ISSUES

- Whether Claimant has proven by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course and scope of his employment with Employer?

- If Claimant has proven he sustained a compensable injury, whether Claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits for the period of February 2, 2024 and continuing?

- If Claimant has proven he sustained a compensable injury, whether Respondents have proven by a preponderance of the evidence that Claimant committed a volitional act that led to his termination of employer?

FINDINGS OF FACT

1. Claimant was employed with Employer in the housekeeping department beginning in December 2021. Claimant sustained a compensable injury to his ankle while employed with Employer on July 25, 2022. Respondents filed a General Admission of Liability ("GAL") for that injury on October 3, 2022 admitting for medical benefits and temporary partial disability benefits.

2. Claimant testified that after the July 25, 2022 injury, he returned to work for Employer and on January 28, 2024 he was working in the laundry section for Employer taking wet laundry out of the washing machine when he heard something in his neck and back and felt pain. Claimant testified he reported the injury to a supervisor on the date the injury occurred and was provided with lighter work the rest of the day. Claimant testified he reported the incident to another Supervisor, America, two days later.

3. Claimant testified he sought medical treatment from the same clinic that provided him with treatment for the 2022 ankle injury, but the clinic denied the service. Claimant testified he then went to Vail Occupational Health for treatment and was see two times, but then was denied further treatment.

4. Andres Vega testified on behalf of Employer. Ms. Vega testified that Claimant had been off of work due to his neck injury from the bus accident and returned to work for Employer on January 27, 2024. Ms. Vega testified Claimant worked on January 27 and January 28, but was then off of work on January 29 and January 30. Ms. Vega testified that Claimant worked on January 31 and may have worked on February 9. Ms. Vega testified that Claimant worked for 3.79 hours on February 13, 2024.

5. Ms. Vega testified Claimant showed up on February 8, 2024 and reported he had physical discomfort in his hands and fingers along with pain in his neck. Ms. Vega testified she told Claimant he should file a claim and offered to help Claimant complete the form, but Claimant denied the offer of help. An Employer's First Report of Injury was filed on February 12, 2024 by Employer.

6. Respondents presented the testimony of Azucena Corral, the Director of Housekeeping for Employer. Ms. Corral testified she was Claimant's supervisor in January 2024. Ms. Corral testified Claimant did not report an injury to her on January 28, 2024. Ms. Corral testified that when Claimant worked on February 13, 2024 he left early and mentioned something about his arms feeling weak.

7. Claimant has a history of prior injuries to his neck including a prior cervical fusion and an incident on December 24, 2029 when he was struck by a bus. As a result of this incident, Claimant underwent a cervical spine computed tomography ("CT") scan on January 10, 2020 that showed anterolisthesis at the C3-C4 and the C4-C5 levels, partial fusion across C5-C6 level with hardware. The CT scan further showed bilateral facet arthropathy at the C2-3 level, mild right and moderate left foraminal stenosis at the C3-4 level, mild spinal canal stenosis due to a disc bulge at the C4-5 level, mild left foraminal stenosis due to facet arthropathy at the C5-6 level, mild canal stenosis due to posterior disc osteophyte complex at the C6-7 level and mild bilateral forminal stenosis at the C7-T1 level.

8. Claimant underwent a magnetic resonance image ("MRI") of the right shoulder on July 16, 2020 that showed a complete full thickness tear of the distal supraspinatus tendon insertion with retraction of the torn fibers, full-thickness disruption of the proximal long head biceps with retraction of the torn fibers, subluxation of the humeral head and labral tearing and fraying. Claimant eventually underwent right shoulder surgery to repair the rotator cuff on March 8, 2021.

9. Claimant continued to experience pain in his shoulder and underwent a repeat MRI on October 7, 2022 that showed a full thickness tear of the supraspinatus tendon with a majority of the tendon retracted. It was opined at this time that Claimant's shoulder surgery had failed and a revision surgery was recommended. Claimant eventually underwent the repeat shoulder surgery on October 18, 2022 under the auspices of Dr. Black.

10. Claimant additionally was complaining of pain into his left hand during this time and underwent a cervical MRI on October 14, 2022. The MRI showed sever left foraminal narrowing secondary to uncovertebral spurring, facet arthropathy ad disc height loss at the C3-4 level, disc height loss and desiccation at the C4-5 level with severe right and mild left foraminal narrowing, disc osteophyte complex indents on the anterior cord margin with mild central stenosis at the C5-6 level, and disc height loss with dorsal disc osteophyte complex at the C6-7 level.

11. Claimant was examined by Dr. York with Panorama Summit Orthopedics on December 9, 2022. Dr. York noted Claimant reported paresthesia and dysesthesias in his bilateral hands and noted Claimant reported feeling clumsy and dropping things. Dr. York performed a C3-4 posterior cervical fusion with C3 laminectomy on February 16, 2023.

12. Claimant was examined by Dr. Black for his right shoulder on October 25, 2023. Claimant reported he was doing well with no pain but noted he did have some pain that radiates from his neck that he described as electrical in nature. Dr. Black noted that Claimant was doing very well 12 months out from a complex revision rotator cuff repair and indicated that the residual pain and symptoms were more related to Claimant's cervical spine, than his shoulder.

13. On November 10, 2023, Claimant reported to physicians' assistant ("PA") Emily Mitchell that he had numbness in both of his arms, but the numbness had continued to improve over time. Claimant reported he still had right trapezius and shoulder pain but that he continued to improve with physical therapy.

14. With regard to the present claim, Claimant sought treatment at Mountain Family Medical Centers on February 8, 2024 and reported he was moving 160 pounds of wet laundry when he experienced pain and numbness in his right hand and last three fingers. Claimant was scheduled to see his orthopedic physician on February 9.

15. Claimant was examined by Dr. York on February 9, 2024. Dr. York noted that Claimant was back to work full duty, but had increased pain into his arms and hands last week after pulling wet towels out of the dryer. Dr. York recommended Claimant get an updated MRI and CT scan of the cervical spine.

16. Claimant was examined by PA Philbus at Colorado Mountain Medical on February 16, 2024. The records from this exam indicate that Claimant reported he was pushing a cart of laundry when his neck pain was exacerbated.

17. Claimant was examined by PA Geller at Vail Health on March 28, 2024. Claimant had previously been evaluated by Vail Health for his August 2022 injury and PA Geller reported Claimant's symptoms developed in February 2024 while pushing a cart. PA Geller noted that Claimant was a poor historian and confused about his symptoms, their onset, and care he has received. Claimant reported on this visit that his injury occurred on January 28, 2024, but PA Geller noted that the date of injury on the WC164 form lists the date of injury as 2/1.

18. Claimant underwent a repeat MRI scan on April 10, 2024. The MRI scan showed a moderate disc bulge at the C3-4 level with facet arthrosis resulting in severe bilateral foraminal stenosis. A moderate disc bulge was also noted at the C4-5 level with facet arthrosis and severe bilateral foraminal and moderate central canal stenosis. Anterior fusion hardware was noted at the C5-6 level. A mild disc bulge was noted at the C6-7 level with moderate facet arthrosis resulting in severe right and moderate left

foraminal and moderate central canal stenosis. A moderate sized disc bulge was also noted at the C7-T1 level with bilateral facet arthrosis resulting in severe right and moderate left foraminal stenosis.

19. Claimant underwent another MRI of his cervical spine on May 12, 0224. This MRI showed multilevel, multifactorial degenerative changes of the cervical spine including mild bilateral facet arthropathy, with mild bilateral neuroforaminal stenosis at the C2-3 level, posterior disc osteophyte complex with uncovertebral hypertrophy and moderate bilateral facet arthropathy at the C3-4 level, posterior disc osteophyte complex with uncovertebral hypertrophy and moderate facet arthropathy at the C4-5 level, posterior disc osteophyte complex with uncovertebral hypertrophy and mild bilateral facet arthropathy at the C6-7 level and posterior disc osteophyte complex with bilateral uncovertebral hypertrophy and moderate bilateral face arthropathy at the C7-T1 level.

20. Claimant returned to Dr. Barnett with Panorama Summit Orthopedics on July 22, 2024. Dr. Barnett noted Claimant's prior fusion surgeries and his onset of symptoms after working in the laundry room at a hotel. Dr. Barnett diagnosed Claimant with cervical spondylosis without myelopathy, cervical myofascial pain syndrome and cervical degenerative disc disease. Dr. Barnett recommended Claimant cervical medial branch blocks starting at the C4-5 level.

21. Claimant returned to Dr. Barnett on August 12, 2024. Dr. Barret reviewed the April 10, 2024 cervical MRI and based on Claimant's complaints of radicular arm pain and findings of myelopathy, referred Claimant to a surgical spine physician.

22. The ALJ credits the medical records entered into evidence and finds that Claimant has failed to establish that he sustained an injury arising out of and in the course and scope of his employment on January 28, 2024. The ALJ notes that the accident histories in the medical records are not consistent and conflict with Claimant's testimony at hearing. The ALJ has thoroughly reviewed the medical records and treatment and is unable to ascertain any acute injury that could be related to an incident of January 28, 2024. Therefore, the ALJ finds that Claimant has failed to establish that there was a new injury on January 28, 2024.

23. Insofar as Claimant argues that the medical treatment is related to the July 25, 2022 injury, the ALJ is likewise not persuaded. The evidence fails to establish that Claimant's cervical condition and treatment after January 28, 2024 could be tied to Claimant's July 25, 2022 admitted injury.

24. Based on the finding of compensability, the ALJ does not need to make additional findings on the remaining issues.

CONCLUSIONS OF LAW

1. The purpose of the "Workers' Compensation Act of Colorado" 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 any litigation. Section 8-40-102(1), C.R.S. A claimant in a Workers' Compensation claim 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 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).

2. The facts in a Workers' Compensation case are not interpreted liberally in favor of either the rights of the injured worker or the rights of the employer. Section 8-43-201, C.R.S., 2006. A Workers' Compensation case is decided on its merits. Section 8-43-201, *supra*.

3. The ALJ's factual findings concern only evidence that is dispositive of the issues involved; the ALJ has not addressed every piece of evidence that might lead to a conflicting conclusion 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). 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 action; the motives of the witness; whether the testimony has been contradicted; and bias, prejudice, or interest. *See Prudential Insurance Co. v. Cline*, 98 Colo. 275, 57 P.2d 1205 (1936); CJI, Civil 3:16 (2006).

4. A compensable industrial accident is one that results in an injury requiring medical treatment or causing disability. The existence of a preexisting medical condition does not preclude the employee from suffering a compensable injury where the industrial aggravation is the proximate cause of the disability or need for treatment. *See H & H Warehouse v. Vicory*, 805 P.2d 1167 (Colo. App. 1990); *see also Subsequent Injury Fund v. Thompson*, 793 P.2d 576 (Colo. App. 1990). A work related injury is compensable if it "aggravates accelerates or combines with" a preexisting disease or infirmity to produce disability or need for treatment. *See H & H Warehouse v. Vicory, supra.*

5. As found, Claimant has failed to establish by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course and scope of his employment with Employer. As found, the accident histories provided by Claimant to his medical providers as indicated in the medical records are inconsistent with Claimant's testimony at hearing.

6. Based on the determination that Claimant has failed to establish a compensable injury arising out of and in the course and scope of his employment, his claim for benefits is dismissed.

7. With regard to the July 25, 2022 injury for which Respondents have admitted compensability, the ALJ finds that the medical treatment to Claimant's neck incurred after January 28, 2024 is not related to the July 24, 2022 workers' compensation injury.

ORDER

It is therefore ordered that:

1. Claimant's claim for benefits for an injury of January 28, 2024 is denied and dismissed.

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**. 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. **In addition, it is recommended that you send a copy of your Petition to Review to the Grand Junction OAC via email at oac-gjt@state.co.us.**

DATED: April 29, 2025

Keith E. Mottram

Keith E. Mottram
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