OFFICE OF ADMINISTRATIVE COURTS
STATE OF COLORADO
WORKERS' COMPENSATION NO. 5-289-322-001

ISSUES

I. Whether Respondents were provided adequate notice of the March 11, 2025, hearing.

II. Whether Claimant established, by a preponderance of the evidence, that she suffered a compensable injury to her right shoulder on October 26, 2024.

III. Whether Claimant established, by a preponderance of the evidence, that she is entitled to medical benefits due to her October 26, 2024, work accident.

PROCEDURAL HISTORY

This case proceeded to hearing on March 11, 2025, at 8:30 a.m. Respondents did not appear. Upon review of the record, as set forth below, the ALJ determined Respondents were provided adequate notice of the hearing and failed to appear. Accordingly, the ALJ proceeded with the hearing in their absence.

FINDINGS OF FACT

Based on the evidence presented at hearing, the Judge enters the following specific findings of fact:

Notice of Injury and Notice of Hearing to Respondents

1. On October 27, 2024, shortly after midnight, Claimant reported a work injury to Employer.
2. Claimant was given various documents upon reporting her injury. One document, titled Employer's Designated Representatives, indicates that the insurer handling her Workers' Compensation claim is Zurich and that the claim will be managed by CCMSI.
3. After her alleged injury, Claimant obtained an attorney.
4. On December 10, 2024, Alycia Bird, Claims Representative from CCMSI emailed Claimant's attorney and told him that she was filing a Notice of Contest for further investigation. The email lists Ms. Bird's email address as Alycia.bird@ccmsi.com. The mailing address listed in the email for CCMSI is P.O. Box 4998, Greenwood Village, CO, 80155.
5. On December 10, 2024, a Notice of Contest (NOC) was filed by Alycia Bird and sent by mail and/or email to the Claimant, her attorney, and the Employer. The NOC identifies CCMSI as the Insurer, names Alycia Bird as the Claims Representative, and lists the mailing address as 7600 E. Orchard Rd., Suite 330 N, Greenwood Village, CO 80111. It also advised Claimant of her right to request an expedited hearing if the request was filed within 45 days of the NOC.

6. On January 23, 2025, Claimant's attorney filed an Application for Expedited Hearing (Application for Hearing) to address compensability and medical benefits. According to the certificate of service, the Application for Hearing was sent by mail and/or email to Alycia Bird at CCMSI, P.O. Box 4998, Greenwood Village, CO 80155, and Alycia.bird@ccmsi.com—the addresses provided in the December 10, 2024, email from Claims Representative Alycia Bird of CCMSI. The Application for Hearing was also mailed to the Employer, and addressed to: Horseshoe Black Hawk, 401 Main St., Black Hawk, CO 80402.

7. On January 24, 2025, the Office of Administrative Courts issued a Notice of Hearing. The Notice was emailed to Claimant's attorney and sent to the adjuster, Alycia Bird, via regular mail to CCMSI, P.O. Box 4998, Greenwood Village, CO 80155, as well as by email to Alycia.bird@ccmsi.com. Additionally, the Notice was mailed to the Employer at "Isle of Capri Black Hawk, LLC d/b/a Horseshoe Black Hawk, 401 Main St., Black Hawk, CO 80402."

8. The zip code used for the Employer's mailing address contained a clerical error and varies slightly from the zip code contained in the record. The zip code listed on the Notice of Hearing is 80402, which is the zip code used by Claimant on her Application for Hearing. The zip code on Claimant's wage records from the Employer, set forth in Claimant's Exhibit 8, is 80422 (80402 vs. 80422).

9. The Office of Administrative Courts has no record of the Notice of Hearing being returned as undeliverable from either the Employer or the adjuster at CCMSI.

10. The Notice of Hearing stated that the hearing was scheduled for March 11, 2025, at 8:30 a.m., at the Office of Administrative Courts, 1525 Sherman Street, 4th Floor, Denver, CO 80203.

11. On March 7, 2025, Claimant's counsel filed hearing exhibits with the Office of Administrative Courts, and as represented by Claimant's counsel, with the adjuster via email. The exhibits contain a cover page that states in bold, and capitalized letters, "CLAIMANT'S EXHIBITS FOR HEARING ON MARCH 11, 2025." Again, as represented by Claimant's counsel, no one contacted Claimant's counsel to inquire or discuss the hearing set for March 11, 2025, in light of receiving Claimant's exhibits.

12. Based on the record, the ALJ finds that the Notice of Hearing was sent to the claims adjuster handling the matter via regular mail and email, using the addresses previously provided by the adjuster. The Notice of Hearing was also mailed to the Employer to an address that was reasonably likely to be received.

13. Accordingly, the ALJ finds that the Notice of Hearing was sent to an address at which it was reasonably likely to be received by the adjuster and the Respondent Employer. Therefore, the ALJ concludes that Respondents were provided adequate notice of the March 11, 2025, hearing but failed to appear.

Work Injury

14. Claimant worked as a bartender for Employer.

15. On October 26, 2024, while scooping ice from an ice machine into a large bin, Claimant felt and heard a pop in her right bicep area, followed by immediate pain. She also experienced pain in her right shoulder joint. Swelling and redness developed in the bicep area, and the bicep muscle visibly slumped downward toward her elbow.

16. The incident occurred just before midnight on October 26, 2024, and the reporting process took her into the next day on October 27, 2024.

17. Claimant initially attempted to report her injury to a manager but was unsuccessful. She subsequently reported the injury to Employer's head of security, S.M. As part of the reporting process, Claimant completed an incident report packet, including an Employee Report of Work-Related Injury form. On the form, Claimant wrote: "I was getting ice from the back and in mid-scoop I felt my bicep pop." She also noted that she had been involved in a car accident on October 22, 2024, while driving home from work, during which she sustained "whiplash and strain in her right arm."

18. The incident report packet completed by Claimant, included in Claimant's Exhibit 4, contains a "Designated Provider List for Colorado Work-Related Injuries" (DPL). *Clmnt. Ex. 4, Bates 24*. Lutheran Medical Center is listed on the DPL for after-hours care. Following completion of the reporting process, Claimant went to Lutheran Medical Center's emergency room.

19. On October 27, 2024, after being treated in the emergency room, Claimant followed up with an urgent care facility in Golden to establish care. Claimant testified that she did not recall the name of the urgent care facility but believed the word "Center" appeared in its name. Of the two Golden locations listed on the DPL, only one includes "Center" in its name—Centura Centers for Occupational Medicine (CCOM). Based on their assessment, they referred Claimant to Panorama Orthopedics.

20. On November 4, 2024, Claimant was evaluated at Panorama Orthopedics by Benjamin Kerwin Wilkerson, PA-C. Claimant told PA Wilkerson that she injured her right shoulder while scooping ice at work on October 27, 2024. It is also noted that Claimant told him that while she was involved in a motor vehicle accident approximately 6-8 weeks earlier, she was recovering well and had no specific concerns about her shoulder after the accident. Based on his assessment, PA Wilkerson ordered an MRI and advised Claimant to return for an additional assessment after the MRI had been performed.

21. On December 27, 2024, Claimant returned to Panorama Orthopedics and was again evaluated by PA Wilkerson. PA Wilkerson evaluated Claimant and reviewed her MRI. PA Wilkerson noted that the MRI showed a near complete tear of the long head of the biceps and moderate to high-grade tearing of the rotator cuff, with an estimated 75% tear in the supraspinatus. The MRI also revealed arthritis with significantly increased signal at the AC joint. PA Wilkerson explained that this pathology would not heal or regenerate without surgery. He also advised Claimant that while conservative treatment might improve her symptoms, there was a risk of further tearing, particularly given the physical demands of Claimant's job. After a discussion of treatment options—including injections, physical therapy, anti-inflammatories, and surgery—PA Wilkerson recommended surgery

as the most reliable and definitive option. Claimant agreed, and they elected to proceed with arthroscopic right shoulder rotator cuff repair, open biceps tenodesis, distal clavicle resection, subacromial decompression, and debridement. Claimant was advised of the surgical risks, and consent was obtained.

22. Claimant ultimately underwent the surgery recommended by PA Wilkerson.

23. The Claimant testified that she was in a motor vehicle accident about a month before her work injury. She also told PA Wilkerson that she was involved in a motor vehicle accident about 6-8 weeks before the November 4, 2024, appointment with him. However, she indicated on the Employee Report of Work-Related Injury form that she was involved in an automobile accident on October 22, 2024, only 4 days before her work injury. The ALJ credits Claimant's testimony and resolves this conflict in the evidence and finds that the motor vehicle accident occurred approximately one month before the work injury. This finding is based on Claimant's testimony and her statements to PA Wilkerson regarding when the automobile accident occurred which are consistent with her testimony.

24. The motor vehicle impact was to the driver's side of her vehicle. All of the driver's side airbags around the door deployed, but the steering wheel airbag did not deploy. Claimant's symptoms following the motor vehicle crash were mostly limited to disorientation, whiplash, and the triceps area of her left arm. While Claimant did have some discomfort in her right triceps area following the motor vehicle collision, Claimant credibly testified that she did not experience any symptomatology in or around her right bicep or right shoulder.

25. Claimant credibly testified that following the September 2024 motor vehicle collision she did not experience the same symptoms (pain, redness, and swelling) in her right bicep or shoulder joint area. Claimant also reported hearing and feeling a pop in her right bicep area, followed by immediate pain, as well as swelling and redness in the same area.

26. The ALJ finds that Claimant sustained a right sided bicep and shoulder injury on October 26, 2024, while scooping ice. This finding is based on Claimant's testimony, which the ALJ finds credible, and the temporal proximity between the activity and the immediate onset of symptoms.

27. The ALJ also finds that the work-related incident involving scooping ice caused the need for medical treatment, including the care provided at Lutheran Hospital, the urgent care facility in Golden, and Panorama Orthopedics as well as the surgical intervention performed there.

28. The ALJ further finds that this treatment was reasonable and necessary to cure and relieve Claimant from the effects of her work injury. This finding is supported by the logical progression of care initiated in response to Claimant's symptoms immediately following the accident and injury. Claimant first sought treatment at Lutheran Hospital because the urgent care facility was closed at the time she needed care. She subsequently followed up at urgent care and was later referred to Panorama Orthopedics for specialized evaluation and treatment by an orthopedic surgeon. The totality of the evidence supports the reasonableness and necessity of this treatment, including Claimant's testimony, the October 27, 2024, report from Dr. O'Keefe recommending orthopedic follow-up, and the medical reports from PA Wilkerson, which describe the mechanism of injury, confirm MRI

findings consistent with Claimant's symptoms, and set forth surgical recommendations directed at treating the effects of the injury.

29. The ALJ finds that the medical treatment Claimant received was provided by authorized medical providers. After reporting her injury, Claimant was given a Designated Provider List (DPL) by her Employer. Because the injury occurred after regular business hours, Claimant sought treatment at Lutheran Hospital, which was listed on the DPL for after-hours care. Following her hospital visit, Claimant obtained follow-up treatment at an urgent care facility in Golden, which was also listed on the DPL. The urgent care provider subsequently referred Claimant to Panorama Orthopedics for specialized evaluation and treatment. Based on this sequence of care and the contents of the DPL, the ALJ finds that Lutheran Hospital, the urgent care facility in Golden, and Panorama Orthopedics were authorized providers.

30. The Claimant has received medical bills for her medical care, including the emergency room bill from Lutheran Medical Center and the urgent care in Golden, Colorado.

31. Claimant paid out-of-pocket for a portion of her medical treatment.

32. Respondents received notice of Claimant's injury, and the Respondents failed to furnish reasonable and necessary medical treatment.

33. Other insurers, or Governmental program(s), paid for a portion of, or all of, Claimant's medical treatment and are entitled to reimbursement.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Judge draws the following conclusions of law:

General Provisions

The purpose of the Workers' Compensation Act of Colorado (Act), C.R.S. §§ 8-40-101, et seq., is to assure the quick and efficient delivery of benefits to injured workers at a reasonable cost to employers, without the necessity of litigation. C.R.S. § 8-40-102(1). Claimant shoulders the burden of proving entitlement to benefits by a preponderance of the evidence. C.R.S. § 8-43-201. 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 respondents; and a workers' compensation claim shall be decided on its merits. C.R.S. § 8-43-201.

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. ICAO*, 5 P.3d 385 (Colo. App. 2000).

In deciding whether a party has met the burden of proof, the ALJ is empowered "to resolve conflicts in the evidence, make credibility determinations, determine the weight to be accorded to expert testimony, and draw plausible inferences from the evidence." *See*

Bodensleck v. ICAO, 183 P.3d 684 (Colo. App. 2008). The ALJ determines the credibility of the witnesses. *Arenas v. ICAO*, 8 P.3d 558 (Colo. App. 2000). The weight and credibility assigned to evidence is a matter within the discretion of the ALJ. *Cordova v. ICAO*, 55 P.3d 186 (Colo. App. 2002). The same principles concerning credibility determinations that apply to lay witnesses apply to expert witnesses as well. *See Burnham v. Grant*, 24 Colo. App. 131, 134 P. 254 (1913); see also *Heinicke v. ICAO*, 197 P.3d 220 (Colo. App. 2008). 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 Ins. Co. v. Cline*, 98 Colo. 275, 57 P.2d 1205 (1936); CJI, Civil 3:16 (2007). A workers' compensation case is decided on its merits. C.R.S. § 8-43-201.

I. Whether Respondents were provided adequate notice of the March 11, 2025, hearing.

W.C.R.P. 24(B)(1) provides that if a party fails to appear at a hearing, the ALJ may proceed upon finding that notice of the hearing was sent to an address at which it is likely to be received by the non-appearing party or the non-appearing party's authorized representative.

The Office of Administrative Courts' Rules of Procedure and the Workers' Compensation Act are designed to ensure that all parties are afforded due process and an opportunity to be heard. These protections, however, require meaningful participation. Here, the record establishes that Respondents were provided with proper notice of the March 11, 2025, hearing. The Notice of Hearing was sent by both regular mail and email to the claims adjuster at CCMSI, using the addresses previously provided by the adjuster in the Notice of Contest and in direct email correspondence with Claimant's counsel. The Application for Hearing and Notice of Hearing were also sent by mail to the Employer using the last known business address provided in the record. Although the zip code for the Employer's address contained a slight clerical error, there is no indication that the notice was returned as undeliverable. Therefore, the ALJ finds and concludes that the notice was sent to an address at which it was reasonably likely to be received and Respondents failed to appear at the hearing.

Pursuant to W.C.R.P. 24(B)(1), the ALJ finds and concludes that Respondents were provided adequate notice of the March 11, 2025, hearing and failed to act and attend the hearing. The notice satisfied the requirements of due process under the Workers' Compensation Act and applicable rules.

Accordingly, the ALJ finds and concludes, based on a preponderance of the evidence, that Respondents were provided adequate notice of the March 11, 2025, hearing pursuant to W.C.R.P. 24(B)(1).

II. Whether Claimant established, by a preponderance of the evidence, that she suffered a compensable injury to her right shoulder on October 26, 2024.

III. Whether Claimant established, by a preponderance of the evidence, that she is entitled to medical benefits due to her October 26, 2024, work accident.

The claimant was required to prove by a preponderance of the evidence that the conditions for which he seeks medical treatment were proximately caused by an injury arising out of and in the course of the employment. Section 8-41-301(1)(c), C.R.S. The claimant must prove a causal nexus between the claimed disability and the work-related injury. *Singleton v. Kenya Corp.,* 961 P.2d 571 (Colo. App. 1998). A preexisting disease or susceptibility to injury does not disqualify a claim if the employment aggravates, accelerates, or combines with the preexisting disease or infirmity to produce a disability or need for medical treatment. *Duncan v. Industrial Claim Appeals Off.,* 107 P.3d 999 (Colo. App. 2004); *H & H Warehouse v. Vicory,* 805 P.2d 1167 (Colo. App. 1990).

However, the mere occurrence of symptoms at work does not require the ALJ to conclude that the duties of employment caused the symptoms, or that the employment aggravated or accelerated any preexisting condition. Rather, the occurrence of symptoms at work may represent the result of or natural progression of a preexisting condition that is unrelated to the employment. *See F.R. Orr Construction v. Rinta,* 717 P.2d 965 (Colo. App. 1995); *Breeds v. North Suburban Medical Ctr.,* WC 4-727-439 (ICAO August 10, 2010); *Cotts v. Exempla, Inc.,* WC 4-606-563 (ICAO August 18, 2005). The question of whether the claimant met the burden of proof to establish the requisite causal connection is one of fact for determination by the ALJ. *City of Boulder v. Streeb*, 706 P.2d 786 (Colo. 1985); *Faulkner v. Industrial Claim Appeals Off.,* 12 P.3d 844 (Colo. App. 2000).

Moreover, Respondents are liable to provide medical treatment that is reasonable and necessary to cure and relieve the effects of the industrial injury. Section 8-42-101(1)(a), C.R.S. The question of whether the claimant proved treatment is reasonable and necessary is one of fact for the ALJ. *Kroupa v. Industrial Claim Appeals Off.,* 53 P.3d 1192 (Colo. App. 2002).

In this case, the ALJ finds that Claimant sustained a right bicep and shoulder injury on October 26, 2024, while scooping ice in the course and scope of her employment as a bartender. The injury was immediately accompanied by a popping sensation, pain, swelling, and visible muscle displacement, and was promptly reported. The ALJ finds Claimant's testimony credible and further supported by contemporaneous medical records and imaging studies.

Although Claimant was involved in a motor vehicle accident before the work injury, the precise date of that accident is unclear from the record. In her incident report regarding the work injury, Claimant noted that the motor vehicle accident occurred on October 22, 2024, while driving home from work, and that she sustained "whiplash and strain in her right arm." However, the medical records and Claimant's testimony consistently indicate that the motor vehicle accident occurred approximately one month

before the work-related incident. The ALJ resolves this discrepancy by finding that the notation that the motor vehicle accident occurred on October 22, 2024, was made in error. The ALJ credits Claimant's testimony and medical documentation in concluding that the motor vehicle accident occurred in September 2024. Furthermore, no medical provider attributed Claimant's rotator cuff or biceps injury to the motor vehicle accident. This absence of medical attribution supports the conclusion that the October 26, 2024, workplace incident was the proximate cause of Claimant's injury and need for medical treatment. Moreover, even assuming the motor vehicle accident resulted in some injury to Claimant's arm or ongoing symptoms, the ALJ credits Claimant's testimony that the act of scooping ice caused her to feel and hear a distinct pop in her right bicep area, immediately followed by the onset of pain and other symptoms. Accordingly, the ALJ finds and concludes that the scooping of ice was the proximate cause of the symptoms that necessitated the need for medical treatment.

As a result, the ALJ finds and concludes that Claimant has established by a preponderance of the evidence that her biceps and shoulder condition for which she sought medical treatment was proximately caused by the October 26, 2024, work accident. Claimant has therefore met her burden of proving a compensable injury.

In addition, the ALJ finds and concludes that the treatment Claimant received-including emergency care at Lutheran Medical Center, follow-up care at an urgent care facility in Golden, and orthopedic treatment and surgery at Panorama Orthopedics-was reasonable and necessary to treat Claimant from the effects of the work injury. The course of treatment followed a logical progression in response to persistent symptoms and was supported by diagnostic findings, including an MRI revealing significant tearing of the rotator cuff and biceps tendon. In addition, PA Wilkerson did not question the work-related cause of Claimant's condition. As a result, and based on the totality of the evidence, the ALJ finds and concludes that Claimant has established by a preponderance of the evidence that the medical treatment she received at Lutheran Hospital, the urgent care in Golden, and at Panorama Orthopedics, including the surgery, was reasonable, necessary, and causally related to the October 26, 2024, compensable work injury.

Moreover, the ALJ finds and concludes that Claimant established by a preponderance of the evidence that the medical treatment she received was from authorized providers. As found, after reporting her injury, Claimant was provided with a Designated Provider List (DPL) by her Employer. Because the injury occurred after regular business hours, Claimant sought treatment at Lutheran Hospital, which was identified on the DPL for after-hours care. She then followed up at an urgent care facility in Golden, which was also listed on the DPL. That provider subsequently referred Claimant to Panorama Orthopedics for further evaluation and treatment, which she had. Based on this sequence of care and the record, the ALJ concludes that Lutheran Hospital, the urgent care facility in Golden, and Panorama Orthopedics were authorized providers.

Lastly, the ALJ finds and concludes that Claimant established by a preponderance of the evidence that Respondents received notice of Claimant's injury, and the Respondents failed to furnish reasonable and necessary medical treatment. As a result, the Respondents shall reimburse Claimant, or any insurer or governmental program that paid for related medical treatment, for the costs of reasonable and necessary treatment that was provided.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Judge enters the following order:

1. Claimant sustained a compensable injury arising out of and in the course of her employment on October 26, 2024.
2. Respondents are liable for, and shall pay for, all reasonable and necessary medical treatment from authorized providers to cure and relieve Claimant from the effects of the October 26, 2024, work injury, including but not limited to:
   - The treatment Claimant received at Lutheran Medical Center right after the accident.
   - The treatment at the urgent care facility in Golden.
   - The treatment provided by Panorama Orthopedics, including the surgery performed.
   - Any out-of-pocket expenses paid by Claimant for the treatment of her work injury.
   - Reimbursement to any insurer or governmental program that paid for related medical treatment, for the costs of reasonable and necessary treatment that was provided.
3. Issues not expressly decided herein are reserved to the parties for future determination.

If you are dissatisfied with the Judge's order, you may file a Petition to Review the order with the Denver Office of Administrative Courts, 1525 Sherman St., 4th Floor, Denver, CO 80203. You must file your Petition to Review within twenty (20) days after mailing or service of the order, as indicated on certificate of mailing or service; otherwise, the Judge's order will be final. You may file the Petition to Review by mail, as long as the certificate of mailing attached to your petition shows: (1) That you mailed it within twenty (20) days after mailing or service of the order of the Judge; and (2) That you mailed it to the above address for the Denver Office of Administrative Courts. For statutory reference, see section 8-43-301(2), C.R.S. For further information regarding procedures to follow when filing a Petition to Review, see Rule 26, OACRP. You may access a petition to review form at: http://www.colorado.gov/dpa/oac/forms-WC.htm.

DATED: April 1, 2025

/s/ Glen Goldman

Glen B. Goldman
Administrative Law Judge
Office of Administrative Courts
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