condition. Moreover, Claimant's testimony is consistent with Dr. Nelson's opinion prior to Claimant's return to work that she would not be able to perform the duties of a delivery driver due to her knee condition. As such, Claimant is entitled to temporary total disability benefits from the date her occupational disease prevented her from performing her duties. No credible evidence was admitted demonstrating that the criteria for termination of TTD under § 8-42-105 (3), C.R.S., have occurred. Claimant is therefore entitled to TTD benefits from July 8, 2023 until terminated pursuant to the Act.

ORDER

It is therefore ordered that:

1. Claimant sustained compensable occupational disease to her bilateral knees on or about July 8, 2023.

2. Respondents shall pay for authorized, reasonable, and necessary medical treatment to cure or relieve the effects of Claimant's industrial injury.

3. Respondents shall reimburse Claimant for treatment at Kaiser Permanente with Dr. Javer on December 1, 2023, and the December 13, 2023 visit to primary care.

4. Claimant's request that Respondents reimburse Claimant for other treatment at Kaiser Permanente, Orthopedic Centers of Colorado, New West Physicians and Amanda Blackmon, LPCC is denied.

5. Claimant's request for authorization of bilateral knee replacements, and "weight loss support treatment" is denied without prejudice due to lack of jurisdiction.

6. Claimant is entitled to temporary total disability benefits from July 7, 2023 until terminated pursuant to the Act.

7. Claimant's authorized treating physician is Barry Nelson, D.O., at Concentra.

8. Claimant's average weekly wage is $1,998.98.

9. 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 21, 2025

Steven R. Kabler
Administrative Law Judge
Office of Administrative Courts
1525 Sherman Street, 4th Floor
Denver, Colorado, 80203