Office of Administrative Courts
State of Colorado
Workers' Compensation Number 5-166-688-003

Issues

1. Has Claimant demonstrated, by a preponderance of the evidence, that a recommended right hip injection is reasonable medical treatment necessary to cure and relieve her from the effects of the admitted March 16, 2021, work injury?

2. Has Claimant demonstrated, by a preponderance of the evidence, that magnetic resonance imaging (MRI) of her lumbar spine is reasonable medical treatment necessary to cure and relieve her from the effects of the admitted March 16, 2021, work injury?

Findings of Fact

1. On March 16, 2021, Claimant suffered a right knee[1] injury while working for Employer. The injury occurred while Claimant was taking out trash when she tripped on a pallet and fell onto her right knee.

2. Respondents have admitted liability for Claimant's March 16, 2021, work injury.

3. During this claim, Claimant's authorized treating provider (ATP) has been Avon Occupational Health. At that practice, Claimant initially was seen by Lucia London, NP and Dr. Alisa Koval. Later in her treatment Claimant was seen by Dr. Elizabeth Esty. Claimant's medical treatment since her injury has included physical therapy, imaging, and surgery.

4. On May 6, 2021, magnetic resonance imaging (MRI) of Claimant's right knee showed patellofemoral chondromalacia including full thickness patellar chondral fissuring; edema within the superolateral aspect of Hoffa's fat pad; and mild pes anserine and prepatellar bursitis.

[1] Claimant also struck her head at the time of the injury. However, treatment of that body part is not at issue in this order.

5. Based upon the MRI findings, Claimant underwent right knee surgery on February 28, 2022. That procedure was performed by Dr. Max Seiter and included right knee partial lateral meniscectomy; arthroscopy with extensive debridement and chondroplasty of lateral and lateral tibial plateau cartilage; lysis of adhesions in the suprapatellar pouch and anterior interval release; and synovectomy of the suprapatellar, medial, lateral, and anterior interval compartments.

6. Due to continuing right knee symptoms, on February 13, 2023, Claimant underwent a second right knee surgery. Specifically, Dr. Seiter performed a right total knee arthroplasty. Claimant testified that after that second surgery, her right knee symptoms worsened.

7. Subsequently, on May 17, 2023, Dr. Seiter performed a right knee manipulation under anesthesia.

8. Claimant further testified that following the second surgery her gait changed, and she began to develop pain in her right hip.

9. On October 19, 2023, Claimant was seen by Dr. Matthew Gnirke for consultation of Claimant's right hip symptoms. Dr. Gnirke recommended and administered a right greater trochanteric bursal injection. Claimant reported no pain relief from that injection.

10. On October 29, 2023, Claimant underwent an MRI of her right hip. The MRI report showed low grade chondral fibrillation; fully intact labrum; inflammation indicating possible bursitis; a low grade articular sided tear; mild hamstring tendinosis; and indication of a paralabral cyst.

11. In a medical record dated November 14, 2023, Dr. Seiter opined that Claimant was not a good candidate for right hip arthroscopic bursectomy. Dr. Seiter noted that the right hip MRI indicated evidence of trochanteric bursitis, but there was "no significant evidence of contributory glute medius pathology or significant arthritis". Dr. Seiter opined that Claimant's right hip pain could be coming from her lumbar spine. He also noted that it was possible that it was a result of her altered gait. At that time, Dr. Seiter recommended an MRI of Claimant's lumbar spine.

12. Respondents denied authorization of the requested lumbar spine MRI.

13. On November 22, 2023, Dr. Seiter authored a letter in which he requested reconsideration of the denial. Dr. Seiter explained that because Claimant had not improved with the injection, her altered gait and hip symptoms could be consistent with lumbar radiculopathy. Therefore, he reasoned that a lumbar spine MRI would be the next step.

14. On December 29, 2023, Claimant attended an independent medical examination (IME) with Dr. Robert Messenbaugh. In connection with the IME, Dr. Messenbaugh reviewed Claimant's medical records, obtained a history from Claimant, and performed a physical examination. In his IME report, Dr. Messenbaugh opined that claimant had suffered a right knee injury and received reasonable and necessary treatment of her injury. Dr. Messenbaugh further opined that Claimant had reached maximum medical improvement (MMI), and he assessed a permanent impairment rating of 39 percent for her right lower extremity. Dr. Messenbaugh noted that Claimant had no complaints of low back pain or of lower extremity radiculopathy. Therefore, in his opinion the requested lumbar spine MRI was not reasonable or necessary. Dr. Messenbaugh recommended possible maintenance medical treatment of one or two additional right hip trochanteric bursal injections.

15. On January 6, 2025, Claimant was seen by Dr. Esty and reported needle like pain in her right knee that occasionally radiated into her hip. Dr. Esty opined that obtaining a second opinion regarding Claimant's right knee was reasonable. With regard to Claimant's lumbar spine, Dr. Esty opined that Claimant did not suffer an acute injury to her lumbar spine. Dr. Esty specifically noted that "[w]hile it is possible, I do not think it is medically probable that the patient's significant degenerative lumbar changes suggested by an outside MRI report can reasonably be attributed to her 2021 trip and fall onto her knees." In support of this opinion, Dr. Esty noted that Claimant's low back pain developed more than a year after her work injury. It is Dr. Esty's opinion that Claimant's lumbar spine symptoms are related to chronic degenerative changes.

16. On March 10, 2025, Claimant returned to Dr. Esty and reported worsening right knee pain, right hip pain, and back pain. Claimant also reported left knee pain, which was a new complaint. Also in the March 10, 2025, medical record, Dr. Esty noted her review of Dr. Messenbaugh's IME report. Dr. Esty noted her agreement with Dr. Messenbaugh that the "lumbar and hip degenerative findings that emerged after [Claimant's] the trip and fall onto the [right] knee are not medically probably related to the work injury." Dr. Esty also opined that

further treatment of Claimant's degenerative lumbar spine condition should be treated outside of the workers' compensation claim.

17. At the request of Respondents, Dr. Qing-Min Chen reviewed Claimant's medical records. Dr. Chen testified regarding his records review. Dr. Chen explained that the Colorado Medical Treatment Guidelines (MTG) do not address hip bursitis. Dr. Chen testified that the typical treatment for trochanteric bursitis is physical therapy. Specifically, such therapy would address strengthening the muscles of the hip to decrease tightness. Dr. Chen further testified that another treatment opinion for this condition is a cortisone injection, with a return to physical therapy. Dr. Chen testified that during this claim Claimant has attended approximately 200 physical therapy visits. It is his opinion that additional physical therapy is neither reasonable nor necessary for Claimant. Dr. Chen testified that because the prior hip bursa injection was not helpful to Claimant, another such injection would not be reasonable or necessary.

18. Dr. Chen further testified that the lumbar spine MRI requested in this claim is not reasonable or necessary to treat Claimant's work injury. Dr. Chen explained that Claimant initially suffered a knee injury, and it was not until 2023 that Claimant began reporting right hip and low back symptoms. Dr. Chen testified that there is no objective evidence to indicate that Claimant has a low back injury. Dr. Chen further testified that it is his opinion that Claimant's altered gait did not aggravate or accelerate the preexisting condition of her lumbar spine.

19. With regard to the requested right hip injection, the ALJ credits the medical records and the opinions of Drs. Esty and Chen. The ALJ specifically credits Dr. Esty's opinion that the degenerative condition of Claimant's right hip is not causally related to her work injury. The ALJ also notes that the initial hip injection did not provide Claimant with any relief. Therefore, a subsequent injection would be neither reasonable nor necessary. The ALJ finds that Claimant has failed to demonstrate that it is more likely than not that the requested right hip injection is reasonable medical treatment necessary to cure and relieve her from the effects of the admitted March 16, 2021, work injury.

20. With regard to Claimant's lumbar spine symptoms, and more specifically, the request for a lumbar spine MRI, the ALJ credits the medical records and the opinions of Drs. Esty, Messenbaugh, and Chen over the contrary opinions of Dr. Seiter. The ALJ specifically

credits Dr. Chen's opinion that Claimant did not suffer a low back injury. The ALJ also credits Dr. Chen's opinion that Claimant's altered gait did not aggravate or accelerate the preexisting condition of her lumbar spine. The ALJ finds that Claimant has failed to demonstrate that it is more likely than not that the requested lumbar spine MRI is reasonable medical treatment necessary to cure and relieve her from the effects of the admitted March 16, 2021, work injury.

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 which leads the trier-of-fact, after considering all of the evidence, to find that a fact is more probable than not. *Page v. Clark*, 197 Colo. 306, 592 P.2d 792 (1979). 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, *supra*. A Workers' Compensation case is decided on its merits. Section 8-43-201, *supra*.

2. 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.

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).

4. Respondents are liable for authorized medical treatment reasonably necessary to cure and relieve an employee from the effects of a work related injury. Section 8-42-101, C.R.S.; *see Sims v. Industrial Claim Appeals Office*, 797 P.2d 777 (Colo. App. 1990).

5. As found, Claimant has failed to demonstrate by a preponderance of the evidence, that a recommended right hip injection is reasonable medical treatment necessary to cure and relieve her from the effects of the admitted March 16, 2021, work injury. As found, the medical records and the opinions of Drs. Esty and Chen are credible and persuasive on this issue.

6. As found, Claimant has failed to demonstrate by a preponderance of the evidence, that a lumbar spine MRI is reasonable medical treatment necessary to cure and relieve her from the effects of the admitted March 16, 2021, work injury. As found, the medical records and the opinions of Drs. Esty, Messenbaugh, and Chen are credible and persuasive on this issue.

Order

It is therefore ordered:

1. Claimant's request for a right hip injection is denied and dismissed.

2. Claimant's request for a lumbar spine MRI is denied and dismissed.

3. All matters not determined here are reserved for future determination.

Dated December 1, 2025.

Cassandra M. Sidanycz
Administrative Law Judge
Office of Administrative Courts

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 service of the order, as indicated on the certificate of mailing or service; otherwise, the ALJ's order will be final. Section 8-43-301(2), C.R.S. and OACRP 27. You may access a petition to review form at: https://oac.colorado.gov/resources/oac-forms.

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 via email to either **oac-ptr@state.co.us** or to **oac-dvr@state.co.us**. If the Petition to Review is emailed to either of the aforementioned email addresses, 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. **It is also recommended that you provide a courtesy copy of your Petition to Review to the Grand Junction OAC via email at oac-gjt@state.co.us.**

Office of Administrative Courts
State of Colorado

Workers' Compensation No. 5-287-280-002

Issues

- ➢ Whether Claimant proved by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course of his employment with Respondent-Employer on August 16, 2024.
- ➢ Whether Claimant proved by a preponderance of the evidence that he is entitled to temporary total disability benefits for his wage loss beginning on his date of injury of August 16, 2024, through August 24, 2024.
- ➢ Whether Claimant proved by a preponderance of the evidence that he is entitled to temporary partial disability benefits for his wage loss beginning August 25, 2025, and continuing.
- ➢ Whether Claimant has proved by a preponderance of the evidence entitlement to medical benefits reasonably necessary to cure and relieve Claimant of a workplace injury on August 16, 2024, including treatment from Memorial Hospital.

- ➢ Claimant's average weekly wage.

Findings of Fact

Employer-Employee Relationship

1. Respondent-Employer is a restoration and remediation company that collects and cleans items after floods and fires.

2. Claimant began working for Respondent-Employer in 2022 as a laborer and driver. His job duties included moving boxes and appliances such as fridges, stoves and washing machines and some cleaning.

Accident

3. On August 16, 2024, he was unloading items from a truck at the employer's warehouse using a dolly that he described as defective due to a flat or deflating tire. As he attempted to unload boxes from the truck using the dolly, he fell.

4. Claimant later testified that the fall occurred due to the left tire on the dolly being deflated, thus pulling him to the left. He testified that he grabbed the dolly with his right hand and that the boxes on the dolly fell onto his right hip and that there were five boxes weighing fifty pounds each.

5. Claimant got up from his fall and his boss, Ben Hettich, helped him to his car. Claimant remained in his car until coworkers found him near the end of the day around 4:00 P.M. unconscious and sweaty in the hot car. Claimant's sister, Jennifer Perez, drove him to the hospital.

Treatment

6. At the hospital, Claimant reported that he had been experiencing hip pain since his July 26 motor vehicle accident, but that he could still walk. However, Claimant reported to the attending provider that since his work accident earlier that day, he was unable to walk. Claimant also reported back pain as well as numbness and tingling in his toes sometimes. Claimant also reported that his left forearm and shoulder had been bothering him since his July 26 motor vehicle accident. He underwent X-rays, which showed no fracture. While Claimant complained of left upper extremity numbness, the attending provider suspected that it could be due to his recent motor vehicle accident. The attending physician recommended that Claimant remain on bedrest pending further imaging of the pelvis.

7. Claimant underwent a MRIs of the pelvis and lumbar spine the following day. The results were unremarkable. Claimant's attending physicians recommended physical therapy, crutches, and pain medications.

Prior Injury

8. On July 26, 2024, less than a month prior to Claimant's accident at work, Claimant was involved in a motor vehicle accident in which his vehicle rolled over multiple times. Claimant reported bruising of his right hip and abrasions of his left upper extremity. He was taken to the hospital, and, although he was released with no major injuries, the attending physician noted that Claimant was limping on his right leg, feeling low energy and generally poor. Claimant had a hard time working after that and it was his understanding that he was put on light duty.

Termination

9. Claimant was terminated on or about October 17, 2024, as a result of various complaints from coworkers that Claimant was essentially adopting a negative attitude, carelessly damaging clients' property, and putting forth little effort into his work.

Testimony

10. Claimant testified at hearing on his own behalf. He testified that at the time of the accident, while pushing the dolly, it pulled to the left, causing him to fall, and boxes and heavy accessories fell onto him, striking his right hip. Claimant testified he could not get up on his own, and that his coworker, Ayden Alvarado, helped him to a seated area while his supervisor Perla contacted the owner, Ben Hettich. Claimant testified that he reported the incident to Mr. Hettich through Perla, who interpreted for Mr. Hettich. Claimant testified that he declined immediate medical

care, thinking the injury was not serious, and that Mr. Hettich helped him to his car, where coworkers later found him and transported him to the emergency room.

11. Claimant testified that his physician instructed him to rest three to four weeks but that he returned to work after about two weeks because he was not being paid and could not afford food or medication. Claimant testified that he had right hip pain and difficulty lifting heavy objects when he returned to work and that he worked more slowly and needed assistance from Mr. Alvarado.

12. Claimant acknowledged his prior July 26, 2024 motor vehicle accident in his testimony. He testified that he recalled abdominal and arm pain, but Claimant denied that he had hip pain from that accident. Nevertheless, when confronted with a hospital record documenting a right hip contusion and left upper extremity abrasion, Claimant acknowledged that the records were accurate. Claimant testified that he believed he resumed full-duty work after his July 26, 2024 motor vehicle accident and hospital visit. Claimant testified that he used a bicycle as transportation and estimated riding approximately seven hundred miles between the date of his work accident and his termination in October 2024.

13. Mr. Alvarado testified at hearing as well. Mr. Alvardo testified that he worked with Claimant as a coworker in the summer of 2024. Mr. Alvardo testified that between the July motor vehicle accident and the August 16, 2024 work accident, he observed Claimant moving more slowly and “couldn’t move as well.” Mr. Alvarado testified that he did not discuss the accidents with him due to a language barrier.

14. Regarding the August 16 accident, Mr. Alvarado stated that he and claimant were dollying boxes that “weren’t anything too heavy” when he saw claimant begin a slow collapse. He testified that he did not see anything that Claimant would have tripped on and that Claimant did not impact the ground. According to Mr. Alvarado, Claimant grabbed a stack of empty Tupperware boxes, two of which fell on him. Claimant appeared “almost concussed,” could not support his own weight, and Mr.

Alvarado helped him to a desk and later into a coworker's car. Mr. Alvarado testified that he recalled the dolly tire being "wonky" but stated they had used it all summer and he did not believe it caused the fall. Mr. Alvardo testified that when Claimant returned to work about one to two weeks later, Claimant worked essentially normally and better than immediately after his crashes.

15. Mr. Alvarado also testified regarding one of the incidents that led to Claimant's termination. He testified that he was working with Claimant while Claimant was moving a heavy wardrobe or sewing-cabinet–type piece of furniture. The item was difficult to maneuver through a doorway, and Mr. Alvarado testified that Claimant was "just kind of, like, shoving it through," causing damage. He described the screen-door handle being peeled off as Claimant forced the cabinet through the doorway and noted that the item was "getting busted up."

16. Mr. Alvarado testified that he told Claimant he did not think they should move the cabinet in that manner, but Claimant continued pushing it. Mr. Alvarado believed Claimant understood this instruction. He also stated that he may have jumped in to help once he saw Claimant would not stop, though he was not certain of the exact sequence. Additionally, Mr. Alvarado recalled occasionally hearing Claimant say on the phone that he hated the job or was going to quit, and that on such days Claimant worked less effectively.

17. Jennifer Perez testified at hearing as well. Ms. Perez testified that she and Claimant grew up together in the Dominican Republic and considered each other siblings despite not being biologically related. She testified that she and Claimant lived together as roommates and were living together at the time of his first motor vehicle accident on July 26, 2024, but that Claimant moved out by August 2024 due to a dispute regarding Claimant's payment of rent. She testified that after the July 26 accident, Claimant had difficulty walking and had concerns about medical bills, but he continued to work for Respondent-Employer.

18. Ms. Perez testified that she did not witness the fall on August 16. That day, a coworker told her that Claimant was passed out in his car. She testified that she found him in sweating and talking “nonsense.” She testified that she then drove him to Memorial Hospital where she heard him attribute his problems to prior car accidents, not a work incident. She testified that she did not believe he was actually injured by a fall at work on August 16, though she conceded she did not see any such accident.

19. Ben Hettich testified at hearing as well. He testified that he was the owner of Respondent-Employer. He testified that Claimant was involved in two motor vehicle accidents in July and August 2024 and returned to work afterward with significant soreness and difficulty walking. Before the August 16, 2024 accident, Mr. Hettich accommodated Claimant by assigning hand-cleaning tasks and limiting walking and lifting while allowing him to keep working.

20. Regarding the August 16 accident, Mr. Hettich testified that he did not witness the fall. He testified that he was told of the incident and that he found Claimant at his work station in obvious pain. He offered to send Claimant home with pay and helped him to his car, believing Claimant could drive. Mr. Hettich denied any report from Claimant that Claimant had suffered a work injury or aggravated his condition on August 16.

21. Regarding Claimant’s testimony that he was pushing a dolly with five 50-pound boxes and using a ramp, Mr. Hettich testified that box weights were limited to twenty to thirty pounds and that their facility would use a dock, not a ramp. He acknowledged one dolly had a minor issue but stated all were functional.

22. Mr. Hettich testified that security video of the incident was overwritten in the normal course, and he did not preserve the video because he believed the episode was related to prior car-accident injuries.

23. Mr. Hettich also testified regarding the conduct that led to Claimant's termination. The first was a September 10 writeup based on reports from other employees. He testified that he learned that Claimant was "throwing things around the . . . garage" and treating the homeowner's contents with disrespect, to a degree that, if the homeowner had seen it, it "was going to become a larger issue." He recalled Claimant from the jobsite that day, explained the writeup to Claimant, and sent Claimant home.

24. The second warning, dated September 18 involved reports that Claimant refused to get out of the truck cab and refused to help move furniture. Mr. Hettich testified that he was not on scene and learned of it after the crew returned, then spoke to Claimant, wrote him up, and again sent him home. He testified that Claimant later characterized this as merely taking his lunch/break, which was inconsistent with what Mr. Hettich had been told.

25. The third incident of misconduct that Mr. Hettich testified about was the October 17 write-up. Again, the incident itself was reported to him by others, but he testified he personally saw the "fallout" at the homeowner's house and the damage he attributed to Claimant's "reckless" conduct. On that date, he did not go into detail with Claimant. Rather, he testified, he simply told Claimant that it was not going to work out and asked him to leave. He stated that, in his view as owner, the termination was "100 percent" for job-related misconduct and policy violations, and that property damage at clients' homes stopped after Claimant was terminated.

Credibility Findings

26. The Court finds the testimonies of Mr. Alvarado, Ms. Perez, and Mr. Hettich more credible than that of Claimant.

27. Claimant's testimony was materially inconsistent with both the documentary evidence and the testimony of other witnesses. For example, although Claimant

initially denied having right hip pain from the July 26, 2024 motor vehicle accident, he ultimately acknowledged that the hospital records correctly documented a right hip contusion and left upper extremity abrasions from that accident. Likewise, Claimant's description of the work incident—pushing a dolly loaded with five fifty-pound boxes that fell onto him, allegedly using a ramp—conflicts with Mr. Hettich's testimony that box weights were limited to twenty to thirty pounds and that the facility used a dock rather than a ramp, and with Mr. Alvarado's testimony that the boxes "weren't anything too heavy" and that only two empty Tupperware boxes fell on Claimant.

28. The Court also finds Claimant's account of the mechanism and severity of the August 16 incident less persuasive because it is not corroborated by the contemporaneous reports he made to others. Ms. Perez credibly testified that when she took Claimant to the hospital on August 16, she heard him attribute his problems to his prior car accidents, not to a fall at work. Her testimony on this point is consistent with Claimant's documented history at the hospital, where he reported ongoing hip pain since the July 26 motor vehicle accident and additional symptoms after the July and August motor vehicle accidents, and where the attending provider suspected that at least some of his complaints were attributable to those accidents.

29. Further, the Court finds Mr. Alvarado's and Mr. Hettich's testimonies regarding Claimant's functional abilities more reliable than Claimant's self-report. Mr. Alvarado credibly testified that between the July motor vehicle accident and the August 16 incident, Claimant already "couldn't move as well," and that after Claimant's brief time off, he returned to work "essentially normally" and better than immediately after his July 2024 motor vehicle accident. This account is difficult to reconcile with Claimant's portrayal of a dramatically disabling work injury on August 16, particularly in light of his own testimony that he was able to return to physically demanding work within approximately two weeks and that he rode his bicycle an estimated seven hundred miles between the work incident and his

October 2024 termination. Mr. Hettich's testimony that he accommodated Claimant with lighter duties after the car accidents and that property damage problems ceased after Claimant's termination was detailed, internally consistent, and supported by the written warnings he issued.

30. Although Ms. Perez acknowledged a personal dispute with Claimant over rent, her testimony regarding Claimant's condition and statements on August 16 aligns closely with the medical records. On balance, the Court finds that the consistency among the testimonies of Mr. Alvarado, Ms. Perez, and Mr. Hettich, and their corroboration by the contemporaneous medical and employment records render their accounts more credible than Claimant's.

Ultimate Findings

31. The Court finds that Claimant has not proved by a preponderance of the evidence that he sustained a work injury on August 16, 2024, arising out of and in the course of his employment.

32. The evidence does not establish that the accident caused any new injury, need for medical treatment, or resulting disability. The accounts of Mr. Alvarado and Mr. Hettich were that the boxes involved were light, that Claimant did not strike the ground forcefully, and that he appeared more generally unwell rather than acutely injured. Claimant's contemporaneous statements to medical providers attributed his symptoms to prior motor vehicle accidents rather than to a workplace fall, and diagnostic imaging revealed no injury. His ability to return to physically demanding work shortly thereafter and with a higher level of function than prior to his accident, as well as his extensive bicycle riding before termination, is inconsistent with Claimant having suffered a disability arising out of his August 16, 2024 accident. Therefore, the Court finds that Claimant has not proved by a preponderance of the evidence that he sustained a work injury on August 16, 2024, arising out of and in the course of his employment.

Conclusions of Law

Generally

A. The purpose of the Workers' Compensation Act of Colorado, §§ 8-40-101, et seq., C.R.S. is to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of litigation. *See* § 8-40-102(1), C.R.S. 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.

B. 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. *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 Insurance Co. v. Cline*, 57 P.2d 1205 (Colo. 1936); *Bodensieck v. Industrial 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. Industrial Claim Appeals*

Office, 55 P.3d 186 (Colo. App. 2002). To the extent expert testimony is subject to conflicting interpretations, the ALJ may resolve the conflict by crediting part or none of the testimony. *Colorado Springs Motors, Ltd. v. Industrial Commission*, 441 P.2d 21 (Colo. 1968).

C. The ALJ's factual findings concern only evidence and inferences found to be dispositive of the issues involved; the ALJ has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to the above findings as unpersuasive. *Magnetic Engineering, Inc. v. Industrial Claim Appeals Office*, 5 P.3d 385 (Colo. App. 2000).

Compensability

D. An injury must "arise out of and occur in the course of" employment to be compensable, and it is the claimant's burden to prove these requirements by a preponderance of evidence. Section 8-41-301, C.R.S.; *see also Madden v. Mountain West Fabricators*, 977 P.2d 861 (Colo. 1999). An injury "arises out of" the employment when it is sufficiently related to the conditions and circumstances under which the employee usually performs his or her job functions to be considered part of the service provided to the employer. *Price v. Indus. Claim Appeals Off.*, 919 P.2d 207 (Colo. 1996); *Popovich v. Irlando*, 811 P.2d 379, 383 (Colo. 1991). An injury is said to have arisen in the course of employment if the injury occurred while the employee was acting within the time, place, and circumstances of the employment. *Popovich*, 811 P.2d at 383.

E. The Act distinguishes between an "accident" and an "injury." The term "accident" refers to an "unexpected, unusual, or undesigned occurrence." Section 8-40-201(1), C.R.S. In contrast, an "injury" contemplates the physical or emotional trauma caused by an "accident." An "accident" is the cause, and an "injury" is the result. No benefits flow to the victim of an industrial accident unless the accident causes a compensable "injury." A compensable injury is one that causes disability or the need for medical treatment. *City of Boulder v. Payne*, 162 Colo. 345, 426

P.2d 194 (1967); *Mailand v. PSC Industrial Outsourcing LP*, W.C. No. 4-898-391-01 (Aug. 25, 2014).

F. The Court concludes, as found, that Claimant has not proved by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course of his employment on August 16, 2024. The accounts of Mr. Alvarado and Mr. Hettich were that the boxes involved were light, that Claimant did not strike the ground forcefully, and that he appeared more generally unwell rather than acutely injured. Claimant's contemporaneous statements to medical providers attributed his symptoms to prior motor vehicle accidents rather than to a workplace fall, and diagnostic imaging revealed no injury. His ability to return to physically demanding work shortly thereafter and with a higher level of function than prior to his accident, as well as his extensive bicycle riding before termination, is inconsistent with Claimant having suffered a disability arising out of his August 16, 2024 accident. Therefore, the Court concludes that Claimant has not proved by a preponderance of the evidence that he sustained a work injury on August 16, 2024, arising out of and in the course of his employment.

Order

It is therefore ordered that:

1. Claimant's claim for compensation for an August 16, 2024 injury is denied and dismissed.

Dated: December 1, 2025.

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Stephen J. Abbott

Administrative Law Judge

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.

Office of Administrative Courts
State of Colorado
Workers' Compensation Number 5-306-659-001

Issues

Has Claimant demonstrated, by a preponderance of the evidence, that on May 27, 2025, he suffered an injury arising out of and in the course and scope of his employment with Respondent?

Stipulations

The parties have stipulated that if the claim is found compensable:

1. Treatment of Claimant's left shoulder (including physical therapy and an injection) is reasonable medical treatment necessary to cure Claimant from the effects of the work injury.

2. Kaiser Permanente is Claimant's authorized treating provider (ATP) for this claim.

3. Claimant's average weekly wage (AWW) is $1,754.61 (with a corresponding temporary total disability (TTD) benefits rate of $1,169.74).

4. Claimant is entitled to TTD benefits beginning May 28, 2025, and ongoing until terminated by law.

Findings of Fact

1. Claimant has worked for Respondent as a bus driver for nine years. His job duties include operating a city bus in Denver, Colorado. When operating a bus on the 16th Street Mall, drivers, including Claimant, must manually operate the wheelchair ramp for passengers. This operation involves placing a handle-type pole into a hole on the ramp and raising it up and out of the bus. When retracting the ramp, the operation is reversed, with the use of the same pole by lifting the ramp up and back into the bus.

2. Claimant testified that on May 27, 2025, he was working driving buses on the 16th Street Mall. Claimant's role during that shift was to give breaks to other drivers. As a result, he drove a number of different buses on that date.

3. Claimant testified that on May 27, 2025, he operated the wheelchair ramp for a passenger. Claimant further testified that when he was lifting the ramp to place it back into the bus, he felt pain and a pull in his left shoulder. Claimant was able to complete his shift on that date. However, he found that he had to use his right arm to operate the ramp the rest of the day. In addition, there was a point in that same shift when Claimant was pulling himself into the bus with his left arm and he felt additional pain in his left shoulder.

4. During Claimant's testimony, he was shown a video[1] of him operating the wheelchair ramp on May 27, 2025. Claimant confirmed that this was the activity he was engaged in when he felt pain in his left shoulder. Claimant explained that the time stamp of the video may not be the specific moment when he felt that pain. Claimant testified that he operated ramps multiple times on different buses throughout his shift on May 27, 2025. Therefore, he cannot confirm the precise time that his left shoulder began to hurt.

5. At the end of his shift on May 27, 2025, Claimant reported the incident to Respondent and was sent for medical treatment.

6. On May 28, 2025, Claimant was seen at Injury Care Associates of Denver by Kelly Livingston, PA-C. On that date, PA Livingston recorded the May 27, 2025 incident as "he was cranking the ramp back up when he felt a pull in his LEFT shoulder" (*emphasis in original*). PA Livingston listed Claimant's diagnosis as a strain of the left shoulder, and noted that it was possible that Claimant suffered a biceps tear. PA Livingston prescribed Celebrex and ordered magnetic resonance imaging (MRI) of Claimant's left shoulder. With regard to whether Claimant's condition was work related PA Livingston stated that she was "unable to determine causation at this time".

7. On May 29, 2025, Claimant was seen at Injury Care Associates of Denver by Dr. Ericson Tentori. In the medical record of that date, Dr. Tentori records Claimant's mechanism

[1] That same video is part of the record at Exhibit Q.

of injury of operating the wheelchair ramp Claimant “initiated the activity with his left hand/upper extremity/shoulder but experienced fairly quick onset of left shoulder pain and therefore switched and finished the task with his right hand/upper extremity.” Dr. Tentori noted that he had been provided video footage of the alleged incident, however it was unclear to Dr. Tentori if the video was of the actual time of the onset of Claimant’s left shoulder pain. As a result, he noted that a causation assessment was pending. He stated that Claimant would proceed with a left shoulder MRI.

8. Also on May 29, 2025, Claimant underwent a left shoulder MRI. In the radiology report of that date, Dr. Brian Carrier listed his impressions as including, *inter alia*, a medial dislocation of the biceps tendon; a split tear of the biceps tendon at the lower bicipital groove; chronic full-thickness tearing and partial scarring of the upper half of the subscapularis tendon; moderate loss of upper subscapularis muscle bulk with fatty infiltration; a low grade partial tear of the posterior infraspinatus insertion; an intraosseous ganglion; moderate to severe anterior supraspinatus tendinosis (without tearing); a possible superior labral tear; and mild acromioclavicular joint osteoarthrosis.

9. Claimant testified that he learned that his claim had been denied. However, because he continued to have left shoulder symptoms, he sought treatment with Kaiser Permanente. On June 16, 2025, Claimant was seen by Devan Decell, PA at Lakewood Medical Offices Urgent Care at Kaiser Permanente Urgent Care. In the medical record of that date, PA Decell referenced the recent left shoulder MRI that showed a medial dislocation of the biceps tendon and a likely superior labral tear. PA Decell identified Claimant’s differential diagnoses as rotator cuff tear, labrum tear, fracture, dislocation, sprain/strain. At that time, Claimant was referred to physical therapy and for orthopedic consultation.

10. On July 29, 2025, Claimant was seen by Dr. Micah Naimark for an orthopedic consultation. Dr. Naimark recorded Claimant’s mechanism of injury as operating the bus ramp "with a removable bar when [he] felt a sudden increase in pain in the anterior aspect of the shoulder in the biceps region.” Dr. Naimark ordered and reviewed x-rays of Claimant’s left shoulder. Specifically, he noted joint space narrowing with osteophitic change. Dr. Naimark noted that this was consistent with mild glenohumeral joint osteoarthritis. Dr. Naimark also reviewed the report from the May 28, 2025 MRI. Dr. Naimark requested the MRI images for his

review and recommended conservative treatment that would include subacromial steroid injection, physical therapy, a home exercise program, and medications.

11. Dr. Naimark administered the recommended left subacromial bursa injection on July 29, 2025.

12. On September 8, 2025, Claimant attended an independent medical examination with Dr. Carlos Cebrian. In connection with the IME, Dr. Cebrian reviewed Claimant's medical records, obtained a history from Claimant, and performed a physical examination. In his IME report dated September 25, 2025, Dr. Cebrian opined that Claimant did not suffer a work related injury to his left shoulder on May 27, 2025. Dr. Cebrian referenced his review of the video of Claimant's use of the ramp mechanism on May 27, 2025. Dr. Cebrian opined that this mechanism would not require the necessary force to cause injury to Claimant's left shoulder. Dr. Cebrian also noted that the May 29, 2025, left shoulder MRI showed degenerative changes that are pre-existing and chronic. Dr. Cebrian also noted that Dr. Naimark's opinion that Claimant's shoulder condition was chronic and secondary to his age. Dr. Cebrian opined that Claimant suffered neither an acute injury nor a cumulative trauma injury on May 27, 2025. Dr. Cebrian further opined that Claimant's work activities on May 27, 2025 did not aggravate or accelerate the pre-existing condition of Claimant's left shoulder to necessitate treatment.

13. Dr. Cebrian's testimony was consistent with his written report. Dr. Cebrian explained that the MRI shows degenerative changes in Claimant's shoulder. Dr. Cebrian also noted that Dr. Naimark opined that the condition of Claimant's left shoulder is chronic and age related. Dr. Cebrian referenced the video of Claimant using the pole to raise and lower the ramp on the bus. Based upon his review of the video, it continues to be Dr. Cebrian's opinion that activity would not result in the condition of Claimant's left shoulder. Dr. Cebrian further noted that even if the video presented was not of Claimant's actions at the time of his alleged injury, the lifting and movement of the arm and shoulder is not significant enough to result in an injury.

14. The ALJ generally credits the medical records and the opinions of Dr. Cebrian. The ALJ specifically credits the opinion of Dr. Naimark that the condition of Claimant's left shoulder is chronic and age related. The ALJ finds that Claimant has failed to demonstrate that

it is more likely than not that his work activities on May 27, 2025, resulted in an injury to his left shoulder. The ALJ also specifically credits the opinion of Dr. Cebrian that the activity of raising and lowering the bus ramp did not aggravate or accelerate the pre-existing and chronic condition of Claimant's left shoulder to lead to his need for medical treatment.

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 which leads the trier-of-fact, after considering all of the evidence, to find that a fact is more probable than not. *Page v. Clark*, 197 Colo. 306, 592 P.2d 792 (1979). 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, *supra*. A Workers' Compensation case is decided on its merits. Section 8-43-201, *supra*.

2. 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.

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).

4. A compensable industrial accident is one that results in an injury requiring medical treatment or causing disability. The existence of a pre-existing 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. *H & H Warehouse v.*

Vicory, 805 P.2d 1167 (Colo. App. 1990); *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." *H & H Warehouse v. Vicory, supra.*

5. As found, Claimant has failed to demonstrate, by a preponderance of the evidence, that on May 27, 2025, he suffered an injury arising out of and in the course and scope of his employment with Respondent. As found, the medical records and the opinions of Drs. Cebrian and Naimark are credible and persuasive on this issue.

Order

It is therefore ordered that Claimant's claim regarding an alleged injury on May 27, 2025, is denied and dismissed. All remaining endorsed issues are dismissed as moot.

Dated December 2, 2025.

Cassandra M. Sidanycz
Administrative Law Judge
Office of Administrative Courts

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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. **It is also recommended that you provide a courtesy copy of your Petition to Review to the Grand Junction OAC via email at oac-gjt@state.co.us.**

Office of Administrative Courts
State of Colorado
Workers' Compensation No. 5-241-895-001

Issues

I. Whether Claimant overcame the opinion of the DIME physician that he is at MMI.

II. Whether Claimant established that he is entitled to have his lower extremity impairment rating converted to a whole person rating.

III. Whether Claimant overcame the impairment rating provided by the DIME physician.

IV. Whether Claimant established that he is entitled to a disfigurement award.

Findings of Fact

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

Claimant's injury and treatment

1. On June 7, 2023, Claimant sustained an admitted, work-related injury to his right lower extremity while working when another employee hit him with a tug (a small, motorized vehicle used to carry heavy packages), pinning his leg between the tug and a stationary guard or post.

2. Claimant was taken to UC Health Hospital where he underwent x-rays of his right leg, which included his tibia, fibula, and ankle. The x-rays demonstrated comminuted displaced fractures of the right distal tibia and fibula, but the ankle appeared normal.

3. On June 8th, the day after the accident, Claimant underwent emergency surgery to repair his right sided distal third tibial shaft fracture. The surgery required the use of hardware, which included screws and a tibial nail.

4. On June 28, 2023, Claimant started treating at Concentra and was seen by Dr. Garner. At this time, Claimant was non-weight bearing and was using crutches and a walking boot. At this appointment, Claimant complained of pain that was dull, constant, mild to moderate, and non-radiating. He also stated that direct pressure and any weight bearing aggravated his pain. Based on his assessment, Dr. Garner referred Claimant to physical therapy, which Claimant started on June 30, 2023.
5. On July 20, 2023, Claimant returned to UC Health and was seen by Jessie Larson, PAC, in orthopedics. At this appointment Claimant was cleared to weightbearing as tolerated in his cam boot but was still using crutches. At this time, Claimant's pain was primarily in his right ankle with ambulation, and PAC Larson noted soft tissue swelling around his right ankle.
6. On July 25, 2023, Claimant underwent physical therapy and received treatment that was directed towards his right knee and ankle.
7. On August 2, 2023, Claimant was seen by Hanna Bodkin, PA-C. At this appointment, Claimant continued to complain of right sided knee and ankle pain.
8. On September 5, 2023, Claimant returned to UC Health and saw Alisha Meserve, PAC. Claimant was weightbearing as tolerated and continued using a boot. He also continued to complain of right sided knee and ankle pain. Based on her assessment, she recommended that Claimant continue his physical therapy and focus on aggressive knee and ankle range of motion, strengthening, and gait training. It was also noted at this appointment that there was concern because Claimant was still wearing the fracture boot when he had been told to discontinue use of it. There was concern for Achilles tendinitis and posterior tibial tendinitis along with knee pain due to boot use as well as contusion from the nail. As of September 8, 2023, Claimant was no longer using his boot and had transitioned into an ankle brace.
9. On October 19, 2023, Claimant returned to UC Health and was seen by PAC Larson. At this appointment, it was noted that Claimant was continuing to improve—although slowly.

10. On December 19, 2023, Claimant returned to UC Health. At this appointment it was again noted that Claimant was doing well and continuing to make progress, although he did have occasional pain in his distal tibia near the fracture site. It was documented that his knee and ankle had full range of motion. There was no numbness or paresthesia documented in the right lower extremity at this time.

11. On January 18, 2024, Claimant complained to his physical therapist about developing fairly intense lower back pain over the weekend. However, at the following visit on January 23, 2024, just one week later, it was noted that his lower back pain had resolved.

12. On February 27, 2024, Claimant returned to Concentra and saw Dr. Nelson. At this appointment, it was noted that Claimant had been evaluated by his specialist, his orthopedic surgeon, and that everything looked okay. Dr. Nelson also noted Claimant was about 75% of the way towards meeting the physical requirements of his job so he was referred for additional treatment in the form of work hardening.

13. On March 27, 2024, Claimant was again seen by Dr. Nelson. At this appointment, Claimant's pain level was noted to be the same. It was also noted that Dr. Nelson evaluated Claimant's gait and Claimant demonstrated a normal gait, was full weight bearing, and did not have any ataxia or shuffling. Based on Claimant's progression, he anticipated Claimant would be at MMI in about 6-12 weeks.

14. On April 11, 2024, Claimant returned to Dr. Nelson and due to his symptoms, he wanted to discuss the possibility of returning to physical therapy. At this visit, Dr. Nelson concluded that Claimant was almost sufficient for the safe return to regular duty. He noted Claimant finished 6 or 9 work conditioning sessions and reached 100% of his physical goals. Thus, he released him for a trial of full duty and referred him to Dr. Zimmerman for an impairment rating.

Placement at MMI and Initial Impairment Rating

15. On May 9, 2024, Claimant was seen by Dr. Nelson and Dr. Zimmerman.[1] Dr. Nelson evaluated Claimant and placed him at MMI. He also documented his physical examination of Claimant's right leg and noted that Claimant had full range of motion, with pain, but that his strength, motor tone, and sensation were normal. He also documented that there was no atrophy. Regarding Claimant's right ankle, he found there was no tenderness, no crepitus, normal strength, and normal motor tone. He did, however, indicate in one section that Claimant's ankle range of motion was limited in all planes, but also stated in another section that it had full range of motion. He also evaluated Claimant's gait. He again found Claimant had a normal gait, was full weight bearing, and that he did not demonstrate any ataxia or shuffling. Dr. Nelson released Claimant to full duty, but assigned Claimant permanent restrictions which included no ladders, no uneven ground, and no stairs. He also stated that approximately 50% of each hour should be spent sitting and Claimant should be allowed to change positions while standing. Dr. Nelson also prescribed maintenance medical treatment that consisted of topical diclofenac gel and lidocaine ointment, ongoing medications for up to 6 months, follow up with orthopedics for the next 2 years, and possibly an EMG nerve conduction study to quantify any nerve damage.

16. On May 9, 2024, Dr. Zimmerman assessed Claimant for any permanent impairment by using the AMA Guides. Dr. Zimmerman assessed Claimant with a 16% lower extremity impairment rating of his right leg, which converted to a 6% whole person

[1] The medical reports from May 9, 2024, are somewhat confusing. The WC164 Report placing Claimant at MMI was completed by Dr. Nelson. There is also a report from that day listing Dr. Nelson as the provider. However, Claimant was referred to Dr. Zimmerman for an impairment rating on the same day, and Dr. Nelson's report appears to have incorporated the impairment rating calculated by Dr. Zimmerman. There is also a separate report from Dr. Zimmerman dated May 9, 2024, where he independently documents his assessment of Claimant's permanent impairment.

impairment rating. Dr. Zimmerman calculated Claimant's impairment rating as follows:

> For range of motion deficits of the right ankle, he receives a 5% lower extremity impairment. Then, for tibial nerve damage below the mid-calf using Table 51, the patient receives a 15% impairment for sensory deficit and 15% impairment for motor deficit. Then, using Table 10, Item #2, a 25% modifier is multiplied by 15% for a total of 4% lower extremity impairment for sensory deficit. Similarly, using Table 11, Item 3, for 50% loss of strength is multiplied against 15% motor deficit, totaling 8% lower extremity impairment for motor deficits. These 2 values together total 12% for motor and sensory disorders. Finally, combining the 5% range of motion deficit with 12% motor and sensory deficits, total 16% lower extremity impairment. Then, using Table 46, this converts to 6% whole person.

17. Dr. Zimmerman did not measure Claimant's left ankle and did not apply normalization in his impairment rating calculation.

18. Dr. Zimmerman also provided the same permanent work restrictions as Dr. Nelson. He also addressed maintenance medical treatment, and although he provided very similar maintenance medical treatment recommendations, he provided a bit more explanation and detail. Dr. Zimmerman also said that maintenance treatment should include topical diclofenac gel and lidocaine ointment for up to 6 months and that they were being prescribed to reduce swelling, inflammation and pain which in turn was expected to maximize Claimant's function, tolerance for rehabilitation and activity plus improve his sleep. Dr. Zimmerman also recommended that Claimant be allowed to follow up with orthopedics anytime within the next 2 years for any questions or concerns. He indicated that an EMG/nerve conduction study may be requested by orthopedics at any time as part of maintenance to quantify any sensory or nerve damage. Lastly, he indicated that if any surgeries are recommended, the case should be reopened and then Claimant should ultimately be assessed for any additional impairment at the appropriate time.

Treatment After Being Placed at MMI

19. On June 13, 2024, Claimant returned to UC Health and was seen by Lisa Allison Malyak, M.D. At this appointment it was noted that Claimant had pain to the proximal interlocking screw if he hits it on something, but yet his primary pain was overlaying the lateral distal interlocking screw and fracture. He also complained of ongoing paresthesias and decreased sensation of his foot. X-rays were taken and demonstrated a stable callus formation at the distal tibial fracture site without evidence of hardware failure, loosening, or malalignment. Overall, Claimant was continuing to progress. It was suggested that if his pain continued and plateaued, they could perform a CT scan to further evaluate his ongoing pain. It was also noted that if Claimant developed symptomatic hardware overlying the interlocks, they would discuss possibly taking the hardware out. Dr. Alfonso reviewed the assessment and plan of Dr. Malyak and concurred.

Division Independent Medical Examination

20. On September 30, 2024, Claimant underwent a Division Independent Medical Examination (DIME). The DIME was performed by Paul Ogden, M.D., and he issued his report on October 20, 2024. Dr. Ogden obtained a history from Claimant, reviewed his medical records, and performed a physical examination. The DIME application requested that Dr. Ogden evaluate the following body parts: right foot, right ankle, right knee, left ankle, and left knee.

21. In Section D of his report, titled "Pertinent Medical Issues," Dr. Ogden documented: "History of Osgood-Schlatter's both knees." This notation identifies Osgood-Schlatter disease as a preexisting medical condition affecting Claimant that predates the June 7, 2023, work injury.

22. Dr. Ogden noted that Claimant indicated his current pain was 5 out of 10. He also indicated Claimant completed an anatomic pain diagram and shaded various areas involving his right lower extremity, including along the right shin, immediately just below the knee, the medial right knee, and the dorsal right foot and anterior ankle. Claimant described stabbing pain, numbness over the dorsal foot, and pins and

needles. Dr. Ogden, however, did not indicate Claimant shaded his left ankle on the pain diagram.

23. In Section E of his report, titled "Patient's Interpretation – Subjective History," Dr. Ogden recorded Claimant's self-reported current symptoms regarding each body part:

    - Left ankle: "there was some pain in the left ankle, from walking in the boot for a while. He feels he needs to stretch the left hip."
    - Left knee: "it has been sensitive since Osgood-Schlatter. He is worried it could become a problem, though no specific problems at this time."
    - Right Foot: "numbness, motion not normal. Not painful."
    - Right ankle: "pain, shin pain. Pain radiates laterally up to the medial shin, then into the knee cap, around medial patella. Ankle motion is good but not great, but missing some swinging."
    - Right knee: "knee cap, pain. He did have Osgood Schlatter's, but hasn't had trouble with for some years. Overall motion good, but stabbing pain with full flexion or knee to chest stretch."

24. The ALJ finds that Claimant's subjective complaint of left ankle pain from walking in the boot may have arisen at some point during Claimant's recovery from the June 7, 2023, work injury. Claimant was placed in a walking boot as part of his treatment following the work injury. The medical records reflect that Claimant was using a walking boot through at least September 2023, and that there was concern at the September 5, 2023, orthopedic visit that Claimant was still wearing the fracture boot when he had been told to discontinue use of it. However, the ALJ does not find it credible that Claimant has ongoing left ankle pain. First, Claimant’s complaint to Dr. Ogden was specifically linked to "walking in the boot for a while," which was a temporary treatment modality that Claimant was instructed to discontinue by September 2023. Second, by the December 19, 2023, orthopedic follow-up, the medical records documented that Claimant's knee and ankle had full range of motion, with no mention of ongoing left ankle complaints. Third, when Claimant completed his

anatomic pain diagram at the DIME examination on September 30, 2024, Dr. Ogden indicated that Claimant only shaded areas involving his right lower extremity. Thus, he did not indicate Claimant marked his ankle as a current problem. Fourth, Dr. Ogden's physical examination revealed no peripheral edema or swelling, normal strength bilaterally, and equivalent range of motion in both ankles. Fifth, Dr. Ogden concluded that he could identify no specific injury or impairment to the left ankle related to the work injury. Sixth, when Dr. Ogden physically examined Claimant, he specifically noted that Claimant's gait was normal. Seventh, when Claimant was evaluated by Dr. Fall in March 2025 - nearly two years after the work injury and approximately six months after the DIME - there is no indication in her report that Claimant complained of left ankle symptoms. If Claimant had ongoing left ankle pain or impairment, it is reasonable to expect he would have reported such symptoms during an independent medical examination. The absence of left ankle complaints to Dr. Fall further supports the conclusion that any boot-related discomfort was temporary and had resolved. Based on these considerations, the ALJ finds that any left ankle discomfort Claimant may have experienced from walking in the boot was temporary and had resolved, and the ALJ does not credit Claimant's assertion that he had ongoing left ankle symptoms at the time he was placed at MMI or evaluated by Dr. Ogden. Thus, Dr. Ogden's decision to consider the left ankle as Claimant's baseline is supported by the evidence and found to be a reasonable decision in assessing Claimant's impairment.

25. By contrast, the left knee condition documented by Dr. Ogden - sensitivity since Osgood-Schlatter - is a preexisting condition that predates the June 7, 2023, work injury. Dr. Ogden identified Osgood-Schlatter disease as a "Pertinent Medical Issue," indicating it was a relevant preexisting medical condition rather than a symptom arising from the work injury or its treatment.

26. Claimant told Dr. Ogden that he felt he had recovered to about 75% of normal. But he also mentioned that he was considering having the hardware that was used during the surgery removed.

27. Dr. Ogden performed a physical examination of Claimant. He specifically noted that Claimant's gait was normal and that he can walk normally on his toes and heels. He noted Claimant can fully squat, but is mildly unstable with this, but maintains balance and rises without assistance. He also noted there was atrophy on Claimant's right quad and calf as compared to the same muscles on the left. He went on to describe the scars from Claimant's injury and surgery, which included a 4 cm x 1 cm axially oriented scar over the right quadriceps tendon, a small surgical scar over the right medial tibia, small surgical scars over the medial and lateral malleoli and sutured lacerations of the distal tibia, and a scar over the anterior distal tibia.

28. Dr. Ogden tested Claimant's strength and found it was five out of five in all areas tested in the lower extremities, including hip flexion and extension, knee flexion and extension, ankle dorsiflexion, and plantar flexion bilaterally. He noted that reflexes are brisk at the knees and ankles. The reflex finding was documented as being bilateral. Dr. Ogden did not characterize this finding as abnormal, hyperactive, or pathological. Dr. Ogden did not reference this finding in his rationale as a factor affecting his impairment analysis or as evidence of pathology in either ankle. He also noted pulses were symmetrical, there was no peripheral edema or swelling, and EHL extension was strong bilaterally.

29. Dr. Ogden tested for sensation and found it was intact throughout the lower extremities except for the dorsal right foot at the fourth and fifth toes up into the distal anterior ankle and the dorsal foot. He stated that this area has minimal sensation to fine touch, but there is normal sensation of the medial and lateral foot as well as the sole of his right foot.

30. Dr. Ogden evaluated Claimant's knees and found no evidence of ligament problems. Examination of both knees showed a normal Thessaly maneuver bilaterally, and Dr. Ogden could appreciate no evidence of ligamentous laxity in either knee, including anterior and posterior cruciate ligaments, medial and lateral collateral ligaments.

31. Dr. Ogden measured range of motion for both the right and left lower extremities:

    - Right knee: flexion 130°, extension 0°. Claimant is not able to hyperextend the right knee.

- Left knee: flexion 140°, able to hyperextend to 5°.
- Right ankle: dorsiflexion 10°, plantar flexion 40°, inversion 30°, eversion 10°.
- Left ankle: dorsiflexion 10°, plantar flexion 40°, inversion 50°, eversion 10°.

32. Dr. Ogden noted that although he was requested to also evaluate Claimant's left knee and ankle, he could not identify any specific injury or impairment related to Claimant's work accident. In Section L of his report, titled "Rationale for Your Decision," Dr. Ogden stated: "I was requested in the DIME application to evaluate the left knee and ankle. I could identify no specific injury or impairment related to this mechanism and date of injury and therefore have not provided impairment ratings to those body parts."

33. The ALJ notes that Dr. Ogden's range of motion measurements revealed that Claimant's right ankle inversion (30°) was less than his left ankle inversion (50°). This 20° difference is consistent with Dr. Ogden's use of the left ankle as a normalization baseline - the right ankle demonstrates reduced motion compared to the left, as one would expect when comparing an injured joint to an uninjured baseline. However, under Table 38 of the AMA Guides, 30° of inversion does not constitute a ratable impairment. Thus, while the right ankle shows reduced inversion compared to the left, this reduction does not translate to an impairment rating under the AMA Guides. The inversion measurements therefore support, rather than undermine, Dr. Ogden's determination that the left ankle was an appropriate baseline for normalization and that the right ankle has no ratable motion impairment after normalization is applied.

34. Regarding the left ankle specifically, Dr. Ogden stated in his rationale: "The right ankle moves as well as the left ankle and there is no identified motion impairment."

35. The ALJ finds that Dr. Ogden's report distinguishes between recording a patient's subjective complaints during the history-taking portion of the examination and reaching clinical conclusions based on objective examination findings. Dr. Ogden documented Claimant's subjective report of left ankle discomfort in Section E (Subjective History), conducted a physical examination documented in Section F, and

then reached a clinical conclusion in Section L that he could identify no specific injury or impairment to the left ankle related to the work injury.

36. The ALJ finds that Dr. Ogden's conclusion that he could identify "no specific injury or impairment" to the left ankle constitutes a clinical determination that no objective pathology existed in that joint related to the work injury, notwithstanding Claimant's subjective report of pain from walking in the boot at some point in time.

37. Dr. Ogden also considered the possibility that Claimant will have to have the hardware removed. Dr. Ogden concluded that such procedure could be performed as maintenance treatment.

38. Based on his assessment, Dr. Ogden concluded and agreed that Claimant is at MMI and agreed with the MMI date of May 9, 2024, provided by Dr. Nelson.

Dr. Ogden's Impairment Rating and Application of Normalization

39. Dr. Ogden proceeded to assess Claimant's impairment using the AMA Guides and the Division of Workers' Compensation Desk Aid #11. In Section K of his report, Dr. Ogden stated: "The impairment rating is completed consistent with AMA Guides Third Edition Revised as well as Desk Aid 11. Apportionment is not applicable. Normalization is used when appropriate."

40. Dr. Ogden concluded that Claimant has an 8% lower extremity impairment rating, which converted to a 3% whole person impairment rating. He also concluded that Claimant has a 1% whole person impairment for skin disfigurement due to scarring. He then combined the 3% whole person rating with the 1% whole person rating for a 4% whole person impairment rating.

41. Regarding the ankle impairment calculation, Dr. Ogden documented his methodology as follows:

> Ankle impairment is calculated using table 37 on page 66 for ankle plantar and dorsal flexion. Table 38 on page 67 is used for subtalar joint motion of inversion and inversion. Right ankle dorsiflexion 10° is a 4 percent impairment. Normalization for the left ankle 10° dorsiflexion results in a 0% impairment after subtracting 4 from 4. Plantar flexion of 40° is a 0%

impairment. Inversion of 30° is a 0% impairment. Eversion of 10° is a 2% impairment, however normalization of the left ankle which also has 10° of eversion results in a 0% impairment. Adding ankle impairments results in a 0% ankle impairment.

42. Regarding the knee impairment calculation, Dr. Ogden documented his methodology as follows:

> The knee impairment rating is completed using table 39 on page 68 for flexion and extension. 130° of flexion is a 7% impairment. Normalization cannot be used because of prior Osgood-Slaughter syndrome, some chronic knee pain on the left. 0° of knee extension is a 0% impairment. Total knee impairment 7%.

43. Regarding the peripheral nerve impairment, Dr. Ogden documented:

> Peripheral nervous system impairment is consistent with the superficial peroneal nerve. Figure 77 on page 73 is used to identify the root of origin. Table 51 provides the maximum sensory and motor loss for the specific nerve. Table 10 and table 11 are used for grading schemes for sensory and motor impairment from page 42. The superficial peroneal nerve accounts for a 5% maximum sensory deficit. This is a category two from table 10, 25% sensory impairment. Multiplying 25% times 5% rounds to a one percent lower extremity peripheral sensory impairment. I cannot identify a motor impairment.

44. Regarding the surgical scars, Dr. Ogden documented:

> He has multiple surgical scars, including a 1X4 cm scar on the right patellar tendon as well as multiple smaller scars over the shin. On page 232 table one the impairment classification for skin disease would be class one with signs of a skin disorder (surgical and traumatic scars), and with treatment there is no limitation. At this time, the scars have been well treated and there is no limitation. However, this qualifies for a one percent person additional whole person impairment.

45. The ALJ finds that the record supports Dr. Ogden’s decision to apply normalization to the ankle based on the following: (a) both ankles demonstrated equivalent range of motion in dorsiflexion (10° bilateral) and eversion (10° bilateral); (b) the right ankle's inversion (30°) was less than the left ankle's inversion (50°), which is consistent with comparing an injured joint to an uninjured baseline; (c) the December 19, 2023, orthopedic records documented that Claimant's knee and ankle had full range of motion, with no mention of left ankle complaints; (d) Claimant's anatomic pain diagram at the DIME did not indicate left ankle pain; (e) Dr. Fall's March 2025 IME contains no indication that Claimant reported left ankle symptoms; (f) Dr. Ogden identified no specific injury or impairment to the left ankle related to the work injury; and (g) the left ankle therefore served as an appropriate individual baseline for comparison.

46. The ALJ finds that Dr. Ogden declined to apply normalization to the knee because Osgood-Schlatter disease is a preexisting condition that has caused chronic left knee pain, making the left knee unsuitable as a baseline for Claimant's pre-injury knee function.

47. The ALJ finds that the different treatment of the ankle and knee in Dr. Ogden's normalization analysis reflects different clinical circumstances and data for each joint, not inconsistent methodology.

Normalization

48. The Division of Workers' Compensation Desk Aid #11 provides guidance on the use of normalization, stating in relevant part: "In some cases, the contralateral joint is a better representation of the patient's pre-injury state than the AMA Guides population norms." Desk Aid #11 further provides: "However, this subtraction should not be done if the contralateral joint has a known previous injury because that joint may not reflect the 'normal' ROM for that individual."

49. The ALJ finds that Osgood-Schlatter disease constitutes a "known previous injury" within the meaning of Desk Aid #11 that could affect knee range of motion and prevent the left knee from reflecting Claimant's normal pre-injury knee function. Dr. Ogden appropriately identified this as a reason not to apply normalization to the knee.

50. Claimant's subjective complaints of pain or discomfort in the left ankle from walking in a boot allegedly arose during recovery from the work injury, not from any preexisting condition affecting the left ankle. Accordingly, such complaints do not constitute a "known previous injury" within the meaning of Desk Aid #11 that would preclude the left ankle's use in normalization of the right ankle. The ALJ recognizes that if the work injury and its treatment caused persistent deficits to the left ankle, it would be inappropriate to use the left ankle as a normalization baseline - not because of a "known previous injury" under Desk Aid #11, but because normalization is intended to establish the patient's pre-injury individual baseline, and a joint affected by the work injury would not reflect that baseline. However, as found above, the credible evidence establishes that any left ankle discomfort from boot use was temporary and had resolved. The medical records from December 2023 documented full ankle range of motion. Claimant's pain diagram at the DIME did not indicate left ankle pain. Claimant's gait was normal at MMI and at the DIME. And Claimant did not report left ankle symptoms to Dr. Fall in March 2025. Accordingly, the ALJ finds that the left ankle was not affected by the work injury in a manner that would preclude its use as a normalization baseline.

Dr. Ogden's Compliance with Desk Aid #11 Guidance

51. Desk Aid #11 provides: "Make sure an explanation of the methodology and rationale are present in the report."

52. The ALJ finds that Dr. Ogden's report contains sufficient methodology and rationale to satisfy the guidance in Desk Aid #11:

- Dr. Ogden stated that his impairment rating was "completed consistent with AMA Guides Third Edition Revised as well as Desk Aid 11" and that "Normalization is used when appropriate."
- Dr. Ogden identified the specific tables from the AMA Guides used in his calculations (Tables 37, 38, 39, 46, 51, 10, and 11, as well as Figure 77).
- Dr. Ogden provided specific calculations demonstrating how normalization was applied to the ankle measurements.

- Dr. Ogden explained why normalization was appropriate for the ankle: "The right ankle moves as well as the left ankle and there is no identified motion impairment."
- Dr. Ogden explicitly explained why normalization was not appropriate for the knee: "Normalization cannot be used because of prior Osgood-Slaughter syndrome, some chronic knee pain on the left."
- Dr. Ogden stated that on the anatomic pain diagram Claimant shaded areas along his right lower extremity, but there is no mention of Claimant shading his left ankle.
- Dr. Ogden stated his overall clinical conclusion regarding the left lower extremity: "I could identify no specific injury or impairment related to this mechanism and date of injury."

53. The ALJ finds that Dr. Ogden's report demonstrates that he understood and applied the principles set forth in Desk Aid #11, within his discretion.

Dr. Ogden's Rationale for Differences from Dr. Zimmerman's Rating

54. In Section L of his report, Dr. Ogden explained the differences between his impairment rating and Dr. Zimmerman's rating:

> My impairment rating differs from that of Dr. Zimmerman dated May 9, 2024. Dr. Zimmerman did not rate the knee which is the primary impairment that I identified. Our ankle measurements were very close, however, Dr. Zimmerman did not measure the left ankle and did not apply normalization. We also differ significantly on the application of the neurologic impairment. Strength was normal on my examination and I could identify no impairment for strength. The sensory impairment is specific on my examination and anatomically lines up well dermatomally with that of the superficial peroneal nerve. Dr. Zimmerman identified a mid-calf, tibial nerve injury resulting in a higher rating. This appears to have improved significantly since the May 9, 2024 assignment by Dr. Zimmerman, accounting for the differences in impairment.

Independent Medical Examination Performed by Dr. Allison Fall

55. On March 13, 2025, Claimant underwent an Independent Medical Examination that was performed by Allison Fall, M.D. Her IME included obtaining a history from Claimant, reviewing his medical records, performing a physical examination, and then assessing his impairment under the AMA Guides.

56. Dr. Fall noted Claimant's current symptoms. She stated that Claimant said he experienced persistent numbness at the top of his foot following the surgery. He also said he had ongoing pain originating from a surgical screw located at the upper aspect of his tibia, with radiation of pain above the kneecap. He also stated that he had been trying to get the screw removed for the past year and had seen the surgeon in September of the previous year regarding this issue.

57. Claimant also described intermittent, achy pain around the ankle. Claimant also stated that he was unable to walk for more than approximately 15 minutes without developing increased pain that extended upward to the knee, accompanied by a sensation that his leg was going to "fall apart." He also said he was unable to run or jump, despite attempts to do so.

58. The Claimant went on to describe a sense of weakness and numbness in his right foot, which he attributed to nerve-related issues. He rated his pain at 3 out of 10 on the day of evaluation, with a reported pain range of 2 out of 10 at its least and 8 out of 10 at its worst. He indicated that his pain was typically worse in the evening and was aggravated by constant movement, but stretching and icing provided some relief. He also indicated that due to his symptoms, he was no longer able to participate in activities he previously enjoyed, such as coaching, although he was working on starting, or was working at, his own business. There is no indication in her report that Claimant complained of additional problems with his back, left knee, or left ankle or that he indicated new symptoms were due to any overcompensation for his right sided injuries.

59. Dr. Fall also performed a physical examination. Her examination included measuring Claimant's knee range of motion, bilaterally. Although she did not list range of motion measurements for either of Claimant's ankles, she did indicate in her report that his

hindfoot range of motion was normal. She also noted Claimant did not have an antalgic gait.

60. She then assessed Claimant's MMI status and impairment. Regarding MMI, Dr. Fall agreed with the treating providers and the DIME physician that Claimant reached MMI as of May 9, 2024, following extensive physical therapy and functional rehabilitation.

61. Regarding impairment of the right knee, Dr. Fall disagreed with the DIME physician's conclusion that the left leg could not serve as a valid baseline for comparison or normalization. She reasoned that even if the Claimant had a history of bilateral Osgood-Schlatter's disease, it would have affected both knees symmetrically and thus the left knee remained a reasonable reference. Based on the difference in flexion—130° in the right knee versus 140° in the left—she assigned a 3% lower extremity impairment rating for the right knee after subtracting or normalizing a 4% baseline impairment from a total of 7%.

62. Regarding the right ankle, Dr. Fall found no basis for a permanent impairment rating because the tibial fracture did not extend through the ankle joint and Claimant's hindfoot range of motion was normal.

63. Regarding any nerve damage, Dr. Fall agreed with the DIME's 1% lower extremity impairment rating for sensory deficit or pain in the distribution of the superficial peroneal nerve.

64. Dr. Fall stated that the nerve-related impairment, when combined with the 3% knee impairment, resulted in a total lower extremity impairment of 4%, which converts to a 2% whole person impairment under Table 46.

65. Dr. Fall rejected the assignment of a 1% impairment rating for skin disease by Dr. Ogden. She noted that the surgical and traumatic scars, although present, were well-treated and not associated with any functional limitations. As such, she concluded there was no ratable impairment for skin under the applicable classification system of the AMA Guides.

66. In the end, Dr. Fall concluded that Claimant had a total of 4% lower extremity impairment, converting to a 2% whole person impairment. Dr. Fall also stated that she

found no evidence of loss of function above the right leg. Lastly, she stated that removal of the screw could be pursued as maintenance care.

67. The ALJ notes that Dr. Fall's IME report disagreed with Dr. Ogden's decision not to normalize the right knee rating. However, Dr. Fall did not opine that Dr. Ogden erred in applying normalization to the ankle. Although Dr. Fall did not list specific range of motion measurements for Claimant's ankles, she made the clinical observation that Claimant's hindfoot range of motion was normal. While this general observation is entitled to less weight than specific measurements, it is nonetheless consistent with Dr. Ogden's determination that normalization of the ankle was appropriate and that no ankle impairment exists after normalization.

68. The ALJ has considered Dr. Fall's opinion regarding normalization of the knee. However, the ALJ finds Dr. Ogden's reasoning persuasive - that a preexisting condition causing chronic unilateral symptoms (sensitivity in the left knee "since Osgood-Schlatter") may affect the reliability of that joint as a baseline, even if the underlying condition theoretically affected both knees. Dr. Ogden, as the DIME physician who examined Claimant, used his independent judgement to assess whether the left knee was a suitable baseline for comparison and concluded it was not.

Absence of Medical Opinion Challenging Ankle Normalization

69. Although not required, the record does not contain a credible and persuasive medical opinion that Dr. Ogden misapplied the AMA Guides or Desk Aid #11 with respect to his normalization of the right ankle impairment.

Claimant's Testimony

70. Claimant testified that prior to his work-related injury, he had no functional impairments involving his right knee, right ankle, left knee, left ankle, or lower back. He stated that each of these body parts exhibited full range of motion and were free of pain or limitation.

71. Claimant testified that he currently experiences multiple symptoms in his right knee, including pain, instability, weakness, limited range of motion, and what he described

as "excruciating" pain beneath the kneecap, which he attributes to the implanted hardware. He also testified that his right ankle now demonstrates decreased range of motion, numbness, tightness, temperature sensitivity, instability, weakness, and intermittent swelling. He also reported noticeable muscle atrophy in the right calf.

72. Claimant testified that over time he developed new symptoms involving his left knee, left ankle, and lower back, which he attributes to overcompensating for the injuries to his right leg. He described his back as feeling tight and reported experiencing shooting pain that radiates from his calves, which he stated interferes with both walking and lying down. The physical therapy records from January 18, 2024, do reflect a complaint of back pain; however, records from the following week indicate that his back pain had resolved. There is no credible evidence that after January 2024 Claimant continued to report or receive treatment for back pain. Notably, Claimant did not request the Division Independent DIME physician to evaluate his back, and the DIME report does not reference any complaints of ongoing back pain related to overuse, overcompensation, or an altered gait. Furthermore, Claimant was evaluated by Dr. Fall in March 2025, and her report does not indicate that Claimant reported symptoms involving his back at that time.

73. Claimant testified that the hardware in his right knee causes pain that interferes with his daily activities, including climbing stairs and performing household tasks. He indicated that he has discussed the possibility of hardware removal and expressed an interest in undergoing that procedure. The medical records confirm that Claimant consulted with Dr. Malyak and Dr. Alfonso in June 2024, after being placed at MMI, and that hardware removal was discussed. It was also discussed that a CT scan would be necessary before proceeding with any hardware removal. However, the medical records do not indicate Claimant returned to Dr. Malyak or Dr. Alfonso to obtain the CT scan and determine whether hardware removal was appropriate. Moreover, there is no indication that Claimant's surgeon has recommended and sought authorization for surgery to remove the hardware.

74. Claimant testified that his injuries have adversely affected his overall function and mobility. He stated that he has difficulty with walking, particularly up stairs, and with

tasks such as placing items on high shelves. He further testified that his physical restrictions - including limitations against climbing ladders, walking on uneven surfaces, kneeling, and squatting - led to the loss of his job with Employer. While the ALJ credits Claimant's testimony that his injury and restrictions have affected his ability to perform certain activities of daily living, the ALJ finds that Claimant's functional impairment is limited to his right lower extremity.

75. Claimant also testified that, despite undergoing gait training at Concentra, he continues to walk with a limp. However, the medical records do not corroborate this testimony. The treatment records from Dr. Nelson indicate that when Claimant was placed at MMI, he evaluated Claimant's gait and found it was normal. Additionally, both the DIME report by Dr. Ogden and the March 2025 IME report from Dr. Fall note that upon examination of Claimant's gait it was normal or not antalgic.

76. Claimant testified that the surgical scars on his ankle remain sensitive to heat, cold, and physical touch. He reported that contact with the scar causes numbness and tightness radiating to the foot, which he attributes to possible nerve damage. He also stated that he must use specialized lotions to prevent the scar from becoming irritated, inflamed, or reopening.

77. Based on the totality of the evidence, the ALJ finds that Claimant's testimony concerning symptoms involving his left knee, left ankle, and lower back - allegedly caused by an altered gait or overcompensation - is not credible. To the extent the medical record contains references to left-sided complaints, the ALJ does not find such evidence persuasive in establishing that Claimant developed or continues to suffer from left knee pain, left ankle pain, or lower back pain as a result of an altered gait or overcompensation for his right lower extremity injury. Although earlier treatment records document that Claimant exhibited an altered gait during recovery, those symptoms had resolved by the time he was placed at MMI by Dr. Nelson. Moreover, subsequent evaluations by the DIME physician, Dr. Ogden, and IME physician, Dr. Fall, both noted that Claimant's gait was normal. In addition, while Claimant reported back pain in January 2024, those complaints were short-lived and resolved the following week. Furthermore, although Claimant requested the DIME, Claimant did

not ask the DIME physician to evaluate his back. In addition, neither the DIME report nor Dr. Fall's report reference back pain or other symptoms due to overuse or compensatory measures. Accordingly, the ALJ does not find credible Claimant's assertion that he developed and continues to suffer from back pain, left knee pain, or left ankle pain as a result of an altered gait or overcompensation. Thus, the ALJ does not find that Claimant has functional impairment of a portion of his body beyond his right lower extremity.

78. On the other hand, the ALJ does credit Claimant's testimony that he continues to experience pain in his lower right extremity and that he is interested in having the hardware removed.

79. However, due to a lack of persuasive corroborating and credible medical evidence, the ALJ does not credit Claimant's testimony regarding the severity and extent of his current symptoms - such as instability, weakness, and excruciating pain beneath the kneecap - as indicative of his condition at the time he was placed at MMI by Dr. Nelson or when he was evaluated by the DIME physician, who likewise concluded that Claimant was at MMI.[2]

Scars and Disfigurement

80. Claimant has a number of scars on his right lower extremity due to his work injury and the resulting surgery. The scars, each of which is different in color and texture compared to the surrounding skin, include the following:

- A surgical scar above his kneecap that is approximately 2½ inches long by 1/3 of an inch wide.
- A surgical scar below his kneecap that is approximately ¾ of an inch in diameter.

[2] Whether Claimant's condition has worsened since he was placed at MMI by Dr. Nelson and evaluated by the DIME physician is not an issue before the ALJ.

- A surgical scar on the inside of his ankle, plus three arthroscopic port scars.
- A scar on the outside of his ankle that is approximately two inches in diameter.
- A surgical scar on the front of his ankle—top of his foot—that is approximately ½ inch in diameter.

81. Claimant does have some atrophy of his right calf, and the ALJ finds that atrophy is due to his work injury.

82. At the hearing, Claimant also alleged he has a limp due to his work injury. In response to this allegation, the ALJ requested Claimant to walk in the courtroom to observe any apparent limp. During this demonstration, the ALJ observed Claimant limping and walking at a pace that appeared slower than normal walking speed. However, despite these observations, the ALJ finds that Claimant has not developed a permanent limp, or abnormal walking speed, due to his work injury. As found above, when Claimant reached MMI, the medical records indicate that his gait was evaluated and found to be normal. Additionally, both the DIME report by Dr. Ogden and the March 2025 IME report from Dr. Fall documented that upon examination, Claimant's gait was normal and not antalgic. Based on this medical evidence, the ALJ finds that Claimant has not suffered disfigurement due to an altered gait or abnormal walking speed.

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*, 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 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*, 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*, 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 Claimant Overcame the Opinion of the DIME Physician That He is at MMI.

MMI exists at the point in time when "any medically determinable physical or mental impairment as a result of injury has become stable and when no further treatment is reasonably expected to improve the condition." Section 8-40-201(11.5), C.R.S. A DIME

physician's finding that a party has or has not reached MMI is binding on the parties unless overcome by clear and convincing evidence. Section 8-42-107(8)(b)(III), C.R.S.; *Magnetic Engineering, Inc. v. Industrial Claim Appeals Off.*, 5 P.3d 385 (Colo. App. 2000).

The party seeking to overcome the DIME physician's finding regarding MMI bears the burden of proof by clear and convincing evidence. Magnetic Engineering, Inc. v. Industrial Claim Appeals Off., supra. Clear and convincing evidence is that quantum and quality of evidence which renders a factual proposition highly probable and free from serious or substantial doubt. Thus, the party challenging the DIME physician's finding must produce evidence showing it highly probable the DIME physician's finding concerning MMI is incorrect. *Metro Moving and Storage Co. v. Gussert*, 914 P.2d 411 (Colo. App. 1995). The question of whether the party challenging the DIME physician's finding regarding MMI has overcome the finding by clear and convincing evidence is one of fact for the ALJ.

Here, Claimant has failed to meet this heightened burden. Claimant's challenge to Dr. Ogden's MMI determination is not supported by credible evidence. First, Claimant's testimony regarding ongoing symptoms in his left knee, left ankle, and lower back - which he attributes to overcompensation and altered gait - was found not credible and is unsupported by credible evidence. The credible medical evidence establishes that any gait abnormalities had resolved by the time Dr. Nelson placed Claimant at MMI, and both Dr. Ogden's DIME evaluation and Dr. Fall's subsequent IME documented normal gait upon examination.

Second, while the ALJ credits Claimant's testimony regarding continued pain in his right lower right extremity and his interest in having the hardware removed, the ALJ does not credit Claimant's testimony regarding the severity and extent of his current symptoms, including claims of instability, weakness, and excruciating pain beneath the kneecap. This lack of credibility regarding symptom severity, and extent of symptoms, directly undermines Claimant's contention that Dr. Ogden erred in finding Claimant reached MMI as of May 9, 2024.

Third, the persuasive and credible evidence does not support Claimant's contention that the date of MMI assigned by Dr. Ogden is wrong. For example, Claimant's

back pain complaints were documented as resolved within one week in January 2024. Plus, Claimant did not ask Dr. Ogden to evaluate his back on the form requesting the DIME, and neither Dr. Ogden's DIME report nor Dr. Fall's March 2025 IME report reference ongoing back pain or compensatory injuries that require medical treatment. Moreover, Dr. Fall evaluated Claimant and also concluded Claimant reached MMI on May 9, 2024, and the ALJ finds her assessment to be persuasive and supported by the medical records.

Fourth, regarding the hardware removal issue, while Claimant expressed interest in the procedure and consulted with Dr. Alfonso in June 2024, the record does not establish Claimant pursued the recommended CT scan, or that Dr. Alfonso formally recommended and requested authorization for the procedure. Moreover, both Dr. Ogden and Dr. Fall acknowledged the possibility that Claimant might require hardware removal in the future. However, each expressly characterized such a procedure as maintenance treatment. The mere possibility of future elective hardware removal, without more, does not establish Claimant was not at MMI on May 9, 2024, as determined by Dr. Ogden.

Based on the credibility findings regarding Claimant's testimony and the lack of persuasive corroborating evidence supporting Claimant's position, Claimant has failed to produce credible evidence showing it is highly probable that Dr. Ogden's MMI determination was incorrect.

While Claimant did sustain a serious injury, and underwent a significant surgery, the issue before the court is whether Claimant reached MMI on the date assigned by Dr. Ogden. Whether Claimant's condition has worsened since being placed at MMI is not before this ALJ.

As a result, Claimant failed to establish by clear and convincing evidence that Dr. Ogden erred in placing him at MMI as of May 9, 2024.

II. Whether Claimant Established That He Is Entitled to Have His Lower Extremity Impairment Rating Converted to a Whole Person Rating.

When an injury results in a permanent medical impairment not set forth on a schedule of impairments, the claimant is entitled to medical impairment benefits paid as a whole person. See § 8-42-107(8), C.R.S. Whether the claimant has suffered a loss set forth on the schedule under § 8-42-107(2), C.R.S., or a whole person medical impairment compensable under § 8-42-107(8), C.R.S., is determined on a case-by-case basis. See *DeLaney v. Industrial Claim Appeals Off*., 30 P.3d 691, 693 (Colo. App. 2000).

Thus, the ALJ must determine the situs of a claimant's "functional impairment." *Velasquez v. UPS*, W.C. No. 4-573-459 (Apr. 13, 2006). The situs of the functional impairment is not necessarily the site of the injury. *See In re Hamrick*, W.C. No. 4-868-996-01 (ICAO, Feb. 1, 2016); *In re Zimdars*, W.C. No. 4-922-066-04 (Feb. 4, 2015). Pain and discomfort that limit a claimant's ability to use a portion of his body is considered functional impairment for purposes of determining whether an injury is off the schedule of impairments. *In re Johnson-Wood*, W.C. No. 4-536-198 (June 20, 2005); Vargas v. Excel Corp., W.C. 4-551-161 (Apr. 21, 2005). Moreover, in certain circumstances, a lower extremity injury for which an extremity impairment rating has been provided may be converted to a whole person impairment rating when the work-related injury causes a limp that functionally impairs the back, resulting in back pain. *See Webb v. Circuit City Stores*, Inc., W.C. No. 4-467-005 (August 16, 2002). However, the mere presence of pain in a portion of the body beyond the schedule does not require a finding that the pain represents a functional impairment. *Lovett v. Big Lots*, WC 4-657-285 (Nov. 16, 2007); *O'Connell v. Don's Masonry*, W.C. 4-609-719 (Dec. 28, 2006).

In this case, the ALJ finds and concludes that Claimant failed to establish by a preponderance of the credible evidence that his work injury caused functional impairment of a part of the body not found on the schedule. In this case, Claimant's functional impairment is limited to his right lower extremity - which is on the schedule. Although Claimant contends that his work injury caused functional impairment of part of his body not found on the schedule, i.e., his back, the ALJ finds that Claimant's back pain was short lived and had resolved by the time he had reached MMI. Thus, Claimant failed to establish by a preponderance of the evidence that his right lower extremity rating should be converted to a whole person.

III. Whether Claimant Overcame the Impairment Rating Provided by the DIME Physician.

A. Applicable Standard of Review

When a DIME physician provides both scheduled and non-scheduled (i.e., whole person) impairment ratings, distinct evidentiary standards apply to each type of rating. The heightened burden of proof established by § 8-42-107(8)(c), C.R.S., applies only to non-scheduled impairments and does not extend to scheduled injuries. As such, a DIME physician's whole person rating is presumed correct and may be overcome only by clear and convincing evidence. In contrast, a challenge to a scheduled extremity rating is governed by the preponderance of the evidence standard.

This distinction arises from the statutory scheme, which treats scheduled and non-scheduled impairments differently for purposes of determining permanent disability benefits. See § 8-42-107(8)(c), C.R.S.; *Delaney v. Indus. Claim Appeals Off.*, 30 P.3d 691, 693 (Colo. App. 2000); *Egan v. Indus. Claim Appeals Off.,* 971 P.2d 664 (Colo. App. 1998). The Industrial Claim Appeals Office has reaffirmed this interpretation in multiple decisions, holding that the statutory presumption in favor of the DIME's opinion does not apply to scheduled injuries. *See Ortega v. Trax Constr.*, W.C. No. 5-144-050 (ICAO Nov. 20, 2023); *Hackbarth v. A.W. Farrell & Sons*, W.C. No. 4-737-890 (ICAO Nov. 20, 2012).

Whether a physician has properly applied the AMA Guides is a question of fact for the ALJ. *Metro Moving & Storage Co. v. Gussert*, 914 P.2d 411 (Colo. App. 1995).

B. Whole Person Rating for Surgical Scars

Dr. Ogden provided Claimant with a 1% whole person impairment rating for his scars pursuant to the AMA Guides. The finding of a DIME physician concerning a claimant's medical impairment rating must be overcome only by clear and convincing evidence. Clear and convincing evidence is that quantum and quality of evidence which renders a factual proposition highly probable and free from serious or substantial doubt. Thus, the party challenging the DIME physician's findings must produce evidence showing it highly probable the DIME physician is incorrect. *Metro Moving and Storage*

Co. v. Gussert, 914 P.2d 411 (Colo. App. 1995); *Lafont v. WellBridge D/B/A Colorado Athletic Club*, W.C. No. 4-914-378-02 (ICAO, June 25, 2015).

However, Claimant is not challenging the 1% rating Dr. Ogden assigned for Claimant's surgical scars. And while Respondents have submitted the report of Dr. Fall in which she contends Dr. Ogden misapplied the AMA Guides by assigning Claimant a 1% whole person impairment rating for his surgical scars and erred by assigning Claimant an 8% lower extremity rating instead of a 4% rating, Respondents have not taken the position that Dr. Ogden erred and that his opinion should be overturned and that the rating provided by Dr. Fall should be adopted by the ALJ. Instead, Respondents contend Claimant has failed to overcome the opinion of Dr. Ogden and that the rating provided by Dr. Ogden should stand. Therefore, neither party is challenging the 1% whole person rating provided by Dr. Ogden for Claimant's surgical scars.[3] As a result, there does not appear to be the need for the ALJ to address this portion of his rating.

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[3] To the extent the analysis is required, the ALJ finds and concludes that there is insufficient evidence under either standard to establish Dr. Ogden erred in providing Claimant a 1% whole person impairment rating under the AMA Guides. Dr. Fall's assertion that no impairment should be assigned because the scars are "well-treated and not associated with any functional limitations" misinterprets the AMA Guides' rating criteria for skin disorders. Under Table 1 on page 232 of the AMA Guides, Class 1 skin disorders explicitly encompass "signs or symptoms of a skin disorder (surgical and traumatic scars) are present, and with treatment there is minimal to no limitation, in the performance of the activities of daily living." Moreover, this Class 1 category allows for the provision of a 0-5% whole person impairment rating. Thus, Dr. Ogden correctly identified that Claimant's surgical scars fall within this Class 1 category, which qualifies for a 0-5% whole person impairment rating despite the absence of functional limitations. The AMA Guides specifically contemplate that visible scarring constitutes a ratable impairment even when well-treated and causing no functional limitation. Therefore, Dr. Ogden's 1% rating is consistent with the plain language and application of the AMA Guides. (ALJ can take judicial notice of the AMA Guides and Desk Aid 11. See Serena V. SSC Pueblo Belmont Op Co. LLC., W.C. No. 4-922-344-01 (Dec. 1, 2015))

C. Extremity Rating for Claimant’s Right Leg

Another issue is whether Dr. Ogden properly applied the AMA Guides in assessing Claimant's right lower extremity impairment rating. Dr. Ogden assigned a 7% lower extremity impairment for Claimant's right knee based on reduced flexion and a 1% lower extremity impairment for superficial peroneal sensory deficit, resulting in an 8% lower extremity impairment, or 3% whole person impairment.

As noted above, the increased burden of proof, i.e., clear and convincing evidence, required by the DIME procedures does not apply to scheduled injuries, such as Claimant’s right lower extremity. Thus, Claimant must prove by a preponderance of the evidence that Dr. Ogden misapplied the AMA Guides by assigning this rating.

D. The Division of Workers’ Compensation Desk Aid #11 and Normalization

The Division of Workers' Compensation Desk Aid #11 provides guidance for assessing impairment using contralateral joint measurements, a method known as normalization, when the opposite joint better reflects the patient's pre-injury baseline. Desk Aid #11 states: "In some cases, the contralateral joint is a better representation of the patient's pre-injury state than the AMA Guides population norms." The Desk Aid further provides: "However, this subtraction should not be done if the contralateral joint has a known previous injury because that joint may not reflect the 'normal' ROM for that individual." The Desk Aid is not binding but may be applied at the physician's discretion. *Hackbarth v. A.W. Farrell & Sons*, W.C. No. 4-737-890 (Nov. 20, 2012).

E. Dr. Ogden's Application of Normalization Was Proper

The ALJ concludes that Dr. Ogden properly applied the AMA Guides and Desk Aid #11 in his use of normalization for the right ankle impairment calculation.

Under Desk Aid #11, normalization is appropriate when the contralateral joint "is a better representation of the patient's pre-injury state than the AMA Guides population norms." Normalization should not be applied when the contralateral joint has a "known previous injury" or otherwise does not reflect the patient's normal pre-injury function.

The ALJ finds that Claimant's left ankle was an appropriate baseline for normalization based on the following evidence in the record:

a) The medical records contain no credible evidence of a preexisting left ankle condition;

b) Although Claimant reported to Dr. Ogden that he experienced "some pain in the left ankle, from walking in the boot for a while," this complaint was linked to a specific, temporary treatment modality that ended by September 2023;

c) By December 19, 2023, the orthopedic records documented that Claimant's ankle had full range of motion, with no mention of ongoing left ankle complaints;

d) Claimant's anatomic pain diagram at the September 30, 2024, DIME examination shaded only areas of his right lower extremity and did not indicate left ankle pain;

e) Dr. Ogden's physical examination revealed equivalent range of motion in both ankles for dorsiflexion (10° bilateral) and eversion (10° bilateral);

f) The right ankle's reduced inversion (30°) compared to the left ankle (50°) is consistent with comparing an injured joint to an uninjured baseline;

g) Claimant's gait was documented as normal at MMI, at the DIME, and at Dr. Fall's March 2025 IME;

h) Dr. Fall's March 2025 IME report contains no indication that Claimant reported left ankle symptoms nearly two years after the work injury; and

i) No physician has rendered a credible and persuasive opinion that the work injury - whether through altered gait, boot use, or overcompensation - caused any persistent condition in the left ankle that would preclude its use as a normalization baseline.

Based on these findings, the ALJ concludes that the left ankle reflects Claimant's pre-injury individual baseline and that Dr. Ogden's application of normalization was appropriate.

Dr. Ogden's decision not to apply normalization to the knee was supported by the following: (a) Claimant has a documented history of Osgood-Schlatter disease, which Dr.

Ogden identified as a "Pertinent Medical Issue"; (b) Claimant reported that his left knee has been sensitive since developing Osgood-Schlatter; and (c) this preexisting condition affecting the left knee made it unsuitable as a baseline for Claimant's pre-injury knee function.

F. The Different Treatment of the Knee and Ankle Was Medically Consistent

The ALJ concludes that Dr. Ogden's different treatment of the knee and ankle in his normalization analysis was reasonable, within his discretion to apply the AMA Guides, and consistent with the principles set forth in Desk Aid #11. The different treatment reflects materially different clinical circumstances:

First, the left knee is affected by a preexisting diagnosed condition (Osgood-Schlatter disease) that has caused chronic sensitivity predating the work injury. This constitutes a "known previous" condition that may prevent the left knee from reflecting Claimant's normal pre-injury knee function. Dr. Ogden documented that Claimant's left knee "has been sensitive since Osgood-Schlatter." This chronic, preexisting symptom distinguishes the left knee from a joint that could serve as a reliable baseline.

Second, unlike the left knee, the left ankle had no preexisting condition. To the extent Claimant reported subjective pain in the left ankle from walking in a boot, such complaints arose during recovery from the work injury and do not constitute a "known previous injury" under Desk Aid #11.

Third, Dr. Ogden conducted a physical examination and reached different clinical conclusions regarding the two joints. For the left knee, he documented a history of a preexisting condition with ongoing sensitivity. For the left ankle, he concluded he could identify "no specific injury or impairment related to this mechanism and date of injury." While Dr. Ogden documented Claimant's subjective complaint of left ankle pain from walking in the boot, he was not required to credit that complaint or conclude that Claimant suffered decreased range of motion to his left ankle as a result of treatment, altered gait, or overcompensation caused by the work injury. Indeed, if any left ankle condition and/or range of motion deficits were attributable to the work injury itself - whether through treatment, altered gait, or overcompensation - it would have been improper to use that

deficit to normalize the right ankle rating, because normalization is intended to establish the patient's pre-injury individual baseline, not to subtract injury-caused deficits from injury-caused deficits. Dr. Ogden's clinical determination that the left ankle had no specific injury or impairment related to the work injury and that any range of motion measurements reflected Claimant's individual baseline rather than injury-caused deficits supported his discretionary decision to use the left ankle as a normalization baseline in determining Claimant's impairment. These different clinical findings and conclusions support the different treatment of the knee and ankle in the impairment analysis.

Fourth, the credible and persuasive medical evidence corroborates Dr. Ogden's determination that the left ankle was an appropriate baseline. At the orthopedic follow-up on December 19, 2023, it was documented that Claimant's knee and ankle had "full range of motion." Dr. Fall's March 2025 IME noted that Claimant's "hindfoot range of motion was normal." Dr. Ogden stated Claimant did not have an altered gait. And the pain diagram completed by Claimant at the DIME appointment did not indicate he had left ankle pain.

G. The Work Injury Did Not Affect the Left Ankle in a Manner Precluding Normalization

Claimant contends that the work injury and its treatment - specifically, prolonged boot use and an altered gait - affected his left ankle such that it no longer reflects his pre-injury baseline. The ALJ has considered this argument and rejects it based on the evidence in the record.

Even assuming Claimant experienced some left ankle pain during his recovery period while using the walking boot, the credible evidence establishes that any such discomfort was temporary and had fully resolved before Claimant was placed at MMI. The December 2023 orthopedic records documented full ankle range of motion. By the time of the DIME in September 2024, Claimant did not indicate left ankle pain on his anatomic pain diagram. His gait was consistently documented as normal at MMI, at the DIME, and at the March 2025 IME. And Claimant did not report left ankle symptoms to Dr. Fall nearly two years after the work injury.

The ALJ recognizes that if the work injury had caused persistent deficits to the left ankle, it would be inappropriate to use that joint as a normalization baseline - because

normalization is intended to establish the patient's pre-injury state, not to subtract injury-caused deficits from injury-caused deficits. However, that is not the case here. The credible evidence establishes that the left ankle was not injured by the work accident and was not persistently affected by the treatment or recovery process. Accordingly, the left ankle appropriately served as a baseline reflecting Claimant's individual pre-injury function.

H. Claimant's Subjective Complaints Do Not Establish Left Ankle Pathology

The ALJ concludes that Claimant's subjective report of left ankle discomfort from walking in the boot does not establish pathology that would preclude normalization.

Dr. Ogden documented Claimant's subjective report of left ankle pain from walking in the boot in Section E of his report (Subjective History). However, Dr. Ogden's clinical conclusion, based on his physical examination, was that he could identify "no specific injury or impairment" to the left ankle related to the work injury.

This clinical determination was supported by (a) the objective examination findings showing equivalent or greater range of motion in the left ankle compared to the right; (b) the absence of left ankle pain on Claimant's anatomic pain diagram; (c) the December 2023 medical records documenting full ankle range of motion; and (d) the absence of any left ankle complaints in the medical records after Claimant discontinued the boot in September 2023.

The mere fact that a patient reports subjective discomfort does not require a physician to find objective pathology or to conclude that the joint is unsuitable for normalization. Dr. Ogden considered Claimant's subjective report, conducted a physical examination, and reached a clinical conclusion that no injury or impairment to the left ankle existed. The ALJ finds this clinical determination was reasonable and supported by the evidence.

I. Dr. Ogden's Report Satisfies Desk Aid #11 Guidance

Desk Aid #11 provides: "Make sure an explanation of the methodology and rationale are present in the report."

The ALJ concludes that Dr. Ogden's report contains sufficient methodology and rationale to satisfy the guidance in Desk Aid #11. Dr. Ogden stated that his impairment rating was "completed consistent with AMA Guides Third Edition Revised as well as Desk Aid 11" and that "Normalization is used when appropriate." He identified the specific tables from the AMA Guides used in his calculations. He provided specific calculations demonstrating how normalization was applied to the ankle measurements. He explained why normalization was appropriate for the ankle: "The right ankle moves as well as the left ankle and there is no identified motion impairment." He explicitly explained why normalization was not appropriate for the knee: "Normalization cannot be used because of prior Osgood-Slaughter syndrome, some chronic knee pain on the left." He also stated his overall clinical conclusion regarding the left lower extremity: "I could identify no specific injury or impairment related to this mechanism and date of injury." Moreover, Dr. Ogden noted Claimant completed a pain diagram and shaded his right lower extremity, but he did not mention Claimant shaded his left ankle.

The ALJ finds that Dr. Ogden's report demonstrates that he understood and appropriately applied the principles set forth in Desk Aid #11, including the principle that normalization should not be used when a preexisting condition affects the contralateral joint.

J. **The Record Contains No Credible Medical Opinion Challenging Dr. Ogden's Ankle Normalization**

Although not required, the ALJ notes that the record does not contain a credible medical opinion that Dr. Ogden misapplied the AMA Guides or Desk Aid #11 with respect to his normalization of the right ankle impairment. Dr. Fall's IME disagreed with Dr. Ogden's decision not to normalize the knee rating, but she did not opine that Dr. Ogden erred in normalizing the ankle. To the contrary, Dr. Fall found no basis for any ankle impairment rating because Claimant's hindfoot range of motion was normal. While Dr. Fall did not provide specific ankle range of motion measurements, her clinical observation that hindfoot motion was "normal" is consistent with Dr. Ogden's determination. The absence of any credible and persuasive medical opinion challenging the ankle normalization - particularly when Dr. Fall specifically challenged other aspects of Dr.

Ogden's analysis - supports the conclusion that Dr. Ogden's application of normalization to the ankle was appropriate.

K. Conclusion Regarding the Impairment Rating

Accordingly, the ALJ finds and concludes Claimant has not met his burden of proving by a preponderance of the evidence that Dr. Ogden misapplied the AMA Guides in assessing his impairment.

The record also supports Dr. Ogden's assessment of a 1% impairment for the superficial peroneal nerve. While Dr. Zimmerman provided a higher rating, a preponderance of the evidence does not establish that Dr. Ogden's rating based on his physical examination and review of the medical records was incorrect.

As a result, the ALJ finds and concludes that Claimant sustained an 8% permanent impairment rating of the right lower extremity.

IV. Whether Claimant Established That He Is Entitled to a Disfigurement Award.

Disfigurement benefits are provided for in § 8-42-108, C.R.S. and are awarded for the observable consequences of an industrial injury. *Arkin v. Industrial Comm'n*, 145 Colo. 463, 358 P.2d 879 (1961).

Claimant has sustained a serious permanent disfigurement to areas of the body normally exposed to public view, which entitles Claimant to additional compensation. Based on the ALJ's observations and findings, Claimant has sustained a number of scars involving his right lower extremity. In addition to scarring, his right calf also developed some atrophy. As a result, the ALJ finds and concludes Claimant is entitled to disfigurement benefits under § 8-42-108(1). Thus, based on the totality of the overall appearance of his right lower extremity, which includes numerous scars and some atrophy of his calf, the ALJ awards Claimant $4,500.

Order

It is therefore ordered that:

1. Claimant failed to overcome the opinion of the DIME physician regarding MMI. Thus, Claimant reached MMI on May 9, 2024.
2. Claimant is entitled to an 8% lower extremity impairment rating. Claimant's scheduled impairment rating shall not be converted to a whole person.
3. Claimant is entitled to a 1% whole person impairment rating for his scarring.
4. Claimant shall be paid $4,500 for his disfigurement.

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 regarding the requirements for filing a Petition to Review a supplemental order, see section 8-43-301(6), 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: December 2, 2025

/s/ Glen Goldman

Glen B. Goldman
Administrative Law Judge
Office of Administrative Courts
1525 Sherman Street, 4th Floor
Denver, CO 80203

Issues

1. Whether Claimant's request for a right-sided Sacroiliac (SI) joint injection as recommended by her Authorized Treating Providers (ATPs) should be deemed authorized because Respondents' failed to comply with the utilization review standards set forth in Division of Workers' Compensation (DOWC) Rule 16-7.

2. Whether Claimant has demonstrated by a preponderance of the evidence that her request for a right-sided SI joint injection is reasonable, necessary and causally related to her December 6, 2006 admitted industrial injuries.

3. Whether Claimant has established by a preponderance of the evidence that she is entitled to reimbursement of mileage expenses for travel from her home in Willard, Utah to her ATPs in Colorado for medical appointments on March 11, 2025 and April 8, 2025.

Findings of Fact

1. Claimant worked for Employer as a Store Manager. On December 17, 2006 Claimant suffered an admitted work injury. Specifically, while lifting heavy ceramic pots weighing between 30 and 50 pounds she heard and felt something "pop" in her right groin.

2. The incident caused a strangulated hernia that required immediate surgery. Over the course of nearly 20 years Claimant has developed Complex Regional Pain Syndrome (CRPS) and undergone 30-40 surgeries. Claimant testified that most of the surgeries were to reposition the wires of a spinal cord stimulator.

3. Claimant reached Maximum Medical Improvement (MMI) in 2011. The claim remains open only for *Grover* medical maintenance benefits.

4. Claimant testified that for years she has received significant therapeutic relief from SI joint injections administered by ATP Giancarlo Checa, M.D. She began receiving the injections quarterly in approximately 2017. Claimant maintained that the injections have consistently provided significant functional improvement and allowed her to engage in activities of daily living. She remarked that the injections reduce her back pain by as much as 80% for nearly three months at a time. Claimant has not received an SI joint injection since February 2022.

5. However, the medical records do not support Claimant's testimony regarding the effectiveness of the SI joint injections. On September 15, 2017 Claimant received her first right diagnostic therapeutic SI joint injection from Peter Reusswig, M.D. Dr. Reusswig was experimenting "with effective ways of reducing her pain to try to allow her to rely on less opiate pain medication." Claimant described her pain as largely in the right lower back and right groin. Dr. Reusswig diagnosed Claimant with sacroiliitis. Notably, Claimant was also taking Nucynta ER 100 mg twice per day and IR short-acting 100 mg Nucynta up to four times per day. Claimant reported the injection reduced her pain from an 8/10 to 3/10 level.

6. By October 30, 2017, or about six weeks later, Claimant reported a pain score of 6/10 and described shooting pain that was very deep on the right side of her back. She stated that it felt "like waves are crashing onto the beach. It just keeps coming." Dr. Reusswig commented that the pain in Claimant's right SI region had returned to baseline.

7. On November 19, 2018 Claimant listed her pain score as 7/10. Dr. Checa noted that she had last undergone an SI joint injection on June 6, 2018. He ordered repeat SI joint injections, noting that Claimant "typically has 50-75% relief with these injections for 6-12 weeks."

8. On July 19, 2019 Dr. Checa provided Claimant with an SI joint injection to treat her for "sacroiliitis – not elsewhere classified." He first injected Claimant with Fentanyl 200 mcg. In the recovery room, Claimant reported 51% relief.

9. By October 22, 2019 Rachel Spady, PA-C remarked that Claimant's pain was "quite well managed between injections and her medications." At the same appointment

Claimant stated she had a pain score of 7/10. Claimant reported that through her treatment from MD Pain, her pain control, function and quality of life were unchanged.

10. On December 30, 2019 Claimant returned to Dr. Checa. She reported a pain score of 7/10. Claimant again commented that her pain control, function and quality of life have been unchanged. Claimant noted 60% pain relief of her chronic sacroiliitis at the same appointment. Approximately one month after the injection on January 27, 2020 Claimant reported a pain score of 7/10.

11. On October 2, 2020 Claimant underwent an MRI of the lumbar spine. The findings revealed bilateral SI joint arthritis and a transitional L5-S1 segment.

12. On July 15, 2021 Claimant underwent a pelvis and SI Joint MRI. The imaging reflected mild bilateral SI joint space narrowing and osteophytes, small SI joint effusions, and mild regions of increased signal intensity along the margins of the anteroinferior SI joints. Claimant also underwent x-rays of the bilateral hip and pelvis that revealed mild bilateral joint space narrowing and small osteophyte, leading to mild SI joint arthritis. None of Claimant's pelvic and SI joint MRIs or x-rays showed that she had SI joint dysfunction or sacroiliitis.

13. On December 2, 2021 PA-C Spady noted that Claimant had undergone SI joint injections on September 29, 2021 and reported instantaneous relief of 80%. However, Claimant "fell several days after decreasing relief to 50% currently." Claimant reported a pain score of 7.5/10. PA-C Spady remarked that Claimant had right chronic lower back/buttock pain due to sacroiliitis and SI joint dysfunction. She referenced Claimant's lumbar MRI, pelvic MRI, and x-rays of bilateral SI joints. Based on the results, PA-C Spady determined that Claimant had "notable SIJ osteoarthritis."

14. On January 22, 2022 Claimant underwent a right SI joint injection. Dr. Checa noted that "[l]ocal anesthetic with moderate intravenous sedation requestion by the patient." Claimant reported instantaneous 85% relief. However, by February 18, 2022, or less than one month later, Claimant reported a pain score of 7/10.

15. Claimant's treating providers at MD Pain, Dr. Checa and PA-C Spady, have recommended a right-sided SI joint injection to treat her continuing lower back pain. Notably, on October 29, 2024 Dr. Checa recounted that Claimant presented with a chief complaint of lower back pain. He noted that Claimant had obtained excellent relief from previous SI joint injections. In response, Respondents scheduled an Independent Medical Examination (IME) with L. Barton Goldman, M.D. that was conducted on October 21, 2024.

16. On November 8, 2024 Respondents denied Claimant's request for prior authorization. They explained that:

> Pursuant to W.C.R.P., 16-7-2(E), [Claimant] underwent an October 21, 2024, Independent Medical Examination (IME) with Dr. Bart Goldman. We have yet to receive Dr. Goldman's IME Report. However, we have forwarded your request, and the records contained within, to Dr. Goldman for review. Respondents are denying your request for authorization for these injections pending the IME opinion, [Claimant] and her attorney are aware of the recent IME and have been included in this correspondence. Once the IME Report is completed and received, we will forward [it to Claimant's counsel].

However, Dr. Goldman did not issue an IME report until March 10, 2025.

17. On September 18, 2025 the parties conducted the pre-hearing evidentiary deposition of Dr. Goldman. He explained that Claimant sustained a work injury on December 17, 2006 and re-aggravated a hernia in her right groin. A complication of her hernia surgery caused nerve pain resulting in CRPS. Dr. Goldman identified CRPS as Claimant's main pain generator. He disputed Claimant's diagnosis of sacroiliitis because CRPS is a neurological condition that would not cause sacroiliitis.

18. Dr. Goldman explained that x-rays revealing mild SI joint arthritis were unremarkable and physiologically appropriate for a patient of Claimant's age. However, they were inconsistent with sacroiliitis. The MRI also showed mild SI joint arthritis and bilateral effusions, but no significant inflammation or lateralizing findings specific to her right-sided pain.

Instead, the MRI revealed findings that Dr. Goldman correlated with a chronic recurrent strain and muscle pain in the SI region. However, the conditions did not directly involve the SI joint.

19. Dr. Goldman recounted that Claimant has received numerous SI joint injections. He summarized that the injections have not effectively reduced Claimant's pain or reliance on opioid medications. They also have not provided significant functional improvement. Dr. Goldman noted that, while some reports reflect high pain relief percentages, they do not correlate with documented functional improvement or decreased opioid use. Claimant's instantaneous response after receiving SI joint injections was due to her receipt of conscious sedation with an injection of 100-200 mcg of Fentanyl. Her longer-term lackluster response to the injections occurred because she was treated for a misdiagnosed condition that was unrelated to her work-related injury. While diagnostic evaluations show Claimant has notable osteoarthritis in both the right and left SI joints, these are degenerative changes consistent with a patient of Claimant's age. The conditions are unrelated to her work injury or associated CRPS.

20. Dr. Goldman explained that Claimant's response to treatment did not satisfy DOWC Rule 17 criteria especially involving documented functional improvement and correlation with pain scores. He emphasized the need for specific, quantified functional benefits. Dr. Goldman maintained that Claimant can be treated effectively within Rule 17 guidelines with different approaches.

21. Claimant has relocated from Colorado to Willard, Utah. She continues to receive treatment with her established providers at MD Pain in Colorado for her complex, long-term medical needs that require monthly in-person visits for medication management. On February 25, 2025 Claimant filed an Application for Hearing that endorsed the issue of mileage reimbursement. On April 28, 2025 Claimant specifically submitted a mileage reimbursement request of 2148 miles for two separate round trips to-and-from Utah and Colorado that occurred on March 11, 2025 and April 8, 2025.

22. On April 29, 2025 Claimant submitted a Notice of Change of Address reflecting that she had moved from Colorado to Utah. Respondents have denied payment for Claimant's mileage for the two round trips from Utah to Colorado.

Conclusions of Law

1. The purpose of the "Workers' Compensation Act of Colorado" (Act) 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. §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. §8-42-101, 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); *People v. M.A.*, 104 P.3d 273, 275 (Colo. App. 2004). 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. §8-43-201, C.R.S. A Workers' Compensation case is decided on its merits. §8-43-201, C.R.S.

2. The Judge's factual findings concern only evidence that is dispositive of the issues involved; the Judge 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. *See Magnetic Engineering, Inc. v. ICAO,* 5 P.3d 385, 389 (Colo. App. 2000).

3. When determining credibility, the fact finder should consider, among other things, the consistency or inconsistency of the witness's testimony and actions; the reasonableness or unreasonableness (probability or improbability) of the testimony and actions; the motives of the witness; whether the testimony has been contradicted; and bias, prejudice, or interest. *See Prudential Insurance Co. v. Cline*, 98 Colo. 275, 57 P.2d 1205 (1936); CJI, Civil 3:16 (2007).

Deemed Authorization

4. Claimant contends that her request for right-sided SI joint injections should be deemed authorized pursuant to Rule 16-7-2(E) (effective January 1, 2023) because Respondents failed to fully comply with the required timing provisions for exchanging Dr.

Goldman's report. Rule 16-7-1(B) as it was in effect at the time of the request for prior authorization, provided that a payer respond to all prior authorization requests in writing within 10 days from receipt of a completed request. Rule 16-7-2(E) provided in relevant part:

> (E) Failure of the payer to timely comply in full with all Prior Authorization requirements outlined in this rule shall be deemed authorization for payment of the requested treatment unless the payer has scheduled an independent medical examination (IME) and notified the requesting provider of the IME within the time prescribed for responding.
>
> …
>
> 2. The IME physician must serve all parties concurrently with the report within 20 days of the IME.

5. When an insurer elects to obtain an IME in response to a prior authorization request, WCRP 16-7-2(E) imposes a strict deadline for the issuance of the IME report. Specifically, Rule 16-7-2(E)(2) mandates: "the IME physician must serve all parties concurrently with the report within twenty days of the IME." Claimant asserts that Respondents and Dr. Goldman failed to comply with the Rule because Dr. Goldman did not issue his report until March 10, 2025 or nearly five months after the examination. Therefore, Insurer's failure to comply with all prior authorization requirements renders the denied treatment authorized as a matter of law.

6. Despite Claimant's contention, the context and structure of Rule 16-7-2(E) reflects that the failure to timely submit an IME report in contravention of Rule 16-7-2(E)(2) does not mandate that a requested procedure is deemed authorized. Importantly, the language regarding deemed authorization does not apply when the payer has requested an IME. Respondents complied with the "exception" provided in Rule 16-7-2(E) by timely requesting an IME. Consequently, the request for prior authorization was not "deemed authorized." The failure to timely exchange the IME report, while perhaps a valid basis for monetary penalties, is not "deemed authorization" under the plain language of WCRP 16-7-2(E). Accordingly, Claimant's argument fails.

7. The same rules of statutory construction apply whether construing an

administrative regulation or interpreting a statute. *Lucero v. Dep't of Insts. Div. of Developmental Disabilities,* 942 P.2d 1246, 1249 (Colo. App. 1996). The primary task in interpreting administrative regulations is to give effect to the intent of the enacting body. *Benuishis v. Indus. Claim Appeals Off.,* 195 P.3d 1142 (Colo. App. 2008). "Rules promulgated by an agency are presumed to be valid, and plaintiffs bear the burden of demonstrating that a rule-making body has exceeded its statutory authority." *Table Servs., LTD v. Hickenlooper*, 257 P.3d 1210, 1217 (Colo. App: 2011).

8. The best indicator of the Director's intent is the plain language of the Rule, unless that interpretation produces an absurd result. *Safeway, Inc. v. Indus. Claim Appeals Off.*, 186 P.3d 103, 105 (Colo. App. 2008). If there is any ambiguity in the Rule, it should be construed to give sensible effect to all its parts. Further, the problem that the Rule sought to remedy may be considered. *See Monfort Transportation v. Indus. Claim Appeals Off.*, 942 P.2d 1358 (Colo. App. 1997); *Henderson v. RSI. Inc.*, 824 P.2d 91 (Colo. App. 1991).

9. The Director's stated purpose in promulgating WCRP 16 was to comply with the legislative charge to assure the quick and efficient delivery of medical benefits at a reasonable cost. *See* Rule 16-1. The purpose of prior authorization of treatment under the Rule is to facilitate the determination of the reasonableness of treatment by directing the physician to submit a request that is either granted or denied by the insurer. *Slotterback v. Morgan County*, W.C. No. 5-090-380-003 (Nov. 20, 2025). The Rule protects the provider from supplying treatment considered by the insurer to be non-compensable. *See Repp v. Prowers Medical Center,* W.C. No. 4-530-649 (Sept. 12, 2005).

10. Notably, Rule 16-7-2(E) specifies that the failure to comply with all prior authorization requirements in Rule 16-7-2 is deemed "prior authorization" for requested treatment "*unless the payer has scheduled an independent medical examination (IME) and notified the requesting provider of the IME within the time prescribed for responding*." (emphasis added). The Director's use of "unless" introduces a condition or an exception and confirms that when a payer fails to comply with the terms of the Rule, the request is deemed authorized *except* on the condition that the payer has scheduled an IME and notified the requesting provider within the 10-day time frame. *Slotterback v. Morgan County*, W.C. No. 5-090-380-003 (Nov. 20, 2025).

11. Here, Respondents timely requested an IME within the 10-day timeframe. Although there are enumerated criteria regarding the transmission of an IME report after an IME has been requested, they are not triggered as long as an IME has been requested within the 10-day timeframe of 16-7-2(E)(2). Because Respondents met that condition, the request for prior authorization is not deemed authorized, regardless of the other timeline violations. Specifically, despite Respondents and Dr. Goldman failure to comply with the Utilization Standards because Dr. Goldman's report was not issued until March 10, 2025, or nearly five months after the IME, prior authorization is not deemed authorized. *See Slotterback v. Morgan County*, W.C. No. 5-090-380-003 (Nov. 20, 2025) (concluding that (the Director's use of "unless" introduces a condition or exception and confirms that when a payer fails to comply with the terms of the Rule, the request is deemed authorized, *except* on the condition that the payer has scheduled an IME and notified the requesting provider of the IME within the 10-day time frame); *Poveromo v. Penske Truck Leasing*, WC No. 5-282-770 (ICAO Nov. 25, 2025) (relying on *Slotterback* in determining that an evidentiary hearing was required because the request for spinal fusion surgery was not "deemed authorized" by operation of Rule 16-7-1(C)).

Reasonable, Necessary and Related

12. Generally, to prove entitlement to medical maintenance benefits, a claimant must present substantial evidence to support a determination that future medical treatment will be reasonably necessary to relieve the effects of the industrial injury or prevent further deterioration of her condition. *Grover v. Industrial Comm'n.,* 759 P.2d 705, 710-13 (Colo. 1988). When the respondents contest liability for a particular benefit, the claimant must prove that the challenged treatment is reasonable, necessary and related to the industrial injury. *Id.* Specifically, respondents are not liable for future maintenance benefits when they no longer relate back to the industrial injury. *See In Re Claim of Salisbury*, W.C. No. 4-702-144 (ICAO, June 5, 2012).

13. Claimant has failed to demonstrate by a preponderance of the evidence that her request for a right-sided SI joint injection is reasonable, necessary and causally related to her December 6, 2006 admitted industrial injuries. The record reflects that Claimant's initial injury consisted of an exacerbation of a pre-existing hernia that caused the development of CRPS in

the lower right back and right groin. Although Claimant seeks an additional SI joint injection, the record, Rules and persuasive testimony of Dr. Goldman reveal that the lack of therapeutic response and functional improvement suggest they are not causally related to her work injuries.

14. Under Rule 17, Exhibit 1, Recommendation 106, Repeat SI joint injections are only recommended when the first injection resulted in a sustained therapeutic response for three months or more and is characterized by the following: (1) improvement in at least three physical examination findings consistent with SI joint origin pain; and (2) at least 80% improvement in an accepted pain scale. Furthermore, Rule 17, Exhibit 1, Recommendation 105, states that the "following requirements must be met prior to proceeding with a SI joint injection" and clarifies that there must be consistent physical examination findings that show SI joint *origin* pain.

15. Here, Claimant's consistent and poor response to SI injections over the years has failed to meet any of the Rule 17 criteria for repeat SI joint injections. Claimant's well-documented response to the SI joint injections consistently: (1) failed to reflect a sustained therapeutic response for three months or more; (2) did not improve her pain score in at least three physical examination findings; (3) did not reflect SI joint origin pain; and (4) failed to provide her with at least 80% improvement in an accepted pain scale. Therefore, any SI joint origin pain, arising from SI joint osteoarthritis, is unrelated to the work injury and associated CRPS. Instead, the medical records provide substantial evidence that Claimant's physiologic response to SI joint injections fails to meet Rule 17 criteria for continuing SI joint injections under her Workers' Compensation claim. Rather, the records reflect that Claimant has undergone repeat SI injections for treatment of age-related degenerative medical conditions that are not attributable to her work-related CRPS.

16. Similarly, Dr. Goldman explained that Claimant's response to treatment did not adhere to Rule 17 criteria especially involving documented functional improvement and correlation with pain scores. Dr. Goldman recounted that Claimant has received numerous SI joint injections. He summarized that the injections have not effectively reduced Claimant's pain or reliance on opioid medication, nor have they led to significant functional improvement. He emphasized the need for specific, quantified functional benefits, ideally verified by independent therapists. Dr. Goldman noted that, while some reports reflect high pain relief

percentages, they do not correlate with documented functional improvement or decreased opioid use. Claimant's instantaneous response after receiving SI joint injections was due to her receipt of conscious sedation.

17. Furthermore, the persuasive testimony of Dr. Goldman demonstrates that right-sided SI joint injections are unrelated to her work injury. Her longer-term lackluster response to the injections occurred because she was treated for a misdiagnosed condition that was unrelated to her work-related injury of CRPS. While diagnostic evaluations show Claimant has notable osteoarthritis in both the right and left SI joints, these are degenerative changes consistent with a patient of Claimant's age. The conditions are unrelated to her work injury or associated CRPS.

18. Based on the medical records, the application of Rule 17 and the persuasive opinion of Dr. Goldman, Claimant has failed to demonstrate that her request for a right-sided SI joint injection is reasonable, necessary and causally related to her December 6, 2006 admitted industrial injuries. The record reflects that Claimant's initial injury consisted of an exacerbation of a pre-existing hernia that caused her to develop CRPS in the lower right back and right groin. Because the right-sided SI joint injections are not causally related her work injury and Claimant has failed to meet any of the Rule 17 criteria for repeat SI joint injections, Claimant's request for a right-sided SI joint injection is denied and dismissed.

Mileage Reimbursement

19. Claimant has established by a preponderance of the evidence that she is entitled to reimbursement of mileage expenses for a total of 2148 miles based on travel from her home in Willard, Utah to her ATPs in Colorado for medical appointments on March 11, 2025 and April 8, 2025. The record reflects that the travel was reasonable and necessary to obtain compensable medical care and complies with relevant statutes.

20. Section 8-42-101(7)(a), C.R.S. provides, in relevant part:

> a Claimant must submit a request for mileage expense reimbursement for travel reasonably necessary and related to obtaining compensable treatment,

> supplies, or services specified in subsection (1)(a) of this section to the employer or, if insured, to the employer's insurer no later than one hundred twenty days after the date the expense is incurred unless good cause for a later submission if shown. . . . Within thirty days after the date the Claimant submits the request for mileage expense reimbursement, the employer or employer's insurer shall pay the mileage expenses or, if denying the request, provide written notice to the Claimant stating the reason the request was denied.

21. The record reveals that Claimant suffers from a complex, chronic condition resulting from a work injury nearly two decades ago. She has been under the care of the specialists at MD Pain for years. Her treatment was reasonable, necessary and related to her chronic condition. Furthermore, Claimant credibly testified that from 2014 to 2018, she also lived in Utah, and the current Insurer paid for her monthly travel to visit her doctors in Colorado.

22. Nevertheless, despite the clear language in §8-42-101(7)(a), C.R.S. Respondents contend that Claimant was required to submit an advance request for travel reimbursement pursuant to §8-42-101(7)(b), C.R.S. The subsection provides, in relevant part,

> Within seven days after the date of receipt of a Claimant's written request for advance mileage expenses for travel that is reasonably necessary and related to obtaining compensable treatment, supplies or services specified in subsection (1)(a) of this section and requires round-trip travel greater than one hundred miles, the employer or the employer's insurer shall pay the advance mileage expenses or, if denying the request, provide written notice to the Claimant stating the reason the request was denied.

23. Here, Claimant timely a submitted a mileage reimbursement request for reasonable, necessary, and related compensable medical treatment on May 5, 2025 for a total of 2148 miles. Respondents denied payment for reimbursement and at hearing argued that §8-42-101(7)(b), C.R.S. required Claimant to request mileage expenses in advance because the total roundtrip exceeded 100 miles. However, because there is no requirement that a claimant must submit an advance request for mileage reimbursement for travel in excess of 100 miles,

Respondents' contention fails.

24. A claimant is entitled to reimbursement for reasonable, necessary, and related mileage reimbursement under §8-42-101(7)(a), C.R.S. Section 8-42-101(7)(b), C.R.S. only applies to claims where a claimant makes a written request for "advance" medical mileage and is intended to cover matters where a claimant requires payment of advanced mileage to cover anticipated travel costs. Section 8-42-101(7)(b), C.R.S. is not designed to bar a Claimant's recovery of medical mileage reimbursement under §8-42-101(7)(a), C.R.S. It is intended to relieve the burden of anticipated travel costs for claimants that cannot fund travel over 100 miles. Section 8-42-101(7)(b), C.R.S. simply does not require a Claimant to request pre-approval of travel costs for trips greater than 100 miles. Accordingly, Claimant is entitled to mileage reimbursement of 2148 miles based on her two separate round trips to-and-from Utah and Colorado that occurred on March 11, 2025 and April 8, 2025.that was timely submitted on May 5, 2025.

Order

Based upon the preceding findings of fact and conclusions of law, the Judge enters the following order:

1. Claimant's request for a right-sided SI joint injection is not "deemed authorized" pursuant to WCRP 16-7-2(E).

2. Claimant's request for a right-sided SI joint injection is denied and dismissed.

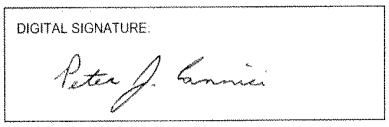
3. Claimant shall receive mileage reimbursement expenses for a total of 2148 miles for her two separate round trips to-and-from Utah and Colorado that occurred on March 11, 2025 and April 8, 2025.

4. Any issues not resolved in this Order are reserved for future determination.

If you are a party dissatisfied with the Judge's order, you may file a Petition to Review the order with the Denver Office of Administrative Courts, 1525 Sherman Street, 4th Floor, Denver,

Colorado, 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. (as amended, SB09-070). For further information regarding procedures to follow when filing a Petition to Review, see Rule 26, OACRP. You may access a form for a petition to review at http://www.colorado.gov/dpa/oac/forms-WC.htm.*

Dated: December 2, 2025.



Peter J. Cannici
Administrative Law Judge
Office of Administrative Courts
1525 Sherman Street, 4th Floor
Denver, CO 80203

Office of Administrative Courts
State of Colorado
Workers' Compensation Number 5-256-102-002

Issues

Have Respondents overcome, by clear and convincing evidence, the opinions of the Division sponsored independent medical examination (DIME) physician, Dr. John Hughes, on the issue of permanent impairment?

Findings of Fact

1. On November 3, 2023, Claimant suffered an injury at work while employed with Employer. The injury occurred when Claimant was on a ladder that fell. As the ladder fell, Claimant became tangled in the ladder, injuring his left leg and back. Respondents have admitted liability for Claimant's injury.

2. Claimant testified that immediately following the injury he was unable to walk and received medical treatment at an urgent care facility. The medical records admitted into evidence demonstrate that on November 3, 2023, Claimant received treatment in the emergency department (ED) at Mercy Medical Center.

3. On that date, Dr. Bryan Jarrett recorded Claimant's symptoms as left lower extremity pain and diffuse back pain. Claimant reported to Dr. Jarrett that his primary complaint was his pain and tingling in his left leg. On examination, Dr. Jarrett noted bruising around Claimant's left shin and posterior knee. Also on November 3, 2023, Dr. Jarrett ordered and reviewed x-rays of Claimant's left ankle, knee, tibia, and fibula. Dr. Jarrett noted no fractures or bony abnormalities. Dr. Jarrett referred Claimant for an orthopedic evaluation.

4. On November 14, 2023, Claimant was seen at Mercy Orthopedic Associates by Wiley Smart McCreedy, PA-C. At that time, Claimant reported burning, sharp, and shooting pain in his left leg. PA Smart McCreedy ordered magnetic resonance imaging (MRI) of Claimant's left lower extremity and recommended continued conservative treatment. In addition, PA Smart McCreedy took Claimant off of all work.

5. On November 29, 2023, Claimant underwent an MRI of his lower[1] left leg. The MRI showed, *inter alia*, trace edema in the talar dome with no osteochondral injury, and no osseous, muscular, or tendinous injury.

6. On November 30, 2023, an MRI of Claimant's left thigh was performed. That MRI was negative for acute myotendinous injury. The radiologist specifically noted that there was no high-grade tear of the left hamstring.

7. On December 12, 2023, Claimant returned to PA Smart McCreedy and discussed the MRI findings. PA Smart McCreedy recommended further physical therapy. Claimant continued to be taken off of work.

8. On January 4, 2024, Claimant spoke with PA Smart McCreedy by telephone. At that time, Claimant reported radiating pain from his left ankle to his buttock. PA Smart McCreedy recommended a referral for a spinal consultation.

9. On April 4, 2024, Claimant sought treatment at Durango Urgent Care and reported constant muscle pain in his central lower back. Claimant also reported that his "work comp provider at Mercy" requested an MRI of his back, but that was denied. Shaina Nawrocki, CFNP diagnosed Claimant with unspecified low back pain and prescribed tizanidine. In addition, NP Nawrocki referred Claimant to Spine Colorado for further evaluation. Claimant continued to be off of work.

10. On April 10, 2024, Claimant was seen at Spine Colorado by Dr. Ryan Martyn. On that date, Claimant reported constant low back pain that was aching, sharp, tender, tiring/exhausting, and throbbing. Claimant also reported radiating pain, with numbness, pins and needles, and weakness in his legs and feet. Dr. Martyn opined that it was possible that Claimant had left S1 radiculopathy and "possible left FHL tendon[2] pathology". Dr. Martyn recommended the use of analgesics, he also provided Claimant with lidocaine patches. In addition, Dr. Martyn ordered x-rays of Claimant's lumbar spine. Those x-rays were performed on April 10, 2024, and showed "no significant listhesis", and "relative maintenance of lumbar lordosis".

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[1] Knee to ankle.

[2] Flexor hallucis longus tendon.

11. On April 11, 2024, Dr. Martyn requested authorization for a lumbar spine MRI.

12. On April 16, 2024, Claimant returned to Durango Urgent Care and was seen by Jessica Harrison, PA-C. The medical record of that date indicates that the reason for the visit was a "work comp follow up". At that time, Claimant reported constant back pain that radiated from this foot into his back. Claimant also reported that the MRI requested by Dr. Martyn had been denied and that all further physical therapy treatment was suspended. At that time, PA Harrison released Claimant to return to work with restrictions. Those restrictions included no kneeling, squatting, bending, twisting, jumping, running, or climbing ladders. Claimant was also restricted to a push/pull restriction of no more than five pounds.

13. PA Harrison amended the April 16, 2024 medical record to state that Claimant's "case worker" had communicated that the lumbar spine MRI was approved.

14. On May 21, 2024, Claimant underwent an MRI of his lumbar spine. The MRI showed minimal degenerative changes, a broad disc protrusion at the L5-S1 level, and no spinal canal stenosis. The radiologist, Dr. Nathan Daley, opined that the disc protrusion was contributing to mild bilateral neural foraminal stenosis.

15. On July 8, 2024, Claimant returned to Dr. Martyn and discussed the MRI findings. On that date, Dr. Martyn opined that the disc extrusion at the L5-S1 level explained Claimant's radiculopathy symptoms. Dr. Martyn discussed various treatment options including physical therapy, injections, and the possibility of a left L5-S1 microdiscectomy. Claimant opted to pursue physical therapy. A request for six weeks of physical therapy for treatment of Claimant's lumbar spine was submitted to Insurer.

16. Following a peer review by Dr. William Barreto, authorization for additional physical therapy was denied by Insurer.

17. On September 9, 2024, Claimant was seen by Dr. Martyn. At that time, Dr. Martyn noted that Claimant's condition was unchanged and that Claimant reported low back pain of seven out of ten. Dr. Martyn recommended that Claimant undergo a transforaminal epidural steroid injection (TFESI) at S1. Claimant declined to undergo any injections. Alternatively, Dr. Martyn recommended a work hardening program followed by a functional capacity evaluation (FCE).

18. Claimant returned to Dr. Martyn on October 11, 2024. Claimant again declined to undergo a left S1 TFESI. Claimant explained to Dr. Martyn that there was not a work conditioning program available to him in the Durango area. Based upon this information, Dr. Martyn determined that Claimant had reached maximum medical improvement (MMI) with no work restrictions. Dr. Martyn noted that another provider would need to assess a permanent impairment rating.

19. Subsequently, on October 23, 2024, Claimant was seen at La Plata Physical Medicine by Dr. Robert Wallach for purposes of a permanent impairment rating. At that time, Dr. Wallach had a lengthy discussion with Claimant regarding the history of his injury and related treatment. Dr. Wallach opined that Claimant was not yet at MMI. He also opined that there were "tremendous biopsychosocial factors" that were impacting Claimant's chronic pain condition. Dr. Wallach recommended a psychological evaluation, electromyography (EMG) testing, as well as a functional capacity evaluation (FCE). Claimant agreed to consider these treatment modalities. No physical examination was performed on that date.

20. On October 27, 2025, Claimant was seen at Durango Urgent Care by Dr. Christine Koch. This visit was identified as a workers' compensation demand appointment. At that time, Claimant reported that an MRI showed "something abnormal" at the L5-S1 level. On that date, Claimant continued to report low back pain with numbness and tingling. Dr. Koch noted that Claimant was scheduled to see Dr. Wallach on October 28, 2025, for an "MMI evaluation" and Claimant was released from the care of Durango Urgent Care.

21. On October 28, 2024, Claimant returned to Dr. Wallach. At that time, Dr. Wallach reiterated his recommendations for a psychological evaluation, EMG testing, and an FCE. Claimant declined all of the recommended treatments. Claimant expressed to Dr. Wallach his concern that having permanent restrictions on his record might impact future employment. Claimant also expressed to Dr. Wallach his desire to close his workers' compensation claim. Based upon these discussions, Dr. Wallach noted that Claimant had reached MMI as of October 28, 2024. Claimant was scheduled to return to Dr. Wallach for an impairment rating.

22. On November 6, 2024, Claimant was seen by Dr. Wallach solely for the purpose of a permanent impairment rating. Dr. Wallach again noted that Claimant had reached MMI as of October 28, 2024. He assessed a permanent impairment rating of 16 percent whole person. This rating was calculated by combining a seven percent rating for a Table 53 diagnosis (specifically the disc herniation at L5-S1); and 10 percent for lumbar spine range of motion. Dr. Wallach released Claimant to return to work with no restrictions. Dr. Wallach continued to recommend Claimant undergo a psychological evaluation as maintenance medical treatment.

23. Based upon the opinions of Dr. Wallach, on January 10, 2025, Respondents filed a Final Admission of Liability (FAL). In the FAL, Respondents admitted for an MMI date of October 28, 2024, and a whole person permanent impairment rating of 16 percent.

24. Thereafter, Claimant objected to the FAL and requested a Division sponsored independent medical examination (DIME). Dr. John Hughes was selected as the DIME physician, and the DIME took place on June 17, 2025. Claimant resides in Durango, Colorado, and the DIME took place at Dr. Hughes' office in Littleton, Colorado. In connection with the DIME, Dr. Hughes reviewed Claimant's medical records, obtained a history from Claimant, and performed a physical examination. Dr. Hughes determined that Claimant reached MMI as of November 6, 2024. Dr. Hughes noted Claimant's report that his symptoms included constant and burning back pain that ranged from five to seven out of ten. Claimant also reported radiating pain into his left leg. Dr. Hughes recorded Claimant's statement that his low back pain was "much worse than usual because of the 'drive up here.'"

25. Dr. Hughes assessed a permanent impairment rating of 23 percent whole person. Like Dr. Wallach, Dr. Hughes assessed a seven percent rating for a Table 53 diagnosis of the lumbar spine. However, with regard to lumbar spine range of motion, Dr. Hughes assessed 17 percent. Dr. Hughes noted that Claimant exhibited "a high degree of lumbar range of motion limitation". Although Dr. Hughes noted that these measurements were valid, he opined that Claimant's range of motion was likely limited because of his drive from Durango. Dr. Hughes noted the inconsistencies between what he noted on examination and the objective findings on MRI. As a result of these factors, Dr. Hughes recommended another set of range of motion measurements should be undertaken. He specifically recommended that Claimant return to Dr. Wallach for such measurement. Dr. Wallach did not assign work restrictions for Claimant at the time of the DIME.

26. With regard to Dr. Hughes' reference to Claimant's "drive up here" Claimant testified that he made the drive from Durango to Littleton two days prior to the DIME. He explained that he did so in an effort to ensure that the muscles in his back could "calm down" from the drive.

27. On July 7, 2025, the Division of Workers' Compensation (DOWC) DIME Unit issued a letter to the parties that stated that the DIME process had concluded. That letter also notified Respondents that they could either file an FAL or an Application for Hearing (AFH) with the OAC. Based upon that notification, Respondents understood that although Dr. Hughes had recommended a second set of range of motion measurements, the impairment rating identified in Dr. Hughes DIME report was "binding".

28. Therefore, on July 11, 2025, Respondents filed an AFH endorsing the issue of overcoming the DIME, specifically with regard to the permanent impairment rating. That AFH led to the present hearing.

29. At the request of Respondents, Dr. Carlos Cebrian performed a review of Claimant's medical records. In his report dated October 10, 2025, Dr. Cebrian referenced the AMA *Guides to the Evaluation of Permanent Impairment*, 3rd Edition, (Revised)[3]. Dr. Cebrian noted that the Guides address what should be done when measurements are inconsistent. Section 2.1 of the Guides states "if the current findings are not in substantial accordance with the information of record, the appropriate course is to undertake further evaluation to resolve disparities and determine the individual's present status." Dr. Cebrian opined that the measurements taken by Dr. Hughes were inaccurately low, resulting in an inflated impairment rating. Dr. Cebrian further opined that this was due to Claimant's complaints of increased pain at the time of the DIME.

30. Dr. Cebrian also referenced Section 1.2 of the Guides, which states "[i]f the findings of the impairment evaluation are not consistent with those in the record, the step of determining the percentage of impairment is meaningless and should not be carried out until communication between the involved physicians or further clinical investigation resolves the disparity." Also in his report, Dr. Cebrian noted Dr. Hughes' concession that the impairment

[3] Referred herein as "the Guides".

rating he assessed was “unduly high”, particularly considering the findings on MRI and Claimant’s increased pain from the long drive.

31. Dr. Cebrian’s hearing testimony was consistent with his written report. Dr. Cebrian testified that Dr. Wallach’s impairment rating was correctly calculated, valid, and consistent with the medical records. Dr. Cebrian also testified that the DIME rating assessed by Dr. Hughes is unreliable and therefore incorrect. In support of this opinion, Dr. Cebrian noted that due to Claimant’s increased pain at the time of the DIME because of travel, his mobility was limited when Dr. Hughes performed range of motion measurements. Additionally, because of the disparity between Dr. Wallach’s measurements and those of Dr. Hughes, the DIME rating should be deemed unreliable. Dr. Cebrian testified that Dr. Hughes recommended that additional range of motion measurements should be performed by Dr. Wallach perform. Finally, Dr. Cebrian explained that Dr. Hughes had other options other than a second set of measurements, including not providing a rating and recommending additional treatment, or adopting Dr. Wallach’s range of motion measurements.

32. Claimant testified that the rating assessed by Dr. Hughes should be upheld. He testified that the measurements taken by Dr. Hughes are indicative of his current condition and symptoms. Claimant also noted that at the time of Dr. Wallach’s measurements Claimant was still off of work. However, at the time of the DIME he had been back to work for two weeks.

33. Claimant testified that his current symptoms include ongoing pain. He also testified that he is unable to pick up his children, that getting into and out of a vehicle is painful, and “everything hurts”. He also testified that he wants to avoid undergoing invasive surgery. Claimant confirmed that he was offered and declined treatment including injections, EMG testing, and psychological assessment/treatment. During his testimony, Claimant also confirmed that he had not sought any maintenance medical treatment since being placed at MMI.

34. The ALJ credits the medical records, and the opinions of Drs. Cebrian and Wallach with regard to Claimant’s permanent impairment. The ALJ also credits Dr. Hughes’s acknowledgement that his rating was “unduly high” and his recommendation that additional range of motion measurements be taken by Dr. Wallach. The ALJ also credits Dr. Hughes’s recognition of the inconsistencies between what he noted on examination at the DIME, and the

objective findings on MRI. Based upon all of the foregoing, the ALJ finds that Respondents have overcome Dr. Hughes's impairment rating by clear and convincing evidence.

35. The ALJ finds that Dr. Wallach's range of motion measurements were valid. The ALJ also finds that Dr. Wallach's assessment of an impairment rating of 16 percent whole person most accurately reflects Claimant's permanent impairment. Therefore, the ALJ finds that Claimant shall be assigned a whole person permanent impairment rating of 16 percent, as determined by Dr. Wallach.

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 which leads the trier-of-fact, after considering all of the evidence, to find that a fact is more probable than not. *Page v. Clark*, 197 Colo. 306, 592 P.2d 792 (1979). 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, *supra*. A Workers' Compensation case is decided on its merits. Section 8-43-201, *supra*.

2. 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.

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).

4. Section 8-42-107(8)(b)(III) and (c), C.R.S. provides that the DIME physician's finding of MMI and permanent medical impairment is binding unless overcome by clear and convincing evidence. Clear and convincing evidence is highly probable and free from substantial doubt, and the party challenging the DIME physician's finding must produce evidence showing it is highly probable that the DIME physician is incorrect. *Metro Moving & Storage Co. v. Gussert*, 914 P.2d 411 (Colo. App. 1995). A fact or proposition has been proved by clear and convincing evidence if, considering all of the evidence, the trier-of-fact finds it to be highly probable and free from substantial doubt. *Metro Moving & Storage, supra.* A mere difference of opinion between physicians fails to constitute error. See *Gonzales v. Browning Ferris Industries of Colorado*, W.C. No. 4-350-356 (March 22, 2000). The ALJ may consider a variety of factors in determining whether a DIME physician erred in his opinions including whether the DIME appropriately utilized the Medical Treatment Guidelines and the AMA Guides in his opinions.

5. As found, Respondents have overcome, by clear and convincing evidence, the opinions of the DIME physician, Dr. Hughes, on the issue of permanent impairment. As found, the DIME assessment of permanent impairment was "unduly high" as noted by the DIME physician himself. As found, Dr. Wallach's range of motion measurements were valid. As found, Dr. Wallach's impairment rating was likewise valid and most accurately reflects Claimant's permanent impairment. Therefore, Claimant shall be assigned a whole person permanent impairment rating of 16 percent, as determined by Dr. Wallach. As found, the medical records and the opinions of Drs. Cebrian and Wallach are credible and persuasive.

Order

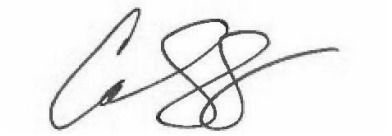
It is therefore ordered:

1. Respondents have overcome the opinions of the DIME physician on the issue of permanent impairment.

2. Claimant shall be assigned a permanent impairment rating of 16 percent, whole person.

3. All matters not determined here are reserved for future determination.

Dated December 3, 2025.



Cassandra M. Sidanycz
Administrative Law Judge
Office of Administrative Courts

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 service of the order, as indicated on the certificate of mailing or service; otherwise, the ALJ's order will be final. Section 8-43-301(2), C.R.S. and OACRP 27. You may access a petition to review form at: https://oac.colorado.gov/resources/oac-forms.

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 via email to either **oac-ptr@state.co.us** or to **oac-dvr@state.co.us**. If the Petition to Review is emailed to either of the aforementioned email addresses, 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. **It is also recommended that you provide a courtesy copy of your Petition to Review to the Grand Junction OAC via email at oac-gjt@state.co.us.**

Issues

- Whether Claimant proved by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course of his employment on September 21, 2024.

- Whether Claimant proved by a preponderance of the evidence that he is entitled to reasonably necessary medical benefits.

- Whether Claimant proved by a preponderance of the evidence that he is entitled to temporary total disability benefits.

- Claimant's average weekly wage.

- Claimant's authorized treating physician.

- Whether Respondents proved by a preponderance of the evidence that Claimant was responsible for his own termination.

Findings of Fact

1. On September 21, 2024, Claimant was employed by Respondent-Employer as a lead generator or promoter. Respondent-Employer sold roof gutters. Claimant's job was to attend trade shows, set up a booth, demonstrate products, and generate leads for the company. Claimant, like other promoters, was expected to go straight from his home to the events. He was also encouraged to keep the marketing materials in his vehicle and he was reimbursed in his paychecks for fuel expenses. Claimant earned $18.29 per hour plus commission, earning $2,261.92 in the seven weeks preceding his date of injury.

2. Claimant was scheduled to attend a trade show on September 21, 2024, in a location he was unfamiliar with. So, Claimant utilized a GPS device to obtain directions to the show location. Claimant maintained possession of the supplies and equipment from prior shows and was to attend and transport those supplies to the event for use on September 21, 2024.

3. Shortly after leaving his home, Claimant checked his GPS “to make sure he was going in the right direction”, and within that time, he struck a telephone pole on the side of the road in Lakewood and was injured.

4. Claimant notified his supervisor Liz about the accident and noted that his vehicle was inoperable and he would be unable to attend the trade show that day. Claimant also questioned whether he would still have a job after wrecking his form of transportation.

5. Later that day, Claimant was taken to the hospital by his mother to be evaluated. Claimant was seen in the emergency room at St. Anthony Hospital. He reported he was driving his truck when he lost control and veered off the road, striking a telephone pole. Claimant reported hitting his head on the airbag, but he denied any loss of consciousness. Claimant reported a headache and difficulty concentrating as well as diffuse anterior chest pain. The treater noted that Claimant had a history of migraines. Claimant underwent chest x-rays and a head CT scan that were both normal. He sustained injuries, including a closed head injury. These injuries were classified as “moderate-severe” at the hospital. Claimant was instructed to follow up with Common Spirit Primary Care and Sports Medicine.

6. Claimant did not follow up with any medical providers after the emergency room visit on September 21, 2024, until he was seen at St. Anthony Outpatient Therapy on July 2, 2025. At that visit, Claimant stated “I was kind of non-functional after the injury and kind of still am” and that he “barely [goes] outside.” The therapist noted

that Claimant had a prior history of a head injury in a biking accident as well as having been “beat up” in several prior altercations. The therapist recommended that Claimant obtain an evaluation with a speech therapist to address cognitive deficits.

7. Claimant’s last medical visit was July 29, 2025. He was not placed at MMI, nor was he released from care. Instead, he was recommended for cognitive therapy with a speech language pathologist.

8. Claimant was in immediate contact with his supervisor after the crash. Claimant inquired with his employer about filing a workers compensation claim. Claimant’s employer advised she did not think it was a compensable injury, so she did not make a report. However, she did provide Claimant with contact information related to reporting a workers compensation injury.

9. Claimant never received a designated provider list.

10. On October 10, 2024, Claimant’s employer offered Claimant work at the shows if Claimant could obtain his own transportation to and from the show. However, Claimant testified at hearing that Respondent-Employer did not ask him if he wanted to come back to work in a different position that did not require a car. Claimant then testified that he asked Respondent-Employer about returning to work, but that no positions were offered. The Court does not find Claimant’s testimony credible in this regard.

11. Claimant testified at hearing that he was aware that if he did not have a personal vehicle to use then he would not be able to continue with Respondent-Employer in his current position. Claimant acknowledged that he did have access to other vehicles. Claimant did not provide an explanation as to why he could not use those vehicles to get to and from work, though he testified that he “was forbidden” from driving any other vehicle he had access to because he had just sustained a

concussion. The Court notes that there is no credible evidence that Claimant's medical providers assigned Claimant any restrictions from driving. Rather, the Court finds that this was a self-imposed restriction or a restriction imposed by Claimant's family.

12. The Court finds that Claimant's wage loss following the motor vehicle accident was due to Claimant's limited access to vehicles and self-imposed restrictions without medical support rather than due to a bona fide disability.

Ultimate Findings

13. The Court finds Claimant's testimony credible with respect to the circumstances of his employment, his work duties, his purpose for travel on the date of injury, the manner in which the motor vehicle accident occurred, his prompt reporting of the incident to his supervisor, and the symptoms he experienced thereafter. The Court finds his testimony to be internally consistent, corroborated by contemporaneous medical records, and supported by Respondent-Employer's own description of Claimant's job expectations. However, the Court does not find credible Claimant's testimony that Respondent-Employer failed to offer modified work, as that portion of his testimony is inconsistent with the weight of the evidence, nor does the Court find credible Claimant's testimony insofar as he suggested that he suffered a disability from his injury that prevented him from driving or otherwise performing his job duties, as there is no corroborating evidence to support such self-limitation.

14. The Court finds that Claimant sustained an injury on September 21, 2024, arising out of and in the course of his employment with Respondent-Employer. Claimant's travel on the date of injury was undertaken for the direct purpose of attending a scheduled work event, transporting required promotional materials, and performing assigned duties at a trade show. Respondent-Employer expected Claimant to travel from his home to various show locations as part of his regular job functions, and Respondent-Employer both permitted and encouraged him to

keep company materials in his vehicle and reimbursed him for fuel expenses associated with such work travel. In other words, Claimant's travel from his home to the trade show was contemplated by his employment contract. At the time of the accident, Claimant had already begun his work-related trip and was using a GPS to ensure he was traveling to the correct show location. His injury therefore occurred while he was engaged in an activity that was essential to his job responsibilities and undertaken for the benefit of Respondent-Employer. While there is no evidence that the injury occurred during working hours, that the injury occurred on Respondent-Employer's premises, or that the obligations or conditions of employment created a "zone of special danger", the integral nature of Claimant's going to and coming from the trade shows is such that Claimant's drive on the date of injury was a substantial part of the service to Respondent-Employer. For these reasons, the Court concludes that the accident occurred within the course and scope of Claimant's employment.

15. The Court finds that Claimant's average weekly wage is $323.13. Claimant earned $18.29 per hour plus commission, earning $2,261.92 in the seven weeks preceding his date of injury. The Court finds that the average weekly wage of $543.26 proposed by Claimant is based on total amounts he received, including for fuel reimbursement, and includes payments beyond Claimant's earned wages.

16. The Court finds that Claimant's September 21, 2024 injury resulted in the need for medical treatment. Claimant sought emergency care on the date of injury with complaints of head pain, difficulty concentrating, and chest discomfort following the motor vehicle accident. Objective imaging was performed to rule out more serious injury, and Claimant was diagnosed with a closed head injury classified as "moderate–severe," for which he was instructed to obtain follow-up care. Although Claimant did not pursue additional treatment until July 2025, when he reported ongoing cognitive and functional limitations, the contemporaneous medical records from the date of injury document acute symptoms consistent with head trauma and support the necessity of initial medical evaluation and diagnostic

testing. The medical services obtained to date, as well as the recommended cognitive therapy, are reasonably necessary to cure and relieve Claimant of the effects of his injury.

17. The Court finds that Claimant did not prove by a preponderance of the evidence that he sustained lost wages resulting from a disability arising out of his work injury. No treating provider imposed work restrictions, prohibited Claimant from driving, or otherwise limited his ability to perform his job duties. Instead, Claimant's inability to return to work stemmed from his own decision not to drive and his self-imposed limitations regarding the use of other available vehicles. The Court finds that Claimant did not prove by a preponderance of the evidence that his self-limitation on driving was reasonably necessary to cure and relieve him of the effects of his injury or that he was as a result of his injuries unable to drive a vehicle. Additionally, Respondent-Employer offered Claimant the opportunity to resume his job duties so long as he could secure transportation, and the Court does not credit Claimant's testimony to the contrary. Because Claimant's wage loss resulted from personal transportation issues and unsupported self-limitations rather than a bona fide work-related disability, he has not met his burden to prove entitlement to temporary disability benefits by a preponderance of the evidence.

18. The Court finds that Respondents did not provide Claimant with a designated provider list and that Claimant selected through his actions St. Anthony Hospital as his authorized treating provider. Because Respondents failed to provide Claimant with a designated provider list, Claimant exercised his right of selection. Claimant sought treatment on the date of injury at St. Anthony Hospital and thereafter continued to pursue follow-up care within the same provider system. By presenting for care and accepting treatment at St. Anthony without any contrary direction from Respondents, Claimant effectively made his statutory selection of an authorized treating provider. St. Anthony Hospital is the authorized treating provider in this matter.

Conclusions of Law

Generally

A. The purpose of the Workers' Compensation Act of Colorado, §§ 8-40-101, et seq., C.R.S. is to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of litigation. *See* § 8-40-102(1), C.R.S. 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.

B. 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. *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 Insurance Co. v. Cline*, 57 P.2d 1205 (Colo. 1936); *Bodensieck v. Industrial 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. Industrial Claim Appeals Office*, 55 P.3d 186 (Colo. App. 2002). To the extent expert testimony is subject to conflicting interpretations, the ALJ may resolve the conflict by crediting part or none

of the testimony. *Colorado Springs Motors, Ltd. v. Industrial Commission*, 441 P.2d 21 (Colo. 1968).

C. The ALJ's factual findings concern only evidence and inferences found to be dispositive of the issues involved; the ALJ has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to the above findings as unpersuasive. *Magnetic Engineering, Inc. v. Industrial Claim Appeals Office*, 5 P.3d 385 (Colo. App. 2000).

Compensability

D. An injury must arise out of, and in the course of, the Claimant's employment to be compensable. § 8-41-301(2)(b) and (c), C.R.S.

E. Injuries sustained by employees going to and from work are usually not compensable. *Berry's Coffee Shop, Inc. v. Palomba*, 423 P.2d 2 (Colo. 1967). One exception, however, to the coming and going exclusion is when "special circumstances" create a causal relationship between the employment and the travel beyond the employee's arrival at work. *Madden v. Mountain W. Fabricators*, 977 P.2d 861, 863 (Colo. 1992); *Monolith Portland Cement v. Burak*, 772 P.2d 688 (Colo. 1989). Where Claimant is injured while on travel status, under certain circumstances that injury is compensable. *SkyWest Airlines, Inc. v. Indus. Claim Appeals Office*, 487 P.3d 1267 (Colo. App. 2020).

F. The *Madden* Court identified several factors to be evaluated to determine whether special circumstances exist. These factors include, but are not limited to: (1) whether the travel occurred during working hours; (2) whether the travel occurred on or off the premises; (3) whether the travel was contemplated by the employment contract; and (4) whether the obligations or conditions of employment created a "zone of special danger" in which the injury arose. 977 P.2d at 865. The question of whether Claimant presented "special circumstances" sufficient to establish the required nexus is a factual determination to be resolved by the ALJ based upon

the totality of circumstances. *Anthony Morrison v. Rock Elec.*, W.C. 4-939-901-03 (ICAO February 22, 2016). The *Madden* Court reasoned that "the going to and from work rule is such a fact-specific analysis that it cannot be limited to a predetermined list of acceptable facts and circumstances. . . . the proper approach is to consider a number of variables when determining whether special circumstances warrant recovery under the Act." 977 P.2d at 864. "[An] example of travel being within the employment contract occurs when travel is singled out for special treatment as an inducement to employment, such as when the employer provides transportation or pays the cost of the employee's travel to and from work." *Id.* at 865.

G. The common link among compensable situations is that travel is a substantial part of the service provided to the employer as, for example, (a) when a particular journey is assigned or directed by the employer; (b) when the employee's travel is at the employer's express or implied request or when such travel confers a benefit on the employer beyond the sole fact of the employee's arrival at work; and (c) when travel is singled out for special treatment as an inducement to employment. *Id*.

H. The Court concludes, as found, that Claimant's travel on September 21, 2024, constituted a substantial part of the service he was employed to perform and therefore falls within the "special circumstances" exception to the going-to-and-coming-from rule. Claimant was required to travel directly from his home to various trade show locations as an integral component of his job duties; he was responsible for transporting company materials; Respondent-Employer encouraged him to keep those materials in his vehicle; and he was reimbursed for fuel costs associated with such travel. The journey itself conferred a benefit on Respondent-Employer beyond Claimant's mere arrival at the worksite and that travel was contemplated as part of the employment contract. Although the accident occurred off-premises and outside of traditional working hours, the totality of

circumstances establishes the requisite nexus between Claimant's employment and the travel, rendering his injury compensable.

Average Weekly Wage

I. The entire objective of wage calculation is to arrive at a fair approximation of the claimant's wage loss and diminished earning capacity. *Campbell v. IBM*, 867 P.2d 77, 82 (Colo. App. 1993). In general, an ALJ is to compute a claimant's AWW based on the claimant's earnings at the time of injury. *See* § 8-42-102(2), C.R.S. (2021).

J. Where the prescribed methods will not result in a fair calculation of a claimant's AWW in the particular circumstances, section C.R.S. § 8-42-102(3) grants an ALJ discretion to determine AWW "in such other manner and by such other method as will, in the opinion of the director *based upon the facts presented*, fairly determine such employee's average weekly wage." Section 8-42-102(3), C.R.S. (emphasis added).

K. The Court concludes, as found, that the statutory formula set forth in § 8-42-102(2), C.R.S., provides a fair and accurate calculation of Claimant's earnings at the time of injury and that no alternative method under § 8-42-102(3), C.R.S., is warranted. Claimant earned $2,261.92 in the seven weeks preceding the date of injury, resulting in an average weekly wage of $323.13, which the Court finds to be a fair approximation of Claimant's wage loss and diminished earning capacity.

Medical Benefits

L. A claimant may receive medical treatment reasonably necessary to relieve the effects of the industrial injury or to prevent further deterioration of their condition. *See* § 8-42-101(1)(a), C.R.S.; *Grover v. Indus. Comm'n*, 759 P.2d 705 (Colo.1988)(authorizing receipt of reasonably necessary medical treatment after permanent disability award). However, the burden of proof is on the claimant to

establish entitlement to such medical benefits. *Cordova v. Foundation Builders Inc.*, W. C. No. 4-296-404 (April 20, 2001).

M. The Court concludes, as found, that Claimant met his burden to establish entitlement to medical benefits reasonably necessary to cure and relieve the effects of the work-related injury sustained on September 21, 2024. Claimant sought prompt emergency evaluation for symptoms consistent with acute head trauma, including headache, difficulty concentrating, and chest discomfort, and the diagnostic testing performed that day constituted reasonable and necessary care to assess the extent of injury. Although Claimant did not pursue additional treatment until July 2025, the subsequent evaluation documented ongoing cognitive complaints and resulted in a recommendation for speech-language therapy to address deficits reasonably attributable to the industrial injury. The medical services obtained to date, as well as the recommended cognitive therapy, are reasonably necessary to cure and relieve Claimant of the effects of his injury.

Authorized Provider

N. Pursuant to Section 8-43-404(5), C.R.S., Respondents are afforded the right, in the first instance, to select a physician to treat the industrial injury. Once respondents have exercised their right to select the treating physician, a claimant may not change physicians without first obtaining permission from the insurer or an ALJ. *See Gianetto Oil Co. v. Indus. Claim Appeals Off.*, 931 P.2d 570 (Colo. App. 1996).

O. A copy of the written designated provider list must be given to the injured worker in a verifiable manner within seven business days following the date the employer has notice of the injury. Rule 8-2(A)(1), W.C.R.P. A physician or corporate medical provider is presumed willing to treat injured workers unless the employer is specifically informed by the physician or corporate medical provider to the contrary. Rule 8-2(D), W.C.R.P. If the employer fails to supply the required designated

provider list in accordance with the WCRP, the injured worker may select an authorized treating physician or chiropractor of their choosing. Rule 8-2(E), W.C.R.P. In situations where the claimant has signified "by words or conduct that he has chosen a physician to treat the industrial injury," they have made a physician "selection". *Murphy-Tafoya V. Safeway Inc.*, W.C. No. 5-153-600-001 (Sept. 1, 2021).

P. The Court concludes, as found, that Respondents failed to provide Claimant with a designated provider list as required by § 8-43-404(5), C.R.S., and Rule 8-2(A), W.C.R.P. Because Respondents did not timely exercise their statutory right of selection, Claimant was entitled under Rule 8-2(E), W.C.R.P., to select an authorized treating provider of his choosing. Claimant's presentation for care at St. Anthony Hospital on the date of injury, followed by his continued pursuit of treatment within the St. Anthony system, constitutes a valid provider selection by conduct. Accordingly, St. Anthony Hospital and the associated providers within that system are deemed Claimant's authorized treating provider for all reasonably necessary medical care related to the September 21, 2024 industrial injury.

Temporary Total Disability

Q. To prove entitlement to Temporary Total Disability (TTD) benefits a claimant must demonstrate 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 Off.*, 954 P.2d 637 (Colo. App. 1997). Section 8-42-103(1)(a) requires the claimant to establish a causal connection between a work-related injury and a subsequent wage loss in order to obtain TTD benefits.

R. 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 that 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 must 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).

S. The Court concludes, as found, that Claimant failed to prove by a preponderance of the evidence that he sustained a disability causing his post-injury wage loss. Although Claimant testified that he was unable to work and believed he should not drive following the September 21, 2024 injury, no treating provider imposed work restrictions, prohibited him from driving, or otherwise documented a medical incapacity that impaired his ability to perform his job duties. The Court further notes the absence of credible evidence that his self-limitation was reasonably necessary. Under these circumstances, Claimant has not established the requisite causal connection between the industrial injury and his subsequent wage loss. Because Claimant's wage loss was attributable to unsupported self-limitations rather than a bona fide work-related disability, he has not met his burden to prove entitlement to temporary total disability benefits.

Order

It is therefore ordered that:

1. Claimant has sustained a compensable injury.
2. Claimant's treatment with St. Anthony Hospital obtained to date, as well as the recommended cognitive therapy, are reasonably necessary to cure and relieve Claimant of the effects of his injury.

3. St. Anthony Hospital is Claimant's authorized provider.
4. Claimant's average weekly wage is $323.13.
5. Claimant has not proved entitlement to TTD benefits.
6. All matters not determined herein are reserved for future determination.

Dated: December 3, 2025.

Stephen J. Abbott

Administrative Law Judge

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.

Office of Administrative Courts
State of Colorado
Workers' Compensation No. WC 5-259-882-002

Issues

I. Whether Claimant established by a preponderance of the evidence that she is entitled to maintenance medical treatment.

Stipulations

- The parties stipulated to Temporary Partial Disability (TPD) benefits from July 27, 2024, through January 28, 2025, in the amount of $3,791.22

Findings of Fact

1. On December 7, 2023, Claimant sustained an admitted work-related injury to her low back while lifting a heavy box of produce. The injury resulted in lower back pain with radiculopathy down her left lower extremity.
2. Following her injury, Claimant received conservative care consisting of physical therapy and ultimately came under the care of authorized treating physician, Dr. Danahey.
3. On January 4, 2024, and due to radicular symptoms, Claimant underwent an MRI of her lumbar spine. The MRI showed an L4–L5 disc protrusion likely contacting the L5 nerve roots bilaterally and an L5–S1 right subarticular disc protrusion.
4. Based on the findings on MRI and her symptoms, Claimant was referred to pain specialist Dr. Sacha. After evaluating Claimant, Dr. Sacha recommended an epidural steroid injection. Claimant declined the injection because she felt the risk was too high. Dr. Sacha also recommended consideration of a full-duty work trial and chiropractic treatment with Dr. Mobus.
5. On January 18, 2024, Claimant followed up with Dr. Danahey. At this appointment, Claimant continued to report left lower extremity radicular symptoms. Although she was doing well with therapy, she still complained of pain in her left lower back with radiation

into her left foot. Claimant again reiterated that she did not want an epidural steroid injection because she believed the risk was too high. Dr. Danahey noted he would try oral steroids.

6. On March 5, 2024, Claimant again saw Dr. Danahey. She continued to report pain in her lower back and left lower extremity. She was working modified duty and indicated that 20-minute breaks helped a lot, but she was not yet working her regular duty job and did not feel she could perform heavy lifting. She continued to decline steroid injections.

7. On March 12, 2024, Claimant returned to Dr. Sacha. He noted that Claimant continued to have low back and leg pain, that she was taking Naproxen, Cyclobenzaprine, and using Lidocaine patches, and diagnosed her with lumbar radiculopathy and a lumbar displaced disc. He discussed maintenance care options with Claimant and noted that she was being seen by Dr. Danahey that same day for an impairment rating and advancement of work restrictions.

8. In his written treatment plan, Dr. Sacha documented that: (a) Claimant was at maximum medical improvement (MMI) as of March 12, 2024; (b) her work status was “okay for a full-duty trial”; (c) an impairment rating would be performed by Dr. Danahey; (d) maintenance should be allowed consisting of eight chiropractic visits with Dr. Mobus and if at some point in the future Claimant wanted an epidural steroid injection, she should be allowed to obtain one; (e) he renewed Claimant’s medications that day and provided a topical Lidocaine patch to use daily on an as-needed basis; and (f) he discharged Claimant from his care with a medication refill and also indicated she could follow-up on an as-needed basis.

9. The ALJ finds that Dr. Sacha’s March 12, 2024, discharge note, which included the option for a future epidural steroid injection as well as providing the Claimant the ability to follow up on an as needed basis is a recommendation for maintenance medical treatment to relieve Claimant from the effects of her work injury.

10. On April 2, 2024, Claimant followed up with Dr. Danahey. Claimant remained adamant that she did not want an injection but did want additional therapy. Dr. Danahey noted that he tried to discuss options with Claimant, but she felt she did not understand and requested an interpreter.

11. Although Dr. Sacha thought Claimant was at MMI, Dr. Danahey did not place Claimant at MMI at that time. Instead, he referred Claimant to neurosurgeon Dr. Rauzzino to assess her current condition and determine whether she was a surgical candidate. Claimant was evaluated by Dr. Rauzzino on June 18, 2024. At that appointment she complained of back pain radiating to her lower left leg with left leg weakness. Dr. Rauzzino noted that Claimant had been evaluated by Dr. Sacha, who recommended an injection, but that Claimant was scared of the risks and did not want to pursue it.

12. Dr. Rauzzino documented that Claimant's symptoms had worsened and that she was then having weakness with dorsiflexion of her left foot. On examination, he noted a positive straight leg raise on the left, diminished sensation on the top and side of her left foot, and weakness with both dorsiflexion and plantarflexion of her left foot.

13. Dr. Rauzzino reviewed the January 2024 MRI images, which he said showed L4–L5 marked disc space height loss with flattening of the thecal sac and moderate foraminal stenosis, but no large significant disc protrusion to the left side. He recommended an updated MRI and stated that he would also consider an EMG. He again discussed an epidural steroid injection with Claimant, but she refused due to concerns about the risk of death or paralysis. Dr. Rauzzino explained that these are very small risks, but Claimant did not wish to proceed.

14. Dr. Rauzzino indicated that he would not recommend surgery without at least a trial of conservative therapy in the form of injections, as the risks of surgery are more significant. He noted that if Claimant declined to pursue additional treatment in the form of injection or potentially surgery, then he believed she was at MMI for the claim. He indicated he was going to send her back for additional physical therapy and obtain updated imaging.

15. On July 8, 2024, Dr. Kandah performed an EMG, which revealed left lower lumbar radiculitis, likely L5, that was remote/chronic. There was also evidence of diffuse axonal loss involving the left peroneal motor nerve, which may have been due to remote/chronic left L5 radiculopathy.

16. On July 22, 2024, Claimant returned to Dr. Danahey. Claimant reported that she felt she was better because she was only working four days per week. She requested additional

therapy because she found it helpful. Dr. Danahey noted that she was apparently not making progress with land-based therapy and referred her to water (pool) therapy.

17. On July 29, 2024, Claimant returned to Dr. Rauzzino. He noted that Claimant still did not want to try an injection. A repeat MRI showed no changes from the prior study. Dr. Rauzzino indicated that he did not have much to offer and noted that Claimant would like to pursue additional therapy.

18. On August 26, 2024, Claimant returned to Dr. Danahey. He noted that Claimant had not started pool therapy yet but was scheduled to begin that week. Her chief complaint was discomfort in the left lateral calf. At this time she was working four hours per day.

19. On September 19, 2024, Claimant followed up with Dr. Danahey and was undergoing pool therapy. Her chief complaint continued to be left lower extremity numbness and left low back pain.

20. On October 25, 2024, Claimant returned to Dr. Danahey. She was completing pool therapy, with her last visit scheduled for the following week. Her chief complaint was still left lower back pain and left lower extremity radiculopathy. On physical examination, Dr. Danahey noted that Claimant was in moderate distress, had tenderness at the L5 lumbar spine level, and had limited range of motion. He referred Claimant for four additional pool therapy visits and anticipated that Claimant would be at MMI in approximately four weeks.

21. On November 22, 2024, Claimant saw Dr. Danahey and in order to manage her back pain, she requested a new prescription for lidocaine patches. As a result, Dr. Danahey prescribed her additional lidocaine patches to treat her ongoing back pain.

22. On December 20, 2024, Claimant returned to Dr. Danahey. At this appointment, Dr. Danahey noted that Claimant continued to have back pain and neurological symptoms such as leg weakness. He also noted that Claimant was in mild distress. Even though she had ongoing pain and radicular symptoms, Dr. Danahey placed Claimant at MMI and completed a WC164 form. He also took range of motion measurements to assess

Claimant's impairment and recommended maintenance medical treatment and specified that it consisted of Claimant completing her pool therapy.[1]

23. After the December 20, 2024, appointment, Dr. Danahey realized that Claimant's range-of-motion measurements were not valid. He therefore did not close her case and requested Claimant to return for repeat range-of-motion measurements.

24. Claimant returned to Dr. Danahey on January 28, 2025, and had completed her pool therapy. At this visit, Dr. Danahey provided a new MMI date of January 28, 2025, and addressed Claimant's impairment. He noted that Claimant had undergone a significant course of pool therapy because she had not progressed with land-based therapy and that there was limited progress with pool therapy as well. He further noted that Claimant continued to be symptomatic, but that she had maximized care and treatment, and he did not recommend any specific maintenance medical care on the WC164 form completed that day.[2]

25. Notably, on December 20, 2024, when Dr. Danahey initially placed Claimant at MMI, he indicated on the WC164 form that maintenance medical care was required and specified that such care would consist of pool therapy visits as currently approved. (*See* footnote 1.) However, by January 28, 2025, Claimant had completed her pool therapy. With no other specific treatment to recommend at that time, Dr. Danahey indicated on the January 28, 2025, WC164 form that maintenance medical care was not required. (*See* footnote 2.)

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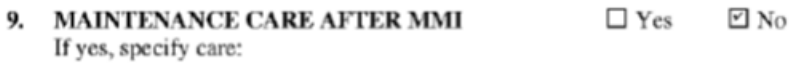
[1] Dr. Danahey' December 20, 2024, WC164 Report recommending specific maintenance treatment. Resp. Ex., BS 298.


9. MAINTENANCE CARE AFTER MMI ☑ Yes ☐ No
If yes, specify care:
Complete pool therapy visits as currently approved

[2] Dr. Danahey January 28, 2025, WC164 Report recommending no maintenance treatment. Resp. Ex., BS 306.


9. MAINTENANCE CARE AFTER MMI ☐ Yes ☑ No
If yes, specify care:

26. The ALJ finds that this change in Dr. Danahey's recommendation from "yes" on December 20, 2024, to "no" on January 28, 2025, may be attributable to the structure of the WC164 form rather than a change in Claimant's need for maintenance treatment. The WC164 form requires the physician who is recommending maintenance treatment to specify the precise maintenance treatment being recommended. Specifically, if the physician checks "yes" for maintenance medical care, the form requires the physician to complete the following line: "If yes, specify care." Because of this structure, when a physician is unable to identify a specific course of maintenance care at the time the claimant is placed at MMI, the physician may indicate that no maintenance care is recommended, but not necessarily because the claimant does not require ongoing maintenance treatment, but because the form does not readily accommodate a general recommendation for maintenance care when particular treatment cannot yet be specified.

27. At the time Claimant was placed at MMI on January 28, 2025, Dr. Danahey noted that Claimant continued to be symptomatic despite having undergone significant courses of both land-based and pool therapy. The evidence in the record that existed at the time Claimant was placed at MMI establishes that Claimant continued to experience ongoing low back pain and radicular symptoms related to her work injury.

28. On March 12, 2024, when Dr. Sacha thought Claimant had reached MMI, he discussed maintenance medical care with her and recommended that if Claimant desires an epidural steroid injection at some point in the future, she should be allowed to pursue this treatment. Claimant had previously declined the injection due to her perception of the risks involved; however, Dr. Sacha’s recommendation that this option be available to Claimant is a recommendation for maintenance care. Moreover, Dr. Sacha also indicated that Claimant could follow up with him on an as-needed basis – which the ALJ finds is another recommendation for maintenance medical care.

29. Additionally, in November 2024, Dr. Danahey prescribed additional lidocaine patches for Claimant to manage her ongoing symptoms, demonstrating that Claimant required medication management for her condition about a month before he initially placed Claimant at MMI.

30. Based on the evidence that existed at the time Claimant was placed at MMI on January 28, 2025 - including Claimant's continued low back pain and radicular symptoms, Dr. Sacha's March 12, 2024 recommendation that Claimant be allowed to pursue an epidural steroid injection in the future and follow up on an as-needed basis, and Dr. Danahey's November 2024 prescription for lidocaine patches - the ALJ finds that Claimant required maintenance medical treatment to relieve her from the effects of her work-related low back injury and to prevent deterioration of her condition. This finding is based on the evidence that existed prior to March 2025, when Claimant developed urinary and bowel urgency, and prior to August 2025, when Dr. Danahey recommended specific maintenance treatment in the form of an MRI.

31. After being placed at MMI on January 28, 2025, Claimant developed new urinary and bowel urgency symptoms in March 2025. Due to these new symptoms, Respondents authorized a one-time follow-up evaluation with Dr. Danahey.

32. On August 28, 2025, Claimant saw Dr. Danahey for the authorized one-time follow-up evaluation. Claimant reported that her low back pain complaints were unchanged from those present at the time she was placed at MMI. However, she reported new urgency with bowel and bladder functions that had begun in March 2025.

33. At the August 28, 2025, appointment, Dr. Danahey completed another WC164 form. He concluded that Claimant remained at MMI but changed his maintenance medical care recommendation. Whereas he had not recommended maintenance care on January 28, 2025, he now recommended *specific* maintenance care consisting of an MRI of Claimant's lumbar spine to rule out cauda equina syndrome (emphasis added).[3]

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[3] As set forth above, Dr. Danahey's pattern demonstrates that when he can identify a specific treatment to recommend such as pool therapy on December 20, 2024, or the MRI on August 28, 2025, he indicates that Claimant requires maintenance medical treatment. However, when he cannot specify a particular treatment, as on January 28, 2025, after Claimant had completed pool therapy, he indicates that maintenance treatment is not required. This pattern appears to be attributable to the structure of the WC164 form, which

34. The ALJ finds that Dr. Danahey's August 28, 2025, recommendation for a lumbar MRI as maintenance care provides additional support for the ALJ's finding that Claimant is entitled to maintenance medical treatment. However, the ALJ emphasizes that Claimant's entitlement to maintenance medical benefits does not rest upon Dr. Danahey's August 2025 MRI recommendation. Rather, Claimant's entitlement to maintenance medical treatment was established by the substantial evidence that existed at the time she was placed at MMI on January 28, 2025, as set forth above. However, Dr. Danahey's subsequent recommendation for specific maintenance care in the form of an MRI in August of 2025 reinforces and is consistent with the ALJ's finding that Claimant requires ongoing medical treatment to relieve her from the effects of her work injury and to prevent deterioration of her condition.

35. The ALJ finds that Claimant requires periodic medical treatment beyond MMI to relieve her from the effects of her work-related low back injury and to prevent deterioration of her condition.

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.

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requires the physician to specify the type of maintenance treatment if recommending it, rather than provide a general recommendation for maintenance medical treatment.

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).

I. Whether Claimant established by a preponderance of the evidence that she is entitled to maintenance medical treatment.

The need for medical treatment may extend beyond maximum medical improvement when a claimant requires periodic maintenance care to relieve the claimant from the effects of the work injury or to prevent further deterioration of the claimant's physical condition. *Grover v. Indus. Comm'n*, 759 P.2d 705 (Colo. 1988). An award for maintenance medical benefits is neither contingent upon a finding that a specific course of treatment has been recommended nor a finding that the claimant is actually receiving medical treatment. *Holly Nursing Care Center v. Indus. Claim Appeals Off*., 992 P.2d 701

(Colo. App. 1999); *Stollmeyer v. Indus. Claim Appeals Off.*, 916 P.2d 609 (Colo. App. 1995).

Here, the credible and persuasive evidence establishes that Claimant continues to experience chronic low back pain with radicular symptoms radiating into her left leg that have not relented despite being provided conservative treatment. At the time she was placed at MMI on January 28, 2025, Dr. Danahey noted that Claimant continued to be symptomatic despite having undergone significant courses of both land-based and pool therapy. Because Claimant's symptoms are chronic in nature and have persisted, it is highly likely that she will require periodic medical treatment to relieve her from the effects of her work-related injury and to prevent deterioration of her condition.

This conclusion is supported by the following: (1) Dr. Sacha's March 12, 2024 recommendation that Claimant be allowed to follow up on an as-needed basis and that she have the option to pursue an epidural steroid injection in the future if she so chooses, which recognizes that Claimant's condition may require future treatment; (2) Dr. Danahey's November 2024 prescription for lidocaine patches to help Claimant manage her ongoing pain symptoms, issued just one month before she was initially placed at MMI, which demonstrates that Claimant required medication management for her chronic pain condition; (3) Dr. Danahey's December 20, 2024 recommendation for maintenance care in the form of pool therapy; and (4) the fact that Claimant has chronic and unrelenting low back pain with radicular symptoms.

The ALJ is not persuaded by the fact that Dr. Danahey did not recommend maintenance medical care on the January 28, 2025 WC164 form. It appears Dr. Danahey's pattern demonstrates that when he can identify a specific treatment to recommend, such as pool therapy on December 20, 2024, or the MRI on August 28, 2025, he indicates that Claimant requires maintenance treatment. However, when he cannot specify a particular treatment as on January 28, 2025, after Claimant had completed pool therapy, he indicates that maintenance treatment is not required. This pattern may be attributable to the structure of the WC164 form, which requires the physician to specify the type of maintenance treatment if recommending it, rather than allowing the physician to indicate – without any specificity - that Claimant will require ongoing care. Requiring

specificity is inconsistent with the legal standard, which permits a general award of maintenance medical benefits without requiring the specification of particular treatment. *See Holly Nursing Care Center, supra; Stollmeyer, supra*.

The ALJ concludes that Claimant has established by a preponderance of the evidence that she is entitled to maintenance medical benefits based on the evidence that existed at the time she was placed at MMI on January 28, 2025. Dr. Danahey's August 28, 2025, recommendation for an MRI as maintenance care provides additional support for this conclusion but is not the basis upon which Claimant's entitlement rests.

Based on the foregoing, Claimant is entitled to a general award of maintenance medical benefits.

Order

It is therefore ordered that:

1. Claimant is awarded a general award of maintenance medical treatment for her admitted work-related low back injury.
2. Respondents shall pay for all reasonable and necessary maintenance medical treatment causally related to Claimant’s work injury that is prescribed to relieve Claimant from the effects of the injury or prevent deterioration of her condition.
3. Respondents shall pay to Claimant Temporary Partial Disability (TPD) benefits from July 27, 2024, through January 28, 2025, in the amount of $3,791.22, pursuant to the stipulation entered into between the parties.
4. 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: December 5, 2025

/s/ Glen Goldman
Glen B. Goldman
Administrative Law Judge

Office of Administrative Courts

State of Colorado

Workers' Compensation No. 5-175-175-004

Issues

- Did Respondent overcome the DIME's determination regarding MMI by clear and convincing evidence?
- If the DIME is overcome, neither party is challenging the DIME's impairment rating.

Findings of Fact

1. Claimant worked for Employer as a Traffic Control Supervisor. His duties included setting up traffic control devices for utility crews.

2. Claimant suffered admitted injuries in a motor vehicle accident on May 8, 2021. He was parked in a traffic control truck blocking the leftmost traffic lane on Powers Boulevard while crews serviced streetlights in the median. Claimant's vehicle was a large box truck equipped with a lighted arrow board and a "Scorpion Attenuator" trailer attached to the back. The attenuator serves as an energy-absorbing barrier that deforms and crushes to dissipate the forces from a rear-end collision.

3. A drunk driver traveling at a high rate of speed crashed into the Scorpion trailer. According to the investigating police officer, the attenuator performed its intended function "very well," with no appreciable damage to Claimant's vehicle.

4. Claimant was unrestrained at the time of the accident and reported being jostled around in the cab of his truck. He required no medical attention at the scene and drove his personal vehicle home.

5. The next day, Claimant went to the St. Francis Medical Center Emergency Department with complaints of head, neck, and shoulder pain. He also reported feeling "a little groggy." Claimant was unsure if he suffered any head trauma or loss of consciousness. There were no observable signs of injury or other significant findings on physical examination. A head CT was normal. Left shoulder x-rays showed mild AC joint arthropathy, but no acute pathology. CT imaging of the cervical spine showed moderate degenerative changes but no acute fracture or soft tissue abnormalities. Claimant was diagnosed with a neck strain and concussion.

6. Employer's designated provider, Dr. Nicholas Kurz, evaluated Claimant on May 10, 2021. Dr. Kurz diagnosed a mild neck strain based on "minimal" physical exam findings. Dr. Kurz also ordered an ophthalmologic evaluation to investigate reported headaches, blurry vision, and visual "floaters."

7. Claimant saw Dr. Angela Mortland, an ophthalmologist, on May 18, 2021. Dr. Mortland noted "inconsistent complaints with changing symptoms over the past 18 days since the MVA." The examination revealed cataracts that were not clinically significant. The optic nerve and retinal exam were normal. Dr. Mortland attributed the headaches to a "whiplash" injury.

8. Claimant followed up with Dr. Kurz on May 26, 2021. Examination showed trigger points along the paraspinal muscles extending to the trapezius, but no other significant findings. Dr. Kurz noted that Claimant's reported symptoms were out of proportion to the objective findings. He reassured Claimant that the evaluations and imaging showed no objective injuries and he expected the mild concussion would resolve quickly, as would his other symptoms. He released Claimant at MMI with no impairment and no restrictions.

9. After being put at MMI, Claimant sought treatment from his PCP, Dr. John Bell. He reported ongoing headaches, neck pain, left shoulder pain, and low back pain. Dr. Bell prescribed medications and referred Claimant to PT and chiropractic treatment.

10. A cervical MRI on June 21, 2021 showed multilevel degenerative changes but no acute pathology. Similar degenerative findings had been shown on cervical x-rays in 2019, with contemporaneous complaints of neck pain and upper extremity radicular symptoms.

11. Dr. Miguel Castrejon evaluated Claimant on October 12, 2021, at the request of his counsel. Dr. Castrejon documented soft-tissue neck pain, limited range of motion, and possible facet dysfunction. Claimant described no specific shoulder pain, although he had mild pain between his shoulder blades. Dr. Castrejon diagnosed a cervical strain with myofascial pain, probable facet mediated pain, and bilateral shoulder girdle myofascial pain. He also diagnosed a concussion and mild TBI, "overlapping" with PTSD. He noted that the "vast majority" of mild TBIs resolve quickly but a small subset of

patients report long-term symptoms. These persistent cases are typically associated with psychiatric symptoms or other situational factors.

12. Dr. Barry Ogin has performed multiple IMEs and record reviews for Respondents, the first of which took place on November 5, 2021. Dr. Ogin's physical exam findings largely tracked those at Dr. Castrejon's IME, with issues primarily related to cervical area soft-tissues, possible facet-mediated pain, and cervicogenic headaches. Dr. Ogin generally agreed with Dr. Castrejon's diagnoses and treatment recommendations for the cervical myofascial pain and headaches. However, Dr. Ogin was not persuaded that Claimant suffered a head injury of any significance. He also noted multiple concerns regarding the reliability of Claimant's subjective complaints, including denial of documented pre-injury conditions, inconsistencies between Claimant's reported pain levels and his appearance during the exam, and psychological testing indicating an unusually high level of somatic complaints. Nevertheless, Dr. Ogin gave Claimant the benefit of the doubt and agreed with Dr. Castrejon's recommendations for treatment for the cervical strain, facet dysfunction, and headaches.

13. Claimant underwent an L2-S1 decompression surgery performed by Dr. Roger Sung on December 28, 2021.

14. In February 2022, the parties stipulated that Claimant was not at MMI and that Respondent would cover reasonably necessary and related treatment for the "cervical spine, left hip labral tear, and possible TBI/headaches/anxiety." In return, Claimant agreed that his low back condition was not related to the work injury, including the lumbar surgery performed by Dr. Sung. The parties agreed the Stipulation could not be reopened except on the grounds of fraud or mutual mistake of material fact. The Stipulation was approved by the Division on February 4, 2022.

15. Claimant underwent a left total hip arthroplasty performed by Dr. Benjamin Kam on April 13, 2022. Respondent admitted liability for this treatment.

16. In early 2022, Claimant reported worsening neck pain, headaches, and upper extremity neurological symptoms, and Dr. Roger Sung requested authorization for a C3-C6 fusion. Updated cervical MRIs in July 2022 and March 2023 showed progression of the underlying degenerative changes.

17. After reviewing additional records, Dr. Ogin opined that the C3-C6 surgery was unrelated to the work accident. He noted Claimant previously stated that he had left arm symptoms immediately after the accident, but those symptoms "completely resolved" shortly thereafter. He reported no upper extremity symptoms at the November 5, 2021 IME. Dr. Ogin opined that Claimant's new upper extremity radicular symptoms were related to progression of the pre-existing degenerative changes rather than the work accident.

18. Dr. Neil Brown, an orthopedic surgeon, performed a detailed record review for Respondent on August 2, 2022, regarding the proposed neck surgery. Dr. Brown agreed with Dr. Ogin that the surgery was directed to unrelated, pre-existing conditions, pointing to significant cervical spine symptomatology and pathology documented before the motor vehicle accident. His personal review of radiological studies showed chronic severe degenerative disc disease throughout the cervical spine with no acute changes shown on serial studies performed before and after the accident. As a result, he concluded that all cervical pathology possibly requiring surgical intervention was attributable to pre-existing degenerative disease rather than trauma from the work-related motor vehicle accident.

19. The parties attended a hearing on April 26, 2023 regarding the cervical surgery. The surgery was denied based on the credible and persuasive opinions of Dr. Ogin and Dr. Brown.

20. Dr. Anjmun Sharma took over as Claimant's ATP in July 2022. Dr. Sharma managed Claimant's care for the cervical spine, hip, shoulder, and headaches.

21. Claimant has received extensive treatment for his chronic headaches, which have been labeled "post-concussive headaches," "cervicogenic headaches," or "migraines" by various providers. Claimant has undergone extensive pharmacological management for headaches. He attempted a trial of Nortriptyline, which was discontinued due to tolerability issues. He was subsequently prescribed Propranolol, Emgality, Qulipta, and Nurtec, the latter of which Dr. Sharma noted provides "significant relief" and functional improvement. In addition to oral medication, Claimant receives Botox injections every three months. Treating neurologist Dr. Nikhil Dhuna documented a "significant reduction in the intensity" of migraines following Botox administration.

22. Claimant has received extensive psychological treatment related to the accident. He started seeing Jill Bradley, LCSW, in September 2021. Ms. Bradley diagnosed PTSD and adjustment disorder with depression and anxiety. Early treatment focused on managing driving anxiety and hypervigilance. Since that time, Claimant participated in extensive modalities, including Cognitive Behavioral Therapy (CBT), Eye Movement Desensitization and Reprocessing (EMDR), exposure therapy, and mindfulness training.

23. Claimant also attended speech and language therapy to address reported cognitive deficits, including memory and focus. He engaged in logic puzzles and word retrieval exercises. Records from September 2024 show that Claimant's cognitive testing scores (SLUMS and MOCA) had improved to within the normal range, suggesting maximum benefit from this modality had been achieved.

24. Dr. Sharma put Claimant at MMI on June 4, 2024. He assigned a 62% whole person impairment rating and recommended maintenance care, including medication for headaches (Nurtec) and cognitive behavioral therapy. Dr. Sharma did not believe a psychiatric rating was warranted, noting that while Claimant developed psychological issues during his protracted recovery, he was "doing very well" from a cognitive-behavioral standpoint. Nevertheless, Dr. Sharma recommended ongoing psychological treatment with Ms. Bradley and psychotropic medications as maintenance care.

25. Dr. Sander Orent performed a Division IME on December 16, 2024. The bulk of the report is devoted to the record review and discussion with Claimant regarding his history and subjective complaints. The documented physical exam appears quite cursory, consisting primarily of range of motion measurements of the neck, low back, hip, and shoulder. No frank weakness was identified. Claimant appeared distressed and was wearing sunglasses due to a reported migraine. Dr. Orent diagnosed a cervical strain and cervical radiculopathy, a lumbar strain with possible lumbar radiculopathy, a nonspecific left shoulder "injury," a left hip labral tear, PTSD, and "chronic, severe, recalcitrant, post traumatic migraines." Dr. Orent opined all the above diagnoses are related to the May 2021 MVA.

26. Dr. Orent determined Claimant is not at MMI, based on the following recommendations:

- an orthopedic evaluation for the left shoulder,
- an EMG of the upper extremities “to define the ongoing numbness” in Claimant’s fingers,
- a lower extremity EMG for lumbar radicular symptoms,
- open-ended treatment for PTSD “until such time as the treating providers feel that he has reached maximal benefit from treatment,” and
- “intensive management” for his “incapacitating” migraines.

27. Dr. Orent “completely disagreed” with Dr. Ogin’s opinions because, in his view, Claimant was “largely asymptomatic” and “doing very well” before the MVA.

28. Consistent with Division guidelines, Dr. Orent provided an impairment rating despite finding Claimant was not at MMI. He assigned a 78% whole person rating for the cervical spine, lumbar spine, left shoulder, left hip, headaches, and psychiatric impairment.

29. Dr. Sharma and Dr. Ogin testified for Respondent via deposition. Dr. Sharma maintained his opinion that Claimant is at MMI. He emphasized that the Claimant has already undergone a significant amount of therapy and diagnostic tests. He stated that “diagnostics are not the issue here” and that the necessary workup has been completed. Dr. Sharma further noted that Claimant has received extensive interventions for headaches, including multiple medications and Botox injections. He argued that while additional treatment may be beneficial, it should be considered “maintenance care” rather than active treatment expected to “cure” Claimant's condition.

30. Dr. Ogin opined that the recommendation for an orthopedic shoulder evaluation is medically unsupported because there are no clinical findings such as impingement, weakness, or instability to justify a new diagnosis and surgical evaluation four years post-injury. He emphasized that prior examinations, including by Claimant’s own expert, consistently documented full range of motion and no structural pathology. Regarding the cervical spine, Dr. Ogin persuasively explained that while diagnostic EMG testing might define Claimant's current condition, it is not related to the work injury. Dr. Ogin attributed this delayed onset of radicular symptoms to the natural progression of degenerative spinal stenosis rather than the industrial accident. He noted that Dr. Orent minimized non-physiologic findings and failed to acknowledge that recent cognitive

testing had already normalized. Overall, Dr. Ogin felt that Dr. Orent relied too heavily on Claimant's subjective complaints, without addressing inconsistencies in the record.

31. Dr. Ogin's opinions are credible and highly persuasive.

32. Dr. Sharma's opinions regarding MMI are credible and persuasive.

33. Respondent proved by clear and convincing evidence that the DIME's determination of MMI is incorrect. Any potential cervical radiculopathy is related to the natural progression of Claimant's underlying and pre-existing degenerative changes, and not the soft-tissue cervical strain and myofascial pain caused by the accident. Claimant previously waived any claim for benefits related to the lumbar spine. There are no persuasive clinical, radiographic, or other findings to justify a shoulder evaluation by an orthopedic specialist. Nor has any provider diagnosed a shoulder condition that would reasonably require surgical intervention. Claimant has received extensive treatment for headaches and PTSD and is not reasonably likely to improve with further treatment. All additional injury-related treatment Claimant requires is maintenance in nature. Claimant was at MMI on June 4, 2024, as determined by Dr. Sharma.

Conclusions of Law

A. Respondent overcame the DIME regarding MMI

The DIME's determination regarding MMI is binding unless overcome by clear and convincing evidence. Section 8-42-107(8)(b) and (c); *Cordova v. Industrial Claim Appeals Office*, 55 P.3d 186 (Colo. App. 2002). MMI is defined as the point "when no further treatment is reasonably expected to improve the [injury-related] condition." Section 8-40-201(11.5). The DIME's opinion regarding the cause of a claimant's condition is an "inherent" part of the diagnostic assessment that comprises the DIME process of determining MMI. *Egan v. Industrial Claim Appeals Office*, 971 P.2d 664 (Colo. App. 1998). Therefore, the DIME's finding that a particular condition is or is not related to the industrial injury is also binding unless overcome by clear and convincing evidence. *Id*. Clear and convincing evidence must be "unmistakable and free from serious or substantial doubt." *Leming v. Industrial Claim Appeals Office*, 62 P.3d 1015 (Colo. App. 2002). The party challenging a DIME's conclusions must demonstrate it is "highly probable" that the MMI finding is incorrect. *Qual-Med, Inc. v. Industrial Claim Appeals Office*, 961 P.2d 590, 592 (Colo. App. 1998); *Metro Moving & Storage Co. v. Gussert*,

914 P.2d 411 (Colo. App. 1995). A "mere difference of medical opinion" does not constitute clear and convincing evidence that the DIME is incorrect. *E.g., Gutierrez v. Startek USA, Inc*., W.C. No. 4-842-550-01 (March 18, 2016).

As found, Respondent overcame the DIME's determination of MMI by clear and convincing evidence. Dr. Ogin's opinions are credible and highly persuasive. Dr. Ogin has examined Claimant on multiple occasions and performed several comprehensive record reviews. Dr. Ogin's opinions are well-reasoned and consistent with the great weight of the medical records. They are also supported by Dr. Sharma's credible opinions. Dr. Sharma's opinions, in turn, are based on a longitudinal treatment relationship spanning over two years.

The persuasive evidence shows that Dr. Orent is highly probably incorrect about each aspect of Claimant's condition on which the not-at-MMI determination rests:

- **Cervical spine**: Claimant suffered a cervical soft-tissue injury but no structural damage to his neck. No compensable condition would plausibly cause a cervical radiculopathy. While an EMG may be reasonably necessary, it is not related to the injury.
- **Lumbar spine**: Claimant entered into a binding agreement that his lumbar spine is not related to the work injury. As a result, evaluations or treatment for lumbar radiculopathy cannot prevent the attainment of MMI.
- **Left shoulder**: No treating or examining provider, including Dr. Orent, has documented clinical findings such as impingement, weakness, or instability to warrant an orthopedic evaluation. Nor has any provider persuasively diagnosed any condition amenable to surgical correction in more than four years of extensive treatment. Claimant's own IME persuasively opined that his post-accident shoulder complaints were related to shoulder-girdle myofascial dysfunction. Respondent proved that an orthopedic shoulder evaluation is not reasonably likely to lead to treatment recommendations for any injury-related condition.
- **Headache**: Dr. Orent recommended "intensive management" for migraine headaches but provided no specifics of what that would entail. In any event, Claimant has received extensive treatment for headaches, including neurology

evaluations, trials of multiple medications, manual therapy for cervical myofascial dysfunction, and Botox injections.

- **PTSD**: Claimant has received psychological treatment from Ms. Bradley since September 2021. Since that time, he has participated in extensive modalities, including CBT, EMDR, exposure therapy, and mindfulness training. He also attended speech and language therapy to address reported cognitive deficits, including memory and focus. Dr. Sharma persuasively opined that Claimant's psychological status has stabilized and any ongoing treatment is maintenance in nature. Respondent proved Claimant is at MMI from a psychological perspective.

Respondent proved by clear and convincing evidence that the additional testing and treatment recommended by Dr. Orent are either unrelated to the work accident or constitute maintenance care rather than curative treatment. Accordingly, the DIME's finding has been overcome, and Claimant reached MMI on June 4, 2024, consistent with the determination of Dr. Sharma.

B. PPD benefits

MMI provides the demarcation between temporary and permanent disability. *McLane Western Inc. v. Industrial Claim Appeals Office*, 996 P.2d 263 (Colo. App. 1999). Because Claimant is at MMI, the endorsed issue of PPD is now ripe for adjudication. Neither party disputes the DIME's impairment rating. Therefore, Claimant is entitled to PPD benefits based on that rating. Respondent is entitled to credit for any temporary disability benefits paid after the MMI date.

Order

It is therefore ordered that:

1. Respondent overcame the DIME regarding MMI by clear and convincing evidence. Claimant reached MMI on June 4, 2024, as determined by his ATP, Dr. Sharma.

2. Respondent shall pay Claimant PPD benefits based on the DIME's 78% whole person rating. Respondent may take credit for any temporary disability benefits paid after the date of MMI, and any PPD previously paid in connection with this claim.

3. All issues not decided herein are reserved for future determination.

If you are dissatisfied with this order, you may file a Petition to Review 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 the certificate of mailing or service; otherwise, the ALJ's order will be final. You may file the Petition to Review by mail by sending it to the above address for the **Denver Office of Administrative Courts** within twenty (20) days after mailing or service of the ALJ's order. In the alternative, you may file your Petition to Review electronically by email to the following email address: oac-ptr@state.co.us. If the Petition to Review is timely served via email, it is deemed filed in Denver pursuant to OACRP 27(A) and § 8-43-301, C.R.S. If the Petition to Review is filed by email to the proper email address, it need not also be mailed to the Denver Office of Administrative Courts. For statutory reference, see § 8-43-301(2), C.R.S. For further information regarding procedures to follow when filing a Petition to Review, see Rule 27, OACRP. You may access a petition to review form at: https://oac.colorado.gov/resources/oac-forms

DATED: December 5, 2025

DIGITAL SIGNATURE

Patrick C.H. Spencer II

Patrick C.H. Spencer II
Administrative Law Judge
Office of Administrative Courts

Office of Administrative Courts

State of Colorado

Workers' Compensation No. WC 5-273-810-002

Stipulations

At the outset of the hearing, the parties stipulated that Claimant's had a base average weekly wage (AWW) equal to $2,012.87. The stipulation is approved.

Remaining Issues

1. Whether the ALJ has jurisdiction to determine disputed issues of temporary disability benefits and medical benefits based on the "Not at MMI" determination of the DIME physician where no opinion exists as to relatedness of the condition(s) for which the DIME physician removed Claimant from MMI.

2. Whether Claimant established, by a preponderance of the evidence, that she is entitled to a change in provider.

3. Whether Claimant established, by a preponderance of the evidence, that she is entitled to additional medical benefits (unspecified).

4. Whether Claimant established, by a preponderance of the evidence, that she is entitled to an increase in her average weekly wage for the loss of her employer paid medical insurance plan.

5. Whether Claimant established, by a preponderance of the evidence, that she is entitled to additional Temporary Disability Benefits for the following periods of time:

    - Temporary Partial Disability (TPD) benefits from February 14, 2024, through February 18, 2024.

- Temporary Total Disability (TTD) benefits from February 19, 2024, through June 15, 2024.

- TPD from June 16, 2024, through January 16, 2025.

- TTD beginning January 17, 2025—the date of her wrist surgery—and ongoing until terminated by operation of law.

6. Whether Respondents are entitled to offset any temporary disability benefits awarded to Claimant for receipt of unemployment benefits.

Findings of Fact

Based upon the evidence presented at hearing, the ALJ enters the following findings of fact:

1. Employer operates an assisted living facility (nursing home) doing business as The Gardens at View Pointe. Claimant works for Employer as a caregiver and qualified medications aid (QMAP) in the facilities memory care unit. (CHE 10, p. 129; RHE M, p. 163).

2. On November 30, 2023, Claimant was going about her duties when an agitated male resident, whom Claimant estimated to be six feet tall and 300 pounds, grabbed and began pulling, jerking and twisting her right arm. Claimant's arm was twisted to the side, and she was yanked to a counter where this resident forcefully began pushing her wrist and forearm down over the edge of the work surface. During this assault, Claimant's head and neck were also pushed downward onto the countertop. Claimant testified that in addition to upper extremity pain, she had neck and shoulder symptoms from the onset of the assault.

3. Claimant reported the incident to the facility director who referred her to

Concentra for evaluation and treatment. Claimant presented to Tanya Hrabal, M.D., who recorded complaints of mid-right forearm pain and right wrist pain. (CHE 9, p. 57; RHE G, p. 47). Claimant was diagnosed with a right wrist injury and given a splint. *Id*. at 58, 48. Claimant was instructed to return to the clinic the following Monday (12/4/2023) at which time an x-ray would be obtained since there was no radiology technician in the clinic on November 30, 2023. *Id*. Claimant was returned to modified duty work with restrictions of no patient contact. *Id*. at 59, 49.

4. Claimant was re-evaluated at Concentra on December 4, 2023, by Morgan Meury, M.D., with pain mainly over the right wrist with some radiation up into the forearm but no numbness or loss of motor function. (CHE 9, p. 63; RHE G, p. 53). Claimant reported discomfort with her splint. *Id*. Accordingly, a change in splinting materials was made. *Id*. at 64, 54. An x-ray of the right wrist showed no boney fracture or dislocation. *Id*. at 62, 52.

5. Claimant was referred to and participated in physical therapy (PT) from December 8, 2023, through January 15, 2024.

6. Claimant continued to experience pain in the right wrist and forearm, which she described as a burning spasm. (CHE 9, p. 71; RHE G, p. 62). The change in splints did not help. *Id.* Claimant was returned to physical therapy. *Id*. at 72, 63.

7. Claimant was re-evaluated at Concentra by Physician Assistant (PA-C) Mendy Peterson, on December 12, 2023. (CHE 9, pp. 74-77; RHE G, pp. 65-68). PA Peterson noted that Claimant's x-rays were negative, and that she had nearly full range of motion of the wrist. *Id*. at 74, 65. Regardless, Claimant reported dull pain over the TFCC area of the wrist. *Id*. PA Peterson noted that Claimant felt ready for a change to a dynamic splint and that she was "approximately 25% of the way toward meeting the physical requirements of her job." *Id*. at 74-75, 65-66. She continued Claimant's medications, returned her to PT and kept her restrictions consistent with those from prior visits,

specifically no lifting greater than 5 pounds, no pushing/pulling greater than 10 pounds and no pinching/gripping with the right hand/upper extremity. *Id*. at 76-77, 67-68.

8. Claimant reported feeling 60% better on December 27, 2023, and her therapist reported that she had met 70% of her job goals; however, she wasn't lifting anything with the right upper extremity. (CHE 9, p. 82; RHE G, p. 73).

9. Claimant returned to Concentra, in tears, on December 28, 2023, due to pain she had experienced after waking that morning. (CHE 9, p. 90; RHE G, p. 78). Claimant reported numbness that was radiating into her neck and was fearful that "something [was] seriously wrong with [her] wrist" due to [her] pain levels. *Id.* PA Peterson noted that an MRI was indicated "because [Claimant] [was] not meeting anticipatory goals of normal states of healing for the particular injury being treated." *Id*. PA Peterson stressed the need for a prompt MRI. *Id.*

10. Claimant presented to the ER at Penrose Hospital on January 1, 2024, with complaints of "right wrist pain that radiates to her neck." (CHE 10, p. 129; RHE M, p. 163). X-ray revealed "some mild soft tissue swelling" but no acute findings. *Id*. at 131, 165. Claimant was given a dose of prednisone and referred to a hand specialist. *Id*.

11. A January 10, 2024, right wrist MRI demonstrated a "full-thickness tear of the intercarpal ligament/radial aspect of the capsule between the trapezium and the scapho*id*," with low-grade edema suggestive of recent trauma. (RHE L, p. 154). On January 15, 2024, PA Peterson referred Claimant to an orthopedist (Dr. Chance Henderson) based upon the January 10, 2024, MRI findings. (CHE 9, pp. 104–106; RHE G, p. 92).

12. Claimant was evaluated by Dr. Henderson, M.D., on February 1, 2024. (CHE 9, pp. 110-113; RHE G, pp. 102-105). During this encounter, Claimant reported pain in the wrist in the area of the TFCC, with numbness. *Id.* at 110, 102. She also reported right elbow pain at the medial epicondyle and pain in the anterior shoulder over the rotator

interval. *Id*. During physical examination, Claimant reported tenderness to palpation over the biceps and coracoid. *Id.* at 111, 103. She demonstrated a positive O'Brien's sign and Jobe's testing recreated pain in the shoulder. *Id.* At the elbow, Claimant demonstrated a positive Tinel's sign over the ulnar nerve, which was noted to sublux with deep elbow flexion greater than 90 degrees. *Id*. Physical examination of the right wrist revealed TFCC tenderness with positive ulnar fovea and DRUJ shuck testing reproducing pain. *Id.* Dr. Henderson reviewed Claimant's MRI and independently opined, "My review…shows a full-thickness tear of the TFCC." *Id.* Based upon the history provided and his physical examination findings, Dr. Henderson noted the following working diagnosis: "right shoulder bicipital tendinitis and right elbow cubital tunnel with subluxing ulnar nerve and right wrist TFCC injury. *Id*. He addressed causation by noting:

> In reviewing the patient's history and medical records and examination today, it appears that the patient did sustain an injury to [her] right shoulder and right wrist arising out of and caused by the industrial exposure of 11/30/2023.

Id. He recommended and performed a corticosteroid injection into the wrist at this visit and ordered a shoulder MRI. *Id*. at 112, 104.

13. Claimant testified that Concentra only wanted to focus on her wrist despite her complaints of more proximal symptoms. She added that the providers at Concentra were not listening to her and that her employer arranged for her to see Dr. Henderson to evaluate the shoulder.

14. Claimant returned to Concentra on February 7, 2024, where she was evaluated by Dr. Meury. (CHE 9, pp. 114-117; RHE G, pp. 106-109). Durning this encounter, Claimant reported that her right arm pain was getting worse and that her shoulder was "falling out of place frequently". *Id.* at 114, 106. She expressed frustration with Employer asserting that she was being put in a position where she had to use her right arm at work

and that Employer was not following/adhering to her work restrictions. *Id*. Dr. Meury noted that Claimant's right shoulder MRI was scheduled for February 8, 2024. *Id*.

15. A February 8, 2024, right shoulder MRI revealed mild infraspinatus tendinosis without rotator cuff tear and no acute osseous abnormality. (RHE L at 156).

16. Claimant presented to Concentra for a follow-up appointment on February 14, 2024. During this visit, PA Peterson noted that Claimant had seen Dr. Henderson, that he had performed a wrist injection and that an MRI of the wrist demonstrated a "full thickness tear of scaphoid – trapezium ligament with edema." (CHE 9, p. 119; RHE G, p. 111). After noting that no follow-up specialist visits were scheduled, PA Peterson documented that Claimant was "non-compliant" with follow-up appointments and physical therapy, missing several sessions. *Id*. Indeed, PA Peterson's 2/14/2024 record states:

> I do not see a specialist f/u on the books. Non-compliant with f/u appts and PT, missed several. She has a NCM[1] here with her today. She is so belligerent within 30 seconds of me walking into the room I can't even talk to her. She is yelling for unknown reasons and will not let me develop a treatment plan. She has said we have done nothing for her. She states she continues to be in pain and that we have not treated her pain at all. She thinks it (sic) may have not treat her correctly and that she wants a new ATP. It should be noted that patients objective findings do not support subjective complaints, pt appears to be amplifying symptoms at this time. Very verbally abusive. Employer called me after the visit and informed me the patient refuses to work and has done this several times, faking injuries for compensation. Patient told the employer she plans to sue everyone involved on her case.

Id. at 119–120, 111-112.

[1] Nurse Case Manager.

17. Claimant was noted to be so upset that she refused further examination and treatment. (CHE 9, p. 121; RHE G, p. 113). PA Peterson then abruptly noted that Claimant was a "functional goal" and ready for discharge. *Id*. PA Peterson added:

> I have evaluated the patient and formulated the above diagnosis[2] based on signs and symptoms of history and physical exam. I believe the above injury or symptoms are NOT work related due to associated risk factors of the individuals employment described. . . . I feel that there is NOT a temporal relationship and association that exists between the workplace risk factors and the onset or aggravation of the above symptoms. There is NO injury/accident that occurred in the course of employment job duties – symptoms appear to NOT be consistent with and arising from the course of employment job duties. I have considered or ruled out other non-occupational diagnosis, such as RA, obesity, DM, OA, etc. as well as avocational activities. If any of these non-occupational occurrences should exist, I believe the exposure levels are HIGH and the case meets evidence based criteria at this time to support NO causation.

Id. Claimant was purportedly "yelling and disrupting the entire clinic and when told to stop, she "[continued] on and on." *Id*. at 122, 114. Consequently, PA Peterson ended the visit and walked out of the exam room. After noting that she did not believe that Claimant's reported mechanism of injury (MOI) and presenting symptoms "arose out of [her] job duties in the course of the [Claimant] performing those duties", PA Peterson discharged Claimant from care at maximum medical improvement for "nonmedical reasons" with no maintenance treatment recommendations or restrictions. *Id*. at 122-123, 114-115. Dr. George Johnson adopted PA Peterson's opinions and completed a WC 164 form. (CHE 9, p. 123, 118; RHE G, p. 115, 110). There is no indication in the medical records admitted into evidence that Dr. Johnson ever evaluated Claimant.

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[2] PA Peterson's diagnoses included: "1. Right shoulder injury. 2. Wrist strain, right, initial encounter.

18. Claimant testified that she did not agree with her impending discharge from Concentra. She added that she asked for a new provider to attend to her injury. When no offer of a new authorized provider was forthcoming, Claimant testified that she sought care from her primary care provider (PCP). Claimant presented to the offices of her PCP (Comfort Care Family Practice) on March 26, 2024, where she was evaluated by Family Nurse Practitioner (FNP) Reagan Bryant. FNP Bryant noted that Claimant was there to "establish care and FMLA paperwork." (CHE 15, p. 233; RHE K, p. 144). Claimant reported that she was seeing an orthopedist and was on FMLA as she was not allowed to work with restrictions and instead told to take time off. *Id*. She reported neck pain and stiffness with pain traveling down the lateral aspect of the right arm into the wrist and hand. *Id.* She reported decreased range of motion and "trouble with lifting, pushing, pulling grabbing and moving objects." *Id*. FMLA paperwork was "filled out" and scanned into Claimant's chart. *Id.* FNP Bryant imposed work restrictions and referred to back to Dr. Henderson (ortho) for additional evaluation. *Id*. at 231-232, 143, 150.

19. Claimant testified that her FMLA leave was approved, and she was off work from February 14, 2024, through the date of a neck surgery performed by Dr. Ronald Hammers on May 29, 2024. Claimant testified that she was paid sick/vacation leave for the period between April 21 and May 18, 2024. Claimant's wage records demonstrate that she worked zero hours for the 12 week pay periods extending from 2/25/2024 through 4/20/2024 (8 weeks) and 5/19/2024 though 6/15, 2024 (4 weeks). (CHE 5, p. 24).

20. Claimant underwent an MRI of her cervical spine on April 18, 2024. This imaging revealed cervical spondylosis with mild multilevel degenerative spondylolisthesis and reversal of normal lordosis along with moderate C6-7 canal stenosis with ventral cord abutment, mild C3-4 and C4-5 canal stenosis, severe left C3-4 foraminal stenosis and moderate-severe right C6-7 foraminal stenosis. (CHE 11, p. 190; RHE H, p. 117).

21. Claimant returned to Dr. Henderson on May 6, 2024. (CHE 11, p. 190; RHE

H, p. 117). In his report from this date of service, Dr. Henderson noted that Claimant had undergone two injections into the right shoulder as well as two TFCC injections which had been helpful in reducing her pain. *Id.* While the TFCC injections were beneficial in reducing her wrist pain, she continued to endorse minimal TFCC discomfort along with neck pain "radiating over the dorsal forearm into the middle finger." *Id*. After outlining the findings of her cervical MRI, Dr. Henderson indicated that he was following Claimant for a right shoulder "SLAP" tear and bicipital tendinitis with rotator cuff tendinopathy and a right wrist TFCC tear, which had responded well to corticosteroid injections. *Id*. He noted Claimant to have a C7 radiculopathy by complaint and referred her to a spine surgeon (Dr. Ronald Hammers) for further evaluation. *Id*. Dr. Henderson noted that should Claimant experience recurring upper extremity pain, he recommended moving forward with shoulder treatment first "since the TFCC may resolve with injection alone." *Id*.

22. Claimant was evaluated by neurosurgeon Dr. Hammers for her complaints of neck pain on May 15, 2024. (CHE12, p.199-201; RHE 129-131). Dr. Hammers noted that Claimant had sustained an injury at work on November 11, 2023,[3] during which her right arm was "pulled and twisted." *Id*. at 199, 129. Dr. Hammers noted further that since the November incident, Claimant had experienced "progressive neck pain and spasms with right upper extremity pain and frequent headaches." *Id*. at 200, 130. Dr. Hammers opined that Claimant's right arm radicular pain in a C7 distribution pattern fit the MRI findings. *Id.* at 199, 129. Because physical therapy made Claimant feel worse and her symptoms were refractory with triceps weakness on examination, Dr. Hammers recommended a C6-7 ACDF (Anterior Cervical Decompression Fusion) surgery. *Id*. at 201, 131.

23. Dr. Hammers took Claimant to the operating room on May 29, 2024, where he performed a 1 level ACDF procedure at C6-7. (RHE M, pp. 231-232). As noted, Claimant was on FMLA leave, for what the ALJ finds was her right hand/wrist condition at the time

[3] Based upon the totality of the medical records submitted for review, the ALJ finds Dr. Hammers' reference to a November 11, 2023, date of injury a probable typographical error. The correct date of injury is November 30, 2023.

of this May 29, 2024, neck surgery.

24. Respondents filed a Notice of Contest on June 3, 2024, contending that Claimant's injury was not "Work-Related" based on the February 14, 2024, opinion from PA Peterson and Dr. Johnson, who by the records admitted into evidence never personally evaluated Claimant. (See generally, CHE 1, p. 3; RHE A, p. 5; see also, CHE 9; RHE G).

25. Claimant was seen in follow-up by Dr. Hammers' physician assistant, Megan Ann Wetherbee on June 12, 2024. (RHE J, p. 140). Claimant reported significant improvement regarding her right upper extremity (RUE) pain and expressed a desire to return to work. *Id.* PA Wetherbee recommended post-surgical PT, but Claimant declined. *Id.* Claimant testified she declined additional PT because the therapists were making her do things that were hurting her while she was undergoing PT for her wrist, so she simply stopped going, which the ALJ finds probably led PA Peterson to assert that Claimant was "non-compliant" with treatment as documented in her February 14, 2024, medical report.

26. Claimant testified that she returned to work around June 16, 2024, and that her hours were reduced upon returning to work due to a combination of functional decline in her wrist, neck, and shoulder. Claimant's wage records support a finding that she returned to work on June 16, 2024. (CHE 5, p. 24). The records also support a finding that Claimant, more probably than not, was physically impaired and restricted following her neck surgery. Indeed, on August 22, 2024, PA Wetherbee noted that Claimant could return to work with a 10-pound lifting restriction, which precluded her from changing bed linens. Claimant was also precluded from activities which involved twisting. (CHE 12, p. 212). Moreover, Claimant had been previously restricted by FNP Bryant on March 26, 2024, because of "decreased range of motion and "trouble with lifting, pushing, pulling grabbing and moving objects". (See FOF ¶ 18 above).

27. Dr. Mark Paz, M.D. evaluated Claimant at Respondents' request on September

18, 2024. (RHE F). As part of his independent medical examination (IME), Dr. Paz completed a physical examination during which he noted a "click" with active rotational movement of the right wrist. Claimant reported tenderness during the palpatory examination of the ulnar and volar surfaces of the right radiocarpal joint. (RHE F, p. 31). Range of motion testing of the right wrist was symmetric with the left for flexion, extension and ulnar and radial deviation. Concerning Claimant's right shoulder, Dr. Paz noted that Claimant was tender to palpation over the acromioclavicular (AC) joint. *Id.* There was tenderness to palpation of the long head of the biceps tendon. Provocative testing, including Neers testing, Hawkins testing and Empty Can testing were negative; however, Claimant demonstrated a positive Speeds test result. *Id*. Range of motion was symmetric between the left shoulder for flexion, and abduction at 180 degrees, but only 80% for external rotation of the right shoulder when compared to the left. *Id.* Examination of the cervical spine revealed no axial compression tenderness and a negative Spurlings test. *Id*. at 30. There was restricted range of motion in three planes and reported tenderness to palpation of the right paraspinous region and the "superior medial segment of the right trapezius muscle extending to the lateral aspect of the superior trapezius. *Id*. Dr. Paz documented that there was "overt" pain behavior noted during range of motion testing. Indeed, he noted: "[Claimant] became tearful and expressed pain located in the right upper thoracic region during the initial phase of cervical range of motion measurement." *Id*. Range of motion testing was discontinued based upon observed pain behaviors when Claimant became tearful. *Id*. According to Dr. Paz, Claimant's demeanor did not improve after he discontinued the cervical range-of-motion measurements. *Id*. Rather, she appeared "anxious and agitated." *Id*. Accordingly, he did not gather range-of-motion measurements of the wrists or shoulders. *Id.*

28. Dr. Paz found the right wrist TFCC tear causally related to the November 30, 2023, incident based upon the described MOI. (RHE F, p. 32). Conversely, Dr. Paz opined the right shoulder infraspinatus mild tendinosis was unrelated to the November 30, 2023, incident based on the lack of temporal relationship between the injury and documented onset of symptoms and inconsistent mechanism of injury. *Id*. Similarly, Dr. Paz opined that Claimant's cervical spondylosis with C7 radiculopathy and her need for

treatment (surgery) was unrelated to the November 30, 2023, incident as it was likely due to a preexisting, degenerative condition. *Id*. Dr. Paz noted that it was not medically probable that this pre-existing condition was "aggravated or accelerated secondary to the November 30, 2023, incident." *Id*. Indeed, Dr. Paz noted: "The mechanism of injury is inconsistent with an aggravation of the diagnosis of cervical spondylosis, and the onset of symptoms is not contemporaneous with the November 30, 2023, date of injury." *Id*. Dr. Paz opined that Claimant was at MMI for the related wrist injury and calculated a 2% upper extremity impairment. *Id*. at 33.

29. Claimant presented to the ER at Penrose on October 26, 2024, for evaluation of right knee pain. Claimant reported that she had a mechanical fall onto the front of her knee on June 22, 2024, and had chronic and progressively worsening pain since, with difficulty walking. (RHE M). Claimant reported increasingly severe and constant knee pain at work. *Id*. An x-ray showed osteoarthritis with no acute fractures, dislocations, or joint effusions. *Id.* Claimant testified she had problems with her knee at work after going to the ER in October 2024. She also admitted to having prior knee problems at work. Indeed, Claimant testified that she injured her right knee while playing basketball in High School which required an ACL repair and a subsequent loss of cartilage. Claimant testified that she has limitations based on her knee.

30. Claimant sought the opinions of Dr. Miguel Castrejon who performed an IME on November 6, 2024. (CHE 14). Following a thorough medical records review (including review of emails from Jan Hogan, Jessica Rush, and Suzette Cardano) and a comprehensive physical examination, Dr. Castrejon opined that Claimant's right shoulder and cervical spine conditions and the treatment rendered to these body parts was related to the November 30, 2023, incident. Noting various instances of record support outlining Claimant's reports of shoulder symptoms shortly after the November 30, 2023, incident, Dr. Castrejon concluded that Claimant's right shoulder symptoms were contemporaneous to the date of injury, and the MOI was consistent with the diagnosis of mild infraspinatus tendinosis. Accordingly, Dr. Castrejon disagreed with the conclusions of Dr. Paz and PA

Peterson in addition to Dr. Johnson's decision to sign off on PA Peterson's MMI determination without evaluating Claimant.

31. Dr. Castrejon also disagreed with Dr. Paz concerning the cause of Claimant's neck symptoms and need for treatment. Indeed, Dr. Castrejon noted that while he concurred with Dr. Paz that Claimant's degenerative cervical spondylosis was pre-existing, the MOI in this case was sufficient to aggravate this previously asymptomatic condition causing symptoms and the need for treatment, including surgery. (See generally, CHE 14).

32. Respondents filed a medical-only Final Admission of Liability (FAL) on November 19, 2024, not admitting to any wage loss. (CHE 6).

33. Respondents filed an Amended FAL on November 22, 2024, based on the February 14, 2024, MMI date provided by Dr. Johnson, based upon PA Peterson's opinions. (RHE B, p. 7). Impairment and maintenance care were denied. Respondents admitted liability for TPD benefits from December 1, 2023, through February 13, 2024, totaling $4,310.82. *Id*.

34. Claimant returned to Dr. Henderson for a follow-up appointment on December 5, 2024. (CHE 11, p. 192; RHE H, p. 119). During this encounter, Claimant reported some symptom improvement following her C6-7 ACDF surgery. *Id.* Nonetheless, she complained of persistent right shoulder and wrist pain. *Id*. She requested corticosteroid injections into the shoulder and wrist. *Id*. In his report from this date of visit, Dr. Henderson refers to a February 8, 2024, MRI of the shoulder which demonstrated a small superior labral tear at the biceps. *Id*. Dr. Henderson injected the right radiocarpal joint of the wrist with "1 cc of 1% lidocaine without epinephrine and 40 mg of Kenalog." *Id*. He also directed a "10 cc mixture of 8 cc of 1% lidocaine and 80 mg of Kenalog into the right glenohumeral joint." *Id*.

35. On December 18, 2024, Claimant returned to Dr. Henderson following her

right shoulder and wrist injections. (CHE 11, p. 194; RHE H, p. 121). She reported feeling better. *Id.* After reviewing the findings on Claimant's right shoulder MRI, Dr. Henderson assessed a her with a SLAP tear with bicipital tendinitis and rotator cuff tendinopathy of the right shoulder. *Id.* He also noted that she had a TFCC tear in her right wrist. *Id.* Claimant testified that Dr. Henderson wanted to perform a shoulder surgery before addressing her wrist, but the severity of her wrist pain prompted her to request that the wrist be addressed first. Dr. Henderson noted that he would have his surgery scheduler reach out to Claimant to get the surgery scheduled sometime after January 5, 2025, since Claimant had undergone an injection to the wrist on December 5, 2024. *Id.*

36. Claimant underwent arthroscopic TFCC repair with Dr. Henderson on January 17, 2025. (CHE 13, pp. 215-216; RHE I, pp. 126-127). Although the cost of Claimant's wrist surgery was covered under her personal health insurance, the ALJ finds, based upon the content of the medical records in total, that the need for this surgery was related to Claimant's TFCC tear caused by the November 30, 2023, assault. However, careful review of the records admitted into evidence demonstrates that Dr. Henderson did not request pre-authorization to proceed with this surgery through workers' compensation.

37. During a follow-up visit on January 27, 2025, Dr. Henderson's Nurse Practitioner (NP) Johanna Moore reviewed post-operative imaging and noted a stable-appearing DRUJ. (CHE 11, p. 196; RHE H, p. 123). Claimant was to be transitioned to a removable splint via therapy. *Id.* She was tearful during this appointment as Employer had purportedly informed her that she had to return to work by January 31, 2025, or be terminated, because she had exhausted her FMLA leave previously. *Id.* During this appointment, Claimant also indicated that she wanted to address the condition of her shoulder but needed to hold off because she was having insurance "difficulties." *Id*. Claimant was off work after undergoing right wrist surgery.

38. Careful review of the exhibits admitted into evidence fails to support a finding that Employer offered Claimant modified duty following her right wrist surgery. Indeed, Claimant testified that Employer would not permit her to return to work with work

restrictions.[4] Thus, she testified that that she applied for and began receiving unemployment insurance (UI) benefits in April 2025 in the amount of $735 per week, which benefits ran through August 30, 2025, by virtue of Claimant return to u restricted work on August 31, 2025. (CHE 16). Claimant lost her employer health insurance benefits shortly after her 1/17/2025, right wrist surgery. Indeed, Employer directed correspondence to Claimant on January 21, 2025, informing her that her 12 weeks of job protected leave under FMLA that had been approved previously ended on June 18, 2024. (CHE 5, p. 14). Because Claimant had returned to work on June 16, 2024, her portion of her health insurance premium had been covered by payroll deduction, however, as it was unknown whether Claimant's request for additional leave would qualify under the Americans with Disabilities Act (ADA), Employer was obligated to extend Consolidated Omnibus Reconciliation Act (COBRA) insurance coverage to her. *Id.* Based upon the evidence presented, the ALJ finds that Claimant's request for additional leave probably did not qualify under the ADA prompting her to apply for UI benefits. Because Claimant did not return to work on or before January 31, 2025, she lost her employer subsidized insurance. Nonetheless, she was eligible for COBRA coverage. The COBRA notice in evidence lists monthly continuation premiums of Medical (Employee & Children) $1,076.10, Dental $93.53, and Vision $7.61, totaling $1,177.24/month, with COBRA effective February 1, 2025. *Id.*

39. Claimant objected to Respondents November 22, 2024, FAL and sought a Division Independent Medical Examination (DIME). Dr. Dwight Caughfield was selected to complete the DIME and did so on May 11, 2025.[5] (CHE 8, RHE E). Claimant was not working at the time of the DIME. *Id.* at 49, 17. Claimant reported ongoing functional issues with her right arm and shoulder pain. *Id*. Claimant expressed frustration over the denial of surgery for her shoulder as she felt that her shoulder condition and need for

[4] The ALJ finds this consistent with Claimant's prior report to FNP Byrant that she (Claimant) was not permitted to work with restrictions prompting her to apply for FMLA. (See FOF ¶ 18).

[5] There is a discrepancy regarding the date Dr. Caughfield completed the DIME. The Dime Examiner's Summary Sheet reflects that the DIME appointment was 5/13/2025 whereas the DIME Report Template notes May 11, 2025, as the DIME appointment date. (CHE 8, p. 48-49; RHE E, pp. 16-17). Regardless, the DIME was completed and a report outlining the results of the examination was generated by Dr. Caughfield on May 21, 2025. *Id.* at p. 53; 21).

treatment was "related to her work injury and [had] kept her from returning to work and limits her ADLs." *Id*. at 51, 19. Claimant reported that she had recently obtained Medicaid and would be "moving towards a surgical repair so she can return to work." *Id*. Claimant's reported improved symptoms in the right wrist after surgery, but she still had issues with extension localized at the ulnar wrist. *Id*. A physical examination by Dr. Caughfield reflected a QuickDash score of 95, which was consistent with severe disability, but Dr. Caughfield felt that this score was potentially being impacted by depression and anxiety. *Id*. Dr. Caughfield noted further that Claimant's high depression inventory score suggested severe depression, which could explain her clinical presentation, as she was anxious and crying during most of his examination. *Id*. The DIME diagnoses included: 1) possible carpal tunnel – not injury related; 2) right shoulder pain without established objective findings in the provided records; 3) cervical surgery with continued arm numbness – not established as related to the injury; and 4) probable depression and anxiety that has not been evaluated. *Id*. at 52, 20.

40. Dr. Caughfield opined that Claimant was not at MMI. (CHE 8, p. 52; RHE E, p. 20). He indicated that the right wrist injury was well-established as consistent with the mechanism of injury. *Id*. He assigned Claimant a provisional 3% scheduled impairment rating of the upper extremity. *Id*. He concluded further that Claimant's cervical complaints and subsequent surgery were not established as related to the injury. *Id*. Rather, Dr. Caughfield opined that Claimant's cervical spondylosis was age-related and not indicative of surgical need as it would have predated the injury. *Id*. Similarly, Dr. Caughfield indicated that Claimant's shoulder symptoms were "not established as work related. *Id*. He concluded that Claimant's imaging revealed "age-appropriate MRI findings" and noted that while there was an indication of possible labral tear in the orthopedic notes, this contradicted the MRI report without any reasoning given. *Id*. He found Claimant's shoulder examination "severely" limited by pain and unreliable in regard to providing an impairment rating or treatment recommendations. *Id*. at 52-53, 20-21.

41. Dr. Caughfield concluded that Claimant's high levels of anxiety and depression

"may or may not be injury related" but this anxiety and depression had not been addressed and could impact treatment and physical presentation. (CHE 8, p. 53; RHE E, p. 21). Accordingly, Dr. Caughfield concluded that Claimant's psychological status needed to be addressed per both the upper extremity and cervical treatment medical treatment guidelines before undertaking shoulder surgery. *Id*. Dr. Caughfield stated that because a psychological evaluation with any needed treatment had not been done, he determined that she was not at MMI. *Id*. Dr. Caughfield opined there were no restrictions for the wrist injury or any need for restrictions for the shoulder or neck since Claimant's symptoms in and need to treat these body parts had not been established as work-related. *Id*.

42. On June 10, 2025, Respondents filed a General Admission of Liability (GAL) accepting Dr. Caughfield's conclusion that Claimant was not at MMI. The GAL admitted liability for medical benefits, i.e. the psychological evaluation recommended by Dr. Caughfield. (CHE 7, p. 45; RHE C, p. 9). However, the GAL omitted an AWW and described the admission as a "medical benefits only claim at this time." *Id*.

43. Claimant did not pursue the psychological evaluation. Rather, she testified that she sought additional care for her right shoulder, including surgery performed by Dr. Henderson in June 2025.[6] Claimant added that Dr. Henderson imposed work restrictions for her shoulder after this surgery. The cost of Claimant's right shoulder surgery was covered by Medicaid since Claimant had lost her employer sponsored health insurance.

44. Claimant testified that she returned to work for Employer on August 31, 2025, following her wrist and shoulder surgery. Claimant's wage records document the she worked 84.25 hours for the pay period extending from 8/24/2024 through 9/6/2025. Based upon the wage records, the ALJ is convinced that Claimant probably returned to work on 8/31/2025 and worked part of the pay period extending from 8/24/2025-9/6/2025. Claimant testified that when she returned to work on August 31, 2025, she returned at full duty with no restrictions for either the wrist or shoulder.

[6] The medical reports concerning this surgery were not included among the records admitted into evidence.

45. Claimant alleged that Employer cut her hours due to the function of her right hand/wrist after her 11/30/2023 injury, which reduced her pay. Because Claimant was paid TPD benefits for the period extending from 12/1/2023 through 2/13/2024 and is now seeking additional temporary disability benefits beginning 2/14/2024 and after, this order does not address any reduction in hours or entitlement to additional disability benefits prior to 2/14/2024.

46. Claimant's wage records reflect that she is paid for regular hours, evening shift hours, night shift hours, extra shift pickup hours and weighted overtime. (CHE 5, RHE N). Historically the number of hours for which Claimant is paid in each category varies from pay period to pay period. (See generally, CHE 5, pp. 22-24; RHE N, pp. 326-328). Prior to her injury on 11/30/2023, Claimant's hours changed depending on the number of evening, and night shift hours she worked. (RHE N, p. 326). Indeed, the wage records admitted into evidence reflect that prior to her 11/30/2023 injury, the number of hours Claimant worked during any given pay period varied from a low of 156.4 hours for the pay period ending 10/22/2023 to a high of 268.57 hours for the pay period ending 11/18/2023. *Id*. at 326. For the pay period encompassing her 11/30/2023 injury, i.e. 11/19/2023–12/2/2023, Claimant worked a total of 221.91 hours. (RHE N, p. 327). No persuasive evidence was presented establishing that Claimant was guaranteed a specific number of hours, shifts or overtime during hearing. Nonetheless, post-injury pay periods (Dec. 17, 2023–Feb. 20, 2024) demonstrate progressive declines in hours worked, and this trend continued after Claimant returned to work on June 16, 2024. (CHE 5, p. 24; RHE N, p. 326-327).

47. For the pay period 2/11/2024-2/24/2024, it appears that Claimant worked a total of 108.62 hours. (RHE N, p. 327). However, because Claimant testified that her FMLA leave was approved beginning 2/14/2024, this pay period simply reflects the number of hours Claimant worked leading up to the approval of her FMLA leave.

48. The wage records demonstrate that Claimant worked no hours between

2/25/2024 and 4/20/2024. The ALJ finds this consistent with Claimant's testimony that her FMLA leave request was approved on 2/14/2024 and she was out of work until 6/16/2024. (CHE 5, p. 24; RHE N, p. 327). While the wage records reflect that Clamant was paid for 80 hours of work for the pay period between 4/21/2024-5/4/204 and 10.48 hours of work for the pay period between 5/5/2024-5/18/2024, Claimant testified that she did not work these periods. *Id*. Instead, Claimant testified that Employer paid her for accrued sick and vacation leave for these periods. The ALJ credits Claimant's testimony to find that the wage records reflect a payout for vacation and sick leave rather than actual wages for hours worked for these periods.

49. The wage records also demonstrate that Claimant worked no hours for the pay periods of 5/19/2025-6/1/2024 and 6/2/2024-6/15/2024. (CHE 5, p. 24; RHE N, p. 327). Based upon the wage records and Employer's January 21, 2025, letter, the ALJ is convinced that Claimant was out of work on FMLA for the 12-week period outlined above, i.e. 2/25/2024-4/20/2024 and 5/19/2024-6/15/2024 due to the functional limitations associated with her right hand/wrist, shoulder and neck conditions. *Id*.; see also, CHE 5, p. 14.

50. As noted, Claimant testified that she returned to work on June 16, 2024. The wage records admitted into evidence support Claimant's testimony. (CHE 5, p. 24; RHE N, p. 327). When Claimant returned to work following her FMLA leave, her wrist continued to hurt which limited her job performance. Indeed, Claimant testified that her wrist never got fixed and it was still hurting to do anything with it. As noted, the wage records support a finding that the drop in Claimant's work hours during this time frame continued when those hours are compared to the number of hours she worked pre-injury. (CHE 5, p. 24).

51. Claimant's wage records support a finding that following her 1/17/2025, right wrist surgery, she had no earnings up to the pay period beginning August 24, 2025. (CHE 5, p. 24; RHE N, p. 328). Claimant testified that she returned to work on August 31, 2025. For this pay period (8/24/2025-9/6/2025), the wage records admitted into evidence reflect that Claimant worked 84.25 hours for this pay period. *Id*. The ALJ credits Claimant's

testimony to find that she probably returned to work following her 1/17/2025 wrist surgery on August 31, 2025, in the middle of the pay period and worked a total of 84.25 hours in the seven days between 8/31/2025 and 9/6/2025. Based upon the evidence presented, the ALJ is persuaded that employer did not offer Claimant modified duty following her 1/17/2025 wrist surgery and that Claimant was unable to return to her regular position with Employer until 8/31/2025 after she was released to full duty (unrestricted) work. Thus, the ALJ is convinced that Claimant is entitled to temporary total disability for the period running from 1/17/2025 through 8/30/2025.

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. 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 accordance with §8-43-215 C.R.S., this decision contains specific Findings of Fact, Conclusions of Law and an Order. 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).

Jurisdiction and Ripeness

C. Administrative Law Judges employed by the Office of Administrative Courts "have original jurisdiction to hear and decide all matters arising under [the Act]." Section 8-43-201(1), C.R.S. (2025); *see also Destination Maternity v. Burren*, 463 P.3d 266 (Colo. 2020) (recognizing the ALJ's adjudicatory authority within the Act's framework). However, § 8-43-211(2)(b), C.R.S., requires that an issue be ripe for adjudication at the time the application for hearing is filed. Ripeness tests whether an issue is real, immediate, and fit for adjudication. *Olivas-Soto v. Industrial Claim Appeals Office*, 143 P.3d 1178 (Colo. App. 2006). A claim is not ripe if there is a legal impediment to adjudication. *BCW Enterprises v. Industrial Claim Appeals Office*, 964 P.2d 533 (Colo. App. 1997). In this case, Respondents contend that the issues endorsed for hearing, including medical benefits, authorization and right-of-selection flowing from Claimant's discharge from care on February 14, 2024, by Dr. Johnson, wage-loss in the form of TPD and TTD, and appropriate adjustment of the stipulated AWW based on Claimant's loss of fringe benefits are not ripe because there is a legal impediment to their adjudication, namely the ALJ's jurisdiction to hear the issues.

D. An ALJ lacks jurisdiction to resolve disputes concerning MMI or permanent impairment absent a completed DIME. See §§ 8-42-107(8), 8-42-107.2, C.R.S.; *Town of Ignacio v. Industrial Claim Appeals Office*, 70 P.3d 513 (Colo. App. 2002); *Meza v. Indus. Claim Appeals Off.*, 303 P.3d 158, 161–62 (Colo. App. 2013) (hearings concerning the validity of MMI/impairment require DIME findings to be filed first); *Rosten v. Indus. Claim Appeals Off.*, 536 P.3d 839, 845–46 (Colo. App. 2023) (timing and channeling of MMI/impairment disputes through DIME); *see also Williams v. Kunau*, 147 P.3d 33, 36–38 (Colo. 2006) (once the DIME process is invoked, the DIME track controls MMI/impairment and the claim may not be closed on competing MMI opinions while that process remains open). This is true because determining MMI necessarily requires the injured worker's treating physician to ascertain the cause or causes of the claimant's condition to decide whether additional treatment for any work-related condition is

warranted and the exclusive method for challenging such determinations is the DIME process. See *Story v. Industrial Claim Appeals Office*, 910 P.2d 80, 82 (Colo. App. 1995).

E. The Act defines MMI as the point at which any medically determinable physical or mental impairment resulting from the industrial injury has stabilized and no further treatment is reasonably expected to improve the condition. Section 8-40-201(11.5), C.R.S. (2025). In this case, the DIME physician indicated that Claimant was not at MMI because she needed additional psychological testing for a potential mental condition. However, the DIME opinion recommends no further care for the wrist, which Respondents concede is work-related, and likewise indicates both the shoulder and neck conditions are unrelated. The DIME report is the sole opinion from any physician or treater which suggests a mental component to the claim and is, as raised by Respondents, ambiguous as to whether this mental condition is related to the injury. Because further testing is necessary not only to determine MMI, but also whether the mental condition is causally related to the industrial injury, and Claimant has yet to undergo this testing, the DIME in this case is incomplete. Indeed, the incomplete nature of the DIME with respect to MMI and causation renders the DIME opinion incomplete because MMI and causation for body parts/mental conditions cannot be parceled out.[7]

F. As noted, Respondents assert that in the absence of a completed DIME, the ALJ does not have jurisdiction to make determinations regarding medical treatment, authorized care, or temporary disability benefits because a determination by the ALJ on these issues would necessarily require a determination of causation (i.e. treatment for a body part, or wage loss in connection with treatment for a body part), which requires a completed DIME before this determination can be made. Considering the ongoing DIME process and the unresolved question of MMI in the context of ambiguous causation, Respondents contend that the ALJ does not have jurisdiction to determine the issues for hearing. Because the ALJ lacks jurisdiction, Respondents argue that the issues endorsed

[7] Colorado law does not permit "partial" or component MMI within a single compensable injury: a claimant does not reach MMI until **all injury-related conditions** reach stability. *Paint Connection Plus v. Indus. Claim Appeals Off.*, 240 P.3d 429, 433 (Colo. App. 2010) (emphasis added).

for hearing are not ripe for adjudication. In short, Respondents assert that the ALJs lack of jurisdiction serves as an impediment to adjudication of medical and temporary disability benefits in the absence of a completed DIME process.

G. Conversely, Claimant contends that issues which do not require deciding MMI, permanent impairment, or a determination regarding the cause of a specific condition or need for treatment, remain within the Court's authority and are appropriately tried when endorsed, including right-of-selection, authorization of care, AWW, fringe benefit calculations, and entitlement to temporary disability benefits, which presumptively continues until MMI or some other terminating event. See §§ 8-43-201(1), 8-42-105(3), C.R.S. (2025); *City of Colorado Springs*, supra at 639–40. In this case, the DIME physician, Dr. Caughfield, examined Claimant on May 13, 2025, and found her not at MMI. Respondents then filed a General Admission consistent with the DIME. Further, the undersigned ALJ limited the hearing to the issues of authorization and right-of-selection flowing from the February 14, 2024, Concentra discharge, wage-loss in the form of TPD and TTD, and appropriate adjustment of the stipulated AWW based on Claimant's loss of fringe benefits. Accordingly, the ALJ agrees with Claimant that the case posture follows harmoniously with the authorities above, i.e. that MMI and impairment, and issues directly related to medical causation, remain reserved to the DIME track while non-MMI issues proceed. The question of whether Claimant is entitled to wage loss benefits, whether she received authorized or unauthorized care for an admitted condition, whether the right of selection passed, and Claimant's average weekly wage are all issues that are not contingent upon closure of the DIME process. Accordingly, the ALJ rejects Respondents assertion that in the absence of a completed DIME process, including the conclusion of a hearing regarding the credibility of a DIME ruling on MMI, an ALJ does not have jurisdiction to award temporary benefits after an authorized physician has assigned a date of MMI. The ALJ finds Respondents reliance on *Ayala v. Conagra Beef Co.*, W.C. No. 4-579-880 (July 22, 2004) as standing for this proposition misplaced. In *Ayala*, the ALJ lacked jurisdiction to award TTD benefits after claimant's ATP placed her at MMI on October 14, 2002, because no DIME had been requested. In this case, Claimant requested a DIME and Dr. Caughfield concluded that she was "not at MMI". Thereafter,

Respondents *conceded* that Claimant was not at MMI when they filed their General Admission of Liability. Respondents did not challenge the causation findings of Dr. Caughfield regarding Claimant's wrist being causally related to the November 30, 2023, industrial incident. Thus, the ALJ agrees with Claimant that temporary disability continues unless and until the overall injury reaches MMI or another statutory termination event occurs. § 8-42-105(3), C.R.S.; *City of Colorado Springs*, 954 P.2d at 639–40. Indeed, the statute presumes temporary disability continues until MMI, return to work, or release. § 8-42-105(3), C.R.S.; *City of Colorado Springs*, 954 P.2d at 639–40. Determining entitlement for defined periods of disability benefits, e.g., TPD 2/14–2/18/24; TTD from 2/19/24 forward does not require deciding the ultimate MMI question. Rather, it applies the statutory framework to the facts as determined.

H. Similarly, authorization/right-of-selection and determinations regarding AWW do not require an MMI determination. The Act obligates respondents to furnish medical treatment that is reasonable and necessary to cure or relieve the effects of the injury without regard to MMI, and disputes about who is authorized (e.g., after a non-medical discharge) turn on statutory selection rules and the facts of authorization—not on deciding MMI or impairment. See § 8-42-101(1)(a), C.R.S. (employer shall provide medical treatment reasonably necessary to cure and relieve); cf. *Williams*, 147 P.3d at 36–38 (DIME governs MMI/impairment, but other claim administration can proceed). Based upon the evidence presented and the legal authorities cited, the ALJ concludes that he has jurisdiction and that the issues heard—authorization/right-of-selection, TTD/TPD, and AWW/fringe benefits—were ripe for adjudication at the time Claimant's application for hearing was filed. Any issues related to overcoming the DIME as to MMI, medical causation, and any permanent impairment disputes are not ripe and are reserved for future proceedings.

Claimant's Discharge from Care for Non-Medical Reasons, Right of Selection and Authorized Provider

I. Under § 8-43-404(5)(a), C.R.S., the employer or insurer is afforded the right in

the first instance to select the physician who attends to Claimant's injuries. However, § 8-43-404(5)(a), C.R.S. implicitly contemplates that respondents will designate a physician who is willing to provide treatment without regard to non-medical issues such as the prospects for payment in the event the claim is ultimately denied. *Lutz v. Industrial Claim Appeals Office,* 24 P.3d 29 (Colo. App. 2000); *Scoggins v. Air Serv,* W. C. No. 4-642757-(ICAO, Mar 31, 2006). Thus, if the physician selected by the respondent refuses to treat the claimant for non-medical reasons, and the respondent fails to appoint a new treating physician, the right of selection passes to the claimant, and the physician selected by the claimant is authorized. *See § 8-43-404(10)(a-b), C.R.S; Ruybal v. Univ. of Colo. Health Sciences Center, 768 P.2d 1259, 1261 (Colo. App. 1988); Lutz v. ICAO, supra; Rogers v. ICAO, 746 P.2d 565, 567 (Colo. App. 1987); Buhrmann v. University of Colorado Health Sciences Center,* W.C. No. 4-253-689 (Nov. 4, 1996); *Ragan v Dominion Services, Inc.,* W.C. No. 4-127-475 (Sept. 3, 1993).

J. Whether an ATP refused to treat a claimant for non-medical reasons, whether the insurer received notice of the refusal to treat and whether the insurer "forthwith" designated a physician who was willing to treat the claimant are questions of fact for resolution by the ALJ. *Garrett v. McNelly Construction Company, Inc.*, W.C. No. 4-734-158 (ICAP, Sept. 3, 2008); *see Ruybal*, 768 P.2d at 1260. Here, the record evidence supports a finding/conclusion that Claimant was discharged from Concentra by Dr. Johnson on February 14, 2024, despite his not having evaluated Claimant, for what is listed on the M164 form as nonmedical reasons. While PA Peterson's report outlines her belief that Claimant's injury and the symptoms, she sought to be treated were not causally related to a work event, Dr. Johnson provided no causality statement. Rather, he simply adopted PA Peterson's conclusion that Claimant's injuries/symptoms appeared to "NOT" be consistent with and arising from the course of employment job duties" and thus were not causally related to the November 30, 2023, incident. Based upon the evidence presented, the ALJ finds/concludes that PA Peterson's refusal to treat Claimant was not based upon a medical judgement concerning Claimant's need for treatment but instead on her opinions concerning legal issues surrounding causation and compensability of Claimant's asserted injuries. Such refusals to treat have been found to constitute a non-

medical basis for discharge from treatment. See *Patrick A. Dover v. Ameriserve Food Distribution and MSAS Global Logistics Inc*., W.C. Nos. 4-451-332 & 4-494-054 (ICAO, March 12, 2003). Moreover, the ALJ finds record support for the conclusion that PA Peterson and Dr. Johnson abruptly discharged Claimant from treatment, despite an MRI-documented TFCC tear and the orthopedist's confirming exam, because of frustrations over perceived non-compliance with treatment and inappropriate behavior while in the clinic. Based upon the evidence presented, the ALJ finds/concludes that Claimant was refused treatment for non-medical reasons.

K. As noted, the fact that an authorized treating provider stops providing treatment for non-medical reasons does not automatically authorize a claimant to change physicians. Rather, the Act affords employers the right to select a new physician in the event that an authorized provider refuses to provide treatment or discharges an injured worker from care for non-medical reasons. C.R.S. § 8-43-404(10) (b). Failure to do so entitles a claimant to select the physician who attends to his/her injuries and the physician selected by the claimant is authorized. *Ruybal v. University Health Sciences Center, supra; Lutz v. Industrial Claim Appeals Office, supra.*

L. As presented, the evidence persuades the ALJ that Respondents probably received notice of the refusal to treat Claimant via the February 14, 2024, report of PA Peterson, Dr. Johnson's M164 Report and the conversation PA Peterson had with employer, wherein Employer accused Claimant of a history of faking injuries. (See FOF ¶ ¶ 16-18). Accordingly, Respondents' duty to re-designate a physician willing to treat Claimant arose immediately. Because Respondents did not act forthwith, selection of a new authorized provider passed to Claimant as of February 14, 2024. *Lutz*, 24 P.3d at 32–33; *Ruybal*, 768 P.2d at 1261. Claimant then presented to the offices of her PCP, Comfort Care Family Practice who became Claimant's new primary authorized treating provider. Because authorized providers include those medical personnel to whom the claimant is directly referred by the employer, as well as providers to whom an authorized provider refers the claimant in the normal progression of authorized treatment and a subsequent change in providers does not act to deauthorize prior authorized medical

personnel, both Dr. Henderson, who was in the original referral chain and, Dr. Hammers to whom Claimant was referred by Dr. Henderson remain authorized to treat Claimant. *Town of Ignacio v. Industrial Claim Appeals Office,* 70 P.3d 513 (Colo. App. 2002); *City of Durango v. Dunagan,* 939 P.2d 496 (Colo. App. 1997); *Chapman v. The Spectranetics Corporation*, W.C. No. 4-162-568 (May 30, 1997) (holding that "deauthorization" may occur if evidenced by an express agreement under which the claimant waives treatment by the previously authorized physician); *see also Granger v. Penrose Hospital*, W.C. No. 4-351-885 (July 20, 1999). While this order does not address causality issues surrounding Claimant's shoulder/neck conditions and whether the treatment directed to these body parts was reasonable and necessary in light of the incomplete nature of the DIME process, the ALJ finds and concludes, based upon the evidence presented, that the surgery directed to Claimant's right wrist (a body part that Respondents have admitted is related to the 11/30/2023 incident) was reasonable and necessary. Because this surgery and the associated follow-up care was delivered by an authorized provider and was otherwise reasonable, necessary and related to Claimant's 11/30/2023 work incident, Respondents are liable for it. See § 8-42-101(1)(a), C.R.S.; *Yeck v. ICAO*, 996 P.2d 228, 231 (Colo. App. 1999).

Claimant's Average Weekly Wage- Loss of Fringe Benefits (COBRA Conversion)

M. Employer-paid health premiums are not part of the average weekly wage calculation while the employer remains the payor. When the employer-paid healthcare terminates, the injured workers cost of continuing coverage under the same or similar plan converts to a weekly amount and is added to AWW to fairly reflect the lost fringe benefit. See §§ 8-42-102(3), (5)(b), C.R.S.; *Campbell v. IBM Corp*., 867 P.2d 77, 82 (Colo. App. 1993). In this case, the COBRA notice admitted into evidence lists monthly continuation premiums of Medical (Employee & Children) $1,076.10, Dental $93.53, and Vision $7.61, totaling $1,177.24/month, with COBRA coverage effective February 1, 2025. Using the standard conversion: $1,177.24 × 12 = $14,126.88 ÷ 52, Claimant is entitled to an increase of $271.67/week ($1,177.24 × 12 = $14,126.88 ÷ 52 = $271.67/week) in her average weekly wage beginning February 1, 2025. The AWW from

the DOI through January 31, 2025, is $2,012.87. Effective February 1, 2025, Claimant's AWW increases by $271.67/week to $2,284.54 to reflect Claimant's loss of fringe benefits. While Claimant is entitled to an increase in her AWW, the Court notes that the stipulated AWW is already subject to the State Maximum benefits rate for Claimant's 2023. The weekly maximum TTD rate for a November 30, 2023, injury is $1,293.25 and remains tied to the DOI.

Claimant's Entitlement to Temporary Total Disability Benefits

N. To establish entitlement to temporary disability (TTD) benefits, Claimant must prove that the industrial injury caused a disability lasting more than three work shifts; that she left work as a result of the disability, and the disability resulted in an actual wage loss. *PDM Molding, Inc. v. Stanberg*, 898 P.2d 542 (Colo. 1995); *City of Colorado Springs v. Industrial Claim Appeals Office,* 954 P.2d 637 (Colo. App. 1997). The purpose of TTD benefits as provided by statute is to compensate for and protect against actual temporary wage loss attributable to an industrial injury. *Manor v. Industrial Claim Appeals Office*, 881 P.2d 443 (Colo. App. 1994); *see also Lunsford v. Sawatsy*, 780 P.2d 76 (Colo. App. 1989). Section 8-42-103(1)(a) requires Claimant to establish a causal connection between a work-related injury and a subsequent wage loss in order to obtain TTD benefits. *PDM Molding, Inc. v. Stanberg, supra*. 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 prior work. *Culver v. Ace Electric*, 971 P.2d 641 (Colo. 1999). The impairment of the earning capacity element may be evidenced by a complete inability to work, or by restrictions, which impair the Claimant's ability to effectively, and properly perform his regular employment. *Ortiz v. Charles J. Murphy & Co.*, 964 P.2d 595 (Colo. App. 1998). Claimant is not required to prove that the industrial injury is the sole cause of her wage loss to recover temporary disability benefits. *Jorge Saenz Rico v. Yellow Transportation, Inc*. W.C. No. 4-547-185 (ICAO December 1, 2003), citing *Horton v. Industrial Claim Appeals Office*, 942 P.2d 1209 (Colo. App. 1996). Furthermore, there is no requirement that a claimant produce a medical opinion to prove his/her entitlement to temporary

disability benefits. Rather, the testimony of the claimant, if credited, is sufficient to demonstrate a disability. *Lymburn v. Symbios Logic*, 952 P.2d 831, 833 (Colo. App. 1997).

O. In this case, the evidence presented establishes that Claimant was treated by a myriad of doctors, physicians' assistants and physical therapists; however, all these providers were located out of a Concentra facility in Pueblo. Claimant was placed under restrictions at her first visit with Dr. Tanya Hrabal on November 30, 2023 (CHE 9, p. 59). These restrictions were modified over time and became more restrictive by December 4, 2023, following an appointment with Dr. Meury. *Id*. at 65. Indeed, by December 4, 2023, Claimant was restricted to lifting no more than 5 pounds, pushing/pulling no more than 10 pounds and no pinching/gripping with the right hand/upper extremity. *Id.* These restrictions remained in place for the duration of Claimant's treatment with Concentra, until February 14, 2024. *Id.* at 117. On February 14, 2024, Claimant's restrictions were abruptly "lifted" by PA Peterson during a contentious appointment during which Claimant requested a change of provider. The ALJ is convinced that this request prompted PA Peterson to discharge her for non-medical reasons, which discharge was subsequently approved by Dr. Johnson. *Id*. at 118-123. After Claimant's discharge, Respondents failed to timely authorize a new provider. Claimant then presented to the offices of her PCP where she saw FNP Bryant who significantly curtailed her work duties for what the ALJ finds was persistent right arm and shoulder pain and weakness. (CHE 15, pp. 231-235). Based upon the evidence presented, the ALJ finds PA Peterson's and Dr. Johnson's opinions concerning work restrictions as of Claimant's February 14, 2024, appointment unpersuasive. Instead, the ALJ credits the testimony of Claimant regarding her functional limitations, the medical records as a whole and the opinions of FNP Bryant, Dr. Henderson, Dr. Castrejon, and Dr. Paz to find a probable need for ongoing restrictions after February 14, 2024. As presented, the evidence fails to persuade the ALJ that Concentra's February 14, 2024, "non-medical" discharge restored Claimant's work capacity. Instead, the ALJ is convinced that by the February 14, 2024, appointment, Claimant was probably struggling to perform the essential functions of her job with Employer secondary to persistent pain and weakness in the right hand/wrist despite

significant work restrictions. Based upon the content of PA Peterson's 2/14/2024 record, the ALJ is convinced that Claimant's frustration with the condition of her hand/wrist boiled over and she lashed out at Ms. Peterson, whom she felt was not helping her. In response PA Peterson promptly lifted all restrictions and discharged her from the clinic. Claimant's testimony regarding her functional limitations and the employer records documenting approval of her FMLA leave persuade the ALJ that Claimant was completely unable to effectively and properly work for Employer in any capacity due to the effects of her right hand/wrist injury as of February 14, 2024 at which time she began experiencing an actual wage loss due to a condition related to the November 30, 2023 assault. Simply put, the ALJ concludes that Claimant was "disabled" within the meaning of section 8-42-105, C.R.S. beginning February 14, 2024. Once a claimant has established a "disability" and a resulting wage loss, the entitlement to temporary disability benefits continues until terminated in accordance with § 8-42-105(3)(a) - (d).

P. C.R.S. § 8-42-105(3) provides in pertinent part: Temporary total disability benefits shall continue until the first occurrence of any one of the following:

(a) The employee reaches maximum medical improvement;

(b) The employee returns to regular or modified employment;

(c) The attending physician gives the employee a written release to return to regular employment; or

(d)(I) The attending physician gives the employee a written release to return to modified employment, such employment is offered to the employee in writing, and the employee fails to begin such employment.

Q. In this case, the evidence presented supports a finding/conclusion that Employer did not seek to return Claimant to modified duty at any time between February 14, 2024, and June 15, 2024. While Claimant had a neck surgery that has been deemed to be unrelated to the November 30, 2023, assault, the ALJ is convinced that her right hand/wrist injury substantially contributed to her inability to work and thus, her wage loss during this period. As noted, Claimant was paid for accrued sick and vacation leave for

the period between 4/21/2024 and 5/18/2024, which the ALJ determines does not constitute wages for hours worked. Accordingly, the ALJ concludes that Claimant is entitled to TTD benefits from February 14, 2024, through June 15, 2024. Because Claimant's period of disability lasted longer than two weeks from the day she left work as a consequence of her right hand/wrist injury, she is entitled to recover disability benefits from the day she left work in this case, i.e. February 14, 2024. See § 8-42-103(1)(b), C.R.S. Because Claimant returned to work on June 16, 2024, TTD benefits terminate pursuant to C.R.S. § 8-42-105(3) (b).

R. Based upon the evidence presented, the ALJ concludes that Claimant is also entitled to TTD from January 17, 2025, through August 30, 2025, when she returned to unrestricted work. For the reasons outlined above, the ALJ specifically rejects Respondents contentions that the January 17, 2025, wrist surgery was "unattributable", i.e. not related to Claimant's November 30, 2023, assault and was not performed by an authorized provider. Further, the ALJ is not convinced that Dr. Henderson's failure to request prior authorization, per W.C.R.P. 16-7, for the January 17, 2025, surgery precludes Claimant's entitlement to TTD benefits. Indeed, Respondent's failed to cite any legal authority for this proposition. Finally, while Claimant did undergo surgery for her right shoulder, which has been determined to be unrelated to Claimant's 11/30/2023 assault, during the same period she was off work following her right wrist surgery, the ALJ is convinced that the condition of Claimant's right wrist played a material role in her inability to effectively, and properly to perform her regular employment and no evidence was presented that Employer offered Claimant modified duty during this period. Accordingly, the ALJ concludes that Claimant is entitled to TTD benefits for this period.

Claimant's Entitlement to Temporary Partial Disability Benefits

S. Temporary partial disability benefits are intended to pay for lost wages while a claimant is able to return to modified duty but not yet at maximum medical improvement. *Monfort of Colorado v. Husson*, 725 P.2d. 67 (Colo. App. 1986). Temporary partial disability benefits are calculated based on the difference between the claimant's average

weekly wage at the time of the injury and the average weekly wage during the continuance of temporary partial disability. See C.R.S 8-42-106(1). Respondents already admitted for and paid TPD benefits from December 1, 2023, through February 13, 2024. Claimant now seeks TPD for a period of partial disability extending from 6/16/2024 through 1/16/2025 on the basis that the impaired condition of her right wrist resulted in fewer hours worked. The wage records support Claimant's contention that she is entitled to partial wage loss during this period as the evidence establishes Claimant's wrist continued to play a role in her functional impairment and inability to earn a full wage. Indeed, the wage records admitted into evidence demonstrate fluctuating but decreased hours when compared to the hours Claimant worked pre-injury. Using the payroll ledger and prorating the wage loss due to the decreased hours Claimant worked between 6/16/2024 and 8/31/2025, because of her right wrist injury, Claimant is owed additional TPD benefits as set out below.

From	Thru	Weeks	Wages	AWW	Stip. AWW	TPD
06/16/2024	06/29/2024	2	$3225.89	$1,612.95	$2,012.87	$599.88
06/30/2024	07/13/2024	2	$3493.01	$1,746.50	$2,012.87	$399.55
07/14/2024	07/27/2024	2	$2813.19	$1,406.59	$2,012.87	$404.19
07/28/2024	08/10/2024	2	$4283.96	$2,141.98	$2,012.87	$0.00
08/11/2024	08/24/2024	2	$3720.92	$1,860.46	$2,012.87	$101.60
08/25/2024	09/07/2024	2	$4023.19	$2,011.59	$2,012.87	$0.85
09/08/2024	09/21/2024	2	$3641.13	$1,820.56	$2,012.87	$128.20
09/22/2024	10/05/2024	2	$2638.33	$1,319.16	$2,012.87	$462.47
10/06/2024	10/19/2024	2	$3823.01	$1,911.50	$2,012.87	$67.58
10/20/2024	11/02/2024	2	$3625.54	$1,812.77	$2,012.87	$133.40
11/03/2024	11/16/2024	2	$3018.14	$1,509.07	$2,012.87	$335.87
11/17/2024	11/30/2024	2	$2367.57	$1,183.78	$2,012.87	$552.73
12/01/2024	12/14/2024	2	$2119.17	$1,059.58	$2,012.87	$635.53
12/15/2024	12/28/2024	2	$1961.50	$980.75	$2,012.87	$688.08
12/29/2024	01/11/2025	2	$1185.93	$592.96	$2,012.87	$946.61
01/12/2025	01/25/2025	2	$483.56	$241.78	$2,012.87	$1,180.72

					Increased AWW[8]	
08/24/2025	09/06/2025	2	$1059.4	$529.53	$2,284.54	$1,170.00
				Total		$7,807.26

Offsets

T. For all temporary disability awarded between April 2025 and August 30, 2025, Respondents are entitled to an offset for unemployment benefits per Section 8-42-103(1)(f), C.R.S. and W.C.R.P. 6-5, in the amount of $735 per week.

Order

It is therefore ordered that:

1. The Court exercises jurisdiction under C.R.S. § 8-43-201, and determines the issues presented are ripe for adjudication.

2. Claimant has proven that Concentra (PA Peterson/Dr. Johnson) discharged her on 2/14/2024 for non-medical reasons. Respondents received notice of the discharge but did not forthwith re-designate an ATP. Accordingly, the right of selection passed to Claimant on 2/14/2024.

3. CCFP (Reagan Bryant, FNP) and Dr. Chance Henderson and their ordinary referrals are authorized to treat Claimant. CCFP is the primary ATP.

4. Respondents shall authorize and pay for all reasonable, necessary, and related medical care for Claimant's admitted wrist injury, including the surgery performed by Dr.

[8] See the AWW calculation set out in paragraph K above.

Chance Henderson. Payment for medical services rendered shall be made in accordance with the Colorado workers' compensation medical benefits fee schedule.

5. Claimant has proven that she is entitled to an increase in her AWW for loss of her employer paid insurance plan. The party's stipulation concerning Claimants AWW up to 1/31/2025 at $2,012.87 is approved. Beginning 2/1/2025, Claimant's AWW is increased to $2,284.54 to reflect the cost to Claimant to convert to a COBRA plan. The stipulated AWW as well as the COBRA-adjusted AWW beginning 2/1/2025 are subject to the State Maximum benefits rate for Claimant's 2023 date of injury. The weekly maximum TTD rate for Claimant's November 30, 2023, injury is $1,293.25/week. Nonetheless, Respondents shall file an updated admission reflecting Claimant's AWWs, weekly TTD and TPD Benefits, and COBRA start date, and adjust all payments retroactively.

6. Claimant has established, by a preponderance of the evidence, that she is entitled to TTD benefits at the State Maximum TTD rate ($1,293.25) beginning 2/14/2024 and running through 6/15/2024. Similarly, Claimant has established that she is entitled to TTD benefits at this same rate for the period beginning 1/17/2025 through 8/30/2025.

7. Claimant has proven, by a preponderance of the evidence, that she is entitled to TPD in the amount of $7,807.26.

8. Respondents are entitled to offset any temporary disability benefits awarded for unemployment benefits received from April 2025 through August 30, 2025, in the amount of $735 per week.

9. Insurer shall pay interest to Claimant at the rate of 8% per annum on all amounts of compensation not paid when due.

10. All matters not determined herein are reserved for future determination.

Dated: December 5, 2025

/s/ Richard M. Lamphere_____

Richard M. Lamphere
Administrative Law Judge

NOTE: 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 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 26(A) and Section 8-43-301, C.R.S. If the Petition to Review is filed by email to the proper email address, it need not 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 26, OACRP. You may access a petition to review form at: https://oac.colorado.gov/resources/oac-forms

Office of Administrative Courts
State of Colorado
Workers' Compensation No. WC 5-246-213-001

Issues

- Whether Claimant has proven by a preponderance of the evidence that he is entitled to an award of temporary total disability ("TTD") benefits for the period of September 29, 2024 through January 28, 2025?

- Whether Claimant has proven by a preponderance of the evidence that he is entitled to an award of temporary partial disability ("TPD") benefits for the period of August 16, 2024 through September 28, 2025

- Whether Respondents have proven by a preponderance of the evidence that Claimant committed a volitional act that led to his termination of employment pursuant to Sections 8-42-103(1)(g) and 8-42-105(4), C.R.S., thereby precluding Claimant from receiving TTD benefits for the period of September 29, 2024 through January 28, 2025?

Findings of Fact

1. Claimant sustained an admitted injury to his right knee in the course and scope of his employment with Employer on January 6, 2023. Claimant previously owned his own company processing firewood before selling the company to Employer and accepting a position which required him to process logs into firewood and deliver the firewood to customers in the Gunnison County area.

2. After Claimant's injury, Claimant sought medical treatment initially at the Urgent Care in Montrose, Colorado before coming under the care of Dr. Elfenbein. Dr. Elfenbein eventually performed surgery on Claimant's right knee on December 21, 2023. Following Claimant's surgery, Claimant testified he was off of work and had his

hamstring snap, which resulted in six months of physical therapy. Claimant was eventually released to return to work with restrictions that included no lifting over 10 pounds and no kneeling, crawling, squatting or climbing as of March 11, 2024. Claimant testified he returned to work delivering firewood, but needed assistance because he could not walk on uneven firewood piles or climb up on the truck. Claimant testified he could not operate an 18 wheel semi-truck while he was taking Lyrica. Claimant testified his job was tolerable, but would need assistance to even out the load on the truck and put on the tarp. Claimant's work restrictions were modified as of May 24, 2024 to restrict Claimant's lifting to 15 pounds, with the same limitations involving no crawling, kneeling, squatting or climbing. Claimant testified he performed his light duty work for Employer through September 2024.

3. Claimant testified that during the time he was performing modified duty, he was having difficulty delivering the firewood and could not climb up on any of the machinery, and was unable to haul logs with a self-loader truck. Claimant testified that the owner of Employer, Cody Neff, did not want Claimant' climbing up on the ladder on the semi-loader log truck.

4. Claimant testified that in September 2024, Employer shut down their firewood operation. Claimant testified he was not told he was laid off or fired, but simply informed that Employer was shutting down their operation. Claimant testified he inquired about the existing orders from customers, and was informed by Mr. Castle, the HR Manager, that he should continue to fill the existing orders with the firewood that was in the yard. Claimant testified that he was not offered additional work that was within his work restrictions.

5. Claimant testified he was offered a position with Employer driving a log truck which would involve driving to other areas Employer serviced that included New Mexico, Nevada and California. Claimant testified this job was not within his work restrictions.

6. Respondents presented the testimony of Jesse Castle, the Human Resources Manager for Employer. Mr. Castle testified Claimant worked in the firewood

yard in Gunnison, Colorado up until September 28, 2024. Mr. Castle testified at that point, the company had decided to close down the firewood operations as it was not profitable for Employer. Mr. Castle testified that on September 16, 2024, he called Claimant to discuss what still needed to be done about closing up the yard and discussed with Claimant the possibility of driving a truck with the company. Mr. Castle testified that Claimant indicated that he was not interested in driving a truck for the company because Claimant wanted to be at his home in Gunnison. Mr. Castle testified that Claimant's employment with Employer ended because Claimant did not want to drive the log truck for Employer and because Employer did not have any other available positions. Mr. Castle identified a letter from Erin Leftwhich dated January 15, 2025 that indicated that Claimant was laid off as of September 8, 2024, but testified this letter is not accurate.

7. On cross examination, Mr. Castle admitted that Claimant's job would have required Claimant be an over-the-road truck driver that would include driving a semi-truck for Employer to Nevada, New Mexico or California or other states where Employer operated. Mr. Castle testified Claimant was previously driving a Ford F350 or F550 truck for Employer. Mr. Castle testified Claimant's position driving the semi-truck would involve a work schedule of being on for 10 days, then off for 4 days. Mr. Castle testified that Claimant's job driving the logging truck would require Claimant to chain up the semi-truck to drive over the mountain passes. Mr. Castle admitted chaining up the semi-truck would represent work that was not within Claimant's work restrictions.

8. Claimant subsequently underwent another knee surgery on January 29, 2025 under the auspices of Dr. Rawlings. Respondents admitted for TTD benefits after the subsequent surgery.

9. The ALJ credits Claimant's testimony and the medical records entered into evidence and finds that Claimant has established that it is more probable than not that he is entitled to an award of TTD benefits for the period of time beginning September 29, 2024 and continuing until January 28, 2025 as Claimant was under work restrictions related to his admitted injury and did not earn wages during that period of time due to

his work restrictions. The ALJ likewise credits the testimony of Claimant and the medical records entered into evidence along with the wage records entered into evidence and determines that Claimant has established that it is more likely than not that he is entitled to an award of TPD benefits for the period of August 16, 2024 through September 28, 2024.

10. With regard to the TPD benefits, Respondents admitted for an average weekly wage ("AWW") of $1,502.12 in their General Admission of Liability. According to the wage records entered into evidence in this case, during the period of August 19, 2024 through September 1, 2024, Claimant's gross earnings from Employer were $2,499.25. Claimant's gross earnings for the period of September 2, 2024 through September 15, 2024 were $1,681.64. Claimant's gross earnings for the period of September 16, 2025 through September 29, 2024 were $1,628.42. During this period of time, Claimant was under work restrictions from his treating physician, Dr. Elfenbein, of no lifting over 15 pounds and no crawling, kneeling, squatting or climbing.

11. Respondents maintain that Claimant is not entitled to temporary benefits for the period after September 28, 2024 due to the fact that he was responsible for his termination of employment with Employer. In this regard, Respondents argue that Claimant's action of refusing to accept the position as a truck driver operating a semi-truck in California, New Mexico, and Nevada represents a volitional act that led to Claimant's termination of employment. The ALJ is not persuaded.

12. The ALJ credits the testimony of Mr. Castle and Claimant and determines that the position offered to Claimant to drive the semi-truck would require Claimant to perform duties that were outside his work restrictions as established by his treating physicians. Therefore, the offer of a position that does not comply with Claimant's modified duty restrictions does not represent a bona fide job offer from Employer and Claimant's decision to reject such an offer does not represent a volitional act that led to Claimant's termination of employment.

13. Because Claimant did not commit a volitional act that led to his termination of employment, Claimant is entitled to an award of TTD benefits for the period of September 29, 2024 through January 28, 2025.

Conclusions of Law

A. 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 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 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., 2016.

B. 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).

C. To prove entitlement to temporary partial disability ("TPD") benefits, claimant must prove that the industrial injury contributed to some degree to a temporary wage loss. *PDM Molding, Inc. v. Stanberg*, 898 P.2d 542 (Colo. 1995). Section 8-42-106(1), C.R.S. provides that in cases of temporary partial disability, the employee shall receive sixty-six and two-thirds percent of the difference between the employee's

average weekly wage ("AWW") at the time of the injury and the employee's average weekly wage during the continuance of the temporary partial disability.

D. As found, Claimant has demonstrated by a preponderance of the evidence that he is entitled to an award of TPD benefits for the period of August 19, 2024 through September 28, 2024.

E. To prove entitlement to temporary total disability (TTD) benefits, claimant must prove that the industrial injury caused a disability lasting more than three work shifts, that he left work as a result of the disability, and that the disability resulted in an actual wage loss. *PDM Molding, Inc. v. Stanberg*, 898 P.2d 542 (Colo. 1995). Section 8-42-103(1)(a), *supra*, requires claimant to establish a causal connection between a work-related injury and a subsequent wage loss in order to obtain TTD benefits. *PDM Molding, Inc. v. Stanberg, supra*. 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 prior work. *Culver v. Ace Electric*, 971 P.2d 641 (Colo. 1999). There is no statutory requirement that claimant establish physical disability through a medical opinion of an attending physician; claimant's testimony alone may be sufficient to establish a temporary disability. *Lymburn v. Symbios Logic*, 952 P.2d 831 (Colo. App. 1997). 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 regular employment. *Ortiz v. Charles J. Murphy & Co.*, 964 P.2d 595 (Colo.App. 1998).

F. Sections 8-42-103(1)(g) and 8-42-105(4), C.R.S., provide that where it is determined that a temporarily disabled employee is responsible for termination of employment, the resulting wage loss shall not be attributable to the on-the-job injury. Respondents shoulder the burden of proving by a preponderance of the evidence that a claimant was responsible for his termination of employment. *See Colorado Compensation Insurance Authority v. Industrial Claim Appeals Office*, 20 P.3d 1209 (Colo. App. 2000).

G. As found, in this case, Respondents offered Claimant a position as an over-the-road truck driver that would require Claimant to perform duties that were outside of Claimant's work restrictions. As found, this does not represent a bona fide job offer to Claimant as the job duties exceed Claimant's modified work restrictions.

H. As found, Respondents have failed to establish by a preponderance of the evidence that Claimant committed a volitional act that led to his termination of employment. Therefore, Claimant is entitled to an award of TTD benefits for the period of September 29, 2024 through January 28, 2025.

Order

It is therefore ordered that:

1. Respondents shall pay Claimant TTD benefits based on Claimant's AWW for the period of September 29, 2024 through January 28, 2025.

2. Respondents shall pay Claimant TPD benefits for the period of August 19, 2024 through September 28, 2024.

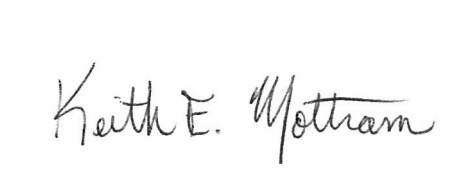
3. Respondents shall pay interest to Claimant at a rate of 8% per annum on all amounts of compensation not paid when due.

4. All issues not herein decided are reserved for future determination.

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**. 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. 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 26(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.

DATED: December 8, 2025



Keith E. Mottram
Administrative Law Judge
Office of Administrative Courts
222 S. 6th Street, Suite 414
Grand Junction, Colorado 81501

Office of Administrative Courts
State of Colorado

Workers' Compensation No. WC 5-299-035-001

Issues

1. Whether Claimant established, by a preponderance of the evidence, that she sustained compensable injuries to her right knee, right shoulder and left ankle on October 7, 2024.

2. If Claimant suffered compensable injuries to her right knee, right shoulder and left ankle on October 7, 2024, whether she proved that she is entitled to reasonable, necessary and related medical benefits to cure and relieve her of the effects of these compensable injuries.

3. If Claimant sustained compensable injuries to her right knee, right shoulder and left ankle on October 7, 2025, whether Respondent-Employer properly designated a medical provider pursuant to statue and rule of procedure.

Although endorsed for hearing, Claimant did not present any evidence/testimony from which the ALJ could determine her average weekly wage or entitlement to temporary disability benefits. Moreover, while the ALJ is convinced that Respondent Employer probably did not have workers' compensation insurance coverage on October 7, 2024, penalties for failing to carry such coverage as required pursuant to C.R.S. § 8-43-408(1) was not endorsed for hearing. Consequently, this order does not address Claimant's average weekly wage, her entitlement to TTD and/or penalties for failing to carry workers' compensation insurance coverage on October 7, 2024.

Findings of Fact

Based upon the evidence presented at hearing, the ALJ enters the following findings of fact:

1. On October 7, 2024, Claimant, who works as a cook for Employer, (Del Taco)

tripped and fell while returning to her work station after retrieving some food items from the front of the restaurant. According to her Worker's Claim for Compensation, she was walking with a tray and didn't see some drainage on the floor and when she stepped in it, she slipped and fell to the floor. (CHE 5). Claimant felt a pop in her right knee and experienced bruising/swelling in this knee as well as her right shoulder and left ankle. *Id.*

2. Claimant testified that she notified her manager of her injuries and that the manager had her complete a report/forms so she could be sent to the hospital.

3. Claimant then proceeded to the Emergency Room at Long's Peak Hospital where It was noted that her slip and fall occurred about 1.5 hours prior to arrival. (CHE 11, p. 065). Physical examination of the left ankle revealed soft tissue swelling under the distal portion of the lateral malleolus and tenderness about the anterior portion of the right knee and posterior right shoulder. *Id*. at 067. Range of motion for all body parts mentioned was full. X-rays of the right knee, right shoulder and left ankle were obtained and revealed "no acute fracture or dislocation. *Id*. at 067-068. There was some "benign-appearing sclerosis in the distal medial femoral shaft of the right leg but otherwise normal mineralization, joint spaces, and alignment of the right knee. *Id*. Claimant was instructed to take Ibuprofen and Tylenol for pain, elevate and ice her knee four times/day, elevate her ankle and follow-up with her primary care provider and an orthopedist. *Id.* at 069. Claimant testified that she was then discharged from the hospital with a referral for physical therapy.

4. Claimant testified that she tried to get into physical therapy but was unable to do so because she couldn't afford to pay for it and she had no health insurance. Claimant testified that she then followed-up with her usual and customary provider, "The Health Clinic" for treatment. According to Claimant, providers at "The Health Clinic" repeated x-rays and prescribed additional medication, which she paid for out-of-pocket. Claimant has not received any additional care and continues to experience pain in her shoulder, knee and ankle. She testified that her ankle feels weak, like it is "going to give out" while walking.

5. On March 7, 2025, the Claims Management Unit of the Division of Workers'

Compensation (Division) sent correspondence to Colorado Del II, LLC (Del Taco – AZ & CO) that Claimant was asserting that she suffered injuries at work on October 7, 2024. (CHE 9). On March 14, 2025, Del Taco – AZ-CO responded with an indication that Colorado Del II, LLC was sold to Newport Ventures on October 3, 2023. Accordingly, Del Taco asserted that it was not responsible for Claimant's injuries. (CHE 8). Notice of the claim was then sent by the Division to Newport Ventures, LLC on March 27, 2025. (CHE 7). Based upon the evidence presented, Newport Ventures did not respond to the Division's March 27, 2025, Notice.

6. On March 28, 2025, the United States Bankruptcy Court issued an order authorizing the sale free and clear of liens, claims, interests, and other interests of Newport Ventures among other relief pursuant to a Chapter 11 bankruptcy filing. (CHE 10). Based upon the evidence presented, the ALJ is convinced that the assets and final proceeds from the bankruptcy sale of Newport Ventures, LLC, have been distributed among the various entities claiming rights thereto. Id. at 062. The ALJ is also convinced, based upon the evidence presented, that Newport Ventures, LLC probably did not have workers compensation insurance coverage at the time of Claimants October 7, 2024, work-related trip and fall.

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, §§ 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.

B. 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).

C. The ALJ's factual findings concern only evidence and inferences found to be dispositive of the issues involved; the ALJ has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to the above findings as unpersuasive. *Magnetic Eng'g, Inc. v. Indus. Claim Appeals Office*, 5 P.3d 385 (Colo. App. 2000).

Compensability

D. A claimant's right to compensation initially hinges upon a determination that the

claimant suffered a disability that was proximately caused by an injury arising out of and within the course and scope of employment. C.R.S. § 8-41-301. 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 17, 20 (Colo. 1988). The latter requirement refers to the time, place, and circumstances under which a work-related injury occurs. *Popovich v. Irlando*, 811 P.2d 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 an activity connected with the employee's job-related functions. *In re Question Submitted by U.S. Court of Appeals*, supra; *Deterts v. Times Publ'g Co*., 38 Colo. App. 48, 51, 552 P.2d 1033, 1036 (1976). The "arising out of" test is one of causation. It requires that the injury have its origins in an employee's work-related functions and be sufficiently related thereto so as to be considered part of the employee's service to the employer. *Horodyskyj v. Karanian*, 32 P.3d 470, 475 (Colo. 2001). It is the burden of the claimant to establish causation by a preponderance of the evidence. *Faulkner v. Indus. Claim Appeals Office*, 12 P.3d 844, 846 (Colo. App. 2000). There is no presumption than an injury which occurs in the course of employment arises out of the employment. *Finn v. Industrial Commission*, 165 Colo. 106, 437 P.2d 542 (1968). The evidence must establish the causal connection with reasonable probability, but it need not establish it with reasonable medical certainty. *Ringsby Truck Lines, Inc. v. Industrial Commission*, 30 Colo. App. 224, 491 P.2d 106 (Colo. App. 1971); Industrial Commission v. Royal Indemnity Co., 124 Colo. 210, 236 P.2d 2993. Medical evidence is not required to establish causation. To the contrary, lay testimony alone, if credited, may constitute substantial evidence to support an ALJ's determination regarding causation. *Industrial Commission of Colorado v. Jones*, 688 P.2d 1116 (Colo. 1984); *Apache Corp. v. Industrial Commission of Colorado*, 717 P.2d 1000 (Colo. App. 1986).

E. The determination of whether there is a sufficient "nexus" or causal relationship between the claimant's employment and the injury is one of fact and one which the ALJ must determine based on the totality of the circumstances. *In Re Question Submitted by*

the United States Court of Appeals, 759 P.2d 17 (Colo. 1988); *Moorhead Machinery & Boiler Co. v. Del Valle*, 934 P.2d 861 (Colo. App. 1996). In this case, the evidence presented supports a finding that Claimant was performing services for Respondent-Employer for a wage when she suffered injuries to her right knee, right shoulder and left ankle after slipping and falling to the floor while preparing food for Employer. This conclusion is buttressed by the medical records admitted into evidence. More probably than not, Claimant's slip and fall caused acute pain and swelling of the right knee, right shoulder and left ankle giving rise to her emergent need for treatment. (CHE 11). Consequently, the ALJ concludes that a logical causal connection exists between Claimant's work duties and his right elbow symptoms and need for treatment. Accordingly, the ALJ concludes that Claimant's alleged injuries are compensable.

Claimant's Entitlement to Medical Benefits

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

G. Where the relatedness, reasonableness, or necessity of medical treatment is disputed, Claimant has the burden to prove that the disputed treatment is causally related to the injury, and reasonably necessary to cure or relieve the effects of the injury. *Ciesiolka v. Allright Colorado, Inc*., W.C. No. 4-117-758 (ICAO April 7, 2003). The question of whether a particular medical treatment is reasonably necessary to cure and relieve a claimant from the effects of the injury is a question of fact. *City & County of Denver v. Industrial Commission*, 682 P.2d 513 (Colo. App. 1984). As concluded above, the evidence presented persuades the ALJ that Claimant sustained acute work-related injuries to her right knee, right shoulder and left ankle due to falling on the floor of Employer's restaurant after slipping in some drainage while working on October 7, 2024. The evidence presented also persuades the ALJ that these compensable injuries were the direct cause of Claimant's need to obtain emergent medical treatment at Long's Peak Hospital and subsequently thereafter at "The Health Clinic."

H. Authorization to provide treatment refers to a provider's legal authority to provide medical treatment to the claimant with the expectation that the provider will be compensated by the insurer for said services. *Mason Jar Rest. v. Indus. Claim Appeals Office,* 862 P.2d 1026, 1029 (Colo.App.1993); *Bunch v. Industrial Claim Appeals Office,* 148 P.3d 381 (Colo. App. 2006); *One Hour Cleaners v. Industrial Claim Appeals Office,* 914 P.2d 501 (Colo. App. 1995); *In re Bell*, W.C. No. 5-044-948-01 (ICAO, Oct. 16, 2018). Authorized providers include those medical personnel to whom the claimant is directly referred by the employer, as well as providers to whom an authorized provider refers the claimant in the normal progression of authorized treatment. *Town of Ignacio v. Industrial Claim Appeals Office,* 70 P.3d 513 (Colo. App. 2002); *City of Durango v. Dunagan,* 939 P.2d 496 (Colo. App. 1997). Consequently, treatment is compensable under the Act where it is provided by an "authorized treating physician." *Popke v. Indus. Claim Appeals Office,* 944 P.2d 677 (Colo.App.1997); *see also* §§ 8–42–101(1) (b), (3.6) (b), 8–42–107(8) (b) (I), 8–43–404(7), 8–43–501(3) (e) (III), 8–43–502(2), C.R.S.2005 (all referring to "authorized treating physician"). Medical services provided during a bona fide emergency are an exception to the normal requirement that a claimant obtain authorization for all treatment connected to the industrial injury. Larson's Workers'

Compensation Law, § 94.02[6] (1999); *Sims v. Industrial Claim Appeals Office, 797 P.2d 777* (Colo. App. 1990). There is no precise legal test for determining what constitutes a medical emergency.[1] Rather, the question of whether a claimant established the existence of a bona fide emergency is dependent on the particular facts and circumstances of the claim. *Timko v. Cub Foods,* W. C. No. 3969-031 (June 29, 2005). In this case, the ALJ is persuaded that Claimant's treatment in the Emergency Department (ED) at Long's Peak Hospital consisted of acute care to assess the extent of injuries Claimant may have sustained after slipping and falling onto a hard surface in Employer's restaurant. Based upon the totality of the evidence presented, the ALJ is convinced that the treatment Claimant obtained in the ED was connected to a bona fide emergency. Accordingly, Claimant was not required to obtain authorization from Employer before securing this treatment.

I. Section 8-43-404(5) (a), C.R.S. affords an employer or its insurer the right, in the first instance, to select a physician to treat the injury. The statute requires the employer or insurer to "provide a list of at least four physicians . . . in the first instance, from which list an injured employee may select the physician who attends said injured employee." Similarly, Workers' Compensation Rules of Procedure, Rule 8-2(A), 7 Code Colo. Reg. 1101-3, states that "[w]hen an employer has notice of an on-the-job injury, the employer or insurer shall provide the injured worker with a written list . . ." In order to maintain the right to designate a provider in the first instance, the employer has an obligation to name the treating physician forthwith upon receiving notice of the compensable injury. *See Rogers v. Industrial Claim Appeals Office,* 746 P.2d 545 (Colo. App. 1987). The failure to tender the "services of a physician . . . at the time of injury" gives the employee "the right to select a physician or chiropractor." The employer's duty to designate is triggered once the employer or insurer has some knowledge of facts that would lead a reasonably conscientious manager to believe the case may involve a claim for compensation. *Bunch v. Industrial Claim Appeals Office,* 148 P.3d 381 (Colo. App. 2006); *Jones v. Adolph Coors Co.,* 689 P.2d 681 (Colo. App. 1984); *Gutierrez*

[1] The exception is not limited to situations where life is threatened. *Bunch v. Industrial Claim Appeals Office of State of Colorado,* 148 P.3d 381 (Colo.App.2006).

v. Premium Pet Foods, LLC, W.C. No. 4-834-947 (ICAO, September 6, 2011). In this case, the evidence presented persuades the ALJ that Claimant reported her injury to Respondent-Employer and that she was subsequently seen in the emergency room for treatment. The ALJ is also convinced that Employer took no action to designate a provider to attend to Claimant's injuries following her initial report of injury and treatment in the emergency room. Accordingly, the ALJ concludes that the initial right to select a provider to treat Claimant's injuries passed to her and that she chose to treat at "The Health Clinic." Finally, the evidence presented persuades the ALJ that the treatment Claimant received in the emergency room at Long's Peak Hospital was reasonable, necessary and related to her October 7, 2024, slip and fall. Consequently, Respondents are liable for this treatment.

Order

It is therefore ordered that:

1. Claimant has proven that she suffered compensable injuries to her right knee, right shoulder and left ankle while working as a cook/food preparer for Employer on October 7, 2024.

2. Claimant has established, by a preponderance of the evidence that the treatment she obtained in the emergency room at Long's Peak Hospital arose out of a bona fide emergency. Thus, she was not required to obtain authorization for this treatment. As this care was otherwise reasonable, necessary and related to Claimant's Octboer 7, 2024 slip and fall, Respondent-Employer liable for the costs of this treatment.

3. Respondent-Employer failed to properly designate a medical provider to attend to Claimant's injury in the first instance. Consequently, the right of selection passed to Claimant. Claimant exercised this right by treating at The Health Clinic. Accordingly, the Health Clinic is Claimant's authorized treating provider under this claim. Employer shall pay for all reasonable, necessary and related treatment provided to the Claimant to attend to her October 7, 2024, injuries as rendered by the providers at The Health Clinic.

4. All medical expenses shall be paid in accordance with the Colorado Workers' Compensation Medical Benefits Fee Schedule.

5. 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: December 8, 2025

/s/ Richard M. Lamphere

Administrative Law Judge

Office of Administrative Courts
State of Colorado
Workers' Compensation No. 5-310-265-001

Issues

- Has Claimant demonstrated, by a preponderance of the evidence, that on June 26, 2025, he suffered an injury arising out of, and in the course and scope of his employment with Employer?

- If the claim is found compensable, has Claimant demonstrated, by a preponderance of the evidence, that treatment he received for his lower left leg (including surgery on July 7, 2025, and physical therapy) constitutes reasonable medical treatment necessary to cure and relieve him from the effects of the work injury?

- Has Claimant demonstrated, by a preponderance of the evidence, that penalties should be assessed against Respondents pursuant to Section 8-43-408(4)(1), C.R.S. for Respondents' alleged violation of Section 8-43-203(1)(a), C.R.S.?

Findings of Fact

1. On May 14, 2024, Claimant began employment with Forum Real Estate Group, LLC (Forum)[1] as an Associate Property Accountant. Employer provides human resources and payroll services to clients as a professional employer organization (PEO). Forum is one of Employer's clients. At all times material to this matter, Claimant was supervised by individuals with Forum, but all steps related to Claimant's workers' compensation claim have been processed by Employer.

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[1] On September 11, 2025, the parties attended a Pre Hearing Conference with PALJ Royce Mueller. In his order of that same date, PALJ Mueller explained why Employer is identified as the employer of record in this matter and not Forum. PALJ Mueller's September 11, 2025, order is incorporated herein for purposes of that explanation.

2. In 2025, Forum invited all employees to participate in a pickleball and picnic event that was to take place on June 26, 2025. The pickleball portion of the event was held at Gates Tennis Center, followed by a picnic lunch at Pulanski Park. Both locations are a short walk from the offices where Claimant worked.

3. On May 19, 2025, invitations were emailed to employees regarding the June 26, 2025, event. That email included the following language "IF YOU ARE NOT PLAYING PICKLEBALL: You are welcome to spectate or join for the picnic afterward, should you wish to sit out the pickleball portion of the event. The goal is for everyone to get out of the office and have fun, so join whatever portion works best for you!" (emphasis in original)

4. On June 24, 2025, Theresa Martinez, Office Manager/Executive Assistant with Forum, sent a reminder email to Forum employees regarding the June 26, 2025, event. The language of that email was identical to that of the May 19, 2025, emailed invitation. In addition, the June 24, 2025, reminder included the statement "*By attending our event, you acknowledge responsibility for your physical capabilities and assume liability for any injuries*." (emphasis in original).

5. On June 25, 2025, Siobhan Sargent, Senior Director of Marketing & Events with Forum, sent out an email regarding the June 26, 2025, event. In that email, Ms. Sargent stated "Please, PLEASE do not [let] the Pickling (sic) deter you. If you aren't into sports or pickleball, then the picnic is a perfect portion to join. **If you are NOT planning to attend**, we do ask that you **update your RSVP accordingly**. We are purchasing food and drinks based on that headcount." (emphasis in original).

6. The event was held on a Friday during normal work hours.

7. Pickleball courts were reserved for the event by Forum. As it is a public tennis center, members of the public were present and playing on other courts during the same time as Forum's event.

8. Claimant participated in the pickleball portion of the event. Claimant testified that as a new employee he felt social pressure to attend and participate.

9. Claimant testified that during the event he played with various members of management, including the CEO of the company. Claimant also testified that on that date he wore a hat bearing Forum's logo.

10. Claimant testified that while playing pickleball, he stepped to reach for a ball and felt a loud pop in his left leg. He immediately felt pain in his lower left leg and walked with a limp. Claimant was provided with an ice pack for his leg/ankle, and he participated in the picnic portion of the event.

11. As he had walked to the event and due to the pain in his leg, one of Claimant's coworkers provided him with a ride back to the office where his vehicle was parked. Claimant further testified that his supervisor and others encouraged him to seek medical treatment.

12. Ms. Martinez testified at the hearing. Ms. Martinez testified that she was involved with the planning and coordination of the August 26, 2025, pickleball and picnic event. Ms. Martinez also testified that the purpose of the event was to develop comradery and team building. Ms. Martinez testified that employees were not required to participate in the pickleball portion of the event.

13. Austin Vautrin, Associate Director of Tax with Forum, also testified at the hearing. Mr. Vautrin testified that he participated in the pickleball portion of the August 26, 2025, event. He was playing against Claimant when Claimant fell over and began holding his leg. Mr. Vautrin further testified that a benefit of the event was creating employee morale. Mr. Vautrin testified that although employees were encouraged to attend the event, they were not required to do so. He further testified that an employee's failure to attend would not have resulted in a reprimand.

14. Susan Lyons, Associate Director of Property Accounting with Forum testified at the hearing. On August 26, 2025, Ms. Lyons was Claimant's direct supervisor. Ms. Lyons testified that as Claimant's supervisor she did not tell him he was required to attend and/or participate in the event. With regard to compensation during the event, Ms. Lyon explained that most employees are salaried and not paid by the hour. Ms. Lyons testified that she participated in only the picnic portion of the event and did not play pickleball. Ms. Lyons testified that morale was the only benefit Forum gained from the event.

15. On June 26, 2025, Claimant sought treatment at OnPoint Urgent Care and was seen by Shareese Depold, NP. Also on June 26, 2025, x-rays of Claimant's left leg were performed. The x-rays showed no evidence of fracture or dislocation. Nurse Practitioner Depold diagnosed Claimant with a rupture of the left Achilles tendon and recommended the use of over-the-counter pain medications such as ibuprofen and acetaminophen. In addition, Nurse Practitioner Depold referred Claimant for evaluation with an orthopedic surgeon.

16. On June 30, 2025, Employer filed a First Report of Injury with the Colorado Division of Workers' Compensation (DOWC). In that document, Claimant's date of injury is identified as August 26, 2025.

17. On July 1, 2025, Claimant was seen at Orthopedic Centers of Colorado by Martin Aguilar, PA. In the medical record of that date, Claimant's symptoms were listed as aching, shooting and throbbing pain, with weakness in his left Achilles. Claimant described to PA Aguilar that while playing pickle ball he took a step and "felt like someone kicked his heel." PA Aguilar identified Claimant's diagnosis as a left Achilles rupture. Treatment options were discussed and Claimant elected to procced with repair surgery.

18. On July 2, 2025, Dr. Scott Resig with Advanced Orthopedic and Sports Medicine Specialists requested authorization from Insurer for left Achilles tendon repair.

19. On July 3, 2025, Insurer notified Advanced Orthopedics, via fax, that the requested surgery was denied, pending additional investigation. Claimant was notified of this denial. Due to the nature and severity of his injury, Claimant elected to proceed with the surgery as scheduled.

20. On July 7, 2025, Dr. Resig performed a surgical repair of Claimant's left Achilles tendon. Following the surgery, Claimant had multiple physical therapy visits with therapists at Orthopedic Centers of Colorado.

21. On July 10, 2025, Insurer emailed and mailed a denial letter to Claimant. That letter notified Claimant that reason for the denial was that Claimant's injury to his left Achilles "does not arise out of the course or scope of employment". The letter included the statutory citation of Section 8-40-201(8), C.R.S. regarding a voluntary recreational activity or program.

22. The ALJ calculates that the July 10, 2025, notice was provided to Claimant ten days after the First Report of Injury was filed. The ALJ further calculates that this notice was provided to Claimant 14 days after his August 26, 2025, injury.

23. On July 22, 2025, Respondents filed a Notice of Contest with the DOWC. In that document, the reason for Respondents' denial of liability was due to "Injury/Illness Not Work-Related".

24. With regard to compensability, Claimant asserts that his injury arose out of and in the course and scope of his employment because he was injured during an Employer sponsored event. Claimant notes that the event occurred during normal work hours on a workday. In addition, as members of the public were also present at the event location, it is Claimant's assertion that Employer benefited in the form of marketing.

25. Respondents assert that the August 26, 2025, pickleball and picnic event was an optional recreational event and is therefore not covered under the Colorado Workers' Compensation Act pursuant to Sections 8-40-301(1)(a) and 8-40-201(8), C.R.S.

26. The ALJ credits the testimony of Ms. Martinez, Mr. Vautrin, and Ms. Lyons and finds that the pickleball and picnic event was voluntary and an employee's failure to attend would not have resulted in repercussions. The ALJ also credits the email invitations and reminders that were sent to employees and finds that the event was not mandatory. The ALJ also finds that the benefits of the event included comradery, teambuilding, and morale. The ALJ finds that these constitute a small benefit to Employer. The ALJ recognizes Claimant's feeling of social pressure to attend the event. However, in weighing the facts surrounding Claimant's participation in this event, the ALJ finds that Claimant has failed to prove that it is more likely that not that his injury arose out of and in the course and scope of his employment with Employer. The ALJ finds that the July 26, 2025, event was a voluntary recreational activity.

27. With regard to Claimant's request for penalties, the ALJ credits the July 10, 2025, denial letter that was both emailed and mailed to Claimant. The ALJ finds that Respondents timely notified Claimant that his claim was denied. The ALJ finds that Claimant has failed to demonstrate that it is more likely than not that Respondents failed to comply with the Workers' Compensation Act of Colorado. Therefore, the ALJ also finds that Claimant has failed to demonstrate that it is more likely than not that he is entitled to penalties.

Conclusions of Law

A. 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 which leads the trier-of-fact, after considering all of the evidence, to find that a fact is more probable than not. *Page v. Clark*, 197 Colo. 306, 592 P.2d 792 (1979). 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, *supra*. A Workers' Compensation case is decided on its merits. Section 8-43-201, *supra*.

B. 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.

C. 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).

D. 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. *H & H Warehouse v. Vicory*, 805 P.2d 1167 (Colo. App. 1990); *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." *H & H Warehouse v. Vicory, supra.*

E. Section 8-41-301(1)(b), C.R.S. provides that the right to compensation is subject to the condition that "at the time of the injury, the employee is performing service arising out of and in the course of the employee's employment."

F. Pursuant to Section 8–40–201(8), C.R.S., the term "employment" does not include "an employee's participation in a voluntary recreational activity or program, regardless of whether the employer promoted, sponsored, or supported the recreational activity or program." *White v. Industrial Claim Appeals Office,* 8 P.3d. 621, 623 (Colo. App. 2000).

G. Compensability must be denied if participation in the activity was voluntary, even though the employer promoted, sponsored or supported the activity.

White v. Industrial Claim Appeals Office, 8 P.3d 621, 623-24 (Colo. App. 2000); *Dover Elevator Co. v. Industrial Claim Appeals Office*, 961 P.2d 1141 (Colo. App. 1998). When determining whether the claimant's participation was voluntary the ALJ may consider various factors including whether the activity occurred during working hours, whether the activity occurred on or off the employer's premises, whether the employer initiated, organized, sponsored or financially supported the activity and whether the employer derived benefit from the activity. *Price v. Industrial Claim Appeals Office*, 919 P.2d 207, 210-11 (Colo. 1996); *White*, 8 P.3d at 623. The first two factors carry greater weight than the other factors because the time and place of injury are particularly strong indicators of whether an injury arose out of and in the course of the employee's employment. *Price*, 919 P.2d at 211.

H. The current statute requires that a claimant's motive for participation in the recreational activity also be determined and that compensation be denied if participation in the recreational activity was voluntary, even if the employer promoted or sponsored the activity. *Dover Elevator Co. v. Industrial Claim Appeals Office*, 961 P.2d 1141 (Colo.App.1998).

I. Ultimately, the question of whether the claimant's participation in the recreational activity was voluntary is one of fact for determination by the ALJ. *Schniedwind v. Rite of Passage Inc.*, WC 5-051-507 (ICAO, Mar. 12, 2019) (where the claimant voluntarily participated in a bicycle ride organized by the employer for its clients that resulted in only a small benefit to the employer, the bicycle ride was a voluntary recreational activity and claimant's injury during the ride was thus not compensable); *In re Claim of Kendrick*, WC 4-991-007 (ICAO, Nov. 15, 2016) (rejecting the claimant's claim that running fell under the personal comfort doctrine as a way to maintain his health because it constituted a recreational activity).

J. As found, Claimant has failed to demonstrate, by a preponderance of the evidence, that on June 26, 2025, he suffered an injury arising out of, and in the course and scope of his employment with employer. As found, Claimant was engaged in a voluntary recreational activity at the time of his injury. As found, the testimony of Ms. Martinez, Mr. Vautrin, and Ms. Lyons is credible and persuasive on this issue.

K. Prior to the assessment of any penalties, the ALJ must first determine whether a party has violated any provision of the Workers' Compensation Act or an order. If the ALJ finds such a violation, penalties may be imposed if it is also found that the employer's actions were objectively unreasonable. Section 8-43-304, C.R.S. *City Market, Inc. v. Industrial Claim Appeals Office*, 68 P.3d 601 (Colo. App. 2003); *Pioneers Hospital of Rio Blanco County v. Industrial Claim Appeals Office*, 114 P.3d 97 (Colo. App. 2005); *Jimenez v. Industrial Claim Appeals Office*, 107 P.3d 965 (Colo. App. 2003). The "objective standard" is measured by reasonableness of the insurer's action and does not require knowledge that the conduct was unreasonable." *Colorado Compensation Insurance Authority v. Industrial Claim Appeals Office*, 907 P.2d 676 (Colo. App. 1995). Section 8-43-305, C.R.S. provides that each day is a separate offense. Therefore, penalties may be assessed of up to $1,000.00 per day.

L. In this case, the claimant seeks penalties for the alleged late denial of his claim. Section 8-43-203(1)(a), C.R.S. provides that the employer or the insurance carrier shall notify the injured worker whether liability is admitted or denied within twenty days "after a report is, or should have been, filed with the division".

M. As found, Claimant has failed to demonstrate by a preponderance of the evidence that he is entitled to penalties. As found, the July 10, 2025, letter was provided to Claimant ten days after the First Report of Injury was filed, and 14 days after Claimant's August 26, 2025, injury. In both instances this was less than 20 days. As found, Respondents' actions were in compliance with the Workers' Compensation Act. As found, Claimant has failed to demonstrate by a preponderance of the evidence that he is entitled to penalties.

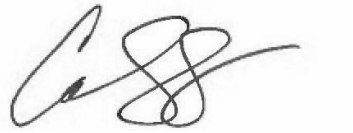
Order

It is therefore ordered:

1. Claimant's claim regarding an alleged July 26, 2025, work injury is denied and dismissed.

2. Claimant's request for penalties is denied and dismissed.

Dated December 9, 2025.



Cassandra M. Sidanycz
Administrative Law Judge
Office of Administrative Courts

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 service of the order, as indicated on the certificate of mailing or service; otherwise, the ALJ's order will be final. Section 8-43-301(2), C.R.S. and OACRP 27. You may access a petition to review form at: https://oac.colorado.gov/resources/oac-forms.

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 via email to either **oac-ptr@state.co.us** or to **oac-dvr@state.co.us**. If the Petition to Review is emailed to either of the aforementioned email addresses, 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. **It is also recommended that you provide a courtesy copy of your Petition to Review to the Grand Junction OAC via email at oac-gjt@state.co.us.**

Office of Administrative Courts
State of Colorado

Workers' Compensation No. WC 5-239-786-006

Issue

- Whether Respondents have produced clear and convincing evidence to overcome the opinion of Division Independent Medical Examination (DIME) physician Stephen Lindenbaum, M.D. that Claimant's May 9, 2023 left shoulder injury was causally related to his work activities.

Findings of Fact

1. Claimant worked for Employer as a Machinist. On May 9, 2023 he suffered an admitted industrial injury to his left shoulder. Specifically, Claimant was emptying a large, heavy can of metal shavings into a dumpster using his left arm, felt the acute onset of pain and heard a "pop."

2. After diagnostic imaging and conservative treatment, Claimant underwent his first left shoulder surgery on July 31, 2023 in the form of a subscapularis repair and biceps tenodesis with Authorized Treating Physician (ATP) Lucas G. Schnell, D.O. On June 17, 2024 Dr. Schnell performed a second left shoulder surgery consisting of a labral repair.

3. On November 10, 2023 Claimant underwent an Independent Medical Examination (IME) with Mark S. Failinger, M.D. He reviewed Claimant's medical records and conducted a physical examination. Dr, Failinger explained that Claimant was at higher risk to require future surgery, including a left shoulder replacement, because of his arthritis. He emphasized that the arthritis was not reasonably accelerated by the May 9, 2023 work event. Instead, the arthritis developed because of prior left shoulder surgery or genetics.

4. On December 9, 2024 Claimant underwent an IME with William Ciccone II, M.D. He recounted that on May 9, 2023 Claimant was cleaning metal shavings and putting them into a trash can weighing about 50 pounds when he felt a “pop” in his left shoulder. Dr. Ciccone reviewed Claimant’s medical records and conducted a physical examination. In addressing whether Claimant’s left shoulder condition was causally related to the May 9, 2023 work injury, Dr. Ciccone explained that Claimant suffers from pre-existing, degenerative changes in his left shoulder. He remarked that Claimant’s arthritic changes were not reasonably accelerated by the May 9, 2023 work accident. An MRI revealed moderate to severe degenerative changes in the left shoulder joint that were chronic, pre-existing and unrelated to the work event. Dr. Ciccone agreed that Claimant reached Maximum Medical Improvement {MMI) on February 1, 2024 with no impairment. Although he agreed Claimant would benefit from shoulder replacement surgery, the procedure was not causally related to the work accident and should be denied under Workers’ Compensation.

5. On January 10, 2025 Claimant returned to ATP Dr. Schnell for an evaluation. Dr. Schnell noted that Claimant continued to experience persistent left shoulder pain. He also commented that Claimant had undergone an IME with Dr. Ciccone. Dr. Ciccone confirmed that a total shoulder arthroplasty was not related to Claimant’s work injury but constituted a pre-existing condition. Dr. Schnell also reasoned that the total shoulder arthroplasty was not related to the work injury and should be treated outside of the Workers’ Compensation system. He explained

> I discussed that it is best for the patient to close his Workmen’s Comp case at this time. I would be happy to see him under his private insurance if he would like to proceed with arthroplasty…Regarding causation I discussed with him that he likely had some pre-existing arthritis of the shoulder before the work event. The request for this surgery was not because I felt that it was truly related to his work comp injury.

6. On February 3, 2025 Claimant underwent a total left shoulder replacement. Dr. Schnell performed the surgery outside the Workers' Compensation system through Claimant's private insurance.

7. On June 23, 2025 Claimant underwent a Division Independent Medical Examination (DIME) with Stephen Lindenbaum, M.D. Dr. Lindenbaum initially noted that Claimant suffered a work injury while emptying a large, heavy can of metal shavings into a dumpster using his left arm. He experienced the acute onset of pain and a "pop." Dr. Lindenbaum recounted that since the work incident Claimant has undergone multiple surgeries on his left shoulder, culminating in a left total shoulder replacement (arthroplasty). Prior to the injury, Claimant had an older rotator cuff repair that was not work-related. Claimant reported that he recovered well, had good range of motion, and was performing a relatively physical job involving lifting up to 70 pounds without pain.

8. Dr. Lindenbaum's clinical diagnosis was that Claimant had a history of underlying arthritis of the left shoulder (glenohumeral joint), but that the recent work incident "caused significant aggravation to an underlying degenerative joint." He reached the conclusion because Claimant had been performing strenuous work without difficulties before the May 9, 2023 incident. Dr. Lindenbaum determined that Claimant reached MMI as of the date of his DIME. He assigned an impairment rating of 30% for the arthroplasty and 10% for range of motion deficits. Combining the impairments yielded a 37% upper extremity rating that converted to a 22% whole person impairment.

9. Relying on the Colorado Medical Treatment Guidelines (*Guidelines*) and Impairment Accreditation coursework, Dr. Lindenbaum expressly explained his rationale, directly linking the need for the arthroplasty to the work injury by relying on the legal and medical definition of "aggravation." His rationale centered on Claimant's transition from an asymptomatic state to requiring major, definitive surgery immediately following the work trauma. Dr. Lindenbaum explained:

> This is a very difficult case. However, I do feel based on Colorado Medical Treatment Guidelines, Section 4C, page 14, it specifically states determining work relatedness and under recommendation 25, it specifically states medical causation must establish the condition or injury results from a specific injury and aggravation of an underlying condition or a previously asymptomatic condition made symptomatic by work-related exposure. I do believe that this claimant who was asymptomatic prior to this injury and had significant pain with multiple surgeries post injury that ended up in an arthroplasty, would indicate that this is definitely an aggravation of an underlying quiescent glenohumeral arthritis, which was aggravated by this injury.

Dr. Lindenbaum's determination was predicated on the reasoning that although Claimant's glenohumeral arthritis was asymptomatic prior to his work injury, it became acutely symptomatic and disabling by the work trauma and ultimately required a left shoulder arthroplasty.

10. On September 11, 2025 Claimant underwent an IME with Allison M. Fall, M.D. She reviewed Claimant's medical records and conducted a physical examination. Dr. Fall also considered the reports of Dr. Schnell as well as the IME's of Drs. Failinger and Ciccone. She commented that all orthopedic surgeons besides DIME physician Dr. Lindenbaum acknowledged Claimant's pre-existing, significant osteoarthritic changes. Dr. Fall reasoned that Claimant's work-related injury involved a rotator cuff tear, a biceps tear and repair, and a biceps tenodesis for which Claimant was placed at MMI on February 19, 2024. She emphasized that Dr. Lindenbaum erred by attributing Claimant's pre-existing degenerative changes to his work injury. He also failed to explain his difference of opinion with other specialists.

11. On October 1, 2025 the parties conducted the post-hearing evidentiary deposition of Dr. Ciccone. He explained that Claimant's November 7, 2024 left shoulder MRI showed moderate glenohumeral arthritis, shoulder joint arthritis, postoperative

changes from a labral repair, and a possible case of capsulitis. The degenerative arthritis was all pre-existing. Dr. Ciccone's diagnoses related to the May 9, 2023 work incident were rotator cuff tear and biceps tendon instability. He commented that Claimant suffered a work injury that was treated and he recovered. Claimant subsequently had increasing pain that was related to the underlying arthritis and not the work injury. His medical causation analysis involved determining which conditions were related to the work event based on the injury mechanism and previous history. Dr. Ciccone summarized that Claimant's arthritis did not reasonably accelerate due to the work incident because he recovered following his surgery. He agreed with the assessment from Dr. Failinger that Claimant's current symptoms were related to preexisting degenerative arthritis, not the work incident. Moreover, Dr. Ciccone testified he agreed with Dr. Schnell's assessment that the surgery request was not work related. Finally, even after considering Dr. Lindenbaum's rationale that Claimant's need for a left shoulder arthroplasty was caused by the work incident, Dr. Ciccone maintained that the need for future treatment was related to Claimant's degenerative, pre-existing condition.

12. Dr. Fall testified at the hearing in this matter. She explained that Claimant's industrial injury caused an acute subscapularis (rotator cuff muscle) tear and a biceps tendon issue that were addressed in the first surgery on July 31, 2023. She reasoned that there was no objective medical evidence in the records, including pre- and post-operative MRIs, that the work-related injury aggravated, accelerated, or exacerbated the underlying degenerative changes/arthritis in Claimant's left shoulder and required a total shoulder arthroscopy. Dr. Fall concluded that Dr. Lindenbaum erred by failing to cite evidence that the work event would lead to a "permanent acceleration of that underlying degenerative process."

13. Dr. Fall clarified that for an existing condition to qualify for an impairment rating, a "physiologic change" or "identifiable structural change" (such as cartilage destruction) must occur to justify acceleration or permanent aggravation/worsening. A temporary increase in symptoms or aggravation would not qualify for a permanent impairment rating. Finally, she reasoned that Dr. Lindenbaum's opinion was not in

substantial accordance with the medical records. The medical records, including those from other specialists and treating physician Dr. Schnell, reflected the issue was not work-related and could be treated outside of Workers' compensation. Dr. Fall summarized that Dr. Lindenbaum failed to account for this discrepancy, as required by section 2.1 of the American Medical Association Guides to the Evaluation of Permanent Medical Impairment Third Edition revised (*AMA Guides*).

Conclusions of Law

Generally

1. The purpose of the "Workers' Compensation Act of Colorado" (Act) 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. §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. §8-42-101, 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); *People v. M.A.*, 104 P.3d 273, 275 (Colo. App. 2004). 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. §8-43-201, C.R.S. A Workers' Compensation case is decided on its merits. §8-43-201, C.R.S.

2. The Judge's factual findings concern only evidence that is dispositive of the issues involved; the Judge 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. *See Magnetic Engineering, Inc. v. ICAO,* 5 P.3d 385, 389 (Colo. App. 2000).

3. When determining credibility, the fact finder should consider, among other things, the consistency or inconsistency of the witness's testimony and actions; the reasonableness or unreasonableness (probability or improbability) of the testimony and actions; the motives of the witness; whether the testimony has been contradicted; and

bias, prejudice, or interest. *See Prudential Insurance Co. v. Cline*, 98 Colo. 275, 57 P.2d 1205 (1936); CJI, Civil 3:16 (2007).

4. In ascertaining a DIME physician's opinion, the ALJ should consider all of the DIME physician's written and oral testimony. *Lambert & Sons, Inc. v. Indus. Claim Appeals Off.,* 984 P.2d 656, 659 (Colo. App. 1998). A DIME physician's determination regarding MMI and permanent impairment consists of his initial report and any subsequent opinions. *In Re Dazzio,* W.C. No. 4-660-149 (ICAO, June 30, 2008); *see Andrade v. Indus. Claim Appeals Off.,* 121 P.3d 328 (Colo. App. 2005).

5. A DIME physician is required to rate a claimant's impairment in accordance with the *AMA Guides*. §8-42-107(8)(c), C.R.S.; *Wilson v. Indus. Claim Appeals Off.,* 81 P.3d 1117, 1118 (Colo. App. 2003). However, deviations from the *AMA Guides* do not mandate that the DIME physician's impairment rating was incorrect. *In Re Gurrola,* W.C. No. 4-631-447 (ICAO, Nov. 13, 2006). Instead, the ALJ may consider a technical deviation from the *AMA Guides* in determining the weight to be accorded the DIME physician's findings. *Id.* Instead, proof of deviation must be considered in the context of all the evidence when the ALJ makes the ultimate determination of whether the DIME physician's rating has been overcome by clear and convincing evidence. Martin v. HBE Corp., W.C. No. 4-307-916 (ICAO, Nov. 13, 1998). Whether the DIME physician properly applied the *AMA Guides* to determine an impairment rating is generally a question of fact for the ALJ. *In Re Goffinett,* W.C. No. 4-677-750 (ICAO, Apr. 16, 2008).

6. A DIME physician's opinions concerning MMI and impairment carry presumptive weight pursuant to §8-42-107(8)(b)(III), C.R.S. *See Yeutter v. Indus. Claim Appeals Off.*, 487 P.3d 1007, 1012 (Colo. App. 2019). The statute provides that "[t]he finding regarding [MMI] and permanent medical impairment of an independent medical examiner in a dispute arising under subparagraph (II) of this paragraph (b) may be overcome only by clear and convincing evidence." *Id.* Both determinations require the DIME physician to assess, as a matter of diagnosis, whether the various components of the claimant's medical condition are causally related to the industrial injury. *See Eller v. Indus. Claim Appeals Off.*, 224 P.3d 397 (Colo. App. 2009); *Qual-Med, Inc. v. Indus. Claim*

Appeals Off., 961 P.2d 590 (Colo. App. 1998). Consequently, when a party challenges a DIME physician's determination of MMI or impairment rating, the finding on causation is also entitled to presumptive weight. *Egan v. Indus. Claim Appeals Off.*, 971 P.2d 664 (Colo. App. 1998).

7. "Clear and convincing evidence" is evidence that demonstrates it is "highly probable" the DIME physician's rating is incorrect. *Qual-Med, Inc.,* 961 P.2d at 592. In other words, to overcome a DIME physician's opinion, "there must be evidence establishing that the DIME physician's determination is incorrect and this evidence must be unmistakable and free from serious or substantial doubt." *Adams v. Sealy, Inc.*, W.C. No. 4-476-254 (ICAO, Oct. 4, 2001). The mere difference of medical opinion does not constitute clear and convincing evidence to overcome the opinion of the DIME physician. *Javalera v. Monte Vista Head Start, Inc.*, W.C. Nos. 4-532-166 & 4-523-097 (ICAO, July 19, 2004); *see Shultz v. Anheuser Busch, Inc.*, W.C. No. 4-380-560 (ICAO, Nov. 17, 2000).

8. The notation by the treating physician that a particular body part was injured through a work injury does not receive the presumptive status of a DIME physician. Because the DIME procedure is to resolve disputes over MMI and impairment ratings, a DIME physician's finding necessarily controls over the causation decision of any other doctor in the claim including an IME or ATP. See *Kenny v. Douglas County School Dist. RE-1*, W.C. No. 5-132-521 (ICAO, July 14, 2025).

9. Respondents have failed to produce clear and convincing evidence to overcome the opinion of DIME physician Dr. Lindenbaum that Claimant's May 9, 2023 left shoulder injury was causally related to his work activities. Initially, on May 9, 2023 Claimant suffered an admitted work injury to his left shoulder. He ultimately underwent three surgeries for his condition, including a total shoulder arthroplasty that was performed outside of the Workers' Compensation system. Notably, ATP Dr. Schnell reasoned that a total shoulder arthroplasty was not related to Claimant's work injury but constituted a pre-existing condition.

10. Claimant ultimately underwent a DIME with Dr, Lindenbaum. Relying on the

Guidelines and Impairment Accreditation coursework, Dr. Lindenbaum explained his rationale directly linking the need for the arthroplasty to the May 9, 2023 work injury by relying on the legal and medical definition of "aggravation." His rationale centered on Claimant's transition from an asymptomatic state to requiring major, definitive surgery immediately following the work trauma. Dr. Lindenbaum's determination was predicated on the reasoning that although Claimant's glenohumeral arthritis was asymptomatic prior to his work injury, it became acutely symptomatic and disabling as a result of the work trauma and ultimately required a left shoulder arthroplasty.

11. Numerous IME physicians have disagreed with Dr. Lindenbaum's rationale Specifically, Drs. Failinger, Ciccone and Fall have all reasoned that Claimant's need for a total shoulder arthroplasty was not related to his May 9, 2023 industrial injury. They instead maintained that Claimant's left shoulder symptoms were caused by preexisting degenerative arthritis.

12. Dr. Failinger emphasized that Claimant's arthritis was not reasonably accelerated by the May 9, 2023 work event. Instead, the arthritis developed because of prior left shoulder surgery or genetics. Moreover, Dr. Ciccone explained that Claimant suffers from pre-existing, degenerative changes in his left shoulder. An MRI revealed moderate to severe degenerative changes in the left shoulder joint that were chronic, pre-existing and unrelated to the work event. Dr. Ciccone summarized that Claimant's arthritis did not reasonably accelerate due to the work incident because he recovered following his surgery. He agreed with the assessment from Dr. Failinger's IME report that Claimant's current symptoms were related to preexisting degenerative arthritis, not the work incident. Moreover, Dr. Ciccone testified he agreed with Dr. Schnell's assessment that the surgery request was not work related. Finally, even after considering Dr. Lindenbaum's explanation that Claimant's need for a left shoulder arthroplasty was caused by the work incident, Dr. Ciccone maintained that the need for future treatment was related to Claimant's degenerative, pre-existing condition.

13. Similarly, Dr. Fall attributed Claimant's need for a left shoulder arthroplasty to his pre-existing, degenerative condition. She considered the reports of Dr. Schnell as

well as the IME's of Drs. Failinger and Ciccone. Dr. Fall commented that all orthopedic surgeons besides DIME physician Dr. Lindenbaum, acknowledged Claimant's pre-existing, significant osteoarthritic changes. She emphasized that Dr. Lindenbaum erred by attributing Claimant's pre-existing degenerative changes to his work injury. He failed to explain his difference of opinion with other specialists. Furthermore, Dr. Fall reasoned that there was no objective medical evidence in the records, including pre- and post-operative MRIs, that the work-related injury aggravated, accelerated, or exacerbated the underlying degenerative changes/arthritis in the Claimant's left shoulder and required a total shoulder arthroscopy. Dr. Fall concluded that Dr. Lindenbaum erred by failing to cite evidence that the work event would lead to a "permanent acceleration of that underlying degenerative process."

14. Despite the opinions of numerous physicians that Claimant's need for a total shoulder arthroscopy was unrelated to his work injury, Respondents have failed to produce unmistakable evidence free from serious or substantial doubt that Dr. Lindenbaum's opinion was incorrect. Although multiple physicians disagreed with Dr. Lindenbaum's causation analysis, the opinion of a DIME physician is entitled to a presumptive effect and is not simply weighed against opinions from other physicians. A DIME physician's finding necessarily controls over the causation decision of other doctors in the claim. Overcoming a DIME is simply not dependent on whether other physicians reach a different conclusion than the DIME physician, but whether the DIME opinion was clearly erroneous. The mere difference of medical opinion does not constitute clear and convincing evidence to overcome the opinion of the DIME physician.

15. Importantly, Dr. Lindenbaum's determination aligns with the legal principle that aggravation of a pre-existing condition is a compensable injury. The injury only needs to "aggravate or accelerate a preexisting condition so as to cause a need for treatment." Dr. Lindenbaum's conclusion hinged on the determination that the underlying glenohumeral arthritis, though asymptomatic prior to the date of injury, became acutely symptomatic and disabling and May 9, 2023 and ultimately required a left shoulder arthroplasty. Although numerous physicians disagreed with Dr. Lindenbaum's causation determination, their disagreement does not render it highly probable that Dr.

Lindenbaum's analysis was incorrect. His report contains a thorough review of the medical records, consideration of the complexity and divergent opinions in the case, and application of relevant standards. His application of his medical judgment in relying on the medical records and applicable standards to reach a different conclusion from other providers was not clearly erroneous. Claimant has thus failed to present unmistakable evidence free from serious or substantial doubt that Dr. Lindenbaum's opinion was incorrect. He acknowledged Claimant's pre-existing degenerative condition and divergent opinions from other physicians but simply reached a different conclusion. Because of his status as a DIME physician and the presumptive weight accorded his conclusion, Dr. Lindenbaum's reasoned determination is controlling. Based on Dr. Lindenbaum's opinion, Claimant's May 23, 2023 work accident is causally related to his need for a left shoulder arthroscopy. Accordingly, Respondents are financially responsible for the procedure.

Order

It is therefore ordered that:

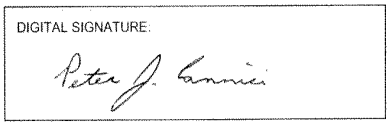
1. Respondents have failed to produce clear and convincing evidence to overcome the opinion of DIME physician Dr. Lindenbaum that Claimant's May 9, 2023 left shoulder injury was causally related to his work activities.

2. Respondents are financially responsible for Claimant's left shoulder arthroscopy

3. All matters not resolved in this Order are resolved 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: December 9, 2025



Peter J. Cannici
Administrative Law Judge

Office of Administrative Courts
State of Colorado

Workers' Compensation No. WC 5-203-358-002

Issues

- ➢ Whether Claimant established by clear and convincing evidence that the Division Independent Medical Examination (DIME) physician erred in assigning Claimant an 18% permanent medical impairment rating.

Stipulations

1. Claimant's average weekly wage (AWW) is $1.454.95.
2. For the period of April 16, 2022, through August 4, 2024, Respondents do not owe additional temporary disability benefits based on Claimant's stipulated AWW.
3. Claimant's stipulated AWW would only apply if Claimant overcomes the DIME's permanent impairment rating (IR) and will apply to any future temporary or permanent disability benefits awarded under Claimant's claim.

Findings of Fact

1. Claimant sustained an admitted lower back injury on April 15, 2022, arising out of the course of his employment with Employer while lifting a box of produce in Employer's grocery store.
2. After the injury, Claimant underwent a lengthy course of treatment and evaluations with various providers, including authorized treating physician (ATP) Stephen Danahey, M.D., physiatrists Samuel Chan, M.D., Robert Kawasaki, M.D., and Kathy McCranie, M.D., surgeon Michael Rauzzino, M.D., physical therapy, and injections.
3. Throughout the course of his care, Claimant reported symptoms radiating from his lower back to both legs. MRI studies performed on April 19, 2022, March 15, 2023, and July 5, 2023, showed a moderate to large disc protrusion at L4-5. Different physicians, including radiologists, Dr. Chan, and Dr. Kawasaki interpreted the MRI studies as showing compression of one or both the L4 nerve root and L5 nerve root. (Ex. 8, 9 & G).

4. In June 2022, Dr. Chan performed an L4 transforaminal epidural steroid injection which provided limited short-term benefit. (Ex. 13). In April 2023, Dr. McCranie performed an EMG which she indicated was suggestive of an L4 radiculopathy. (Ex. B & 20). In March 2023, Dr. Rauzzino recommended Claimant undergo surgery to treat the L4-5 disc, but Claimant declined surgery. (Ex. B). Later, in March 2024, Dr. Kawasaki recommended L4-5 and L5-S1 TFESI injections, indicating the injections were intended to address nerve root impingement at L4, and irritation of the L5 nerve root. The procedure was performed in May 2024 but was of limited benefit. (Ex. B & 20).
5. Because Claimant declined surgical treatment, Dr. Danahey placed Claimant at MMI on August 5, 2024, and assigned an IR. In his August 5, 2024 report, Dr. Danahey calculated Claimant's IR as a 24% whole person rating. This rating was comprised of a 7% IR for a specific disorder of the lumbar spine under Table 53 II.C of the AMA Guides, a 12% rating for loss of lumbar range of motion (ROM), and 7% neurologic system rating. The 7% neurologic system rating consisted of a 3% rating for loss of function due to sensory deficit ("Sensory IR"), and a 4% rating for loss of function/strength ("Strength IR") due to an impairment of the L5 nerve root. (*See* Ex. B, p. 171). Dr. Danahey's ROM impairment is based on one measurement of each required movement (*i.e.*, lumbar flexion, extension, left and right straight leg raise, and left and right lateral flexion).
6. Dr. Danahey later revised his IR indicating that he had neglected to convert the Claimant's neurologic system rating to a whole person IR. Conversion to a whole person impairment reduced Claimant's neurologic rating from 7% to 3% (*i.e.,* a 2% Strength IR, and a 1% Sensory IR.) (Dep. Trans., p. 19-20). Recalculation of Dr. Danahey's IR resulted in a 20% whole person IR.
7. Thereafter, Respondents requested a DIME which was performed by Paul Ogden, M.D., on February 24, 2025. Dr. Ogden agreed with Dr. Danahey that Claimant reached MMI on August 5, 2024, and assigned Claimant an 18% whole person IR. Dr. Ogden's rating is comprised of a 7% rating for a specific disorder for the lumbar spine under AMA Guide Table 53 II.C., an 11% for loss of lumbar ROM, and a 1% neurologic system rating, these combined ratings correspond to an 18% whole

person IR under the AMA Guides. Dr. Ogden's neurologic system rating is based on a 1% impairment Strength IR due to impairment of the L4 nerve root. He did not assign Claimant a Sensory IR, indicating he found no sensory deficit on his examination. Dr. Ogden indicated that Claimant's Strength IR was consistent with the L4 nerve root and assigned a 3% lower extremity impairment which converted to a 1% whole person impairment under the AMA Guide.

8. The differences between Dr. Ogden's 18% whole person rating, and Dr. Danahey's 20% whole person rating lie in the range of motion impairment (*i.e.*, 11% for Ogden vs. 12% for Danahey), and neurologic ratings (*i.e.*, 1% for Ogden and 3% for Danahey). Both physicians assigned a 7% rating for specific impairment under Table 53 of the AMA Guides. The final impairment ratings from both physicians are illustrated in the table below.

Component	**Dr. Danahey**	**Dr. Ogden**	**Difference**
Specific Disorder	7%	7%	0
Lumbar ROM	12%	11%	1%
Strength IR	2% (L5 nerve)	1% (L4 nerve)	1%
Sensory IR	1%	0%	1%
Combined	**20%**	**18%**	**2%**

9. Under Table 49 of the AMA Guides, a Strength IR is calculated based on the lumbar nerve root that is impaired. Strength loss due to impairment of the L5 nerve root generally results in a higher impairment than impairment of the L4 nerve root. This difference in the nerve to which the strength loss was attributed accounts for the difference between the two physicians' Strength IRs. Dr. Danahey's Strength IR, based on an L5 nerve root impairment, resulted in a 2% rating, while Dr. Ogden's rating, based on an L4 nerve root impairment, yielded a 1% whole person rating.
10. Dr. Danahey testified by deposition and was admitted as an expert in occupational medicine. Dr. Danahey testified that although he arrived at a different IR than the DIME physician, he did not find any errors in Dr. Ogden's opinions or methodology. Rather, he characterized the differences as differences of opinion.

11. With respect to the Strength IR, Dr. Danahey testified that he felt Claimant had some loss of lower extremity strength, and he assigned an impairment based on an L5 nerve root impairment under Table 49 of the AMA Guides. (AMA Guides, p. 76). He indicated that he consulted with Dr. Kawasaki who suggested he could assign a rating based on either the L4 or L5 nerve root, although Dr. Kawasaki thought the L5 was most appropriate. Dr. Danahey further testified that the selection of the appropriate impairment rating and whether to assign a Strength IR based on an L4 or L5 nerve root impairment were matters of medical opinion. (Depo. Trans. p. 17, l. 16 – p. 18, l. 19). He also indicated that it was not incorrect for Dr. Ogden to utilize the L4 nerve root impairment rating.
12. With respect to his Sensory IR, Dr. Danahey indicated that although he found sensory deficits, given the time between his evaluation and the DIME, it was possible that Claimant did not have sensory deficits when Dr. Ogden saw him. He also indicated that it was not unusual for symptoms to resolve over time. He further indicated that the decision as to whether to assign a sensory rating was "a matter of medical opinion, given the situation at the time, as to whether the rating is appropriate or not." (Depo. Trans, p. 15, l. 14-23.).

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).

Overcoming DIME on Impairment

Under § 8-42-107 (8)(b)(III), C.R.S., a DIME physician's opinion concerning whole person impairment carries presumptive weight and may be overcome by clear and convincing evidence. "Clear and convincing evidence means evidence which is stronger than a mere 'preponderance;' it is evidence that is highly probable and free from serious or substantial doubt." *Metro Moving & Storage Co. v. Gussert*, 914 P.2d 411, 414 (Colo. App. 1995). Accordingly, a party seeking to overcome a DIME's whole person impairment rating must present "evidence demonstrating it is 'highly probable' the DIME physician's impairment rating is incorrect and such evidence must be unmistakable and free from

serious and substantial doubt. *Adams v. Sealy, Inc*., W.C. No. 4-476-254 (ICAO Oct. 4, 2001); *Leming v. Indus. Claim Appeals Office*, 62 P.3d 1015, 1019 (Colo. App. 2002). Whether a party has overcome the DIME physician's opinion is a question of fact to be resolved by the ALJ. *Metro Moving & Storage*, 914 P.2d at 414.

Claimant has failed to establish through clear and convincing evidence that the DIME physician's assigned impairment rating is incorrect. Although ATP Dr. Danahey and the DIME physician, Dr. Ogden, assigned different ratings, no credible evidence was admitted demonstrating Dr. Ogden erred in performing his rating, or that the rating itself is incorrect. While Dr. Danahey believes his rating was correct, he agreed and acknowledged that the differences between the Sensory and Strength IRs were differences of opinions between the physicians, and potentially the resolution of Claimant's sensory deficits in the interval between the examinations.

The difference between the ROM IRs assigned by Dr. Danahey and Dr. Ogden are not significant, amounting to a 1% difference. The AMA Guides, p. 79, direct rating physicians to perform "at least three measurements of each range of motion," and use these measurements for determining validity. The records reflect that Dr. Danahey's range of motion impairment is based on a single measurement of each movement, while Dr. Ogden's rating is based on three measurements of each movement. In addition, Dr. Danahey testified that the differences in range of motion were minimal, and may be attributable to the time between examinations, and normal variance in ranges of motion. Given that Dr. Ogden performed his ROM assessment as directed by the AMA Guides and Dr. Danahey's acknowledgment that ranges of motion may vary over time, the evidence does not establish that Dr. Ogden's ROM IR is incorrect.

Based on the foregoing, Claimant has failed to establish by evidence that is unmistakable and free from substantial doubt that the DIME physician's impairment rating is highly probably incorrect.

Order

It is therefore ordered that:

1. Claimant's a whole person impairment rating is 18% as determined by the DIME physician, Dr. Ogden.
2. The parties' stipulations set forth in this Order are approved.
3. 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: December 9, 2025

Steven R. Kabler
Administrative Law Judge

Office of Administrative Courts
State of Colorado
Workers' Compensation Nos. WC 5-307-467-001 & WC 5-307-609-001
(Consolidated)

Issues

Case No. WC 5- 307-609-001

- Whether Claimant established by a preponderance of the evidence that she sustained a compensable injury arising out of the course of her employment with Employer on May 28, 2025.

- Whether Claimant established by a preponderance of the evidence entitlement to medical benefits to cure or relieve the effects of an industrial injury sustained on May 28, 2025.

Case No. WC 5-307-467-001

1. Whether Claimant established by a preponderance of the evidence that she sustained a compensable injury arising out of the course of her employment with Employer on June 2, 2025.

2. Whether Claimant established by a preponderance of the evidence entitlement to medical benefits to cure or relieve the effects of an industrial injury sustained on June 2, 2025.

Findings of Fact

1. Claimant works for Employer as an executive assistant to Employer's executive director.

2. Since 2019, Claimant has experienced various neurologic difficulties, including polyneuropathy affecting both feet, and a focal peroneal nerve entrapment at the right knee. Claimant's neurological conditions cause, among other things, a right foot drop that fluctuates in severity, numbness in her right leg and foot, difficulty flexing her right foot, and leg weakness. Claimant reported to her physicians that she experienced six episodes of right foot drop before October 2024 and testified that it occurred occasionally. (Ex. E).

3. On November 5, 2024, Claimant saw Michael Cavanagh, M.D., and reported experiencing right foot drop, restless leg syndrome, syncopal episodes with falls within the previous two weeks. (Ex. F).

4. After diagnostic studies and evaluations by neurologists, including Thomas Rampy, M.D., and Alexander Dietz, M.D., Claimant was diagnosed with hereditary neuropathy with susceptibility to pressure palsies (HNPP) in early 2025. (Ex. D, E, F).

5. In April 2025, Dr. Dietz noted that Claimant's right foot drop was likely due to a right peroneal neuropathy related to HNPP and noted that it would be reasonable to explore surgical intervention due to the "severity and frequency of her foot drop." (Ex. A).

6. As a result of her condition, Dr. Cavanagh recommended accommodations for Claimant at work. On April 22, 2025, Claimant submitted a medical certification form to Employer, signed by Dr. Cavanagh indicating she required intermittent leave due to her pre-existing condition, and that her condition affects her ability to work, and contributes to insomnia and falls. (Ex. F).

7. On May 28, 2025, Claimant tripped on a wrinkled or kinked carpet in Employer's office and fell to the ground, landing on her knees. After her fall, Claimant saw Heather West, M.D. at Concentra on May 30, 2025, reporting that she tripped over a kink in a carpet at work and landed on her knees. She reported experiencing hip and tail bone pain, but no knee pain. Dr. West diagnosed Claimant with a strain of the buttock and referred her to physical therapy. (Ex. 6).

8. On June 2, 2025, before Claimant received any additional treatment for her May 28, 2025 injuries, she fell again on a marble floor at Employer's office. Claimant testified that there was a carpet on the floor but that she did not know what caused her to fall.

9. Claimant returned to Concentra on June 2, 2025, and reported injuring her knee, and worsening hip and back pain. She reported to Dr. West that her most recent fall occurred on a marble floor that was unobstructed in Employer's office. Dr. West noted that Claimant had right foot drop from her neurological condition and was experiencing significant stress, which makes her neurological condition worse. Dr. West characterized Claimant as a "high fall risk," and prescribed a wheeled walker. (Ex. 7).

10. After the June 2, 2025 fall, Claimant continued to receive treatment through Concentra. On June 4, 2025, Claimant reported a pain in her ribs, right elbow, lower back, and right leg which she attributed to the June 2, 2025 fall. Dr. West indicated that although Claimant previously reported she did not trip on anything when she fell on June 2, 2025, she was now reporting that she tripped on a rug near an elevator in a location where there were no cameras. Dr. West opined that Claimant's June 2, 2025 fall was the result of her pre-existing condition, and that it was not work-related. (Ex. 8).

11. On June 6, 2025, at an appointment with Dr. Dietz, who noted that Claimant's falls were "potentially due to worsening of her right peroneal neuropathy." He further noted that Claimant suffered from ankle weakness and would benefit from a right ankle-foot orthosis (AFO) to accommodate weakness and allow her to return to a safe and functional gait. He also noted that Claimant had tripped over carpets that she could normally navigate. (Ex. A).

12. On June 13, 2025, Claimant returned to Dr. Cavanagh, reporting that she tripped over a carpet at work on June 2, 2025. Dr. Cavanagh indicated that Claimant's falls were likely due to tripping from foot drop and expressed concern for a hyperextension injury to her right knee from the June 2, 2025 fall.

13. On July 11, 2025, Claimant saw Dr. West, reporting increasing pain in her tailbone, right knee buckling and urinary incontinence. (Ex. 8).

14. Claimant testified at hearing that she does not have a constant foot drop, and that it only occurs occasionally. She indicated that the condition "comes and goes" and that it does not cause her to fall, although it does cause her to stumble at times. She indicated that she had fallen previously but did not attribute the falls to her neurological condition.

15. At hearing, Jason Lane, Employer's building operations manager testified that he spoke with Claimant after both the May 28, 2025, and June 2, 2025 incidents. He testified that he inspected the area where Claimant fell on June 2, 2025, and that the area was not wet.

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 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. *Univ. Park Care Ctr. 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 his injury arose out of the course and scope of his 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 his employment and during an activity that had some connection with his work-related functions. *Id.*; *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 Equip. Co.*, W.C. No. 4-952-153-01 (ICAO Aug. 10, 2015).

A pre-existing disease or susceptibility to injury does not disqualify a claim if the employment aggravates, accelerates, or combines with the pre-existing disease or infirmity to produce a disability or need for medical treatment. *Duncan v. Indus. Claim Appeals Office*, 107 P.3d 999 (Colo. App. 2004); *H & H Warehouse v. Vicory*, 805 P.2d 1167 (Colo. App. 1990); *Enriquez v. Americold*, W.C. No. 4-960-513-01 (ICAO Oct. 2, 2015).

If the precipitating cause of an injury is a preexisting health condition that is personal to the claimant, the injury does not arise out of the employment unless a "special hazard" of the employment combines with the preexisting condition to contribute to the accident or the injuries sustained. *National Health Lab. v. Indus. Claim Appeals Office*, 844 P.2d 1259 (Colo. App. 1992); *Rice v. Dayton Hudson Corp.*, W.C. No. 4-386-678 (ICAO July 29, 1999); *Alexander v. Emergency Courier Servs*, W.C. No. 4-917-156-01 (ICAO Oct. 14, 2014). This rule is based upon the rationale that, unless a special hazard of the employment increases the risk or extent of injury, an injury due to the claimant's preexisting condition lacks sufficient causal relationship to the employment to meet the arising out of employment test. *Ramsdell v. Horn*, 781 P.2d 150 (Colo. App. 1989); *Alexander*, *supra*. For a condition of employment to qualify as a "special hazard" it must not be a "ubiquitous condition" generally encountered outside the workplace. *Ramsdell, supra; Briggs v. Safeway, Inc*. W.C. No. 4-950-808-01 (ICAO July 8, 2015). Conversely, if the precipitating cause of the injury involves conditions or circumstances of the employment, there is no need to prove a "special hazard" for the injury to arise out of the employment. *Cabela v. Indus. Claim Appeals Office*, 198 P.3d 1277 (Colo. App. 2008); *H & H Warehouse, supra*. "[T]here is no requirement that a particular activity of employment which aggravates the preexisting condition be unique to the employment, or that it constitute a 'special hazard" of the employment. To the contrary, the special hazard requirement applies only where the precipitating cause of an injury is a preexisting non-industrial condition which the claimant brings to the workplace." *Shelton v. Eckstein Elec. Co.*, W.C. No. 4-724-391 (ICAO May 3, 2008).

Case No. WC 5-307-609-001

Claimant has established by a preponderance of the evidence that she sustained a compensable injury arising out of the course of her employment on May 28, 2024. The ALJ finds it more likely than not that Claimant's pre-existing neurological condition contributed in some measure to Claimant's May 28, 2024, fall and the injuries sustained because of that fall. The ALJ also finds credible that Claimant tripped and fell on a rug that was bunched up or displaced, creating a tripping hazard which Claimant could not avoid due to her condition. The displaced rug constitutes a "special hazard" that existed in the workplace, and that contributed to or caused her fall. Although rugs themselves

may be a ubiquitous condition, one that has been displaced or bunched up is not such a condition, and not one that an employee normally expects to exist in the workplace. Claimant's claim for worker's compensation benefits related to her May 28, 2024 fall is granted.

Case No. WC 5-307-467-001

Claimant has failed to establish by a preponderance of the evidence that she sustained a compensable injury arising out of the course of her employment on June 2, 2024. The ALJ finds it more likely than not that Claimant's pre-existing neurological condition caused her fall on June 2, 2024. Claimant reported to her physician Dr. West that the June 2, 2024 fall occurred on a marble floor that was free of obstruction, and that she was not aware of the reasons she fell. Claimant's later reports to her physicians and her testimony that a carpet or rug was present are inconsistent with her contemporaneous reports to Dr. West. Given Claimant's significant history of neurological issues and foot drop, the ALJ finds the opinions of Dr. West and Dr. Cavanagh that Claimant's fall on June 2, 2024, was likely due to her foot drop, Although Claimant's neurological condition caused her to fall. In this instance, no credible evidence was admitted demonstrating the existence of a hazardous condition, or the condition of Claimant's workplace contributed to the fall in any respect. Accordingly, Claimant's claim for benefits related to the June 2, 2024 fall is denied.

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).

Case No. WC 5-307-609-001

Because Claimant has established that she sustained a compensable injury on May 28, 2024, Respondents are liable for all reasonable, necessary, and authorized medical care to cure or relieve the effects of the May 28, 2024 injury.

Case No. WC 5-307-467-001

Because Claimant has failed to establish that she sustained a compensable injury on June 2, 2024, Claimant has failed to establish an entitlement to medical benefits for that injury. Claimant's request for medical benefits related to her June 2, 2024 injury is denied.

Order

It is therefore ordered that:

1. Claimant sustained a compensable injury arising out of the course of her employment with Employer on May 28, 2024.
2. Respondent shall pay for all reasonable, necessary, and authorized medical care to cure or relieve the effects of Claimant's May 28, 2024 injury.
3. Claimant has failed to establish that she sustained a compensable injury arising out of the course of her employment with Employer on June 2, 2024.
4. Claimant's request for medical benefits related to injuries sustained on June 2, 2024, is denied.
5. 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: December 10, 2025

Steven R. Kabler

Administrative Law Judge

Office of Administrative Courts
State of Colorado

Workers' Compensation No. WC 5-290-625-001

Issues

- Whether Claimant has proven by a preponderance of the evidence that the reverse total shoulder arthroplasty is reasonable medical treatment necessary to cure and relieve Claimant from the effects of his work injury?

Findings of Fact

1. Claimant was employed by Employer as a delivery driver. Claimant sustained an admitted injury on November 7, 2024 when he was making a delivery of cattle panels to Murdoch's and was on top of the trailer and cut the bands on the load which caused the panels in the load to release, knocking Claimant to the ground where he landed on his shoulder on the deck of the trailer.
2. Claimant testified that when he landed his left shoulder felt numb, but he continued his work for Employer. Claimant testified he completed another delivery, but his shoulder got worse as the day went on. Claimant reported the injury to Employer and when he returned to the office, went to human resources and filled out paperwork.
3. Claimant testified he went to the doctor the next day and underwent a course of treatment that included physical therapy, x-rays, a magnetic resonance image ("MRI"), and a cortisone injection. Claimant was eventually referred to Panorama Orthopedics for a surgical consultation where Claimant was examined by Dr. Johnson.
4. Claimant was initially examined by Dr. Johnson on May 8, 2025. Dr. Johnson noted Claimant was a 75 year old male who referred by Dr. Foulk to discuss his shoulder pain. Dr. Johnson noted Claimant sustained an injury to his shoulder when he fell at work in December 2024 and his pain gradually worsened.
5. Dr. Johnson noted that the MRI of Claimant's left shoulder was degraded by motion, but diagnosed Claimant with severe glenohumeral osteoarthritis with

near complete denuding of the humeral head and full-thickness cartilage loss through the posterior labrum. Dr. Johnson documented additional findings including tendinopathy of the supraspinatus and infraspinatus tendons without definite tear and moderate acromioclavicular osteoarthritis. In addition, Dr. Johnson diagnosed Claimant with a traumatic partial tear of the left biceps tendon and a partial tear of the supraspinatus tendon.

6. Dr. Johnson noted that Claimant reported no pain in his left shoulder prior to his fall along with full painless range of motion. Dr. Johnson noted in his report that it was difficult to determine how much of the changes shown on x-ray and in the MRI occurred prior to the injury, but also noted that Claimant reported that the condition of his left shoulder was significantly worse than it was prior to the fall. Dr. Johnson opined that it was reasonable that a portion of the cartilage damage occurred at the time of the fall. Dr. Johnson noted that Claimant's pain did not improve with physical therapy nor with the cortisone injection. Dr. Johnson recommended that Claimant undergo a reverse total left shoulder arthroplasty with capsular contracture release, biceps tenodesis and repair of the torn superior subscapularis.
7. Respondents obtained and independent medical examination ("IME") with Dr. Chen on June 16, 2025. Dr. Chen reviewed Claimant's medical records, obtained a medical history and performed a physical examination in connection with the IME. Dr. Chen noted Claimant's reported history of being knocked to the floor of the trailer onto his left shoulder when the cattle panels knocked him back after he cut the metal bands that held the panels in place. Dr. Chen noted a history of type II diabetes and a work history that included being a truck driver starting seven years earlier and working 40 hours per week.
8. Dr. Chen summarized Claimant's medical records and provided a diagnosis of (1) left end-stage shoulder glenohumeral osteoarthritis, pre-existing; (2) left shoulder rotator cuff muscle fatty infiltration, pre-exiting; (3) left shoulder severe long head of the biceps tendinopathy, pre-existing; (4) left shoulder impingement syndrome with rotator cuff tendinopathy, pre-existing; (5) left shoulder moderate

acromioclavicular (“AC”) joint arthritis, pre-existing; (6) left shoulder high grade partial tear of the superior third of the subscapularis tendon, likely pre-existing.

9. With regard to the diagnosis that Dr. Chen opined was causally related to the November 7, 2024 injury, Dr. Chen opined that, at most, Claimant sustained a left shoulder contusion that at this point had healed. Dr. Chen opined that all of the findings on MRI and x-ray appeared to be chronic and pre-existing in nature. Dr. Chen further opined that the request for the reverse left total shoulder arthroplasty did not appear to be medically necessary or appropriate. Dr. Chen opined that Claimant’s need for surgery was not work related as the need for surgery is due to osteoarthritic changes that should be treated outside Claimant’s workers’ compensation claim.
10. Dr. Johnson testified by deposition at the hearing. Dr. Johnson noted in his testimony that Claimant suffered from pre-existing osteoarthritis in his left shoulder. Dr. Johnson opined in his deposition that due to the fact that Claimant also has a partial thickness tear of the subscapularis, along with Claimant’s advanced age, made an arthroscopic procedure unlikely to provide Claimant with much relief. Therefore, Dr. Johnson recommended the reverse left total shoulder arthroplasty.
11. The ALJ credits the testimony of the Claimant along with the opinions expressed by Dr. Johnson in his reports and testimony and finds that Claimant has established that it is more probable than not that the proposed left shoulder total arthroplasty is reasonable medical treatment necessary to cure and relieve Claimant from the effects of his work injury. The ALJ specifically finds the testimony of Claimant to be credible and persuasive regarding the onset of his symptoms in his left shoulder following the work injury.
12. The ALJ further finds the testimony of Dr. Johnson regarding the causal relatedness of the proposed surgery to the November 7, 2024 fall at work to be credible and persuasive.
13. The ALJ recognizes the existence of the osteoarthritis in the left shoulder joint, but finds that the November 7, 2024 injury aggravated, accelerate or combined

with Claimant's preexisting condition to cause the need for medical treatment in the form of the left shoulder total arthroplasty recommended by Dr. Johnson.

Conclusions of Law

A. The purpose of the Workers' Compensation Act of Colorado, §§ 8-40-101, et seq., C.R.S. is to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of litigation. *See* § 8-40-102(1), C.R.S. 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.

B. 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).

C. The ALJ's factual findings concern only evidence and inferences found to be dispositive of the issues involved; the ALJ has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to the above findings as unpersuasive. *Magnetic Eng'g, Inc. v. Indus. Claim Appeals Office*, 5 P.3d 385 (Colo. App. 2000).

D. 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.*

E. Respondents are liable for authorized medical treatment reasonably necessary to cure and relieve an employee from the effects of a work related injury. Section 8-42-101, C.R.S.; *see Sims v. Industrial Claim Appeals Office*, 797 P.2d 777 (Colo. App. 1990).

F. As found, the testimony of Claimant and Dr. Johnson are found to be credible and persuasive with regard to the issue of the relatedness of the proposed surgery to Claimant's November 7, 2024 fall at work. As found, Claimant has proven by a preponderance of the evidence that the proposed total left shoulder arthroplasty is reasonable medical treatment necessary to cure and relieve Claimant from the effects of the November 7, 2024 work injury.

Order

It is therefore ordered that:

1. Respondents shall pay for the recommended reverse total left shoulder arthroplasty pursuant to the Colorado Medical Fee Schedule.
2. 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: December 11, 2025

/s/ Keith E. Mottram
Keith E. Mottram
Administrative Law Judge

Office of Administrative Courts

State of Colorado

Workers' Compensation No. WC 5-228-288-002

Issues

- ➢ Whether Respondents established by clear and convincing evidence that the permanent impairment rating assigned by Division Independent Medical Examination (DIME) physician Bryan T. Alvarez, M.D., is incorrect.
- ➢ Determination of Claimant's Average Weekly Wage (AWW).
- ➢ Whether Claimant established by a preponderance of the evidence that he is entitled to Total Temporary Disability (TTD) benefits from June 18, 2023[1] to December 1, 2023.
- ➢ If Claimant established entitlement to TTD benefits, whether Respondents established by a preponderance of the evidence that Claimant was responsible for his termination from employment and resulting wage loss under section 8-42-105(4), C.R.S. and section 8-42-105(1)(g), C.R.S., thereby terminating his entitlement to TTD benefits.
- ➢ Whether Respondents established entitlement to offsets.

Stipulation

1. After hearing the parties stipulated that Claimant reached Maximum Medical Improvement (MMI) on December 1, 2023.

Findings of Fact

1. Claimant starting working for Employer in February 2008.
2. Claimant earned $78,863.29 in 2021 and $70,124.36 in 2022. Ex. 9.
3. Claimant suffered an admitted work injury on June 14, 2022. RHE p. 386.

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[1] Claimant's counsel requested TTD benefits begin August 19, 2023. However, the evidence at hearing established that Claimant's last day at work was June 17, 2023 and that Claimant earned no wages from June 18, 2023 to December 1, 2023, the date he was determined to be at MMI. Therefore, the ALJ conforms the TTD request to the evidence introduced at hearing.

4. At the time of his admitted work injury, Claimant was working as a foreman for landscaping jobs. Claimant was paid $30.00 an hour. Claimant was eligible for health care through his employer but did not elect coverage.

5. On July 7, 2022, Claimant presented to Concentra for evaluation of his work injury. RHE p. 2. Claimant reported that on June 14, 2022, he was lifting PVC pipes over a wall when he felt a "pop" in his neck. Over the next several weeks he developed pain in his left shoulder and left hip, and tingling/pins and needles in his left leg and foot. *Id*. Claimant was initially diagnosed with a strain of his left shoulder and left hip pain. RHE p. 6.

6. Claimant was provided no work restrictions at his July 7, 2022 appointment. RHE p. 4.

7. Claimant was seen at Concentra by Kenneth Farrell, PA, on July 14, 2022. Ex. 10. PA Farrell gave Claimant temporary work restrictions of lifting 10 pounds, repetitive lifting 10 pounds, carrying 10 pounds, and pushing/pulling 10 pounds. *Id.*

8. A first report of injury was filled out by Jeff Dee on July 15, 2022. RHE p. 380-81. Mr. Dee testified for Respondents at hearing. Mr. Dee testified that he works for Hartland Company, which contracts with Employer to provide human resources. On the first report of injury, Mr. Dee identifies himself as Human Resources Director for Employer. RHE p. 381.

9. Mr. Dee testified that the first report of injury was signed by him but was sent to "his adjuster." The ALJ infers from Mr. Dee's testimony that neither Employer nor Insurer submitted the first report of injury to the Division of Workers' Compensation (Division).

10. Claimant's next appointment at Concentra was on July 28, 2022, with Amanda Ying, PA. PA Ying provided Claimant with "no restrictions." Ex. 13. Then, on August 11, 2022, PA Ying noted "cont same work restrictions – full duty was written in error last visit, loosened restrictions today based on his visit prior, to cont some work restrictions." *Id*.

11. On August 11, 2022, PA Ying gave Claimant temporary restrictions of "Lifting (maximum weight in pounds) 15 lbs. Repetitive lifting 10 lbs Carrying 15 lbs Pushing/Pulling 15 lbs." Ex. 13 (hereinafter 15/10/15/15 temporary work restrictions).

12. As Claimant treated with Concentra, it was determined his left shoulder was improving but his lumbar spine was not. RHE p. 111.

13. On August 23, 2022, Claimant underwent an MRI of his lumbar spine. RHE p. 8. The MRI showed that at L5-S1 Claimant had "[m]ild degenerative disc disease with posterior disc bulge and mild to moderate facet osteoarthrosis resulting in severe left foraminal compromise and moderate right foraminal narrowing." RHE p. 9. Claimant was diagnosed with significant degenerative disc disease and spondylosis at L5-S1. *Id.*

14. Claimant saw PA Ying on August 25, 2022. Ex. 13. PA Ying noted Claimant reported "light duty is going well" and continued Claimant's 15/10/15/15 temporary work restrictions. *Id.*

15. Claimant returned to Concentra on September 14, 2022, and was seen by John Sacha, M.D. RHE p. 11. Dr. Sacha diagnosed Claimant with lumbar radiculopathy and secondary myofascial pain. *Id.* According to Dr. Sacha:

> From a causality standpoint, my review of this gentleman's case and listening to him closely, it appears that the primary problem was always his low back. He had some secondary complaint of some other body parts including the hip, the shoulder and the neck. There is no pathology or findings in any of these areas and his complaints have been inconsistent and essentially resolved at this timeframe. At this point, I do recommend a lumbar transforaminal injection, some chiropractic with Dr. Mobus for the whole spine and see him back, also adjust the medications.

Id.; see RHE p. 13.

16. Dr. Sacha requested Insurer authorize left-side transforaminal epidural steroid injections (ESI) at L5 and S1. RHE p. 15.

17. Claimant saw PA Ying on September 15, 2022 and October 6, 2022. Ex. 13. PA Ying continued Claimant's 15/10/15/15 temporary work restrictions. *Id.* On October 27, 2022, PA Ying modified Claimant's temporary work restrictions to 20 pounds lifting, 15 pounds repetitive lifting, 20 pounds carrying, and 20 pounds pushing/pulling. *Id.* (hereinafter 20/15/20/20 temporary work restrictions).

18. Claimant visited Dr. Sacha at Concentra on October 5, 2022, October 26, 2022, November 9, 2022, and November 30, 2022. RHE p. 141-145; RHE p. 20-21. Insurer did not authorize the requested ESI during that time. *See* RHE p. 112 (noting denial of injection on October 27, 2022 by Nathan Patrick, M.D.).

19. Claimant saw PA Ying on November 15, 2022 and January 3, 2023. Ex. 13. PA Ying continued Claimant's 20/15/20/20 temporary work restrictions. *Id.*

20. Claimant met with Dr. Sacha at Concentra on January 4, 2023. RHE p. 23-28. Dr. Sacha noted:

> Unfortunately, since last being seen, we still had denial of care. We have made multiple attempts to getting authorization for a transforaminal epidural injection, but they have not authorized any care to date at this point, although allowing apparently followups and medication. At this point, I am going to move forward to MMI case closure and to outline what care still needs to be done for this patient. He has been working and tolerating light duty without difficulty. Please note, I am not going to make the restrictions permanent at this point as once the definitive care is done, I am hoping he [will] get back to full duty.
>
> . . .
>
> At this point, MMI case closure and impairment rating are being performed. We do want to move forward with his impairment rating, but I still feel that appropriate care needs to be done to get him back to his full duty activities.
>
> . . .
>
> Work restrictions: No lifting over 20 pounds. Bending, twisting on an occasional basis. These are not permanent at this point, although can be advanced once definitive care is done.

RHE p. 23-24.

21. Dr. Sacha testified he placed Claimant at MMI on January 4, 2023 because Insurer continually denied requested care. RHE p. 155-156.

22. Dr. Sacha gave Claimant a 9% whole person impairment rating, consisting of 7% impairment for his lumbar spine and 2% impairment for range of motion. RHE pp. 24, 27-28.

23. On January 24, 2023, Claimant was seen by Carol Dombro, M.D., at Concentra. RHE p. 30-34; RHE p. 148 (deposition of Dr. Sacha explaining that once he provided an impairment rating and placed Claimant at MMI, a "primary authorized treating physician" at Concentra would file the "M form").

24. Dr. Dombro adopted Dr. Sacha's recommendation for MMI and impairment rating. RHE p. 32 ("Impairment rating completed on 1/4/2023. He has a 9% whole person impairment due to lumbar disc.").

25. However, rather than adopting Dr. Sacha's recommended temporary work restrictions (and the 20/15/20/20 temporary work restrictions documented by PA Ying), Dr. Dombro listed the following permanent work restrictions: "permanent lift restriction 50 lb, permanent carry restriction of 30 lb, push-pull 100 lb." RHE p. 34 (hereinafter 50/30/100 permanent work restrictions).

26. The ALJ finds by a preponderance of the evidence that Dr. Dombro's 50/30/100 permanent work restrictions was an error and contrary to the medical records and recommendations of PA Ying and Dr. Sacha. On January 24, 2023, Claimant's true work restrictions were temporary work restrictions of 20 pounds lifting, 15 pounds repetitive lifting, 20 pounds carrying, and 20 pounds pushing/pulling. This is supported by the parties stipulation that Claimant was not at MMI until December 1, 2023 and by Insurer's eventual approval of care based on their own IME doctor's opinion that the requested ESI was reasonable, necessary, and causally related to Claimant's June 14, 2022 injury.

27. During his deposition Dr. Sacha was asked about Dr. Dombro's 50/30/100 permanent work restrictions:

> Q. All right. Now, at this time [January 4, 2023] he is placed at MMI and the case is closed, correct?
>
> A. Correct.

> Q. Or not quite yet?
>
> A. Well, yeah, kind of. The way the system's set up in Concentra, I do the impairment rating, I say he's at maximum medical improvement, and then the Concentra primary authorized treating physician then goes and fills out the M form and that will be the official date.
>
> . . . .
>
> Q. Okay . . . . Dr. Dombro indicated that there was a comprehensive discharge evaluation conducted to determine that he reached MMI and all components of the discharge and return to work were assessed. He at this point was returned to modified duty with a maximum lifting restrictions of 50 pounds; carrying, 50 pounds; pushing and pulling of 100 pounds. Do you agree with those?
>
> A. Yes.

RHE p. 148-149. Yet Dr. Sacha also testified that Claimant "had work restrictions from early on that's continued to present" and those restrictions are "[n]o lifting over 20 pounds on an occasional basis; twisting, turning, bending, and twisting on an occasion basis; no ladders or unprotected heights." RHE p. 177-178.

28. The ALJ finds Claimant's medical records to be the most credible and persuasive evidence of Claimant's true work restrictions in January 2023.

29. On January 25, 2023, the day after being placed at MMI by Dr. Dombro, Claimant saw Dr. Sacha at Concentra for "maintenance followup." RHE p. 36. Dr. Sacha noted "[s]ince last being seen, the patient did have an impairment rating as the case closed, has denial of care, has a pending division IME per patient report. At this point, we will discharge [to] maintenance program, just for med management while we are waiting for the legal process to go through." RHE p. 36; *see* RHE p. 150.

30. Claimant filed a Workers' Claim for Compensation with the Division on January 25, 2023. Ex. 7.

31. Blas Rodriguez testified on behalf of Respondents at hearing. Mr. Rodriguez works from Employer and became Claimant's direct supervisor in January 2023.

32. Mr. Rodriguez testified that in January 2023 Employer was "absorbed" by Keesen Landscaping Management, Inc. (Keesen). At the time of hearing, Mr. Rodriguez had been an operations manager for Keesen for seven years.

33. Mr. Rodriguez testified that in January 2023, Claimant's then-supervisor Josh Walker told Mr. Rodriguez that Claimant had 50/30/100 permanent work restrictions.

34. The ALJ finds Mr. Rodriguez's testimony incredible. Between July 14, 2022 and January 23, 2023, Claimant had 20/15/20/20 temporary work restrictions. Indeed, on January 4, 2023, Dr. Sacha documented no lifting over 20 pounds and "occasional" bending and twisting. Claimant was not given the 50/30/100 permanent work restrictions until January 24, 2023, and the Physician's Report of Worker's Compensation Injury completed by Dr. Dombro does not indicate that it was provided to Employer. The ALJ finds it far more likely that if Mr. Walker informed Mr. Rodriguez that Claimant had work restrictions, the restrictions would have been the 20/15/20/20 temporary work restrictions assigned Claimant by PA Ying and Dr. Sacha.

35. Claimant testified at hearing that his work restrictions in January 2023 were 20 pounds lifting, 30-50 pounds pushing and pulling, and no frequent twisting of his body. When questioned during the hearing about Dr. Dombro's 50/30/100 permanent work restrictions, Claimant was adamant that he had lower restrictions.

36. Mr. Rodriguez testified that Employer modified Claimant's employment from leading a crew of landscapers to mowing in order to accommodate Claimant's restrictions. Employer also switched Claimant to "preemergent applications" and assigned Claimant jobs that included riding in an all-terrain vehicle.

37. Since Mr. Rodriguez became Claimant's supervisor in January 2023, it is unlikely that Claimant was completing mowing jobs. Claimant told PA Ying in November 2022 that he was "nervous with the cold weather that pain will be worse," Ex. 13, and on January 3, 2023, "having to shovel snow at work now that we have had so many snow storms lately, has aggravated his back." *Id.*

38. The ALJ finds that shoveling snow requires more than occasional twisting and bending in contravention of PA Ying's 20/15/20/20 temporary work restrictions and Dr. Sacha's January 4, 2023 restrictions of "occasional" twisting and bending.

39. Mr. Dee also testified that in January 2023 Claimant had 50/30/100 permanent work restrictions and that Claimant was given jobs that complied with those restrictions. The ALJ finds this testimony lacks credibility.

40. An incomplete General Admission of Liability (GAL) with the hand-written date of February 21, 2023 in the upper right-hand corner is included in Claimant's exhibits as Exhibit 5. The ALJ is unable to determine if the GAL was completed or filed with the Division. Respondents did not include a copy of this GAL in their exhibits.

41. Respondents filed a Final Admission of Liability (FAL) on April 18, 2023 and attached Dr. Sacha's January 4, 2023 report. Ex. 4. The FAL listed medical benefits of $9234.01 paid to date, no temporary total disability (TTD) or temporary partial disability (TPD) payments, and permanent partial disability (PPD) benefits of $46,656.00 (1/4/23 through 2/15/2024 for 58 2/7 weeks at $800 per week). *Id.* Respondents admitted to an average weekly wage (AWW) of $1200.00 per week. *Id.*

42. The ALJ infers from the medical records and testimony that Claimant objected to the FAL and requested a Division Independent Medical Examination (DIME).

43. Mr. Rodriguez testified that in mid-to-late May 2023, Claimant's work performance began to suffer. Claimant stated that he could not do the jobs assigned to him and that he wanted to work in either the office or the yard, rather than out on landscaping jobs. Mr. Rodriguez asked Claimant if he had updated work restrictions so Claimant could work in Employer's office.

44. On June 5, 2023, Claimant was given a written warning for bending a blade on a mower. RHE p. 377. Mr. Rodriguez testified that Claimant's use of the mower with the damaged blade resulted in the mower doing damage to the client's lawn and that the client was "pretty upset."

45. Mr. Rodriguez and Mr. Dee testified that Employer has an attendance policy that if an employee no call/no shows for three shifts, it is cause for termination. This information is provided to employees at the time they are hired, at yearly safety "spring fling" meetings, and is included in the employee handbook.

46. No copy of the employee handbook was entered into evidence.

47. Claimant's last day working at Employer was June 17, 2023. For the pay period of June 4, 2023 to June 17, 2023, Claimant earned $2400.00. RHE p. 375. Claimant

testified that Mr. Rodriguez kept asking him for "new" work restrictions and he believed he could not return to work without providing those restrictions to Employer.

48. Mr. Rodriguez testified that he called Claimant and gave him the opportunity to provide updated work restrictions. He also communicated to Claimant that Employer wanted him to return to work.

49. The ALJ determines that a preponderance of the evidence supports a finding that Claimant left his employment because of his industrial injury.

50. Mr. Rodriguez testified that "after a couple weeks" Employer determined Claimant had abandoned his job.

51. On Monday June 19, 2023, just one day after Claimant stopped reporting to work and while the DIME was pending, Claimant attended an independent medical examination with J. Tashof Bernton, M.D., at the request of Respondents. RHE p. 319-326.

52. Dr. Bernton opined that Claimant was not at MMI and that the requested ESI should be approved. RHE p. 324-326; RHE p. 324 ("The patient has persistent pain due to lumbar radiculopathy. He is not at maximum medical improvement because his lumbar radiculopathy has not been adequately treated. It appears that it has not been adequately treated because authorization was not granted for indicated medical procedures. The utilization review performed declined to certify medically necessary treatment. . . . Particularly of concern is the noncertification of Dr. Sacha's second request for epidural steroid injection despite the documentation of appropriate findings on examination, because "there was no documented imaging finding" on the 12/22/2022 utilization review. The patient clearly has imaging findings documenting an MRI with severe left foraminal compromise at L5-S1, which is entirely consistent with the patient's clinical findings on exam.").

53. Dr. Bernton did not mention temporary or permanent work restrictions in his report. RHE p. 319-326.

54. Based on Dr. Bernton's opinion, Insurer began authorizing care for Claimant. *See* RHE p. 204-205.

55. On August 3, 2023, Respondents filed a General Admission of Liability (GAL) admitting to medical benefits and noting "[n]o attachments with this admission. $35,600

in PPD has been paid, which will be credited towards future entitlement." Ex. 3. There was no admission for TTD or TPD benefits. *Id.* Respondents again admitted to an AWW of $1200.00 and wrote "TBD" next to "[d]ate first payment paid TTD." *Id.*

56. The ALJ infers that Claimant's request for a DIME was withdrawn based on Dr. Bernton's opinion and the August 3, 2023 GAL.

57. Insurer authorized Dr. Sacha's requested ESI on August 7, 2023. RHE p. 39-40.

58. Claimant returned to Dr. Sacha at Concentra on August 16, 2023. RHE p. 43. Dr. Sacha completed a "Physician's Report of Worker's Compensation Injury" on August 16, 2023, in which he selected the report type as "closing," Claimant's work status as "[a]ble to return to modified duty," and "limitations/restrictions" as "permanent restrictions" but without any additional information. RHE p. 45. Dr. Sacha also selected "injured worker has reached MMI" and listed the date of MMI as 1/24/23, selected yes to maintenance care after MMI, and wrote "[t]wo lumbar injections over the next year with physiatry," and selected "permanent impairment." *Id.*

59. Claimant underwent left-side transforaminal ESI at L5 and S1 on August 25, 2023. RHE p. 47-50. Dr. Sascha testified that Claimant had a diagnostic but non-therapeutic response to the injection. RHE pp. 153, 157.

60. Claimant received his first recommended ESI more than two months after he stopped reporting to work at Employer and approximately eleven months after it was initially requested by Dr. Sacha.

61. On September 6, 2023, Dr. Sacha "discharged" Claimant from Concentra to a maintenance and medication program at Mile High Sports and Rehabilitation Medicine. RHE p. 52-57; RHE p. 154.

62. Claimant saw Dr. Sacha at Mile High Sports and Rehabilitation Medicine on October 2, 2023, November 6, 2023, and December 1, 2023. Ex. 10; RHE p. 157.

63. On December 1, 2023, Dr. Sacha "reopened" the claim because Insurer sent a letter allowing additional care for Claimant. RHE p. 74-77; RHE p. 74 ("As you recall . . . we closed his claim because of lack of authorization for ongoing treatment. We did receive a letter from the insurance carrier stating that they are now allowing care and the claim can be reopened. So the claim will be reopened as of today's [d]ate, December 1, 2023. Of note, they have also stated they will authorize transforaminal

epidural injection and we are going to transfer his care back to the Concentra Clinic where his primary authorized treating physician is."). Dr. Sacha testified that he transferred Claimant's care back to Concentra. RHE p. 160.

64. In his testimony, Dr. Sacha characterized the December 1, 2023, reopening as an "administrative" decision that Claimant was not at MMI, allowing Claimant to seek additional medical care. However, in his professional opinion, Claimant was "clinically" at MMI on December 1, 2023. RHE p. 219-220 ("If I were to look at this from a practical standpoint and look at when he had the injection, the treatment he had in the peri-procedural period and the strengthening conditioning, I would have probably placed him at maximum medical improvement – based on nontherapeutic response to the injection and completing all the strengthening, chiropractic, home exercise, and massage visits, I would have put him right about 12/1 – 12/1/23."); *see* Ex. 10 (June 29, 2025 letter authored by Dr. Sacha discussing his determination of MMI on December 1, 2023).

65. The ALJ infers that Claimant earned no wages from June 18, 2023 to December 1, 2023. *See* RHE p. 70 (November 21, 2023 physical therapy initial examination noting "Pt currently unable to work d/t pn."); RHE p. 74 (December 1, 2023 note "Work Status: Off duty. Restrictions in place.").

66. Dr. Sacha requested a second ESI in December 2023. RHE p. 79-80. Dr. Sacha characterized the second ESI as maintenance care after the first ESI had a diagnostic but non-therapeutic response. RHE p. 165-166.

67. Insurer approved the second ESI on December 19, 2023. RHE p. 82.

68. Claimant underwent a second ESI on January 25, 2024. RHE p. 91-92; Ex. 10; RHE p. 165. Claimant's response was again diagnostic but nontherapeutic. RHE p. 165-166.

69. Claimant was seen by Dr. Sacha at Mile High Sports and Rehabilitation Medicine for "maintenance followup[s]" on January 29, 2024, February 27, 2024, March 26, 2024, April 8, 2024, May 20, 2024, July 15, 2024, September 16, 2024,[2] October 15, 2024,

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[2] The September 16, 2024 medical record indicates Claimant had a "very high" Keele STarT score "consistent with psychiatric dysfunction that would interfere with care and delayed recovery." Ex. 10. Dr. Sacha noted "[a]t this point we are just waiting for an

and October 29, 2024. Ex. 10; *id.* (October 29, 2024 note that "[s]ince last being seen we did receive a legal letter from the attorney for the insurance carrier that apparently has reopened the claim and allowing therapy. Please see separate dictated special report with a review of records in detail, but apparently they have authorized care prior to case closure. The recommended care was initially PT with dry needling, massage therapy, and a repeat epidural. The patient does not want the epidural injection at this point, so we will just do PT, work strengthening, and dry needling for 8 visits, massage therapy for 8 visits and then MMI case closure again will occur in 4 to 5 weeks.").

70. Claimant returned to Dr. Sacha at Mile High Sports and Rehabilitation Medicine on December 2, 2024. Ex. 10. Dr. Sacha testified that at that time there was a delay by Insurer in authorizing physical therapy and dry needling, and that Insurer was requesting Dr. Sacha "reclose" the case and outline appropriate maintenance treatment. RHE p. 175; Ex. 10 (December 2, 2024 office note stating: "Since last being seen, as you recall, this claim got reopened and care is being allowed. There was a delay in authorization of getting the PT done at SpineFix! and he has done 3 of the 8 visits with PT and dry needling. We have pending chiropractic and dry needling too, and we are going to see this gentleman back in a month and then re-close the case and outline what maintenance care is appropriate.").

71. Dr. Sacha testified that he placed Claimant at MMI with permanent work restrictions on December 30, 2024. RHE p. 176-178; Ex. 10 ("The patient is at maximum medical improvement as of today's date, December 30, 2024.").

72. At his deposition, Dr. Sacha changed his opinion as to MMI and concluded Claimant reached MMI on December 1, 2023. RHE p. 219-220 ("If I were to look at this from a practical standpoint and look at when he had the injection, the treatment he had in the peri-procedural period and the strengthening conditioning, I would have probably placed him at maximum medical improvement – based on nontherapeutic response to

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IME. All care is being denied except for medications. He does have a psychiatric component that does interfere with care as outlined above. We may need to consider a one-time psychiatric evaluation after the IME is performed." *Id.* The records admitted do not show that Claimant ever underwent a psychological evaluation.

the injection and completing all the strengthening, chiropractic, home exercise, and massage visits, I would have put him right about 12/1 – 12/1/23.").

73. Claimant's permanent work restrictions on December 30, 2024 were "No lifting over 20 pounds on occasional basis, twisting, turning, bending and twisting only on occasional basis. No ladders or unprotected heights." Ex. 10.

74. During his deposition Dr. Sacha testified:

> Q. Now, you talked about you discussed permanent work restrictions, and you stated that they had never changed.
>
> A. Yes.
>
> Q. So between – I guess when you say they've never changed, in what time frame are you talking?
>
> A. Ever. I don't think – this gentleman had work restrictions from early on that's continued to the present. I only modified them slightly based on what the patient thought he could and couldn't do at the time, but he always had restrictions in place, and they were actually – they never really changed. . . .
>
> Q. All right. And what were the restrictions that you discussed on 12/30/2024?
>
> A. No lifting over 20 pounds on an occasional basis; twisting, turning, bending and twisting on an occasional basis; no ladders or unprotected heights.
>
> Q. Any push/pull/carry?
>
> A. No. In general, if we say lifting's 20 pounds, the push, pull, and carry leave at 20 pounds as well, but no, I did not do that – put that in formally.
>
> Q. All right. So you just had 20 pounds lifting; twisting, turning, bending occasionally, and ladders occasionally?
>
> A. No ladders.

RHE p. 177-178; RHE p. 184 ("Q. All right. And then just to clarify, as of this date, January 6, 2025, the claimant's work restrictions have not ever changed over the course

of his care? A. Essentially. They've been about the same the entire time."); RHE p. 196 ("Q. And – and since January 24, 2023, the claimant's work restrictions have not changed significantly? A. No. They've been essentially the same.").

75. According to Dr. Sacha, based on invalid results regarding Claimant's range of motion on December 30, 2024, Claimant had to return for a valid impairment rating. RHE p. 104-107; Ex. 10 (December 30, 2024 note "impairment could not be calculated today as the patient was invalid and inconsistent with forward flexion.").

76. On January 6, 2025, Dr. Sacha provided Claimant with a 12% whole person impairment rating. RHE p. 107.

77. The ALJ infers from the deposition of Dr. Sacha that Respondents objected to Dr. Sacha's determination of MMI and/or permanent impairment and requested a DIME. *See* RHE p. 216-217.

78. On February 14, 2025, Claimant attended a DIME with Bryan Alvarez, M.D. RHE p. 110-127.

79. Dr. Alvarez diagnosed Claimant with L5-S1 injury with left lower extremity radiculopathy and left shoulder trapezius muscle strain. RHE p. 118.

80. In his report, Dr. Alvarez determined that Claimant was not at MMI because of his lumbar spine. RHE p. 118. Dr. Alvarez then gave Claimant a provisional 13% whole person impairment rating. RHE p. 119.

81. At his deposition, Dr. Alvarez changed his opinion and agreed with Dr. Sacha that Claimant was at MMI as of December 1, 2023. RHE p. 272 ("I would agree with Dr. Sacha on that December 1st, 2023, date based off of the information now.").

82. Dr. Alvarez agreed with Dr. Sacha that Claimant suffered an injury to his lumbar spine and that any shoulder, neck, or hip complaints either fully resolved or were unrelated to his industrial injury. RHE p. 263.

83. Dr. Alvarez testified that the provisional impairment rating he gave Claimant on February 14, 2025 was an appropriate permanent impairment rating. RHE p. 277.

84. Dr. Sacha testified he agreed with Dr. Alvarez's 7% lumbar impairment, RHE p. 185-186, and Dr. Alvarez's 6% range of motion impairment was based on "consistent and valid" range of motion findings, RHE p. 186-187.

85. Dr. Sacha testified "[i]f someone is valid and gets a 12 percent impairment rating and then someone is valid and gets a 13 percent, that's a – that's a variance of an opinion. And in all honesty, the Division IME, their recommendations for care were appropriate. They were the same recommendations I made." RHE p. 211.

86. Dr. Alvarez document Claimant's work restrictions as "[h]e should remain at the current work restrictions, and after having the injections and physical therapy, this should be revisited. If there is a question as to permanent restrictions, and a Functional Capacity Evaluation should be performed." RHE p. 120.

87. Claimant's last documented work restrictions prior to his DIME was Dr. Sacha's December 30, 2024 note "[n]o lifting over 20 pounds on occasional basis, twisting, turning, bending and twisting only on occasional basis. No ladders or unprotected heights." Ex. 10.

Conclusions of Law

Generally

The purpose of the Act 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. § 8-40-102(1), C.R.S. Claimant shoulders the burden of proving entitlement to benefits by a preponderance of the evidence. § 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, 318 (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 – 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. *Univ. Park Care Ctr. v. Indus. Claim Appeals Off.*, 43 P.3d 637, 641 (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*. 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. *Bodensieck v. Indus. Claim Appeals Off.*, 183 P.3d 684, 687 (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 Off.*, 55 P.3d 186, 191 (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. *Colo. Springs Motors, Ltd. v. Indus. Comm'n*, 165 Colo. 504, 506 (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 Off.*, 5 P.3d 385, 389 (Colo. App. 2000).

Overcoming DIME

A DIME physician's medical impairment rating may be overcome only by clear and convincing evidence. § 8-42-107(8)(b)(III), C.R.S.; *see Leprino Foods Co. v. Indus. Claim Appeals Off.*, 134 P.3d 475, 478 (Colo. App. 2005). Clear and convincing evidence is that quantum and quality of evidence which renders a factual proposition highly probable and free from serious or substantial doubt. Thus, the party challenging the DIME physician's findings must produce evidence showing it highly probable the DIME physician is incorrect. *Metro Moving & Storage Co. v. Gussert*, 914 P.2d 411, 413 (Colo. App. 1995); *Lafont v. WellBridge D/B/A Colorado Athletic Club*, W.C. No. 4-914-378-02 (ICAO, June 25, 2015).

The rating physician's determination concerning the causes of impairment should include an assessment of data collected during a clinical evaluation, which involves information obtained by history, clinical findings obtained from a physical evaluation, laboratory tests, and function measurements. *Wackenhut Corp. v. Indus. Claim Appeals Off.,* 17 P.3d 202, 204 (Colo. App. 2000).

A DIME physician must rate a claimant's medical impairment in accordance with the AMA Guides. § 8-42-107(8)(c), C.R.S.; *Wilson v. Indus. Claim Appeals Off.*, 81

P.3d 1117, 1118 (Colo. App. 2003). However, deviation from the AMA Guides "does not compel automatically rejection of the DIME opinion." *In Re Gurrola*, W.C. No. 4-631-447 (ICAO Nov. 13, 2006). "Instead, the ALJ may consider a technical deviation from the AMA Guides in determining the weight to be given the DIME physician's findings . . . ." *Id*.

A mere difference of opinion between physicians does not necessarily rise to the level of clear and convincing evidence. *Gonzales v. Browning Ferris Indus. of Colo.*, W.C. No. 4-350-36 (ICAO, Mar. 22, 2000). Whether the DIME physician properly applied the *AMA Guides*, and whether the rating was overcome by clear and convincing evidence, present questions of fact for determination by the ALJ. *Paredes v. ABM Indus.,* W.C. No. 4-862-312-02 (ICAO, Apr. 14, 2014).

Here, Respondents presented little to no credible evidence to refute Dr. Alvarez's 13% whole person impairment rating. Respondents cite to Dr. Sacha's deposition testimony that the 9% whole person impairment he gave Claimant on January 4, 2023 "should have been the impairment rating the whole time." RHE p. 183-184. But Dr. Sacha later in the deposition changed his opinion as to when Claimant reached MMI. And Dr. Sacha testified that he reached a 12% impairment rating on December 30, 2024 because "[o]ver time I think he got slightly worse, and so when were doing stuff to maintain, the maintenance didn't completely maintain him. He slightly worsened over time. And the range of motion, even though there's a 2 percent difference from one to the other, it's very minimal. The actual – those are just the numbers. The actual lost range of motion was not a huge change. It just turned out he got an extra 2 percent." RHE p. 181.

Respondents also argue in their position statement that Dr. Sacha's January 4, 2023 9% whole person impairment rating "is the rating closest in time to Claimant's date of MMI and is most likely to accurately reflect the Claimant's impairment at MMI." But Dr. Alvarez's impairment rating is entitled to presumptive weight and Dr. Sacha testified that not only was Dr. Alvarez's impairment rating valid but substantially similar to his own impairment rating of 12% whole person on December 30, 2024, and that the 1% difference was "a variance of an opinion." RHE p. 211.

Ultimately, the ALJ determines that Respondents failed to present evidence showing it highly probable that Dr. Alvarez's 13% whole person impairment rating is incorrect.

AWW

Section 8-42-102(2), C.R.S. requires the ALJ to base the claimant's AWW on his or her earnings at the time of injury. "The entire objective of wage calculation is to arrive at a fair approximation of the claimant's wage loss and diminished earning capacity." *Campbell v. IBM Corp.*, 867 P.2d 77, 82 (Colo. App. 1993).

Respondents argue that in June 2022 Claimant was earning $30.00 an hour working approximately 40 hours a week, and, therefore, Claimant's AWW is $1200.00. However, Respondents provided the ALJ with a copy of Claimant's earnings for his last two weeks of work, June 4, 2023 to June 17, 2023, *not* Claimant's AWW at the time of his injury, RHE p. 375, and the testimony of Mr. Dee that Claimant wages would have been the same because he making $30.00 an hour in June 2022 is not particularly persuasive. Meanwhile, Claimant provided the ALJ with his 2022 W2 statement showing earnings of $70,124.36, which the ALJ accepted over the objection of Respondents. Yet Claimant's counsel failed to address AWW in his position statement and did not put forward argument or an amount for Claimant's AWW at hearing.

The ALJ must base Claimant's AWW on his earnings at the time of his injury. Since Respondents only provided the ALJ with a single paycheck from 2023, and Claimant at least provided the ALJ with a W2 for 2022, the ALJ determines using Claimant's W2 will best arrive at a fair approximation of Claimant's wage loss at the time of his injury. Accordingly, the ALJ concludes that Claimant's AWW is $1348.55 ($70,124.36/52=$1348.55).

TTD

"Temporary disability benefits are intended to compensate a claimant for actual wages lost during the time the claimant is unable to work because of injury." *PDM Molding v. Stanberg*, 898 P.2d 542, 548 (Colo. 1995). To prove entitlement to TTD benefits, a claimant must prove that the industrial injury caused a disability lasting more than three work shifts, that he or she left work as a result of the disability, and that the disability resulted in an actual wage loss. § 8-42-103(1), C.R.S.; § 8-42-105(1), C.R.S.;

see City of Colo. Springs v. Indus. Claim Appeals Off., 954 P.2d 637, 639 (Colo. App. 1997).

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 a claimant's inability to resume his prior work. *Culver v. Ace Electric*, 971 P.2d 641, 649 (Colo. 1999); *but see Montoya v. Indus. Claim Appeals Off.*, 2018 COA 19, 488 P.3d 314. There is no statutory requirement that a claimant establish physical disability through a medical opinion of an attending physician; a claimant's testimony alone may be sufficient to establish a temporary disability. *Lymburn v. Symbios Logic*, 952 P.2d 831, 833 (Colo. App. 1997). 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 regular employment. *Ortiz v. Charles J. Murphy & Co.*, 964 P.2d 595, 597 (Colo. App. 1998).

A claimant must establish a causal connection between a work-related injury and a subsequent wage loss in order to obtain TTD benefits. *Linder Chevrolet v. Indus. Claim Appeals Off.*, 914 P.2d 496, 498 (Colo. App. 1995).

Claimant has demonstrated by a preponderance of the evidence that he is entitled to TTD benefits beginning June 18, 2023. Claimant's testimony, combined with the medical records documenting Claimant's 20/15/20/20 work restrictions, was credible and persuasive. Claimant suffered an industrial injury on June 14, 2022, which resulted in a loss or restriction of bodily function, and, by June 2023, impairment of Claimant's wage earning capacity as demonstrated by his inability to complete the modified work based on the erroneous 50/30/100 permanent work restrictions. Mr. Rodriguez testified that Claimant stated he could not do the jobs assigned to him and that he wanted to work in Employer's office or the yard. As found, Claimant left work as a result of his industrial injury. And Claimant suffered actual wage loss as he earned no wages from June 18, 2023 to the date of MMI. Accordingly, the ALJ concludes Claimant has established entitlement to TTD benefits.

TTD benefits shall 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. Employers or insurers must pay statutory interest of 8% per annum on all benefits not paid when due. § 8-43-410(2), C.R.S.; *see Subsequent Inj. Fund v. Indus. Claim Appeals Off.*, 859 P.2d 276, 278 (Colo. App. 1993).

The parties stipulated that Claimant reached MMI on December 1, 2023. Therefore, Claimant is entitled to TTD from June 18, 2023 to December 1, 2023, totaling $21,448.29 plus statutory interest ($1348.55 x 2/3 = $899.03) (6/18/23 to 12/01/23 is 23 weeks and 6 days x $899.03 = $21448.29).[3]

Responsible for Termination

"In cases where it is determined that a temporarily disabled employee is responsible for termination of employment, the resulting wage loss shall not be attributable to the on-the-job injury." § 8-42-103(1)(g), C.R.S.; § 8-42-105(4)(a), C.R.S. Accordingly, a claimant who is responsible for the termination of employment is not entitled to temporary disability benefits absent a worsening of condition which reestablishes the causal connection between the injury and the wage loss. *Anderson v. Longmont Toyota, Inc.*, 102 P.3d 323, 330 (Colo. 2004); *see Grisbaum v. Indus. Claim Appeals Off.*, 109 P.3d 1054, 1056 (Colo. App. 2005).

Because sections 8-42-103(1)(g), C.R.S., and 8-42-105(4)(a), C.R.S., provide a defense to an otherwise valid claim for temporary disability benefits, respondents shoulder the burden of proving, by a preponderance of the evidence, that the claimant was responsible for his termination and subsequent wage loss. *Poos v. Murfin Drilling Co.*, W.C. No. 5-185-172-002 (ICAO Jan. 17, 2025). The dispositive question in these cases is whether the employee performed a volitional act or otherwise exercised a

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[3] The ALJ used the Colorado Department of Labor and Employment Division of Workers' Compensation Benefits Calculator available at https://wc1.cdle.state.co.us/Benefits/tab/DateCalculator.aspx to determine the amount of TTD owed Claimant.

degree of control over the circumstances resulting in his discharge. *Id.* (citing *Colo. Springs Disposal v. Indus. Claim Appeals Off.*, 58 P.3d 1061 (Colo. App. 2002); *Padilla v. Digital Equip. Corp.*, 902 P.2d 414 (Colo. App. 1994) *opinion after remand* 908 P.2d 1185 (Colo. App. 1995); *Colo. Comp. Ins. Auth. v. Indus. Claim Appeals Off.*, 18 P.3d 790 (Colo. App. 2000)).

Respondents have failed to demonstrate by a preponderance of the evidence that Claimant was responsible for the termination of his employment. Employer contends that Claimant is responsible for his termination because he "abandoned" his employment by not returning to work after June 17, 2023. But Claimant had restrictions that Employer was not accommodating and he left work because of his injury. Further, Insurer was continually denying Claimant reasonable, necessary, and casually related medical care from mid-2022 through August 2023. The ALJ is persuaded that between Employer failing to fully accommodate Claimant's restrictions and the continuous denial of care by Insurer, Claimant did not in fact exercise a degree of control over his leaving his employment. This is bolstered by the fact that Claimant had worked for Employer since 2008 and that he tried to continue working for a year after suffering his industrial injury despite receiving little meaningful care for that injury during that time. Under the circumstances presented in this case, the ALJ concludes that Claimant's decision not to return to work after June 17, 2023 was not a "volitional" act resulting in his discharge. Therefore, Respondents failed to demonstrate by a preponderance of the evidence that Claimant was responsible for the termination of his employment.

Offsets

Respondents did not address the issue of offsets during their presentation of evidence or in their position statement. The only mention of offsets is in Respondents' proposed order section which states "Respondents are entitled to offsets for disability benefits paid in excess of amounts due as a result of this Order." Because the ALJ has determined that Respondents failed to overcome the DIME physician's permanent impairment rating, the ALJ has determined Claimant's AWW to be $1348.55, and the ALJ has determined that Claimant is entitled to TTD benefits from June 18, 2023 to December 1, 2023, the ALJ further determines Respondents have failed to establish entitlement to offsets.

Order

It is therefore ordered that:

1. Respondents did not prove by clear and convincing evidence that the DIME physician Dr. Alvarez erred in his determination of Claimant's permanent impairment rating.

2. Claimant's AWW is $1348.55.

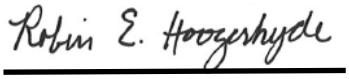
3. Claimant established by a preponderance of the evidence that he is entitled to TTD benefits from June 18, 2023 to December 1, 2023. Based on Claimant's AWW of $1348.55, Claimant's TTD rate is $899.03. Respondents owe Claimant $21,448.29 in TTD benefits for the period of June 18, 2023 to December 1, 2023 plus statutory interest.

4. Respondents failed to establish by a preponderance of the evidence that Claimant was responsible for the termination of his employment.

5. Respondents failed to establish they are entitled to offsets.

6. All matters not determined herein are reserved for future determination.

Signed: December 12, 2025.



Robin E. Hoogerhyde
Administrative Law Judge

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 service of the order, as indicated on the certificate of 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 OACRP Rule 27. You may access a petition to review form at: http://www.colorado.gov/dpa/oac/forms-WC.htm.

Office of Administrative Courts
State of Colorado

Workers' Compensation No. WC 5-200-893-003

Issues

- ➢ Whether Respondents have overcome the findings of the Division-sponsored Independent Medical Examination ("DIME") physician by clear and convincing evidence regarding the issue of maximum medical improvement ("MMI")?
- ➢ If Respondents have overcome the opinion of the DIME physician on the issue of MMI, what is Claimant's impairment rating?
- ➢ The parties reserved the issues involving conversion of the impairment rating, temporary total disability ("TTD"), permanent total disability ("PTD") and disfigurement for future consideration after issues involving the opinion of the DIME physician are resolved.

Findings of Fact

1. Claimant sustained a compensable injury arising out of and in the course and scope of his employment with Employer on March 22, 2022 when he was teaching a beginner lesson to a client who was much larger than he was, and while Claimant was holding onto the client, the client then began to fall, and flung Claimant over onto the ski slope. Claimant testified he landed on his shoulder and head on the ski slope causing him to dent his ski helmet.
2. Claimant testified that after the injury, he saw stars and was disoriented and sat on the slope for a period of approximately 15 minutes before he and the student took off their snowboards and made their way to the gondola by foot in order to take the gondola down the mountain.
3. Claimant reported the injury to his supervisor and a first report of injury was completed. The first report of injury describes the accident as follows: "We were riding hand-in-hand student was on the toe side, went to his heel side and fell backwards and grabbed me and flipped me over his shoulders and I hit the ground on my left shoulder."

4. Matthew Thomas, the Director of Risk Management for Employer, testified at hearing that Claimant filled out the first report of injury online on March 23, 0222 at 12:19 p.m. The first report of injury indicates that the injury occurred at 11:50 a.m. Mr. Thomas testified that when an employee is injured, they have access to a nurse triage line for the initial medical treatment. Mr. Thomas noted that the first report of injury does not indicate that Claimant struck his head in the fall.
5. The nurse triage notes entered into evidence establish that Claimant reported that he was teaching a snowboard class, riding hand-in-hand with a student when the student caught his edge and fell, pulling/"flipping" the employee over him, landing directly on his left shoulder and striking the left side of his head (wearing helmet). The nurse triage notes further indicate that Claimant's body parts that were injured included his shoulder – left and head – left. The call to the nurse triage line was documented to have occurred at 13:22 CST. The ALJ notes that this would be 12:22 local time (Mountain Standard Time)
6. Claimant testified that while participating in the nurse triage line, he noticed that his helmet had been dented from his fall.
7. Claimant was then taken to Telluride Medical Center by Employer for medical care. Claimant reported a consistent accident history of falling while teaching a lesson to a student causing him to land on his left shoulder. The medical records report no injury to the head or neck, and no neck pain, headache or head injury. Claimant was examined by Dr. Koelliker, who ordered an x-ray of the left shoulder which revealed a closed, non-displaced fractur of his left distal clavicle. Claimant was discharged with prescribed pain medications and instructed to follow up with Dr. Bynum.
8. Claimant was examined by Dr. Bynum on March 30, 2022. Dr. Bynum noted Claimant was injured when he fell with a guest while snowboarding, being pulled over the guest and landing on his left shoulder. Dr. Bynum noted Claimant denied any blurred vision, double vision or vision loss, but Claimant did report dizziness to Dr. Bynum. Dr. Bynum reported Claimant noted no other injuries other than his distal clavicle fracture. Dr. Bynum further noted that Claimant had previously been treated for a left shoulder acromioclavicular ("AC") joint

separation 25 years prior. Dr. Bynum recommended a magnetic resonance image ("MRI") that was accomplished on April 16, 2022. The MRI showed a distal clavicle fracture, sprain of the AC joint, severe arthrosis of the glenohumeral joint with obliteration of the articular cartilage, bony irregularity of the posterior glenoid, likely related to remote fracture, advanced circumferential degeneration of the labrum and interstitial tearing of the supraspinatus.

9. Claimant was examined by Dr. Gaylord on April 20, 2022. Claimant reported he was getting better range of motion and was feeling a little stronger. Dr. Gaylord instructed Claimant to follow up with Dr. Bynum.
10. Claimant eventually underwent surgery for his left shoulder on September 1, 2024 under the auspices of Dr. Bynum. The surgery consisted of a left shoulder arthroscopic debridement, distal clavicle excision with mini-open rotator cuff repair and biceps tenodesis.
11. Claimant continued to treat with Dr. Bynum and Dr. Gaylord through December 2024 without complaints of issues related to a concussion reported in the medical records. On February 3, 2023, Claimant returned to Dr. Bynum and reported he was still working on some of the nausea, vomiting, balance and headache issues from the concussion that he was seeing Dr. Gaylord for. Dr. Bynum provided Claimant with work restrictions and instructed Claimant to follow up in three months.
12. Claimant returned to Dr. Gaylord on February 28, 2023. Dr. Gaylord noted that Claimant still had nausea, but ginger and turmeric seemed to help along with wearing sea bands.
13. Claimant was evaluated by Dr. Judkins on May 3, 2023 for an upper endoscopy consultation. Dr. Judkins noted Claimant had complaints of vomiting 2-3 times per week in the morning with daily nausea. Claimant reported he smoked marijuana and Dr. Judkins recommended he abstain from marijuana to see if it helped with his symptoms. Dr. Judkins noted that he discussed with Claimant the relationship between concussions and nausea. Notably, Dr. Judkins noted that another esophagogastroduodenoscopy ("EGD") was considered, but would

be a “fairly low yield” as Claimant’s symptoms were not significantly different from when Dr. Judkins performed the last endoscopy in December.

14. Claimant returned to Dr. Gaylord’s office of May 9, 2023 where he was evaluated by Dr. Anna Turner. Dr. Turner noted Dr. Bynum was pleased with Claimant’s range of motion and strength in his left shoulder, but had referred Claimant to Dr. Hehmann for his concussion. Dr. Tuner noted Claimant had seen Dr. Hehmann on May 8, 2023 and Dr. Hehmann was recommending a brain MRI. Claimant reported to Dr. Turner that he had issues with weight loss, buzzing in head, garbled vision, issues with balancing/walking, proprioception, severe nausea and changes in taste.
15. Claimant underwent a computed tomography (“CT”) scan of the abdomen on May 16, 2023. The CT scan of the abdomen showed sigmoid diverticulosis without diverticulitis, stable small renal cysts, mild demineralization, and stable benign-appearing lung nodules.
16. Claimant underwent the MRI of the brain on June 2, 2023. The MRI showed no acute intracranial findings sinusitis.
17. Claimant returned to Dr. Turner on June 7, 2023. Claimant reported two incidents of severe nausea and vomiting, the first being on the day of workers’ compensation injury. Claimant reported having an episode approximately every five weeks where he would wake up with the sensation of gastrointestinal (“GI”) upset and will have dry heaving, vomiting and diarrhea for approximately fifteen (15) minutes. Dr. Turner noted Claimant had not yet had a barium swallowing study.
18. The barium swallowing study was performed on June 14, 2023 by Dr. Kotarska which showed no difficulty and normal cervical esophagus and normal swallowing mechanism.
19. Claimant was subsequently placed at maximum medical improvement (“MMI”) by Dr. Bynum on September 9, 2023. Claimant was eventually referred to Dr. Grundy for an impairment rating that was performed on October 11, 2023. Dr. Gundy provided Claimant with an impairment rating of 18% of the left upper extremity.

20. Respondents filed a final admission of liability ("FAL") on December 12, 2023 admitting for the 18% left upper extremity impairment rating. The FAL also admitted for maintenance care. Claimant filed an objection to the FAL and requested a Division-sponsored Independent Medical Examination ("DIME").
21. Claimant returned to Dr. Turner on February 5, 2024 due to ongoing issues with regard to Claimant's complaints of vertigo which Claimant believed were related to his workers' compensation injury. Dr. Turner noted it was unclear as to whether the vertigo was related to his workers' compensation injury and could be related to stress.
22. Claimant underwent the DIME with Dr. Ellen Price on April 17, 2024. Dr. Price noted Claimant was injured when he fell on the ground while helping a client and saw stars. Claimant reported he did not lose consciousness, but felt immediate nausea. Dr. Price noted Claimant's shoulder injury and subsequent surgery along with the impairment rating.
23. Dr. Price noted she performed a St. Louis University Mental Status ("SLUMS") examination in which Claimant scored a 26 which was indicative of a mild neurocognitive disorder. Dr. Price further noted that Claimant had been referred to Dr. Molina for a second opinion, but that did not occur.
24. In Dr. Price's report, Dr. Price opined that Claimant was at MMI as of October 11, 2023 when Claimant was placed at MMI by Dr. Grundy. Dr. Price opined that Claimant had an impairment rating of 19% of the left upper extremity which converts to a 11% whole person impairment rating.
25. With regard to Claimant's traumatic brain injury ("TBI"), Dr. Price opined Claimant was entitled to an impairment rating of 10% whole person for the mild TBI and changes on the SLUMS. Dr. Price opined Claimant should be allowed to see vestibular therapists again if his symptoms should worsen.
26. Respondents obtained an independent medical examination ("IME") of Claimant with Dr. Fall on July 25, 2024. Dr. Fall reviewed Claimant's medical records, obtained a medical history and performed a physical examination in connection with her IME. Dr. Fall opined in her IME that Claimant sustained a head contusion in the fall with a possible, but not probable, mild concussion. Dr. Fall

agreed with the MMI date of October 11, 2023 and opined that any issues with regard to a possible concussion would have resolved shortly after the injury. Dr. Fall opined that any ongoing issues were preexisting and not related to Claimant's workers' compensation injury.

27. Dr. Fall further opined that Dr. Price had erred in attributing Claimant's symptoms to a concussion and disagreed that Claimant's score on the SLUMS test of 26 would be related to the work injury. Dr. Fall further opined that Dr. Price used the wrong section of the AMA Guides, Third Edition, Revised to assign an impairment rating for the concussion because that section is to be used for conditions such as seizures.
28. Claimant underwent his own IME with Dr. Orent on October 15, 2024. Dr. Orent issued a report after a telephone interview with Claimant and a review of Claimant's medical records. Dr. Orent opined in his report that Claimant was not at MMI for his shoulder because he needed an electromyelogram ("EMG")/ nerve conduction study and noted that the SLUMS test did not adequately articulate the level of neurocognitive deficiency that Claimant suffers. Dr. Orent opined Claimant had not been adequately evaluated and felt that there was a vestibular concussion present as well as posttraumatic migraines and possibly other neurologic consequences.
29. On October 23, 2024, Dr. Fall issued an addendum to her IME report after reviewing additional records in which Dr. Fall indicated the additional records did not change her opinion that Claimant's injury may have caused a mild concussion that resolved over time.
30. Claimant underwent a neuropsychological evaluation on May 13, May 15, and May 29, 2025 with Dr. Kryvanos. Dr. Kryvanos noted Claimant complained of nausea, vomiting, diarrhea, dizziness and vertigo with ongoing headaches. Claimant reported a history of being flung ten feet into the air and landing on his head on the left side of his helmet. Dr. Kryvanos opined Claimant had mild cognitive impairment of uncertain or unknown etiology. Dr. Kryvanos noted Claimant presents with clear cognitive complaints that represent a decline from Claimant's previous level of functioning, as evidenced by Claimant's subjective

reports and confirmed by objective neuropsychological testing, particularly in the domains of processing speed and memory. Dr. Kryvanos noted that the etiology was uncertain or unknown due to the presence of multiple potential contributing factors, making it difficult to pinpoint a singular cause. With regard to the factors, Dr. Kryvanos noted the head injury from snow boarding along with two significant episodes of respiratory failure, with reported cerebral hypoxia and newly diagnosed sleep apnea.

31. Dr. Price testified by deposition in this matter on June 26, 2025. Dr. Price opined during the deposition that after reviewing the updated medial records, she changed her opinion as to whether Claimant was at MMI. Dr. Price opined that Claimant was no longer at MMI for his work injuries. Dr. Price noted that Claimant had capsulitis in his left shoulder and recommended Claimant get his left shoulder "looked at a little more carefully". Dr. Price further opined that neuropsychological testing would be very helpful to identify Claimant's deficits, with potential additional treatment after the testing is completed. Dr. Price also recommended Claimant be evaluated by a headache specialist prior to being placed at MMI.
32. Dr. Fall issued an addendum to her IME report on August 7, 2025 after reviewing Dr. Price's deposition. Dr. Fall opined in her addendum that she agreed with the neuropsychologist that the Claimant's impairment was of unknown etiology. Dr. Fall further opined that she disagreed with the opinion that Claimant needed any further treatment for his left shoulder.
33. Dr. Fall testified at hearing in this matter consistent with her IME reports.
34. Mr. Thomas, Employer's Director of Risk Management, testified at hearing that he was aware Claimant was alleging he struck the left side of his head when he fell by approximately July 2022. Mr. Thomas testified that he had reviewed a picture of Claimant's helmet with a dent in it, and testified that usually a ski helmet would be scraped or crack.
35. Claimant testified at hearing that when he fell on March 22, 2022, the student he was teaching picked him up and threw him over his shoulder to the ground. Claimant testified his head/helmet was the first thing to hit the ground and then

his left shoulder hit the ground. Claimant estimated he was thrown ten (10) feet. Claimant testified the fall resulted in a dent in his helmet that was not present prior to the fall and resulted in the helmet being unable to continue to be used.

36. Claimant testified he mentioned his symptoms to Dr. Bynum and was eventually referred to Dr. Hehmann. Claimant testified his symptoms included dizziness, nausea, loss of appetite and loss of weight. Claimant testified he would get motion sickness when he would venture out of his home.
37. Claimant testified he has had vestibular therapy that has helped tremendously and allows Claimant to perform more activities. Claimant testified he continues to have no strength with regard to his left arm.
38. The ALJ credits the testimony of Claimant along with the testimony of Dr. Price and finds that Respondents have failed to establish that it is highly likely and free from substantial doubt that the opinion of Dr. Price that Claimant is not at MMI is incorrect. The ALJ notes that Claimant reported striking his head to the nurse triage line shortly after the incident and credits Claimant's testimony that his onset of symptoms on March 22, 2022 as being credible and persuasive.
39. The ALJ recognizes the contrary opinions expressed by Dr. Fall in her reports and testimony but finds that the opinions expressed by Dr. Price are more persuasive than the contrary opinions provided by Dr. Fall.
40. The ALJ therefore finds that the opinion of Dr. Fall that Claimant is not at MMI has not been overcome by Respondents in this matter.

Conclusions of Law

A. Section 8-42-107(8)(b)(III) and (c), C.R.S. provides that the DIME physician's finding of MMI and permanent medical impairment is binding unless overcome by clear and convincing evidence. Clear and convincing evidence is highly probable and free from substantial doubt, and the party challenging the DIME physician's finding must produce evidence showing it is highly probably the DIME physician is incorrect. *Metro Moving & Storage Co. v. Gussert*, 914 P.2d 411 (Colo. App. 1995). A fact or proposition has been proved by clear and convincing evidence if, considering all of the evidence, the trier-of-fact finds it to be highly probable and free from substantial doubt. *Metro Moving & Storage, supra.* A mere

difference of opinion between physicians fails to constitute error. See *Gonzales v. Browning Ferris Industries of Colorado*, W.C. No. 4-350-356 (March 22, 2000).

B. The ALJ may consider a variety of factors in determining whether a DIME physician erred in his opinions including whether the DIME appropriately utilized the Medical Treatment Guidelines and the AMA Guides in her opinions.
C. As found, Respondents have failed to overcome the opinions of Dr. Price by clear and convincing evidence that Claimant is not at MMI. As found, the testimony of Claimant that he struck his head as a result of the fall on March 23, 2022 is found to be credible and supported by the nursing notes that were taken in his phone call immediately following the accident.
D. As found, the opinions expressed by Dr. Fall in her report and testimony are not credited by the ALJ. As found, the contrary opinions expressed by Dr. Price in her report and given more weight and credibility by the ALJ.
E. Because Respondents have failed to overcome the opinion that the Claimant is not at MMI for his industrial injury, Respondents are liable for the ongoing medical treatment to address Claimant's TBI and a re-evaluation of Claimant's left shoulder as recommended by Dr. Price in her testimony.

Order

It is therefore ordered that:

1. Respondents shall pay for the reasonable medical treatment necessary to address Claimant's TBI, along with a re-evaluation of Claimant's left shoulder as recommended by the DIME physician.
2. All matters not determined herein are reserved for future determination.

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**. 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.

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.

Dated: December 15, 2025

/s/ Keith E. Mottram
Keith E. Mottram
Administrative Law Judge

Office of Administrative Courts
State of Colorado

Workers' Compensation No. WC 5-253-002-002

Issues

- ➢ Whether Respondents have proven by a clear and convincing evidence that the Division Independent Medical Examination ("DIME") physician erred in opining that Claimant was not at maximum medical improvement ("MMI") for his September 27, 2023 industrial injury?
- ➢ If Respondents have overcome the DIME physician on the opinion of MMI, what is Claimant's permanent impairment rating?
- ➢ If Respondents have overcome the DIME physician on the opinion of MMI, whether Claimant has proven by a preponderance of the evidence that he is entitled to an award of maintenance medical treatment?

Findings of Fact

1. Claimant was employed with Employer as a carpenter/form setter. Claimant's job duties included building forms for concrete for the construction of highways, bridges and tunnels. Claimant sustained a compensable injury on September 27, 2023 when he was working in concrete up to his waist and received chemical burns on both legs on his knees and ankles. Claimant testified at hearing that the chemical burns were the result of employer failing to provide proper personal protective equipment ("PPE") and Claimant only being able to use mucking boots.
2. Following the injury, Claimant sought treatment at the St. Francis Hospital emergency room ("ER"). Claimant was provided with pain medications and wound care follow up as there was concern that Claimant was developing an infection.
3. Claimant initially received treatment with physicians' assistant ("PA") Mendy Peterson on October 3, 2023 with Concentra Medical Center. Claimant reported he was experiencing issues navigating stairs and was therefore staying with his

girlfriend. Claimant received treatment that included a mild debridement of the leg and was referred for a magnetic resonance image ("MRI") of the leg. PA Peterson noted Claimant's complaints with regard to ambulation and provided Claimant with crutches.

4. The MRI was performed on October 4, 2024. The MRI revealed subcutaneous changes of the proximal to distal anterior tibia without deep compartment or osseous involvement.
5. Claimant returned to PA Peterson on October 5, 2023. Claimant was reported to be in a state of anger over the fact that his job status says he has to perform desk work. Claimant reported that after two days of using crutches, he was experiencing low back pain and requested that his low back be added to his claim.
6. Claimant was involved in a motor vehicle accident on July 13, 2023 that involved Claimant traveling at 10 miles per hour when he was struck head on by a vehicle being driven at 35 miles per hour. As a result of the motor vehicle accident, Claimant sought treatment with Colorado Accident & Injury Centers. Claimant's treatment with Colorado Accident & Injury Centers included treatment for his low back that included x-rays of his lumbar spine, chiropractic treatment, physical therapy and massage therapy. Claimant's subjective complaints to his providers at Colorado Accident & Injury included low back pain with radicular symptoms in his bilateral legs and thighs. Claimant was under active treatment for his low back condition as recently as September 22, 2023 when he was evaluated by Dr. Vellore at which time he reported to Dr. Vellore that his neck and back pain were significantly better than they were at the time of the motor vehicle accident and shortly thereafter. Claimant reported to Dr. Vellore that he had an incident roughly three weeks earlier when his back seized up and he was unable to walk, but reported that those symptoms had since resolved. Dr. Vellore further noted that Claimant reported he would be in Rifle, Colorado and would not be obtaining services for a while, but would follow up when he returned to the Colorado Springs area.

7. Notably, when Claimant asked for his low back to be added to his claim, the evidence does not reflect that Claimant mentioned to PA Peterson his prior motor vehicle accident.
8. Claimant returned to Dr. O'Dea, the chiropractor with Colorado Accident & Injury on October 6, 2023 and reported good improvement in his prior low back pain that had been aggravated today, but was doing better since his last visit. Claimant reported the chemical burns to his legs to Dr. O'Dea and Dr. O'Dea encouraged Claimant to continue to seek treatment for the burns as they were showing potential signs of infection. In this record from Dr. O'Dea, there is no mention of Claimant's low back pain increasing due to Claimant's use of crutches.
9. Claimant received manual therapy and cupping from Joshua Phillips, a licensed therapist, on October 6, 2023, in which Claimant reports some improvement with the manual therapy including decreased pain, as well as increased tolerance for active range of motion ("AROM") post treatment. Claimant did not report any issues with increased back pain related to his crutches or any fall.
10. Claimant was treated by physical therapist ("PT") Bayliss on October 13, 2023. PT Bayliss had previously provided therapy for Claimant in August and noted that Claimant had a gap in care due to being out of town for some work issues. PT Bayliss noted Claimant reported the dry needling helped with his symptoms on his previous visit on August 24, 2023. Claimant reported his current pain as a 6/10 with his best pain at 2/10 and worst at 8/10. Claimant reported aggravating factors included moving at work; bending; squatting; lifting/carrying his children; changing his baby's diapers; standing immediately; putting on shoes and socks with crossing legs; and sidelying. PT Bayliss recommended ongoing physical therapy 2 times per week for an additional four weeks.
11. Claimant was evaluated by Dr. O'Dea on October 13, 2023 and reported some mild improvement in his low back pain since his last visit. Claimant also mentioned his burns were getting better. Claimant reported that his low back pain was present every day, but had not "locked up" recently. Claimant reported his current pain was a 5-6/10.

12. Claimant received manual therapy and cupping on October 16, 2023 from Mr. Phillips. Claimant reported decreased pain and increased AROM post treatment. Claimant did not report any issue with regard to a fall while using his crutches during this visit.
13. Claimant reported to Dr. O'Dea on October 18, 2023 that he had "minimal change" in his feeling and function of low back pain since his last visit. Claimant reported notices mild low back pain on his right side, but now also has moderate to severe low back pain on his left side. Claimant reported his pain as being a 5 out of 10.
14. Claimant reported an increase in his low back pain to the physical therapist with Colorado Accident & Injury on October 18, 2023. Claimant rated his pain as a 7/10 at this time and noted the pain was worse on the left side of his low back. Claimant's complaints of back continued to include the radiating symptoms into his bilateral thighs. Claimant did not, in these records, relate the increase in his low back pain to his use of crutches or any fall that purportedly occurred.
15. Claimant returned to PT Bayliss on October 20, 2023 and reported his back pain was 8/10 before chiropractic treatment, but 5/10 after the treatment. Claimant reported having issues straightening his left knee (due to sustaining a burn on his bilateral lower legs 2-3 weeks ago at work). Claimant reported he had some difficulty with pain and performing his home exercise program. Claimant reported the burns on his lower legs cause him severe pain and cause him difficulty with walking/weight bearing activities and are exacerbating his low back pain from the motor vehicle collision. While Claimant reported issues with his gait due to the burns, Claimant did not report any fall related to use of crutches during this visit. The ALJ notes that the records from Colorado Accident and Injury are noticeably absent any mention of Claimant utilizing crutches to assist with his gait upon examination.
16. Claimant was also examined by Dr. O'Dea on October 20, 2023. Dr. O'Dea noted in his report that Claimant presented with "no change in his lower back since last visit." Claimant reported to Dr. O'Dea that he would receive short relief after his chiropractic adjustment and physical therapy, but by the time he went to

bed, his low back pain began to return and it would wake him up multiple times throughout the night. Claimant reported his pain was less on his left side and now even on both sides and the pain had moved toward the middle of his low back. Claimant reported his pain as a 4-6 out of 10.

17. The ALJ notes the inconsistencies in the reports between Dr. O'Dea and PT Bayliss involving Claimant's treatment on October 20, 2023. Dr. O'Dea reported Claimant had back pain of 4-6 out of 10, while PT Bayliss reported Claimant had back pain of 8/10 prior to chiropractic treatment. Moreover, while Claimant reported "no change" in his pain from his previous visit (October 18, 2023), PT Bayliss noted Claimant had an increase in his reported pain to 8/10 as opposed to his reported pain of 6/10 to her on his previous visit (October 13, 2023) and 5/10 as recorded by Dr. O'Dea on October 18, 2023.
18. Claimant returned to PT Bayliss on October 24, 2023 with reports that his pain had improved to 3-4/10, but still with a lot of pain from the burns on his bilateral legs.
19. Claimant was also evaluated by Dr. O'Dea on October 24, 2023 and reported "mild improvement" of his low back pain and radicular symptoms since his last visit. Claimant also reported better range of motion with bending down and reported progress with his pain.
20. Claimant was examined by Dr. Velore on October 24, 2023 and reported he had been doing well since his last visit, with the exception of the unrelated burn injuries from his job. Dr. Velore noted that with respect to the injuries sustained in the motor vehicle accident, Claimant was "grateful to our team as conservative care has worked extremely well for him." Claimant reported his one ongoing issue was some escalating anxiety involved with driving for which Dr. Velore recommended a referral to behavioral health.
21. Significantly, the physical examination performed by Dr. Velore demonstrate Claimant presenting with 5/5 strength of his low back in extension, flexion, right sided bending and left sided bending with negative straight leg testing on the right and left. With regard to Claimant's low back condition, Dr. Velore noted his

condition was improving more rapidly with conservative care and there was no indication to escalate diagnostics or therapeutics at this time.

22. Claimant did not mention to PT Bayliss, Dr. O'Dea or Dr. Velore any issue with falling when his crutches gave out on him during the October 24, 2023 visit.
23. Claimant returned to Dr. O'Dea on October 31, 2023 with reports of mild continued improvement of his low back pain since his last visit. Claimant reported that over the past weekend he had an aggravation of his low back pain that lasted the rest of that particular day, but had since resolved. Claimant reported that the physical therapy had decreased the pain and tension in his low back and increased his hip range of motion. Claimant reported his pain to be currently a 3-4/10.
24. Claimant was also treated by therapist Zachary Schwartz on October 31, 2023. Claimant reported to Mr. Schwartz that he had continued incremental improvement in his low back pain in the last week. Claimant reported that one of the strategies from PT for picking up his infant child had resulted in less pain with this activity, but he still reported that picking up his child is one of the more difficult functional tasks with regard to pain. Claimant reported to Mr. Schwartz his low back pain was currently 3/10 with his worst pain being 7/10.
25. Claimant was next examined by Dr. O'Dea on November 10, 2023 at which time he reported minimal change in his low back pain, but mentioned having a good response to recent treatments involving his upper back, neck and headache symptoms. Claimant reported his low back pain had not been progressing recently and expressed frustration due to the slow progress. Claimant reported his low back pain continued to give him symptoms in his thighs and was worse when bending down to pick his kids up. Claimant reported his current pain was a 6/10.
26. Claimant was also examined by Dr. Vellore on November 10, 2023. Dr. Vellore noted that Claimant reported that since his last visit he had noticed pain that is radiating into both thighs that Claimant associated with picking up objects. Claimant also reported symptoms in his low back that Dr. Vellore noted were consistent with muscle spasms. Dr. Vellore recommended an MRI of the lumbar

spine and trigger point injections to assist with the spasms. Dr. Vellore performed the trigger point injections on November 10, 2023. Notably, Claimant did not associate his onset of new symptoms to any fall or other issues related to using crutches.

27. Claimant received therapy on November 10, November 14 and November 28, 2024. The records from these visits do not reveal any report from Claimant that associated his low back complaints to a fall or from using crutches.
28. Claimant returned to Dr. Vellore on December 8, 2023 after the lumbar MRI scan. Dr. Vellore reviewed the MRI and found that it showed "fairly substantial" disc herniations at the L4-L5 level and L5-S1 level. As a result of the MRI findings, along with Claimant's continued complaints of radiating pain, Dr. Vellore recommended an epidural steroid injection at the L5-S1 level which was performed on December 15, 2023.
29. Following the epidural steroid injection, Claimant returned to Colorado Accident & Injury Centers on December 26, 2023 and reported to the PT Bayless, that he had two days of relief, before his symptoms returned. Claimant reported pain of 6/10 currently with his worst pain being 8-9/10.
30. Claimant returned to Dr. O'Dea on December 28, 2023 with reports of minimal change to his low back pain, but also good response to his recent treatments in his upper back, neck and headaches. Claimant again reported frustrating with the progress of his low back pain that Claimant noted included symptoms radiating into both thighs when he bends down to pick up his kids. Claimant rated his pain as 6/10 on the date of his visit.
31. Claimant was again evaluated by Dr. Vellore on January 2, 2024. Dr. Vellore noted Claimant's reports of two days of 100% relief following the epidural steroid injection following by his symptoms returning to the point that he was essentially back to his post-injury baseline level of pain and symptoms. Dr. Vellore recommended Claimant be referred for a surgical consultation and referred Claimant to Dr. Sung.
32. Claimant returned to Colorado Accident & Injury Centers on January 4, 2024 for therapy with Mr. Schwartz and reported to his therapist that he feels like his legs

"give out" intermittently, but reported no falls. Notably, Claimant reports during the visit with Mr. Schwartz symptoms of his legs giving out, but denies any falls. If Claimant had in fact sustained a fall as testified to by Claimant in October or November 2023, the ALJ believes that the medical records would document Claimant reporting the fall to at least one of his medical providers. Instead, the records document Claimant denying that any falls occurred. The ALJ finds the medical histories contained in the medical records to be more credible and persuasive than Claimant's testimony at hearing.

33. Claimant underwent a second epidural steroid injection on January 5, 2024 under the auspices of Dr. Vellore.
34. Claimant was placed at MMI for his workers' compensation injury on March 7, 2024 by Dr. Johnson. Claimant reported to Dr. Johnson during this evaluation that about a week after the injury, he tripped on the stairs while crutch walking. Dr. Johnson, nonetheless, opined that Claimant was at MMI and provided Claimant with an impairment rating of 5% whole person based on a skin rating under Chapter 13 of the AMA Guides, Third Edition, Revised. The ALJ notes that this represents the first time Claimant reported any issues with regard to the low back symptoms involving a fall while using crutches in the medical records related to Claimant's treating physicians for his workers' compensation injuries, other than Claimant's initial report of increased back pain after using crutches on October 5, 2023.
35. After Claimant was placed at MMI for his work injury, he underwent a left-sided L5-S1 microdiscectomy on April 25, 2024 outside of the workers' compensation system.
36. Respondents then requested a Division – Sponsored Independent Medical Examination ("DIME"). Dr. Aschberger was selected as the DIME physician. Dr. Aschberger obtained a medical history, reviewed the medical records related to Claimant's work injury, and performed a physical examination in connection with the DIME. Dr. Aschberger noted in his DIME report that Claimant had chemical burns to both lower extremities resulting in significant pain and difficulty ambulating. Dr. Aschberger noted Claimant was prescribed crutches due to his

difficulty ambulating and suffered a fall several weeks after his injury while attempting to manage stairs, Dr. Aschberger noted that Claimant's leg went out in front of him, and he fell back, striking his lower back.

37. Dr. Aschberger also noted Claimant's history of a motor vehicle accident in July 2023 for which he received treatment that included physical therapy, chiropractic treatment and massage therapy. Dr. Aschberger noted that these records were not available for review. Claimant reported to Dr. Aschberger that the most significant lumbar symptomology occurred after his fall, which occurred after the chemical burns and with use of his crutches.
38. Dr. Aschberger noted that findings on the November 16, 2023 lumbar spine MRI and Claimant's description of his lumbar surgery in 2024. Dr. Aschberger noted Claimant reported significant prior issues of lumbar spine pain, with "some" symptomatology after the motor vehicle accident, but specific aggravation to intolerable levels following his fall with use of the crutches.
39. Dr. Aschberger opined that Claimant was at MMI for his chemical burns, with some discussions regarding potential laser treatment to reduce scarring that Dr. Aschberger opined would be reasonable. Dr. Aschberger opined that an MMI date of March 7, 2024 as outlined by Dr. Johnson was appropriate with regard to Claimant's chemical burns on his bilateral legs (skin condition).
40. Dr. Aschberger opined that based on Claimant's history, his lumbar spine condition would be considered to be work related. Dr. Aschberger noted that he did not have these records for review, but opined that Claimant was only four months out from the surgery and had persistent irritation and limitations, and was "not likely" at MMI for his lumbar condition. Dr. Aschberger noted that he would need to review records of Claimant's pre-operative and post-operative management to make a determination on MMI for the lumbar spine. Dr. Aschberger provided Claimant with a provisional permanent partial disability ("PPD") rating of 15% for the lumbar spine and 5% for the skin disorder. This combined to a final impairment rating of 19% whole person.
41. With regard to Claimant's lumbar condition, Claimant testified at hearing that following his accident, he was unable to perform daily tasks and could not walk,

resulting in Claimant having to go to the bathroom in a bottle. Claimant testified he had weakness, numbness and instability which made it very difficult for Claimant to access stairs. Claimant testified to a fall down the stairs when coming home from a workers' compensation appointment when his leg gave out and he fell back, hitting multiple (6-8) concrete stairs. Claimant testified this fall occurred in the October to November 2023 timeframe. Claimant testified he never had a leg buckle while navigating stairs until this incident. Claimant testified that after the fall down the stairs, he had instant sharp pain in his back.

42. Claimant's testimony regarding his fall down the stairs is found to be not credible. Notably, despite the voluminous records documenting Claimant's treatment with Colorado Accident & Injury Centers, including chiropractic treatment and physical therapy records and evaluations with Dr. Vellore, Claimant at no time reported a fall resulting in an aggravation of his low back condition. In fact, Claimant reported feeling as though his leg would give out to the therapist on January 4, 2024, but specifically denied ever having fallen. The ALJ credits the medical records over Claimant's testimony at hearing and finds that Claimant has failed to establish that any fall occurred as a result of Claimant using crutches while at a medical appointment.

43. Moreover, if Claimant had fallen while leaving a workers' compensation appointment, and unrelated to his use of crutches, the injury resulting from that fall could be determined to be compensable, but Claimant would need to establish that the injury occurred as a result of using the crutches or in the quasi-course and scope of his employment with employer. In that case, Claimant would need to establish that the injury occurred while Claimant was traveling to or from an authorized medical appointment. Claimant's testimony in this case does not establish where the injury occurred, which appointment he was going to, or whether the appointment was authorized. The testimony further does not establish that the fall was related to his use of crutches based on the non-credible testimony of Claimant at hearing, especially in light of the January 4, 2024 medical report in which Claimant specifically denied having ever fallen. Claimant's testimony was simply that it occurred in October or November 2023,

during a period in time in which he was actively treating for both his workers' compensation injury and his motor vehicle accident.

44. Moreover, the testimony that the fall in this case occurred as a result of Claimant using crutches is not supported by the credible evidence in the record. The ALJ finds no credible evidence in the medical records from Claimant's workers' compensation treatment or from the treatment for his motor vehicle accident that Claimant ever reported a fall occurring where Claimant had crutches go out from underneath him resulting in Claimant hitting his low back on 6-8 concrete stairs.
45. Instead, the ALJ finds that the credible evidence in this case establishes that no fall ever occurred in October of November 2023 that resulted in Claimant hitting his low back on 6-8 concrete stairs as testified to by Claimant at hearing. Notably, the medical records establish Claimant reporting certain activities aggravating his low back condition on various visits with Colorado Accident and Injury, most notably bending at the waist to pick up his kids. This establishes that Claimant was aware of activities that aggravated his low back condition and was reporting such activities to his professional medical providers. There is no credible explanation as to why Claimant would report certain activities as aggravating his low back condition, but fail to mention something as significant as a fall down concrete stairs to his medical providers.
46. The ALJ further finds that the records establish that Claimant was complaining of symptoms that included low back pain and radiating symptoms into his bilateral thighs well before his workers' compensation injury. Notably, the medical records document Claimant associating these symptoms as occurring when he would bend down to pick his kids up, and not to any purported fall. A close review of Claimant's medical treatment with Colorado Accident & Injury Centers show a line of treatment for his low back symptoms that waxed and waned before worsening in mid-November 2023 and resulting in Claimant undergoing epidural steroid injections along with physical therapy and chiropractic treatment, before eventually undergoing lumbar spine surgery.
47. The ALJ finds insufficient documentation in the records from Colorado Accident & Injury (which, according to the DIME report, were not provided to Dr. Aschberger)

that would demonstrate that Claimant at any point credibly related his lumbar spine complaints to any issues with regard to his use of crutches or to a fall while using his crutches.

48. The ALJ therefore finds that it is highly probable and free from substantial doubt that Claimant's lumbar spine condition is related to his motor vehicle accident and not related to any purported fall that occurred in October or November 2023 while Claimant was leaving a medical appointment that resulted in Claimant's back hitting 6-8 concrete stairs.
49. Because Respondents have overcome the opinion of Dr. Aschberger that Claimant's lumbar spine condition was related to Claimant's work injury, Respondents have overcome the opinion of Dr. Aschberger that Claimant is not at MMI for his work injury.
50. The ALJ does credit the reports of Dr. Aschberger and Dr. Johnson and finds that Claimant has established that he is entitled to a permanent impairment rating of 5% whole person as a result of the chemical burns related to his September 27, 2023 pursuant to Section 13-6 of the AMA Guides, Third Edition, Revised. The ALJ notes that Section 13-6 of the AMA Guides provides guidance for physicians for impairment involving the skin. Class 1 provides for an impairment rating of 0-5% whole person for a patient when (a) signs or symptoms of skin disorder are present; *and* with treatment, there is no limitation, or minimal limitation in the activities of daily living, although exposure to certain physical or chemical agents might increase limitation temporarily.
51. The ALJ credits the reports from Dr. Johnson and Dr. Aschberger and finds that their opinion that Claimant falls under Class 1 of Section 13-6 or the AMA Guides is credible and persuasive.

Conclusions of Law

A. Section 8-42-107(8)(b)(III) and (c), C.R.S. provides that the DIME physician's finding of MMI and permanent medical impairment is binding unless overcome by clear and convincing evidence. Clear and convincing evidence is highly probable and free from substantial doubt, and the party challenging the DIME physician's finding must produce evidence showing it is highly probably the DIME physician

is incorrect. *Metro Moving & Storage Co. v. Gussert*, 914 P.2d 411 (Colo. App. 1995). A fact or proposition has been proved by clear and convincing evidence if, considering all of the evidence, the trier-of-fact finds it to be highly probable and free from substantial doubt. *Metro Moving & Storage, supra.* A mere difference of opinion between physicians fails to constitute error. See *Gonzales v. Browning Ferris Industries of Colorado*, W.C. No. 4-350-356 (March 22, 2000).

B. The ALJ may consider a variety of factors in determining whether a DIME physician erred in his opinions including whether the DIME appropriately utilized the Medical Treatment Guidelines and the AMA Guides in his opinions.

C. The ALJ's factual findings concern only evidence and inferences found to be dispositive of the issues involved; the ALJ has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to the above findings as unpersuasive. *Magnetic Eng'g, Inc. v. Indus. Claim Appeals Office*, 5 P.3d 385 (Colo. App. 2000).

D. As found, Respondents have overcome the opinion of the DIME physician that Claimant's lumbar spine condition is a compensable component of his work related injury by clear and convincing evidence. As found, the medical records entered into evidence that specifically deny any fall occurring as of January 2024 are found to be more credible than Claimant's testimony that he fell while using crutches sometime in October or November 2023 while leaving a medical appointment, resulting in Claimant hitting 6-8 concrete stairs.

E. In overcoming the opinion of the DIME that the lumbar spine condition is causally related to the work injury, the Respondents have thus overcome the DIME opinion with regard to MMI.

F. Section 8-42-107(2)(b), C.R.S., states in pertinent part: When an injury results in permanent medical impairment and the employee has an injury or injuries not on the schedule specified in subsection (2) of this section, the employee shall be limited to medical impairment benefits as specified in subsection (8) of this section

G. The ALJ credits the opinions of Dr. Johnson and Dr. Aschberger and finds that Claimant is entitled to an impairment rating of 5% whole person pursuant to

Section 8-42-107(8), C.R.S., for the chemical burns to his bilateral legs per section 13-6 of the AMA Guides, Third Edition, Revised.

H. As found, Respondents are liable for the PPD rating of 5% whole person impairment rating provided by Dr. Aschberger in his DIME report.

Order

It is therefore ordered that:

1. Respondents have overcome the opinion of Dr. Aschberger that Claimant sustained an injury to his lumbar spine that his causally related to Claimant's September 27, 2023 work injury.
2. Respondents shall pay Claimant PPD benefits based on an impairment rating of 5% whole person for the burns to Claimant's bilateral legs.
3. 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: December 17, 2025

/s/ Keith E. Mottram
Keith E. Mottram
Administrative Law Judge

Office of Administrative Courts
State of Colorado

Workers' Compensation No. WC 5-280-997-001

Issues

➢ Did Claimant prove entitlement to PPD benefits based on a 2% whole person impairment rating for the right shoulder?

Findings of Fact

1. Claimant works for Employer as a police officer. She suffered admitted injuries on July 29, 2024, when a suspect driving a stolen pickup truck rammed her police cruiser.
2. Claimant saw Dr. Thomas Centi at Employer's occupational medicine clinic on August 1, 2024. She reported pain in her neck and low back. Examination showed muscle tenderness and tightness in the neck, trapezius, and low back. Dr. Centi diagnosed cervical and lumbar strains and recommended chiropractic treatment.
3. Claimant had her initial appointment with Dr. Vincent Loparco, a chiropractor, on August 6, 2024. Claimant described neck pain radiating to the back of her head, left shoulder, and right shoulder blade. She was also having frequent headaches. These symptoms were all attributed to the accident. Examination of Claimant's neck showed muscle spasms and limited range of motion.
4. Claimant followed up with Jodi Killilea, NP-C in Dr. Centi's office on August 16, 2024. Examination showed improvement in neck pain and range of motion. Ms. Killilea recommended additional chiropractic treatment, since it was helping.
5. Treatment notes from six chiropractic sessions through September 10, 2024, were submitted at hearing. The records show improved but not completely resolved muscle spasm and neck pain radiating to Claimant's shoulders.
6. Ms. Killilea's August 26, 2024, report shows that Claimant was feeling better with only minor tightness on the right side of her neck. She was eager to return to full duty. The accompanying WC 164 form indicates Claimant was expected to reach MMI on September 24, 2024.

7. The record contains no formal MMI determination or impairment assessment from Dr. Centi or other ATP.
8. Dr. Michael Maher performed a DIME on April 10, 2025. He noted reduced cervical and right shoulder range of motion, and scalene pain on the left side of Claimant's neck. Dr. Maher diagnosed cervical muscle pain, bilateral shoulder "sprains" (worse on the right), and posttraumatic headaches of musculoskeletal origin. Although Dr. Maher documented cervical range of motion deficits, he assigned no cervical spine rating because he did not believe Claimant qualified for a Table 53 rating. Dr. Maher assigned a 4% upper extremity rating for the right shoulder based on range of motion loss, which converts to a 2% whole person rating.
9. Dr. Maher noted Claimant had a history of soft-tissue neck pain from a MVA in 2022, for which she received chiropractic treatment for approximately six months. Dr. Maher persuasively opined that apportionment was not appropriate because Claimant had no treatment for nearly a year and a half before the 2024 work accident and had no pre-existing disability. Additionally, Claimant credibly testified that the 2022 MVA was "very minor" and the associated symptoms were "nothing like" the symptoms from the 2024 work accident. The persuasive evidence shows the symptoms and limitations Dr. Maher documented were proximately caused by the work accident.
10. Respondent filed a Final Admission of Liability on June 17, 2025, admitting for the DIME's 4% scheduled rating.
11. Claimant returned to full duty as a police officer and remained in that job at the time of the hearing. Although Claimant has no formal work restrictions, the shoulder pain limits her ability to perform exercises such as lateral raises and anything overhead. She also has difficulty lifting and carrying her young son.
12. Dr. John Burris performed a record review for Respondent and testified at hearing. Dr. Burris saw no evidence of functional impairment beyond the right arm. As a result, he opined that conversion to whole person is not warranted.
13. Dr. Burris' opinion regarding the situs of Claimant's functional impairment is not persuasive.

14. Claimant proved she suffered functional impairment not listed on the schedule of disabilities.

Conclusions of Law

A. When evaluating whether a claimant has sustained scheduled or whole person impairment, the ALJ must determine "the situs of the functional impairment." This refers to the "part or parts of the body which have been impaired or disabled as a result of the industrial accident," and is not necessarily the site of the injury itself. *Strauch v. PSL Swedish Healthcare System*, 917 P.2d 366, 368 (Colo. App. 1996). The schedule of disabilities refers to the loss of "an arm at the shoulder." Section 8-42-107(2)(a). If the claimant has a functional impairment to part(s) of his body other than the "arm at the shoulder," they have suffered a whole person impairment and must be compensated under § 8-42-107(8).

B. There is no requirement that functional impairment take any particular form, and "pain and discomfort which interferes with the claimant's ability to use a portion of the body may be considered 'impairment' for purposes of assigning a whole person impairment rating." *Martinez v. Albertson's LLC*, W.C. No. 4-692-947 (June 30, 2008). Referred pain from the primary situs of the initial injury may establish proof of functional impairment to the whole person. *E.g., Latshaw v. Baker Hughes, Inc*., W.C. No. 4-842-705 (December 17, 2013); *Mader v. Popejoy Construction Co., Inc*., W.C. No. 4-198-489 (August 9, 1996). Although the opinions of physicians can be considered when determining this issue, the ALJ can also consider lay evidence such as the claimant's testimony regarding pain and reduced function. *Olson v. Foley's*, W.C. No. 4-326-898 (September 12, 2000).

C. Pain and limitation affecting the neck, trapezius, and scapular area can functionally impair an individual beyond the arm. *E.g. Steinhauser v. Azco, Inc.*, W.C. No. 4-808-991 (January 11, 2012) (pain and muscle spasm in scapular and trapezial musculature warranted whole person impairment); *Mader v. Popejoy Construction, supra* (complaints of pain into the chest, trapezius, and neck). However, the mere presence of pain in a part of the body beyond the schedule does not automatically

represent a functional impairment or require a whole person conversion. *Newton v. Broadcom, Inc*., W.C. No. 5-095-589-002 (July 8, 2021).

D. As found, Claimant proved she suffered functional impairment not listed on the schedule. Multiple providers have documented proximal symptoms including neck pain and headaches, including the DIME. These symptoms cause functional limitations including difficulty with overhead activities and moving her head. Claimant suffered no specific injury to the shoulder joint. Rather, her symptoms reflect “strains” and “sprains” of soft tissues around the shoulder and neck. The DIME determined that Claimant did not qualify for a separate cervical spine rating, and therefore, these symptoms and limitations can be considered when evaluating the request for conversion. *Compare Warthen v. Industrial Claim Appeals Office*, 100 P.3d 581 (Colo. App. 2004) (conversion to whole person not appropriate where all functional impairment proximal to the arm is fully encompassed in a separate cervical spine rating).

Order

It is therefore ordered that:

1. Respondent shall pay Claimant PPD benefits based on the 2% whole person right shoulder rating assigned by the DIME.
2. Respondent may take credit for any PPD benefits previously paid in connection with this claim.
3. Respondent shall pay Claimant statutory interest of 8% per annum on all compensation not paid when due.
4. All matters not decided herein are reserved for future determination.

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 the 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 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 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: December 17, 2025

/s/ Patrick C.H. Spencer II
Administrative Law Judge

Office of Administrative Courts
State of Colorado

Workers' Compensation No. WC 4-889-769-006

Issues

- ➢ Whether Claimant has proven by a preponderance of the evidence that the C7-T1 injection recommended by Authorized Treating Physician (ATP) Giancarlo Checa, M.D. is reasonable, necessary and causally related to treat the effects of his February 6, 2012 industrial injury.
- ➢ Whether Respondents have demonstrated by a preponderance of the evidence that continuing treatment of Claimant's cervical spine at C6-C7 is not causally related, reasonable or necessary to address the effects of the February 6, 2012 industrial injury.
- ➢ Whether Claimant has established that the doctrine of issue preclusion prevents Respondents from challenging continuing maintenance care as recommended by Dr. Checa.

Findings of Fact

1. On February 6, 2012 Claimant sustained an admitted industrial injury to his neck, back, shoulder, and teeth in the course and scope of his employment with Employer. Claimant acknowledged that the sole issue presented at hearing pertained to the cervical injuries incurred on that date.

2. A January 13, 2013 cervical MRI of Claimant's spine revealed the following: "straightening, suggestive of paraspinal muscle spasm, C3-4 left uncovertebral joint hypertrophy causing left foraminal stenosis, C4-5 right uncovertebral joint hypertrophy causing right foraminal stenosis, and a right C5-C6 right foraminal disc protrusion causing mild-to-moderate right foraminal stenosis, C6-C7 mild canal stenosis."

3. Claimant's Authorized Treating Physician (ATP) Albert Mattem, M.D. determined Claimant reached Maximum Medical Improvement (MMI) on September 29, 2014 for his cervical injuries. Dr. Hattem assigned a 6% cervical spine impairment for range of motion deficits and medical maintenance care.

4. On November 6, 2014 Respondents filed a Final Admission of Liability (FAL) based upon Dr. Hattem's rating. The FAL admitted for "reasonable and necessary medical care, related to this work injury, by an authorized treating physician" No objection was filed to the FAL.

5. Dr. Hattem recommended maintenance medical benefits that included treatment for Claimant's dental condition and returning to Dr. Davis for right elbow surgery. Dr. Hattem also stated Claimant could return to John Papilion, M.D. if he wished to proceed with additional right shoulder surgery. Respondents subsequently continued to provide medical benefits to Claimant after MMI.

6. On April 25, 2015 a repeat cervical MRI was performed. The imaging reflected "stable degenerative disc and joint changes without core deformity. There are multiple stable levels of foraminal narrowing which appear predominantly bony except for the C6-C7 level where there is a small new disc component extending into the left foramen."

7. On January 18, 2016 Claimant visited ATP Robert Kawasaki, M.D. He documented that since Claimant had reached MMI he had developed increased pain in his left arm from his neck. Dr. Kawasaki noted the new MRI from April 2015 showed a new disc extension at C6-C7 with new C7 radiculopathy not previously seen or documented. He explained that a diagnostic left C6-C7 Transforaminal Epidural Steroid Injection (TF ESI) would help determine how much the left C6-C7 foraminal disc protrusion was contributing to Claimant's pain.

8. On January 21, 2016, Dr. Kawasaki's office sent a request for authorization for left C6-7 TF ESI and left L3-4 TF ESI.

9. On May 19, 2016 the parties proceeded to a hearing before ALJ Timothy Nemechek on the sole issue of "did claimant prove by a preponderance of the evidence that the treatment recommended by Dr. Kawasaki (left C6-7 TF ESI and left L3-4 TF ESI) is reasonable and necessary?" The issue is footnoted as follows "in the recitation of issues at the outset of the hearing, counsel for both parties agreed this was the sole issue for determination."

10. ALJ Nemechek credited Dr. Kawasaki's testimony from an evidentiary deposition. He explained:

> With regard to the recommendation for the left C6-7 transforaminal epidural steroid injection, Dr. Kawasaki testified this injection was diagnostic and would potentially help determine the source of Claimant's ongoing shoulder issues. Therefore, even though the disc protrusion at C6-7 was a new issue and not related to the 2012 injury, the proposed ESI was reasonable as a diagnostic test to decide whether this was a shoulder issue and therefore compensable, or a neck issue and not causally related.

Consistent with Dr. Kawasaki's testimony, ALJ Nemechek concluded the C6-C7 injection was reasonably necessary "as a diagnostic test to determine the source of Claimant's continued pain." His Order simply specified "Claimant's request for authorization of left C6-7 TF ESI and left L3-4 TF ESI injections is granted." The record thus reveals that ALJ Nemechek's 2016 Order did not address whether the pathology at C6-C7 constituted a work-related condition.

11. On July 29, 2016 Claimant underwent the injection litigated at the hearing before ALJ Nemchek. Claimant complained of pre-procedure pain at rest of 3/10 (with increased functional pain with movement) that improved to 1/10 for both pain at rest and functional pain after the procedure. Dr. Kawasaki confirmed that Claimant exhibited a positive diagnostic response to the injection. Claimant's positive response revealed that his source of pain was in her neck and thus not work-related.

12. On May 12, 2023 Qing-Min Chen, M.D. performed a records review of Claimant's case. He determined that at the time of the injury and MMI Claimant's pain symptoms were located at the C2-C4 level and in 2015 there was additional neck pain without a new injury. Dr. Chen agreed that the 2015 MRI did not show anything in the cervical spine that appeared to be work-related, but rather "ongoing progressive degeneration, which is the natural course for that disease for the neck." He noted the MRI specifically revealed a new component of a left C6-C7 disc protrusion that Dr. Failinger and Dr. Kawasaki both believed to be non-work-related. Dr. Chen ultimately concluded that "there is no objective proof that the 2012 work accident permanently aggravated an ongoing pre-existing condition at multiple areas of the neck and there is no evidence at these levels from C4-C7 were ever related to the initial accident, it was never even a

problem for the first four years or so after the initial accident." He concluded that there was no evidence of any long-term efficacy from the repeated ESIs.

13. In addressing whether ESIs at the left C4-C6 levels were related to the February 6, 2012 industrial injuries, Dr. Chen explained that Claimant's pathology reflected a degenerative condition. He reasoned that in 2013 there was some concern for C2-C4 pathology. However, concerns then moved to C6-C7 in 2016 and by the time of his exam in 2019, the symptoms moved to the C4-C6 level. Dr. Chen remarked that the migration constituted evidence of the natural progressive of neck deterioration without objective evidence that the work injury caused any permanent aggravation of a pre-existing condition. He thus did not recommend repeat ESIs in 2019.

14. The record reveals that between 2016 and 2023 Claimant received one ESI each year at the C6-C7 level. By 2024, the treatment moved to the C7-T1 level. Notably, the first time the C7-T1 level was identified for treatment was the September 12, 2024 record from Dr. Checa. Based on Claimant's pain distribution and physical examination Dr. Checa attributed Claimant's pain to the left C3-C4 and right C5-C7 nerves. He noted overall progressive degenerative changes in Claimant's cervical spine. Dr. Checa commented that for the period 2012-2023 Claimant received periodic cervical TF ESIs from Dr. Kawasaki with 80% relief for up to 3-4 months at a time. He thus recommended C7-T1 ESIs but noted injection therapy might lose efficacy and surgical options would be considered.

15. On October 26, 2024 Alicia Feldman, M.D. conducted an Independent Medical Examination (IME) of Claimant. Dr. Feldman agreed with ATP Kawasaki that Claimant lacked pathology at the cervical level in the initial post-injury MRI in 2013. However, in the 2015 MRI there was a new component of a left-sided disk herniation at the C6-C7 level with new symptoms of left C7 radiculopathy. She also echoed that pre-MMI electrodiagnostic testing performed in 2013 was negative for cervical radiculopathy. The contemporaneous physical examination in 2013 was also negative for both subjective and objective findings of cervical radiculopathy at the C7-T1 and C6-C7 levels.

16. Dr. Feldman documented "the onset of cervical radiculopathy three to four years post injury is not consistent with an acute injury occurring on February 6, 2012." She agreed with a prior IME from Mark Failinger, M.D. that "the new-onset of symptoms

three to four years later is related to ongoing degeneration and a natural course of the disease of the cervical spine and not related to the work-related injury of February 6, 2012."

17. Dr. Feldman also explained in her deposition that there was no temporal relationship between any pathology at the C7-T1 level and Claimant's initial work injury. She testified that Claimant's C7-T1 symptoms began over a decade after the initial injury. The symptoms were thus more consistent with a natural progression of the underlying degenerative condition. Dr. Feldman summarized that Claimant's symptoms were "much more consistent with what would be expected given the natural progression of arthritis" than any traumatic pathology that would have occurred in 2012. She commented that the C7-T1 injection was recommended to treat new pathology in the form of cervical radiculopathy and stenosis that was not previously present.

18. Dr. Feldman remarked that injections at the C7-T1 level were not medically necessary pursuant to the Colorado Medical Treatment Guidelines (MTGs). Specifically, the MTGs require that to be a candidate for an ESI, there must be documentation of subjective reports of severe radicular pain that correlate to objective findings, positive neural compression tests, and reflex/motor/sensory changes consistent with impingement of nerves or the spinal cord. She reasoned that the preceding criteria were not satisfied at the time of Claimant's injury or for many years later. Specifically, Dr. Feldman noted the February 2013 EMG reflected Claimant was neurologically intact without any correlating lesion of the cervical spine to explain symptoms. She commented the original neck pain would not have qualified for an ESI and it was not until three years after the injury that one was recommended for diagnostic purposes.

Conclusions of Law

Generally

1. The purpose of the "Workers' Compensation Act of Colorado" (Act) 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. §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. §8-42-101, 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); *People v. M.A.*, 104 P.3d 273, 275 (Colo. App. 2004). 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. §8-43-201, C.R.S. A Workers' Compensation case is decided on its merits. §8-43-201, C.R.S.

2. The Judge's factual findings concern only evidence that is dispositive of the issues involved; the Judge 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. *See Magnetic Engineering, Inc. v. ICAO,* 5 P.3d 385, 389 (Colo. App. 2000).

3. When determining credibility, the fact finder should consider, among other things, the consistency or inconsistency of the witness's testimony and actions; the reasonableness or unreasonableness (probability or improbability) of the testimony and actions; the motives of the witness; whether the testimony has been contradicted; and bias, prejudice, or interest. *See Prudential Insurance Co. v. Cline*, 98 Colo. 275, 57 P.2d 1205 (1936); CJI, Civil 3:16 (2007).

C7-T1 Injection

4. Where the respondents file an FAL acknowledging maintenance medical benefits, they are not precluded from later contesting their liability for a particular treatment. *Snyder v. Indus. Claim Appeals Off.*, 942 P.2d 1337 (Colo. App. 1997). When respondents challenge a specific medical benefit, the claimant must prove that the contested treatment is reasonable, necessary and related to the industrial injury. *See id.*; *see also Grover v. Indus. Comm'n*, 759 P.2d 705 (Colo. 1988). Indeed, 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 employment. §8-41-301(1)(c), C.R.S.; *Faulkner v. Indus. Claim Apps. Office*, 12 P.3d 844, 846 (Colo. App. 2000).

5. Claimant has failed to prove by a preponderance of the evidence that the C7-T1 injection recommended by ATP Dr. Checa is reasonable, necessary and causally related to his February 6, 2012 industrial injury. The record reflects that the first time the C7-T1 level was identified for treatment was the September 12, 2024 record from Dr. Checa. Based on Claimant's pain distribution and physical examination Dr. Checa attributed Claimant's pain to the left C3-C4 and right C5-C7 nerves. He noted overall progressive degenerative changes in Claimant's cervical spine. Dr. Checa thus recommended C7-T1 ESIs but noted injection therapy might lose efficacy and surgical options would be considered. Notably, he did not address the causal connection between Claimant's need for C7-T1 ESIs and his 2012 industrial injury.

6. Dr. Feldman persuasively explained the lack of a temporal relationship between any pathology at the C7-T1 level and Claimant's work injury. She remarked that Claimant's C7-T1 symptoms began over a decade after his injury. Dr. Feldman also commented there was no objective evidence of pathology at the C7-T1 level in a post-injury MRI. She explained that the development of symptoms at C7-T1 was likely related to the natural progression of an underlying degenerative condition of arthritis rather than any traumatic pathology that occurred in 2012.

7. Moreover, Dr. Feldman remarked that injections at the C7-T1 level were not medically necessary pursuant to the MTGs. Specifically, the MTGs require that to be a candidate for an ESI, there must be documentation of subjective reports of severe radicular pain that correlate to objective findings, positive neural compression tests, and reflex/motor/sensory changes consistent with impingement of nerves or the spinal cord. Dr. Feldman reasoned that the preceding criteria were not satisfied at the time of Claimant's injury and for many years later. She specifically noted the February 2013 EMG reflected Claimant was neurologically intact without any correlating lesion of the cervical spine to explain symptoms. There was simply no objective evidence of pathology at the C7-T1 level in either a post-injury MRI or on physical examination.

8. Based on the medical records and persuasive opinion of Dr. Feldman, Claimant has failed to prove that the C7-T1 injections recommended by Dr. Checa are causally related, reasonable and necessary to treat the effects of the 2012 industrial injury. Notably, initial treatment at the C7-T1 level was not considered until more than 12

years after the February 6, 2012 admitted industrial injury. The temporal proximity between the injury and requested C7-T1 injection, in conjunction with the lack of objective pathology, is too attenuated to establish a causal connection. Instead, Claimant's symptoms are more likely the result of a progressive, degenerative condition. Accordingly, Claimant's request for a C7-T1 ESI is denied and dismissed.

Causation of Cervical Spine Condition

9. When the respondents file an FAL acknowledging medical maintenance benefits pursuant to *Grover* they may still seek to terminate liability for ongoing maintenance medical treatment. *See* §8-43-201(1), C.R.S.; *Snyder v. Indus. Claim Appeals Off.*, 942 P.2d 1337 (Colo. App. 1997). Notably, when the respondents seek to terminate all post-MMI benefits, they shoulder the burden of proof. *In Re Claim of Arguello*, W.C. No. 4-762-736-04 (ICAO May 3, 2016); *In Re Claim of Dunn*, W.C. No. 4-754-838 (ICAO Oct. 1, 2013); *see* §8-43-201(1), C.R.S. (stating that "a party seeking to modify an issue determined by a general or final admission, a summary order, or a full order shall bear the burden of proof for any such modification"). Specifically, the respondents are not liable for future maintenance benefits when they no longer relate back to the industrial injury. *See In Re Claim of Salisbury*, W.C. No. 4-702-144 (ICAO, June 5, 2012).

10. A respondent's payment for a medical procedure does not constitute an admission that the care is reasonable or related to the work injury. *Morin v. ACE Hardware,* W.C. No. 4-906-748-04 (ICAO May 6, 2014); see *Gordon v. Ross Stores, Inc.*, W.C. No. 4-878-759 (ICAO Feb. 5, 2015) (noting employers frequently provide medical treatment to injured workers even though the employers can subsequently contest compensability of the injury)*; Ashburn v. La Plata School Dist. 9R*, W.C. No. 3-062-779 (ICAO May 4, 2007) (payment of medical benefits is not an admission of liability.

11. Respondents have demonstrated by a preponderance of the evidence that continuing treatment of Claimant's cervical spine is not causally related, reasonable or necessary to address the effects of the February 6, 2012 industrial injury. It is undisputed Respondents paid for Claimant's C6-C7 injections beginning in 2016. However, merely because Respondents paid for the injections is inconsistent with a determination that the ongoing need for the treatment was reasonably necessary or causally related to the 2012

work injury. As recognized by ALJ Nemechek in his 2016 Order, Claimant's ATP Dr. Kawasaki recommended the C6-C7 injection for diagnostic purposes to assess whether Claimant's pain generator was work-related or non-work-related. Notably, consistent with Dr. Kawasaki's testimony, ALJ Nemechek concluded the C6-C7 injection was reasonably necessary "as a diagnostic test to determine the source of Claimant's continued pain." Once the injection was performed and revealed a positive response, the identified pain generator was the non-work-related new disc protrusion.

12. No physician has causally linked the C6-C7 disc protrusion to the work injury and therefore treatment aimed at that level was never causally related. Initially, Dr. Chen recounted that the 2015 MRI did not show anything in the cervical spine that appeared to be work-related, but rather "ongoing progressive degeneration, which is the natural course for that disease for the neck." He noted the MRI specifically revealed a new component of a left C6-C7 disc protrusion that Dr. Failinger and Dr. Kawasaki both believed to be non-work-related. Dr. Chen summarized that "there is no objective proof that the 2012 work accident permanently aggravated an ongoing pre-existing condition at multiple areas of the neck and there is no evidence at these levels from C4-C7 were ever related to the initial accident, it was never even a problem for the first four years or so after the initial accident." Similarly, Dr. Feldman explained that in the 2015 MRI there was a new component of a left-sided disk herniation at the C6-C7 level with new symptoms of left C7 radiculopathy. She also commented that pre-MMI electrodiagnostic testing performed in 2013 was negative for cervical radiculopathy. Notably, Dr. Feldman documented "the onset of cervical radiculopathy three to four years post injury is not consistent with an acute injury occurring on February 6, 2012." She agreed with the prior IME of Dr. Failinger that "the new-onset of symptoms three to four years later is related to ongoing degeneration and a natural course of the disease of the cervical spine and not related to the work-related injury of February 6, 2012."

13. Notably, Claimant's treating providers including Dr. Checa and Dr. Kawasaki have not proffered a causation opinion on whether the C6-C7 cervical level is causally related to the 2012 industrial injury. Neither doctor expressed in the medical records that treatment at the C6-C7 level was for anything other than a non-worked related condition. Therefore, based on the medical records and persuasive opinions of

Drs. Chen and Feldman, Respondents have demonstrated by a preponderance of the evidence that Claimant's continuing treatment at the cervical spine, including the C6-C7 level, is not causally related to his February 6, 2012 industrial injury.

Issue Preclusion

14. Claimant contends that Respondents cannot terminate maintenance care of the cervical spine based on issue preclusion. He specifically asserts the matter was addressed by ALJ Nemechek in his 2016 Order. However, because the present issue of continuing maintenance care was not decided in the 2016 proceeding before ALJ Nemechek, Claimant's assertion fails.

15. Claim and issue preclusion are affirmative defenses that must be pled and proven by the party seeking to apply the doctrines. *Bristol Bay Prods., LLC v. Lampack*, 312 P.3d 1155, 1164 (Colo. 2013). Although issue preclusion was created as a judicial doctrine, it has been extended to administrative proceedings, where it "may bind parties to an administrative agency's findings of fact or conclusions of law." *Sunny Acres Villa, Inc. v. Cooper*, 25 P.3d 44, 47 (Colo. 2001); *see Holnam v. Indus. Claim Appeals Off.,* 159 P.3d 795 (Colo. App. 2006). Issue preclusion bars relitigation of an issue if:

> (1) the issue sought to be precluded is identical to an issue actually determined in the prior proceeding; (2) the party against whom [issue preclusion] is asserted has been a party to or is in privity with a party to the prior proceeding; (3) there is a final judgment on the merits in the prior proceeding; and (4) the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior proceeding.

Youngs v. Indus. Claim Appeals Off., 297 P.3d 964, 974 (Colo. App. 2012).

16. The record reveals that the issue addressed in the current matter pertains to an ESI at Claimant's C7-T1 level and causation of continuing treatment of the cervical spine including the C6-C7 level. In contrast, on May 19, 2016 the parties proceeded to a hearing before ALJ Nemechek on the sole issue of whether the left C6-7 TF ESI and left L3-4 TF ESI recommended by Dr. Kawasaki was reasonable and necessary.

17. ALJ Nemechek's 2016 Order did not address whether the pathology at C6-C7 was a work-related condition. Instead, he limited his determination to whether

treatment at the level would be reasonable and necessary as a diagnostic test. ALJ Nemechek specifically concluded that "Claimant's request for authorization of left C6-7 TF ESI and left L3-4 TF ESI injections is granted." The record thus reveals that ALJ Nemechek's 2016 Order did not address whether the pathology at C6-C7 constituted a work-related condition. Because the issue decided in 2016 was different than the current dispute regarding the causal relationship of ongoing cervical treatment, the present issues are not barred by the doctrine of issue preclusion. Accordingly, Claimant has failed to prove that the first factor of issue preclusion, identity of issues, has been satisfied. The issues in the present matter are wholly distinct and different from those litigated in 2016. Consequently, Respondents' request for relief is not barred by the doctrine of issue preclusion.

Order

It is therefore ordered that:

1. Claimant's request for a C7-T1 ESI is denied and dismissed.

2. Respondents have demonstrated that Claimant's request for continuing treatment of the cervical spine, including the C6-C7 level, is not causally related to his February 6, 2012 industrial injury.

3. Respondents' request for relief is not barred by the doctrine of issue preclusion.

4. All matters not resolved in this Order are resolved for future determination.

Dated: December 17, 2025

DIGITAL SIGNATURE:
Peter J. Cannici

Peter J. Cannici
Administrative Law Judge

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.

Office of Administrative Courts

State of Colorado

Workers' Compensation No. WC 5-295-087-001

Issues

- ➢ Whether Claimant proved by a preponderance of the evidence that the bilateral total knee arthroplasties recommended by Jesse L. Chrastil, M.D., are reasonable, necessary, and casually related to his January 8, 2025 work injury.

- ➢ Whether Claimant proved by a preponderance of the evidence that the at home controlled thermal therapy device recommended by Lawrence Cedillo, D.O., is reasonable, necessary, and casually related to his January 8, 2025 work injury.

Findings of Fact

1. Claimant has a history of bilateral knee issues. Approximately twenty years ago Claimant underwent bilateral arthroscopic knee surgery. *See* RHE p. 40. In July 2020, Claimant began treating with Patrick J. McNair, M.D., at Panorama Orthopedics and Spine Center (Panorama) for his knees. RHE p. 77-81. Dr. McNair diagnosed Claimant with severe bilateral osteoarthritis of the knees. RHE p. 79. Dr. McNair informed Claimant that he ultimately would require knee replacement surgery. RHE p. 88.

2. Between 2020 and 2024, Dr. McNair treated Claimant with multiple steroid injections into his knees. RHE p. 77-103. Between June 2024 and November 2024, Claimant underwent several platelet rich plasma (PRP) injections, as well as an alpha-2-macroglobulin (A2M) injection and a bone marrow aspirate concentrate (BMAC) injection, at QC Kinetix. RHE p. 144-154.

3. Claimant was hired by Employer in 2021. Claimant is a Class A CDL driver for Employer handling local deliveries. Prior to the industrial injury at issue, Claimant had no work restrictions and was able to perform his full duty job.

4. On January 8, 2025, Claimant was pulling a pallet jack up a ramp while two people helped to push the load up the ramp. Claimant suffered an admitted industrial injury to his bilateral knees when the others pushed too quickly and knocked Claimant onto cement. Claimant landed on his knees on the cement and the pallet jack ran over Claimant's right foot. Claimant immediately reported his injury.

5. Claimant began treating at Midtown Occupational Health Services (Midtown) on January 9, 2025. RHE p. 40-45. Claimant was seen by Matthew Edwards, PA-C. RHE p. 44. Claimant reported how he fell and noted bruising on the inside of his right knee and the outside of his left knee. RHE p. 40. Claimant indicated he had been working full duty without incident prior to January 8, 2025. *Id.*

6. PA Edwards noted a small effusion, no appreciable edema, and an approximately 2 centimeter by 1 centimeter ecchymosis of the medial condyle area on Claimant's right knee, and a small effusion, minimal anterior edema over ecchymosis area, and an approximately 1 centimeter by 1 centimeter area of ecchymosis over the lateral knee on Claimant's left knee. RHE p. 41-42. Radiographs of Claimant's knees showed no fracture or dislocation but "moderately severe tricompartmental osteoarthritis." RHE p. 43-44.

7. On January 29, 2025, Claimant underwent an MRI of his right knee. RHE p. 112-113. The MRI imaging showed: macerated and torn posterior horn medial meniscus; horizontal tear anterior horn lateral meniscus; edema signal throughout the ACL and intrasubstance cystic fluid which could represent mucinous degeneration and ACL sprain/injury; prominent bone marrow edema changes in the peripheral medial femoral condyle near the medial patellofemoral ligament attachment and deep to chondral thinning – less prominent focal bone marrow edema is also seen in the peripheral medial tibial plateau and anterior

lateral femoral condyle; deep to areas of full thickness chondral loss; soft tissue edema at the margin of the medial patellofemoral retinaculum at its femoral attachment could represent sequela of stretch injury to the medial patellofemoral ligament or soft tissue edema at the margin of the prominent bone edema in the peripheral medial femoral condyle – the medial patellofemoral retinaculum remains intact; and small-moderate joint effusion – lateral patellofemoral plica. RHE p. 113.

8. Claimant began treating with Midtown physical therapy on February 10, 2025. CHE p. 122-128. At fourteen visits between February 13, 2025, and April 10, 2025, Claimant was treated with a vasopnuematic compression device at physical therapy. CHE pp. 130, 132, 134, 136, 139, 141, 143, 145, 147, 149, 151, 153, 155, 163.

9. On February 17, 2025, Claimant saw Dr. McNair in relation to his industrial injury. CHE p. 165-171. Dr. McNair noted: “I have seen and treated [redacted] in the past for his knees. He states he had undergone regenerative medicine techniques such as stem cell which should dramatically lessen his pain and allowed him to return back to a physical job. He was at that job where he injured both knees. He presents today with an MRI of his right knee. He is not able to perform any of his normal daily activities either at home or with work related to his knee pain.” CHE p. 165. Claimant reported that after his stem cell treatment he had “dramatic improvement to his pain and function.” CHE p. 167.

10. Regarding Claimant’s left knee, Dr. McNair documented “range of motion lacks 3 degrees full extension flexion gets to 135. There is a mild to moderate joint effusion. He has exquisite medial joint line tenderness positive medial McMurray’s. There is some lateral joint line test and negative lateral McMurray’s. His knee is globally stable to provocative test of the ACL, MCL, PCL, and LCL. His quad appears to be atrophied. He is walk with an antalgic gait.” CHE p. 167. These results are similar to the examination of Claimant’s right knee. CHE p. 166-167.

11. Dr. McNair recommended an MRI of Claimant's left knee "to determine if there is any intra-articular pathology could be addressed arthroscopically." CHE p. 167.

12. On March 13, 2025, Claimant returned to PA Edwards and reported "[h]e still has significant pain in the right knee and reports that his left knee pain is worsening[;] is also reporting increased swelling in his left knee." RHE p. 65; *see* CHE p. 140 (3/3/25 PT visit noting increased pain in left knee). At that appointment PA Edwards documented Claimant's injury as "an acute on chronic injury as he has bilateral severe tricompartmental osteophyte arthritis." RHE p. 65.

13. PA Edwards ordered Claimant an ice machine on March 13, 2025. RHE p. 68; *see* CHE p. 146 (3/13/25 PT visit note "also using cold machine"); CHE p. 156 (3/31/25 PT visit note "got the ice machine this weekend for home. It has two sleeves so I can do both legs.").

14. Claimant underwent an MRI of his left knee on March 18, 2025. RHE p. 116-118. The MRI showed degenerated and torn medial meniscus, degenerated lateral meniscus with possible nondisplaced degenerative type tears, chronic high-grade partial tear versus mucoid degeneration anterior cruciate ligament, tricompartmental chondromalacia most marked with the patellofemoral and medial joint compartments, and joint effusion. RHE p. 117-118.

15. On March 21, 2025, Claimant was seen by Dr. McNair. CHE p. 172-176. Dr. McNair noted:

> [redacted] is a 57-year-old gentleman who has bilateral knee pain secondary to work-related events. He is working diagnosis is osteoarthritic changes with his right knee being more painful than his left. Pain and ensure he had osteoarthritis before the work-related events but those related events took him from a knee that was well-balanced and minimally painful to 1 but is now painful and stopping not

> being able to perform his daily activities both at work as well as at home.
>
> His MRIs are consistent with bilateral osteoarthritis advanced. His x-rays as well.
>
> At this point the question for [redacted] is what is the most appropriate treatment for him. While both knees have medial meniscal tears and dysfunction arthroscopy is not the benefit for him. Any arthroscopic procedures is likely to make him worse that is making better. From a surgical standpoint the only option for him is knee replacements. . . . The other nonoperative management would be some form of regenerative medicine injection such as PRP or stem cell. I certainly believe they have value in pain relief but they will not provide any regenerative components either his articular cartilage or meniscus.

CHE p. 174.

16. Dr. McNair referred Claimant to the arthroplasty team at Panorama. CHE p. 174.

17. Claimant saw Jesse L. Chrastil, M.D., at Panorama on April 1, 2025, to discuss bilateral total knee arthroplasties. CHE p. 178-179. Claimant reported to Dr. Chrastil that his "knees were doing relatively well up until work-related injury now he has continued persistent knee pain and issues." CHE p. 177.

18. Dr. Chrastil reviewed conservative management versus operative intervention with Claimant. CHE p. 178. Dr. Chrastil noted "[a]t this time, we agreed to proceed with bilateral total knee arthroplasties give the patients level of limitation as documented above and failure of greater than 3 months of conservative treatment. . . . The patient has tried and failed all attempts at conservative management for this problem. They feel like this is causing limitation in their

functions of daily living. This includes limiting their ability to perform activities they enjoy." CHE p 178-179.

19. On April 1, 2025, Dr. Chrastil requested Insurer approve a total knee arthroplasty of Claimant's left knee. CHE p. 181.

20. While Dr. Chrastil stated in a conclusory fashion on April 1, 2025 that Claimant's visit was "[p]art of a workers comp work-related injury," CHE p. 178, on April 22, 2025, PA Edwards noted that "[i]t was opined by orthopedics at patient's workplace injury accelerated his need for bilateral knee replacements." CHE p. 81.

21. Respondents scheduled Claimant for an independent medical examination (IME) with Mark Failinger, M.D., on May 20, 2025. RHE p. 7-19. In part, Dr. Failinger opined:

    - "With reasonable medical probability, the patient . . . was functioning reasonably well prior to the work incident on January 8, 2025, which does not appear to be a contested injury." RHE p. 16.

    - "With ecchymosis noted in the medial epicondylar area, it is reasonable that a direct blow occurred to the right knee to create ecchymosis. In most all cases, when a person falls, they will fall on a flexed knee, and a direct impact can cause acceleration of a pre-existing arthritis if the impact occurs to the medial or lateral femoral condyle, or if a direct impact occurs to the patella, which can cause or accelerate pre-existing patellofemoral chondromalacia. With the temporal, or timely reporting of right knee pain and symptoms, and with an ecchymosis in an area that could reasonably indicate that some acceleration of pre-existing medial compartment arthritis had occurred, and with no resolution of right knee symptoms despite reasonable conservative treatment, it is within reasonable medical probability that some acceleration of the right knee pre-existing arthritis occurred in the falling incident." RHE p. 16.

- “Although almost all of the knee arthritis was reasonably pre-existing, an aggravation reasonably occurred to his right knee pre-existing severe arthritis, which has not resolved with conservative treatment.” RHE p. 16.

- “The patient has responded quite well, it appears, to injection therapy in the past, and that would be the next most reasonable step prior to proceeding with a knee replacement, per the Colorado Lower Extremity Treatment Guidelines. . . . As the patient has responded well to injection therapy in the past, injection therapy at this time would be the next most reasonable step in order to decrease the flare of the patient’s symptoms and hopefully improve his function.” RHE p. 16.

- “The left knee, likewise, was noted to have an ecchymosis on the lateral aspect when [redacted] was examined after the work incident. It is more difficult to accelerate pre-existing medial compartment severe osteoarthritis with a lateral blow to the left knee. When a direct blow occurs to the patella, as stated previously, some acceleration of pre-existing severe osteoarthritis can occur. However, that does not necessarily happen.” RHE p. 17.

- “When reviewing the clinical records, there was notable initial left knee symptoms, along with the very small area of ecchymosis, and a small effusion was noted . . . . The patient’s symptoms improved, and the patient noted to be 65% improved about one week later, on January 16, 2025, at which time he was noted to have full knee range of motion with resolution of his ecchymosis and no effusion.” RHE p. 17.

- “It is with reasonable medical probability, the patient had pre-existing symptoms in the left knee prior to the work incident on January 8, 2025, although he did not have symptoms that were significant enough to seek treatment. That is to say, it would not [be] reasonable that the patient had no symptoms in the left knee prior to the work incident, with severe osteoarthritis noted on the imaging studies.” RHE p. 17.

- “With a normal examination, and with no significant disfunction as noted on February 6, 2025, and with essentially a normal exam, the patient most reasonably only sustained a contusion to the left knee, with no acceleration of his pre-existing significant osteoarthritis.” RHE p. 17.

- The MRI of Claimant’s left knee “noted . . . mild subcutaneous edema anteriorly, which could be evidence for a contusion, but there was no evidence of any posttraumatic bone marrow contusion. Given such, it would appear that the patient sustained a contusion to the left knee as opposed to any acceleration of pre-existing arthritis.” RHE p. 18.

22. Dr. Failinger wrote an addendum to his IME report on September 30, 2025. RHE p. 33-38. Dr. Failinger reviewed additional medical records and concluded “my opinions as expressed in my independent medical examination report of May 20, 2025, do not change.” RHE p. 37. “Given the information provided . . . it appears, within reasonable degree of medical probability, that the patient’s right knee reasonably underwent some permanent aggravation, or acceleration of the pre-existing severe degenerative joint disease, given the direct blow and ecchymosis noted on the right knee. However, given the early resolution of left knee symptoms, the left knee more reasonably sustained a contusion with resolution of symptoms, even though the resolution of symptoms was relatively brief. With prior significant ongoing and recurrent bilateral knee symptoms requiring treatment, it appears that the reason for the patient’s recurrence of left knee symptoms in February of 2025 was most reasonably due to the common waxing and waning course of symptoms which most all patients that have significant severe degenerative joint disease experience . . . .” RHE p. 37-38.

23. Dr. Failinger testified at hearing and was admitted as an expert in orthopedic surgery and sports medicine.

24. Dr. Failinger classified Claimant’s knees as experiencing “end stage” osteoarthritis and noted that Claimant had lost all cartilage in his knees by 2020,

resulting in bone-on-bone contact that was slowly reshaping the bone similar to “sandpaper on a wood block.”

25. On direct examination, Dr. Failinger initially opined that the knee contusions Claimant suffered on January 8, 2025, did not aggravate or exacerbate his end stage osteoarthritis. In his opinion, “nothing” can aggravate bone-on-bone arthritis.

26. However, when asked by counsel whether the bilateral knee replacements being recommended in this case were related to Claimant’s January 8, 2025 work incident, Dr. Failinger did testify consistent with his IME report that he could not discount a slight acceleration in the right knee osteoarthritis making the right knee arthroplasty related. On cross examination, Dr. Failinger confirmed the right knee arthroplasty is reasonable and related to the January 8, 2025 industrial injury based on his review of the MRI, Claimant’s consistent reports of pain, and the mechanism of injury which could possibly create an acceleration of Claimant’s osteoarthritis.

27. Dr. Failinger maintained that the need for the left knee arthroplasty was not related to the January 8, 2025 industrial injury.

28. Dr. Failinger testified that under the Medical Treatment Guidelines the most reasonable treatment for Claimant would be injections into his right knee as Claimant has historically done well with injections. Only if the injections do not provide Claimant with measurable symptom relief should an arthroplasty be pursued.

29. Dr. Failinger did concede that Claimant was forthcoming with his providers about the previous treatments he underwent to his bilateral knees, including the injections he underwent between 2020 and 2024.

30. Dr. Failinger testified that regarding aggravation of a pre-existing condition, Claimant’s left knee had the pathology indicating the need for an arthroplasty

prior to the January 8, 2025 work incident. However, in his professional opinion, Claimant did not have symptoms after the January 8, 2025 work incident indicating an aggravation or acceleration of the pre-existing condition because by January 24, 2025, Claimant had a normal examination and was not complaining of symptoms in his left knee.

31. Respondents filed a general admission of liability (GAL) on May 22, 2025. CHE p. 3.

32. On June 18, 2025, Respondents denied Dr. Chrastil's request for bilateral total knee arthroplasty. CHE p. 185.

33. Also on June 18, 2025, Respondents denied a request by Lawrence Cedillo, D.O., for controlled thermal therapy and/or intermittent thermal pneumatic compression therapy. CHE p. 183. The ALJ infers from the record and the testimony of Dr. Failinger that controlled thermal therapy is the ice machine ordered by PA Edwards on March 13, 2025. *See* CHE p. 72 ("We again discussed this with acute on chronic injury and our goal is to provide reasonable treatments to return patient to baseline. In that regard, I do believe continue physical therapy, an ice machine, continue work restrictions and consideration of PRP injections would be appropriate. I will defer recommendation of PRP to orthopedics. We will order continued therapy, work restrictions and ice machine[.] . . . Controlled thermotherapy machine ordered[.]"); *see* CHE p. 73 (M164 form completed 3/13/25 listing under "supplies" "ice machine ordered").

34. The medical records admitted do not contain the request by Dr. Cedillo.

35. Dr. Failinger testified that he has never seen the use of controlled thermal therapy before surgery, and, outside of its possible use to reduce swelling in order to allow for emergent surgery, the use of controlled thermal therapy many months after an injury would indicate a level of swelling caused by an individual "being on their feet a lot more than they should be."

36. Claimant testified that in April 2025 he was provided with a controlled thermal therapy unit for use at home to help with the swelling of his knees. He uses the unit approximately four times a week and it helps with swelling and pain.

37. Claimant testified at hearing that after his January 8, 2025 injury, he experienced increased pain in both his knees, problems sleeping, decreased stability in both knees, and “a lot more noise when doing squats.”

38. Claimant consistently reported to his providers after his work injury that he experienced increased pain and decreased stability in his knees as compared to prior to the injury.

39. Claimant filed an Application for Hearing on July 8, 2025.

40. The ALJ finds Claimant’s testimony credible and persuasive.

41. The ALJ finds Dr. Failinger’s opinion that Claimant’s fall could (and likely did) result in aggravation or acceleration of the osteoarthritis of his right knee but that same fall did not result in aggravation or acceleration of the osteoarthritis in his left knee unpersuasive. As noted by Dr. Failinger, on January 9, 2025, PA Edwards documented a 2 centimeter by 1 centimeter ecchymosis on Claimant’s right knee (medial condyle) and a 1 centimeter by 1 centimeter ecchymosis on Claimant’s left knee (lateral). While Dr. Failinger opines that “[i]t is more difficult to accelerate pre-existing medial compartment severe osteoarthritis with a lateral blow to the knee,” RHE p. 17, Claimant’s x-rays on January 9, 2025 show “moderately severe tricompartmental osteoarthritis.” RHE p. 43-44. Thus, Claimant’s pre-existing left knee condition is not limited to medial compartment severe osteoarthritis but instead includes the medial, lateral, and patellofemoral compartments. Dr. Failinger’s opinion that a lateral blow to a left knee with moderately severe tricompartmental osteoarthritis would not accelerate or aggravate that osteoarthritis while a medial blow to the right knee would is inconsistent and unpersuasive.

42. Dr. Failinger also relies on Claimant's MRIs to conclude Claimant did not suffer an aggravation or acceleration of his pre-existing severe tricompartmental osteoarthritis of his left knee when he fell on January 8, 2025. But Dr. Failinger does not address that Claimant's right knee MRI was taken on January 29, 2025, and Claimant's left knee MRI was taken on March 18, 2025, nearly two months later.

43. While their opinions on causation are brief, Drs. McNair and Chrastil both attribute Claimant's need for bilateral knee arthroplasties to an acceleration of Claimant's severe osteoarthritis as indicated by the negative change in his symptoms after Claimant's January 8, 2025 industrial injury. As Claimant's treating physicians, the ALJ finds their opinions carry persuasive weight.

44. Claimant has established by a preponderance of the evidence that his January 8, 2025 industrial injury more likely than not aggravated or accelerated both his left knee and his right knee moderately severe tricompartmental osteoarthritis.

45. Claimant has established by a preponderance of the evidence that the requested bilateral total knee arthroplasty are reasonable, necessary, and related to his January 8, 2025 industrial injury.

46. Claimant has established by a preponderance of the evidence that the requested controlled thermal therapy is reasonable, necessary, and related to his January 8, 2025 industrial injury.

Conclusions of Law

A. The purpose of the Act 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. § 8-40-102(1), C.R.S. Claimant shoulders the burden of proving entitlement to benefits by a preponderance of the evidence. § 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, 318 (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 – and a workers' compensation claim shall be decided on the merits. § 8-43-201, C.R.S.

B. Assessing weight, credibility, and sufficiency of evidence in Workers' Compensation proceedings is the exclusive domain of the administrative law judge. *Univ. Park Care Ctr. v. Indus. Claim Appeals Off.*, 43 P.3d 637, 641 (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*. 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. *Bodensieck v. Indus. Claim Appeals Off.*, 183 P.3d 684, 687 (Colo. App. 2008).

C. The weight and credibility to be assigned expert testimony is a matter within the discretion of the ALJ. *Cordova v. Indus. Claim Appeals Off.*, 55 P.3d 186, 191 (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. *Colo. Springs Motors, Ltd. v. Indus. Comm'n*, 165 Colo. 504, 506 (1968).

D. 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 Off.*, 5 P.3d 385, 389 (Colo. App. 2000).

E. An aggravation of a pre-existing condition is compensable. *Subsequent Injury Fund v. Thompson*, 793 P.2d 576, 580 (Colo. 1990) ("When a pre-existing

condition is aggravated by an employee's work, the resulting disability is a compensable industrial injury."); *see Seifried v. Indus. Comm'n*, 736 P.2d 1262, 1263 (Colo. App. 1986) ("[I]f a disability were 95% attributable to a pre-existing, but stable, condition and 5% attributable to an occupational injury, the resulting disability is still compensable if the injury has caused the dormant condition to become disabling."); *Archuletta v. Concrete Frame Assocs., Inc.*, W.C. No. 4-951-597-03 (ICAO, June 24, 2016).

F. "[T]he respondents are liable if employment-related activities aggravate, accelerate, or combine with a pre-existing condition to cause a need for medical treatment." *Dietrich v. Estes Express Lines*, W.C. No. 4-921-616-03 (ICAO, Sep. 9, 2016). "Pain is a typical symptom from the aggravation of a pre-existing condition. The claimant is entitled to medical benefits for treatment of pain, so long as the pain is proximately caused by the employment-related activities and not the underlying pre-existing condition." *Id.* (citing *Merriman v. Indus. Comm'n*, 120 Colo. 400, 210 P.2d 448 (1949)).

G. Once a claimant has established the compensable nature of his work injury, he is entitled to a general award of medical benefits and respondents are liable to provide all reasonable, necessary, and related medical care to cure and relieve the effects of the work injury. § 8-42-101, C.R.S.; *see Grover v. Indus. Comm'n*, 759 P.2d 705, 709 (Colo. 1988); *see generally Urban v. City of Colo. Springs*, W.C. No. 5-180-359 (ICAO, Jan. 2, 2024).

H. But a claimant is only entitled to medical benefits if the care is reasonable, necessary, and the industrial injury is the proximate cause of his need for medical treatment. § 8-41-301(1)(c), C.R.S.; *Standard Metals Corp. v. Ball*, 172 Colo. 510, 515, 474 P.2d 622, 625 (1970). Ongoing benefits may be denied if the current and ongoing need for medical treatment is not proximately caused by the injury arising out of and in the course of the injured worker's employment. *Snyder v. Indus. Claim Appeals Off.*, 942 P.2d 1337, 1339 (Colo. App. 1997).

I. “The issue of whether medical treatment is necessitated by a compensable aggravation or a worsening of the claimant’s pre-existing condition is one of fact for resolution by the ALJ based upon the evidentiary record.” *Dietrich v. Estes Express Line*, W.C. No. 4-921-616-03 (ICAO, Sep. 9, 2016). The question of whether the need for treatment is causally related to the industrial injury is one of fact. *Walmart Stores, Inc. v. Indus. Claim Appeals Off.*, 989 P.2d 251, 252 (Colo. App. 1999).

J. Similarly, the question of whether medical treatment is reasonable and necessary to cure and relieve the effects of an industrial injury is also one of fact. *Kroupa v. Indus. Claim Appeals Off.*, 53 P.3d 1192, 1197 (Colo. App. 2002).

K. Where the relatedness, reasonableness, or necessity of medical treatment is disputed, the claimant has the burden to prove that the disputed treatment is casually related to the injury, and reasonably necessary to cure or relieve the effects of the injury. *See Ciesiolka v. Allright Colo. Inc.*, W.C. No. 4-117-758 (ICAO, Apr. 7, 2003).

L. As found, Claimant has established by a preponderance of the evidence that the requested bilateral total knee arthroplasty is reasonable, necessary, and related to his January 8, 2025 industrial injury. Claimant’s fall onto his knees, both of which had pre-existing pathology of “end stage” osteoarthritis but which were not symptomatically preventing Claimant from completing his full duty work, combined with his subsequent immediate and consistent reports that after the fall his symptoms worsened to the point he was unable to complete his full duty work, makes it more likely than not that the January 8, 2025 industrial injury aggravated or accelerated Claimant’s severe tricompartmental osteoarthritis in both his knees.

M. Additionally, the ALJ is unpersuaded by Dr. Failinger’s opinion that Claimant must undergo additional injections before the requested arthroplasties are reasonable under the Medical Treatment Guidelines. Claimant was forthright with his providers about the multitude of injections he underwent between 2020 and

2024. Indeed, Dr. McNair provided Claimant with many of those injections and, in his professional opinion, by March 2025 those injections could provide Claimant with pain relief but the injections "will not provide any regenerative components [to] either his articular cartilage or meniscus." CHE p. 174. And both Drs. McNair and Chrastil opined that Claimant was unlikely to improve with any additional conservative measures. CHE pp. 174, 178-179.

N. Having found that Claimant's pre-existing osteoarthritis in both knees was aggravated or accelerated by his January 8, 2025 industrial injury, and based on Claimant's credible testimony that the ice machine helps with both the swelling and pain in his knees after that injury, the ALJ further concludes that Claimant has established it is more likely than not that the controlled thermal therapy requested by Dr. Cedillo is reasonable and necessary to help relieve Claimant of the effects that injury. The ALJ disregards Dr. Failinger's opinion to the contrary.

Order

It is therefore ordered that:

1. Claimant's request for authorization of bilateral total knee arthroplasties as recommended by Dr. Chrastil are approved as reasonable, necessary, and casually related to Claimant's January 8, 2025 industrial injury. Payment shall be in accordance with the Colorado workers' compensation medical benefits fee schedule.

2. Claimant's request for authorization of the at-home controlled thermal therapy recommended by Dr. Cedillo is approved as reasonable, necessary, and casually related to Claimant's January 8, 2025 industrial injury. Payment shall be in accordance with the Colorado workers' compensation medical benefits fee schedule.

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

Signed: December 17, 2025.

Robin E. Hoogerhyde

Robin E. Hoogerhyde
Administrative Law Judge

NOTE: If you are dissatisfied with the ALJ's order, you may file a Petition to Review the order with the Denver Office of Administrative Courts, 1525 Sherman St., 4th Floor, Denver, CO 80203. You must file your Petition to Review within twenty (20) days after mailing or service of the order, as indicated on certificate of mailing or service; otherwise, the ALJ's order will be final. You may file the Petition to Review by mail, as long as the certificate of mailing attached to your petition shows: (1) that you mailed it within twenty (20) days after mailing or service of the order of the ALJ; and (2) that you mailed it to the above address for the Denver Office of Administrative Courts. You may file your Petition to Review electronically by emailing the Petition to Review to the following email address: oac-ptr@state.co.us. If the Petition to Review is emailed to the aforementioned email address, the Petition to Review is deemed filed in Denver pursuant to section 8-43-301, C.R.S. and OACRP Rule 27. 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 further information regarding procedures to follow when filing a Petition to Review, see OACRP Rule 27. You may access a petition to review form at: http://www.colorado.gov/dpa/oac/forms-WC.htm.

Office of Administrative Courts

State of Colorado

Workers' Compensation No. WC 5-291-910-001

Issues

- Whether Respondent proved by a preponderance of the evidence Claimant was an Independent Contractor pursuant to 8-40-202(2) C.R.S.
- Whether Claimant proved by a preponderance of evidence he sustained a compensable work injury arising out of and in the course of employment with Respondent.
- What is the Claimant's average weekly wage (AWW)?
- Whether Claimant proved by a preponderance of the evidence that Respondent is subject to penalties pursuant to 8-43-408.
- Whether Respondent has proven by a preponderance of the evidence that Claimant violated a safety rule subjecting him to a 50 percent reduction in his benefits.

Stipulations

The parties entered into the following stipulations:

1. If the claim is found compensable, the physicians Claimant has seen related to his work injury are authorized.
2. If the claim is found compensable, Claimant is entitled to temporary total disability (TTD) benefits from November 2, 2024 and ongoing.

Findings of Fact

1. On November 1, 2024, Claimant was performing roofing work on a house in the Cripple Creek area when he fell, sustaining life threatening injuries. Claimant's injuries include an epidural hematoma with superior sagittal sinus rupture, scattered subarachnoid hemorrhages, zygomatic arch fracture, periorbital right eye hematoma, injury to the right shoulder, back and neck pain.

2. As a result of the injury, Claimant has received medical care consisting of a Flight for Life to Penrose Hospital where he underwent a decompressive craniotomy. followed by a lengthy hospitalization with rehabilitation. Claimant continues to treat, and Claimant is not at maximum medical improvement (MMI).
3. Claimant testified that he remembers working and then eight days later waking up in the hospital. According to the Claimant, the last memory he has prior to the fall is eating his lunch, around noon. Claimant testified that he still has problems with his memory, especially his short term memory.
4. Claimant testified he was hired by Wilmer Cuevar of CR Roofing to help him install a metal roof on a house in Cripple Creek. According to Claimant he has known Mr. Cuevar for around 10 years, both personally and professionally. According to Claimant, he has worked for Mr. Cuevar as a roofer on numerous occasions prior to being hired for the Cripple Creek project.

5. According to Claimant, Mr. Cuevar verbally offered him the job to install a metal roof. There was no written contract entered into between Claimant and CR Roofing concerning the job. Clamant testified that he was to be paid $400.00 per day until the roof was completed. Claimant also testified that when Mr. Cuevar offers him a job he asks about the pay and, depending on the amount, either accepts or declines it.

6. Claimant testified that he usually gets paid a daily rate for roofing jobs. Claimant went on and said that most of the jobs he works on are those that pay by the day with his pay usually being in the range of $200.00 to $250.00 a day. Furthermore, Claimant testified that in the six months prior to the Cripple Creek job, he was very busy working Monday

through Saturday which was the case year round although in the winter months weather might prevent him from working such a schedule.

7. The materials to complete the roofing project were provided by Respondent but Claimant provided his own tools to perform the work. Claimant was not given a specific time period by which he had to complete the metal roofing. Neither Respondent nor anyone from CR Roofing provided Claimant any training.

8. Claimant testified that there were two individuals who assisted on the roofing project: Nettie Zelaya and another person who went by the nickname “the Cat”. Claimant knew Mr. Zelaya and the Cat from working on other roofing jobs. Claimant contacted Nettie and asked if he could help Mr. Cuevar with the house in Cripple Creek. Mr. Cuevar hired the Cat himself. Claimant testified that Mr. Cuevar would give Claimant money in addition to his own daily pay in order to pay Nettie. Mr. Cuevar paid Nettie after the Claimant was injured. Mr. Cuevar paid the Cat himself.

9. Claimant testified that while he was the expert in metal roofing, when there was a need for additional materials or if there was an issue with the project, he would go to Mr. Cuevar who in turn would advise Respondent.

10. Claimant has been a roofer for approximately 12 years and understands how to safely perform his job based upon various safety classes he has taken along with his experience. Claimant knows that when working more than 6 feet off the ground, he needs to use a harness, rope and anchor in order to prevent falls. Claimant testified that he provided his own rope and harness while working on the Cripple Creek project. Claimant testified that the harness and rope he was using were about 6 months old and were in good condition. Claimant went on to say that when he arrived at the house on his first day, Mr. Cuevar installed the anchors and the ropes that attached to the anchors. When getting on a roof Claimant puts his harness on, climbs up the ladder, and then when he gets to the top of the ladder he ties off to the rope that extends down from the anchor.

11. At hearing, Claimant denied being told by Respondent or Mr. Cuevar about using safety equipment while working on the roof. There was no credible evidence presented that Claimant was provided written safety rules by either Respondent or Mr. Cuevar.

12. On cross examination, Claimant agreed that he worked for CR Roofing when he had time and was free to work for other roofing companies if he so desired. Claimant also testified that his pay is variable depending on what roofing material is being used and the pitch of the roof.

13. Claimant was paid two times prior to being injured; once by check and once in cash. The check was made out to the Claimant personally and not to a business. Claimant testified that he cashed the check and paid Nettie what he was owed after he deducted his own pay. According to Claimant, Mr. Cuevar determined what Nettie was to be paid.

14. Claimant has never owned his own roofing or construction business. Claimant testified that he obtains roofing jobs through people he knows and by asking them if they had work or knew anyone else who had work. Sometimes people will call him asking if he is available to do a job. Claimant will sometimes decline taking a job due to pay or if it is inconvenient. Claimant does not give estimates as to what the cost would be to complete a particular job.

15. Wilmer Cuevar, owner of CR Roofing testified that his company obtains labor for other roofing companies. In other words, CR Roofing provides the labor and the roofing company that hires CR Roofing would provide the materials. In Claimant's case, PrimeCo provided the materials and CR Roofing obtained the labor which included Claimant.

16. According to Mr. Cuevar, PrimeCo contacted him to work on two houses up in Cripple Creek, one of which was the house that had the metal roof. Mr. Railey contacted Mr. Cuevar to find somebody to work on the metal roof which apparently needed to be done "soon". According to Mr. Cuevar, CR Roofing was to be paid approximately $6,500.00 for the roofing project but CR Roofing had to find the labor. There was no written contract between PrimeCo and CR Roofing.

17. Mr. Cuevar testified that CR Roofing has three or four family members but when he has larger projects, he will get additional help. Mr. Cuevar gets the additional workers from friends and other places. Mr. Cuevar contacted Claimant about a week before the metal roofing project started. At this initial call, Claimant advised Mr. Cuevar he was busy but Claimant called Mr. Cuevar back later and said he could do the work. Mr. Cuevar acknowledged that the agreement between him and Claimant was oral in nature and there was no written contract.

18. Mr. Cuevar testified that initially he and a Mr. Fraynor started working on the roofing project. Mr. Fraynor was a friend of Mr. Cuevar's and had arranged for other workers to show up and do the metal roofing. When the other workers failed to show up, Mr. Cuevar contacted Claimant. Mr. Cuevar also hired the Cat to work on the roof. Mr. Cuevar went on to say that Claimant told him he needed an extra person to do the job to which Mr. Cuevar acquiesced to the hiring of Nettie.

19. According to Mr. Cuevar, he set aside a lump sum amount of $5,200.00 to pay Claimant and the other workers for the project. Mr. Cuevar stated it was up to Claimant and the other workers how to divide the money between the three. Mr. Cuevar went on to say that Claimant never set a specific sum of money needed to perform the work, rather he told the Claimant, the Cat and Nettie that there was $5,200.00 available for the job if they wanted to work. Furthermore, Mr. Cuevar testified that even though the project wasn't finished and CR Roofing has not been paid by PrimeCo, he still paid Claimant through the date he was injured as well as Nettie and the Cat.

20. Mr. Cuevar admitted that if Claimant, Nettie and the Cat did not perform the roofing work properly CR Roofing would be responsible to PrimeCo to correct the situation.

21. At the time of the injury, neither CR Roofing nor PrimeCo had Workers Compensation insurance coverage.

22. Mr. Cuevar was not present at the work site the day Claimant was injured. However, when he was there on prior days, Mr. Cuevar testified when he saw Claimant on the roof, he was wearing a harness, using a rope, and was doing everything right in regard to safety.

23. Antonio Rodriguez Mesa, a painter who was at the job site the day Claimant was injured testified that while there he asked Mr. Railey, the owner of PrimeCo, why Claimant wasn't wearing his harness. Mr. Mesa testified that also he asked Claimant why he wasn't wearing a harness to which Claimant allegedly replied that he had been a roofer for many years. On cross examination, Mr. Mesa agreed he did not witness the fall and was never present when Claimant was working on the roof. Furthermore, Mr. Mesa conceded that Claimant was on the ground when he observed him without having his harness on.

24. Ryan Railey, owner of PrimeCo testified that his company offers a variety of home construction services including painting, siding, windows, decks and roofing. However, Mr. Railey is the sole employee of PrimeCo and uses subcontractors to perform the work. The subcontractors used by PrimeCo are specialists in their trades, one of whom is CR Roofing.

25. According to Mr. Railey, he contacted CR Roofing in spite of it having no experience with metal roofs. Mr. Railey went on to explain that he contacted CR Roofing because apparently it could find someone to assist with the installation of the metal roof. The total amount PrimeCo was going to pay CR Roofing for the project was $5,200.00.

26. PrimeCo did not set the time and performance of the roofing project and CR Roofing. Mr. Railey testified that the project was supposed to take four days, but it took longer due to the pitch of the roof and some weather challenges.

27. Mr. Railey was present at the job site on the day Claimant was injured. While there Mr. Railey noticed that the safety ropes and harnesses were attached to anchors. Mr. Railey went on to say that he requires and enforces a rope off, tie off rule and spoke with Claimant multiple times prior to this injury concerning this rule. On the day of the injury, Mr. Railey specifically reminded Claimant of the tie off rule, but Claimant was on the ground at that time. Mr. Railey admitted he left the job site prior to the incident, and it would be speculative as to whether or not Claimant was properly tied off.

Conclusions of Law

Generally

A. The purpose of the Workers' Compensation Act of Colorado, §§ 8-40-101, et seq., C.R.S. is to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of litigation. See § 8-40-102(1), C.R.S. 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.

B. 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).

C. The ALJ's factual findings concern only evidence and inferences found to be dispositive of the issues involved; the ALJ has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to the above findings as unpersuasive. Magnetic Eng'g, Inc. v. Indus. Claim Appeals Office, 5 P.3d 385 (Colo. App. 2000).

D. Any person, Company or Corporation by contracting out any part or all of its work would be considered an employer and liable to compensate the subcontractor as well as its employers for injuries or death resulting from that work. See C. R. S. 8.4.41.401 (g)

The purpose of these provisions is to prevent an employer from evading liability for Workers Compensations benefits by contracting out work instead of directly hiring workers. *Curtiss v. GSX Corp. 774 P.2d 873 (Colo. 1989)*. The General Assembly intended that Workers' Compensation "be the remedy for all contractors 'downstream' from the one contracting out work regardless of how many intermediate contractors there might be." *Buzard v. Super Walls, Inc. 681 P.2d 520 (Colo.1984).* If, however, the injured individual is excluded from the definition of an employee under C. R. S. 8-40-202(2) then the employer is free from the imposition of liability for Workers' Compensation benefits.

Pursuant to § 8-40-202(2)(a), C. R. S. "any individual who performs

services for pay for another shall be deemed to be an employee" unless the person "is free from control and direction in the performance of the services, both under the contract for performance of service and in fact and such individual is customarily engaged in an independent…business related to the service performed." Moreover, pursuant to 8-4-202(2)(b)(I), C. R. S. independence may be demonstrated through a written document that complies with the statute. *See* § 8-40-202(2)(b), C. R. S.

If the evidence establishes that Claimant was performing services for pay, and there is no written document establishing Claimant's independent contractor status, the burden of proof rests upon the Respondents to rebut the presumption that Claimant was an employee. *Baker v. BV Properties, LLC*, W.C. No. 4-618-214 (ICAO, Aug. 25, 2006). The question of whether Respondents have overcome the presumption and established that Claimant was an independent contractor is one of fact for the ALJ. *Nelson v. Industrial Claim Appeals Off. of Colo.*, 981 P.2d 210 (Colo. App. 1998). Section 8-40-202(2)(b)(ii), C. R. S. enumerates nine factors to be considered in evaluating whether an individual is deemed an employee or independent contractor. However, the test considered by the Colorado Supreme Court in the unemployment insurance case of Indus. *Claims Appeals Office v. Softrock Geological Services*, 325 P.3d 560 (Colo. 2014) concerning whether worker is an employee or an independent contractor applies to Workers' Compensation claims. The test requires the analysis of not only the nine factors enumerated in 8-40-202(2)(b)(II), C. R. S. but also the nature of the working relationship and any other relevant factors. *Pella Windows & Doors, Inc. v. Industrial Claim Appeals Off.*, 458 P.3d 128 (Colo. App. 2020). The *Softrock* decision noted indicia that would normally accompany the performance of an ongoing separate business in the field and included whether: the worker used an independent business card,

listing, address, or telephone; had a financial investment such that there was a risk of suffering a loss on the project; used his or her own equipment on the project; set the price for performing the project; employed other to complete the project; and carried liability insurance. *Softrock Geological Services*, 325 P.3d 565.

The nine factors in § 8-40-202(2)(b)(II), C. R. S. are:

1. Require the worker to work exclusively for the person for whom services are performed; except that the individual may choose to work exclusively for such person for a finite period of time specified in the document.

2. Establish a quality standard for the individual; except that the person may provide plans and specifications regarding the work but cannot oversee the actual work or instruct the individual as to how the work will be performed.

3. Pay a salary or at an hourly rate instead of at a fixed or contract rate.

4. Terminate the work of the service provider during the contract period unless such service provider violates the terms of the contract or fails to produce a result that meets the specifications of the contract.

5. Provide more than minimal training for the individual.

6. Provide tools or benefits to the individual; except that materials and equipment may be supplied.

7. Dictate the time of performance; except that a completion schedule and a range of negotiated and mutually agreeable work hours may be established.
8. Pay the service provider personally instead of making checks payable to the trade or business name of such service provider.

9. Combine business operations of the person from whom services is provided in any way with the business operations of the service provider instead of maintaining all such operations separately and distinctly.

The existence of any one of these factors is not conclusive evidence that the individual is an employee. § 8-40-292(2)(b)(III). Likewise, it is not necessary that all the elements be met in order for the court to find that Claimant is not an employee. *See Nelson v. Industrial Claim Appeals Off*., 981 P.2d 210 (Colo App. 1998), *cert. den.* Section 8-40-202(a) notes, "For purposes of this section, the degree of control exercised by the person for whom the service is performed over the performance of the service or over the individual performing the service shall not be considered if such control is exercised pursuant to the requirements of any state or federal statute or regulation."

In the case at hand, there was no credible evidence that there was a written document between Claimant and CR Roofing or between CR Roofing and PrimeCo concerning Claimant being an independent contractor. Therefore, Respondent has the burden of proof to prove by a preponderance of the evidence that Claimant was an independent contractor at the time he was injured.

Based on the totality of the evidence, the ALJ finds and concludes that Respondent failed to meet its burden of proof. If there was an issue with Claimant's work, CR Roofing was ultimately responsible to PrimeCo who, in turn, was responsible to the homeowner. Moreover, Respondents failed to establish Claimant was customarily engaged in an independent business of, or related to, roofing. For example, CR Roofing paid Claimant directly – personally – and did not pay him via a trade or business name. In fact, Claimant denied owning his own business. CR Roofing also paid Claimant $400.00 per day and only for the days he worked up until the day he was injured. It was never established that Claimant used an independent business card, a business listing, a business address, or a business telephone number. It was also not established that Claimant had any financial risk based on the success or

failure of the project. There was no credible evidence that Claimant set the price for the job. Lastly, it was not established that Claimant employed others to complete the roofing project. Claimant credibly testified that Mr. Cuevar gave him permission to obtain Nettie to assist and that Mr. Cuevar paid Nettie.

The ALJ recognizes that Claimant provided his own tools, set his own hours, was able to work for other roofing contractors, and was provided no training. However, the ALJ does not consider such evidence to be persuasive in determining if Claimant was an employee or an independent contractor under the Workers' Compensation Act on the day of the accident.

Based on a complete review of the evidence, the ALJ concludes that Claimant was an employee of CR Roofing and that PrimeCo is Claimant's statutory employer and is responsible for Claimant's workers' compensation benefits.

E. Section 8-42-112(1)(a) provides for a 50% reduction in compensation in cases of willful failure to use safety devices provided by the employer or to obey any reasonable rule to use safety devices provided by the employer or to obey any reasonable rule adopted by the employer for Claimant's safety. Under these statutory provisions, it is Respondents burden to prove every element justifying a reduction in compensation for a willful failure to obey a safety rule or use a safety device. *Triplett v. Evergreen Builders, Inc.* W.C. No. 4-578-463 (May 13, 2004). The question of whether the Respondents met their burden to prove a willful safety rule violation or failure to use a safety device is generally one of fact for the ALJ to determine. See *Loris Family Dining, Inc. v. Industrial Claim Appeals Office*, 907 P.2d 715 (Colo. App 1995). The term "willful" connotes deliberate intent, and mere carelessness, negligence,

forgetfulness, remissness, and oversight does not satisfy the statutory standard. *Bennett Properties Co. v. Industrial Commission*, 165 Colo. 135, 437 P.2d 548 (1968). Respondents are not required to present direct evidence concerning the Claimant's state of mind or prove the Claimant had the rule in mind when he did the prohibited act. Rather a "willful" violation may be inferred from evidence that the Claimant knew the safety rule and did the prohibited act. Safety rules do not have to be written or posted in order to satisfy the requirements of section 8-42-111(1)(b). As stated in *Bennett Properties Co. v. Industrial Commission*, supra. "oral warnings, Prohibitions, and directions are sufficient if given by someone generally in authority."

In the case at hand, there was no testimony from anyone as to why Claimant fell and whether or not Claimant was using his harness and rope when he fell. Claimant testified that he has taken safety classes concerning roofing work and understands how to use a harness and rope to prevent falls. Any theory as to why Claimant fell would be speculative. Based on the evidence presented, it is concluded that Respondent failed to prove Claimant willfully violated a safety rule.

F. Section 8-42-102(2) provides that compensations is payable based on the employee's average weekly earnings "at the time of the injury." The statute sets forth several computational methods for workers paid on an hourly, salary, per diem basis etc. But 8-42-102(3) give the ALJ wide discretion to "fairly" calculate the employee's AWW in any manner that is most appropriate under the circumstances. *Avalanche Industries, Inc. v. Clark, 198 P.3d 589 (Colo. 2008).* The "entire objective" of AWW calculation is to arrive at a "fair approximation" of the claimant's actual wage loss and diminished earning capacity because of the industrial injury. *Campbell v. IBM Corp., 867 P.2d 77 (Colo. App 1993)*

Claimant's job with CR Roofing paid $400.00 a day until the project was

completed. However, the $400.00 per day was for metal roofing. Claimant testified that most of his work he performs he gets paid a daily rate, but it is in the range of $200.00 to $250.00 per day. Claimant credibly testified that in the six months prior to his fall he usually worked six days a week. However, during the winter he would miss workdays due to inclement weather. Based on this, the fairest way to calculate Claimant's AWW is to take the $250.00 per day and assume an average of five-day work throughout the year. It is therefore concluded that Claimant's AWW is $1250.00.

Section 8-43-408(5), C.R.S. (2021) provides,

In addition to any compensation paid or ordered…an employer who is not in compliance with the insurance provisions of [the Act] at the time an employee suffers a compensable injury or occupational disease shall pay an amount equal to twenty-five percent of the compensation or benefits to which the employee is entitled to the Colorado uninsured employer fund created in section 8-67-105.

G. The penalty for failure to insure only applies to indemnity benefits; it does not apply to medical benefits. *Industrial Commission v. Hammond*, 77 Colo, 414, 236 O. 1006 (1925); *Jacobsen v. Doan*, 319 P.2d 975 (Colo. 1957); *Wolford v. Support, Inc.* W.C. No. 4-155-231 (February 13, 1998). Although the ALJ is not aware of a case directly on point, statutory interest is not properly considered "compensation or benefits" within the meaning of 8-43-408(5). Interest is a statutory right intended to secure claimants the present value of benefits to which they are entitled by creating an equitable remedy for the lost time value of money during the actual accrual period. *Subsequent Injury Fund v. Trevethan*, 809 P.2d 1098 (Colo. App. 1991). Similarly, the ALJ concludes that the penalties awarded herein are not "compensation or benefits". Employer has been ordered to pay Claimant TTD from November 2, 2024, up through November 25, 2025 in

the amount of $46,309.52 and shall continue to pay TTD from November 26, 2025 and ongoing until terminated by law.

Twenty-five percent (25%) of the compensation awarded is $11,577.38 which shall be sent to the Division of Workers' Compensation Revenue Assessment Unit, 707 17th Street Suite 2300, Denver, Colorado, 80202.

H. Employer was not insured for workers' compensation liability at the time of Claimant's injury. Under 8-43-408(2), Employer must pay to the trustee of the Division of Workers' Compensation ["Division"] and amount equal to the present value of all unpaid compensation or benefits, computed at 4% per annum. No medical bills were submitted at hearing, so no specific payments for medical benefits are being awarded herein. In the alternative, Employer may file a bond with the Division signed by two or more responsible sureties approved by the Director of by some surety company authorized to do business in Colorado.
Employer may contact the Division Trustee for assistance with its obligations in this regard. The Division Trustee may be contacted through the Division's customer service line at 303-318-8700 or by email to Mariya Cassin mariya.cassin@state.co.us The Division can also help Employer calculate medical payments owed under the fee schedule.

ORDER

It is therefore ordered that:

1) PrimeCo is the Claimant's Statutory Employer and liable for payment of Claimant's Workers' Compensation benefits.

2) Neither PrimeCo nor CR Roofing had a policy of Workers' Compensation insurance in effect the date Claimant was injured.

3) Claimant's claim for a head injury, right shoulder injury, and cervical spine injury from his November 1, 2024 fall is compensable.

4) Employer shall pay for medical treatment from authorized providers reasonably needed to cure and relieve the effects of Claimant's compensable injury including but not limited to Flight for Life to Penrose Hospital, Penrose Hospital, CommonSpirit Orthopedics/John Eakin, MD, Eye Associates of Colorado/Matthew Miller, MD, and Peak Vista Community Health.

5) Claimant's AWW is $1,250.00 with a TTD rate of $833.33 per week.

6) Employer shall pay Claimant's TTD from November 2, 2024 through November 25, 2025 in the amount of $46,309.52. Employer shall pay Claimant TTD from November 26, 2025 and continuing until terminated by law.

7) In lieu of direct payment of the above compensation and benefits, Employer shall:

    a. Deposit $46,309.52 with the Division of Workers Compensation, as trustee to secure payment of all unpaid compensation and benefits awarded along with interest at 8% per annum on all benefits not paid when due. The check shall be sent to the Division of Workers' Compensation 707 17th Street, Suite 2300, Denver CO 80202, Attention: Mariya Cassin, Division trustee; or

    b. File a surety bond in the amount of $46,309.52 with the Division of Workers' Compensation within ten (10) days of this order:

        i. Signed by two or more responsible sureties who have received approval of the Division of Workers' Compensation; or

        ii. Issued by a surety company authorized to do business in Colorado. The bond shall guarantee payment of the compensation, penalties and benefits awarded.

8) Employer shall pay $11,577.88 to the Colorado Uninsured Employer Fund. The check shall be sent to the Division of Workers' Compensation, Revenue Assessment Unit, 707 17th Street, Suite 2300, Denver CO 80202.

9) Employer shall notify the Division of Workers Compensation and Claimant's attorney of payments made pursuant to this order.

10) Filing any appeal, including a petition to review shall not relieve Employer of the obligation to pay the designated sum to the Claimant, to the Trustee or to file the bond as required in this order.

11) Respondents request for a 50% reduction in indemnity benefits for a safety violation is denied and dismissed.

12) Any interest that may accrue on a cash deposit shall be paid to the parties receiving distribution of the principal of the deposit in the same proportion as the principal unless an agreement or Order authorizing distribution provides otherwise.

13) All issues not decided herein are reserved for future determination.

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Dated: 12-18-2025

/s/ Michael A. Perales

Michael A. Perales

Administrative Law Judge

Office of Administrative Courts
State of Colorado
Workers' Compensation Nos. 5-144-552-002 and 5-277-759-002

Issues

- Has Claimant demonstrated, by a preponderance of the evidence, that on July 2, 2024, she suffered an injury that arose from and in the course and scope of her employment with Employer (WC 5-277-759)?

- If Claimant does not prove a new compensable injury, has Claimant demonstrated, by a preponderance of the evidence, that her claim related to an admitted injury that occurred on July 25, 2020, (WC 5-144-552) should be reopened pursuant to Section 8-43-303, C.R.S. based on a change of condition?

- If Claimant proves a compensable injury for claim WC 5-277-759 **or** proves reopening of claim WC 5-144-552, has Claimant demonstrated, by a preponderance of the evidence, that treatment she has received for her left knee (including a left total knee arthroplasty) constitutes reasonable medical treatment necessary to cure and relieve her from the effects of either work injury?

Stipulation

At the hearing, the parties stipulated that if WC 5-277-759 is found compensable, or if WC 5-144-552 is reopened, Claimant is entitled to temporary total disability (TTD) benefits beginning July 9, 2024 and ongoing, until terminated by law.

Findings of Fact

1. Claimant has worked at Employer's resort/hotel since 1992. She works as a seamstress. Her job duties include making employee uniforms.

2. On July 25, 2020, Claimant suffered a work related injury to her left knee. The injury occurred while Claimant was pushing a cart full of wet towels and the cart became stuck on a door handle. At that time, Claimant felt and heard a cracking noise in her left knee.

3. Respondents admitted liability for Claimant's July 25, 2020, work injury.

4. Following July 25, 2020, work injury, Claimant received treatment at Aspen Medical Care. She underwent treatment that included use of a knee brace, physical therapy, a Zilretta injection, and anti-inflammatories.

5. On August 2, 2020, Claimant was seen by Dr. Tomas Pevny. At that time, Dr. Pevny ordered magnetic resonance imaging (MRI) of Claimant's left knee. Thereafter, the recommended left knee MRI was performed and showed advanced patellofemoral degenerative changes.

6. On September 29, 2020, Claimant returned to Dr. Pevny. On that date, Dr. Pevny diagnosed Claimant with unilateral primary osteoarthritis of the left knee. Dr. Pevny recommended that Claimant undergo a left total knee arthroplasty. Claimant elected not to undergo surgery.

7. On June 13, 2022, Claimant was seen at Aspen Medical Care by Shari Kiehbaum, PA-C. In the medical record of that date, PA Kiehbaum noted that Claimant wanted to "discuss case closure. [Claimant] does not want to pursue surgery for her knee injury." Claimant reported ongoing symptoms that included pain when walking up and down stairs, and intermittent sharp pain in the medal joint line of her left knee. PA Keihbaum noted that a left total knee arthroplasty had been recommended, however Claimant declined pursuing any surgical intervention. As a result, PA Keihbaum noted that Claimant had reached maximum medical improvement (MMI). PA Keihbaum also noted that Claimant had been working for two years without any work restrictions. Dr. Haley Hoffman reviewed and signed PA Keihbaum's report.

8. On June 28, 2022, Respondents filed a Final Admission of Liability (FAL) for Claimant's July 25, 2020 work injury. In that document, Respondents admitted for an MMI date of June 13, 2022. In addition, the FAL noted no permanent impairment rating, and no post-MMI maintenance medical treatment.

9. Claimant testified that after she was placed at MMI, she continued to work full duty without restrictions.

10. Claimant also testified regarding an incident that occurred on July 2, 2024. Specifically, she was carrying several uniforms to her work area. While carrying these items up a ramp, she felt a cracking sound in her left knee followed by pain. Claimant further testified that this was the same sound and feeling she had experienced when she was previously injured. Claimant reported this incident to Employer and was sent for medical treatment.

11. On July 2, 2024, Claimant was seen at Aspen Medical Care by Dr. Jenny Connery. At that time, Dr. Connery recorded Claimant's July 2, 2024 mechanism of injury as "was walking at work and felt sudden medial knee pain and swelling". Dr. Connery ordered x-rays of Claimant's left knee.

12. On July 3, 2024, x-rays of Claimant's left knee were performed. These x-rays showed mild tricompartmental osteoarthritis with no acute bony abnormalities.

13. On July 8, 2024, Claimant was seen at Aspen Medical Care by Tracie Walterscheid, PA-C. In the medical record of that date, PA Walterscheid opined that Claimant had "acute on chronic left knee pain". PA Walterscheid ordered magnetic resonance imaging (MRI) of Claimant's left knee and referred Claimant for an orthopedic evaluation. PA Walterscheid also noted "if no acute findings on MRI or additional [orthopedic] recommendations, will proceed with case closure as [osteoarthritis] is not work related". PA Walterscheid's July 8, 2024, recommendations were reviewed and co-signed by Dr. Bryan Gieszl.

14. On July 12, 2024, Claimant was seen by Dawn Hershberger, PA-C. At that time, Claimant reported constant throbbing pain in her left knee. Also on that date, PA Herschberger performed a corticosteroid injection to Claimant's left knee.

15. On July 22, 2024, Claimant underwent an MRI of her left knee. The MRI showed severe osteoarthritis of the medial compartment with grade 4 chondromalacia and a complex multidirectional meniscal tear. In addition, there was chondromalacia in the patellofemoral compartment (grade 4) and in the lateral compartment (grade 3).

16. On September 25, 2024, Claimant was seen by Dr. Daniel O'Connor for an orthopedic consultation. At that time, Dr. O'Connor noted that Claimant had a "recent fragility fracture of her sacrum" and recommended consultation to address improving Claimant's "bone health" prior to performing a total knee arthroplasty. In the interim, Dr. O'Connor recommended continued conservative treatment, including a repeat corticosteroid injection.

17. On February 4, 2025, Dr. O'Connor performed a left total knee arthroplasty.

18. At the request of Respondents, Dr. Mark Failinger reviewed Claimant's medical records and issued a written report. In the report dated September 30, 2025, Dr. Failinger noted that he had reviewed records beginning in August 1994 and up to and including a record dated August 18, 2025. Dr. Failinger noted that Claimant has a lengthy history of left knee issues and injuries as far back as December 6, 2003. Dr. Failinger also noted that following the admitted 2020 left knee injury, the MRI showed bone on bone degenerative changes in the medial compartment. Dr. Failinger noted that a total knee replacement had been recommended at that time, but Claimant declined and returned to working full duty with no work restrictions.

19. In addition, Dr. Failinger opined that given the pre-existing condition of Claimant's left knee following the 2020 injury, the action of walking on July 2, 2024, would not have caused an acute injury to her knee. In support of this opinion, Dr. Failinger noted that the July 22, 2024, MRI showed advanced and severe osteoarthritis.

Dr. Failinger explained that finding is consistent with severe and long-standing osteoarthritis. Dr. Failinger further noted that walking is a ubiquitous activity of daily life. Dr. Failinger opined that Claimant's work activities on July 2, 2024 (specifically walking) would not have aggravated or accelerated the degenerative condition of Claimant's left knee.

20. Dr. Failinger's deposition testimony was consistent with his written report. Dr. Failinger testified that he reviewed the August 3, 2020 MRI images and found severe arthritis in the medial compartment and patellofemoral arthritis (or "kneecap arthritis"). Dr. Failinger also testified that he found no indication of any acute or subacute injury in his review of that MRI. Dr. Failinger stated his agreement with Dr. Hoffman's determination that Claimant did not suffer permanent impairment from the July 25, 2020 injury. Dr. Failinger testified that in July 2020, Claimant suffered a temporary aggravation of the underlying osteoarthritis and degenerative joint disease in her left knee.

21. With regard to the July 2, 2024, incident, Dr. Failinger testified that the activity of walking at work on that date did not result in an injury to Claimant's left knee. Dr. Failinger also testified that the pre-existing condition of Claimant's left knee was not worsened or accelerated by that incident. Dr. Failinger explained that the condition of Claimant's left knee is consistent with the natural progression of her pre-existing left knee osteoarthritis that was first diagnosed in December 2018. Dr. Failinger explained that osteoarthritis routinely presents with waxing and waning symptoms as the osteoarthritis progresses. Dr. Failinger further testified that Claimant has end-stage osteoarthritis and symptoms can occur at any time, with or without activity.

22. The ALJ credits the medical records and the opinions of Dr. Failinger and finds that Claimant has failed to demonstrate that it is more likely than not that she suffered a work injury on July 2, 2024. With regard to Claimant's request to reopen her claim regarding a July 2020 injury, the ALJ also credits the medical records and the opinions of Dr. Failinger. The ALJ does find Claimant's testimony regarding the nature and onset of her symptoms to be credible. However, the ALJ specifically credits Dr.

Failinger's testimony that Claimant has end-stage osteoarthritis in her left knee which typically results in the onset of symptoms at any time, with or without activity. The ALJ finds that although Claimant felt pain symptoms while at work in July 2024, those symptoms were not due to Claimant's work activities. Nor did Claimant's work activities result in a worsening of the condition in her left knee. The ALJ specifically credits the June 13, 2022 medical record and notes that at the time of the closure of her 2020 claim Claimant "reported ongoing symptoms that included pain when walking up and down stairs, and intermittent sharp pain in the medal joint line of her left knee". The ALJ also finds that when Claimant experienced left knee symptoms while simply walking on July 2, 2024, it was due to the waxing and waning of symptoms common with end-stage osteoarthritis. Therefore, the ALJ finds that Claimant has failed to demonstrate that it is more likely than not that she suffered a worsening of her condition. Thus, she has likewise failed to demonstrate that it is more likely than not that her 2020 claim should be reopened.

Conclusions of Law

A. 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 which leads the trier-of-fact, after considering all of the evidence, to find that a fact is more probable than not. *Page v. Clark*, 197 Colo. 306, 592 P.2d 792 (1979). 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, *supra*. A Workers' Compensation case is decided on its merits. Section 8-43-201, *supra*.

B. 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.

C. 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).

D. 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. *H & H Warehouse v. Vicory, supra.*

E. At any time within six years after the date of injury, the ALJ may reopen an award on the ground of a change in condition. Section 8-43-303(1), C.R.S. A change in condition refers to "a change in the condition of the original compensable injury or to a change in claimant's physical or mental condition which can be causally connected to the original compensable injury." *Heinicke v. Industrial Claim Appeals Office*, 197 P.3d 222 (Colo. App. 2008). The ALJ is not required to reopen a claim based upon a worsened condition whenever an authorized treating physician finds increased impairment following MMI. *Id.* The party attempting to reopen an issue or claim shall bear the burden of proof as to any issues sought to be reopened. Section 8-43-303(4), C.R.S.

F. As found, Claimant has failed to demonstrate, by a preponderance of the evidence, that on July 2, 2024, she suffered an injury that arose from and in the course and scope of her employment with Employer. As found, Claimant has also failed to demonstrate, by a preponderance of the evidence, that her work activities on July 2, 2024, aggravated, accelerated, or combined with the pre-existing degenerative condition in her left knee to necessitate treatment. As found, the symptoms Claimant experienced on July 2, 2024 were due to the pre-existing and end-stage osteoarthritis in her left knee which (as noted in Dr. Failinger's testimony) can result in the onset of symptoms at any time, with or without activity. As found, the medical records and the opinions of Dr. Failinger are credible and persuasive on this issue.

G. As found, Claimant has failed to demonstrate, by a preponderance of the evidence, that her prior July 2020 claim should be reopened due to a change or worsening of her condition. As found, the onset of Claimant's symptoms was not due to worsening of her 2020 work related injury, but instead due to the pre-existing and end-stage osteoarthritis in her left knee which (as noted in Dr. Failinger's testimony) can result in the onset of symptoms at any time, with or without activity. As found, the medical records and the opinions of Dr. Failinger are credible and persuasive on this issue.

H. All remaining endorsed issues are dismissed as moot.

Order

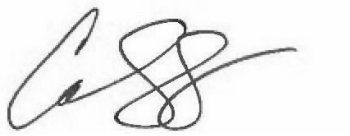
It is therefore ordered:

1. Claimant's claim regarding an alleged date of injury of July 2, 2024, (WC 5-277-759) is denied and dismissed.

2. Claimant request to reopen her claim regarding a July 2, 2020 date of injury (WC 5-144-552) is denied and dismissed.

3. All remaining endorsed issues are dismissed as moot.

Dated December 19, 2025.



Cassandra M. Sidanycz
Administrative Law Judge
Office of Administrative Courts

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 service of the order, as indicated on the certificate of mailing or service; otherwise, the ALJ's order will be final. Section 8-43-301(2), C.R.S. and OACRP 27. You may access a petition to review form at: https://oac.colorado.gov/resources/oac-forms.

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 via email to **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. and does not need to be mailed to the Denver Office of Administrative Courts. **It is also recommended that you provide a courtesy copy of your Petition to Review to the Grand Junction OAC via email at oac-gjt@state.co.us.**

Office of Administrative Courts
State of Colorado
Workers' Compensation No. 5-308-663-001

Issues

- Has Claimant demonstrated, by a preponderance of the evidence, that on June 10, 2025, she suffered an injury arising out of and in the course and scope of her employment with Respondent?
- If the claim is found compensable, has Claimant demonstrated, by a preponderance of the evidence, that at the time of Claimant's injury Respondent did not have workers' compensation insurance coverage?
- If the claim is found compensable, has Claimant demonstrated, by a preponderance of the evidence, that treatment she has received (including, but not limited to treatment at Montrose Memorial Hospital, Western Slope Orthopaedics, and Wellington Neurosurgery Clinic), constitutes reasonable medical treatment necessary to cure and relieve Claimant from the effects of the work injury?
- If the claim is found compensable, has Claimant demonstrated, by a preponderance of the evidence, that she is entitled to temporary total disability (TTD) benefits beginning June 11, 2025, and ending on September 19, 2025?
- If the claim is found compensable, what is Claimant's average weekly wage?

Stipulations

The parties have stipulated to an average weekly wage (AWW) of $375.00.

Stipulated Facts

The parties submitted the following stipulated facts:

1. Claimant worked as a server for Respondent. On June 10, 2025, in the course and scope of her employment with Respondent, Claimant injured her right ankle and back when she fell off a ladder carrying supplies for the restaurant from a storage

area. In the process of the fall her ankle was caught in a rung/step of the ladder. As Claimant fell, she hit her back on a solid object and onto the floor.

2. On June 10, 2025, Claimant left her shift early after the accident and was taken by her father to Montrose Memorial Hospital emergency department (ED). Claimant was diagnosed with a right ankle fracture, and a fracture at the L1 spinal level. Claimant was kept overnight and provided pain medication. She was released with a back brace and cast on her right ankle.

3. On June 19, 2025, Claimant had an appointment with Dr. Jared Sanderford to address the ankle injury. A surgery was proposed.

4. On June 24, 2025, Claimant had an appointment with Intermountain Health Wellington Neurosurgery Clinic to address the L1 compression fracture secondary to the ladder fall. At that time, Claimant was wearing a back brace. She was instructed to continue wearing the back brace and given restrictions to avoid bending, twisting, and to limit lifting to less than ten pounds.

5. On June 26, 2025, Dr. Sanderford performed a closed reduction percutaneous pinning right medial malleolus to repair the fracture. After said surgery, Claimant was to be non-weightbearing, and the use of crutches and/or a walker.

6. On July 9, 2025, Claimant had a post-surgery follow-up appointment with Dr. Sanderford. She was to do touchdown weightbearing with her right foot, but no full weightbearing for another month prior to transition to full weightbearing. In addition, Claimant was taken off of work for another month.

7. On August 7, 2025, Claimant returned to Dr. Sanderford. At that time, Claimant's restrictions were eased to limited standing and walking, no lifting, no climbing, and no ladders.

8. On September 10, 2025, Claimant was seen at Wellington Clinic for her low back compression fracture. Although Claimant was having residual pain, restrictions were eased to fifteen pounds lifting, standing up to two hours at a time, and no ladders.

9. On September 11, 2025, Claimant was seen by Dr. Sanderford. Claimant was released to standing two hours at a time.

10. Claimant missed work from June 11, 2025, to September 19, 2025. Thereafter, Claimant returned to work with Employer on modified duty accommodating her restrictions.

11. Respondent has paid Claimant's medical benefits in the amount of $19,528.64.

12. Respondent has paid Claimant temporary disability benefits in the amount of $1,741.80 (seven payments of $248.84) for the time Claimant missed between July 2, 2025 and September 19, 2025.

Findings of Fact

The ALJ makes the following findings of fact:

1. On June 25, 2025, the Colorado Division of Workers' Compensation (DOWC) sent a letter to Respondent stating "Our records do not indicate that you carried workers' compensation insurance on the date of the claimed injury".

2. On July 28, 2025, the DOWC sent a letter to Claimant that stated "The Division attempted to find the required worker's compensation insurance associated with your employer but was unable to find any insurance coverage."

3. The ALJ finds that Claimant has demonstrated that it is more likely than not that on June 10, 2025, she suffered an injury arising out of and in the course and scope of her employment with Respondent.

4. The ALJ finds that at the time of Claimant's June 10, 2025 work injury Respondent did not have workers' compensation insurance coverage.

5. The ALJ finds that Claimant demonstrated that it is more likely than not that treatment she has received (including, but not limited to treatment at Montrose Memorial Hospital, Western Slope Orthopaedics, and Wellington Neurosurgery Clinic), constitutes reasonable medical treatment necessary to cure and relieve Claimant from the effects of the work injury.

6. The ALJ finds that Claimant has demonstrated that it is more likely than not that she is entitled to temporary total disability (TTD) benefits beginning June 11, 2025, and ending on September 19, 2025.

7. The ALJ accepts the stipulation of the parties and finds that Claimant's AWW for this claim is $375.00.

Conclusions of Law

A. 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 which leads the trier-of-fact, after considering all of the evidence, to find that a fact is more probable than not. *Page v. Clark*, 197 Colo. 306, 592 P.2d 792 (1979). 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, *supra*. A Workers' Compensation case is decided on its merits. Section 8-43-201, *supra*.

B. 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.

C. 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).

D. 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.*

E. As found, Claimant has demonstrated, by a preponderance of the evidence, that on June 10, 2025, she suffered an injury arising out of and in the course and scope of her employment with Respondent.

F. As found, Claimant has demonstrated, by a preponderance of the evidence, that at the time of Claimant's work injury Respondent did not have workers' compensation insurance.

G. Respondents are liable for authorized medical treatment reasonably necessary to cure and relieve an employee from the effects of a work related injury. Section 8-42-101, C.R.S.; *see Sims v. Industrial Claim Appeals Office*, 797 P.2d 777 (Colo. App. 1990).

H. As found, Claimant has demonstrated, by a preponderance of the evidence, that treatment she has received (including, but not limited to treatment at Montrose Memorial Hospital, Western Slope Orthopaedics, and Wellington Neurosurgery Clinic), constitutes reasonable medical treatment necessary to cure and relieve Claimant from the effects of the work injury.

I. To prove entitlement to temporary total disability (TTD) benefits, claimant must prove that the industrial injury caused a disability lasting more than three work shifts, that he left work as a result of the disability, and that the disability resulted in an actual wage loss. *PDM Molding, Inc. v. Stanberg*, 898 P.2d 542 (Colo. 1995). Section 8-42-103(1)(a) C.R.S., *supra*, requires claimant to establish a causal connection between a work-related injury and a subsequent wage loss in order to obtain TTD benefits. *PDM Molding, Inc. v. Stanberg, supra*. 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 prior work. *Culver v. Ace Electric*, 971 P.2d 641 (Colo. 1999). There is no statutory requirement that a claimant establish physical disability through a medical opinion of an attending physician. Claimant's testimony alone may be sufficient to

establish a temporary disability. *Lymburn v. Symbios Logic*, 952 P.2d 831 (Colo. App. 1997). 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 regular employment. *Ortiz v. Charles J. Murphy & Co.*, 964 P.2d 595 (Colo. App. 1998).

J. As found, Claimant has demonstrated, by a preponderance of the evidence, that she entitled to temporary total disability (TTD) benefits beginning June 11, 2025, and ending on September 19, 2025.

K. The ALJ must determine an employee's AWW by calculating the monetary rate at which services are paid the employee under the contract of hire in force at the time of the injury, which must include any advantage or fringe benefit provided to the Claimant in lieu of wages. Section 8-42-102(2), C.R.S.; *Celebrity Custom Builders v. Industrial Claim Appeals Office*, 916 P.2d 539 (Colo. App. 1995).

L. As found, and by stipulation of the parties, Claimant's AWW is $375.00

M. Finally, the ALJ notes that Section 8-42-101(4), C.R.S. specifically provides:

> Once there has been an admission of liability or the entry of a final order finding that an employer or insurance carrier is liable for the payment of an employee's medical costs or fees, a medical provider shall under no circumstances seek to recover such costs or fees from the employee.

Order

It is therefore ordered:

1. Claimant suffered a work injury on June 10, 2025.

2. At the time of Claimant's work injury, Respondent did not have workers' compensation insurance coverage.

3. Respondent shall pay for reasonable, necessary, and related medical treatment Claimant has received (including, but not limited to, treatment with Montrose Memorial Hospital, Western Slope Orthopaedics, and Wellington Neurosurgery Clinic), pursuant to the Colorado Medical Fee Schedule.

4. To the extent that Respondent has paid medical benefits prior to this Order, those medical benefits shall be subject to the Colorado Medical Fee Schedule. Respondent entitled to reimbursement from Claimant's medical providers for medical fees paid above the Colorado Medical Fee Schedule.

5. Respondent shall pay Claimant TTD benefits for the period of June 11, 2025 through September 19, 2025.

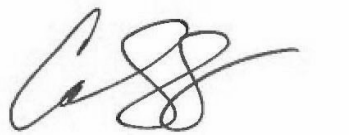
6. Respondent shall be given a credit in the amount of $1,741.88 for TTD benefits that have already been paid to Claimant.

7. Claimant's AWW is $375.00.

8. Respondent shall pay interest to Claimant at the rate of eight percent (8%) per annum for all amounts not paid when due.

9. All matters not determined here are reserved for future determination.

Dated December 19, 2025.



Cassandra M. Sidanycz
Administrative Law Judge
Office of Administrative Courts

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Review electronically by emailing the Petition to Review via email to **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. and does not need to be mailed to the Denver Office of Administrative Courts. **It is also recommended that you provide a courtesy copy of your Petition to Review to the Grand Junction OAC via email at oac-gjt@state.co.us.**

Office of Administrative Courts

State of Colorado

Workers' Compensation No. 5-241-073-001

Issues

- Whether Claimant proved by a preponderance of the evidence that he sustained a change of condition warranting a reopening.

- Whether Claimant proved by a preponderance of the evidence entitlement to additional medical benefits.

Findings of Fact

1. Claimant is a police officer for Respondent who sprained his right shoulder on May 30, 2023, while moving items around in his office and lifting overhead. He felt pain along the anterior and posterior aspects of his shoulder and experienced some swelling and discoloration of his arms.

2. Claimant reported the injury and began obtaining medical treatment from Dr. Matthew Lugliani. Claimant's treatment began with rest, ice, heat, physical therapy, and massage.

Prior Injury

3. In 1997, Claimant was run over by a driver of a stolen car and sustained several injuries for which he underwent three right shoulder surgeries in 2000 and thoracic outlet decompression surgery in May 2020. Claimant also underwent manipulation under anesthesia for a frozen shoulder that developed from that injury.

Curative Treatment for 2023 Injury

4. At his initial appointment, Claimant was referred for an MRI. Claimant underwent the MRI on June 4, 2023. The radiologist noted that Claimant had: moderate supraspinatus and infraspinatus tendinopathy or strain with no tear; mild subscapularis tendinopathy versus strain with no tear; some edema in the infraspinatus and teres minor muscles possibly related to a component of denervation, edema, or muscular strain; possible calcific tendonitis in the distal anterior supraspinatus tendon; overall moderate acromioclavicular arthropathy with no joint space or chondral loss; apparent calcified loose bodies within the glenohumeral joint; small-to-moderate glenohumeral joint effusions with synovitis; and osteophyte formation of the glenoid rim with some labral degeneration and degenerative tearing.

5. On June 8, 2023, Dr. Lugliani, Claimant reported minimal improvement of his symptoms and that he was keeping his arm in a sling. Dr. Lugliani noted that Claimant had an arthritic shoulder with signs of inflammation. Claimant was to remain off work in the meantime.

6. Upon referral from Dr. Lugliani, Claimant saw Dr. Michael Hewitt on June 14, 2023. On examination, Claimant exhibited 120 degrees of active forward flexion with pain beyond 80 degrees and 30 degrees of both external and internal rotation. Dr. Hewitt recommended nonsurgical management, including physical therapy and consideration of subacromial injection for possible calcific tendinitis.

7. Claimant returned to Dr. Lugliani's office on June 27, 2023, reporting that he had begun physical therapy and reported a 25% improvement. Claimant still had moderate pain of five to seven out of ten at random times and he still had moderate swelling down his right arm with some tingling sensation. Dr. Lugliani's assistant, Tom Chau, PA-C, prescribed Claimant meloxicam, recommended Claimant continue with therapy, and recommended that Claimant remain off work

through July 2, 2023, returning to work on July 3, 2023, at four hours per day with ten-pound restrictions on lifting, carrying, pushing, and pulling.

8. When Claimant returned to Dr. Lugliani on August 7, 2023, Claimant reported that he felt ready to return to his full duties with no restrictions. Dr. Lugliani felt that Claimant had reached MMI and released Claimant to full duty with no restrictions. Dr. Lugliani felt that Claimant had no permanent impairment for his May 30, 2023 injury, though he did not provide any documentation of range-of-motion testing that date. He recommended maintenance medical care that included physical therapy as well as follow-ups with him for any concerns over the next three months.

9. Respondent filed a final admission of liability (FAL) on October 27, 2023, consistent with Dr. Lugliani's opinions. Claimant did not preserve an objection to the FAL and the claim except for maintenance medical benefits.

Post-MMI Treatment and Alleged Change of Condition

10. Claimant developed numbness and tingling in his right hand as a result of progressive carpal tunnel syndrome. On October 1, 2024, Claimant underwent a carpal tunnel decompression and trigger finger repair of his index finger under his 1997 claim.

11. On January 15, 2025, roughly eighteen months since Claimant had been placed at MMI, Claimant returned to Dr. Lugliani complaining of swelling and discoloration in his right arm, wrist, and hand over the past several months. Dr. Lugliani noted that Claimant was status post carpal tunnel release. Dr. Lugliani expressed concern for thoracic outlet syndrome (TOC) or chronic regional pain syndrome (CRPS). He referred Claimant for an MRI of the right shoulder to evaluate for TOC and to physiatry for a consultation. Dr. Lugliani maintained Claimant at full-duty status.

12. Claimant underwent a repeat MRI on January 22, 2025. The MRI showed moderate supraspinatus and infraspinatus tendinopathy again seen with a new mild partial interstitial tear of both tendons at the conjoined tendon region, progressive mild to moderate subscapularis tendinopathy versus strain with new mild partial articular surface tear, mild progression of moderate-to-severe glenohumeral arthropathy with osteophyte formation and labral degeneration, small-to-moderate right glenohumeral joint effusion with ossified loose body within the subscapular recess, moderate acromioclavicular arthropathy, and persistent medial subluxation of the long head biceps tendon and bicipital groove consistent with biceps pulley mechanism dysfunction.

13. The findings that were new on the exam when compared to the 2023 MRI were the new mild partial interstitial tear of the supraspinatus and infraspinatus, the new mild partial articular surface tear of the subscapularis, the progression of the glenohumeral arthropathy from moderate to moderate-to-severe, and the new finding of a biceps pulley mechanism dysfunction.

14. Claimant saw Dr. Barry Ogin on January 30, 2025, per Dr. Lugliani's physiatry referral. Dr. Ogin reviewed Claimant's medical history, including Claimant's history of carpal tunnel surgery and trigger finger repair for an unrelated condition of his right upper extremity. Claimant reported that after those unrelated surgeries, the numbness and tingling in his right palmar hand improved significantly. Claimant, however, reported that he still had a lot of swelling in his right hand and difficulty making a fist, and that he would still get purplish discoloration along his dorsal forearm as well as similar triggering of his thumb and fifth digit over the past few weeks. Claimant reported that his right shoulder was overall stable with some achy discomfort and popping but no significant pain or limitation. Claimant reported that his biggest issue at the time was swelling in his hand. Dr. Ogin noted that although Claimant's MRI findings showed pathologies, "his shoulder is really not bothering him too much clinically."

15. On physical examination, Dr. Ogin observed that Claimant had right shoulder flexion of 160 degrees (compared to 180 on the left), internal rotation to T12 on the right (compared to reaching T10 on the left), and limitation on right shoulder external rotation. Though, Claimant exhibited good strength with shoulder abduction and external rotation. He noted that Claimant had a significant reduction in right shoulder range of motion with the right shoulder depressed and anteriorly translated, narrowing his thoracic outlet and coinciding with symptoms consistent with thoracic outlet syndrome.

16. Dr. Ogin referred Claimant to Dr. Scott Primack for an ultrasound to evaluate the brachial plexus and neurovasculature to check for significant compression at the level of the pectoralis minor or for any scar tissue amenable to resection.

17. In the meantime, Claimant began physical therapy again.

18. Claimant returned to Dr. Lugliani on February 17, 2025. Claimant reported obtaining some benefit from physical therapy but continued to complain of persistent right shoulder pain made worse with movement. Claimant also reported ongoing swelling in his arm affecting his right hand as well as new triggering involving his right thumb and little finger. Dr. Lugliani opined that Claimant's "current complaints are exacerbation of work-related injury that occurred in 2023." Dr. Lugliani nevertheless kept Claimant at fully duty. He referred Claimant to an orthopedist in the meantime for a second opinion.

19. Claimant saw Dr. Lugliani again on March 20, 2025, and reported no change in symptoms. Claimant reported that he had seen the orthopedist who suggested the possibility of an arthroplasty in the distant future if symptoms did not improve. Dr. Lugliani kept Claimant on full duty status.

20. When Claimant returned to Dr. Lugliani on May 5, 2025, Claimant reported significant improvement and that occupational therapy massage had helped significantly with decreased swelling and minimal discoloration involving his right hand. Dr. Lugliani noted that Claimant's shoulder range of motion was full and

normal against resistance. Dr. Lugliani noted that Claimant was at MMI with no permanent impairment and no recommendation for work restrictions. At that visit, he discharged Claimant from care.

21. About one month later, on June 3, 2025, Claimant filed an application for hearing endorsing the issues of medical benefits and reopening.

Testimony

22. Claimant testified at hearing that there came a time after he was placed at MMI when the back of his shoulder would tighten up such that he could not move his shoulder or arm. He testified that he began having swelling and discoloration down his arm from his shoulder at that same time.

23. Claimant also testified that he continued with physical therapy and massage, having his last appointment just a week prior to his testimony.

24. When asked to describe how his shoulder was currently feeling, Claimant testified that it seemed to be just continually getting worse. He testified that the physical therapy helped loosen it up, but that it would begin locking back up when he'd stop physical therapy.

25. Claimant also testified that he had some doctors tell him that they felt his carpal tunnel syndrome and trigger symptoms were related to his shoulder, whereas other doctors were not so sure.

26. The Court finds Claimant's testimony to be of limited credibility. Specifically, Claimant's testimony differs from what was documented in Dr. Ogin's January 30, 2025 report. That is, while Claimant testified that his shoulder would tighten up such that he could not move his shoulder or arm, Dr. Ogin documented that Claimant reported that his right shoulder was overall stable with some achy discomfort and popping but no significant pain or limitation. Additionally, while Claimant testified that some doctors had opined that his hand and wrist

symptoms were related to his shoulder, Claimant provided no explanation for why he produced no medical documentation of such opinions in his exhibits.

Ultimate Findings

27. The ALJ finds that Claimant has not met his burden of proving by a preponderance of the evidence that he experienced a change of condition causally related to the May 30, 2023 injury so as to warrant reopening..

28. When Claimant was evaluated by Dr. Ogin on January 30, 2025, shortly after the repeat MRI, Claimant reported that his right shoulder was overall stable with some achy discomfort and popping but no significant pain or limitation. Claimant specifically identified swelling in his hand, not shoulder limitation or pain, as his "biggest issue." These contemporaneous statements undermine Claimant's argument that the MRI changes reflected a change of his compensable shoulder condition warranting reopening.

29. The ALJ further finds it significant that throughout the alleged period of worsening, Claimant's treating physician, Dr. Lugliani, never imposed work restrictions and consistently maintained Claimant at full-duty status. Claimant had previously been released to full duty with no restrictions at MMI in August 2023, and that functional status remained unchanged through 2025. The absence of renewed restrictions or loss of work capacity weighs against a finding that Claimant's condition worsened beyond MMI in a manner contemplated by § 8-43-303, C.R.S.

30. Moreover, by May 5, 2025, Claimant reported significant improvement in his symptoms, including decreased swelling and minimal discoloration of his right hand. On that date, Dr. Lugliani documented that Claimant's shoulder range of motion was full and normal against resistance, reaffirmed that Claimant remained at MMI with no permanent impairment, and discharged Claimant from care. Given the absence of any other credible evidence that Claimant had a greater permanent disability than when he had been placed at MMI, the Court finds that

Claimant did not prove that he sustained a change in permanent disability warranting a reopening.

31. The ALJ is not persuaded that the interval MRI changes demonstrate a change of condition warranting a reopening. Claimant had multiple prior shoulder surgeries and longstanding degenerative pathology predating the May 2023 injury. No persuasive medical opinion establishes that the new MRI findings were causally related to the industrial injury rather than to natural degeneration or Claimant's prior conditions, nor that they resulted in a corresponding clinical decline. Imaging changes alone, without credible evidence of correlated worsening, do not persuade the Court that Claimant had a change of condition related to the May 2023 injury.

32. Claimant's primary complaints during the post-MMI period involved neurological symptoms, including hand swelling, discoloration, and triggering, which are well documented as being associated with Claimant's unrelated carpal tunnel syndrome, trigger finger condition, and concern for thoracic outlet syndrome tied to prior injuries and surgeries. The credible evidence does not establish that these complaints represent a worsening of the compensable May 2023 shoulder injury or that those symptoms were associated with the findings on the January 2025 MRI. To the extent Claimant received treatment post-MMI that was arguably related to the 2023 injury, the ALJ finds that such treatment was maintenance in nature and not reasonably expected to improve Claimant's condition so as to remove him from MMI.

33. In support of his case, Claimant points to the May 5, 2025, record from Dr. Lugliani in which he opined that Claimant's "current symptoms are an exacerbation of a work-related injury that occurred in 2023." However, the Court notes that Dr. Lugliani provided no persuasive rationale for that opinion, nor can the Court discern such a rationale from the context of Dr. Lugliani's report. The opinion is conclusory and the Court gives it no weight.

34. Claimant also points to Dr. Lugliani's May 5, 2025 report in which Dr. Lugliani opined that Claimant had reached MMI. Claimant argues that such a conclusion by Dr. Lugliani necessarily implies that Claimant was not at MMI prior to May 5, 2025. While the Court agrees that this is a plausible interpretation of Dr. Lugliani's opinion, the Court also finds that opinion unpersuasive. As found, Claimant's primary complaints were neurologic in nature and unrelated to the May 2023 injury. In the May 5, 2025 report, Dr. Lugliani noted that Claimant's improvement was as to the swelling and discoloration involving his right hand—neurological symptoms which were unrelated to Claimant's May 5, 2023 injury.

35. For these reasons, the ALJ finds that Claimant has failed to prove by a preponderance of the evidence that his condition worsened in a manner causally related to his May 30, 2023 work injury or that reopening is warranted for additional curative medical benefits.

Conclusions of Law

Generally

A. The purpose of the Workers' Compensation Act of Colorado, §§ 8-40-101, et seq., C.R.S. is to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of litigation. *See* § 8-40-102(1), C.R.S. 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.

B. 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 Off.*, 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).

C. The ALJ's factual findings concern only evidence and inferences found to be dispositive of the issues involved; the ALJ has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to the above findings as unpersuasive. *Magnetic Eng'g, Inc. v. Indus. Claim Appeals Off.*, 5 P.3d 385 (Colo. App. 2000).

Reopening

D. Section 8-43-303(1), C.R.S., authorizes the reopening of a claim on a number of grounds, including error, mistake, or a change in condition. The claimant bears the burden of proof to establish, by a preponderance of the evidence, that the worsening of their physical or mental condition is causally related to the industrial injury. *Lymburn v. Symbios Logic*, 952 P.2d 831 (Colo. App. 1997); *Savio House v. Dennis*, 665 P.2d 141 (Colo. App. 1983). However, a change of condition by itself is not sufficient to justify reopening, and the claimant must also establish

that reopening is appropriate because the claimant's degree of permanent disability has changed, or when additional medical or temporary disability benefits are warranted. *Richards v. Indus. Claim Appeals Off.*, 996 P.2d 756, 758 (Colo. App. 2000).

E. By contrast, under *Grover v. Indus. Comm'n*, 759 P.2d 705, 710 (Colo. 1988), once respondents admit for maintenance medical benefits after MMI, the claimant is entitled to a general award of future medical benefits, subject to the employer's right to contest compensability, reasonableness, or necessity. In turn, once admitted, "[b]ecause future maintenance medical benefits are, by their very nature, not yet awarded, those benefits remain open and are not closed by an otherwise closed FAL." *Bolton v. Indus. Claim Appeals Off.*, 487 P.3d 999, 1004-06 (Colo. App. 2019). Accordingly, since the issue of medical maintenance benefits has not closed based on the FAL, Claimant does not need to seek reopening to obtain future medical maintenance benefits as admitted under *Grover*. Instead, the claimant only needs to apply for a hearing in cases where respondents refused payment for specific maintenance treatment that has been denied as unrelated, unreasonable, or unnecessary. *Walker v. Life Care Centers of America*, W.C. No. 4-953-561-02 (March 30, 2017) (citing § 8-43-203(2)(d), C.R.S. (once any liability is admitted, payments shall continue according to admitted liability)).

F. Since reopening a claim to obtain general maintenance medical benefits is not possible because the issue of maintenance medical care is not closed, to justify reopening a claim to obtain further medical benefits, Claimant has to establish that his condition has worsened to the extent that his is no longer at MMI and there are further medical benefits that "are reasonably expected to improve the condition." *See Mockmore v. Joslins*, W.C. No. 4-343-875 (Apr. 8, 2005). Indeed, the Act expressly recognizes the distinction between maintenance medical benefits and further medical benefits to improve a claimant's condition. Namely, the Act provides that MMI means the point in time "when any medically determinable physical or mental impairment as a result of injury has become

stable and when no further treatment is reasonably expected to improve the condition." § 8-40-201(11.5), C.R.S. However, the Act further clarifies "[t]he requirement for future medical maintenance which will not significantly improve the condition or the possibility of improvement or deterioration resulting from the passage of time shall not affect a finding of maximum medical improvement."

G. In this case, the Court finds and concludes that Claimant's request to reopen his claim for further medical benefits pursuant to § 8-43-303(2)(b), C.R.S., is not warranted as Claimant has not established by a preponderance of the evidence that his condition has worsened in a manner that can be causally related to his work injury.

H. Specifically, the Court is not persuaded that the MRI changes corresponded with any clinical decline. Contemporaneous medical documentation reflects that, shortly after the repeat MRI, Claimant reported his shoulder was overall stable with only achy discomfort and popping, with no significant pain or limitation, and he identified hand swelling as his primary concern rather than shoulder dysfunction. The Court also finds it significant that throughout the period in which Claimant alleges worsening, his treating physician did not impose renewed restrictions and consistently maintained Claimant at full-duty status, reflecting no demonstrated loss of function or work capacity attributable to the 2023 injury. Finally, by May 5, 2025, Claimant reported significant improvement, and Dr. Lugliani documented full and normal shoulder range of motion against resistance, reaffirmed MMI with no permanent impairment, and discharged Claimant from care.

I. The Court concludes that Claimant has not proved by a preponderance of the evidence that he is no longer at MMI due to the May 30, 2023 injury, that he has suffered a worsened permanent disability, or that he requires further medical treatment beyond maintenance care and for the purpose of curing and relieving him of the effects of his May 2023 injury.

Order

It is therefore ordered that:

1. Claimant's request to reopen his claim is denied.

2. All matters not determined herein are reserved for future determination.

/s/ Stephen J. Abbott

Dated: December 19, 2025.

Stephen J. Abbott
Administrative Law Judge

NOTE: If you are dissatisfied with the ALJ's order, you may file a Petition to Review the order with the Denver Office of Administrative Courts, 1525 Sherman St., 4th Floor, Denver, CO 80203. You must file your Petition to Review within twenty (20) days after mailing or service of the order, as indicated on the 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 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 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.

OFFICE OF ADMINISTRATIVE COURTS
STATE OF COLORADO
WORKERS' COMPENSATION NO. 5-296-177

ISSUES

1. Whether Claimant has established by a preponderance of the evidence that he suffered a compensable injury on November 13, 2024, during the course and scope of his employment with Employer.

2. Whether Claimant has demonstrated by a preponderance of the evidence that he is entitled to receive reasonable, necessary, and causally related medical benefits for his industrial injuries.

3. Whether Claimant is entitled to select his authorized treating physician.

4. Claimant's Average Weekly Wage.

5. Whether Claimant is entitled to Temporary Total Disability Benefits from November 14, 2024, until October 1, 2025.

FINDINGS OF FACT

1. On November 13, 2024, Claimant was employed by AYR LLC, as a laborer. Claimant earned $1,500.00 per week.

2. Employer did not carry workers' compensation on November 13, 2024, 2024.

3. On November 13, 2024, while working for Employer, Claimant injured his left upper extremity and left lower extremity when he fell approximately 15 feet to the ground, while working on the roof of a house located at 2009 Blue Mountain Road, Longmont, CO 80504.

4. On November 13, 2024, Claimant was taken to the Good Samaritan Medical Center via emergency medical services. He was evaluated for complaints of left upper and lower extremity pain. A CT scan of the left hand/wrist revealed a comminuted, impacted intra-articular distal radius fracture with 4mm of depression. A CT scan of the left ankle/foot showed a comminuted, depressed fracture of the calcaneus, which extended from the superior aspect of the posterior calcaneus through the body and into the anterior calcaneus. He was placed on a splint and discharged that same day.

5. On November 14, 2025, Claimant was evaluated by Dr. George Chaus due to complications associated with fractures sustained following a fall from a roof on

November 13, 2024. Dr. Chaus recommended surgery to Claimant's wrist as there was significant dorsal comminution and intra-articular step-off in the wrist.

6. Claimant underwent left upper extremity surgery involving an open reduction, internal fixation on November 18, 2024.

7. At his last medical appointment with Dr. Chaus on the record, on February 12, 2025, Doctor Chaus noted Claimant's fracture was healing. Dr. Chaus placed Claimant on an air cast boot. Dr. Chaus recommended non-weight bearing and referred Claimant for physical therapy.

8. On June 3, 2025, Claimant was initially evaluated by Dr. David Yamamoto at Peak to Peak Family Medicine, P.C. due to ongoing complaints associated with his left wrist and left ankle fractures. Dr. Yamamoto diagnosed Claimant with a closed fracture of the left wrist, closed fracture of the left ankle, as well as reactive depression. Dr. Yamamoto assigned occupational restrictions and referred him to Select Physical Therapy. At the time of the hearing, Claimant had seen Dr. Yamamoto a total of 10 times.

9. Claimant did not return to work for Employer after his November 13, 2024, injury. He returned to work for Employer on October 1, 2025.

10. Claimant was never provided a list of designated providers by Respondents. Claimant has selected Dr. Yamamoto at Peak to Peak Family Medicine his authorized treating physician.

11. Claimant continues to experience left ankle and left upper extremity pain. Claimant returned to work on October 1, 2025, however, he has difficulty performing his job duties.

12. Claimant's TTD rate is $1,000.00.

13. Claimant was off work from November 14, 2025, through October 1, 2025. A period consisting of 321 days, or approximately 45 weeks.

14. The testimony of Claimant is credible.

15. The opinions of the medical providers at Good Samaritan Medical Center, Peak to Peak Family Medicine, and Orthopaedic & Spine Centers of the Rockies, are credible.

CONCLUSIONS OF LAW

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.

(2021). 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, *supra*. A Workers' Compensation case is decided on its merits. Section 8-43-201, *supra*.

The ALJ's factual findings concern only evidence that is dispositive of the issues involved. This decision does not specifically address every item contained in the record and the ALJ has not addressed every piece of evidence that might lead to a conflicting conclusion. The ALJ has specifically rejected evidence contrary to the above findings as not credible or unpersuasive. *Magnetic Engineering, Inc. v. Industrial Claim Appeals Office*, 5 P.3d 385 (Colo. App. 2000). In general, the claimant has the burden of proving entitlement to benefits by a preponderance of the evidence, including the causal relationship between the work-related injury and the medical condition for which Claimant is seeking benefits. Sec. 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). Claimant is not required to prove causation by medical certainty. Rather it is sufficient if the claimant presents evidence of circumstances indicating with reasonable probability that the condition for which they seek medical treatment resulted from or was precipitated by the industrial injury, so that the ALJ may infer a causal relationship between the injury and need for treatment. See *Industrial Commission v. Riley*, 165 Colo. 586, 441 P.2d 3 (1968).

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 *Bodensieck 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). Assessing weight, credibility and sufficiency of evidence in a workers' compensation proceeding is the exclusive domain of administrative law judge. *University Park Care Center v. Industrial Claim Appeals Office*, 43, P.3d 637 (Colo. App. 2001). 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 for 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). To the extent expert testimony is subject to conflicting interpretations, the ALJ may resolve the conflict by crediting part or none of the testimony. *Colorado Springs Motors, Ltd. v. Industrial Commission*, 441, P.2d 21 (Colo. 1968).

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); *Kroupa v. Industrial Claim Appeals Office*, 53 P.3d 1192 (Colo. App. 2002). A workers' compensation case is decided on its merits. Sec. 8-43-201, C.R.S.

Compensability

To receive compensation or medical benefits, a claimant must prove they are a covered employee who suffered an injury arising out of and in the course of employment. Section 8-41 301(1); *Faulkner v. Industrial Claim Appeals Office*, 12 P.3d 844 (Colo. App. 2000). The question of whether the claimant met the burden of proof is one of fact for determination by the ALJ. *City of Boulder v. Streeb*, 706 P.2d 786 (Colo. 1985).

Claimant has proven that it was more likely than not he was injured in the course and scope of his employment with Employer on November 13, 2024, when he fell approximately 15 feet to the ground, injuring his left upper extremity and left lower extremity. Claimant's claim is determined to be compensable.

Medical benefits

Employer is liable for authorized medical treatment reasonably necessary to cure and relieve an employee from the effects of a work-related injury. Section 8-42-101, C.R.S.; *Sims v. Industrial Claim Appeals Office*, 797 P.2d 777 (Colo. App. 1990). A claimant must establish the causal connection between the compensable event and the need for medical care with reasonable probability but need not establish it with reasonable medical certainty. *Ringsby Truck Lines, Inc. v. Industrial Commission*, 491 P.2d 106 (Colo. App. 1971); *Industrial Commission v. Royal Indemnity Co.,* 236 P.2d 293 (1951). A causal connection may be established by circumstantial evidence and expert medical testimony is not necessarily required. *Industrial Commission v. Jones*, 688 P.2d 1116 (Colo. 1984); *Industrial Commission v. Royal Indemnity Co., supra*, 236 P.2d at 295-296. All results flowing proximately and naturally from an industrial injury are compensable. See *Standard Metals Corp. v. Ball,* 172 Colo. 510, 474 P.2d 622 (1970).

Authorization refers to the physician's legal authority to treat the injury at the respondents' expense. *Popke v. Industrial Claim Appeals Office*, 944 P.2d 677 (Colo. App. 1997). Section 8–43–404(5), C.R.S.2011, gives employers or insurers the right to choose treating physicians in the first instance in order to protect their interest in overseeing the course of treatment for which they could ultimately be held liable. The initial right to select a treating physician is an obligation that must be met forthwith upon notice of an injury, *Bunch v. Indus. Claim Appeals Office*, 148 P.3d 381, 383 (Colo.App.2006), and if medical services are not timely tendered by the employer or insurer, the right of selection passes to the employee, *Andrade v. Indus. Claim Appeals Office*, 121 P.3d 328, 330 (Colo.App.2005).

Claimant has shown he is entitled to medical benefits that are reasonably necessary and related to the injuries he sustained on November 13, 2024. On the day of the injury, Claimant was taken to the emergency room at Good Samaritan Medical Center for complaints of left lower extremity and left upper extremity papain after an injury where he fell 15 feet to the ground. He was diagnosed with fractures to his left wrist and ankle. Claimant's injuries were treated by the various providers at Orthopaedic & Spine Centers

of the Rockies. Claimant had a left wrist surgery. Claimant was eventually evaluated by Dr. David Yamamoto who recommended additional medical treatment, Claimant has proven by a preponderance of the evidence that Claimant's medical care through Good Samaritan Medical Center, Peak to Peak Family Medicine, and Orthopaedic & Spine Centers of the Rockies is authorized, reasonably necessary and causally related to the November 13, 2024, incident.

Authorized Treating Physician

Under § 8-43-404(5), the employer has the right to choose the treating physician in the first instance. The employer must tender medical treatment "forthwith," or the right of selection passes to the claimant. *Rogers v. Industrial Claim Appeals Off.,* 746 P.2d 565 (Colo. App. 1987). To properly exercise its right of selection, the employer must give the claimant a list of at least four providers from which he can choose. Section 8-43-404(5)(a)(I)(A).

In this case, the employer did not provide the claimant with a list, at any time, of at least four providers from which the claimant could choose to treat for his work injury. Claimant received treatment at Good Samaritan Medical Center, Peak to Peak Family Medicine, and Orthopaedic & Spine Centers of the Rockies. He has also received medical treatment at UC Health to include imaging and surgery. As a result, the claimant has established by a preponderance of the evidence that he may select a physician to treat him from the effects of his work injury. He has chosen Dr. David Yamamoto at Peak to Peak Family Medicine as his ATP.

Average Weekly Wage

Section 8-42-102(2), C.R.S. provides compensation is payable based on the employee's average weekly earnings "at the time of the injury." As found, Claimant was paid $1,500.00 per week.

Temporary Total Disability Benefits

To prove entitlement to TTD benefits a claimant must demonstrate 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 Off.*, 954 P.2d 637 (Colo. App. 1997). Section 8-42-103(1)(a) 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 the 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 that impair the claimant's ability to effectively and properly perform his or her regular employment. *Ortiz v. Charles J. Murphy* (Colo. App. 1991)). Because there is no requirement that a claimant must 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 shall 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. Section 8-42 105(3)(a)-(d), C.R.S.

As found, Claimant has demonstrated by a preponderance of the evidence that he is entitled to TTD benefits beginning November 14, 2024. Claimant's testimony and the medical records demonstrate that he was either unable to work or under restrictions that rendered him unable to perform his job duties and impaired his earning capacity. Notably, the record reveals that medical providers assigned work restrictions that rendered Claimant unable to perform his job duties. Claimant continues to receive medical care and has not yet reached Maximum Medical Improvement (MMI). The record thus reflects that Claimant's industrial injuries 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. Accordingly, Claimant has proven that that he is entitled to receive TTD benefits from November 14, 2024, until October 1, 2025, when he returned to work.

ORDER

Based upon the preceding findings of fact and conclusions of law, the following order is entered:

1. Claimant has established by a preponderance of the evidence that he suffered a compensable injury on November 13, 2024, during the course and scope of his employment with Employer.

2. Claimant has demonstrated by a preponderance of the evidence that he is entitled to receive reasonable, necessary, and causally related medical benefits for his November 13, 2024, injury.

3. Claimant has established by the preponderance of the evidence he is entitled to select a physician to treat his work-related injuries.

4. Claimant's Average Weekly Wage is $1,500.00

5. Claimant is entitled to TTD for the period November 14, 2024, until October 1, 2025, which is approximately 45 weeks at a TTD rate of $1,000.00 per week.

6. All matters not determined here are reserved for future determination.

If you are a party dissatisfied with the Judge's order, you may file a Petition to Review the order with the Denver Office of Administrative Courts, 1525 Sherman Street, 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. (as amended, SB09-070). For further information regarding procedures to follow when filing a Petition to Review, see Rule 26, OACRP. You may access a form for a petition to review at http://www.colorado.gov/dpa/oac/forms-WC.htm.*

DATED: December 22, 2025.

/s/ Stephen J. Abbott

Stephen J. Abbott
Administrative Law Judge
Office of Administrative Courts
1525 Sherman Street, 4th Floor
Denver, CO 80202

Office of Administrative Courts

State of Colorado

Workers' Compensation No. WC 5-272-998-001

Issue

- Whether Claimant has proven by a preponderance of the evidence that the surgery requested by Dr. James Johnson on March 10, 2025, for right knee arthroscopic partial medial meniscectomy is reasonably necessary and related to the admitted May 7, 2024, work injury as well as authorization of the surgery.

Findings of Fact

1. Claimant was 20 years old at the time of the hearing. He was working for Employer as a helper. Claimant had been employed by Employer for approximately 2 years.

2. Claimant sustained an admitted injury on May 7, 2024, when a porch strapped to a forklift fell on top of Claimant's face crushing it and causing him to lose conscious. The claimant fell backwards onto the ground.

3. Claimant was taken to the emergency room at the UCHealth Medical Center. Claimant sustained multiple facial fractures. There were extensive nasal bone comminuted fractures and comminuted maxillary sinus and orbital wall structures. On May 17, 2024, Claimant underwent an open reduction and internal fixation of the bilateral zygomatic fractures, open reduction and internal fixation of the mandible fracture, and open reduction and internal fixation of the nasal bone fractures. Claimant's pain was controlled with multiple medications including hydromorphone, oxycodone, prednisone, and acetaminophen.

4. On May 16, 2024, Claimant fell after standing. A CT scan was ordered as it was unclear whether he struck his head. Claimant testified he would receive help to go to the bathroom.

5. Claimant was discharged from the UC Health Medical Center five days after his surgery. Claimant started to feel pain in his right knee three days after being discharged.

6. Claimant returned to the emergency room at the University of Colorado Hospital on June 19, 2024, with complaints of pain all over his body, especially in the right arm, back, and all of his joints. Claimant was no longer taking any medication for pain. The pain was noted to be systemic and not manifestations of his infection or could be due to stopping the use of ibuprofen. At discharge, Claimant was advised to take ibuprofen 600 mg every six hours, and acetaminophen 500 mg, three times daily.

7. On June 24, 2024, Claimant was evaluated by his ATP, Dr. David Yamamoto at Peak to Peak Family Medicine, for complaints of left sided facial pain, neck pain and stiffness, right shoulder and upper arm pain, right knee pain, left knee pain. He was diagnosed with post-concussion syndrome, post-concussion headache, extensive facial fractures, cervical strain, right shoulder strain, right elbow strain, and acute pain in the bilateral knees. He was placed on off-work status and was referred to physical therapy. Claimant continued to complain of pain is his right knee, consistently after his evaluation in June, 2024.

8. Dr. Yamamoto referred Claimant to Dr. James Johnson at Panorama Orthopedics and Spine Center for continued complaints of medial sided and anterior right knee pain. Dr. Johnson diagnosed Claimant with a complex tear medial meniscus of the right knee. Dr. Johnson did not feel continued conservative treatment would eliminate his symptoms and decided to proceed with a right knee arthroscopic partial medial meniscectomy and chondroplasty.

9. With respect to causation of the right knee pain and surgery to alleviate the pain, Dr. Yamamoto opined that Claimant “was clearly injured in the industrial incident and has pain in the area of the injury in addition to having anterior pain. He had no problems with knee prior to the major injury he sustained. He did not complain about the knee early in the course, as he had a head injury and was hospitalized

for 15 days and because of head/face injury." The surgery was denied by Respondents.

10. At Respondent's request, Dr. Qing Ming Chen performed an independent medical evaluation on April 2, 2025. Prior to his evaluation and report, Dr. Chen did not review records from Peak to Peak Family Health dated prior to October 24, 2024. Dr. Chen noted a negative examination of both knees as well as a negative McMurray's test bilaterally. Dr. Chen opined the pain was diffuse along the anterior side which did not correlate with a medial meniscus tear. Dr. Chen opined the surgery would not be related due to delayed onset of its documentation, which at the time he believed to be October 24, 2024.

11. At hearing, Dr. Chen testified that after review of the missing records, Dr. Chen testified his opinion remained unchanged as the mechanism of injury did not make sense. Claimant's pain did not correlate with the MRI, and the delay in presentation. Dr. Chen testified as to the different ways a meniscal tear could occur, going as far as stating trauma to the knee, though unlikely, could cause a tear.

12. The opinion of Dr. Yamamoto that the work incident resulted in the need for surgery to the right knee is credible and persuasive. This is especially true in light of the Claimant's age and lack of symptoms prior the work injury.

Conclusions of Law

Generally

A. The purpose of the Workers' Compensation Act of Colorado, §§ 8-40-101, et seq., C.R.S. is to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of litigation. See § 8-40-102(1), C.R.S. 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.

B. 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).

C. The ALJ's factual findings concern only evidence and inferences found to be dispositive of the issues involved; the ALJ has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to the above findings as unpersuasive. Magnetic Eng'g, Inc. v. Indus. Claim Appeals Office, 5 P.3d 385 (Colo. App. 2000).

D. Respondents are liable for medical treatment which is reasonably necessary to cure and relieve the effects of the industrial injury. Section 8-42-101 (1)(a),

C.R.S.; Colorado Comp. Ins. Auth. V. Nofio, supra at 716 (Colo. 1994). The claimant bears the burden of demonstrating a causal connection between his industrial injuries and the need for medical treatment. City of Durango v. Dunagan, 939 P.2d 496 (Colo. App. 1997). 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. Sec. 8-41-301(1)(c), C.R.S.; Faulkner v. Industrial Claim Apps. Office, 12 P.3d 844, 846 (Colo. App. 2000). Claimant must establish the causal connection with reasonable probability but need not establish it with reasonable medical certainty. Ringsby Truck Lines, Inc. v. Industrial Commission, 491 P.2d 106 (Colo. App. 1971); Industrial Commission v. Royal Indemnity Co., 236 P.2d 293 (1951).

E. Where the industrial injury aggravates, accelerates, or combines with a preexisting disease or infirmity to produce the need for treatment, the treatment is a compensable consequence of the industrial injury. Duncan v. Industrial Claim Appeals Office, 107 P.3d 999, 1001 (Colo. App. 2004). The issue of whether medical treatment is necessary for a compensable aggravation, or a worsening of Claimant's pre-existing condition is also one of fact for resolution by the ALJ based upon the evidentiary record. See University Park Care Center v. Industrial Claim Appeals Office, 43 P.3d 637 (Colo. App. 2001); Standard Metals Corp. v. Ball, 172 Colo. 510, 474 P.2d 622 (1970); F.R. Orr Construction v. Rinta, 717 P.2d 965 (Colo. App. 1985). The Act places full responsibility on the employer for benefits as a result of a work injury when there is an aggravation of an underlying dormant condition. United Airlines, Inc. v. ICAO, 993 P.2d 1152 (Colo. 2000).

F. The opinion of Dr. Yamamoto is more credible and persuasive over the contrary opinion of Dr. Chen. Dr. Chen’s opinion is not credible as the mechanism of injury is unknown as claimant lost consciousness after the strike and incorrectly relies on Claimant’s failure to complain of right knee pain during his hospital stay to opine the surgery is not reasonably necessary and related to the May 7, 2024, work

related injury. As found and concluded, the strike of the porch causing a fall either caused or aggravated an underlying condition of the right knee that caused the need for treatment.

G. The surgery requested by Dr. Johnson is reasonably necessary and proximately caused by the May 7, 2024, occupational injury. Claimant has proven that the right knee injury was caused by the May 7, 2024, occupational accident and the surgery requested by Dr, Johnson is reasonably necessary and related to the May 7, 2024, work related injury.

Order

It is therefore ordered that:

1. Respondents are liable for the right knee surgery recommended by Dr. Johnson on March 10, 2025.

2. All matters not determined herein are reserved for future determination.

Dated: 12-23-2025

/s/ Michael A. Perales

Michael A. Perales

Administrative Law Judge

NOTE: If you are dissatisfied with the ALJ's order, you may file a Petition to Review the order with the Denver Office of Administrative Courts, 1525 Sherman St., 4th Floor, Denver, CO 80203. You must file your Petition to Review within twenty (20) days after mailing or service of the order, as indicated on the 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 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 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.

Office of Administrative Courts

State of Colorado

Workers' Compensation No. WC 5-251-042-001

Issues

- Whether Respondents' have proven by a preponderance of the evidence that Claimant's Application for Division Independent Medical Examination ("DIME") file of April 3, 2025 was untimely?

- Whether Claimant has proven by a preponderance of the evidence that his claim should be reopened pursuant to Section 8-43-303, C.R.S.

- If Claimant's claim is reopened, whether Claimant has proven by a preponderance of the evidence that his average weekly wage ("AWW") should be increased?

- Respondents appeal the prehearing conference order of September 9, 2025 of Prehearing Administrative Law Judge ("PALJ") Eley denying Respondents' motion to add the issue of "overpayment" to the hearing issues based on a determination that the issue of overpayment was barred by the statute of limitations.

- If Respondents establish that the issue of overpayment is properly before the court, whether Respondents have proven by a preponderance of the evidence that an overpayment exists in this case?

Findings of Fact

1. Claimant sustained an admitted injury arising out of and in the course and scope of his employment with Employer on September 8, 2023 when a piece of concrete fell on Claimant's left leg resulting in a calcaneus fracture of his lower leg. As a result of the injury, Claimant underwent surgery consisting of an open

reduction and internal fixation of the left calcaneus fracture on September 20, 2023.

2. Following Claimant's surgery, a general admission of liability ("GAL") was filed by Respondents on October 6, 2023 that admitted for ongoing temporary total disability ("TTD") benefits commencing September 9, 2023. The GAL was mailed to Claimant's address at 14326 Pensacola Drive, Denver, Colorado 80239. Ruth Carter, a senior adjuster for the third-party administrator for Insurer testified at hearing that indemnity checks were mailed to Claimant at the 14326 Pensacola Drive address and that the checks were cashed by Claimant.

3. Claimant was eventually placed at maximum medical improvement ("MMI") by Dr. Ladwig, Claimant's treating physician, on June 17, 2024. Claimant had previously undergone a functional capacity evaluation ("FCE") on June 1, 2024 that indicated Claimant had difficulty walking and demonstrated unsafe mechanics when carrying weight in excess of 45 to 50 pounds.

4. Dr. Ladwig provided Claimant with a permanent impairment rating of 4% of the lower extremity due to the work injury. Dr. Ladwig also provided Claimant with work restrictions that included a 50 pound carrying limitation, 45 pound lifting restriction from floor to waist, 40 pound restriction from waist to head, and limited Claimant's walking to 1-5% of the day. Dr. Ladwig also recommended maintenance care that included a follow up with his orthopedic surgeon within the next year.

5. Respondents filed a final admission of liability ("FAL") on August 14, 2024 admitting to TTD benefits from September 9, 2023 to October 8, 2023 in the amount of $3,532.67; temporary partial disability ("TPD") benefits October 9, 2023 to June 16, 2024 in the amount of $4,989.72; and permanent partial disability benefits based on the 4% left lower extremity rating of $3,376. The FAL contains a certificate of mailing indicating that it was mailed to the 14326 Pensacola Drive address.

6. No objection to the FAL was filed by Claimant.

7. Claimant testified at hearing that he did not recall ever receiving the August 14, 2024 FAL from Respondents. Claimant did acknowledge, however, that his daughter did find the FAL in his papers when reviewing his paperwork for the claim.

8. Respondents subsequently filed an Amended FAL on October 17, 2024 in which the claimed overpayment was decreased from $10,411.69 to $1,042.53. The October 17, 2024 Amended FAL contains a certificate of mailing that indicates it was mailed to the 14326 Pensacola Drive address.

9. Testimony was presented at hearing from Ms. Carter and Andrea Grace, the human resource manager for Employer, that established the correspondence involving Claimant's employment (including his W2 forms and information involving profit sharing) and his workers' compensation injury (including admissions of liability and indemnity payments) have been mailed to the 14326 Pensacola Drive address.

10. Claimant stipulated at trial that the 14326 Pensacola Drive address is correct. Claimant testified at hearing that he did not receive the October 17, 2024 FAL and had never seen the October 17, 2024 FAL prior to the litigation in this matter.

11. Claimant's daughter, [redacted] [redacted] testified at hearing in this matter regarding ongoing issues Claimant was having after being placed at MMI. [redacted] testified that because Claimant was having significant pain, she contacted the adjuster for his workers' compensation claim and was advised that Claimant's case was closed. [redacted] testified she reviewed Claimant's paperwork from his claim and found the August 2025 FAL, but did not find the Amended FAL. Mr. [redacted] testified she eventually received a March 4, 2025 email from the adjuster with the October 17, 2024 FAL, but this was not contained within Claimant's paperwork prior to receiving the March 4, 2025 email.

12. Claimant filed an objection to the FAL and Notice and Proposal to Select a DIME physician on April 3, 2025. Respondents moved to strike the Notice and Proposal as being untimely.

13. Claimant testified that since being placed at MMI he has had difficulty with walking, standing and putting pressure on his foot. [redacted] testified to an incident in February 2025 when Claimant was going upstairs with his granddaughter ([redacted] daughter) when he tripped on a step and fell on to his granddaughter. [redacted] testified Claimant complained to her about the amount of pain he was experiencing, which caused [redacted] to contact the adjuster regarding obtaining ongoing medical treatment.

14. Claimant testified he has continued to work from Employer since being placed at MMI and has undergone additional medical treatment with Dr. Ladwig that has included and x-ray, computed tomography ("CT") scan and magnetic resonance image ("MRI").

15. Testimony was presented at hearing regarding Claimant being written up by Employer for failing to tag an inoperable piece of equipment on March 3, 2025, the day before the adjuster was contacted by [redacted] testified she was unaware of any issue with Claimant being written up at work.

16. After Claimant's daughter contacted the adjuster regarding the status of Claimant's claim, Claimant returned to Denver Health. Claimant reported a considerable amount of pain in his heel to the point of being debilitating for him and causing him to limp. Claimant reported the pain was medial and lateral around the heal and radiated up the back of the heel to the Achilles. Claimant underwent a sub talar joint injection under the auspices of Dr. Aaltonen.

17. Claimant was evaluated by Dr. Richard on April 29, 2025 with complaints of continued moderate heel pain, but also with pain radiating up the leg to his hip. Claimant reported no improvement with the recent injection. Dr. Richard reviewed imaging of Claimant's foot and noted a well maintained space, a healed

fracture, and no evidence of hardware complication. Claimant was referred for a second opinion.

18. Claimant was examined by Dr. Ladwig on a one-time basis on May 19, 2025. Dr. Ladwig noted Claimant complained of pain in his left foot, along with pain in his knee and up to his hip. Dr. Ladwig noted that Claimant remained at MMI, but additional care was recommended that could change the MMI status. Claimant was referred for an MRI of the left foot and referred for acupuncture treatment, along with a referral for a 2nd opinion and consideration of orthotics. Claimant was instructed to follow up in three weeks to review the MRI and discuss the next steps. Claimant's restrictions were again reiterated as set forth by the FCE.

19. Claimant underwent the MRI of his left ankle on June 9, 2025. The MRI showed the prior open reduction and internal fixation of the calcaneus with associated susceptibility artifact limiting assessment of the calcaneus and adjacent soft tissues. It was noted that the calcaneal fracture appeared predominantly healed, but could be further assessed with a CT scan. Mild degenerative changes to the subtalar joint and mild to moderate first metatarsophalangeal ("MTP") joint osteoarthritis was also noted.

20. Claimant returned to Dr. Ladwig on June 10, 2025 at which time a CT scan of the left foot was requested. The CT scan of Claimant's left ankle was completed on June 12, 2025 which demonstrated a healing calcaneal fracture with no evidence of hardware complication, mild subtalar joint osteoarthritis and diffuse osseous demineralization.

21. Claimant was examined by Dr. Childers on July 1, 2025. Dr. Childers noted Claimant reported he was wearing his orthotics daily with no complaints of pain. Claimant was instructed to complete his acupuncture treatment and follow up with Dr. McGarry who had prescribed the orthotics. Claimant's work restrictions were kept in place which included 45 pounds lifting waist to floor and 40 pounds waist to chest with limitations on walking to 1-5% of his day.

22. Claimant returned to PA Singer on August 27, 2025 and noted he was awaiting evaluation and treatment with Dr. Richards. The notes indicate that Denver Health had not received authorization for follow up treatment at that point.

23. Testimony presented at hearing by Ms. Carter confirmed that Claimant was authorized to follow up with the surgeon with an appointment scheduled for October 2025. Records from the follow up appointment were not entered into evidence at hearing as the appointment took place after the hearing was commenced.

24. The ALJ finds the testimony of [redacted] and Claimant to be credible regarding the fact that they did not see the October 17, 2024 FAL that was filed by Respondents. However, this testimony does not overcome the presumption that the FAL was properly served on Claimant as evidenced by the certificate of mailing. Notably, Claimant also testified he did not recall seeing the August 14, 2024 FAL, but that record was contained within his papers when reviewed by Claimant's daughter. Therefore, the ALJ determines that the October 17, 2024 FAL properly closed Claimant's case when no objection was filed within 30 days.

25. Actual notice is not necessarily required for a claim to be closed by virtue of Section 8-43-203(2)(b)(II)(A), C.R.S. The fact that the FAL was mailed to Claimant and Claimant received the FAL are sufficient for the claim to be closed. Respondents are not required to demonstrate that Claimant actually read and understood the FAL in order for the claim to be closed under the statute.

26. The ALJ further notes that additional documentation, including indemnity payments, were mailed to Claimant at his home address and the credible evidence does not establish any issues with regard to Claimant's receipt of these other documents, including the August 14, 2024 FAL.

27. Consequently, the ALJ finds that the Notice and Proposal to Select a DIME that was filed on April 3, 2025 should be struck as being untimely.

28. The ALJ credits the medical records entered into evidence in this case and finds that Claimant has failed to establish by a preponderance of the evidence that his claim should be reopened based on a worsening of condition. While Claimant testified that he has experienced ongoing pain related to the September 8, 2023 industrial injury, the course of care through his providers have maintained Claimant at MMI while additional medical treatment and diagnostic testing is performed.

29. Notably, none of Claimant's physicians have increased his restrictions or recommended additional medical treatment that would constitute a finding that Claimant is no longer at MMI. The ALJ credits the medical records and finds that the recommendations for evaluation and diagnostic testing thus far represent appropriate maintenance medical treatment as contemplated by the Colorado Workers' Compensation Act.

30. Moreover, while Claimant argues in his position statement that he was scheduled for surgery for hardware removal after the final day of hearings, no evidence was presented at the hearing, nor after the hearing, that the ALJ can rely on to find that the proposed surgery was recommended or occurred.

31. Based on the finding that the Claimant has failed to meet his burden of proof for establishing a reopening of his claim, the ALJ need not address the issue of AWW raised by Claimant at hearing.

32. Respondents argued in their position statement that Claimant's reopening claim should be denied based on an intervening accident. Specifically, Respondents argue that the Claimant's incident in which he fell while with his granddaughter represents an intervening event that severs their liability for medical benefits. The ALJ is not persuaded.

33. The ALJ credits Claimant's testimony at hearing along with the testimony of Claimant's daughter and finds that the fall in February 2025 was the natural result of Claimant's industrial injury and does not represent an intervening injury

that would sever Respondents liability for Claimant's reasonable and necessary medical treatment related to the industrial injury.

34. Respondents also appeal the prehearing conference Order from PALJ Eley dated September 9, 2025 that determined that Respondents were prohibited from endorsing the issue of overpayment based on the one year statute of limitations. The September 9, 2025 prehearing order specifically noted that Section 8-43-113.5(1)(b.5)(I) requires that a party seeking to recover an overpayment assert that claim within one year of when the requesting party was aware of the overpayment. The ALJ agrees with PALJ Eley that the August 14, 2024 FAL filed by Respondents documented a claimed overpayment and, therefore, any attempt to recover the overpayment must have been asserted within one year of the August 14, 2025 FAL. Because Respondents did not assert a claim to recover the overpayment within one year of August 14, 2024, Respondents are prohibited from seeking to recover the overpayment based on the language of Section 8-43-113.5(1)(b.5)(I), C.R.S.

35. Notably, in PALJ Eley's order, PALJ Eley finds that Respondents moved to add the issue of the overpayment in an August 20, 2025 email to Claimant's counsel. PALJ Eley found that the August 20, 2025 email failed to comply with the one year statute of limitation set forth in the statute. The ALJ agrees that the evidence establishes that Respondents were aware of the existence of an overpayment as of August 14, 2024 when they filed the FAL. The ALJ further agrees with Claimant and finds that the credible evidence presented at hearing fails to establish that Respondents made an attempt to recover the overpayment within one year of the date they were aware of the existence of the overpayment.

Conclusions of Law

A. The purpose of the Workers' Compensation Act of Colorado, §§ 8-40-101, et seq., C.R.S. is to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of litigation. See § 8-40-102(1), C.R.S. 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.

B. 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).

C. The ALJ's factual findings concern only evidence and inferences found to be dispositive of the issues involved; the ALJ has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to the above findings as unpersuasive. Magnetic Eng'g, Inc. v. Indus. Claim Appeals Office, 5 P.3d 385 (Colo. App. 2000).

D. Section 8-43-203(2)(b)(II)(A), C.R.S. provides that a claim is closed as a matter of law if the injured worker fails to object to a final admission of liability within 30 days, which would include requesting a hearing on any issues that are ripe or requesting the selection of a division sponsored independent medical examination physician. See Drykop v. Denver School District No. 1, 30 P.3d 821 (Colo. App. 2001).

E. There is a rebuttable presumption that a letter which was properly addressed, stamped, and mailed was duly delivered to the addressee. Campbell v. IBM Corp., 867 P.2d 77, 80 (Colo. App. 1993). In this case, the October 17, 2024 FAL contains a certificate of mailing that indicates that it was sent to Claimant at his proper address.

F. As found, despite Claimant's testimony that he did not ever see the October 17, 2024 FAL, and the testimony from Claimant's daughter that she did not find the October 17, 2024 FAL in Claimant's paperwork, the ALJ finds that the testimony does not overcome the presumption that Claimant received the October 17, 2024 FAL. As found, other documents and indemnity payments were mailed to Claimant at his address and there is no credible evidence that Claimant had issues receiving other properly mailed filings or indemnity benefits.

G. As found, based on the properly addressed October 17, 2024 FAL, the ALJ determines that Claimant's case is closed as a matter of law pursuant to Section 8-43-203(2)(b)(II)(A), C.R.S. Therefore, the April 3, 2025 Notice and Proposal to Selection a DIME is struck as being untimely.

H. Section 8-43-303 provides that at any time within six years after the date of injury, a claim may be reopened after being closed in the event that the injured worker suffers a change of his or her condition. For purposes of reopening a workers' compensation claim, a "change in condition" refers to a change in the condition of the original compensable injury or to a change in claimant's physical or mental condition which can be causally connected to the original compensable

injury. Jarosinski v. Industrial Claim Appeals Office, 62 P.3d 1082 (Colo. App. 2002).

I. As found, based on the testimony presented at hearing and the medical records entered into evidence at hearing, the ALJ determines that Claimant has failed to establish by a preponderance of the evidence that his claim should be reopened based on a change of condition. As found, the medical records entered into evidence at hearing establish that Claimant continues to receive medical treatment, but his restrictions remain consistent with the permanent restrictions he was provided when he reached MMI.

J. Section 8-43-113.5(1)(b.5)(I) provides that after the filing of a final admission of liability, except in cases of fraud, any attempt to recover an overpayment shall be asserted within one year after the time the requester knew of the existence of the overpayment.

K. As found, Respondents were aware of the existence of a claimed overpayment by August 14, 2024 when Respondents filed the FAL in which they claimed an overpayment. As found, Respondents did not attempt to recover the overpayment within one year of the date they were aware of the existence of an overpayment as required by Section 8-43-113.5(1)(b.5)(I), C.R.S.

L. As found, Respondents request to recover an overpayment against Claimant is barred by the statute of limitations set forth at Section 8-43-113.5(1)(b.5)(I), C.R.S.

M. Respondents are not liable for injuries that occur subsequent to a compensable injury, and are not a “natural result” of the compensable injury. Post Printing and Publishing Co. v. Erickson, 94 Colo. 382, 30 P.2d 327 (1934). As found, Claimant’s incident with his daughter in February 2025 was the natural result of the compensable injury and was not an intervening event that would sever Respondents liability for ongoing benefits.

Order

It is therefore ordered that:

1. Claimant's case is closed by virtue of the October 17, 2024 FAL. Claimant's Notice and Proposal to Select a DIME date April 3, 2025 is stricken.

2. Claimant's Petition to Reopen based on a worsening of condition is denied without prejudice.

3. Respondents' request to assert an overpayment against Claimant is denied and dismissed.

4. Respondents' argument that Claimant sustained an intervening injury that would sever Respondents' liability for ongoing medical treatment is denied and dismissed.

All matters not determined herein are reserved for future determination.

Dated: December 31, 2025

/s/ Keith E. Mottram
Keith E. Mottram
Administrative Law Judge

NOTE: If you are dissatisfied with the ALJ's order, you may file a Petition to Review the order with the Denver Office of Administrative Courts, 1525 Sherman St., 4th Floor, Denver, CO 80203. You must file your Petition to Review within twenty (20) days after mailing or service of the order, as indicated on the 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 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 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.

Office of Administrative Courts

State of Colorado

Workers' Compensation No. WC 5-269-683-001

Issues

- Whether Claimant established by a preponderance of the evidence that the surgery recommended is reasonable, necessary, and causally related to treat his October 25, 2023, injuries?
- Whether Claimant is entitled to temporary disability benefits?
- Whether Respondents have established by a preponderance of the evidence that Claimant was responsible for his November 13, 2024, termination from employment under §§8-42-105(4) & 8-42-103(1)(g) C.R.S. (collectively "termination statutes")?

Stipulations

1. The Claimant's Average Weekly Wage is $1,110.12.

2. Respondents are liable to Claimant for temporary partial disability benefits in the amount of $10,310.95 for the periods from October 26, 2023, to October 13, 2024.
3. If the Court finds Respondents failed to meet their burden of proof that Claimant was responsible for his termination of employment, Respondents are liable for the following periods of temporary disability benefits:
   a. TTD from 11/14/24 to 7/6/24 in the amount of $11,296.39.
   b. TPD from 7/7/25 through 10/5/25 in the amount of $6,302.50.

Findings of Fact

Based on the evidence presented at hearing, the ALJ makes the following findings of fact:

1. On October 25, 2023, Claimant was working in a boom lift installing glass and was overextending and leaning forward, reaching out with his hands. He did this activity for an extended period of time of more than three hours. Claimant testified that this involved “a lot of like weight lifting and stuff like that”.

2. Claimant came under the care of Dr. Brian Alvarez. After conservative care was not effective, Dr. Alvarez referred Claimant to Dr. Shoemaker. Dr. Shoemaker did injection therapy, which was unsuccessful.

3. Claimant was then referred to Dr. Ghiselli. Dr. Ghiselli recommended another MRI scan on the Claimant’s back. The MRI was denied by Respondents.

4. Claimant has been on restrictions from October 25, 2023, to the present. Claimant was able to work modified duty from the date of injury until November 2024, when he was terminated.

5. After his termination, Claimant applied for and received unemployment benefits. After unemployment benefits were exhausted, he started working for DoorDash.

6. Claimant was terminated on November 14, 2024, for Misconduct, Insubordination, and substandard work. Specifically, Claimant failed to complete assigned tasks on the CW-12 system. Mr. Rene Lima-Marin, Claimant’s supervisor testified that Claimant was given specific instructions to install anchor bolts and attach filler caps. Claimant acknowledged his failure to follow instructions. At the time of the project, Claimant did not provide any valid reason for not following through on his instructions. Mr. Lima-Marin is credible with respect to his testimony that Claimant was terminated for failing to follow

instructions and failing to provide any reason as to why he did not follow the applicable instructions.

7. Dr. John Burris testified on behalf of the Respondents. He testified as to the two IME's he did, on May 14, 2024 and October 29, 2024. Based on the lack of any diagnostic response to the injection provided by Dr. Shoemaker, Dr. Burris was of the opinion that the proposed L4-5 microdiscectomy was not medically reasonable, necessary or related to the work injury.
8. The medical records consistently document that Claimant's lumbar condition arose out of and in the course of employment and he had no history of back treatment or pain prior to the injury and could perform physically demanding work without limitation. The medical evidence supports that the surgery recommended by Dr. Alvarez and Dr. Ghisselli meets the Medical Treatment Guidelines criteria. First, at his surgery consultation, Claimant reported persistent low back pain radiating into the buttocks and posterior thighs, with tingling in the posterolateral calves and toes; rated his pain between 4-5/10 and 9/10; and continued to experience significant functional limitations. At the IME, he reported pain reaching 8-9/10 at its worst, described it as sharp, shooting, aching, and tight, and noted muscle spasms. These consistent reports of radiating pain and high pain levels establish clinically significant radicular pain and clearly satisfy the Medical Treatment Guidelines requirement for a subjective report of *severe* radicular pain.

Conclusions of Law

Generally

A. The purpose of the Workers' Compensation Act of Colorado, §§ 8-40-101, et seq., C.R.S. is to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of litigation. See § 8-40-102(1), C.R.S. 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.

B. 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).

C. The ALJ's factual findings concern only evidence and inferences found to be dispositive of the issues involved; the ALJ has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to the above findings as unpersuasive. Magnetic Eng'g, Inc. v. Indus. Claim Appeals Office, 5 P.3d 385 (Colo. App. 2000).

D. Respondents are liable for medical treatment that is causally related, reasonable,

and necessary to cure and relieve the effects of the industrial injury. § 8-42-101(1)(a), C.R.S. 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 employment. § 8-41-301(1)(c), C.R.S.; *Faulkner v. Indus. Claim Apps. Office*, 12 P.3d 844, 846 (Colo. App. 2000). Claimant must establish the causal connection with reasonable probability but need not establish it with reasonable medical certainty. *Ringsby Truck Lines, Inc. v. Indus. Comm'n,* 491 P.2d 106 (Colo. App. 1971). A causal connection may be established by circumstantial evidence and expert medical testimony is not necessarily required. *Indus. Comm'n v. Jones*, 688 P.2d 1116 (Colo. 1984). Where the relatedness, reasonableness, or necessity of medical treatment is disputed, the claimant has the burden to prove that the disputed treatment is causally related to the injury, and reasonably necessary to cure or relieve the effects of the injury. *Ciesiolka v. Allright Colorado, Inc.*, W.C. No. 4-117-758 (ICAO April 7, 2003). The question of whether the claimant proved treatment is reasonable, necessary, and causally related is one of fact for the ALJ. *Hobirk v. Colo. Springs Sch. Dist. #11,* WC 4-835-556-01 (ICAO, Nov. 15, 2012).

E. Claimant has established by a preponderance of the evidence that the recommended L4-5 microdiscectomy is causally related, reasonable and necessary to cure and relieve the effects of his October 25, 2023, work injury.

F. The opinions by Dr. Alvarez and Dr. Ghisselli are credible and persuasive as to causation and that the proposed surgery is reasonable and necessary.

G. The Claimant was responsible for his termination based on his failure to follow specific instructions and failure to let his employer know that he was not performing his tasks on the project as instructed. As noted in the termination notice there was to valid reason given by the Claimant as to why he deviated from the instructions.

Order

It is therefore ordered that:

1. The MRI recommended by Dr. Ghiselli is awarded to the Claimant. Furthermore, the surgery recommended by Dr. Ghiselli is compensable.

2. The Claimant is responsible for termination for violation of specific failure to follow the reasonable instructions of the employer. As such, Claimant is not entitled to temporary disability after November 14, 2024. Claimant will be entitled to temporary disability when restrictions worsen.

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

Dated: 12-31-2025

/s/ Michael A. Perales
Michael A. Perales
Administrative Law Judge

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