Issues

Whether PALJ Holley's December 23, 2024 Order improperly concluded that Respondents were permitted to request a follow up division independent medical examination (DIME) on December 5, 2024 in the absence of a determination by an authorized treating physician (ATP) that Claimant had reached maximum medical improvement (MMI).

All other issues raised in Claimant's applications for hearing (AFH) dated April 8, 2025 and June 10, 2025, as well as Respondents' Response to AFH dated July 10, 2025, are preserved for future determination pending resolution of the current appeal of PALJ Holley's December 23, 2024 Order.

Findings of Fact

1. Claimant worked for Employer as an elevator mechanic. On December 16, 2016 Claimant suffered an admitted lower back injury during the course and scope of his employment. He specifically felt a "pop" in his lower back while pulling protective wrapping off elevator cab panels.

2. Claimant reached MMI on August 16, 2017 and returned to work for Employer. Respondents filed a final admission of liability (FAL) on October 12, 2017.

3. Claimant's condition progressively worsened and by July 2018 his claim was reopened.

4. Claimant subsequently underwent the following two surgical procedures for his lower back: (1) a partial laminectomy and decompression at L4-5 on October 10, 2019; and (2) a posterior spinal fusion from L4 to S1 on April 5, 2021.

5. On May 4, 2023 Respondents filed a Notice and Proposal and Application for a

24-month DIME. On June 21, 2023 Koi D. Pham, MD was selected as the DIME physician.

6. On August 9, 2023 Dr. Pham issued a DIME report specifying that Claimant had not reached MMI. He assigned a provisional 24% whole person impairment rating. Dr. Pham noted that Claimant's L3-4 disc herniation and symptomatic L3 radiculopathy needed to be addressed. He explained that the disc herniation was a complication of Claimant's work-related spinal fusion. Dr. Pham commented that Dr. Duhon had provided a surgical opinion and suggested a second opinion from Dr. Frey.

7. Claimant subsequently received additional care for his condition. He specifically received treatment from Stephen Danahey, MD at Concentra Medical Centers. Following Dr. Pham's recommendations, Claimant underwent a left L3-L4 far lateral microdiscectomy with Bradley Duhon, MD on December 7, 2023. On April 15, 2024 Dr. Danahey noted that Claimant continued therapy and his back had improved, but his hips were significantly bothering him with walking. Dr. Danahey advised him to visit a specialist for his hips outside of the Workers' Compensation system. By December 15, 2024 Kevin Schmidt, MD commented that Claimant had improved left buttock and lower extremity pain. He had discomfort at the surgical site but no leg pain.

8. Following the third surgery, Claimant remained under the active care of his authorized treating physicians (ATPs), including Dr. Danahey and pain management specialist Dr. Schmidt. Throughout 2024 Claimant continued to receive treatment, including physical therapy (PT), diagnostic evaluations and injections. On November 27, 2024 Claimant was discharged from PT and on December 18, 2024, Dr. Schmidt noted that Claimant could recheck as needed.

9. On December 10, 2024 Respondents requested a follow-up DIME with Dr. Pham. Claimant filed a Motion to Strike follow-up DIME and hold DIME in abeyance. The parties attended a prehearing conference on December 19, 2024 with PALJ Hunter Holley. Claimant asserted that the follow-up DIME request was improper and should be stricken because no physician had placed him at MMI. Therefore there was no finding of MMI for Respondents to dispute. Rejecting Claimant's contention, PALJ Holley concluded that

Respondents could proceed with the DIME and denied Claimant's Motion.

10. Claimant underwent the DIME with Dr. Pham on January 29, 2025. Dr. Pham determined that Claimant had reached MMI on the same date. He noted that, since the original DIME, Claimant had undergone a left L3-L4 lateral microdiscectomy with Dr. Duhon on December 7, 2023. Dr. Pham remarked that Claimant's condition had plateaued. He recommended six maintenance care visits over two years.

11. Based on Dr. Pham's follow-up DIME report, Respondents filed a FAL on March 12, 2025. The FAL terminated temporary disability benefits and acknowledged MMI as of January 29, 2025.

12. Claimant timely objected to the FAL and filed an AFH on April 8, 2025. They filed an amended AFH on June 10, 2025. Claimant specifically appealed PALJ Holley's Order of December 23, 2024 and raised all other disputed issues.

13. Pursuant to an Order from PALJ Jason M. Carpenter dated July 29, 2025 the parties agreed to consolidate all issues for the October 8, 2025 hearing. However, the parties would first address the legal issue of Claimant's appeal of PALJ Holley's order. They also agreed to bifurcate and preserve the issue of permanent total disability benefits.

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).

4. The central issue in the present matter is the propriety of Respondents' request for a follow-up DIME on December 5, 2024. Claimant contends the request was improper and PALJ Holley erred because no physician including his ATP had placed him at MMI. Moreover, no physician determined Claimant had completed all recommended treatment. However, Claimant's contention fails. The relevant statutes, rules and case law reflect that once a DIME physician determines that a claimant is not at MMI, future MMI determinations rest with the DIME physician. Contrary to Claimant's contention, a determination by an ATP that a claimant has completed all recommended treatment and reached MMI is not required.

5. The DIME process was enacted as a method of reducing litigation concerning MMI and permanent partial disability (PPD) benefits by "providing that, if either party disputes the finding of a treating physician as to MMI or degree of impairment, that party may require that an independent medical examination (IME) be performed." *Colorado AFL-CIO v. Donlon*, 914 P.2d 396, 401 (Colo. App. 1995). The employer or insurer may initiate the selection of an independent medical examiner pursuant to §§8-42-107.2(2)(a)(I),(b)-(c). C.R.S. The statute addresses the process required for the respondents to initiate a 24-Month DIME but does not provide a procedure to follow if the respondents wish to return a claimant to the DIME after additional treatment. Thus, the statute is silent or ambiguous on this point.

6. W.C.R.P. 11-7(A) is the controlling Rule regarding a follow-up DIME. The Rule provides, in relevant part, "If a DIME physician determines that a claimant has not reached MMI and recommends additional treatment, a follow-up DIME examination shall be scheduled with the same DIME physician.... The insurer shall file the Follow-Up DIME form after the claimant completes all additional recommended treatment."

7. Rule 11-7 is silent on who can determine whether a claimant has completed all additional recommended treatment or how this determination must be made. The construction of an administrative regulation or rule is *de novo* using common rules of statutory interpretation. *Schlapp v. Colo. Dep't of Health Care Pol'y & Fin*., 284 P.3d 177 (Colo. App. 2012). "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). Even so, "[a]n administrative agency regulation must further the will of the General Assembly and may not modify or contravene an existing statute." *W. Colo. Congress v. Colo. Dep't of Health*, 844 P.2d 1264, 1267 (Colo. App. 1992).

8. Once a DIME physician determines that a claimant is not at MMI, and that decision is not challenged, the DIME process remains open. *See Sanco Industries v. Stefanski*, 147 P.3d 5 (Colo. 2006); *Williams v. Kunau*, 147 P.3d (Colo. 2006). The claimant then returns to the ATP for additional treatment. In both *Stefanski* and *Kunau*, the DIME physician determined that the claimant was not at MMI, the claimant returned to the ATP for treatment and the ATP then placed the claimant at MMI. The Supreme Court explained that once the ATP placed the claimant at MMI for the second time, the insurer was obligated to return the claimant to the DIME doctor for a follow-up examination. The insurer could not simply file a FAL. *See Aldama V. Burrito Werks*, WC 5-130-634-004 (ICAO, Feb. 15, 2024).

9. Based on the reasoning of *Stefanski* and *Kunau* the matter remains open until the DIME physician has determined whether the claimant has reached MMI. In support of this position, the Court noted the Director's concern that a claimant may be "whipsawed" back and forth between the independent medical examiner and the treating physician. The Court concluded that once there had been a finding of not at MMI by a DIME physician, and

the treating physician has placed the claimant at MMI after additional care, an efficient process is for the insurer to promptly return the claimant to the DIME doctor for a follow-up examination and MMI determination. *Kunau* 147 P3d at 39.

10. Although the treating physician placed the claimant at MMI in both *Stefanski* and *Kunau*, whether an ATP determines that a claimant has reached MMI is irrelevant to the closure of a claim. Here, there has been no finding by an ATP that Claimant has reached MMI, and a finding is not required for a determination of whether treatment has been completed or the claimant has reached MMI. *Stefanski* and *Kunau* stand for the proposition that once an ATP determines that a claimant has reached MMI the claimant must be returned to the DIME for an MMI determination and claim closure. The cases do not suggest that an ATP's MMI determination is a prerequisite for a return to the DIME physician for an MMI determination and claim closure.

11. An MMI finding by the ATP serves as a trigger for returning the claimant to the DIME physician but is not a prerequisite. As the Supreme Court in *Kunau* stated, "...when the treating physician makes a second finding of MMI, the employer or insurer may not file an FAL to close the case prior to returning the claimant to the independent medical examiner for a follow-up examination..." *Id.* at 33. The critical determination that closes the claim only occurs when the DIME physician determines the claimant has reached MMI. The absence of an MMI finding by the ATP does not impact the DIME physician's determination of whether a claimant has received all recommended treatment and the claim has closed.

12. The DIME physician ultimately determines whether the claimant has received all recommended treatment. Presumably, if the claimant has not received the suggested treatment and is returned to the DIME for a follow-up evaluation, the DIME physician could make a second determination that the claimant has not reached MMI. Because the party requesting the DIME is responsible for payment of the DIME fees, if the respondents request a follow up DIME prematurely and the DIME physician finds that the claimant needs additional treatment, the financial burden rests solely with the respondents.

13. Moreover, if a DIME physician makes clear recommendations for additional

treatment, such as injections, surgical intervention or a certain number of PT sessions, whether the claimant has received the treatment can be easily ascertained from the medical records. Here, DIME physician Dr. Pham recommended surgical evaluation that was authorized by Respondents. Claimant subsequently underwent the evaluation and recommended surgery. The record reveals that the treatment recommended by Dr. Pham was completed. If it had not been completed, Dr. Pham could have again requested additional treatment and determined that Claimant was again "not at MMI." Furthermore, when Respondents requested a follow up DIME, Claimant was not undergoing any active treatment and instead was merely attending follow up appointments to manage chronic back pain.

14. DIME physician Dr. Pham had the ultimate authority to determine whether Claimant had received all recommended treatment and reached MMI. On January 29, 2025 Dr. Pham determined that Claimant had reached MMI on the same date. He noted that, since the original DIME, Claimant had undergone a left L3-L4 lateral microdiscectomy with Dr. Duhon on December 7, 2023. Dr. Pham remarked that Claimant's condition had plateaued. Because Dr. Pham determined Claimant had reached MMI, Respondents were permitted to file a FAL and close the claim. The preceding interpretation is consistent with relevant statutes, rules and case law governing the DIME process. Accordingly, PALJ Holley properly determined that Respondents were permitted to request a follow up DIME on December 5, 2024 in the absence of a determination by an ATP that Claimant had reached MMI. His denial of Claimant's Motion to Strike the DIME is affirmed.

Order

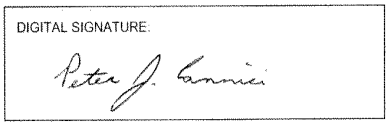
Based upon the preceding findings of fact and conclusions of law, the Judge enters the following order:

1. PALJ Holley properly determined that Respondents were permitted to request a follow up DIME on December 5, 2024 in the absence of a determination by an ATP that Claimant had reached MMI. His denial of Claimant's Motion to Strike the DIME is affirmed.

2. 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: November 7, 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 No. WC 5-304-670-001

Issues

I. Whether Claimant established by a preponderance of the evidence that he sustained a compensable occupational disease or traumatic injury from handling and delivering packages during the week of April 27, 2025.

II. If the claim is compensable, whether Claimant's low-back condition, his two left inguinal hernias, and his right inguinal hernia are causally related to the claim such that general medical benefits are warranted for each condition found to be related.

III. If his claim is compensable, whether a recommended robotic bilateral inguinal hernia repair with mesh is reasonable, necessary and related to this claim.

Stipulations

- The parties stipulated to an Average Weekly Wage of $900.00 and reserved indemnity issues.

Findings of Fact

Claimant's Prior Employment

1. At the time Claimant reported his injury, he was 37 years old. He has a bachelor's degree in criminal justice and communication studies. For approximately 13 years, Claimant worked as a 911 medical dispatcher, a sedentary position requiring prolonged sitting. After that position, he changed careers and subsequently started working for Employer in October 2024.

Claimant's Prior Chiropractic Treatment 2019–2021

2. Between June 11, 2019, and March 2, 2021, Claimant received chiropractic treatment from Joseph McMahon, D.C., for complaints of neck, upper back, and low back pain, aching, and stiffness. His low back pain was rated at 3-4 out of 10 and stiffness at 4-6 out of 10. Claimant testified this care was needed due to prolonged sitting required in his job as a 911 dispatcher.

Chiropractic Treatment from October 2024 Through April 2025

Claimant underwent Before his Alleged Work Accident

3. Beginning October 25, 2024, Claimant received chiropractic treatment from James Dunstan, D.C., approximately every two weeks through April 11, 2025. At the initial evaluation, Claimant indicated that he was seeking care proactively "to be proactive in avoiding the normal aches and pains" and to maintain his physical health to perform his duties as an Amazon delivery driver "efficiently and effectively." Throughout this period, Claimant consistently reported low-level back discomfort, with pain that ranged from 1-4/10 but averaged approximately at 2.5 out of 10. He described his symptoms as general soreness, tightness, or stiffness, and denied any injury. Dr. Dunstan documented objective findings of tenderness, hypomobility at L3–L5, and muscle hypertonicity and spasm, but Claimant remained on full-duty status without restrictions.

4. Claimant's low back pain complaints during this time consisted of:

   - December 13, 2024 – Pain rated 3/10; increased soreness and stiffness attributed to heavier holiday workload.
   - December 20, 2024 – Pain rated 3–4/10; continued holiday-related strain.
   - January 10, 2025 – Pain rated 3/10; no increase in symptoms following the holiday season.
   - January 24, 2025 – Pain rated 2–3/10; noted variability based on stairs and number of packages, and reported feeling stronger overall.
   - January 31, 2025 – Pain rated 3–4/10.

- February 28, 2025 – Pain rated 1–2/10.
- March 21, 2025 – Pain rated 3/10; continued physical strain from job demands, especially in buildings without elevators.
- April 11, 2025 – Pain rated 2/10; no acute complaints and no reported change in condition.

At no time during this period did Claimant report a specific injury or describe a significant increase in symptoms. His condition remained stable and managed until a marked and sudden escalation of pain occurred on May 1 or May 2, 2025.

Employment With Alpha Zulu Logistics

5. Claimant was hired by Employer Alpha Zulu Logistics, LLC on October 8, 2024, as a delivery driver. Employer is an Amazon package delivery service partner. Claimant worked exclusively at the Broomfield Station delivering individual packages weighing less than 50 pounds, but he would also carry more than 50 pounds at times when combining multiple packages in a tote to carry multiple boxes at a time. His job duties included loading totes filled with packages into carts, rolling carts to his van, unloading totes into the van, organizing packages, and delivering packages to customers during ten-hour shifts. Claimant worked a Sunday through Wednesday schedule.

6. Claimant testified and described his job as heavy-duty, noting that he would feel general aches and pains from time to time due to its demands. He also testified that before his work injury he would rate his back pain typically around a 3, which meant general soreness from his job. He testified that 75 pounds is an accurate amount of weight he would lift at work because multiple packages are placed into a carrier at one time. Based on the evidence, which includes his prior chiropractic records, the ALJ finds Claimant's description of his general pain complaints, the assessment of the requirements of his job and his general symptoms after performing his job to be credible and reliable.

7. Prior to late April 2025, Claimant had never complained of back symptoms to his Employer and had never had any issues doing his job. Employer witnesses Raven Kohrs (HR Administrator) and John Carter (Operations Manager) both credibly testified that

Claimant had never before complained of back symptoms and never had an issue performing his job.

Alleged Work Injury–April 27-28, 2025

8. Respondents introduced evidence regarding the specific number and weight distribution of packages Claimant delivered during his work shifts between April 27 and April 30, 2025. On April 27, 2025 (Sunday), Claimant delivered 386 packages during his ten-hour shift. According to Respondents' evidence, of those 386 packages: at least 330 packages (approximately 85%) weighed less than 5 pounds; 11 packages weighed more than 17 pounds; and the heaviest package weighed just under 45 pounds. On April 28, 2025 (Monday), Claimant delivered 301 packages. The heaviest package weighed approximately 40 pounds, 18 packages weighed more than 22 pounds, and the majority weighed under 5 pounds. On April 30, 2025 (Wednesday), Claimant delivered 290 packages. The heaviest package weighed approximately 42 pounds, 13 packages weighed more than 22 pounds, and the large majority weighed under 5 pounds. Respondents did not, however, present testimony setting forth the total weight for each delivery during that period when Claimant had to carry multiple boxes at the same time to a single address. For example, a delivery of 4 boxes weighing 5 pounds each would require Claimant to carry 20 pounds from the truck to the customer's front door – which could require Claimant to carry the boxes up numerous stairs or flights of stairs.[1]

9. While Respondents' evidence establishes that the majority of packages Claimant delivered weighed less than 5 pounds, the evidence also establishes significant physically demanding aspects of his work. First, even light packages require repetitive lifting, bending, carrying, and organizing when handled in quantities of 290-386 packages per ten-hour shift. Second, Claimant credibly testified that 75 pounds is an accurate amount of weight he would lift at work because multiple packages are placed into a carrier or tote

[1] Although the spreadsheets submitted into evidence by Respondents identify the number of packages delivered to each address and the weight of each individual package – so the amount can be calculated - the Employer's witnesses did not testify as to the total weight of the packages delivered to each address for each delivery.

at one time, meaning the cumulative weight when handled together can be substantial. Third, Claimant handled packages weighing up to 40-45 pounds during each of these shifts, with 11-18 packages per shift weighing over 17-22 pounds. Fourth, Claimant's job duties required not only delivering packages but also loading totes into carts, rolling carts to his van, unloading totes into the van, and organizing packages that are all activities requiring repetitive physical exertion. Fifth, as documented in Dr. Dunstan's March 21, 2025, record, Claimant had complained about apartments without elevators where "climbing multiple floors with rather heavy packages can be difficult, tiresome, and frustrating."

10. The evidence establishes that April 27 and 28, 2025, represented a particularly heavy and physically demanding work period for Claimant. On April 27, 2025, Claimant delivered 386 packages, which was the highest volume recorded during the relevant period and approximately 96 more than he delivered on April 30, 2025. On April 28, 2025, Claimant contacted his supervisor during his shift to complain about the excessive number and size of packages, and he submitted photographs to document the load. This contemporaneous communication, made prior to any report of injury or the filing of a workers' compensation claim, constitutes persuasive and credible evidence that the workload on April 28, 2025, exceeded that of a typical workday.

11. Claimant's report of a demanding workload is further corroborated by his treating chiropractor, Dr. James Dunstan, who documented on May 2, 2025, that Claimant stated the volume of deliveries and packages had generally been increasing and that the prior week had been very difficult and demanding. This medical note is consistent with Claimant's contemporaneous complaint to his supervisor and with objective delivery records showing 386 packages delivered on April 27 and 301 packages on April 28th that included number of extra-large boxes.

12. On April 29, 2025 (Tuesday), Claimant took voluntary time off to take his wife to the airport. Claimant did wake up sore with lower back pain on the left side. Claimant did not do anything strenuous that day. On April 30, 2025 (Wednesday), Claimant returned to work and delivered 290 packages. He left work without reporting any injury. This was his last shift that week.

13. Then, on May 1, 2025 (Thursday) he developed back pain that was so excruciating he could not get out of bed.

Medical Treatment After Alleged Work Injury

May 2, 2025–Initial Medical Evaluations and Report to Employer

14. On May 2, 2025, Claimant returned to Dr. Dunstan for a chiropractic appointment. At that visit, Dr. Dunstan documented that Claimant was experiencing "significant low back pain," which Claimant reported that his pain began after a "particularly demanding day approximately 4–5 days ago during the middle of the previous week." Claimant further stated that "the amount of deliveries and packages in general has been increasing recently and that last week in particular was a very difficult and demanding week." On examination, Claimant reported pain levels of 5–6 out of 10 at rest, increasing to 7–8 out of 10 with motion, particularly with lumbar flexion. Dr. Dunstan noted that activities such as rising from a seated position, prolonged standing, walking, bending forward, and sudden movements all exacerbated the pain. He also observed a new pattern of symptoms, including left-predominant pain, mild to moderate radiation into the left gluteal region, and left leg and groin discomfort, which were symptoms that were not present during the previous six months of chiropractic care.

15. The stark contrast between Claimant's presentation on May 2, 2025, and his baseline condition is significant. At his prior chiropractic visit on April 11, 2025, Claimant's low back pain was 2 out of 10, his lowest level in months, and prior symptoms were generally described as soreness, stiffness, or tightness with pain levels ranging from 1–4 out of 10 but averaging 2.5 to 3 out of 10. Considering the acute increase in pain severity and the emergence of new neurological symptoms on May 2, 2025, Dr. Dunstan discontinued his examination and treatment during his session with Claimant and referred Claimant for further evaluation by his employer's medical team. He documented concern for a possible back sprain or lumbar disc herniation. The decision by Dr. Dunstan, a provider who had been delivering routine care for six months to halt treatment during a session and initiate a referral to a physician establishes that Claimant's condition had undergone a marked and concerning change. This escalation is persuasive and credible evidence of a workplace injury to Claimant's back.

16. Also on May 2, 2025, after Dr. Dunstan's recommendations to seek additional care from a physician, Claimant presented virtually to his primary care physician, Prosper Wang, M.D., at Kaiser Permanente. Claimant reported lower back pain on the left side radiating down the left leg after handling extra-large packages weighing 50 to 75 pounds. He reported the pain started the morning after his day off following a 40-hour work week. He described the pain as warm and tender, with shooting sensations down the left leg when attempting stretches. The pain also extended to the left side of the groin. Although Claimant rated the pain as 3/10 at the time of this appointment, he described it as a dull, tugging pain that was different from his prior symptoms. Claimant also informed Dr. Wang about his history of back pain. The record from this visit indicates: "He has a history of experiencing slight back pain during his previous job as a 911 dispatcher, which involved prolonged sitting, but notes that his current pain is more severe than past episodes." Dr. Wang's assessment was "low back pain with possible sciatica" and she noted to "document virtual care for potential work related back pain" and to "consider workers' compensation evaluation if symptoms persist or worsen." Dr. Wang also issued a letter stating Claimant was seen for a back strain "that was likely sustained at work."

17. Following his medical appointments on May 2, 2025, Claimant contacted his Employer via Amazon Chime at 3:06 p.m., alerting them that his chiropractor believed he had disc inflammation/nerve pain causing low back issues. This was the first time Claimant reported a back issue to Employer. Claimant stated he believed the injury stemmed from his route on April 28, 2025.

Treatment at Intermountain Health (May 6–June 5, 2025)

18. On May 6, 2025, Claimant presented to Dr. Samantha Matney, M.D., at Intermountain Health Broomfield Clinic for his initial workers' compensation visit. Claimant reported the incident occurred on April 28, 2025, that he woke up the next morning with back pain, took April 29th off, returned to work April 30th, and when he woke up on May 1st was in so much pain he could not get out of bed. He reported constant lower center back and left lower back pain, pain radiating into the left testicle, left thigh and left groin, and radiating down into his left knee. Dr. Matney noted the following based on her examination:

> Lumbar spine: no gross deformities; no spinal step-offs; slight upper lumbar spinal tenderness to palpation; more pronounced pain to palpate left para lumbar region; limited flexion; limited rotation to the left; fair extension; fair rotation to the right; equivocal straight leg test; negative axial loading test; normal and equal patellar tendon reflexes; difficulty with prolonged sitting; able to get on exam table, moving around with slight caution; fair gait.

19. After her examination, Dr. Matney provided a causation analysis stating: "Based on mechanism of injury, timeline of patient developing symptoms, as well as patient's physical exam findings, I do believe it is probable that his symptoms were caused by his work injury." Dr. Matney diagnosed a possible lumbar strain, prescribed cyclobenzaprine for muscle spasms, referred Claimant to physical therapy, and placed him on work restrictions of no lifting, carrying, pushing, or pulling greater than 10 pounds. Dr. Matney did not document that Claimant had any previous low back complaints, injuries, or treatment.

20. From May 7 through June 5, 2025, Claimant attended physical and occupational therapy. Throughout his care, he experienced functional gains and regressions, but his symptoms continued.

21. On May 6, 2025, Claimant was examined by Dr. Matney with no right-sided symptoms documented. On May 12, 2025, Claimant returned to Dr. Matney reporting worsening symptoms and, for the first time, the medical records note "lower right abdominal pain" in addition to his ongoing left-sided complaints. No medical records exist between these two visits. Based on the documentation, the right-sided symptoms developed sometime between May 7-12, 2025.[2]

22. On May 13, 2025, an ultrasound ordered by Dr. Matney revealed two left inguinal hernias. On May 15, 2025, Dr. Matney referred Claimant to general surgery. On May 19 or 20,

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[2] This timeframe represents 6-11 days after Claimant's sudden worsening on May 1, 2025, when he could not get out of bed and supports a finding that the right-sided groin pain emerged in close temporal proximity to the work injury.

2025, surgeon Adam Butler, M.D., evaluated Claimant, confirmed the diagnosis of left inguinal hernias, discussed treatment options, and submitted a request for surgical authorization after Claimant elected to proceed with surgery.

23. On May 22, 2025, when Claimant presented to Dr. Matney with both left and right groin symptoms, Dr. Matney documented that the right abdominal pain "started about one week ago," placing its onset around May 15, 2025. Based on this May 15 onset date, she opined that "given the onset and timing of his symptoms that it would unlikely be work related." However, Dr. Matney had already documented Claimant's "lower right abdominal pain" on May 12, 2025 - three days earlier than her May 15 estimate. Moreover, the actual onset could have occurred as early as May 7, 2025.[3] This temporal discrepancy is significant because Dr. Matney's causation opinion explicitly relied upon "the onset and timing" as the basis for excluding work-relatedness, and the correct timeframe places the right-sided symptoms substantially closer to the work injury and onset of disabling symptoms.[4]

Transfer to Peak Form Medical Center (June 2, 2025–August 2025)

24. On June 2, 2025, Claimant's care transferred to Peak Form Medical Center. PA-C Mary Tribble evaluated Claimant and noted he was "transferring care due to concerns related to his previous care" and that "surgical repair of the left inguinal hernias has been denied

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[3] Given the absence of any medical examination between May 6 (when no right-sided symptoms were noted) and May 12 (when right-sided symptoms were first documented), the symptoms could have developed any time during this 6-day window.

[4] Dr. Matney appears to have based her causation opinion on symptoms beginning approximately 14 days after the May 1 disabling event (May 15). However, the medical records establish the symptoms were noted to be present by May 12 (11 days after May 1) and possibly as early as May 7 (only 6 days after May 1). This 3-8 day error substantially shortens the temporal gap between the work injury and right-sided symptom onset. And that assumes she was not using May 22, 2025, as the date by which she commented on causation of the right sided hernia.

at this time pending further information." PA-C Tribble obtained a history that the injury occurred April 28, 2025, from lifting packages weighing 50-60 pounds throughout a ten-hour shift. She provided a causation assessment finding it "probable based on the available information associating the work injury to the diagnosis requiring treatment." She ordered a lumbar MRI, referred Claimant to general surgeon Anthony Canfield, M.D., and recommended physical therapy and massage therapy. On examination, PA-C Tribble noted "no hernia on exam" and no palpable masses, though Claimant reported subjective tenderness.

25. On June 3, 2025, Claimant underwent a lumbar spine MRI showing: "Transitional type vertebrae at the lumbosacral junction with partial sacralization of the 5th lumbar vertebrae, a broad-based posterior disc bulge and mild bilateral facet osteoarthrosis at L4-L5, resulting in moderate left foraminal narrowing."

26. From June 9 through August 21, 2025, Claimant attended physical therapy at Peak Form, reporting consistent symptoms and mechanism of injury. He experienced functional gains and regressions, but pain remained throughout.

27. Between June 10 and August 13, 2025, Claimant saw Dr. Felix Meza at Peak Form on multiple occasions. Dr. Meza reviewed Claimant's lumbar MRI, referred him to Dr. Robert Kawasaki for physiatry evaluation. Dr. Meza noted "no hernia on exam" on multiple visits. By July 21, 2025, Dr. Meza noted Claimant had improvement in his lower back symptoms over the past few weeks but reported "most pain is related to his hernias." On August 13, 2025, Dr. Meza noted Claimant reported worsening symptoms and "difficulty with standing or walking for greater than 30 to 40 minutes" and that Claimant "is eager to have his hernia surgery." Dr. Meza stated they were "currently limited in what they're able to do until they receive clearance for the hernia treatment."

28. On June 16, 2025, Claimant presented to Anthony Canfield, M.D., at HCA HealthOne Advanced General Surgery, reporting pain in both left and right groin. An ultrasound of the right groin was ordered. On June 24, 2025, the right groin ultrasound revealed a right inguinal hernia. On July 10, 2025, PA-C Laura Barsch at HCA diagnosed Claimant with "non-recurrent bilateral inguinal hernias without obstruction or gangrene" and Dr. Canfield requested authorization for robotic bilateral inguinal hernia repair with mesh.

29. On July 22, 2025, Claimant presented to Robert Kawasaki, M.D., for physiatry evaluation. Claimant reported his work injury occurring on April 28, 2025, from lifting heavy boxes. Dr. Kawasaki noted Claimant was tender to palpation in the lower lumbar segments, had discomfort with lumbar extension and pain with facet loading during lumbar extension, increased pain with lumbar extension in a supine position, pain in lower lumbar segments more at L4-5 and L5-S1 levels, and some radicular pain experienced with motion that was not significant. Moreover, Dr. Kawasaki noted Claimant had no prior back injuries, which is consistent with Claimant's history. His prior chiropractic treatment was for aches and pains caused by prolonged sitting in his 911 dispatching job, for which he did not claim any work injury, and subsequent chiropractic treatment was to help condition him for his new job delivering packages for Amazon.

Dr. Lesnak's Independent Medical Examination

30. On August 25, 2025, Claimant underwent an Independent Medical Examination with Lawrence Lesnak, D.O., at Respondents' request. Dr. Lesnak is board-certified in Physical Medicine and Rehabilitation.

31. Claimant reported to Dr. Lesnak that he was in his usual state of health until he awoke one morning at the end of April/early May 2025 with significant low back and abdominal pain. He stated he could not recall any specific inciting event at work and that his activities that previous day were not out of the ordinary, though "every day is strenuous and I'm usually stiff and sore after my work shifts." Dr. Lesnak stated in his report that Claimant told Dr. Lesnak that he has "never" experienced any type of abdominal or back problems or symptoms before the end of April/early May 2025 and never had any injuries or underwent any treatment to his abdomen or low back region before that time. Claimant reported his hobby is computer/video gaming.

32. On examination, Dr. Lesnak found Claimant was pleasant but "very dramatic" in his presentation with "tangential thought processes." Claimant ambulated without assistive devices, could heel and toe walk, performed 10 bilateral heel raises without difficulty, and performed a full squat with rise comfortably. He had full strength, intact sensation, and normal reflexes in his lower extremities. He had no tenderness in his inguinal/groin or scrotal regions. There were no palpable inguinal or femoral hernias identified on standing

or supine examination with Valsalva maneuver. Dr. Lesnak noted Claimant exhibited "several pain behaviors" including significant tenderness with even gentle brushing of the skin on his lumbar spine, but no palpable trigger points or muscle spasms were identified. Dr. Lesnak concluded these findings "would seem to suggest some degree of somatization/functional overlay."

33. Dr. Lesnak reviewed Claimant's prior chiropractic records from 2019-2021 and October 2024-May 2025, all post-injury medical records, and the imaging studies (lumbar MRI, bilateral groin ultrasounds). Dr. Lesnak noted the prior records documented Claimant had a history of low back pain, aching, burning, and stiffness requiring chiropractic care dating back to 2019, but Claimant did not report this history during the interview.

34. Dr. Lesnak opined that medical literature suggests 33-50% of infants are born with inguinal hernias and congenital inguinal hernias are frequently bilateral. Based on this, he opined Claimant's bilateral hernias are likely congenital. He concluded: "Based on all the information that I currently have available to me and to a reasonable degree of medical probability, the patient's documented groin ultrasound evidence of bilateral inguinal hernias are completely unrelated to any work activities that he was performing in 04/2025 or at any other time as well."

35. Regarding Claimant's low back, Dr. Lesnak stated: "Clearly, the patient has a long history of chronic low back symptoms including pain, aching, burning sensations, and significant stiffness, for which he was undergoing frequent chiropractic treatments at least between 2019 and 2022, as well as between 10/25/24 – 05/02/25." He noted there was "absolutely no documented evidence of any injury or trauma related pathology identified on the patient's lumbar spine MRI" and "absolutely no reproducible abnormal exam findings identified whatsoever." He noted the imaging studies, which also included the ultrasound that demonstrated Claimant’s hernias showed no "acute or subacute injury or trauma related pathology."

36. Dr. Lesnak concluded there was no medical evidence to support that Claimant sustained any type of work injury, medical diagnoses, or even an aggravation of medical diagnoses from his work activities in late April 2025. He opined Claimant requires no further medical care related to the claim and that MMI and work restrictions are not applicable. Dr. Lesnak

further stated: "Based on this information, it would appear that the patient's reported subjective complaints and medical history appears to be completely unreliable at best."

Hearing Testimony

Claimant's Testimony

37. Claimant testified he treated at the chiropractor before this injury for general soreness from the demands of his job, rating his typical pre-injury back pain around 3. He testified he had never before experienced the kind of symptoms he had following the work injury to his back or groin/testicle area. Claimant testified that 75 pounds is an accurate amount of weight he would lift at work because multiple packages are placed into a carrier at one time. He testified he doesn't do any heavy lifting or physically demanding activity outside of work—only e-bike riding and video gaming.

38. Claimant testified the injury occurred on April 28, 2025, the day he began communication with his Employer about the excessive workload. He testified that on April 29, 2025, he did not do anything strenuous and believes that was the day he drove to the airport, but could not recall anything else he did with his day off. He tried to work on April 30, 2025, and by the morning of either May 1st or May 2nd, the pain was so excruciating he couldn't get out of bed. He testified he notified his Employer, who told him to wait to hear back from insurance, and that he reached out to his PCP virtually while waiting. Following the work injury, at his May 2nd chiropractic appointment, he listed his back pain as 8 out of 10 with motion, abnormal from his typical reporting.

39. There are inconsistencies in Claimant's testimony. He could not recall with certainty whether he woke up in severe pain on May 1st versus May 2nd. He testified that his wife had to help him out of bed when in severe pain, but his wife had flown to Minnesota on April 29, 2025, to visit family for approximately one week and was not present at home on May 1st or 2nd. Claimant could not recall details of what else he did on April 29, 2025, other than airport trips. Claimant displayed poor memory regarding the week of April 27, 2025, admitted to having a poor memory in general, and frequently guessed at what "probably" happened that week.

40. During the August 25, 2025, independent medical examination, Claimant told Dr. Lesnak that he has "never" experienced any back problems or symptoms before late April/early May 2025 and never had any injuries or treatment to his back before that time. When questioned at hearing about why he told Dr. Lesnak he had never experienced back problems or received treatment, despite records documenting chiropractic care dating back to 2019 and his disclosure of prior back problems to Dr. Wang, Claimant had no explanation for his statements or answers to Dr. Lesnak.

Employer Witness Testimony

41. Raven Kohrs (HR Administrator) testified that Claimant called her multiple times on May 2nd and 3rd to report his injury. She testified before the April incident, Claimant had never complained of back symptoms and never had an issue doing his job.

42. John Carter (Operations Manager) testified he could not confirm which specific route Claimant took on the day of injury, but the type of route encompasses many packages in one day. He testified Claimant's testimony regarding package delivery was accurate. He confirmed before the April incident, Claimant never reported back symptoms and never had any issue doing his job.

Credibility Determinations

Credibility of Employer Witnesses

43. The testimony of both employer witnesses is found to be credible. Both witnesses testified consistent with the business records that set forth the number of the packages Claimant delivered and the weight of the packages each day during the relevant period. Moreover, their testimony is consistent with the underlying medical record regarding Claimant’s ability to perform his job before the work injury on April 28, 2025.

Credibility of Claimant

44. The ALJ finds Claimant's testimony generally credible and persuasive. His testimony that the injury occurred on or about April 28, 2025, is consistent with his contemporaneous message to his supervisor that day complaining about excessive packages, Dr. Dunstan's May 2nd note documenting symptoms began "4-5 days ago during the middle of the

previous week" (which corresponds to April 27-28), and his consistent reporting to all medical providers. Significantly, Claimant's testimony about the heavy workload is corroborated by objective documentary evidence independent of his recollection: employer delivery records showing he delivered 386 packages on April 27, 2025 - the highest volume during the relevant period - and 301 packages on April 28, 2025. Employer witnesses Raven Kohrs and John Carter both testified that Claimant's description of his package delivery duties was accurate and consistent with these business records. This objective corroboration of the core facts - the heavy workload and its timing - strengthens Claimant's overall credibility despite inconsistencies regarding peripheral details.

45. Claimant appropriately distinguished between his baseline symptoms (rating typical pre-injury pain around 3, meaning "general soreness") and his acute injury symptoms (8/10 pain with motion). This is consistent with the chiropractic records showing baseline pain of 1-4/10 (typically 2-3/10) from October 2024-April 11, 2025, followed by acute worsening to 5-8/10 on May 2, 2025.

46. Claimant's testimony that he had never before experienced symptoms like those following the work injury is credible and corroborated by employer witnesses who confirmed he never complained of back symptoms and never had issues performing his job. His testimony that he engages in no heavy lifting or physically demanding activity outside of work (only e-bike riding and video gaming) is credible, was not contradicted, and is consistent with his 13-year history as a sedentary 911 dispatcher.

47. There are some inconsistencies in Claimant's testimony regarding some details. For example, he could not recall with certainty whether he woke up in excruciating pain on the morning of May 1st versus May 2nd. Claimant also indicated at some point that his wife had to help him out of bed when he was in severe pain, but his wife had flown to Minnesota on April 29, 2025 to visit family for approximately one week and therefore was not present at home on May 1st or 2nd when Claimant alleges he experienced excruciating pain and could not get out of bed. Claimant could not recall all the details of what he did on his day off on April 29, 2025, other than driving to and from the airport to drop off his wife and pick up his parents.

48. These inconsistencies are concerning and reflect poor memory and/or confusion regarding the sequence of events, and/or possible embellishment regarding certain details. The inconsistency of his wife helping him out of bed is particularly problematic as she was not present. However, the core facts remain consistent and are corroborated by documentary evidence: Claimant worked heavy shifts on April 27-28, 2025; he contemporaneously complained to his supervisor about excessive packages on April 28th before any claim was filed; he worked again on April 30th; and by May 1st or 2nd he was in severe pain that prevented him from working. Whether his wife was present to physically help him or not does not change the fact that he was in severe pain. The important facts supporting compensability–the temporal relationship between the heavy work week and symptom onset, the contemporaneous complaint about workload, the dramatic change from baseline symptoms to acute severe symptoms, the objective imaging findings, and the absence of any other physically demanding activities in Claimant's lifestyle remain consistent and persuasive despite these peripheral inconsistencies.

49. Minor inconsistencies in such peripheral details such as whether pain began on May 1st versus May 2nd, who, if anyone, helped him out of bed at some point when he was in pain, and inability to recall all details of a day off six months earlier do not render a claimant's testimony incredible in its entirety, particularly when the testimony regarding core facts is otherwise consistent with the documentary evidence and the testimony of other witnesses.[5] The ALJ finds that while these inconsistencies negatively affect Claimant's credibility regarding some details, they do not overcome the substantial evidence supporting the work-relatedness of his injuries.

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[5] Variations in the recollection and description of past events by a witness are to be expected and do not mandate a finding that the testimony is fabricated. Internal inconsistencies within a witness's testimony do not, by themselves, justify rejecting the witness's credibility; only when testimony is "palpably incredible and totally unbelievable" may it properly be rejected as a matter of law. *People v. Brassfield*, 652 P.2d 588, 593 (Colo. 1982).

50. However, Claimant was not fully forthcoming with Dr. Lesnak during the IME. He told Dr. Lesnak he had "never" experienced back problems or undergone treatment before April/May 2025, when records document chiropractic care dating back to 2019. When questioned at hearing about why he made this statement to Dr. Lesnak, Claimant had no explanation. This nondisclosure is problematic and Claimant's inability to explain it at hearing is concerning. Nevertheless, this does not defeat his claim because: (1) Dr. Lesnak had access to all prior records and could conduct independent analysis; (2) preexisting conditions do not bar recovery if work aggravates them; and (3) the objective records show stable baseline symptoms for six months followed by acute severe worsening after the heavy work week. Moreover, Claimant did disclose his prior history to Dr. Wang on May 2, 2025, when he started treating for his work injury, where it was documented he had "a history of experiencing slight back pain during his previous job as a 911 dispatcher...but notes that his current pain is more severe than past episodes."

51. Balancing all factors, the ALJ finds Claimant's hearing testimony generally credible regarding the core facts of how and when the injury occurred, his symptoms, work duties, and activities outside of work. His nondisclosure to Dr. Lesnak and the inconsistencies regarding his wife and the exact date of severe pain onset are negative factors but do not negate his overall credibility and defeat his claim given the totality of the evidence.

Credibility / Persuasiveness of Treating Providers' Opinions

52. The ALJ finds the opinions of Claimant's treating physicians credible and persuasive. Dr. Wang issued a letter on May 2, 2025, stating the injury was "likely sustained at work." Dr. Matney provided a causation analysis finding it "probable that his symptoms were caused by his work injury" based on mechanism of injury, timeline, and exam findings. PA-C Tribble provided a causation assessment finding it "probable based on the available information associating the work injury to the diagnosis requiring treatment." Drs. Meza, Butler, Canfield, and Kawasaki all treated or evaluated Claimant and either explicitly found work-relatedness or treated his conditions as work-related without disputing causation.

53. The fact that all treating physicians who examined Claimant multiple times over several months have uniformly found or assumed work-relatedness, except for Dr. Matney’s

comment about the right-sided hernia, is significant evidence. While some may not have been initially aware of the Claimant's prior chiropractic history, none changed their opinions after treating him over time. Plus, their opinions are supported by the temporal relationship between the heavy work week and symptom onset, Claimant's contemporaneous complaint to his supervisor before any claim was filed, the dramatic change from baseline (1-4/10) to acute (5-8/10) symptoms, new symptoms Claimant never experienced before, objective imaging findings, and absence of alternative causation given his sedentary lifestyle.

54. The ALJ gives substantial weight to the treating physicians' opinions and finds they support a conclusion that Claimant's lumbar strain and bilateral inguinal hernias are causally related to his work activities on or about April 28, 2025.

Credibility of Dr. Lesnak's Opinion

55. The ALJ finds Dr. Lesnak's opinion not credible or persuasive and entitled to no weight. While Dr. Lesnak is qualified and appears to have had access to a complete set of Claimant’s medical records, his opinion and conclusions contain fundamental deficiencies:

56. First, Dr. Lesnak failed to distinguish between Claimant's baseline condition and acute increase in symptoms after the alleged work injury. He treated all prior chiropractic care as evidence of "chronic low back symptoms" precluding work-relatedness, ignoring the clear difference between stable baseline symptoms (1-4/10 pain with successful work for six months) and acute severe symptoms (5-8/10 pain with disability) beginning immediately after the heavy work week of April 27-28. This includes the fact that Claimant reported his low back pain to his chiropractor a few weeks before his alleged injury at a 2/10.

57. He also failed to take into consideration the reason for Claimant seeking chiropractic care before his injury. Claimant did not seek chiropractic care due to an injury, but to “be proactive in avoiding the normal aches and pains” and to maintain his physical health to perform his duties as an Amazon delivery driver “efficiently and effectively.” Moreover, the detailed chiropractic records establish that from October 2024 through April 11, 2025,

Claimant maintained stable low-level pain that fluctuated with his workload but never exceeded 4/10 and never prevented him from working. On April 11, 2025, Claimant reported his lowest pain level in months at 2/10. Three weeks later on May 2, 2025, his pain had increased to 5-8/10 with new left-sided predominance, new gluteal radiation, new leg radiation, and new groin pain–symptoms never reported in six months of biweekly care. Moreover, he failed to address the fact that Dr. Dunstan, who had provided routine maintenance care throughout the six-month period, was sufficiently concerned by the acute change in Claimant's condition that he immediately stopped the appointment and referred Claimant for an occupational medical evaluation. This documented dramatic worsening immediately following the heavy work week represents strong and persuasive evidence of a new injury or an aggravation of a low-grade preexisting condition. Dr. Lesnak's failure to recognize and analyze this critical distinction between Claimant's baseline condition and his acute injury is a significant and a glaring failure of his analysis.

58. Second, Dr. Lesnak's opinion that Claimant's bilateral hernias are congenital is speculative. He cites general population statistics but provides no credible evidence Claimant's specific hernias are congenital. The ultrasounds contain no findings indicating congenital origin. Moreover, Dr. Lesnak provides no explanation for why, if congenital, they remained asymptomatic for 37 years including through 13 years as a dispatcher and 6 months as a delivery driver, only to become symptomatic immediately after the heavy work week.

59. Third, Dr. Lesnak failed to address Claimant's sedentary lifestyle outside of work. His own report documents Claimant's only hobby is video gaming. With no heavy lifting or physically demanding activities outside of work, and work being the only source of significant physical demands, a logical inference arises that work caused the injuries. Dr. Lesnak provides no alternative explanation for what non-work activity could have caused lumbar strain or bilateral hernias. Not that it is Respondents' burden to establish the cause of Claimant's conditions, Dr. Lesnak's failure to address the absence of an alternative cause of Claimant's back pain and hernias is another significant gap in his analysis.

60. Fourth, Dr. Lesnak's emphasis on absent "reproducible abnormal exam findings" is misleading. The MRI showed disc bulge, facet osteoarthrosis, and foraminal narrowing.

The ultrasounds showed bilateral hernias. These are objective, measurable pathological findings. Moreover, Dr. Lesnak cherry-picks his single examination while dismissing repeated findings by multiple treating physicians who documented tenderness, hypomobility, hypertonicity, and spasms over several months.

61. Fifth, Dr. Lesnak's characterizations of Claimant as "very dramatic," exhibiting "pain behaviors," having "tangential thought processes," and showing "somatization/functional overlay" are highly subjective. No other physician documented these observations despite numerous examinations over four months. These characterizations appear designed to attack credibility rather than objectively evaluate causation and do not negate objective evidence that supports a finding that Claimant suffered an injury at work and requires medical treatment.

62. Sixth, Dr. Lesnak incorrectly dismisses the timeline Dr. Dunstan documented. Dr. Dunstan's May 2nd note that pain began "4-5 days ago during the middle of the previous week" corresponds to April 27-28 when Claimant worked heavy shifts and messaged his supervisor about excessive packages. Dr. Lesnak states this "does not make sense" but provides no explanation of what the correct timeline should be.

63. Seventh, Dr. Lesnak's opinion is contradicted by numerous treating medical providers who uniformly found or assumed work-relatedness, except for possibly the right-sided hernia.

64. Eighth, Dr. Lesnak provides no alternative explanation for the timing of the development of Claimant’s symptoms. If lumbar symptoms are merely a continuation of chronic problems, why did they suddenly prevent Claimant from working in May 2025 after six months of successful work? If hernias are congenital, why did they remain asymptomatic for 37 years and become symptomatic only after the heavy work week? The only change in Claimant's life at end of April 2025 was work intensity, which he contemporaneously reported to his supervisor as excessive.

65. Ninth, Dr. Lesnak failed to consider that the alleged absence of objective findings on his August 25, 2025 examination - approximately four months after the alleged April 28, 2025, injury - could be explained by the injury having occurred and subsequently improved rather than by the injury never having occurred at all. In fact, the medical records

document that Claimant's back symptoms were improving by late July 2025. For example, Dr. Meza noted on July 21, 2025, that Claimant "has had improvement in his lower back symptoms over the past few weeks" and that "most pain is related to his hernias" rather than his back. Dr. Lesnak's approach assumes that the alleged absence of acute findings based on his examination four months post-injury proves no injury occurred, when it could also prove that an acute injury occurred in late April 2025 and had largely resolved by late August 2025. Dr. Lesnak provides no analysis distinguishing between these two possibilities and does not explain why the documented improvement in Claimant's back symptoms would occur if, as he concludes, Claimant merely has chronic unchanged symptoms unrelated to any work injury. This failure to consider the natural healing process and documented clinical improvement represents another significant analytical gap in Dr. Lesnak's opinion.

66. Finally, Dr. Lesnak's treatment of the imaging studies reflects fundamentally flawed reasoning. The MRI documented disc bulge, facet osteoarthrosis, and foraminal narrowing. The ultrasounds documented bilateral hernias. These are objective pathological findings which are exactly what these imaging methods are designed to detect. Dr. Lesnak repeatedly emphasizes that the studies showed no “acute or subacute injury or trauma related pathology,” then treats this absence as proof that no work-related injury occurred. But there is no credible evidence in the record - including Dr. Lesnak's own report - that establishes that MRIs and ultrasounds can reliably distinguish between congenital pathology, degenerative pathology, or injury-related pathology due to an acute injury or an aggravation of a preexisting condition in the manner he suggests and in a case like this. He has created an evidentiary standard that the imaging cannot meet, then uses the imaging's inability to meet that impossible standard as evidence that no work-related injury occurred. This approach permits him to acknowledge the existence of pathology while simultaneously denying its relevance by creating an evidentiary test designed to fail, then citing that failure as proof of his conclusion.

67. Dr. Lesnak's systematic analytical failures reveal an opinion that consistently favors one side, while failing to meaningfully address the most probative evidence of work-relatedness: the documented heavy work week, Claimant's immediate acute worsening with entirely new symptoms, the absence of alternative causation given his sedentary

lifestyle, and the treating chiropractor's alarm at the dramatic change. Rather than grapple with this evidence, Dr. Lesnak diverts his analysis to attacking Claimant's credibility through inflammatory psychological characterizations such as “very dramatic,” “tangential thought processes,” “pain behaviors,” “somatization/functional overlay,” “completely unreliable,” which were documented by no other physician over four months of care. Moreover, his repeated use of absolute language (“absolutely no medical evidence,” “completely unrelated”) in a case requiring nuance and where reasonable physicians could disagree further demonstrates the weakness of his analysis. As a result, the ALJ finds Dr. Lesnak's opinion unpersuasive and assigns it no weight.

Hernias and Need for Surgery

68. Claimant has been diagnosed with bilateral inguinal hernias based on objective ultrasound imaging studies. The left groin ultrasound performed on May 13, 2025, documented two separate left inguinal hernias. The right groin ultrasound performed on June 24, 2025, documented a right-sided fat containing inguinal hernia. These are objective medical findings documented by diagnostic imaging.

69. Claimant has been consistently symptomatic from these hernias since early May 2025. He has reported persistent groin pain bilaterally, left testicular pain, and abdominal pain that has limited his activities and ability to work. These symptoms have persisted for over five months from the initial onset through the time of hearing.

70. Two qualified general surgeons have independently evaluated Claimant and both recommended surgical repair of the bilateral inguinal hernias. Dr. Adam Butler evaluated Claimant on May 19 or 20, 2025, diagnosed left inguinal hernias, discussed the options of observation versus surgery, and documented that "Patient understands the risk and would like to proceed with surgery." Dr. Butler requested authorization for hernia surgery. Dr. Anthony Canfield at HCA HealthOne Advanced General Surgery evaluated Claimant on June 16, 2025, and again on July 10, 2025. On July 10, 2025, PA-C Laura Barsch, working under Dr. Canfield's supervision, diagnosed Claimant with "non-recurrent bilateral inguinal hernias without obstruction or gangrene" and Dr. Canfield requested authorization for robotic bilateral inguinal hernia repair with mesh. The fact that two

independent surgeons both recommend the same surgical treatment is strong evidence that the surgery is medically appropriate and necessary.

71. Conservative treatment has been attempted and has not resolved Claimant's hernia symptoms. Claimant has undergone some physical therapy, but Dr. Meza documented on July 21, 2025, that "most pain is related to his hernias" and on August 13, 2025 noted that Claimant "is eager to have his hernia surgery" and that they were “currently limited in what they're able to do until they receive clearance for the hernia treatment.” This evidence demonstrates that conservative treatment has been exhausted and surgery is the next appropriate step.

72. The medical records contain no credible evidence that Claimant's hernias will resolve without surgery or that there is any reasonable non-surgical alternative treatment available that has not already been attempted.

73. The ALJ finds that the bilateral inguinal hernias are causally related to Claimant's work injury. Claimant sustained a compensable work injury on or about April 28, 2025. Claimant first developed left groin and testicular symptoms in early May 2025, shortly after the heavy work week of April 27-28, 2025. The left groin ultrasound on May 13, 2025, confirmed two left inguinal hernias. Approximately 10-17 days after the April 28 work activities, between May 6 and May 12, 2025, Claimant developed right-sided groin and abdominal symptoms, and the June 24, 2025, ultrasound confirmed a right inguinal hernia.

74. The ALJ finds both the left sided and right sided hernias are causally related to his work duties. First, the right-sided symptoms developed approximately 10-17 days after the heavy work activities of April 27-28, which is a relatively short time interval. Second, Claimant's work activities on April 27-28, 2025, involved repetitive lifting, bending, and straining that would impact both sides of his body. Third, Claimant engages in no physically demanding activities outside of work that could have caused or caused or aggravated his bilateral inguinal hernias. His only recreational activities are video gaming and e-bike riding. Work was the sole source of significant physical demands in his life. Fourth, both general surgeons who evaluated Claimant recommended bilateral hernia repair, treating this as a unified bilateral condition requiring surgical intervention on both

sides. Neither surgeon distinguished between the sides or suggested that one side was work related while the other was not. Fifth, the treating providers who provided care after both hernias were diagnosed (PA-C Tribble, Dr. Meza) treated both hernias as work related without disputing causation for either side. PA-C Tribble provided a causation assessment finding it “probable based on the available information associating the work injury to the diagnosis requiring treatment” after both hernias had been identified. The evidence supports finding that both hernias are causally related to the work injury.

75. The ALJ also finds that the requested robotic bilateral inguinal hernia repair with mesh is reasonable and necessary medical treatment to cure and relieve Claimant from the effects of his work-related injuries. The surgery has been recommended by two surgeons based on their examinations of Claimant and review of his diagnostic imaging. Conservative treatment has failed to resolve his symptoms, and no other treatment has been recommended that has a reasonable expectation of improving his condition and reducing his symptoms. In other words, there is no credible evidence that the hernias, and the symptoms, will not resolve without surgical intervention.

Back and Need for Treatment

76. The ALJ finds that Claimant's acute worsening of his back pain on May 1-2, 2025, was caused by his work activities during the week of April 27-28, 2025, and that it proximately caused the need for medical treatment. Moreover, the injury was disabling and prevented him from being able to perform his regular job duties. During this period, Claimant delivered 386 packages on April 27 and 301 packages on April 28, which required him to load totes which weighed up to 75 pounds into carts, roll carts to his van, unload and organize packages in the van, and deliver packages - often carrying multiple boxes simultaneously up stairs and multiple floors in buildings without elevators. This workload was sufficiently excessive that Claimant contemporaneously complained to his supervisor and submitted photographs documenting the volume and size of the packages he was delivering.

77. His stable baseline condition (2/10 pain on April 11, full duty work for six months) changed dramatically within days to disabling pain (5-8/10) with entirely new symptoms never reported during six months of biweekly chiropractic care. Dr. Dunstan, who had provided

routine maintenance chiropractic care throughout this period, was sufficiently alarmed by this acute change that he immediately referred Claimant for occupational evaluation. Given Claimant's sedentary lifestyle outside of work (video gaming as sole hobby) and the absence of any non-work physical activity between April 28 and May 1, the ALJ finds that Claimant's job duties is the only credible explanation for the acute injury that occurred following an excessively heavy workload, which was documented by Claimant.

Ultimate Findings of Fact

78. Claimant's job duties exposed him to hazards to which he was not equally exposed outside of his employment. The repetitive heavy lifting, sustained bending and carrying of loads up to 75 pounds, and climbing multiple flights of stairs while loaded with packages during ten-hour shifts far exceed the physical demands to which Claimant was exposed in his everyday life outside of work, as his only activities outside of employment were sedentary (video gaming and occasional e-bike riding).

79. Claimant's job duties aggravated his preexisting back condition and are the proximate cause of his need for medical treatment to cure and relieve him from the effects of his work-related back injury.

80. Claimant's job duties caused his bilateral inguinal hernias and are the proximate cause of his need for medical treatment to cure and relieve him from the effects of his work-related hernias.

81. The injuries caused by Claimant's job duties were disabling and prevented Claimant from performing his regular job duties.

82. The robotic bilateral inguinal hernia repair with mesh is reasonable and necessary medical treatment to cure and relieve Claimant from the effects of his work-related injuries.

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).

I. **Whether Claimant established by a preponderance of the evidence that he sustained a compensable occupational disease or traumatic injury from handling and delivering packages during the week of April 27, 2025.**

II. **If the claim is compensable, whether Claimant's low-back condition, his two left inguinal hernias, and his right inguinal hernia are causally related to the claim such that general medical benefits are warranted for each condition found to be related.**

A. General Legal Standards

The claimant is required to prove by a preponderance of the evidence that at the time of the injury he was performing service arising out of and in the course of the employment, and that the alleged injury was proximately caused by the performance of such service. Section 8-41-301(1)(b) & (c), C.R.S. 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. Industrial Claim Appeals Office*, 107 P.3d 999 (Colo. App. 2004); *H & H Warehouse v. Vicory*, 805 P.2d 1167 (Colo. App. 1990). The question of whether the claimant met the burden of proof to establish a compensable injury is one of fact for determination by the ALJ. *City of Boulder v. Streeb*, 706 P.2d 786 (Colo. 1985); *Faulkner v. Industrial Claim Appeals Office*, 12 P.3d 844 (Colo. App. 2000).

B. Accidental Injury Standard

A compensable injury under the Workers' Compensation Act does not require a discrete or identifiable traumatic event. An injury may be deemed accidental where disabling symptoms arise in close temporal proximity to a period of unusually strenuous or awkward work activity, even if the onset is not immediate or tied to a single incident. *Wesco Elec. Co. v. Shook*, 353 P.2d 743 (Colo. 1960) (injury held compensable where claimant, an electrician, developed disabling back pain after working ten-hour shifts for

several days in a cramped squatting position on a narrow platform, without the ability to sit or stand upright).

C. Occupational Disease Standard

Section 8-40-201(14), C.R.S., defines an occupational disease as one which results directly from the conditions under which work was performed, is a natural incident of the work, can fairly be traced to the employment as a proximate cause, and "does not come from a hazard to which the worker would have been equally exposed outside of the employment." This requirement affects the "peculiar risk" test and serves to ensure that the disease is occupational in origin. If employment conditions acted upon a claimant's pre-existing weakness to disable him, he has a compensable occupational disease. *IML Freight, Inc. v. Industrial Comm'n*, 676 P.2d 1205, 1208 (Colo. App. 1983).

D. Characterization as Accident or Disease

The characterization of an injury as an accidental injury versus an occupational disease does not determine compensability when the factual findings establish a causal relationship between the injury and employment. *IML Freight, Inc. v. Industrial Comm'n*, 676 P.2d 1205, 1208 (Colo. App. 1983). In *IML Freight*, the referee found that a truck driver's stroke resulted from an "accident," but the Court of Appeals held the stroke was actually an occupational disease. *Id*. Nevertheless, the court affirmed the award because "it is immaterial that that finding was based on the assumption that injury was caused by an 'accident' instead of an occupational disease" when the referee had found the necessary causal relationship between the condition and employment. *Id*.

E. Application to Facts

The ALJ finds and concludes that Claimant has proven by a preponderance of the evidence that his lumbar strain and bilateral inguinal hernias are causally related to his employment. Section 8-41-301(1)(b) & (c), C.R.S., requires that Claimant prove he was performing service arising out of and in the course of employment and that the injury was proximately caused by the performance of such service. The evidence establishes both elements under both an accidental injury theory and an occupational disease theory.

1. Accidental Injury Analysis

Under the accidental injury framework applying *Wesco*, Claimant's injuries are compensable. Claimant maintained a stable baseline condition with low-level symptoms (averaging 2.5/10 pain) while working full duty for six months. Within days of an unusually heavy and physically demanding work period on April 27-28, 2025 - during which he delivered 386 and 301 packages respectively, repeatedly lifted totes weighing up to 75 pounds, and contemporaneously complained to his supervisor about the excessive workload - Claimant's condition dramatically worsened. His back symptoms increased from 2/10 to 5-8/10 with entirely new radiating symptoms. Shortly thereafter, he developed left groin pain and then right groin pain, and imaging studies revealed bilateral inguinal hernias. This temporal relationship between the unusually strenuous work period and the sequential onset of disabling symptoms requiring medical treatment establishes that work was the proximate cause of Claimant's back injury, hernias, and the resulting disability and need for medical treatment.

2. Occupational Disease Analysis

Under the occupational disease framework applying Section 8-40-201(14), C.R.S., Claimant's injuries are compensable. Claimant's job duties exposed him to hazards to which he was not equally exposed outside of his employment. The repetitive heavy lifting, sustained bending and carrying of loads up to 75 pounds, and climbing multiple flights of stairs while loaded with packages during ten-hour shifts far exceed the physical demands to which Claimant was exposed in his everyday life outside of work, as his only activities outside of employment were sedentary (video gaming and occasional e-bike riding). His injuries resulted directly from the conditions under which his work was performed (repetitive heavy lifting, bending, carrying, and stair climbing during ten-hour shifts delivering 290-386 packages per day). These conditions were a natural incident of his work as a delivery driver, and the injuries can fairly be traced to his employment as a proximate cause. The hazards of Claimant's employment do not come from hazards to which he would have been equally exposed outside of employment.

3. Conclusion on Compensability

The facts here support compensability under both an accidental injury theory and an occupational disease theory. Whether Claimant's lumbar strain and bilateral inguinal hernias are characterized as an accidental injury arising from the acute heavy work week of April 27-28, 2025, or as an occupational disease resulting from the cumulative repetitive physical demands of his employment, or as both, the claim is compensable. Under *IML Freight*, the specific characterization is immaterial when the factual findings establish the necessary causal relationship between the injuries and employment.

Claimant's sedentary lifestyle outside of work (video gaming and occasional e-bike riding) eliminates non-work activities as a credible cause of either his back injury or his hernias. The treating chiropractor who had provided maintenance care for six months was sufficiently alarmed by the acute change in Claimant's back condition to immediately refer him for occupational evaluation. Multiple treating physicians found or assumed work-relatedness of both the back injury and the hernias. There is no reasonable and credible alternative explanation for the timing of symptom onset for either condition other than Claimant's physical job duties. Although the back symptoms manifested first (May 1-2, 2025), followed by left-sided hernia symptoms, and then right-sided hernia symptoms, all arose from the same physically demanding work activities during the week of April 27-28, 2025.

Claimant has met his burden of proving by a preponderance of the evidence that both his back injury and bilateral inguinal hernias arose out of and in the course of his employment and were proximately caused by his work activities during that period.

III. If his claim is compensable, whether a recommended robotic bilateral inguinal hernia repair with mesh is reasonable, necessary and related to this claim.

Respondents are liable to provide medical treatment that is reasonable and necessary to cure and relieve the effects of the industrial injury. Section 8-42-101(1)(a), C.R.S. The question of whether the claimant proved treatment is reasonable and

necessary is one of fact for the *ALJ. Kroupa v. Industrial Claim Appeals Office*, 53 P.3d 1192 (Colo. App. 2002).

The ALJ finds and concludes requested robotic bilateral inguinal hernia repair with mesh is reasonable, necessary, and related medical treatment to cure and relieve Claimant from the effects of his compensable work injuries. Two independent qualified surgeons - Dr. Adam Butler and Dr. Anthony Canfield - evaluated Claimant and both recommended surgical repair of the bilateral inguinal hernias. The hernias have been objectively documented through diagnostic ultrasound imaging studies.

Claimant has been consistently symptomatic from these hernias since early May 2025, reporting persistent bilateral groin pain, left testicular pain, and abdominal pain that has limited his activities and ability to work for over five months. Conservative treatment has been attempted through physical therapy and has failed to resolve his symptoms. Dr. Meza documented on July 21, 2025, that "most pain is related to his hernias" and on August 13, 2025, noted they were "currently limited in what they're able to do until they receive clearance for the hernia treatment."

No other reasonable alternative treatment has been provided or recommended to cure and relieve Claimant from the effects of his hernias. The bilateral inguinal hernias are causally related to Claimant's compensable work injury, as the symptoms manifested in close temporal proximity to the unusually strenuous work activities of April 27-28, 2025.

Claimant has established by a preponderance of the evidence that the robotic bilateral inguinal hernia repair with mesh is reasonable and necessary medical treatment to cure and relieve Claimant from the compensable work injury.

It is therefore ordered that:

1. Claimant’s claim is compensable.
2. Claimant's injuries include his back and bilateral hernias.
3. Respondents shall pay for all reasonable, necessary, and related medical treatment for his back and bilateral hernias.

4. Respondents shall pay for the hernia surgery for Claimant's bilateral hernias.
5. Based on the stipulation of the parties, Claimant's AWW is $900.
6. 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: November 14, 2025

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

Office of Administrative Courts
State of Colorado
Workers' Compensation Number 5-230-123-007

Issues

Have Respondents overcome, by clear and convincing evidence, the opinions of the Division sponsored independent medical examination (DIME) physician, Dr. Robert McLaughlin (as expressed in his January 28, 2025 DIME report), on the issues of maximum medical improvement (MMI) and permanent impairment?

Stipulations

No stipulations were made at the October 15, 2025 hearing.

Procedural Issue

In their position statement, Respondents also listed the issue of "determination of attorney fees that Respondents are entitled to for Claimant's violation of ALJ Abbott's Case
Management Order'. However, neither party raised or addressed this issue at the October 15, 2025 hearing. The ALJ finds that this was likely an oversight, as the focus of the hearing was the issue of overcoming the DIME, and assignment of the burden of proof. The ALJ also finds that neither party waived this issue by their failure to raise it at the hearing. Therefore, the ALJ finds that the issue of "determination of attorney fees that Respondents are entitled to for
Claimant's violation of ALJ Abbott's Case Management Order" has been preserved.

Findings of Fact

1. This matter involves a slip and fall injury that occurred on February 6, 2023. Respondents have admitted liability for Claimant's work injury. The February 6, 2023 injury occurred when Claimant was in the restroom at work, she slipped on a wet floor, and then fell to the ground. More specifically, Claimant reported that she:

> "fell backwards landing on the floor. She reports she landed on her low back[,] mid back areal;] not on the left side or right side[.] [S]he think[s] she might of

(sic) hit her head. She is not sure if she had a loss of consciousness[.] [S]he recalls there was a gap and she was on the floor. immediately she had a headache and some nausea."[1]

2. As noted in the various reports and medical records admitted into evidence,
Claimant initially sought treatment in the emergency department at St. Joseph Hospita1[2] on February 8, 2023. At that time, Claimant reported her symptoms as including a mild headache, muscle spasms in her back and rib cage. Claimant's diagnosis was identified as an acute headache secondary to a concussion.

3. Subsequently, Claimant's treatment was overseen by providers at Concentra. For much of her claim, Claimant's (ATP) for this claim was Concentra. Claimant's initial treatment included medications, x-rays, physical therapy, imaging of her lumbar and thoracic spines, referrals to physiatry, and to neurosurgery.

4. On March 26, 2024, Claimant was seen by Dr. Samuel Chan [3]. At that time, Dr. Chan opined that Claimant was nearing maximum medical improvement (MMI). Dr. Chan assessed a permanent impairment rating of three percent, whole person. This rating was

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[1] This statement is taken from page nine of Dr. McLaughlin's January 28, 2025 DIME report. As Claimant did not testify at the hearing, the ALJ has taken the description of the mechanism of injury as Claimant described it to Dr. McLaughlin at the DIME.

[2] The medical record from the emergency department visit on February 8, 2023 does not appear in the hearing exhibits. However, references to that date of treatment are made by the various physicians Claimant has seen for IMEs and the DIME, as well as her providers at
Concentra. Therefore, the ALJ has extrapolated from those reports Claimant's initial treatment.

[3] Dr. Chan's report was not included in the hearing exhibits. However, Drs. Lesnak, McLaughlin, and Thwaites all include Dr. Chan's report and opinions in their reports. The ALJ adopts these recitations in making her findings regarding Dr. Chan's opinions.

calculated only for the thoracic spine (one percent for range of motion, and two percent for a Table 53 disorder of the spine). Dr. Chan did not assess a rating for Claimant's lumbar spine.

5. On May 31 , 2024, Claimant was seen by Dr. Kimberly Abernethy at Concentra. In the medical record of that date, Dr. Abernethy placed Claimant at MMI as of May 31 , 2024. Claimant was cleared to return to modified duty, with a work restriction of no lifting over 10 pounds. For maintenance medical treatment, Dr. Abernethy identified four weeks of physical therapy.

6. On November 12, 2024, Claimant attended an independent medical examination (IME) with Dr. Lawrence Lesnak. In connection with the tME, Dr. Lesnak reviewed Claimant's medical records, obtained a history from Claimant, and performed a physical examination. At the iME, Dr. Lesnak performed range of motion measurements of Claimant's lumbar spine using a dual inclinometer. Dr. Lenak noted that during his examination, Claimant exhibited "numerous pain behaviors/nonphysiologic findings including right greater than left 'total body cogwheeling/shaking frequently.' " In his IME report, Dr. Lesnak opined that Claimant did not suffer an injury on February 6, 2023. In support of this opinion, Dr. Lesnak noted that there were no signs of injury or trauma in the initial medical record. Nor were there any reproducible objective findings. Dr. Lesnak further noted that imaging studies are not indicative of an acute injury. Additionally, Claimant's reported symptoms have expanded over time. Dr. Lesnak opined that Claimant has severe psychological issues and that demonstrate an underlying somatic or somatoform disorder. With regard to MMI, Dr. Lesnak noted that if an injury did occur, Claimant had reached MMI no later than October 10, 2023. Dr. Lesnak also opined that no permanent impairment rating was appropriate.

7. On January 28, 2025, Claimant attended a Division sponsored independent medical examination (DIME) with Dr. Robert McLaughlin. In connection with the DIME, Dr. McLaughlin reviewed Claimant's medical records, obtained a history from Claimant, and performed a physical examination. In addition, Dr. McLaughlin asked Claimant to complete testing that included the Modified Zung Depression Index, and the Modified Somatic

Perceptions Questionnaire. Claimant was also asked to complete the Rivermead Postconcussion Symptoms Questionnaire. During the examination, Dr. McLaughlin obtained range of motion measurements of Claimant's cervical, thoracic, and lumbar spines using the two inclinometer method.

8. In the DIME report, Dr. McLaughlin identified Claimant's diagnoses as ongoing chronic pain (with an unclear cause), and thoracic pain, specifically at the T7 and T8 levels. Dr. McLaughlin specifically opined that Claimant was not at MMI, and would benefit from additional pain management. In support of this opinion, Dr. McLaughlin noted that Claimant suffers from chronic pain. Dr. McLaughlin also noted that the Colorado Medical Treatment Guidelines

(MTG) regarding chronic pain include psychosocial assessment to evaluate for nonphysiologic findings. Dr. McLaughlin noted his agreement with Dr. Lesnak's opinion that Claimant suffers from "severe psychosocial/psychological issues". Dr. McLaughlin referenced the testing he asked Claimant to complete as part of the DIME, which showed "a distress somatic score" and moderate to severe anxiety. Based upon these various factors, Dr. McLaughlin specifically recommended additional treatment that would include four weeks of physical therapy (three times per week), and a psychosocial/psychological evaluation or a pain management evaluation.

9. Although he opined that Claimant had not yet reached MMI, Dr. McLaughlin assessed a provisiona1[1] permanent impairment rating of five percent. Dr. McLaughlin calculated the impairment rating as including a Table 53 rating of four percent for Claimant's thoracic spine, and an additional one percent for thoracic spine range of motion.

10. Dr. McLaughlin specifically excluded impairment ratings for traumatic brain injury, the lumbar spine, the pelvis, and the sacroiliac joint. As part of the provisional rating, Dr.

McLaughlin noted permanent work restrictions of no lifting over 10 pounds. However, he also noted that this could be increased to the point that Claimant could return to full duty, depending upon the outcome of the psychological evaluation.

11. On January 29, 2025, the Division of Workers' Compensation (DOWC) DIME Unit sent a letter to the parties noting that Dr. McLaughlin's report had been accepted. The letter specifically noted Dr. McLaughlin's determination that Claimant was not at MMI.

12. Based upon the recommendations of Dr. McLaughlin, Claimant was scheduled to see neuropsychologist, Dr. Laura Rieffel, PhD for purposes of a

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[1] As is appropriate in completing a DIME report.

neuropsychological IME. The evaluation was to occur over two days, specifically May 20 and May 21, 2025. Based upon a June 2, 2025, report authored by Dr. Rieffel, Claimant did appear for these appointments.
However, Dr. Rieffel was unable to complete the evaluation and related testing due to Claimant's reports of significant pain and nausea.

13. Subsequently, on June 20, 2025, Respondents filed an Application for Hearing (AFH) endorsing the issue of overcoming the opinions of the DIME[2]. The current hearing in this matter eventuated from the June 20, 2025 AFH.

14. Due to the inability for Dr. Rieffet to complete her evaluation, on August 18 and 22, 2025, Claimant attended an independent neuropsychological evaluation with Dr. Greg Thwaites. Similar to an IME, Dr. Thwaites reviewed Claimant's medical records and obtained a history from Claimant. In addition, Dr. Thwaites administered a battery of neuropsychological tests, and reviewed the results of that testing in forming his opinions. On September 4, 2025, Dr. Thwaites authored a report explaining the process he followed, the results of the testing involved, and his opinions. Dr. Thwaites opined that Claimant is neither a reliable nor accurate historian. Dr. Thwaites also noted inconsistencies regarding Claimant's description of the mechanism of injury over time. Specifically Dr. Thwaites noted that Claimant described to him "a mechanism/fall, in which her knees went straight down and her feet went behind her, followed by her torso and head falling backward toward her feet." Dr. Thwaits went on to state that "it is difficult for me to understand how [Claimant] could have sustained a blow to the occipital region of her head at all, given this particular mechanism." In addition, Dr. Thwaites determined that Claimant's neuropsychological test results were "not an accurate and valid depiction of her current abilities and represents negative response bias and symptom exaggeration." Dr. Thwaites opined that Claimant engaged in volitional negative response bias and that she exaggerated her impairment. He opined that Claimant's test results should be considered invalid. Dr. Thwaites opined that Claimant did not suffer a psychological or a neuropsychological injury as a result of the February 6, 2023 work injury. He further opined that Claimant may be malingering.

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[2] This case has an extensive and complex procedural history, including the filing of multiple AFHs endorsing various issues. The ALJ does not recite that entire procedural history as it is not germane to the endorsed issue before her at this time.

15. After reviewing additional medical records, on September 15, 2025, Dr. Lesnak authored an addendum to his IME report. These records included Dr. McLaughlin's DIME report, and the reports of Drs. Rieffel and Thwaites. Dr. Lesnak reiterated his opinion that
Claimant reached MMI on August 22, 2025, as this was the date of Claimant's evaluation with Dr. Thwaites. Dr. Lesnak further opined that there was no additional medical treatment that would be reasonable, necessary, or related to Claimant's February 6, 2023 work injury.

16. On October 7, 2025, Dr. McLaughlin testified via deposition. During his deposition, Dr. McLaughlin noted that he had reviewed the reports of Drs. Rieffel and Thwaites. Dr. McLaughlin agreed with Dr. Thwaites' opinion that Claimant does not need any further treatment related to the work injury. Dr. McLaughlin also opined that based upon Dr. Thwaites evaluation, it is now his opinion that Claimant has reached MM! as of August 22, 2025. Dr. McLaughlin further testified that the provisional impairment rating he assessed at the DIME of five percent whole person, is the appropriate impairment rating for Claimant. At the deposition, Dr. McLaughlin completed a DIME Examiner's Summary Sheet that reflected the MMI date of August 22, 2025 and a whole person impairment rating of five percent.

17. Based upon the deposition testimony of Dr. McLaughlin in which he stated his current opinion that Claimant has reached MMI, Respondents initially intended to withdraw their objection to his opinions. However, after communicating with the DOWC, counsel for Respondents learned that the opinions contained in the written DIME report of January 28, 2025 were controlling. Based upon this information from the DOWC, Respondents have elected to proceed with their attempt to overcome the opinions contained in Dr. McLaughlin's
January 28, 2025 DIME report.

18. At the time of the present hearing, the ALJ, counsel for Respondents, and Claimant discussed the procedural posture of the present case and the assignment of the burden of proof to Respondents. Also at the hearing, the ALJ explained that the appropriate burden of proof for overcoming a DIME physician's opinions is that of clear and convincing evidence. The ALJ further explained that Respondent's decision to present Dr. McLaughlin's deposition testimony (and the opinions he expressed at the deposition) in support of their attempt to overcome the opinions expressed in the January 28, 2025 written report was permissible.

19. At the conclusion of Respondents' case in chief (in which they retied upon their exhibits and the deposition testimony of Dr. McLaughlin), Claimant was given the opportunity to testify. She chose not to testify at the hearing.

20. The ALJ credits the medical records, the opinions of Drs. Lesnak and Thwaites, and the testimony of Dr. McLaughlin. The ALJ places particular weight on the opinions expressed by Dr. McLaughlin in his deposition testimony, specifically that it is his current opinion that Claimant has reached MMI. Here, the DIME physician has changed his initial opinions regarding MMI. Clearly this results in an instance of "overcoming" those prior opinions. This change of opinion coupled with the compelling opinions of Drs. Lesnak and Thwaites and the medical records, the ALJ finds that Respondents have successfully overcome the written opinions of the DIME physician in this matter by clear and convincing evidence. As the opinions expressed in the written DIME report have been overcome, The ALJ adopts the current opinions of Dr. McLaughlin and finds that Claimant's date of MMI is August 22, 2025, and the permanent impairment rating of five percent, whole person is appropriate.

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.

2. The facts in a Workers' Compensation case are not interpreted liberally in favor of either the rights of the injured worker or the rights of the employer. Section 843-201 , supra. A Workers' Compensation case is decided on its merits. Section 8-43-201, supra.

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 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.

4. 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).

5. Under the Workers' Compensation Act of Colorado, opinions of a DIME physician are given great deference Section 8-42-107(8)(b)(llt) 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).

6. For purposes of Section 8—42—107(8)(c),C.R.S., the DIME physician's "finding" consists not only of the initial report but also any subsequent opinion given by the physician.

Lambert & Sons, Inc. v. Indus. Claim Appeals Office, 984 P.2d 656 (Colo.App.1998).

7. 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 substantiat 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 their opinions including whether the DIME appropriately utilized the Medical Treatment Guidelines and the AMA Guides in their opinions.

8. As found, Respondents have successfully overcome, by clear and convincing evidence, the DIME physician as expressed in his January 28, 2025 DIME report, on the issues of maximum medical improvement (MMI) and permanent impairment. As found, Claimant reached MMI as of August 22, 2025, and has a whole person impairment rating of

five percent whole person. As found, the medical records, the opinions of Drs. Lesnak and

Thwaites, and the testimony of Dr. McLaughlin, are credible and persuasive on this issue.

Order

It is therefore ordered:

1. Respondents have overcome the opinions of the DIME physician on the issues of MMI and permanent impairment.

2. Claimant reached MMI on August 22, 2025.

3. Claimant shall be assigned a permanent impairment rating of five (5) percent, whole person.

4. The endorsed issue of "determination of attorney fees that Respondents are entitled to for Claimant's violation of ALJ Abbott's Case Management Order" is hereby preserved.

Dated November 14, 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[t]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 Number 5-104-270-001

Issues

Have Respondents demonstrated, by a preponderance of the evidence, that Claimant no longer needs maintenance medical treatment to prevent further deterioration to her physical condition pursuant to *Grover v. Industrial Commission*, 759 P.2d 705 (Colo. 1988), thereby allowing Respondents to withdraw the admission for those benefits related to this claim.

Findings of Fact

1. Claimant suffered an injury at work on March 25, 2019. Claimant's position involved "picking" automotive parts to be packaged and shipped. Claimant testified that on March 25, 2019 they were short staffed and she did additional work both picking parts and building carts to hold totes of parts. In addition, she engaged in lifting totes full of parts onto the assembled carts. During this shift, Claimant developed back pain, and did not complete her shift. Subsequently she reported her symptoms to Employer and this claim eventuated.

2. During her claim, Claimant's treatment has included physical therapy, chiropractic treatment, massage therapy, use of an ESTIM[1] unit, and SI joint injections. Claimant's authorized treating provider (ATP) has been Dr. Paul Ogden and others at his practice "Workwell".

3. On January 16, 2020, Dr. Ogden placed Claimant at maximum medical improvement (MMI). At that time, Dr. Ogden recommended maintenance medical treatment modalities of Flexeril, Biofreeze, and a six month gym membership.

[1] This is an electro stimulation device. In the hearing exhibits and testimony, this device is interchangeably referred to as an "ESTIM", or "electro-stim" device.

4. On January 27, 2020, Respondents filed a Final Admission of Liability (FAL) admitting for the MMI date of January 16, 2020, a permanent impairment rating of 16 percent whole person, and post-MMI medical treatment.

5. On December 17, 2020, Claimant returned to Dr. Ogden. On that date, Dr. Ogden opined that no additional treatment was necessary to treat Claimant's condition. Dr. Ogden also noted that Claimant could return on an as needed basis.

6. Thereafter, Claimant returned to Workwell on May 13, 2021; November 8, 2021; February 28, 2022; October 24, 2022; and October 30, 2023. These medical records do not address Claimant's ongoing use of an electro stimulation device. At many of these appointments, the reason for the visit was identified as completion of disability paperwork. Claimant testified that at some of these visits an examination was performed, at others there was no physical exam.

7. On October 11, 2024, Claimant was seen at Medicine for Business and Industry (MBI) by Paula Homberger, PA-C. In the medical record of that date, PA Homberger noted that maintenance treatment would be handled by MBI because Dr. Ogden and Workwell were no longer available. PA Homberger identified the reason for Claimant's visit as "she presents for paperwork today confirming her permanent work restrictions". On examination, PA Homberger noted that Claimant had limited range of motion in her lumbar spine "due to reported pain [and] stiffness". At that time, PA Homberger recommended Claimant engage in regular exercise including water aerobics and yoga. In addition, PA Homberger offered Claimant RF[2], but Claimant declined.

8. On May 20, 2025, Claimant attended an independent medical examination (IME) with Dr. Joseph Fillmore. In connection with the IME, Dr. Fillmore reviewed Claimant's medical records, obtained a history from Claimant, and performed a physical examination. In the IME report, Dr. Fillmore noted that at the time of Claimant's injury, her providers believed that her low back pain was related to SI joint dysfunction. However, at the IME, Dr. Fillmore opined that Claimant's current low back symptoms are due to disc degeneration and facet arthritis/spondylosis. It is also Dr. Fillmore's opinion that the back strain Claimant suffered at

[2] The ALJ infers that this is a reference to a form of radiofrequency treatment.

the time of her work injury would not be symptomatic years after the injury. With regard to medical treatment, Dr. Fillmore opined that the treatment Claimant received for her work injury was appropriate. He further opined that no further treatment would improve Claimant's function.

9. Dr. Fillmore was asked to specifically opine regarding the medical necessity of Claimant's use of an "electro-stim" machine. Dr. Fillmore stated that this treatment modality will not result in increased function for Claimant.

10. On September 17, 2025, Claimant attended an IME with Dr. Barry Ogin. In connection with the IME, Dr. Ogin reviewed Claimant's medical records, obtained a history from Claimant, and performed a physical examination. Dr. Ogin opined that at the time of her work injury, Claimant suffered a lumbar strain and received appropriate medical treatment for that injury. Dr. Ogin noted that Claimant has a long history for chronic axial back pain that pre-existed her work injury. Dr. Ogin also opined that Claimant's current low back symptoms are related to "chronic muscular deconditioning". With regard to current possible medical treatment, Dr. Ogin opined that Claimant would benefit from a core strengthening program and aerobic conditioning. However, such treatment would not be related to Claimant's work related injury. Dr. Ogin also opined that following her injury in 2019, a course of six months of electrical stimulation treatment would have been appropriate. He further opined that Claimant's continued use of such a device addresses her pre-injury baseline and is not related to the work injury.

11. Dr. Fillmore's testimony was consistent with his written report. Claimant's continued use of the electro stimulation device is not consistent with the Colorado Medical Treatment Guidelines (MTG). He explained that such treatment is intended to be used for a short trial, typically three months. Dr. Fillmore also explained that per the MTG, the use of an electro stimulation device is a passive treatment that is not intended to be used long term. Dr. Fillmore reiterated his opinion that Claimant's continued use of the electrical stimulation device is providing her with no function improvement. Therefore, it is his opinion that the continued use of the electrical stimulation device is not reasonable or necessary medical treatment. It is also Dr. Fillmore's opinion that Claimant is not in need of any further maintenance medical treatment.

12. Claimant testified that she continues to experience low back pain that comes and goes. With regard to the maintenance medical treatment recommended by Dr. Ogden, Claimant testified that Flexeril made her too groggy, so she switched to the use of creams and patches. Claimant further testified that she used Biofreeze for approximately one year. Claimant testified that she uses the electro stimulation device and needs new pads and batteries approximately once a year.

13. The ALJ credits the medical records and the opinions of Drs. Fillmore and Ogin. The ALJ also credits the specific testimony of Dr. Fillmore that the MTG address the use of an electro stimulation device as a passive treatment that is not intended to be used long term. The ALJ is not persuaded that Claimant's continued use of an electro stimulation device will prevent further deterioration of her condition. Therefore, the ALJ finds that Respondents have demonstrated that it is more likely than not that there is no further medical treatment that will maintain Claimant at MMI.

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).

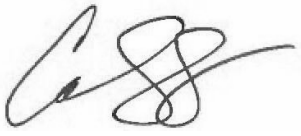
5. The need for medical treatment may extend beyond the point of maximum medical improvement where a claimant requires periodic maintenance care to maintain them at maximum medical improvement (MMI) to prevent further deterioration of their physical condition. *Grover v. Industrial Commission*, 759 P.2d 705 (Colo. 1988). Section 8-42-101, C.R.S., thus authorizes an ALJ to enter an order for future maintenance treatment if supported by substantial evidence of the need for such treatment. *Grover v. Industrial Commission, supra*.

6. As found, Respondents have demonstrated, by a preponderance of the evidence, that there is no further medical treatment necessary to maintain Claimant at MMI related to her March 25, 2019 work injury. As found, the medical records and the opinions of Drs. Fillmore and Ogin are credible and persuasive on this issue.

Order

It is therefore ordered that Respondents may withdraw authorization for maintenance medical treatment related to the March 25, 2019 work injury.

Dated November 17, 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. 5-300-712-001

Issues

- Did Claimant suffer a compensable injury on October 18, 2024?
- Medical bills from Colorado Springs Orthopedic Group and US Anesthesia.
- Temporary total disability (TTD) benefits.
- Disfigurement.
- Penalties to the Colorado Uninsured Employer Fund pursuant to § 8-43-408(5), C.R.S. for failure to insure.
- Claimant's motion to add the issue of penalties pursuant to § 8-43-409, C.R.S. was denied.

Stipulated Facts

The parties stipulated to the following facts:

1. Employer operates a pet grooming business.

2. Claimant worked for Employer as a pet groomer.

3. Claimant suffered an injury to her right middle finger on October 18, 2024, when she was bitten by a cat at work.

4. Claimant had surgery on her right middle finger on November 8, 2024. The surgery was reasonably needed and causally related to the work injury.

5. Employer gave Claimant some funds to cover medical bills. However, the following surgery-related charges remained outstanding at the time of the hearing:

   - Colorado Springs Orthopedic Group: $1,369.34
   - US Anesthesia: $621.55.

6. Claimant was paid $18 per hour and worked an average of 30 hours per week. This equates to an average weekly wage of $540 per week.

7. Claimant missed 26 hours of work because of the compensable injury, commencing November 8, 2024. Claimant is entitled to TTD benefits in the amount of $312 ($18 x 26 = $468 x 2/3 = $312).

8. Employer was not insured for workers' compensation liability on October 18, 2024, due to an inadvertent failure to pay premiums for a policy that was previously in effect.

Findings of Fact

9. As a result of the compensable injury, Claimant has visible disfigurement to areas of the body normally exposed by public view, consisting of (1) a ½-inch long by 1/8-inch wide discolored, irregularly shaped, scar on the right middle finger, and (2) lack of motion of the middle finger, causing it to protrude slightly when making a fist. The ALJ finds that Claimant shall be awarded $400 for disfigurement.

Conclusions of Law

A. Conclusions based on stipulated facts

(1) Claimant proved she suffered a compensable injury to her right middle finger on October 18, 2024, in the course and scope of her employment.

(2) Claimant's average weekly wage is $540.

(3) Claimant is entitled to TTD benefits in the amount of $312.

(4) Employer is liable for medical benefits to cure and relieve the effects of the compensable injury, including outstanding charges from Colorado Springs Orthopedic Group in the amount of $1,369.34, and US Anesthesia in the amount of $621.55.

B. Disfigurement

In addition, Claimant proved entitlement to disfigurement benefits. Section 8-42-108(1) provides that a claimant is entitled to additional compensation if she is "seriously, permanently disfigured about the head, face, or parts of the body normally exposed to public view." As found, Claimant has sustained noticeable disfigurement as a direct and proximate result of the industrial injury. Claimant shall be awarded $400 for disfigurement.

C. Payment to the Colorado Uninsured Employer Fund for failure to insure

Section 8-43-408(5) provides that:

> 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 . . . 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.

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 P. 1006 (1925); *Jacobson v. Doan*, 319 P.2d 975 (Colo. 1957); *Wolford v. Support, Inc.*, W.C. No. 4-155-231 (February 13, 1998). This penalty is mandated by statute and applies regardless of whether it was specifically endorsed by a party.

Even though Employer's lapse in coverage was inadvertent, the statute requires payment to the CUE Fund without regard to intent or culpability. Employer has been ordered to pay $312 in TTD benefits and $400 in disfigurement benefits. Twenty-five percent (25%) of the compensation awarded is $178.

Order

It is therefore ordered that:

1. Claimant's claim for workers' compensation benefits based on an injury occurring on October 18, 2024, is compensable.

2. Employer shall pay Claimant TTD benefits in the amount of $312.

3. Employer shall pay Claimant $400 for disfigurement.

4. Employer shall pay the outstanding charges from Colorado Springs Orthopedic Group in the amount of $1,369.34 and from US Anesthesia in the amount of $621.55.

5. Employer shall pay $178 to the Colorado Uninsured Employer Fund for failure to maintain workers' compensation insurance coverage on the date of Claimant's injury. Employer may contact the Division of Workers' Compensation Customer Service department at 303-318-8700 for instructions on remitting payment to the Colorado Uninsured Employer Fund.

6. In lieu of direct payment of the above compensation and benefits, Employer may:

   a. Deposit $2,880.89 with the Division of Workers' Compensation, as trustee, to secure payment of all unpaid compensation and benefits awarded, or

   b. File a surety bond in the amount of $2,880.89 with the Division of Workers' Compensation within ten (10) days of this order:

      (1) Signed by two or more responsible sureties who have received prior approval of the Division of Workers' Compensation; or

(2) Issued by a surety company authorized to do business in Colorado.

The bond shall guarantee payment of the compensation, penalties, and benefits awarded.

7. Employer shall notify the Division of Workers' Compensation and Claimant's attorney of payments made pursuant to this Order.

8. 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: November 14, 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 5-278-485-001

Issues

Whether Claimant has proven by a preponderance of the evidence that decompression surgery at the L4-S1 level recommended by Dr. Sanjtpal Gill is reasonable medical treatment necessary to cure and relieve the Claimant from the effects of her industrial injury?

Findings of Fact

1. Claimant was employed with Employer working at the Employer's gas station at 24 and G Road in Grand Junction, Colorado. Claimant testified her job duties include keeping the drink stations clean and filling the condiments bar inside the gas station.

2. Claimant sustained an admitted work injury on March 21, 2024 when she tripped and fell outside the gas station while walking up onto a curb in the parking lot. Claimant subsequently sought medical attention at Community Hospital where she underwent a computed tomography ("CT") scan of her brain based on a suspected concussion. Claimant additionally underwent a CT scan of her face and x-rays of her left shoulder. All of the diagnostic tests were reported to be negative.

3. Claimant testified that after her fall, she did not receive medical treatment right away and instead went home, did stretching, but by Saturday, knew something was wrong and then sought treatment at Community Hospital. Claimant testified that prior to the injury, she was very active and would walk five (5) miles per day.

4. Claimant was subsequently referred to Dr. Chaudrhy for medical treatment. Dr. Chaudrhy initially examined Claimant on March 28, 2024. Dr.

Chaudrhy performed an examination that included Claimant's head and face, cervical spine, thoracic spine, lower back, left shoulder, left wrist, and bilateral knees. With regard to her lumbar spine, Dr. Chaudrhy noted Claimant presented consistent with acute on chronic lower back pain secondary to lumbar muscle strain with suspected SI joint involvement. Dr. Chaudrhy recommended a provider-directed home exercise program along with chiropractic care to address this issue.

5. Claimant was subsequently referred to Dr. Anderson on December 4, 2024 for pain management based on her complaints of persistent back pain and leg symptoms. Dr. Anderson evaluated Claimant and diagnosed her with lumbar radiculopathy of the lumbar spine with lumbar facet joint syndrome. Dr. Anderson referred Claimant for L4-L5 epidural steroid injections ("ESI") along with a magnetic resonance image ("MRI") or CT scan.

6. By January 6, 2025, Dr. Anderson referred Claimant to Dr. Gill for surgical consultation.

7. Dr. Gill evaluated Claimant on March 24, 2025. Dr. Gill noted Claimant reported some short-lived episodes of sciatica type pain prior to the injury, but noted that just before the injury Claimant had no signs of lumbar radicular pain or neurogenic claudication type symptoms. Dr. Gill reported Claimant was complaining of neurogenic claudication type pain and symptoms to the left lower extremity grater than to the right lower extremity.

8. Dr. Gill performed imaging studies and diagnosed Claimant with multilevel discogenic disease. Dr. Gill recommended Claimant proceed to surgery consisting of an L4-S1 decompression with possible fusion.

9. Dr. Gill issued a follow report on May 20, 2025 which noted that Claimant sustained a work related fall on March 21, 2024 and began reporting symptoms consistent with lumbar radiculopathy, left lower extremity weakness, gait instability, and chronic low back pain. Dr. Gill noted Claimant reported nearly a year of left-sided foot weakness which was consistent with a post-traumatic aggravation of a preexisting

but previously manageable condition. Dr. Gill noted that while objective findings have varied during her follow-up visits, the constellation of symptoms – including gait abnormality, intermittent limping, and recurring radicular pain – supported a clear and clinically meaningful deterioration following the work injury. Dr. Gill opined in the May 20, 2025 note that the L4-S1 decompression surgery was medically necessary, and in Dr. Gill's opinion, directly related to Claimant's injury of March 21, 2024. Dr. Gill opined that Claimant's injury significantly worsened a preexisting, non-surgical condition to the point where surgical intervention is now required.

10. Respondents obtained an independent medical examination ("IME") of Claimant with Dr. Kimball on April 14, 2025. Dr. Kimball reviewed Claimant's medical records, obtained a medical history and performed a physical examination in connection with his IME. Dr. Kimball reviewed video of the fall that was entered into evidence at hearing and noted Claimant fell onto the left side of her face/shoulder and knee injury without a loss of consciousness, and was able to ambulate after the fall.

11. Dr. Kimball noted Claimant's long history of undergoing physical therapy for various complaints including dizziness, giddiness and left wrist pain. Dr. Kimball further noted that following Claimant's fall, Dr. Chadhry recommended various treatments including chiropractic treatment for her cervical spine and lower back as of April 11, 2024. Dr. Kimball noted Claimant reported to her physical therapist on April 15, 2024 that her symptoms included difficulty sleeping, joint pain, weakness in her arms and legs, along with the onset of headaches.

12. Dr. Kimball noted Claimant underwent an MRI of her lumbar spine on September 19, 2024 which showed a small broad-based disc bulge at the L2-L3, along with buckling of the ligamentum flavum and bilateral facet arthropathy which resulted in moderate to severe spinal stenosis. Dr. Kimball further noted mild left and moderate right neural foraminal stenosis as well as moderate intervertebral disc height loss. At the L3-L4 level, the MRI demonstrated a broad based disc bulge, ligamentum flavum buckling, and bilateral facet arthropathy, leading to moderate spinal canal stenosis, along with mild to moderate right neural foraminal stenosis and mild left

neural foraminal stenosis, accompanied by mild to moderate intervertebral disc height loss. At the L4-L5 level, Dr. Kimball noted a broad-based disc bulge, ligamentum flavum buckling, and bilateral facet arthropathy contributing to severe spinal canal stenosis. Dr. Kimball noted that this level exhibited moderate left and mild right neural foraminal stenosis, as well as advanced intervertebral disc height loss that was asymmetric to the left, along with associated mild degenerative endplate changes. Finally, Dr. Kimball noted that at the L5-S1 level, the MRI revealed a brad-based disc bulge, ligamentum flavum buckling, and bilateral facet arthropathy, resulting in mild spinal canal stenosis and mild bilateral neural foraminal stenosis, along with mild intervertebral disc height loss. Dr. Kimball found the MRI demonstrated multilevel degenerative changes in Claimant's lumbar spine with the most significant findings occurring at the L4-L5 level, where multifactorial severe spinal canal stenosis was present.

13. Dr. Kimball opined in his IME report that Claimant experienced preexisting lumbosacral symptoms of spinal stenosis dating back to November 2018 when she experienced back and left leg symptoms, including the feeling that her leg would give out. Following her fall at work on March 21, 2024, Claimant underwent treatment that included significant treatment for post concussive condition.

14. Dr. Kimball opined in his report that Claimant's findings on the MRI represent significant lumbar degenerative changes causing severe spinal stenosis. Dr. Kimball opined that the symptoms from the stenosis existed prior to the fall and were not caused by the fall. Dr. Kimball opined that if Claimant had an MRI prior to her fall, the same surgical procedure would have been recommended (surgical decompression at L4-S1).

15. Dr. Kimball testified at hearing consistent with his IME report. Dr. Kimball testified he performed a medical causation analysis in performing the IME and opined that the changes shown on the lumbar spine MRI were chronic and would take years to develop. Dr. Kimball testified he reviewed Dr. Gill's May 20, 2025 letter which opined that the recommended surgery was related to the work injury, but disagreed

with Dr. Gill's opinion. Dr. Kimball testified he did not see any objective imagery that documents changes to Claimant's lumbar spine as a result of the fall. Dr. Kimball opined that the recommended surgery was medically necessary, but was not related to the work injury.

16. The ALJ credits the opinions expressed by Dr. Gill in his medical along with Claimant's testimony at hearing and finds that Claimant has demonstrated that it is more probable than not that the surgery recommended by Dr. Gill is reasonable medical treatment necessary to cure and relieve Claimant from the effects of the work injury. The ALJ notes that while the medical records do document Claimant seeking treatment for symptoms involving her low back in May 2019, Claimant was not under active care for her low back in the time frame leading up to her March 21, 2024 work injury. Following Claimant's work injury, Claimant was referred for treatment involving her low back, including chiropractic treatment and therapy to address her low back complaints.

17. The ALJ credits the opinions expressed by Dr. Gill in his Mary 20, 2025 letter and finds that Claimant has established that it is more likely than not that the March 21, 2024 fall significantly worsened her pre-existing, non-surgical condition to the point where surgical intervention is now required. The ALJ therefore finds that Claimant has established that it is more probable than not that the surgery recommended by Dr. Gill involving an L4-S1 decompression represents reasonable medical treatment necessary to cure and relieve Claimant from the effects of her industrial 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 8-40102(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.

2. 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).

3. 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.*

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, the ALJ credits the testimony of Claimant at hearing along with the medical records entered into evidence including the letter from Dr. Gill dated May 20, 2025 and finds that the recommended L4-S1 decompression surgery is reasonable medical treatment necessary to cure and relieve Claimant from the effects of the industrial injury. The ALJ specifically finds that the injury of March 21, 2024 aggravated, accelerated or combined with Claimant's pre-existing condition to cause the need for the recommended L4-S1 decompression surgery as opined by Dr. Gill.

Order

It is therefore ordered that:

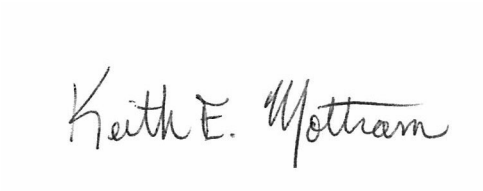
1. Respondents shall pay for the L4-S1 decompression surgery recommended by Dr. Gill pursuant to the medical fee schedule.

2. 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: November 14, 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. 5-293-896-002

Issues

Did Claimant prove she suffered a compensable occupational disease to her right hand on or about October 25, 2024?

If the claim is compensable, did Claimant prove entitlement to medical benefits, including (1) treatment provided by Dr. Benjamin Meyer, (2) a January 30, 2025 charge from Gorman Medical, and (3) an August 25, 2025 right hand x-ray?

Findings of Fact

1. Claimant worked for Employer as a massage therapist. The job is physically demanding and requires forceful use of the hands and thumbs.

2. In late October 2024, Claimant developed pain in her right hand and thumb. Claimant associated the onset of symptoms with the "Dreamcatcher" massage, which involves applying sustained acupressure with her thumbs.

3. Claimant told multiple managers about the thumb pain, which was affecting her ability to perform the Dreamcatcher massage. She also showed at least one manager that she was using kinesiology tape on her thumb to manage the symptoms. A manager suggested that Claimant use tools to perform the Dreamcatcher to minimize use of her thumbs.

4. In November 2024, Claimant requested a reduction to part-time hours because of the persistent thumb pain and swelling. Employer was amenable to the request but needed Claimant to train another massage therapist to cover the workload.

5. Claimant suffered an unrelated admitted work injury to her jaw and neck on November 18, 2024. Employer referred Claimant to the Gorman Medical Center.

6. Claimant saw Jennie Barker, FNP, at Gorman Medical Center on December 19, 2024. The primary purpose of the visit was to evaluate the November 18 injury. However, Claimant also reported an injury to her right thumb from an "acupuncture massage." Claimant said the thumb injury occurred in October 2024 "and has not gone away." She was using a thumb brace "to keep the pain at bay." The right thumb was

tender to palpation, and Ms. Barker observed that it "visibly pops and pops out of place." Ms. Barker diagnosed an unspecified thumb injury and ordered an x-ray and MRI.

7. Claimant gave her manager, Tanya Rooks, a copy of the WC164 Physician's Report form after the appointment with Ms. Barker. Ms. Rooks submitted the claim paperwork to Insurer shortly thereafter.

8. It is unclear whether Employer referred Claimant to a medical provider after receiving notice of the right thumb injury. However, Claimant knew that Gorman Medical Center was Employer's designated provider based because she was sent there for the November 2024 injury.

9. Claimant followed up with Ms. Barker on January 2, 2025. Her right thumb was still painful. The x-ray and MRI were still pending. Ms. Barker amended the diagnosis to include "trigger thumb." Ms. Barker administered injections to the thumb and indicated she would consider hand therapy if the symptoms persisted at the next visit.

10. Claimant next saw Ms. Barker on January 23, 2025. The thumb was "much better" after the injections. The thumb was still "clicking and catching" but Claimant could move it without pain. Despite the improvement, Ms. Barker's report gives no indication that Claimant was put at MMI.

11. Claimant saw Ms. Barker on January 30, 2025. Although the corresponding medical report was not offered into evidence, the visit is summarized in Dr. Burris' IME report. The visit was related to the November 2024 injury, and there is no mention of the right thumb.

12. Respondents filed a Notice of Contest formally denying the thumb claim on February 3, 2025.

13. The injections subsequently wore off and the pain in Claimant's right thumb returned in April 2025. However, she did not return to Gorman Medical Center for treatment of her thumb because the claim had been denied. Instead, Claimant went to personal providers under her personal health insurance.

14. There is no persuasive evidence that Ms. Barker or Gorman Medical Center refused to treat Claimant for nonmedical reasons.

15. Dr. John Burris performed an IME for Respondents on July 15, 2025. Dr. Burris agreed with the diagnosis of trigger thumb. He concluded that Claimant's work

"caused a temporary aggravation of right thumb trigger finger in or around 10/2024." He further opined she reached MMI for the injury on January 23, 2025, the date of the last thumb-related visit with Ms. Barker, and that any ongoing symptoms were unrelated to the work injury.

16. Claimant was evaluated by Dr. Benjamin Meyer, an orthopedic specialist, on August 25, 2025. Claimant reported the injection in January 2025 "worked for a few months however the triggering returned." The thumb was still catching and locking. Examination showed a tender nodule at the base of the volar thumb consistent with trigger thumb. Dr. Meyer obtained x-rays, which showed "very mild" degenerative changes. Dr. Meyer diagnosed right trigger thumb. Dr. Meyer explained that treatment options included additional injections or trigger thumb release surgery. Given the short-lived relief she received from the first injection, Claimant wanted to proceed with surgery.

17. Dr. Meyer reevaluated Claimant's right thumb on September 23, 2025, and affirmed the determination to pursue surgery. Dr. Meyer opined, "this started as a Worker's Compensation claim with symptoms starting after repetitive thumb motion from massage therapy."

18. Claimant was not referred to Dr. Meyer by an authorized provider. She found Dr. Meyer herself using the UCHealth app.

19. Claimant proved she suffered a compensable occupational disease to her right thumb on or about October 25, 2024. Claimant's testimony is credible. Claimant's work required forceful exertion and the application of extended pressure with her thumb. Dr. Meyer's opinions support a causal nexus, and Respondents' own IME agrees the right trigger thumb is work-related. There is no persuasive evidence that she had any pre-existing problems with her right thumb. Nor is there persuasive evidence of any substantial non-occupational exposure to the hazards that caused the condition.

20. Claimant proved the evaluations by Dr. Meyer were reasonably needed and causally related to the work injury. However, she failed to prove Dr. Meyer is an authorized provider.

21. Claimant failed to prove the January 30, 2025 appointment at Gorman Medical Center was causally related to the work accident. The appointment was related

to the November 2024 neck injury, with no mention of the right thumb. That bill should be covered under the November 2024 injury claim.

Conclusions of Law

A. 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); *City of Boulder v. Streeb*, 706 P.2d 786 (Colo. 1985); *Pacesetter Corp. v. Collett*, *33 P.3d 1230* (Colo. App. 2001). The mere fact that an employee experiences symptoms while working does not compel an inference the work caused the condition. *Scully v. Hooters of Colorado Springs*, W.C. No. 4-745-712 (October 27, 2008). There is no presumption that a condition which manifests at work arose out of employment. Rather, the Claimant must prove a direct causal relationship between their work and the injury. Section 8-43-201; *Ramsdell v. Horn*, 781 P.2d 150 (Colo. App. 1989).

The Act imposes additional requirements for liability of an occupational disease beyond the "arising out of" and "course and scope" requirements. A compensable occupational disease must meet each element of the four-part test mandated by § 8-40-201(14), which defines an occupational disease as:

> [A] disease which results directly from the employment or the conditions under which work was performed, which can be seen to have followed as a natural incident of the work and as a result of the exposure occasioned by the nature of the employment, and which can be fairly traced to the employment as a proximate cause and which does not come from a hazard to which the worker would have been equally exposed outside of the employment.

The equal exposure element effectuates the "peculiar risk" test and requires that the injurious hazards associated with the employment be more prevalent in the workplace than in everyday life or other occupations. *Anderson v. Brinkhoff*, 859 P.2d 819 (Colo. 1993). The claimant "must be exposed by his or her employment to the risk causing the disease in a measurably greater degree and in a substantially different manner than are

persons in employment generally." *Id.* at 824. The hazard of employment need not be the sole cause of the disease, but must cause, intensify, or aggravate the condition "to some reasonable degree." *Id*.

As found, Claimant proved she suffered a compensable occupational disease to her right thumb on or about October 25, 2024. Claimant's testimony is credible. Claimant's work required forceful exertion and the application of extended pressure with her thumb. Dr. Meyer's opinions support a causal nexus, and Respondents' own IME agrees the right trigger thumb is work-related. There is no persuasive evidence that she had any pre-existing problems with her right thumb. Nor is there persuasive evidence of any substantial non-occupational exposure to the hazards that caused the condition.

B. Medical benefits generally

The respondents are liable for medical treatment reasonably needed to cure and relieve the effects of an industrial injury. Section 8-42-101. Having proved a compensable injury, Claimant is entitled to a general award of medical benefits.

C. Specific medical bills

Besides proving treatment is reasonably necessary, the claimant must prove the treatment is "authorized." *Bunch v. Industrial Claim Appeals Office*, 148 P.3d 381 (Colo. App. 2006). Authorization refers to a provider's legal right to treat the claimant at the respondents' expense. *Mason Jar Restaurant v. Industrial Claim Appeals Office*, 862 P.2d 1026 (Colo. App. 1993). Providers typically become authorized by the initial selection of a treating physician, agreement of the parties, or upon referrals made in the "normal progression of authorized treatment." *Bestway Concrete v Industrial Claim Appeals Office*, 984 P.2d 680 (Colo. App. 1999); *Greager v. Industrial Commission*, 701 P.2d 168 (Colo. App. 1985). If the employer fails to tender the claimant a list of designated medical providers "forthwith" after receiving notice of an injury, the right of selection passes to the claimant. *Rogers v. Industrial Claim Appeals Office*, 746 P.2d 565 (Colo. App. 1987); WCRP 8-2(E).

It is unclear whether Employer gave a list of providers after receiving notice of the October 2024 injury. Regardless, Claimant knew that Gorman Medical Center was a designated provider based on her November 2024 injury, and Claimant chose to treat

there. The persuasive evidence shows that Gorman Medical Center and Ms. Barker are authorized providers.

Claimant did not return to Gorman for the thumb injury after January 23, 2025. She later started seeing Dr. Meyer on her own referral. Although the evaluations by Dr. Meyer were reasonably needed and causally related to the work injury, Dr. Meyer is not an authorized provider. As a result, Respondents are not liable for the treatment provided by Dr. Meyer, including the hand x-ray.

The January 30, 2025 bill from Gorman Medical Center is not related to the October 2024 work injury and should be covered under the November 2024 claim instead.

Order

It is therefore ordered that:

1. Claimant's claim is compensable.

2. Insurer shall cover medical treatment from authorized providers reasonably needed to cure and relieve the effects of Claimant's injury.

3. Claimant's request for medical benefits relating to treatment provided by Dr. Meyer, including the August 25, 2025 right hand x-ray, is denied and dismissed.

4. Claimant's request for payment of the January 30, 2025 bill from Gorman Medical Center is denied and dismissed.

5. 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: November 14, 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 5-279-004-004

Issues

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

- If Claimant has proven a compensable injury, whether Claimant has proven by a preponderance of the evidence that the treatment he received was reasonable medical treatment necessary to cure and relieve Claimant from the effects of the injury?

- If Claimant has proven a compensable injury, whether Claimant has proven by a preponderance of the evidence that he is entitled to select his own authorized treating physician ("ATP") based on Employer's failure to properly provide Claimant with a list of physicians who could treat Claimant?

- If Claimant has proven a compensable injury, 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 June 27, 2024 until August 1, 2025?

- Following the hearing, the parties stipulated that Claimant's average weekly wage ("AWW") would be $835.00 per week.

- The parties stipulated that Employer was not insured for Colorado Workers' Compensation in violation of Section 8-43-408, C.R.S.

Findings of Fact

1. Claimant was employed by Employer working on a farm as a laborer with job duties that included maintaining ditches. Claimant testified that on May 15, 2024, he was driving a water truck following the burning of ditches and when he got out of the truck, he hit his knee on the truck door and twisted his right knee. Claimant testified he told Employer of the injury, but was not provided with a list of medical providers.

2. Claimant eventually sought medical treatment at Sunrise Community Health Center on June 26, 2024. Claimant reported to Physicians' Assistant ("PA") Gerrity that he had pain in his knee related to hitting the knee on a truck door frame twice in one (1) day about one (1) month earlier. Claimant reported his pain had gotten worse and it was now painful to walk. Claimant was provided with x-rays of the knee and referred for physical therapy. The x-rays demonstrated medium joint effusion in the right knee. PA Gerrity provided Claimant with work restrictions that included minimal walking for the next week.

3. Claimant testified at hearing that after his injury he continued working his regular job with Employer until June 26, 2024 when he could not perform his job duties any longer.

4. Claimant was subsequently returned to Sunrise Community Health on July 16, 2025 and was examined by PA Olson. PA Olson noted Claimant's continued complaints of knee pain and recommended a magnetic resonance image ("MRI"). PA Olson provided Claimant with restrictions that kept Claimant off of work until further evaluation after her exam.

5. The MRI was performed on August 24, 2024 and showed a medial meniscus tear along with subchondral stress reaction of the medial tibial plateau and a small joint effusion.

6. Claimant underwent surgery on the right knee under the auspices of Dr. Matthew Javernick consisting of an arthroscopy with partial medial meniscectomy. The surgery was performed on October 30, 2024.

7. Claimant testified he was paid $2,000 every 15 days. Claimant entered into evidence copies of checks from Employer made out in the amount of $2,000 dated May 9, 2024, and May 20, 2024. Claimant also entered into evidence checks made out in the amount of $1,670 dated June 3, 2024, June 14, 2024 and July 2024.

8. Employer testified at hearing in this matter that Claimant reported that he had injured his knee at the end of the day on May 15, 2024 when he hit his knee on the door of the truck. Employer testified that he believed Claimant had his knee checked and then returned to work cleaning ditches and spraying weeds. Employer testified that Claimant continued to work after May 15, 2024 ten (10) hour days which required Claimant to be on his feet 5-6 hours per day.

9. Employer testified that Claimant continued to work until June 26, 2024 when he was bailing alfalfa and when Claimant finished around 9:30 or 10:00 a.m., Claimant said his knee hurt and he had to go to the doctor.

10. Employer testified that Claimant was paid $16.70 per hour and worked ten (10) hour days. Employer testified that Claimant went from working six (6) days a week to five (5) days a week at the end of May at Claimant's request because Claimant wanted to spend more time with his family. Following the hearing, the parties stipulated that Claimant's AWW would be $835.00.

11. Employer testified at hearing that he did not provide Claimant with a list of medical providers at any time.

12. The ALJ credits the testimony of the Claimant along with the medical records entered into evidence in this case and finds that Claimant has established that it is more probable than not that he sustained a compensable injury arising out of the

course and scope of his employment with Employer when he struck his right knee on the frame of the truck door and twisted his right knee on May 15, 2024.

13. The ALJ credits the medical records entered into evidence in this case and finds that the medical treatment Claimant received was reasonable and necessary to cure and relieve Claimant from the effects of the industrial injury, including the treatment from Sunrise Community Health and the surgery performed by Dr. Javernick.

14. The ALJ further finds that Employer did not provide Claimant with a list of medical providers and Claimant was allowed to select a physician to treat his injury. The ALJ credits the medical records and finds that Claimant selected Sunrise Community Health as the medical provider to treat his injury and the treatment with Sunrise Community Health is therefore authorized medical treatment.

15. The ALJ credits Claimant's testimony at hearing along with the medical records from PA Gerrity that provided Claimant with work restrictions effective June 26, 2024 and finds that Claimant has established that it is more likely than not that as a result of the injury, Claimant's injury resulted in a disability, and Claimant left work as a result of that disability and the disability lasted for more than three (3) days. Claimant has therefore established that he is entitled to an award of TTD benefits.

16. The parties stipulated that Employer did not have workers' compensation insurance as required under Section 8-43-408, C.R.S.

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 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.

2. 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).

3. 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.*

4. As found, the ALJ credits the testimony of the Claimant along with the medical records entered into evidence at hearing and finds that Claimant has established by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course and scope of his employment with Employer when he struck his knee on the frame of the truck door and twisted the knee on May 15, 2024.

5. 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). 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, Claimant may not change physicians without first obtaining permission from the insurer or an ALJ. *See Gianetto Oil Co. v. Industrial Claim Appeals Office*, 931 P.2d 570 (Colo. App. 1996). In order to properly exercise its right of selection, the employer must provide the claimant with a list of at least four providers from which he can choose. Section 8-43-404(5)(a)(I)(A).

6. "Authorization" refers to the physician's legal authority to treat, and is distinct from whether treatment is "reasonable and necessary" within the meaning of Section 8-42-101(1)(a), C.R.S. 2008. *Leibold v. A-1 Relocation, Inc.*, W.C. No. 4-304-437 (January 3, 2008). Section 8-43-404(5)(a) specifically states: "In all cases of injury, the employer or insurer has the right in the first instance to select the physician who attends said injured employee. If the services of a physician are not tendered at the time of the injury, the employee shall have the right to select a physician or chiropractor." "[A]n employee may engage medical services if the employer has expressly or impliedly conveyed to the employee the impression that the employee has authorization to proceed in this fashion…." *Greager v. Industrial Commission*, 701 P.2d 168 (Colo. App. 1985), *citing*, 2 A. Larson, *Workers' Compensation Law* § 61.12(g)(1983).

7. As found, Claimant has established by a preponderance of the evidence that the treatment at the Sunrise Community Health and surgery performed by Dr. Javernick represents reasonable medical treatment necessary to cure and relieve Claimant from the effects of the industrial injury.

8. As found, Claimant has established that Employer failed to refer Claimant for medical treatment and Claimant is therefore entitled to select the physician who is authorized to treat Claimant for his injuries. As found, Claimant has selected Sunrise Community Health as his provider for the compensable injury.

9. 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).

10. As found, Claimant has established by a preponderance of the evidence that he is entitled to an award of TTD benefits commencing on June 27, 2024 and continuing until August 1, 2025. This equates to a TTD period of 57 weeks.

11. The parties stipulated to an AWW of $835.00. This equates to a TTD rate of $556.67, pursuant to Section 8-42-105(1) (835 x 2 divided by 3 = $556.67). The ALJ therefore determines that the total award of TTD benefits for the period of June 27, 2024 through August 1, 2025 is $31,730.19 (57 x $556.67 = $31,730.19).

12. Section 8-43-408, C.R.S. provides in pertinent part:

(1) If an employer is subject to articles 40 to 47 of this title 8 and, at the time of an injury, has not complied with the insurance provisions of those articles or has allowed the required insurance to terminate, or has not effected a renewal thereof, the employee, if injured, or, if killed, the employee's dependents may claim the compensation and benefits provided in those said articles.

(2) In all cases where compensation is awarded under the terms of this section, the director or an administrative law judge of the division shall compute and require the employer to pay to a trustee designated by the director or administrative law judge an amount equal to the present value of all unpaid compensation or benefits computed at the rate of four percent per annum; or, in lieu thereof, such employer, within ten days after the date of such order, shall file a bond with the director or administrative law judge signed by two or more responsible sureties to be approved by the director or by some surety company authorized to do business in Colorado. The bond shall be in such form and amount as prescribed and fixed by the director and shall guarantee the payment of the compensation or benefits as awarded. The filing of any appeal, including a petition to review, shall not relieve the employer of the obligation under this subsection (2) to pay the designated sum to a trustee or to file a bond with the director or administrative law judge.

(3) A certified copy of any award of the director, administrative law judge, or panel ordering the payment of compensation entered in such case may be filed with the clerk of the district court of any county in this state at any time after the order of the administrative law judge awarding compensation, and the same shall be recorded by said clerk in the judgment book of said court and entry thereof made in the judgment docket, and it shall thenceforth have the effect of a judgment of the district

court, and execution may issue thereon out of said court as in other cases. Upon the reversal, setting aside, modification, or vacation of said order or award and upon payment to the trustee or furnishing of bond in accordance with the terms of this section, then, upon certification thereof by the director, administrative law judge or panel, said record in the judgment book and the entry in the judgment docket shall be vacated, and any execution thereon shall be recalled.

(4) Any employer who fails to comply with a lawful order or judgement issued pursuant to subsection (2) or (3) of this section is liable to the employee, if injured, or, if killed, said employee's dependents, in addition to the amount in the order or judgment, for an amount equal to fifty percent of such order or judgement or one thousand dollars, whichever is greater, plus reasonable attorney fees incurred after entry of an order or judgment.

(5) In addition to any compensation paid or ordered in accordance with this section or articles 40 to 47 of this title 8, an employer who is not in compliance with the insurance provisions of those articles 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 uninsured employer fund created in section 8-67-105 in addition to any other amount ordered pursuant to this section or articles 40 to 47 of this title 8.

(6) An employer who fails to comply with a lawful order or judgment issued pursuant to subsection (2) or (3) of this section shall be ordered to 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 in addition to any other amount ordered pursuant to this section or articles 40 to 47 of this title 8.

13. Pursuant to the agreement of the parties, because Employer was not in compliance with the insurance requirements for Colorado workers' compensation benefits under articles 40 to 47 of this title 8 of the Colorado Revised Statutes, Employer is subject to penalties pursuant to Section 8-43-408.

14. Additionally, Claimant may pursue benefits under the Colorado uninsured employer fund established under section 8-67-105, C.R.S.

15. The ALJ calculates the penalties against Employer to be $7,932.55 to be paid to the Colorado uninsured employer's fund established under section 8-67-105, C.R.S. for violation of Section 8-43-408(5).

Order

It is therefore ordered that:

1. Respondent shall provide reasonable medical treatment necessary to cure and relieve Claimant from the effects of the work injury including the treatment from Sunrise Community Health and Dr. Javernick.

2. Respondent shall pay Claimant TTD benefits in the amount of $31,730.19 for the period of June 27, 2024 through August 1, 2025 based on his AWW of $835.00.

3. Respondent shall pay the Colorado uninsured employer's fund $7,932.55 for violation of Section 8-43-408(5).

4. In lieu of payment of the above compensation and benefits to Claimant, Respondent shall:

a. Within ten (10) days of the date of service of this order, deposit the sum of $39,662.74 with the Division of Workers' Compensation, as trustee, to secure the payment of all unpaid compensation and benefits awarded. The check shall be payable to: Division of Workers' Compensation Division Trustee, c/o Mariya Cassin. The check shall be mailed to the Division of Workers' Compensation Revenue Assessment Unit, 633 17th St., Suite 400, Denver, CO 80202,

OR

b. Within ten (10) days of the date of service of this order, file a bond in the sum of $39,662.74 with the Division of Workers' Compensation within ten (10) days of the date of this order:

i. Signed by two or more responsible sureties who have received prior approval of the Division of Workers' Compensation; or

ii. Issued by a surety company authorized to do business in Colorado.

iii. The bond shall guarantee payment of the compensation and benefits awarded.

5. 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: November 17, 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. 5-295-905-002 & 5-297-852-002

ISSUES

I. Whether Claimant established, by a preponderance of the evidence that she sustained a compensable injury to her right wrist on January 12, 2025?

II. Whether Claimant established, by a preponderance of the evidence that she sustained a compensable injury to her left knee on February 5, 2025?

III. If compensable whether Claimant is entitled to medical benefits as reasonable, necessary and related. This includes surgery on Claimant's right wrist as proposed by Dr. Larson and left knee surgery as proposed by Dr. Simpson.

IV. If either case is compensable, whether Claimant is entitled to temporary disability benefits beginning on May 5, 2025.

V. Whether Respondents have proven that Claimant is not entitled to temporary disability benefits because she was responsible for her termination.

Stipulation

The Claimant's Average Weekly Wage for both claims is $768.63.

FINDINGS OF FACT

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

1. Claimant was employed by the employer as a housekeeper on January 12, 2025. She testified that on that date, she worked late until approximately 6:00p.m. She testified that at the end of her shift, she was exiting the building to walk to her car, she slipped and fell on ice.

2. Claimant had been working for the Employer since November of 2024.

3. During the fall, she fell on her butt, hit her head on her shoulder and hurt her right wrist when she tried to catch herself. After the fall, Claimant attempted to be seen for treatment at the Emergency Room, but they declined to see her without a workers compensation number. So, she went home, and her daughter-in-law gave her some Tylenol. The next morning, she woke up feeling sore.

4. Claimant did go into work the following morning but had severe pain in her wrist when she tried to lift and clean things. The Claimant testified that she reported the incident on the day following the incident. After she reported the incident to her office manager, Marisol Vigil and the General Manager, Ms. Garcia, she was told to go to the emergency room.[1]

5. The emergency department was located at St. Mary Corwin Hospital. The chart note from that day indicates that the Claimant was seen at 10:34 a.m. on January 15, 2025. The diagnoses included cervical strain, lumbar strain, contusion of the right upper arm and right wrist sprain. In the comments, it is noted that Claimant had snuffbox tenderness and pain with range of motion of her wrist in any direction.[2] As clarified in Dr. Fall's IME report, "[t]he snuffbox is at the base of the thumb and not in the area of the TFCC which is on the ulnar aspect". To further clarify, Dr. Fall testified that the TFCC is on the "pinky" side of the hand.

6. On August 28, 2025, Dr. Allison Fall conducted an independent medical examination and records review at Respondents' request. She issued a report on September 15, 2025, for both subject incidents. Dr. Fall stated in her report that the Claimant described the location of the pain was her whole entire wrist. The pain was diffuse. Upon examination, Dr. Fall noted that there was no increased pain when she deviated the wrist and there was no clicking or catching in that area. Based on her review of the medical records, and her examination, she was of the opinion that the Claimant had a strain as the result of the fall. She also opined that the Claimant should not have the surgery proposed by Dr. Larsen since it was not reasonable, necessary or related to the work injury.

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[1] There is some discrepancy between the Claimant's testimony that she was told to go to the ER on the following day, which would have been January 13, 2025, but the ER note which has the date of visit as January 15.

[2] At the time of hearing, Claimant's counsel indicated that only the right wrist was still painful from this injury, so the relevant findings included in this order for this date of injury are limited to the right wrist.

7. On January 15, 2025, Claimant was assigned a no-work restriction until January 18, 2025, followed by one week of light duty. Claimant testified on direct examination that she was already scheduled to have two days off during this three-day period. Following that period, Claimant returned to work under a restriction of light duty at Sunrise Senior Living on January 19, 2025.

8. Claimant continued working light duty between January 19, 2025, and the second alleged injury on February 5, 2025. Upon returning to work after her wrist injury, Claimant testified that she continued to receive the same wages as she was receiving prior to the work injury. Ms. Garcia and Mr. Martinez both testified that they did not observe Claimant having any difficulty performing duties within her work restrictions nor did Claimant inform them of any difficulty performing duties during this time.

9. The Claimant testified that the second injury happened on February 5, 2025, when she was vacuuming a carpet. She felt a pop in her knee, but it did not hurt right away. After vacuuming she was cleaning a bathroom and when she went to kneel down to clean the tub, she experienced severe pain in her knee. She reported the incident to the Employer.

10. On February 5, 2025, Claimant was treated at the emergency department of St. Mary-Corwin Hospital. Ex. E: 208. An X-ray of Claimant's left knee found "tricompartmental osteoarthritis…and no acute findings." The ER report noted that the Claimant asserted she had "no history of knee injury". Despite that assertion, there was evidence that the Claimant had prior viscosupplementation and surgery to her left knee. Claimant testified that this prior treatment was not due to pain but was to clean our arthritis to improve function.

11. Contrary to Claimant's testimony that she had no pain in her left knee prior to the incident on February 5, 2025, Dr. Fall testified that the prior medical records "clearly note prior left knee pain complaints". Dr. Fall further testified that "So the records clearly note prior left knee pain complaints. I underwent the same line of questioning when I saw her. I was astounded when she told me she had no knee pain. I've been, you know, providing medical care for many years and worked with a lot of orthopedic surgeons, and nobody's just going to start looking at somebody's knee, and injecting them, and doing surgeries on them if there's no pain complaints. That -- this doesn't happen. It wouldn't be approved -- approved through insurance. It just doesn't happen".

12. Claimant returned to modified work under temporary restrictions at Sunrise Senior Living on February 15, 2025. Claimant continued to work under modified duty in

accordance with changing work restrictions. *Id*. Claimant's supervisor, Christian Martinez, confirmed that Claimant was able to perform her work activities within her work restrictions right up until being placed on leave on April 21, 2025. Ms. Garcia and Mr. Martinez testified on direct examination that Claimant did not inform them of any difficulty performing modified duties within her work restrictions during this time. Ms. Garcia also testified on direct examination that if additional work restrictions had been assigned or become an issue, Employer would have been able to accommodate them.

13. On April 21, 2025, Claimant was placed on a performance counseling improvement plan and administrative leave pending an investigation into Claimant's alleged violation of Employer's policies regarding accepting tips, money, or gifts from residents as well as unexcused or excessive absences. Ms. Garcia testified about the performance improvement plan, which is used any time there are concerns or complaints against an employee, including for job performance matters, absences, etc.

14. Ms. Garcia testified that housekeepers like Claimant received training when hired by Employer, including receiving an employee handbook through which policies and the consequences for their violation are conveyed. Tr. 99-100. This handbook lists "accepting tips, money, or gifts" and "violation of the Attendance and Punctuality Standards Policy" as "conduct which may subject the offender to disciplinary action, up to and including termination, in the [Employer's] sole discretion."

15. On direct examination, Ms. Garcia testified that she received several complaints about Claimant accepting money in exchange for laundry services for residents. One complaint came from a resident's son that Claimant was doing his mother's laundry and receiving money. In addition, she received reports from Claimant's supervisor, Christian Martinez, the Sunrise Senior Living concierge at the time, and a third-party caregiver that Claimant was doing several residents' laundry for twenty dollars. On cross-examination, Claimant admitted that she was aware there was a policy against accepting any money or gifts from residents. Claimant acknowledged that doing laundry for residents was not part of her duties as a housekeeper. Instead, she claimed that she clocked out after her shift and stayed and did the laundry of the resident. She testified that she did this for three residents. However, Ms. Garcia testified that not only was doing laundry for residents not part of Claimant's job duties, but regardless of whether or not money was accepted, "[Employer does] not allow any employees to do off-duty activities for residents."

16. Claimant was responsible for her termination by accepting money from at least one resident to do her laundry. Claimant was aware of this rule, although she denied ever receiving an employee manual. Claimant's denial that she took money from the resident to do the resident's laundry is not credible.

17. With respect to Employer's policy on unexcused absences, this policy states that employees themselves must provide notice of absences via phone call no later than two hours before their scheduled shift begins. Claimant stated that she was never informed of a rule requiring employees to call off of work two hours before a scheduled shift. Ms. Garcia testified that this policy is clearly outlined in the team member handbook. It is also discussed in each training conducted by Sunrise Senior Living. Ms. Garcia further testified that this policy applies no matter what time an employee's work shift starts.

18. On April 30, 2025, Karl Larsen, M.D. examined Claimant in regard to her wrist and reviewed an April 23, 2025 CT scan, which showed a tear of the triangle fibrocartilage (TFCC) in the right wrist. Dr. Larsen recommended a right wrist scope, TFCC debridement, possible wrist capsule thermal modification, and anterior/posterior interosseous nerve excision. Prior to the CT scan, Dr. Larsen's April 16, 2025 examination of Claimant found no tenderness or suspicion of injury to Claimant's TFCC.

19. Dr. Fall opined in her IME report that Claimant did sustain a right wrist sprain on January 12, 2025. However, Dr. Fall stated in her IME report that "[g]iven the diffuse nature of [Claimant's] pain and no localized tenderness over the TFCC, it is unlikely that addressing the symptoms surgically will lead to any significant improvement." Dr. Fall testified on direct examination that she does not believe that the surgery to Claimant's TFCC joint recommended by Dr. Larsen is reasonable or necessary because it is intended to address pathology unrelated to Claimant's work injury and ongoing complaints of pain. Dr. Fall further testified that surgery on Claimant's right wrist has the possibility of worsening Claimant's condition.

20. On July 23, 2025, Michael Simpson, M.D. examined Claimant and reviewed a May 29, 2025 CT scan, which showed a tear of the medial meniscus and concomitant osteoarthritis in the left knee. Dr. Simpson recommended a partial medial meniscectomy.

21. Dr. Fall stated in her IME report that "in [her] opinion, there was no indication that [Claimant] sustained injury to left knee on [February 5, 2025] that required medical

treatment. Given [Claimant's] underlying findings, it would not be unexpected that she would have symptomatology at various times with activities relating to her left knee." Therefore, "in [her] opinion within a reasonable degree of medical probability performing causation analysis, it is unlikely that the [May 29, 2025, CT scan] findings are causally related to [the described mechanism of injury]." Dr. Fall testified on direct examination consistent with her report that the alleged mechanism of injury, which did not include "hyperflexion…[or] planting and rotating," would not cause or aggravate the pathology in Claimant's left knee. Instead, Claimant's left knee pathology is a result of chronic degenerative conditions, for which Claimant had previously required intervening treatments. In addition, Dr. Fall testified that she did not recall seeing in her review of Claimant's medical records any causation analysis that attributed the recommendation for meniscus surgery to the alleged February 5, 2025, mechanism of injury.

22. In her IME report, Dr. Fall maintained that "[t]he surgery recommended by Dr. Simpson is not medically reasonable, necessary, and related to [a] work-related injury. Regardless, however, this recommendation is not supported by the literature, specifically arthroscopic surgery for medial meniscus tear when there is significant degenerative changes is not beneficial." On direct examination, Dr. Fall testified that the Colorado Workers' Compensation Medical Treatment Guidelines do not support the recommendation of the proposed surgery to address meniscus tears when the patient has underlying osteoarthritis.

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. The 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).

B. Assessing weight, credibility, and sufficiency of evidence in Workers'

Compensation proceeding is exclusive domain of administrative law judge. *University Park Care Center v. Industrial Claim Appeals Office*, 43 P.3d 637 (Colo. App. 2001). Even if other evidence in the record may have supported a contrary inference, it is for the ALJ to resolve conflicts in the evidence, make credibility determinations, and draw plausible inferences from the evidence. When determining credibility, the fact finder 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*, 57 P.2d 1205 (Colo. 1936); *Bodensieck v. Industrial Claim Appeals Office*, 183 P.3d 684 (Colo. App. 2008); *Kroupa v. Industrial Claim Appeals Office*, 53 P.3d 1192 (Colo. App. 2002). 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. To recover benefits under the Worker's Compensation Act, the Claimant's injury must have occurred "in the course of" and "arise out of" employment. *See* § 8-41301, C.R.S.*; Horodyskyj v. Karanian* 32 P.3d 470 (Colo. 2001). The phrases "arising out of" and "in the course of" are not synonymous and a claimant must meet both requirements to establish compensability. *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). Thus, 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). There seems to be no real dispute that the Claimant slipped and fell on January12, 2025. It is likely that the fall resulted in a sprain as diagnosed when the Claimant went to the Emergency Room on January 15, 2025. However, it is unlikely that the Claimant

sustained a TFCC tear due to the fall. I conclude that the testimony of Dr. Fall that the claimant strained her right wrist is credible and persuasive.

E. The "arising out of" element required to prove a compensable injury is narrow and requires a claimant to show a causal connection between his/her employment and the injury such that the injury has its origins in work-related functions and is sufficiently related to those functions to be considered part of the employment contract. *See Horodyskyj v. Karanian*, 32 P.3d 470, 475 (Colo. 2001)*; Madden v. Mountain West Fabricators, 977 P.2d 861* (Colo. 1993). Specifically, the term "arising out of" calls for examination of the causal connection or nexus between the conditions and obligations of employment and the claimant's injury. *Horodysky v. Karanian, supra*. The determination of whether there is a sufficient "nexus" or causal relationship between a claimant's employment and the injury is one of fact, 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).

F. The fact that Claimant may have experienced an onset of pain while performing job duties does not mean that he/she sustained a work-related injury or occupational disease. Indeed, an incident which merely elicits pain symptoms without a causal connection to the industrial activities does not compel a finding that the claim is compensable. *F.R. Orr Construction v. Rinta*, 717 P.2d 965 (Colo. App. 1985); *Parra v. Ideal Concrete,* W.C. No. 3-963-659 and 4-179-455 (April 8, 1988)*; Barba v. RE1J School District,* W.C. No. 3-038-941 (June 28, 1991); *Hoffman v. Climax Molybdenum Company,* W.C. No. 3-850-024 (December 14, 1989).

G. While pain may represent a symptom from the aggravation of a pre-existing condition, the fact that Claimant may have experienced an onset of pain while performing job duties does not require the ALJ to conclude that the duties of employment caused the symptoms, or that the employment aggravated or accelerated any pre-existing condition. Rather, the occurrence of symptoms at work may represent, as asserted by Respondents in this case, the natural progression of a pre-existing condition that is unrelated to the employment. *See F.R. Orr Construction v. Rinta,* 717 P.2d 965 (Colo. App. 1995); *Cotts v. Exempla, Inc.,* W.C. No. 4-606-563 (August 18, 2005). Based upon the evidence presented, the ALJ is unconvinced that the Claimant's left knee symptoms were caused, aggravated or accelerated by Claimant's work. I conclude that the opinions of Dr. Fall are credible and persuasive that the Claimant's condition was preexisting. The

left knee symptoms were not caused, aggravated or accelerated by his work duties, including vacuuming on dense carpet.

ORDER

It is therefore ordered that:

1. Claimant sustained a compensable injury to her right wrist in the form of a strain.

2. Claimant has failed to prove, by a preponderance of the evidence, that she sustained a compensable injury to her left knee. The claim for benefits, including medical benefits, for the claimed injury to her left knee is denied and dismissed.

3. Claimant failed to sustain her burden of proof by a preponderance of the evidence that the proposed TFCC surgery is reasonable, necessary or related to the incident of January 12, 2025, and the request for that surgery is denied and dismissed.

4. The claim for temporary disability benefits is denied and dismissed.

5. Any issues not resolved herein are reserved for future determination.

DATED: November 18, 2025.

/s/ Michael A. Perales

Michael A. Perales
Administrative Law Judge
Office of Administrative Courts
1330 Inverness Dr. Suite 330
Colorado Springs, CO 80910

NOTE: If you are dissatisfied with the ALJ's order, you may file a Petition to Review the order with the **Denver Office of Administrative Courts**, 1525 Sherman St., 4th Floor, Denver, CO 80203. You must file your Petition to Review within twenty (20) days after mailing or service of the order, as indicated on certificate of mailing or service; otherwise, the ALJ's order will be final. You may file the Petition to Review by mail, as long as the certificate of mailing attached to your petition shows: (1) That you mailed it within twenty (20) days after mailing or service of the order of the ALJ; and (2) That you mailed it to the above address for the **Denver Office of Administrative Courts**. You may file your Petition to Review electronically by emailing the Petition to Review to the following email address: oac-ptr@state.co.us. If the Petition to Review is emailed to the aforementioned

email address, the Petition to Review is deemed filed in Denver pursuant to OACRP 27(A) and Section 8-43-301, C.R.S. If the Petition to Review is filed by email to the proper email address, it does not need to be mailed to the Denver Office of Administrative Courts. For statutory reference, see Section 8-43-301(2), C.R.S. For further information regarding procedures to follow when filing a Petition to Review, see Rule 27, OACRP. You may access a petition to review form at: http://www.colorado.gov/dpa/oac/forms-WC.htm.

ISSUES

1. Whether Claimant proved by a preponderance of the evidence that he sustained a compensable work injury arising out of and in the course of his employment with Respondent Employer on February 23, 2025.

2. Whether Claimant proved, by a preponderance of the evidence, that he is entitled to all reasonable, necessary, and causally related medical treatment and benefits arising from a February 23, 2025, industrial injury.

3. Whether Claimant proved by a preponderance of the evidence that his average weekly wage is $2,980.76.

4. Whether Claimant proved by a preponderance of the evidence that he is entitled to temporary total disability ("TTD") or temporary partial disability ("TPD") benefits from February 26, 2025, and ongoing.

5. Whether Claimant proved by a preponderance of the evidence that his provider at Peak to Peak Family Medicine, P.C., Dr. David Yamamoto, is an Authorized Treating Physician ("ATP").

FINDINGS OF FACT

1. Claimant was a less-than-load (LTL) truck driver for Respondent-Employer who was involved in a highway motor vehicle accident on February 23, 2025. At that time, his job duties involved transporting trailers to a meet point in Wyoming or Kansas where he would exchange trailers with another driver. He earned $0.86 per mile and earned approximately $2,580 in a typical week.

2. The motor vehicle accident occurred on February 23, 2025, at around 2:00 A.M. near mile marker 299 on I-70 while Claimant was driving back to Respondent-Employer's terminal in Aurora. Claimant's truck was loaded to approximately 75,000 pounds. Claimant observed dim taillights ahead, which made the box truck in front of him appear farther away than it actually was. He realized at the last moment that he was closing on the box truck too quickly. He swerved and applied light brake pressure but struck a glancing blow to the back-left corner of the box truck ahead of him, causing the box truck to flip. Claimant veered into the median and then returned to the roadway while skillfully managing the brakes to avoid flipping or jackknifing his truck.

3. After stopping, Claimant caught his breath and walked back to the box truck. He saw what he believed to be the other driver kneeling on the passenger-side door of the overturned vehicle. Claimant called out, but the other driver did not respond. EMS personnel later documented that the other driver did not report any injury.

4. Claimant called the regional safety representative for Respondent-Employer, Michael Lopez. Claimant later testified that he told Mr. Lopez he was sore but had no cuts, contusions, or scrapes, and that he was in shock.

5. When EMS arrived on scene, accounts began to differ. Claimant testified that he told EMS that he was shaken and sore and was unsure whether he was okay. He testified that EMS personnel offered to transport him to a medical facility, but that he declined because he had no visible injuries and believed he could manage his symptoms until returning to the terminal and going home. Claimant testified that immediately after the accident, he experienced soreness in his neck and back extending from the top of his shoulders and neck down to his buttocks.

6. Claimant also completed a Driver's Statement for the Colorado State Patrol. Where the form asked whether Claimant was hurt, Claimant checked the box for

"NO." When asked to "[d]escribe your injuries," Claimant wrote "NONE." Similarly, the Bennett-Watkins Fire Rescue that secured the scene completed a report that at the time they left the scene to law enforcement "no injuries were reported."

7. At hearing, Claimant was asked why he wrote "none" in the section asking him to describe his injuries on the Driver's Statement provided to the State Patrol. He testified that he was in shock and did not know what he was doing, and that he understood "injuries" to refer to broken bones, scrapes, or contusions.

8. Later that morning, Claimant spoke with Anthony Martinez, the line haul supervisor, and Karen Lynn Walsh, the terminal supervisor, regarding the accident. Claimant testified that he told Mr. Martinez that he was injured. Mr. Martinez, however, testified that when he spoke with Claimant right after the accident, Claimant did not indicate that he was injured, sore, or having any back problems. Mr. Martinez testified that he would have completed an injury report and put the information into the "risk console" had Claimant reported an injury to him. And, while Claimant testified that he never received a designated provider list from Respondent-Employer, Mr. Martinez testified that he would have provided Claimant with a packet that would have included a list of designated providers. Mr. Martinez testified that he had performed these tasks many times before when other drivers had reported injuries.

9. Claimant spoke with Ms. Walsh that morning as well. Claimant testified that he told Ms. Walsh that he was sore and hurt. Ms. Walsh also testified that she spoke with Claimant. However, she testified that Claimant did not allege at any time during that conversation that he was injured or had any soreness.

10. Claimant later testified that Respondent-Employer did not provide him with a designated provider list. He testified that he remained in bed for approximately one week after the accident, resting and waiting for Respondent-Employer to provide a referral to a doctor.

11. On the morning of February 26, 2025, Ms. Walsh called Claimant and notified him that his employment was being terminated due to the accident.

12. Two days later, on February 28, 2025, Claimant sought treatment at the Rocky Mountain Regional Veterans Affairs Medical Center. Claimant complained of back pain and post-traumatic stress symptoms. Claimant expressed emotional distress from the accident, including reliving his fear of dying in the accident, rumination, sleeplessness, sweats and shaking, and low appetite. Claimant also expressed emotional distress arising from his termination of employment. Claimant expressed that his emotional distress also arose from his impression that the Employer was insufficiently supportive of him as well as the uncertainty as to his ability to find new work and pay the bills. Claimant expressed that he had already contacted a law firm, but he asked the provider for additional legal resources. Claimant underwent a CT scan of his head and it showed no acute intracranial abnormality. Similarly, CT scans of Claimant's cervical spine, thoracic spine, and lumbar spine all showed no acute fracture or malalignment. The provider listed the diagnoses as PTSD and general anxiety disorder. Claimant was provided with mental health resource materials, sleep medication, and pain medication.

13. Claimant established treatment with Dr. David Yamamoto on April 2, 2025. Claimant complained of neck pain, tension headaches, back pain, and anxiety or PTSD. Dr. Yamamoto examined Claimant and noted that Claimant exhibited full range of motion in the cervical spine. Claimant exhibited tenderness in his lumbar spine, but Dr. Yamamoto noted that Claimant self-limited on range-of-motion testing. Dr. Yamamoto referred Claimant for physical therapy and counseling and provided Claimant prescriptions for an NSAID and a muscle relaxer.

14. Claimant continued to treat with Dr. Yamamoto seven more times over the next several months through August 2025, continuing to complain of the mental health symptoms as well as neck and back pain and headaches.

15. Claimant underwent an IME with Dr. Lawrence Lesnak in August 2025. Dr. Lesnak took Claimant's subjective history, examined Claimant, and reviewed Claimant's medical records and dashcam footage of the motor vehicle accident. Dr. Lesnak ultimately opined that there was no medical evidence supporting Claimant's claimed injuries from the motor vehicle accident. Dr. Lesnak noted that emergency room records from February 28, 2025, document no external signs of trauma and no reproducible abnormal exam findings. He also noted that CT imaging of Claimant's head and entire spine similarly revealed no acute injury or trauma-related pathology. Dr. Lesnak further observed that neither Dr. Yamamoto nor his staff ever documented any objective, reproducible abnormalities. Additionally, during the IME, Claimant displayed numerous pain behaviors and nonphysiologic findings and reported moderate somatic complaints on screening, but none correlated with objective pathology. Based on the records, imaging, and his examination, Dr. Lesnak felt that Claimant sustained no injuries and developed no medical condition attributable to the motor vehicle accident.

16. At hearing, Claimant testified that he continued to experience neck and back pain at the time of the hearing, continued to have nightmares, ruminated about the accident, and had difficulty thinking clearly. He also testified that he continued to experience nightmares and took triazolam for sleep and prednisone for PTSD and nightmares.

17. Claimant also provided substantial testimony at hearing regarding his disagreement with the basis for the termination of his employment. Claimant testified that this was his first at-fault incident. He acknowledged two prior incidents—a 2024 trailer fire caused by a worn wheel bearing, and an elk kicking out a headlight—but testified that he was never reprimanded for them. Claimant testified that he believed his termination was wrongful because the two prior incidents were not his fault. When presented with a notice that his February 15, 2024 incident was deemed preventable, Claimant testified that he was not referring

to that incident because it did not involve another vehicle.

18. Dr. Lesnak testified at hearing as well. Dr. Lesnak testified that during examination of Claimant's neck range of motion, Claimant did not seem to be providing very good effort at all. Claimant exhibited a lot of pain behaviors during neck flexion and twisting. Yet, later during the exam, when Claimant almost sat on his sunglasses, Dr. Lesnak warned Claimant not to sit on them, at which point Claimant turned his head to look at the sunglasses and exhibited no signs of discomfort or range-of-motion restriction. Additionally, Dr. Lesnak testified that during the examination he touched Claimant lightly on the top left side of Claimant's head and that Claimant reported pain in his right neck and shoulder blade area, which Dr. Lesnak felt was a non-physiologic response. This was consistent with Dr. Lesnak's psychological screening test on which Claimant scored at a moderate level of somatic pain complaints.

19. Dr. Lesnak testified that the CT scans of Claimant's spine and head revealed no evidence of pathology and there were no reproducible exam findings.

20. Regarding Claimant's claim of mental stress, Dr. Lesnak felt that the accident was insufficient to cause PTSD.

21. Therefore, Dr. Lesnak testified, he was unable to identify any evidence of an injury.

22. The Court finds Dr. Lesnak's testimony credible. Dr. Lesnak's testimony was consistent with his report as well as with Claimant's medical history insofar as Claimant's medical history does not document an objectively verifiable injury, notwithstanding the accident. Dr. Lesnak's observations regarding Claimant's pain behavior during the IME are plausible and the Court finds little reason to disbelieve those observations. Consequently, the Court credits Dr. Lesnak's testimony as well as his observations documented in his IME report.

23. The Court finds Claimant's testimony to be of limited credibility. While Claimant's account of the accident itself and the sequence of events are plausible and consistent with the video footage, Claimant's testimony regarding his development of symptoms is at odds with various other sources in the record, including the Bennett-Watkins Fire Rescue report documenting no injuries and Claimant's own written statement to State Patrol indicating that he was not injured in the accident. Additionally, Mr. Martinez and Ms. Walsh both testified that Claimant reported no injury to them when they spoke with him on the morning of the accident, an account which is consistent with Claimant's statements to Bennett-Watkins Fire Rescue and State Patrol. To credit Claimant's testimony over those of Mr. Martinez and Ms. Walsh would also be to credit his testimony over Bennett-Watkins Fire Rescue as well as his own contemporaneous statements from the night of the accident.

24. While Claimant's explanation for his failure to report the injury at the time of the accident was a plausible one—namely, that he was in shock just after the accident—the Court cannot ignore the fact that Claimant made at least four statements during the hours after the accident indicating that he was not injured. Indeed, there is no credible evidence in the record that Claimant alleged an injury until his employment was terminated three days later, at which time he sought legal counsel and medical treatment.

25. It is clear from the evidence that Claimant's termination of employment caused him emotional and financial stress and that he seeks both vindication and financial relief to which he genuinely claims entitlement. And, while the Court finds that Claimant may very well genuinely believe that he sustained a compensable injury arising out of the February 23, 2025 accident—and, indeed, he may in fact have—the evidence presented at hearing to support such a finding is outweighed by the evidence to the contrary. In other words, regardless of whether Claimant did in fact sustain a compensable injury arising out of and in the course of his employment on February 23, 2025, the Court finds that Claimant did not prove the occurrence of such an injury by a preponderance of the evidence.

CONCLUSIONS OF LAW

Generally

1. 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.

2. 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).

3. 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

4. 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.

5. 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).

6. As found, and for the reasons set forth above, the Court concludes that Claimant has not proved by a preponderance of the evidence that the February 23, 2025 accident caused disability or the need for medical treatment, and therefore he has not established the occurrence of a compensable injury.

ORDER

It is therefore ordered that:

1. 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 February 23, 2025.

DATED: November 18, 2025.

Stephen J. Abbott
Administrative Law Judge
Office of Administrative Courts
1525 Sherman Street, 4th Floor
Denver, Colorado 80203

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* § 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.

Office of Administrative Courts
State of Colorado
Workers' Compensation No. WC 5-296-123-001

Issues

Whether Claimant has proven by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course and scope of his employment with Employer on December 11, 2024?

If Claimant has proven a compensable injury, whether Claimant has proven by a preponderance of the evidence that the surgery performed by Dr. West on February 12, 2025 is reasonable medical treatment necessary to cure and relieve Claimant from the effects of the industrial injury?

Findings of Fact

1 . Claimant was employed with Employer as a sales associate. Claimant testified he was working for Employer on December 11, 2024 when he was moving an artificial Christmas tree into a box and was pushing his knee onto the box when he fellt his right knee dislocate and then pop back in. Claimant testified he felt immediate pain. Claimant testified there was a box between his left and right leg with a box directly behind is right leg with his foot pointed towards his right (towards the back of the store). Claimant testified a manager noticed he was limping and instructed him to go sit down on a nearby ladder. Claimant testified he continued to work for another 24 hours but struggled to get up and down the ladder the rest of the day. Claimant did not seek medical attention on December 1 1 , 2024 and was not scheduled to work on December 12, 2024. Claimant testified he filled out an injury report several days later and was provided with a list of physicians for medical treatment.

2. Claimant sought treatment with Dr. West on January 16, 2025 and reported a history of previously dislocating his left knee in 2020 with a second

dislocation in 2022 while working at Walmart. Claimant reported no continued problems with instability of the left knee after that time. Claimant reported he had dislocated his right knee when pushing Christmas trees at Employer in December 2024 with the knee dislocating again while bowling after Christmas 2024. Claimant reported that in each of these episodes, his patella spontaneously reduced. Dr. West performed x-rays and diagnosed Claimant with a closed dislocation of the right patella. Dr. West referred Claimant for a magnetic resonance image ("MRI") of the right knee.

3. The MRI of the right knee was performed on January 23, 2025. The MRI demonstrated findings consistent with a recent lateral patellar dislocation with osteochondral injury of the medial / odd facet of patella and bone contusion lateral femoral condyle with a probable mild medial collateral ligament. Additionally trochlear dysplasia and altered patellar tracing with the tibial tubercle trochlear grove (TT-TG) distance of 16 to 17 millimeters was noted.

4. Claimant returned to Dr. West on January 23, 2025 following the MRI. Dr. West noted Claimant's treatment options included nonoperative treatment with activity modification or surgery consisting of a diagnostic arthroscopy with medial patellofemoral ligament reconstruction ("MPFL") and possible tibial tubercle osteotomy ("TTO") to address the patella alta and to normalize the TT-TG distance.

5. Claimant elected to pursue the surgery which was performed under the auspices of Dr. West on February 12, 2025. Claimant testified the surgery resolved the instability in his right knee.

6. Claimant testified to his history of instability in his left knee. Claimant noted that his left knee previously dislocated the first time while running in a field and then again while working at Walmart. Claimant testified he had physical therapy for his left knee as opposed to surgery. Claimant denied any history of previous dislocations of his right knee prior to December 1 1, 2022.

7. Respondents referred Claimant for an independent medical examination ("IME") with Dr. Chen on May 14, 2025. Dr. Chen reviewed Claimant's medical records, obtained a medical history from Claimant and performed a physical examination in connection with his IME. Dr. Chen opined in his IME report that, based on the imaging, including the MRI report, Claimant has anatomical abnormalities of the right knee that causes the patellar dislocation to occur. Dr. Chen noted that this included the

abnormal TT-TG distance, trochlear dysplasia, as well as patella alta. Dr. Chen opined that the dislocations were related to the natural progression of Claimant's underlying disease process, as opposed to anything to do with work. Dr. Chen opined that the cause of Claimant's knee dislocation was due to Claimant's systemic / congenital / developmental problem, as opposed to an occupational issue.

8. Dr. Chen testified at hearing consistent with his report. Dr. Chen noted in his testimony that Claimant did not really have a mechanism of injury because Claimant was making a conscious decision at the time the dislocation occurred and, when you are consciously doing something, you are protecting yourself. Dr. Chen testified that Claimant's knee was bound to dislocate eventually and it occurred when he was putting the artificial Christmas tree in the box at work.

9. Dr. Chen conceded that Claimant reported dislocating his knee on December 11, 2024 while pushing on a box with his knee in a flexed position, but opined that he did not consider Claimant pushing on the box to be "trauma". Dr. Chen conceded that the knee dislocated and caused trauma inside the knee, but maintained that the mechanism of injury was not traumatic. Dr. Chen opined that the knee surgery performed by Dr. West was reasonable medical treatment necessary to treat Claimant's dislocated patella.

10. The ALJ credits Claimant's testimony at hearing and finds that Claimant has established that it is more probable than not that he sustained a compensable injury arising out of and in the course and scope of his employment with Employer. The ALJ considers the testimony of Dr. Chen but does not credit the opinion of Dr. Chen that the act of pushing on a box with Claimant's knee in a flexed position was not a traumatic mechanism of injury that resulted in Claimant dislocating his right patella.

11. Notably, under Colorado workers' compensation law, if the injured worker suffers from a pre-existing condition, his injury is still held to be compensable if the injury at work aggravates, accelerates or combines with a pre-existing condition to cause the need for medical treatment. In this case, the ALJ credits Claimant's testimony and finds that the act of kneeling on the box combined with Claimant's preexisting congenital condition to cause the patella to dislocate and resulted in the need for medical treatment. Notably, this is no a situation where Claimant was walking

while at work and his patella spontaneously dislocated. Instead, Claimant was in the act of kneeling and pushing on a box with his knee when the dislocation occurred. Under the circumstances of this case, that represents a compensable injury when Claimant subsequently needs medical treatment to address the underlying instability caused by the dislocation.

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 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.

2. 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).

3. 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. Vicoty, supra.

4. As found, the ALJ credits the testimony of Claimant along with the medial records entered into evidence and finds that Claimant has established that he sustained a compensable injury arising out of and in the course of his employment on December 11, 2024 when he was pushing on the box with his knee in a flexed position and his patella dislocated. As found, Claimant's injury represents actions that aggravated, accelerated or combined with his pre-existing condition to cause the need for medical treatment. Notably, Claimant had not previously experienced dislocations involving his right knee prior to December 1 1, 2024 and had not needed medical treatment to address any instability of his right knee until after the December 1 1 , 2024 injury.

5. While Claimant does have a pre-existing condition that may have contributed to his knee dislocation on December 1 1 , 2024, Claimant was performing work in the course and scope of his employment for Employer (kneeling on the box, putting pressure on the right knee) which led to his patella dislocation. Therefore, Claimant's injury is a compensable workers' compensation injury.

6. 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).

7. As found, the ALJ credits the testimony of Claimant at hearing along with the medical records entered into evidence and the testimony of Dr. Chen and finds that the surgery performed by Dr. West on February 12, 2025 was reasonable medical treatment necessary to cure and relieve Claimant from the effects of the industrial injury.

Order

It is therefore ordered that:

1 Respondents shall pay for the surgery performed by Dr. West on February 12, 2025 pursuant to the medical fee schedule.

2 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. November 13 2025

Keith E. Mottram

Keith E. Mottram
Administrative Law Judge

Office of Administrative Courts

State of Colorado

Workers' Compensation Number 5-230-123-007

Issues

Have Respondents overcome, by clear and convincing evidence, the opinions of the Division sponsored independent medical examination (DIME) physician, Dr. Robert McLaughlin (as expressed in his January 28, 2025 DIME report), on the issues of maximum medical improvement (MMI) and permanent impairment?

Stipulations

No stipulations were made at the October 15, 2025 hearing.

Procedural Issue

In their position statement, Respondents also listed the issue of "determination of attorney fees that Respondents are entitled to for Claimant's violation of ALJ Abbott's Case Management Order". However, neither party raised or addressed this issue at the October 15, 2025 hearing. The ALJ finds that this was likely an oversight, as the focus of the hearing was the issue of overcoming the DIME, and assignment of the burden of proof. The ALJ also finds that neither party waived this issue by their failure to raise it at the hearing. Therefore, the ALJ finds that the issue of "determination of attorney fees that Respondents are entitled to for Claimant's violation of ALJ Abbott's Case Management Order" has been preserved.

Findings of Fact

1. This matter involves a slip and fall injury that occurred on February 6, 2023. Respondents have admitted liability for Claimant's work injury. The February 6, 2023 injury occurred when Claimant was in the restroom at work, she slipped on a wet floor, and then fell to the ground. More specifically, Claimant reported that she:

"fell backwards landing on the floor. She reports she landed on her low back[,] mid back area[;] not on the left side or right side[.] [S]he think[s] she might of (*sic*) hit her head. She is not sure if she had a loss of consciousness[.] [S]he recalls there was a gap and she was on the floor. Immediately she had a headache and some nausea."[1]

2. As noted in the various reports and medical records admitted into evidence, Claimant initially sought treatment in the emergency department at St. Joseph Hospital[2] on February 8, 2023. At that time, Claimant reported her symptoms as including a mild headache, muscle spasms in her back and rib cage. Claimant's diagnosis was identified as an acute headache secondary to a concussion.

3. Subsequently, Claimant's treatment was overseen by providers at Concentra. For much of her claim, Claimant's (ATP) for this claim was Concentra. Claimant's initial treatment included medications, x-rays, physical therapy, imaging of her lumbar and thoracic spines, referrals to physiatry, and to neurosurgery.

4. On March 26, 2024, Claimant was seen by Dr. Samuel Chan[3]. At that time, Dr. Chan opined that Claimant was nearing maximum medical improvement (MMI). Dr. Chan

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[1] This statement is taken from page nine of Dr. McLaughlin's January 28, 2025 DIME report. As Claimant did not testify at the hearing, the ALJ has taken the description of the mechanism of injury as Claimant described it to Dr. McLaughlin at the DIME.

[2] The medical record from the emergency department visit on February 8, 2023 does not appear in the hearing exhibits. However, references to that date of treatment are made by the various physicians Claimant has seen for IMEs and the DIME, as well as her providers at Concentra. Therefore, the ALJ has extrapolated from those reports Claimant's initial treatment.

[3] Dr. Chan's report was not included in the hearing exhibits. However, Drs. Lesnak, McLaughlin, and Thwaites all include Dr. Chan's report and opinions in their reports. The ALJ adopts these recitations in making her findings regarding Dr. Chan's opinions.

assessed a permanent impairment rating of three percent, whole person. This rating was calculated only for the thoracic spine (one percent for range of motion, and two percent for a Table 53 disorder of the spine). Dr. Chan did not assess a rating for Claimant's lumbar spine.

5. On May 31, 2024, Claimant was seen by Dr. Kimberly Abernethy at Concentra. In the medical record of that date, Dr. Abernethy placed Claimant at MMI as of May 31, 2024. Claimant was cleared to return to modified duty, with a work restriction of no lifting over 10 pounds. For maintenance medical treatment, Dr. Abernethy identified four weeks of physical therapy.

6. On November 12, 2024, Claimant attended an independent medical examination (IME) with Dr. Lawrence Lesnak. In connection with the IME, Dr. Lesnak reviewed Claimant's medical records, obtained a history from Claimant, and performed a physical examination. At the IME, Dr. Lesnak performed range of motion measurements of Claimant's lumbar spine using a dual inclinometer. Dr. Lenak noted that during his examination, Claimant exhibited "numerous pain behaviors/nonphysiologic findings including right greater than left 'total body cogwheeling/shaking frequently.' " In his IME report, Dr. Lesnak opined that Claimant did not suffer an injury on February 6, 2023. In support of this opinion, Dr. Lesnak noted that there were no signs of injury or trauma in the initial medical record. Nor were there any reproducible objective findings. Dr. Lesnak further noted that imaging studies are not indicative of an acute injury. Additionally, Claimant's reported symptoms have expanded over time. Dr. Lesnak opined that Claimant has severe psychological issues and that demonstrate an underlying somatic or somatoform disorder. With regard to MMI, Dr. Lesnak noted that if an injury did occur, Claimant had reached MMI no later than October 10, 2023. Dr. Lesnak also opined that no permanent impairment rating was appropriate.

7. On January 28, 2025, Claimant attended a Division sponsored independent medical examination (DIME) with Dr. Robert McLaughlin. In connection with the DIME, Dr. McLaughlin reviewed Claimant's medical records, obtained a history from Claimant, and performed a physical examination. In addition, Dr. McLaughlin asked Claimant to complete testing that included the Modified Zung Depression Index, and the Modified Somatic Perceptions Questionnaire. Claimant was also asked to complete the Rivermead

Postconcussion Symptoms Questionnaire. During the examination, Dr. McLaughlin obtained range of motion measurements of Claimant's cervical, thoracic, and lumbar spines using the two inclinometer method.

8. In the DIME report, Dr. McLaughlin identified Claimant's diagnoses as ongoing chronic pain (with an unclear cause), and thoracic pain, specifically at the T7 and T8 levels. Dr. McLaughlin specifically opined that Claimant was not at MMI, and would benefit from additional pain management. In support of this opinion, Dr. McLaughlin noted that Claimant suffers from chronic pain. Dr. McLaughlin also noted that the Colorado Medical Treatment Guidelines (MTG) regarding chronic pain include psychosocial assessment to evaluate for nonphysiologic findings. Dr. McLaughlin noted his agreement with Dr. Lesnak's opinion that Claimant suffers from "severe psychosocial/psychological issues". Dr. McLaughlin referenced the testing he asked Claimant to complete as part of the DIME, which showed "a distress somatic score" and moderate to severe anxiety. Based upon these various factors, Dr. McLaughlin specifically recommended additional treatment that would include four weeks of physical therapy (three times per week), and a psychosocial/psychological evaluation or a pain management evaluation.

9. Although he opined that Claimant had not yet reached MMI, Dr. McLaughlin assessed a provisional[4] permanent impairment rating of five percent. Dr. McLaughlin calculated the impairment rating as including a Table 53 rating of four percent for Claimant's thoracic spine, and an additional one percent for thoracic spine range of motion.

10. Dr. McLaughlin specifically excluded impairment ratings for traumatic brain injury, the lumbar spine, the pelvis, and the sacroiliac joint. As part of the provisional rating, Dr. McLaughlin noted permanent work restrictions of no lifting over 10 pounds. However, he also noted that this could be increased to the point that Claimant could return to full duty, depending upon the outcome of the psychological evaluation.

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[4] As is appropriate in completing a DIME report.

11. On January 29, 2025, the Division of Workers' Compensation (DOWC) DIME Unit sent a letter to the parties noting that Dr. McLaughlin's report had been accepted. The letter specifically noted Dr. McLaughlin's determination that Claimant was not at MMI.

12. Based upon the recommendations of Dr. McLaughlin, Claimant was scheduled to see neuropsychologist, Dr. Laura Rieffel, PhD for purposes of a neuropsychological IME. The evaluation was to occur over two days, specifically May 20 and May 21, 2025. Based upon a June 2, 2025, report authored by Dr. Rieffel, Claimant did appear for these appointments. However, Dr. Rieffel was unable to complete the evaluation and related testing due to Claimant's reports of significant pain and nausea.

13. Subsequently, on June 20, 2025, Respondents filed an Application for Hearing (AFH) endorsing the issue of overcoming the opinions of the DIME[5]. The current hearing in this matter eventuated from the June 20, 2025 AFH.

14. Due to the inability for Dr. Rieffel to complete her evaluation, on August 18 and 22, 2025, Claimant attended an independent neuropsychological evaluation with Dr. Greg Thwaites. Similar to an IME, Dr. Thwaites reviewed Claimant's medical records and obtained a history from Claimant. In addition, Dr. Thwaites administered a battery of neuropsychological tests, and reviewed the results of that testing in forming his opinions. On September 4, 2025, Dr. Thwaites authored a report explaining the process he followed, the results of the testing involved, and his opinions. Dr. Thwaites opined that Claimant is neither a reliable nor accurate historian. Dr. Thwaites also noted inconsistencies regarding Claimant's description of the mechanism of injury over time. Specifically Dr. Thwaites noted that Claimant described to him "a mechanism/fall, in which her knees went straight down and her feet went behind her, followed by her torso and head falling backward toward her feet." Dr. Thwaits went on to state that "it is difficult for me to understand how [Claimant] could have sustained a blow to the

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[5] This case has an extensive and complex procedural history, including the filing of multiple AFHs endorsing various issues. The ALJ does not recite that entire procedural history as it is not germane to the endorsed issue before her at this time.

occipital region of her head at all, given this particular mechanism." In addition, Dr. Thwaites determined that Claimant's neuropsychological test results were "not an accurate and valid depiction of her current abilities and represents negative response bias and symptom exaggeration." Dr. Thwaites opined that Claimant engaged in volitional negative response bias and that she exaggerated her impairment. He opined that Claimant's test results should be considered invalid. Dr. Thwaites opined that Claimant did not suffer a psychological or a neuropsychological injury as a result of the February 6, 2023 work injury. He further opined that Claimant may be malingering.

15. After reviewing additional medical records, on September 15, 2025, Dr. Lesnak authored an addendum to his IME report. These records included Dr. McLaughlin's DIME report, and the reports of Drs. Rieffel and Thwaites. Dr. Lesnak reiterated his opinion that Claimant reached MMI on August 22, 2025, as this was the date of Claimant's evaluation with Dr. Thwaites. Dr. Lesnak further opined that there was no additional medical treatment that would be reasonable, necessary, or related to Claimant's February 6, 2023 work injury.

16. On October 7, 2025, Dr. McLaughlin testified via deposition. During his deposition, Dr. McLaughlin noted that he had reviewed the reports of Drs. Rieffel and Thwaites. Dr. McLaughlin agreed with Dr. Thwaites' opinion that Claimant does not need any further treatment related to the work injury. Dr. McLaughlin also opined that based upon Dr. Thwaites evaluation, it is now his opinion that Claimant has reached MMI as of August 22, 2025. Dr. McLaughlin further testified that the provisional impairment rating he assessed at the DIME of five percent whole person, is the appropriate impairment rating for Claimant. At the deposition, Dr. McLaughlin completed a DIME Examiner's Summary Sheet that reflected the MMI date of August 22, 2025 and a whole person impairment rating of five percent.

17. Based upon the deposition testimony of Dr. McLaughlin in which he stated his current opinion that Claimant has reached MMI, Respondents initially intended to withdraw their objection to his opinions. However, after communicating with the DOWC, counsel for Respondents learned that the opinions contained in the **written** DIME report of January 28, 2025 were controlling. Based upon this information from the DOWC, Respondents have

elected to proceed with their attempt to overcome the opinions contained in Dr. McLaughlin's January 28, 2025 DIME report.

18. At the time of the present hearing, the ALJ, counsel for Respondents, and Claimant discussed the procedural posture of the present case and the assignment of the burden of proof to Respondents. Also at the hearing, the ALJ explained that the appropriate burden of proof for overcoming a DIME physician's opinions is that of clear and convincing evidence. The ALJ further explained that Respondent's decision to present Dr. McLaughlin's deposition testimony (and the opinions he expressed at the deposition) in support of their attempt to overcome the opinions expressed in the January 28, 2025 written report was permissible.

19. At the conclusion of Respondents' case in chief (in which they relied upon their exhibits and the deposition testimony of Dr. McLaughlin), Claimant was given the opportunity to testify. She chose not to testify at the hearing.

20. The ALJ credits the medical records, the opinions of Drs. Lesnak and Thwaites, and the testimony of Dr. McLaughlin. The ALJ places particular weight on the opinions expressed by Dr. McLaughlin in his deposition testimony, specifically that it is his current opinion that Claimant has reached MMI. Here, the DIME physician has changed his initial opinions regarding MMI. Clearly this results in an instance of "overcoming" those prior opinions. This change of opinion coupled with the compelling opinions of Drs. Lesnak and Thwaites and the medical records, the ALJ finds that Respondents have successfully overcome the written opinions of the DIME physician in this matter by clear and convincing evidence. As the opinions expressed in the written DIME report have been overcome, The ALJ adopts the current opinions of Dr. McLaughlin and finds that Claimant's date of MMI is August 22, 2025, and the permanent impairment rating of five percent, whole person is appropriate.

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.

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

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 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.

4. 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).

5. Under the Workers' Compensation Act of Colorado, opinions of a DIME physician are given great deference 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).

6. For purposes of Section 8–42–107(8)(c),C.R.S., the DIME physician's "finding" consists not only of the initial report but also any subsequent opinion given by the physician. *Lambert & Sons, Inc. v. Indus. Claim Appeals Office*, 984 P.2d 656 (Colo.App.1998).

7. 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 their opinions including whether the DIME appropriately utilized the Medical Treatment Guidelines and the AMA Guides in their opinions.

8. As found, Respondents have successfully overcome, by clear and convincing evidence, the DIME physician as expressed in his January 28, 2025 DIME report, on the issues of maximum medical improvement (MMI) and permanent impairment. As found, Claimant reached MMI as of August 22, 2025, and has a whole person impairment rating of five percent whole person. As found, the medical records, the opinions of Drs. Lesnak and Thwaites, and the testimony of Dr. McLaughlin, are credible and persuasive on this issue.

Order

It is therefore ordered:

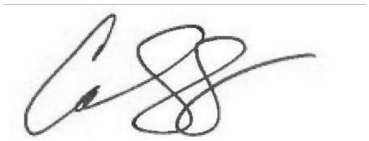
1. Respondents have overcome the opinions of the DIME physician on the issues of MMI and permanent impairment.

2. Claimant reached MMI on August 22, 2025.

3. Claimant shall be assigned a permanent impairment rating of five (5) percent, whole person.

4. The endorsed issue of "determination of attorney fees that Respondents are entitled to for Claimant's violation of ALJ Abbott's Case Management Order" is hereby preserved.

Dated November 14, 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 5-242-221-003

Issues

Whether Respondents have proven by a clear and convincing evidence that the Division Independent Medical Examination ("DIME") physician erred in providing Claimant a permanent impairment rating of 45% of the left lower extremity?

Whether Respondents have proven by a clear and convincing evidence that the Division Independent Medical Examination ("DIME") physician erred in finding Claimant had reached maximum medical improvement ("MMI") on October 2, 2024?

Findings of Fact

1. Claimant was employed with Employer as the manager of a ranch. Claimant sustained a compensable injury on March 22, 2023 when he stepped into a hole while at work. Claimant testified that when he stepped in the hole, it jolted his body and he fell to the ground. Claimant testified he felt pain in his hip after stepping in the hole.

2. Claimant testified that he completed his feed after the injury, but because the pain was getting worse, he called his superintendent and was taken by Employer to the hospital emergency room ("ER"). Claimant was diagnosed with a left groin strain and low back strain at the ER. Claimant continued working for Employer after the ER visit.

3. Claimant subsequently took a three week trip to Colombia to visit his wife. After returning from Colombia, Claimant sought medical treatment with Dr. Shelton on September 7, 2023. Claimant reported to Dr. Shelton that his back pain had largely resolved, but Claimant continued to experience pain in his left thigh. An x-ray obtained on September 3, 2023 noted severe degenerative changes in the left hip. Dr. Shelton referred Claimant for a magnetic resonance image ("MRI") on September 24, 2023 which showed severe arthritis of the left hip with joint effusion. Dr. Shelton diagnosed Claimant with aggravation of Claimant's left hip arthritis on September 28, 2023 and referred Claimant for an orthopedic evaluation.

4. Respondents eventually filed a medical only general admission of liability on October 17, 2023.

5. Claimant was evaluated by Dr. Albrecht on December 8, 2023. Claimant reported a history to Dr. Albrecht of left hip pain that his hip pain started when he fell into a hole at work. Dr. Albrecht recommended Claimant undergo a total left hip arthroplasty based on his examination and the results of the MRI and x-rays.

6. Despite Claimant's report to Dr. Albrecht that his pain started with the work injury on March 22, 2023, the medical records document that Claimant had reported complaints of left hip pain to his chiropractor in May 2022.

7. Respondents obtained an independent medical examination ("IME") with Dr. Chen on March 4, 2024. Dr. Chen issued an IME report that concluded that the recommended total left hip arthroplasty surgery was the natural progression of Claimant's pre-existing condition and not related to the March 22, 2023 work injury.

8. Respondents denied the request for a total left hip arthroplasty and the case proceeded to hearing before ALJ Cassandra Sidanycz on August 20, 2024. ALJ Sidanycz issued an Order dated September 18, 2024 that found that Claimant failed to establish that the recommended surgery was reasonable medical treatment related to Claimant's March 22, 2023 work injury.

9. Dr. Shelton subsequently re-examined Claimant on October 2, 2024 and provided Claimant with a permanent impairment rating of 47% of the lower extremity. Respondents subsequently filed a request for a Division Independent Medical Examination ("DIME"). Dr. Elfenbein was ultimately selected as the DIME physician.

10. Dr. Elfenbein performed the DIME evaluation on April 23, 2025. Dr. Elfenbein issued a DIME report on April 30, 2025 that agreed with Dr. Shelton's finding of MMI as of October 2, 2025 and provided Claimant with an impairment rating of 45% of the lower extremity for the left hip. This impairment rating is based solely off of Claimant's deficiencies in his range of motion of his left hip. Dr. Elfenbein also found deficiencies in Claimant's range of motion of his left knee, but specifically opined that there was no impairment of the left knee related to the work injury.

11. Dr. Elfenbein noted in his report that although Claimant's osteoarthritis was pre-existing, Claimant reported he was able to mountain bike and remain very active until the work injury. Dr. Elfenbein noted the pre-existing osteoarthritis was not so symptomatic to limit Claimant's activities until after the work injury.

12. Respondents obtained an addendum from Dr. Chen dated August 20, 2025. Dr. Chen reviewed the reports from Dr. Elfenbein and Dr. Shelton and opined in his addendum report that Claimant had severe, end-stage, bone-on-bone arthritis that any work injury could not make worse and there was no evidence to support a worsening of this condition that was already at an end-stage condition. Dr. Chen further opined that Claimant was at MMI for his work injury on June 22, 2023 and that no permanent impairment rating was related to Claimant's work injury.

13. Dr. Chen testified by deposition in this matter consistent with his August 20, 2025 addendum. Dr. Chen opined that Claimant's March 22, 2023 injury did not accelerate, worsen or aggravate Claimant's pre-existing osteoarthritis. Dr. Chen testified that when examining hips for an impairment rating the physician should examine both hips to compare the normal and abnormal hip range of motion measurements. Dr. Chen testified that the physician can then subtract the range of motion deficits from the normal hip from the range of motion measurements from the injured hip. Dr. Chen ultimately opined in his deposition that Claimant did not have any impairment rating related to his March 22, 2023 work injury. Dr. Chen further opined that Claimant was at MMI as of June 22, 2023 based on his opinion that Claimant's soft tissue injury should resolve within a three month time period.

14. Claimant testified at hearing in this matter that after the work injury he has been unable to ride a bike and can not ride a motorcycle. Claimant testified he has difficulty sleeping since his injury due to his hip pain. Claimant testified he can't engage in these activities because his hip will not allow it.

15. The ALJ credits the report of Dr. Elfenbein and finds that Respondents have failed to overcome the opinion of Dr. Elfenbein by clear and convincing evidence that Claimant was at MM! as of October 2, 2024. The opinion that Claimant was at MM! as of October 2, 2024 is supported by the opinion of Dr. Shelton which found Claimant at MMI as of the date of the October 2, 2024 examination. The ALJ finds the DIME report from Dr. Elfenbein and the October 2, 2024 medical record from Dr.

Shelton to be credible and persuasive with regard to this issue. The opinion of Dr. Chen that Claimant was at MMI as of June 22, 2023 is not supported by any other medical record and is based on the theory testified to by Dr. Chen that Claimant should recover from any soft tissue injury within 3 months of his date of injury.

16. The ALJ rejects Dr. Chen's testimony that Claimant did not sustain any permanent impairment as a result of his March 22, 2023 work injury and finds that Respondents have failed to overcome the opinion of Dr. Elfenbein by clear and convincing evidence regarding Claimant's impairment rating involving his left hip. The ALJ notes that the findings by ALJ Sidanycz that the recommended total left hip arthroplasty was not related to Claimant's March 22, 2023 work injury do not compel a finding that Claimant sustained no permanent impairment as a result of the work injury.

17. With regard to permanent impairment, Respondents admitted liability with regard to the work injury involving Claimant's left hip. The impairment rating found by Dr. Shelton and Dr. Elfenbein was based on loss of range of motion in Claimant's hip. Respondents are effectively arguing apportionment related to the range of motion, maintaining that the range of motion is related to Claimant's pre-existing osteoarthritis and not his work injury. However, specific rules govern apportionment in Colorado workers' compensation cases, and are not applicable in Claimant's case.

18. Dr. Chen's testimony with regard to errors in the impairment rating insofar as Dr. Elfenbein did not evaluate both of Claimant's hips is likewise rejected by the ALJ. While it may be permissible to measure both of a patient's injured and uninjured joints in connection with a DIME evaluation, the guidelines do not require that a physician compare the non-injured joint to the injured joint in determining the injured worker's permanent impairment related to an industrial injury.

19. Because Respondents have failed to demonstrate that it is highly probable and free from substantial doubt that the opinion of Dr. Elfenbein is that Claimant is at MMI as of October 2, 2024 and has an impairment rating of 45% of the lower extremity, the opinion of the DIME is binding on the parties as to the issue of MMI and permanent impairment. [1]

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[1] The ALJ recognizes that there exists a line of cases which holds that the "clear and convincing" burden of proof does not apply to permanent impairment ratings involving scheduled injuries. See Delaney v.

Conclusions of Law

1 . Section 8-42-107(8)(b)(lll) 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).

2. 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 Medicai Treatment Guidelines and the AMA Guides in her opinions.

3. As found, have failed to overcome the opinion of Dr. Elfenbein that Claimant is at MMI as of October 2, 2024 and has an impairment rating of 45% of the lower extremity by clear and convincing evidence. As found, the DIME report of Dr. Elfenbein is supported by the findings of Dr. Shelton in his October 2, 2024 medical report and is found to be credible and persuasive.

Industrial Claim Appeals Office, 30 P.3d 691 (Colo. App. 2000). However, at the commencement of the hearing, the parties agreed that the burden of proof was on Respondents to overcome the DIME physician's opinion regarding permanent impairment by clear and convincing evidence. However, assuming that the clear and convincing burden of proof does not apply to the opinion of the DIME physician regarding permanent impairment. the ALJ finds that Claimant has established that he sustained a permanent impairment of 45% of the lower extremity by a preponderance of the evidence. The ALJ credits the medical records of Dr. Shelton, Dr, Elfenbein along with Claimant's testimony at hearing in coming to this conclusion.

Order

It is therefore ordered that:

1 .Respondents shall pay permanent partial disability based on an impairment rating of 45% of the lower extremity.

2. Claimant's date of MM! is determined to be October 2, 2024.

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

NOTE: If you are dissatisfied with the ALJs 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 ALJs 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: November 13 2025

Keith E. Mottram
Administrative Law Judge

ISSUES

1. Whether Respondents proved by a preponderance of the evidence that Claimant's injury was caused by the willful failure of Claimant to use a safety device provided by Employer, namely a seatbelt.

2. Whether Respondents proved by a preponderance of the evidence that Claimant's injury resulted from his willful failure to obey a reasonable rule adopted by Employer for the safety of Claimant, namely, Employer's seatbelt policy.

FINDINGS OF FACT

1. Claimant is an automation technician who was involved in a motor vehicle accident on January 8, 2025, sustaining injuries arising out of and in the course of his employment with Respondent-Employer. Claimant's job as an automation technician involved electrical diagnostic and repairs on oil fields.

2. The motor vehicle accident occurred while Claimant and a coworker were traveling to a jobsite in Employer's Ford F450 in northeastern Colorado. Claimant was riding as a front-seat passenger in the vehicle when their vehicle rear-ended a semi-trailer at 65 miles per hour. The collision resulted in the semi-trailer intruding completely into the engine compartment of the F450, causing the dash to intrude into the cabin. Claimant sustained fractures involving his right knee joint and two broken arms, as well as several other injuries. First responders had to use a hydraulic ram to bend the frame of the F450 so as to remove Claimant from the vehicle, at which point he was airlifted to the hospital where he underwent surgery and an extended stay.

3. The driver of the vehicle, Jacob Arebalo, was able to self-extricate from the vehicle. His only injury was a broken wrist. He was transported to the hospital by ambulance, treated for the broken wrist, and discharged that same day.

4. Respondents admitted for temporary total disability benefits from the date after the injury through ongoing. However, Respondents asserted a 50% reduction in temporary total disability benefits based upon a safety-rule violation pursuant to § 8-42-112, C.R.S.

5. A traffic accident report (TAR) by the responding Colorado State Patrol documented severe damage across the entire front end of the vehicle Claimant had been in. It further documented that the driver was restrained while Claimant was not.

6. Respondents commissioned an accident investigation by engineer Adam M. Michener to determine whether Claimant was wearing his seatbelt at the time of the accident. Mr. Michener examined the vehicle and noted in relevant part:

> The frontal damage was greater on the driver's side than the passenger's side. . . . Both the driver's and front passenger's seatbelts were locked in position, where they were when the impact occurred. The driver's seatbelt was spooled out at a length consistent with being around Mr. Arebalo at the time. The driver's side latch plate, d-ring and belt all showed signs of loading, also indicating that Mr. Arebalo was wearing the seatbelt at the time of the accident. The passenger's seatbelt was spooled out, but only slightly, at a length insufficient for the latch plate to even reach the passenger side buckle, let alone also go around a person in the seat. No signs of loading were present on the latch plate, d-ring or belt. This is definitive evidence that [Claimant] was not wearing his seatbelt at the time of the accident.

7. Mr. Michener further documented that he pulled the data from the Bosch airbag control module, which recorded that at the time of the accident the driver's seatbelt was buckled while the passenger's was not.

8. Brandon Coalson testified that he is the owner of Respondent-Employer, which provides oil field services, including maintaining facilities and automation. At the time of the accident, Mr. Coalson had nineteen employees working for Respondent-Employer, including Claimant. The employees would have to travel as part of their work, sometimes to as many as four sites.

9. Mr. Coalson testified that the most dangerous part of the job was the driving in the work truck. He testified that new employees would receive safety training that included seatbelt use and which included a safety belt statement in line with CDOT and USDOT. Mr. Coalson testified that he attended the same safety training as Claimant, and that the safety rule is clear and that Claimant never expressed any uncertainty to him about the rule.

10. Mr. Coalson testified that failure to adhere to the safety belt policy would result in anything from a verbal warning to a termination. Mr. Coalson testified that they had never had a safety belt violation before and so had never had to impose a punishment, though they had enforced several safety violations against the driver of the vehicle in which Claimant was injured, including termination, and given several verbal warnings to other employees for failure to wear personal protective equipment.

11. Mr. Coalson testified that he saw Claimant at the hospital the day after the accident and asked Claimant whether he was wearing his seatbelt, to which Claimant said he was not. According to Mr. Coalson, when he asked Claimant why he was not wearing his seatbelt, Claimant simply shrugged his shoulders.

12. Mr. Coalson also testified that he was present at the scene of the accident when Mr. Arebalo was taken by ambulance to the hospital. Mr. Coalson testified that Mr. Arebalo was treated for his wrist fracture and released later that afternoon.

13. Mr. Michener testified at hearing as an expert in motor vehicle accident reconstruction and seatbelt use analysis. He testified regarding the results of his mechanical analysis of the accident.

14. Mr. Michener testified that he had reviewed the traffic accident report and the photos of the accident scene provided by Respondents, examined the vehicle, and reviewed the airbag module from the truck. Regarding his review of the vehicle, Mr. Michener testified that the damage was worse on the driver's side.

15. Mr. Michener testified that the doors on both the passenger's and driver's sides were cut by first responders. Both seatbelts were in the locked position with the driver's side seatbelt spooled out consistently with going around a body whereas the passenger side was not spooled out enough to secure a body. Additionally, he testified that the driver's side belt showed signs of having been subjected to a load (including deformation of the belt and the D-ring) while the passenger side did not.

16. Mr. Michener testified that the airbag module is designed such that the timing of the deployment of the airbag depends on whether the passenger is restrained or not. Based on his review of the airbag module, Mr. Michener concluded that the timing of the deployment on the passenger side was consistent with Claimant not wearing his seatbelt.

17. Mr. Michener further testified that the purpose of a seatbelt is to keep the passenger in the seat and suppress accelerations and that safety belt usage reduces risk of death in accidents by 65%.

18. Dr. Sander Orent testified at hearing as an expert in internal medicine, occupational medicine, and emergency medicine.

19. Dr. Orent testified that he practiced emergency medicine for fourteen years and that he saw hundreds of motor vehicle accident cases clinically, including cases where patients had been wearing seatbelts and patients who had not. He also testified that he had worked with the Denver Sheriff's Department where he would go on accident scenes.

20. Dr. Orent testified that Claimant severely injured his right femur and tibia and fractured his arm but that there was no damage to his torso.

21. Dr. Orent testified that of those motor vehicle accident patients he had seen, those who had not been wearing seatbelts had injuries to the anterior chest wall, cardiac contusions, blood in the lungs, rupture of the lungs, head injuries, and other such injuries. On the other hand, Dr. Orent testified, patients who had been wearing seatbelts would tend to have injuries to the extremities. Dr. Orent testified that Claimant had no injuries to any body part other than the legs and arms.

22. Based on the photos of the vehicle, it was Dr. Orent's opinion that the vehicle's structural intrusion into the cabin came toward Claimant rather than Claimant being propelled toward the front of the cabin. In such a case, Dr. Orent testified, the seatbelt would be less relevant.

23. In response to Dr. Orent's testimony, Respondents provided Mr. Michener's rebuttal testimony. Mr. Michener testified that the vehicle is designed to protect the occupant in the position that the seatbelt would keep them in and that a person could be "pinned" in the vehicle even with no forces on the person. Thus, Mr. Michener reasoned, the use of the hydraulic ram was not to relieve pressure on Claimant necessarily but to expand the space to extricate Claimant.

24. Claimant testified at hearing as well. He testified that firefighters tore the airbags out of the truck and removed the windows. He also testified that the firefighters used a bar that took pressure from the dashboard off of his legs.

25. Dr. Elizabeth Wilcox also testified as an expert in occupational medicine.

26. Dr. Wilcox opined in her testimony that Claimant's injuries involved an open fracture of the left femur, bilateral wrist fractures, a fractured medial femoral condyle on the right, a tibial plateau fracture across the tibia, and a dislocation of his big toe, and a hypoxic injury requiring intubation. She opined that people who are wearing seatbelts generally sustain bruising from the seatbelt along the right side of the neck, through the chest, and down across the abdomen, injuries which Claimant did not have.

27. Dr. Wilcox noted in her testimony that the driver of the vehicle sustained only a wrist fracture whereas Claimant major trauma, including a broken femur and two fractured arms. Based on the assumption that both Claimant and the driver experienced similar forces in the accident, she opined that the difference in severity of injuries was attributable to the driver wearing the seatbelt and Claimant not. She reasoned that in her thirty years of treating occupational injuries that included injuries from motor vehicle accidents, those injuries where seatbelts were worn involved less severe trauma than those where seatbelts were not worn.

Ultimate Findings

28. Respondent-Employer maintained a clear and unambiguous safety rule requiring all employees to wear seatbelts at all times while driving or riding in any company vehicle, personal vehicle, or other vehicle used for company business. The policy was set forth in the written personnel manual and reiterated through the company's Corporate Safety Belt Statement and Safety Belt Pledge, both of which Claimant

signed on November 13, 2023, acknowledging receipt, understanding, and agreement to comply. Claimant also attended multiple safety meetings and a formal seatbelt training session on May 19, 2023, making it more likely that he was aware of the rule and its requirements.

29. Respondents contend the seatbelt rule was both reasonable and necessary given the inherently hazardous nature of Respondent-Employer's oilfield service work, which involved frequent driving to remote rig sites, the most dangerous aspect of the job. The rule is consistent with federal and Colorado law mandating seatbelt use and aligns with the company's overarching commitment to employee safety and injury prevention.

30. Claimant was not wearing his seatbelt at the time of the accident. As noted by Mr. Michener in his report and testimony, the passenger-side seatbelt was found only partially extended—at a length insufficient to reach the buckle or encircle an occupant—and bore no signs of loading, deformation, or stress that would be present had it been worn during impact. By contrast, the driver's seatbelt was fully extended, locked, and exhibited distinct loading patterns consistent with restraint use. Mr. Michener's analysis was further supported by data retrieved from the vehicle's Bosch airbag control module, which recorded the passenger-side belt as unbuckled at the time of collision. Additionally, Dr. Wilcox credibly testified that Claimant's injury pattern aligned more closely with that of an unrestrained passenger. Finally, Mr. Coalson credibly testified that Claimant admitted in the hospital following the accident that he had not been wearing his seatbelt.

31. Furthermore, the Court finds that Claimant's failure to wear the seatbelt was willful. Claimant had been repeatedly trained and reminded of Employer's seatbelt policy, having signed written acknowledgments of both the Corporate Safety Belt Statement and Safety Belt Pledge just two months prior to the accident. The policy was clear and unambiguous and there is no credible evidence that Claimant misunderstood or was confused about the requirement. Testimony from Mr.

Coalson established that Claimant attended the same safety meetings as all other employees, during which seatbelt use was emphasized as mandatory and essential given the known hazards of driving in the oilfields. Furthermore, there is no credible evidence that Claimant's failure to wear his seatbelt was the product of mistake, inadvertence, or emergency circumstances.

32. Respondents presented persuasive evidence that seatbelts are the most effective means of protection in a motor vehicle accident and that they reduce the risk of fatal or serious injuries. Respondents also presented persuasive evidence that use of a seatbelt improves the effectiveness of airbags and reduces the likelihood that airbags will cause injury to the restrained occupant. This evidence proves that a failure to use a seatbelt, in general, makes it more likely that an occupant will sustain serious injuries.

33. Respondents also presented persuasive evidence that the restrained driver suffered less severe injuries than Claimant who was unrestrained, despite each likely experiencing similar forces in the accident. Specifically, Mr. Arebalo was able to self-extricate from the vehicle, had only a wrist fracture, did not require an airlift to the hospital, and was discharged from care the same day. By contrast, Claimant sustained multiple fractures, required first responders to use a hydraulic ram to extricate him from the vehicle, was intubated and airlifted to a hospital, and required substantial hospitalization and multiple surgeries.

34. Based on the general propensity of unrestrained occupants to suffer worse injuries than restrained occupants, and given that Claimant in fact suffered worse injuries than the restrained driver, Respondents argue that the Court should infer that Claimant's failure to wear his seatbelt resulted in him sustaining worse injuries than he would have otherwise sustained. Respondents argue that the only meaningful variable explaining the disparity in injuries between Claimant and the restrained driver is Claimant's failure to wear a seatbelt.

35. Claimant, in turn, argues that the injuries Claimant actually sustained would not be explained by Claimant's failure to wear a seatbelt. Claimant relied in part on Dr. Orent's testimony that Claimant's injuries were caused by intrusion of the firewall and lower dashboard into the passenger compartment, which "came to him" rather than resulting from Claimant being thrown forward. According to Dr. Orent, a seatbelt would not have prevented such extremity injuries because "the restraint is designed to stop someone from moving forward. This came to him." Furthermore, Claimant points out that Dr. Wilcox conceded in her testimony that it is "impossible" to determine what injuries Claimant would have sustained if he had been wearing a seatbelt.

36. The Court has carefully considered the conflicting expert and lay testimony regarding whether Claimant's failure to wear his seatbelt caused or contributed to the injuries he sustained in the motor vehicle accident. While Respondents presented credible evidence that seatbelt use generally reduces the risk and severity of injury in motor vehicle accidents, the Court is not persuaded that such general principles establish a causal connection between Claimant's unrestrained status and the particular injuries at issue in this case. Dr. Orent credibly testified that Claimant's injuries were caused by the intrusion of the dashboard and firewall into the passenger compartment, with the vehicle structure "coming to him," rather than by forward momentum that a seatbelt would have restrained. The pattern of Claimant's injuries, which were nearly confined to the extremities and without trauma to the torso or head, is consistent with Dr. Orent's explanation and inconsistent with injuries typically associated with unrestrained occupants. By contrast, Dr. Wilcox's opinion that Claimant's lack of restraint caused his injuries was based on general statistical observations and comparative assumptions about the driver, not on an analysis of the mechanics of the particular collision. While there was credible testimony that the driver's side of the vehicle was more severely damaged, and while this would be circumstantial evidence that one would expect the driver to be more seriously injured, all else being equal, it does not compel

such an inference. The Court therefore finds Dr. Orent's testimony more persuasive on the question of causation.

37. Overall, the question of whether Claimant's failure to wear his seatbelt in this case contributed to Claimant's injuries is subject to genuine dispute. Considering the evidence as a whole, the Court finds it equally probable that there existed such a causal relationship between the seatbelt use and the severity of Claimant's injuries as that no such relationship exists. Therefore, the Court finds that Respondents have not proven by a preponderance of the evidence that Claimant's failure to wear his seatbelt caused or contributed to the injuries he sustained.

CONCLUSIONS OF LAW

Generally

1. 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.

2. 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).

3. 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).

Safety Device and Safety Rule

1. Compensation benefits shall be reduced by fifty percent where a claimant’s injury is caused by the willful failure of the employee to use safety devices provided by the employer. Section 8-42-112(1)(a), C.R.S. (2024). Similarly, compensation benefits shall be reduced by fifty percent where a claimant’s injury results from the employee's willful failure to obey any reasonable rule adopted by the employer for the safety of the employee. Section 8-42-112(1)(b), C.R.S. (2024).

2. The plain language of the Act provides that the failure to use a safety device must be the “cause” of the injury. *Shaikh v. Colo. Springs Transportation*, W.C. No. 4-968-013-02 (Oct. 24, 2016). The question of whether the respondents proved the claimant's failure to use a safety device was a proximate cause of the injury is one of fact for determination by the ALJ. *Id*. The mere concurrence of an injury and an alleged cause does not require the ALJ to draw the inference of causation. *Id*.
3. Violation of a rule is not willful unless the claimant did the forbidden act with deliberate intent. A violation which is the product of mere negligence, carelessness, forgetfulness or inadvertence is not willful. *Bennett Properties Co. v. Industrial Commission*, 437 P.2d 548 (Colo. 1968); *Johnson v. Denver Tramway Corp.*, 171 P.2d 410 (Colo. 1946). Conduct which might otherwise constitute a safety rule violation is not willful misconduct if the employee's actions were intended to facilitate accomplishment of a task or of the employer's business. *Grose v. Riviera Electric*, W.C. No. 4-418-465 (Aug. 25, 2000). A violation of a safety rule will not be considered willful if the employee can provide some plausible purpose for the conduct. *City of Las Animas v. Maupin*, 804 P.2d 285 (Colo. App. 1990).

4. As found, although Respondents proved that Claimant willfully violated a clear and reasonable seatbelt rule, § 8-42-112 requires a causal nexus between the willful failure and the injury. *See Shaikh v. Colo. Springs Transportation*, W.C. No. 4-968-013-02 (Oct. 24, 2016). Respondents did not establish by a preponderance of the evidence that Claimant’s unrestrained status proximately caused or contributed to the particular injuries at issue. The Court credits Dr. Orent’s testimony that Claimant’s injuries were produced by structural intrusion (“the vehicle came to him”) rather than forward motion a seatbelt would restrain. While there is contrary evidence, the Court finds that evidence to be general in nature and to at most prove it plausible that Claimant would have sustained lesser injuries had he been restrained. Accordingly, as found, Respondents have not proved by a preponderance of the evidence that Claimant’s failure to use his seatbelt most likely caused or contributed to his injuries.

ORDER

It is therefore ordered that:

1. Respondents have not proved by a preponderance of the evidence that Claimant's willful failure to wear a seatbelt caused or contributed to his injuries.
2. All matters not determined herein are reserved for future determination.

DATED: November 4, 2025.

Stephen J. Abbott
Administrative Law Judge
Office of Administrative Courts
1525 Sherman Street, 4th Floor
Denver, Colorado 80203

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* § 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.

Office of Administrative Courts
State of Colorado
Workers' Compensation No. WC 5-265-748-001

Issues

1. Whether Claimant established by a preponderance of the evidence that she sustained a compensable injury on or about February 2, 2024.

2. Whether Claimant established an entitlement to medical benefits.

3. Whether Claimant established an entitlement to temporary total disability benefits from February 2, 2024, to March 20, 2024.

4. Determination of Claimant's average weekly wage.

5. Whether Claimant established by a preponderance of the evidence that Employer is subject to penalties for failing to timely report her workers' compensation claim to the Division and Insurer pursuant to § 8-43-103 (1), C.R.S.

6. Whether Claimant established by a preponderance of the evidence that employer is are subject to penalties for failing to comply with § 8-43-102(1)(b), C.R.S, by failing to display a required workers' compensation notice.

Findings of Fact

1. Claimant worked for Employer in a day spa. Claimant alleges that on February 2, 2024, she struck her hand on a door frame while changing a laundry bag in Employer's break room. Claimant notified one of her co-workers, Emma Aslin, of the incident. Ms. Aslin wrote a statement indicating that Claimant reported to her that she had injured her hand on February 2, 2024, and that Ms. Aslin observed a raised, quarter-sized lump on the back of Claimant's hand that felt "hard." (Ex. 1). Later that day, at 6:01 p.m., Claimant sent a text message to Mary Brady, Employer's co-owner and human resources representative, advising that she injured her hand at work, and that it had become more swollen and painful. Claimant asked if she needed to fill out any forms and for "next steps."

Ms. Brady advised Claimant that she would need to get doctor's clearance before returning to work. Ms. Brady further advised Claimant that she had communicated with Margo Allison, Employer's co-owner, and advised Claimant to go to urgent care and send the bill to Employer. (Ex. 2).

2. Claimant went to American Family Care urgent care on February 2, 2024, for treatment. The medical record for the examination indicates that Claimant reported "changing her trash bag and as she went up to throw the bag she hit her hand on a corner wall pretty hard," and also that she reported "moving boxes when she forcefully rammed it into the corner of a desk earlier today." (Ex. 12[2]). Claimant incurred a co-pay of $50.00 and requested that Employer reimburse her for that amount. Ms. Brady texted Claimant indicating that payment had been sent. (Ex. 2). As part of her employment compensation, Claimant received health insurance, for which she paid $206.75 per pay period toward the premium. (Ex. D).

3. On February 3, 2024, Claimant informed Ms. Brady that her hand had been placed in a cast, and that she would be out of work for two weeks. She further requested information on how to file a worker's compensation claim. Ms. Brady responded on February 5, 2024, indicating that she was writing an incident report, and indicated she would need a report from Claimant and from Ms. Aslin. (Ex. 2). On February 6, 2024, Claimant sent Ms. Brady a written statement explaining the incident. (Ex. 2).

4. After Claimant made additional inquiries, on February 9, 2024, Ms. Brady sent a text indicating that worker's compensation was "an entire process that has to take place," and that Employer had "collected everyone's statements, video footage, etc., and sent it our rep to handle from there." (Ex. 2).

5. Over the following few days, Claimant continued to contact Ms. Brady, requesting a workers' compensation claim number, and who she should see for additional treatment, including a recommended x-ray. (Ex. 2). Ms. Brady indicated that Claimant could see her primary doctor or return to urgent care but did not provide information regarding a workers'

[2] Only the first page of Claimant's February 2, 2024 American Family Care record was admitted into evidence.

compensation claim. Claimant texted Ms. Brady asking for reimbursement of a $20 co-pay, and a $72 charge for the x-ray, providing receipts for both on February 14, 2024. (Ex. 2). On February 14, 2024, Ms. Brady responded that she did not have answers for Claimant regarding repayment, and that Claimant should contact Ms. Allison with her questions. Claimant also communicated with Ms. Allison by text on February 14, 2024, providing her with receipts for the medical expenses incurred on February 14, 2024. (Ex. 4). Claimant apparently submitted her medical expenses to her health insurance provider as no workers' compensation claim had been opened.

6. On February 15, 2024, Employer's attorney, William Wurm, sent Claimant a letter by email. Wurm acknowledged that Claimant had reported the injury and indicated that Employer had reviewed security footage that did not show Claimant sustaining an injury. Rather than address Claimant's claim through the worker's compensation system, attorney Wurm wrote the following:

> "Employer will not pay the medical expenses accrued on February 14, 2024, nor any other medical expenses related to this alleged injury. We demand that you cease and desist from any further communication with [Employer] related to the February 2, 2024 incidents or further actions may be taken. Additionally, if and to the extent you are unable to work, please provide a medical directive." (Ex. 5 and 13).

7. On February 16, 2024, Claimant emailed Employer's attorneys asking "I am just curious if a work comp claim was ever officially filed or not? If it was, may I please get a copy of the denial letter from the insurance company stating they are denying the claim? And if nothing was ever officially filed can you please let me know that as well." (Ex. 5). The record does not reflect that Employer's attorneys responded to Claimant's inquiry.

8. Because no workers' compensation claim was initially opened, Claimant applied for assistance with the Colorado Family and Medical Leave Insurance Program (FAMLI). In conjunction with this, Claimant submitted to FAMLI two Medical Certification forms signed by her physicians indicating Claimant had "high concern for a scaphoid fracture or bone bruise" and that Claimant was unable to work through March 19, 2024. (Ex. E). For

the month of February 2024, Claimant received wage replacement payments from FAMLI totaling $3,142.47, for the limited period of February 2024, and one payment in April 2024. (Ex. 11 and E). Sometime in February or early March, Claimant was informed by a representative of FAMLI that she could not receive further FAMLI benefits unless her workers' compensation claim was denied. Claimant contacted the Division and learned the Division had not received a claim and was instructed to submit a claim through the Division's website, which Claimant did. (Ex. 7).

9. Insurer's claim representative, Tia Sims, testified at hearing that Employer reported Claimant's claim to Insurer on March 4, 2024. From March 13, 2024, through March 29, 2024, Ms. Sims communicated with Claimant via email, indicating that Respondents disputed Claimant's claim based on alleged discrepancies in American Family Care's medical record regarding the described mechanism of injury. (Ex. 3). No credible evidence was admitted indicating the date Employer or Insurer reported Claimant's claim to the Division.

10. In her communications with Employer, Claimant expressed her fear and nervousness over the letter from Attorney Wurm, and that this deterred Claimant from contacting Employer regarding her attempts to obtain benefits through FAMLI and discussing her workers' compensation claim with Employer. (Ex. 4).

11. On Friday, March 29, 2024, Ms. Allison texted Claimant the following, in response to Claimant's request as to who she needed to make payment for her health insurance premium:

> "Hello [Claimant], I will be in touch next week after I speak with our attorney on how to proceed. I do Believe we will be looking into your fraudulent workers comp claim and notifying the Proper authorities before we proceed with covering any of your expenses and also determine if we will continue to employ you at this point. At this point you owe about 1600 dollars to us for heath [sic] insurance. April 1 will be another approx 800 dollars. If you would like to continue your coverage we will need a check by Monday. Otherwise it will be backdated and cancelled as of February 1. We will email you the cobra form. Thank you[.]" Ex. 4).

12. On March 30, 2024, Claimant texted Ms. Allison indicating that she disputed the amounts it was asserted she owed for her health insurance premiums, indicating that her portion of insurance ($206.75 per pay period) had already been withheld from her February 2 and February 16 paychecks, and acknowledging her own responsibility for payment of premiums while on FAMLI leave. Claimant indicated that she believed she was responsible for $413 for insurance in March 2024 and requested the information of the person to whom she should make payment. (Ex. 4).

13. Ms. Allison responded to Claimant's March 30, 2024 text as follows:

> "Please do not communicate with me any further. I will be pursuing fraud charges on you and you are no longer employed by [Employer]. (Ex. 4).

14. On Friday, April 5, 2024, Ms. Allison sent Claimant the following text message:

> "Hi [Claimant], I am sorry to inform you that you are not eligible for cobra (continued health coverage) due to the fraud. Your health insurance has been cancelled effective 2/29, as we did receive payments for February. You will be responsible for any charges after that date just fyi.
>
> I spoke to the insurance company that you went behind our backs and somehow made a claim and your claim was denied and they now have opened the case for fraud and all evidence has been turned over. Please expect to hear from them and possibly the district attorney.
>
> Also please remember what you have signed and do not communicate with any [Employer] employees or clients or further action will be taken.
>
> Good luck to you." (Ex. 4).

15. Claimant asserts that at the time of her injury, Employer did not have displayed in its facility the statutorily required notice advising Claimant of her worker's compensation rights and obligations ("WC Notice"). Respondents submitted a photo of a partially

compliant[3] WC Notice which Ms. Allison represented was posted in Employer's break room. Ms. Allison testified that the WC Notice had been displayed "since day one," but also admitted that she is not located on the premises, and that the WC Notice shown in Ex. F was hung the day before the hearing (*i.e.*, September 17, 2025). Ms. Brady testified that she was not familiar with the WC Notice and did not know when or where it was displayed at Employer's facility. Similarly, Ms. Aslin testified that she has worked for Employer since at least February 2, 2024, that the WC Notice depicted in Ex. F had been posted for less than one week, and that she had not previously seen any WC Notice in the break room or anywhere else in Employer's facility. Ms. Allison's testimony that the WC Notice had been posted "since day one" was not credible, and no credible evidence established that the WC Notice was displayed at Employer's facility any time between Claimant's injury on February 2, 2024, and September 17, 2025. The ALJ finds that Employer did not post the WC Notice at the time of Claimant's injury, and that no WC Notice was displayed until September 17, 2025, more than 18 months after Claimant's injury.

16. On April 10, 2025, Claimant filed an application for hearing in this matter, endorsing the issues of compensability, medical benefits, average weekly wage, temporary total disability (TTD) benefits, and penalties, including Employer's failure to comply with section 8-43-103 (1), C.R.S., and failing to hand the required WC Notice in the facility.

Stipulations

17. At the outset of hearing, Respondents stipulated that Claimant sustained a compensable injury to her right wrist arising out of the course of her employment with Employer on February 2, 2024; that Claimant's average weekly wage (AWW) at the time of injury was $1,223.11; that Claimant is entitled to TTD benefits for the period of February 2, 2024 to March 20, 2024; and that Respondents would provide Claimant a designated provider list. Claimant agreed, and the ALJ accepted the stipulations. Accordingly, the only issues remaining for determination are Claimant's penalty claims.

[3] The WC Notice depicted in Ex. F does not identify the Employer's insurer, as contemplated by § 8-43-102(1)(b), C.R.S.

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).

Penalties

Claimant has asserted two claims for penalties against Employer for failing to timely report her claim under § 8-43-103 (1), C.R.S., and for failing to display the WC Notice required by § 8-43-102 (1)(b), C.R.S. In her position statement, Claimant also alleged for the first time that Respondents did not timely provide her with a list of designated providers as required by § 8-43-404(5)(a)(I)(A), C.R.S. This issue was not raised at hearing, or listed in Claimant's Application for Hearing, consequently, the issue is not before the ALJ and will not be addressed in this order.

Section 8-43-304(1), C.R.S. provides that a daily monetary penalty may be imposed on any person who violates articles 40 to 47 of title 8 if "no penalty has been specifically provided" for the violation. Section 8-43-304(1), C.R.S. is thus a residual penalty clause that subjects a party to penalties when it violates a specific statutory duty, and the General Assembly has not otherwise specified a penalty for the violation. *See Associated Bus. Products v. Indus. Claim Appeals Office*, 126 P.3d 323 (Colo. App. 2005). In relevant part, section 8-43-304(1) provides: "Any employer or insurer, or any officer or agent of either, or any employee, or any other person who violates articles 40 to 47 of this title 8, or does any act prohibited thereby, or fails or refuses to perform any duty lawfully enjoined within the time prescribed by the director or panel, for which no penalty has been specifically provided, … shall also be punished by a fine of not more than one thousand dollars per day for each offense …" Where the Act provides a penalty for a statutory violation, monetary penalties are not awardable.

In relevant part, section 8-43-304(1) provides: "Any employer or insurer, or any officer or agent of either, or any employee, or any other person who violates articles 40 to 47 of this title 8, or does any act prohibited thereby, or fails or refuses to perform any duty lawfully enjoined within the time prescribed by the director or panel, for which no penalty has been specifically provided, … shall also be punished by a fine of not more than one thousand dollars per day for each offense …"

Whether statutory penalties may be imposed under §8-43-304(1) C.R.S. involves a two-step analysis. The ALJ must first determine whether the insurer's conduct constitutes a violation of the Act, a rule, or an order. Second, the ALJ must determine whether any action or inaction constituting the violation was objectively unreasonable. The reasonableness of the insurer's action depends on whether it was based on a rational argument in law or fact. *Jiminez v. Indus. Claim Appeals Office,* 107 P.3d 965 (Colo. App. 2003); *Gustafson v. Ampex Corp.,* WC 4-187-261 (ICAO Aug. 2, 2006). There is no requirement that the insurer know that its actions were unreasonable. *Pueblo School District No. 70 v. Toth,* 924 P.2d 1094 (Colo. App. 1996). This is a question of fact for the ALJ. *Pioneers Hospital v. Indus. Claim Appeals Office,* 114 P.3d 97 (Colo. App. 2005); *Paint Connection Plus v. Indus. Claim Appeals Office*, 240 P.3d 429 (Colo. App. 2010).

Alleged Violation of Section 8-43-103 (1), C.R.S.

Section 8-43-103(1), C.R.S., requires employers to give notice to the Division and their insurance carrier within ten days after an employee injury. Similarly, WCRP 5-2(A), provides that an employer must report any work-related injury to the employer's insurer within ten days of notice or knowledge of the injury. The Rule also provides that "An employer who does not provide the required notice may be subject to penalties or other sanctions." Section 8-43-103(2), C.R.S., imposes a two-year statute of limitations for a claimant to file a claim for compensation with the Division after a workplace injury. The same section also provides that "in all cases in which the employer had been given notice of an injury and fails, neglects, or refuses to report said injury to the division as required by the provisions of said articles, this statute of limitations shall not begin to run against the claim of an injured employee…until the required report has been filed with the *division*." (Emphasis added). While § 8-43-103 (2) provides for tolling of the statute of limitations as a remedy for an employer's failure to report an injured worker's injury to the Division, it does not provide a remedy for failure to report an injury to the employer's *insurer*. *Montgomery v. Canac Kitchens U. S. Ltd.*, W.C. No. 4-364-555, (ICAO Nov. 29, 1999) (§ 8-43-103(2) "does not impose a specific penalty based on the employer's failure to report the injury to the carrier."). Because no specific penalty is provided for an employer's refusal to provide notice to its insurer, monetary penalties are available under the Act for such a violation.

Violation of § 8-43-103(1), C.R.S.

Claimant has established that Employer violated section 8-43-103(1) and WCRP 5-2(A) by neglecting, failing, and refusing to provide notice to Insurer of Claimant's injury within ten days of knowledge of Claimant's injury. Claimant notified employer of her injury on February 2, 2024, and on multiple occasions afterward, including providing copies of medical bills. Rather than report the injury to Insurer and the Division, as required by the Act, Employer accused Claimant of "fraud," refused to reimburse her for medical expenses, sent Claimant a letter from attorney Wurm demanding that Claimant cease and desist from further communication regarding her injury, and threatened her with "further actions." After Claimant filed a worker's compensation claim with the Division, Employer fulfilled its promise of "further actions" by terminating Claimant, denying her COBRA benefits, and threatening criminal prosecution. Employer offered no valid excuse for refusing to report Claimant's claim to Insurer or the Division.

The evidence clearly establishes that Employer violated the provisions of 8-43-103(1), C.R.S., and WCRP 5-2(A), by failing and refusing to report Claimant's claim to insurer until March 4, 2024, a period of 31 days after receiving notice of Claimant's injury. Thus, Employer is subject to penalties under 8-43-304 (1), C.R.S. Because Employer received notice of Claimant's injury on February 2, 2024, Employer was statutorily required to file a report of injury with Insurer and the Division on or before February 12, 2024. The evidence demonstrates, through Ms. Brady's texts, that Employer was aware that the injury must be reported and elected not to do so. Instead, Employer, through attorney Wurm, chose to attempt to coerce and intimidate Claimant.

Whether Employer's Violation was Objectively Unreasonable

The question of whether the insurer's conduct was objectively reasonable presents a question of fact for the ALJ. *Pioneers Hosp, supra*; *see also Paint Connection Plus, supra*. A party makes a *prima facie* showing of unreasonable conduct by proving that a respondent violated a rule of procedure. *Pioneers Hospital, supra*. If the claimant makes such *prima facie* showing the burden of persuasion shifts to the respondents to show their conduct was reasonable under the circumstances. Id.; *Human Resource Co. v. Indus. Claim Appeals Office*, 984 P.2d 1194 (Colo. App. 1999). As found, the evidence clearly

establishes that Employer violated 8-43-103(1), C.R.S., and WCRP 5-2(A), rendering its conduct presumptively unreasonable.

Employer did not present credible evidence demonstrating its conduct was reasonable. To the contrary, Employer's conduct was objectively unreasonable. Employer delayed 21 days in notifying Insurer, without legal basis. Moreover, Employer's delay was not the result of a mistake or misunderstanding but was part of an intentional effort to intimidate and coerce Claimant from exercising her right to file a claim based on Employer's suspicions of "fraud." The ALJ finds the February 15, 2024 letter from attorney Wurm in which he threatened Claimant with "further actions" if Claimant so much as communicated with Employer regarding her alleged injuries a particularly egregious attempt dissuade Claimant from exercising her rights under the Act through intimidation. Ms. Allison's multiple text messages characterizing Claimant filing a claim as "going behind our back," and "fraudulent," and threatening criminal prosecution demonstrate that Employer was not merely mistaken in failing to notify Insurer. Ms. Brady's text message clearly demonstrates that Employer was aware of the worker's compensation process, and misleadingly informed Claimant that Employer sent information to its "rep" to "handle it from here," although Employer had not notified Insurer and only its attorney. Employer's subsequent notification to Insurer further demonstrates that Employer was aware of the notification requirement. Taken as a whole, Employer's violation of 8-43-102(1), was objectively unreasonable.

Amount of Penalty

In determining the amount of any penalty under the Act, the ALJ must apply the "gross disproportionality test" set forth in *Colorado Dep't of Labor & Employment v. Dami Hosp.*, LLC, 442 P.3d 94, 101 (Colo. 2019). Thus, the ALJ must consider whether the *per diem* fine is proportional to the gravity of the subject offense, *i.e.*, proportional to the harm or risk of harm caused by each day of noncompliance. *Id*. This assessment includes considering whether the fine is harsher than fines for comparable offenses in Colorado or other jurisdictions. The ability of the regulated entity to pay the fine is also a relevant consideration. *Id*.

Neither party presented evidence regarding penalties for comparable offenses or Employer's ability to pay a monetary penalty. The ALJ concludes that a penalty of $750.00 per day for each day Employer delayed in notifying Insurer of Claimant's injury is proportional to the gravity of the offense. Although Employer's attempted coercion and intimidation was ultimately unsuccessful, the harm from Employer's conduct was significant. Employer's violation of 8-43-103(1) was knowing, intentional, and coupled with the attempts circumvent the Act, and persuade Claimant to refrain from exercising right to even pursue a workers' compensation claim. Employer's conduct deterred Claimant from communicating with Employer, and stoked fear of reprisals if Claimant did so, which can only be inferred as Employer's intent. That Employer ultimately notified Insurer does not diminish the gravity of Employer's violation. Employer's failure to report resulted in Claimant being required to bear the cost of co-pays for medical care, use her personal insurance to obtain medical care outside the workers' compensation system, and shifted the burden of paying Claimant's temporary disability benefits from Employer and Insurer to a public assistance program – FAML. All of these were benefits to which Employer ultimately admitted.

Regardless of the validity of Employer's suspicions of "fraud," the Act does not permit employers to disregard its reporting requirements and shift the burden to the Claimant to report her own claim, obtain medical treatment through her own insurance, or seek wage replacement through public assistance. Employer shall pay a penalty of $750.00 per day for each of the 21 days Employer failed to timely report Claimant's claim, for a total penalty of $15.750.00.

Section 8-43-304(1), C.R.S., requires the ALJ to apportion the penalty between the Colorado Uninsured Employer Fund and the aggrieved party (*i.e.*, Claimant), with a minimum of twenty-five percent of the penalty assessed being apportioned to aggrieved party. Employer shall pay 50% of the penalty amount (*i.e.*, $7,875.00) to the Colorado uninsured employer fund and 50% of the penalty amount ($7,875.00) to the Claimant.

Penalty for Failure to Display WC Notice

Section 8-43-102(1)(b), C.R.S., requires that "Every employer shall display at all times in a prominent place on the workplace premises a printed card" that advises

employees of their rights under the Act (i.e., the "WC Notice"). The WC Notice is required to advise injured workers of their right to file a worker's compensation claim, provide the employer's insurance information, and to inform workers that it is against the law for employers to have a policy contrary to the reporting requirements of the Act.

As found, Employer did not display the WC Notice at the time of Claimant's injury, and more likely than not did not display the WC Notice until September 2025. Section 8-43-102(1)(a)(I), C.R.S., provides injured employees with a remedy for an employer's failure to display the required WC Notice, which is limited to tolling of the ten-day reporting requirement for injured employees. *Robinson v. Carder Concrete Products Co.*, W.C. 4-108-643 (ICAO Oct. 15, 1992). Because the Act provides the remedy for failure to post the WC Notice, Claimant is not entitled to monetary penalties under § 8-43-304, C.R.S. Moreover, because Claimant reported her injuries within the ten-day reporting requirement, no further relief for Employer's violation of § 8-43-102(1)(a)(I), may be awarded.

Order

It is therefore ordered that:

1. Claimant sustained a compensable injury to her right wrist arising out of the course of her employment with Employer on February 2, 2024, entitling her to reasonable and necessary medical benefits to cure or relieve the effects of her work injury.
2. Respondents shall pay Claimant temporary disability benefits for the period of February 2, 2024, through March 20, 2024.
3. At the time of her injury, Claimant's average weekly wage was $1,223.11.
4. Employer shall pay penalties pursuant to section 8-43-304(1)(a), C.R.S., (for its failure to timely notify Insurer) amount of $15,750.00 (*i.e.,* $750.00 x 21 days). Employer shall pay 50% of said penalty ($7,875.00) to Division for

allocation to the Colorado uninsured employer fund, and 50% ($7,875.00) to Claimant.

5. Claimant's request for monetary penalties for Employer's failure to comply with § 8-43-102(1)(b), C.R.S., is denied and dismissed.

6. 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: November 3, 2025

Steven R. Kabler
Administrative Law Judge

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, he did not mention to PA Peterson his prior motor vehicle accident when he asked for his low back to be added to his claim at the October 5, 2023 appointment.

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.

9. 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.

10. Claimant continued to treat with Colorado Accident & Injury through October and November 2023. By November 10, 2023, Claimant returned to Dr. Vellore that his pain was radiating into his lower extremities that he associated with picking up objects. Claimant also complained of symptoms that Dr. Vellore associated with back spasms. Dr. Vellore provided Claimant with a series of trigger point injections, which were performed by Dr. Vellore that day, and recommended a lumbar spine MRI.

11. The lumbar MRI scan was performed and interpreted by Dr. Vellore to show "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.

12. Following the epidural steroid injection, Claimant returned to Colorado Accident & Injury Centers on December 26, 2023 and reported to the physical therapist ("PT"), Vikki Bayless, that he had two days of relief, before his symptoms returned.

13. 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.

14. Claimant returned to Colorado Accident & Injury Centers on January 4, 2024 for physical therapy and reported to his therapist that he feels like his legs "give out" intermittently, but reported no falls.

15. Claimant underwent a second epidural steroid injection on January 5, 2024 under the auspices of Dr. Vellore.

16. 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.

17. After Claimant was placed at MMI for his work injury, he underwent a left-sided L5-S1 microdiscectomy on April 25, 2024.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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 at MMI for his lumbar condition. 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.

23. 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 don 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.

24. 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.

25. Moreover, if Claimant had fallen while leaving a workers' compensation appointment, the injury resulting from that fall could be determined to be compensable, but Claimant would need to establish that the injury occurred 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. 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.

26. 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. 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 resulting in Claimant undergoing epidural steroid injections along with physical therapy and chiropractic treatment, before eventually undergoing lumbar spine surgery.

27. The ALJ finds insufficient documentation in the records from Colorado Accident & Injury (which 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.

28. 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).

29. 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.

30. As found, Respondents have overcome the opinion of Dr. Aschberger that Claimant is note at MMI for his September 27, 2023 work injury.

31. The ALJ credits the reports from Dr. Johnson and Dr. Aschberger and finds that Claimant is entitled to an PPD award of 5% whole person for his bilateral chemical burns to his lower extremities. The ALJ credits the report from Dr.

Aschberger and finds that Claimant has established by a preponderance of the evidence that he is entitled to an award of maintenance medical benefits as recommended by Dr. Aschberger.

Order

It is therefore ordered that:

1. Respondents shall pay permanent partial disability based on an impairment rating of 5% whole person.

2. Claimant's date of MMI is determined to be March 7, 2024.

3. Respondents shall admit for maintenance medical treatment as recommended by Dr. Aschberger.

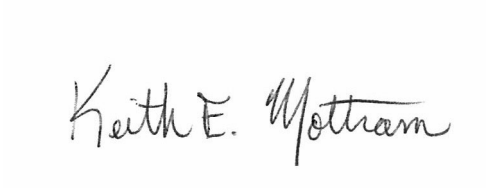
4. All issues not herein decided are reserved for future determination.

This decision is final and not subject to appeal unless a Request for Specific Findings of Fact and Conclusions of Law is filed at the Office of Administrative Courts, 1515 Sherman Street, 4th Floor, Denver, Colorado 80203 or by email to oac-dvr@state.co.us within ten working days of the date of service of this Summary Order. Section 8-43-215 (1), C.R.S. (as amended, SB07-258). Such a Request is a prerequisite to review under Section 8-43-301, C.R.S.

If a Request for Specific Findings of Fact and Conclusions of Law is filed, both parties shall submit proposed Specific Findings of Fact, Conclusions of Law, and Order within five working days from the date of the Request. The proposed order must be submitted by e-mail in Word or Rich Text format to oac-dvr@state.co.us

The proposed order shall also be submitted to opposing counsel and unrepresented parties by e-mail, facsimile, or same day or next day delivery.

DATED: November 24, 2025



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

Issue

I. Whether Respondents established by a preponderance of the evidence that Claimant willfully violated a reasonable and applicable safety rule of the Employer, and that such violation proximately caused his injury, so as to justify a 50% reduction in disability benefits pursuant to § 8-42-112(1)(b), C.R.S.

Findings of Fact

Claimant's Employment and Background

1. Claimant is an experienced commercial vehicle operator, with a professional driving history dating back to 1976. He also served for approximately a decade as a safety instructor at a prior employer. At the time of the incident, Claimant was employed by Respondent as a yard driver and was driving a hostler truck on the day of his accident.

Hostler Truck Design and Configuration

2. A hostler is a truck designed for short-distance repositioning of trailers within a distribution or freight yard. Unlike the cab of traditional semi-tractors, which is entered and exited from the side via a traditional swinging door, the hostler cab is accessed and exited through a sliding rear cab door.

3. Photographs admitted into evidence show that the rear cab door opens onto a narrow deck or catwalk, positioned between the cab and the front of the attached trailer. From that catwalk, the operator must then turn and back down a set of metal steps to reach the ground.

4. The photographs show that the only available handholds to get down from the catwalk are mounted exclusively on the left side of the exit doorway. There is no grab bar, railing, or structure on the right side, which is where the attached trailer is positioned. As a result, the hostler's configuration does not permit the operator to maintain two-hand contact on

opposite sides of the body during descent, and the ALJ finds that a full three-point contact cannot be maintained throughout the entire maneuver of descending from the catwalk.

Claimant's Testimony

5. Claimant testified that when he was a safety instructor for a prior employer, he trained drivers in three-point contact procedures. He credibly testified that using three-point contact has been routine throughout his career. Claimant's prior experience as a safety instructor and his long-standing practice of using three-point contact bolster his credibility regarding the manner in which he descended from the hostler at the time of the accident.

6. Claimant credibly testified that on November 29, 2024, he had just finished coupling a trailer and was exiting the hostler. He exited the cab onto the catwalk. Then, while on the catwalk, he turned and backed down the stairs of the catwalk in accordance with the three-point contact concept. His left hand gripped the left-side handhold, and he reached across his body with his right hand to grasp that same left-side handle because there was no right-side handhold.

7. Claimant testified that as he backed his right foot onto the upper step, his right foot slipped. Because both hands were on the same left-side handhold, he was unable to stabilize himself as his weight shifted. His body rotated to the right, and he instinctively reached to his right in an attempt to grab onto something to stop his fall, but there was no handhold or structure on that side to grab onto. He fell onto the ground between the hostler and the trailer, landing on his right shoulder and right side.

8. Claimant's written incident report completed the same day closely matches his testimony. He wrote that he was holding the handrail, turned to back down, slipped, and fell.

9. The ALJ finds that Claimant attempted to use a three-point contact method, consistent with his training and experience, to the extent permitted by the hostler's configuration.

Video Evidence

10. Portions of the incident were captured on surveillance video. The video does not show Claimant's hand placement, foot placement, or the beginning of his descent from the

catwalk. It does show Claimant falling from between hostler and the trailer and falling onto his right shoulder and right side.

Safety Rule

11. Employer has a written three-point contact safety rule requiring employees to maintain three points of contact when "climbing in and out of cabs and trailers." The written materials include a picture/illustration of a traditional semi-tractor cab with a traditional swinging side-entry door and dual vertical handrails and demonstrate a person either entering or exiting the cab. The rule and its explanatory illustration do not reference hostlers, catwalks, rear sliding doors, or any type of platform-based exit system. Instead, the rule explicitly governs entering and exiting the cab of a traditional semi-tractor.

12. Claimant also took a written test covering personal safety issues. The test includes a question regarding getting in and out of "cabs" but does not contain any questions addressing how to get onto or off a hostler catwalk with handholds only on the left side.

Testimony of Employer's Safety Manager

13. Employer's Safety Manager, Scott Rockwell, testified that the safety rule applies to entering and exiting a cab or trailer, but he acknowledged that the rule does not expressly reference hostlers, catwalks, or rear sliding doors, and that the hostler involved here differs from the cab shown in the written rule.

14. Mr. Rockwell testified that he concluded Claimant violated the rule based on his interpretation of the video. However, the video does not show Claimant descending from the catwalk and going down the stairs backwards. It only depicts the final portion of Claimant's fall. Thus, the video does not show Claimant's hands, feet, or body posture at the beginning of the descent, the catwalk, or the steps. Thus, the video does not show the alleged violation itself.

15. Mr. Rockwell further testified that during the two years preceding this incident, he had not disciplined any employee for a three-point contact violation and could not identify any instance where Employer enforced the rule against an employee descending from a catwalk or exiting a hostler. There is no credible evidence showing the rule was previously applied to someone getting out of a hostler. As a result, Mr. Rockwell's testimony

establishes that Employer did not, in practice, enforce the three-point contact rule in the context of employees descending from hostlers or catwalks.

Credibility Findings

16. Claimant's testimony is found highly credible. His description of his hand placement and body mechanics is consistent with the physical configuration of the hostler and consistent with his contemporaneous incident reports. The mechanics of his fall, including rotation to his right are consistent with a slip occurring while both hands are on the same left-side handhold and then attempting to reach towards his right with his right hand to grab onto something. In addition to the consistency of his reports and the physical evidence, the ALJ's credibility determination is also based on direct observation of Claimant's demeanor and manner of testifying at hearing. As a result, the ALJ finds Claimant's explanation of the mechanism of injury more probable and consistent with the hostler's actual design.

17. Respondents' witness's interpretation and conclusion based on watching the video is not found to be persuasive. The video does not show Claimant's hand placement, footing, or orientation during the relevant portion of the descent from the catwalk. Therefore, it does not establish Claimant did not attempt to use a three-point contact method to descend from the catwalk. Moreover, the fact that Claimant fell on his right side does not establish Claimant failed to use a three-point contact method to descend from the catwalk.

Existence of a Safety Rule Governing Claimant's Conduct

18. The written rule applies to "climbing in and out of cabs and trailers" and does not reference hostlers, catwalks, or rear sliding doors. Moreover, the accompanying illustration shows a traditional semi-tractor cab side-entry door with dual vertical handrails. It does not show the descent from a catwalk that is behind the cab of a hostler with grab bars only on the left side, no right-side support, and a rear catwalk requiring a backward descent. Thus, the rule does not apply to Claimant descending the catwalk from the hostler.

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 bears 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 the weight, credibility, and sufficiency of the 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 Respondents established by a preponderance of the evidence that Claimant willfully violated a reasonable and applicable safety rule of the Employer, and that such violation proximately caused his injury, to justify a 50% reduction in disability benefits pursuant to § 8-42-112(1)(b), C.R.S.

Under an employer seeking to reduce an injured worker's compensation benefits based on a safety rule violation bears the burden of establishing four essential elements:

First, the employer must demonstrate the existence of a reasonable safety rule. The rule need not be formally adopted, written, or posted; oral warnings, prohibitions, and directions suffice if they are heard and understood by the employee and given by someone in authority. *Bennett Properties Co., v. Industrial Commission*, 437 P.2d 548 (Colo. 1968).

Second, the employer must prove the employee willfully violated the safety rule. Willfulness requires a showing of deliberate intent or conscious disregard of the rule, not mere negligence or inadvertence. *McNeil Coal Corp. v. Indus. Comm'n*, 96 P.2d 889 (Colo. 1939). Thus, the violation must be volitional, not accidental or the result of circumstances beyond the employee's control.

Third, the employer must establish a causal connection between the willful violation and the injury. The injury must result from the employee's willful failure to obey the safety rule. *McCulloch v. Industrial Commission*, 123 P.2d 414 (Colo. 1942). Thus, if the injury would have occurred regardless of compliance with the rule, this element is not satisfied.

Fourth, the employer must show that the rule was actually enforced. If the employer has knowledge of violations and acquiesces in them, the rule cannot serve as a basis for reducing benefits*. Lori's Family Dining, Inc. v. Industrial Claim Appeals Office*, 907 P.2d 715. A rule that exists only on paper but is not enforced in practice fails this requirement.

The employer must prove all four elements by a preponderance of the evidence. Failure to establish any single element defeats the claim for reduction of benefits under § 8-42-112(1)(b).

It is axiomatic that, in order to establish that Claimant violated a safety rule and that his benefits should be reduced by 50%, there must first be a safety rule that applies to Claimant's conduct. If the Employer does not have a rule that applies to Claimant's conduct, the analysis ends and the claim of a safety-rule violation fails.

In this case, as found above, Employer has a safety rule that requires an employee to use three points of contact when "climbing in and out of cabs and trailers." The written materials, including the accompanying illustration, address entering and exiting the cab of a traditional semi-tractor or trailer through a traditional swinging side-entry door with dual vertical handrails. The rule and illustration do not reference hostlers, catwalks, rear sliding doors, or any platform-based exit system.

Here, Claimant was not entering or exiting the cab of a traditional tractor when he fell. Instead, he was descending from the catwalk of a hostler, which has a materially different configuration, including a sliding rear cab door and handholds only on the left side. Based on the plain language of the rule, the accompanying illustration, and the hostler's physical configuration as found above, the ALJ concludes that Employer did not have a safety rule that governed Claimant's conduct at issue.

Moreover, even if the three-point contact rule were construed to apply to Claimant's descent from the hostler, Respondents have not proven that Claimant willfully violated the rule or that the rule was actually enforced in this context. The ALJ finds that Claimant attempted to use three-point contact consistent with his training and experience, to the extent permitted by the hostler's configuration, but then fell when his right foot slipped off the step.

Further, Mr. Rockwell was unable to identify any prior instance in which Employer enforced the rule and disciplined an employee for a purported three-point contact violation while descending from a hostler or catwalk. No credible evidence was presented that the rule was applied, reinforced, or treated as mandatory in that specific context.

Respondents point to the inclusion of the three-point contact rule in a written safety policy and its appearance as a question on a training test taken by Claimant. However, the passive presence of a rule in written materials or in a single test item does not, without more, create an operative or enforceable safety rule. A rule must be more than stated, the rule must be activated through consistent practice, reinforced by supervision, and treated as mandatory in the relevant context.

In other words, publication is not implementation. A rule that lives only on paper is not a rule at all. It is enforcement that gives a safety rule its legal effect under § 8-42-112(1)(b), C.R.S. Where there is a lack of credible evidence that the Employer applied the rule to employees exiting hostlers or treated it as binding in that context, the rule cannot be said to have been in effect at the time of Claimant's injury.

Because Respondents have failed to prove the existence of a reasonable and applicable safety rule governing Claimant's descent from the hostler catwalk, and, alternatively, have failed to establish willfulness and enforcement even if the rule were deemed applicable, they have not established by a preponderance of the evidence that Claimant willfully violated a safety rule and that such violation proximately caused the accident, as required by § 8-42-112(1)(b), C.R.S. Accordingly, Respondents are not entitled to a 50% reduction in Claimant's disability benefits.

Order

It is therefore ordered that:

1. Respondent's request to reduce Claimant's disability benefits by fifty percent (50%) pursuant to §8-42-112(1)(b), C.R.S., is **Denied**.
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: November 23, 2025

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

Issues

1. Whether Respondents timely filed the February 17, 2025 Application for Hearing (AFH) within the 20-day deadline in §8-42-107.2(4)(c), C.R.S.

2. Whether the Office of Administrative Courts (OAC) has jurisdiction to determine the issues of Maximum Medical improvement (MMI) and Permanent Partial Disability (PPD) benefits.

Findings of Fact

1. This matter involves an admitted slip and fall injury that occurred on February 6, 2023. Specifically, Claimant slipped on a wet restroom floor at work.

2. Claimant initially sought treatment in the emergency department at St. Joseph Hospital on February 8, 2023. She reported symptoms including a mild headache and muscle spasms in her back and rib cage. Claimant was diagnosed with an acute headache secondary to a concussion.

3. . Claimant received treatment from Authorized Treating Provider (ATP) Concentra Medical Centers. Her care included medications, x-rays, physical therapy, and imaging of her lumbar and thoracic spines. Claimant was also referred to physiatry and neurosurgery.

4. On May 31, 2024 Claimant visited Kimberly Abernethy, M.D. at Concentra. She determined that Claimant had reached Maximum Medical Improvement (MMI). Dr. Abernethy permitted Claimant to return to modified duty with a work restriction of no lifting over 10 pounds. She recommended maintenance treatment of four weeks of physical therapy.

5. On January 28, 2025 Claimant underwent a Division Independent Medical Examination (DIME) with Robert McLaughlin, M.D. Dr. McLaughlin determined Claimant had not reached MMI. He recommended additional treatment including four weeks of physical therapy (three times per week), and a psychosocial/psychological or pain management evaluation.

6. On January 29, 2025 the Division of Workers' Compensation (DOWC) issued a Notice DIME Report "Not at MMI."

7. On February 17, 2025 Respondents filed an AFH challenging Dr. McLaughlin's DIME determinations.

8. On October 7, 2025 Respondents took Dr. McLaughlin's deposition. He concluded that Claimant had reached MMI on August 22, 2025.

9. On October 15, 2025 in Case Number WC 5-123-230-007 ALJ Sidanycz conducted a hearing on whether Respondents had produced clear and convincing evidence to overcome Dr. McLaughlin's January 28, 2025 DIME opinion that Claimant had not reached MMI. On November 14, 2025 ALJ Sidanycz issued Findings of Fact, Conclusions of Law and Order (FFCLO) determining that Respondents had overcome Dr. Mclaughlin's opinion regarding MMI and PPD. Claimant reached MMI on August 22, 2025 with a 5% whole person impairment rating.

10. Claimant asserts she did not receive the February 17, 2025 AFH. She contends that the AFH was not filed until it was re-sent to her on February 19, 2025. Claimant argues that, because the AFH was not filed within the mandatory 20-day period enumerated in §8-42-107.2(4)(c), C.R.S., it was untimely. The OAC thus lacks jurisdiction to determine the issues of MMI and PPD. Consequently, any Orders issued by ALJ Sidanycz after the October 15, 2025 hearing are invalid. However, based on a review of the record, Claimant's contention fails. The AFH was timely filed on February 17, 2025 and the OAC retains jurisdiction.

11. On February 17, 2025 Respondents' counsel drafted and filed an AFH to overcome the DIME. The AFH included a Certificate of Service noting that it was filed on February 17, 2025 and signed by Respondents' counsel Ilene Feldmeier, Esq.

12. Respondents' AFH was filed with the OAC Denver Office at 7:17pm on Monday, February 17, 2025. Claimant was copied on the e-mail. The e-mail shows it was simultaneously sent to both Claimant and the OAC.

13. Ms. Feldmeier's "sent messages" tab in Outlook contained the completed February 17, 2025 e-mail sent to Claimant and the OAC with the AFH attached.

14. Ms. Feldmeier did not receive any notices of failed delivery or bounce back e-mails. She also did not receive any notices that the e-mail was not delivered to Claimant and the OAC.

15. Ms. Feldmeier inquired with her IT provider. They could not find any indication of non-delivery or non-receipt by Claimant or the OAC.

16. Respondents also provided a Sworn Attestation and Affidavit from counsel affirming the AFH was filed on February 17, 2025. The Affidavit noted that Ms. Feldmeier "completed the Application for Hearing on the evening of February 17, 2025 as the undersigned was working late due to plans to be out of the office most of the day on February 18, 2025." The document also specified that "[t]he undersigned's sent mailbox contained the completed February 17, 2025 e-mail sent to Claimant and the OAC with the Application for Hearing attached."

17. On February 19, 2025 (one day after the deadline), Claimant alleged she did not receive the February 17, 2025 AFH. Thus, Respondents immediately sent Claimant another copy of the AFH that included the prior e-mail documenting service.

18. Respondents' counsel then called the OAC to verify receipt. The clerk stated that the OAC had received an overwhelming number of e-mails with the recent court holiday and

could not confirm whether it had been received. The clerk suggested forwarding the prior e-mail because this would ensure it was received. Based on the clerk's instructions, Respondents forwarded the February 17, 2025 e-mail to the OAC Denver office. The OAC confirmed receipt on February 19, 2025.

19. The DOWC maintains documents on claims and creates a chronological history. The chronological history for the present claim shows "Feb 17, 2025 200 APP FOR HRG RCVD DVR, ILENE FELDMEIER." The DOWC chronological history reflects that the DOWC received an AFH filed on February 17, 2025.

20. The OAC system also reveals the AFH was filed on February 17, 2025 based on the following:

- 04/08/2025 – E-mail from Mary Conlon, OAC clerk, noting that there is a "2/17/2025 application."
- 04/10/2025 – E-mail from Ms. Conlon noting that there are two open applications including: "5-230-123-005, dated 2/17/2025."
- 04/18/2025 – E-mail from Ms. Conlon noting "The application for hearing that was submitted on 2/17/2025, was submitted by Ms. Feldmeier."
- 04/22/2025 – E-mail from Ms. Conlon containing screenshots of the OAC files showing "[redacted] WC 5-230-123 RATY AFH 2.17.2025.INGGCC. INCL." and "[redacted] WC 5-230-123 RATY AFH 2.17.2025.INGGCC." The screenshots document the AFH is from February 17, 2025. The screenshots also reveal that the AFH was received by the OAC twice – once when originally filed on February 17, 2025 and again when re-sent on February 19, 2025.

21. Numerous ALJs and PALJs have issued prior orders noting the AFH was filed on February 17, 2025. These orders include the following:

- 03/14/2025 – ALJ Order denying a motion to compel Claimant to attend a demand appointment – Paragraph 2 – ALJ Hoogerhyde found “On February 17, 2025, Respondents’ filed an Application for Hearing.”
- 04/01/2025 – ALJ Order granting a Motion to Set Outside 120 Days – ALJ Kabler states the hearing must be set “within 180 days of the certificate of service of the 02/17/2025 Application for Hearing.”
- 05/02/2025 – Case Management Order entered by ALJ Abbott noting that “[o]n February 17, 2025, Respondents filed an Application for Hearing.”
- 05/02/2025 – Prehearing Conference Order regarding a protective order – Paragraph 6 – PALJ Mueller states “Respondents filed an Application for Hearing on February 17, 2025.”
- 06/11/2025 – Prehearing Conference Order in part denying Claimant’s motion to strike the 02/17/2025 Application for Hearing – Page 2, 2nd full paragraph – PALJ Eidsmoe states “Respondents filed an Application for Hearing on February 17, 2025.”
- 08/08/2025 – Prehearing Conference Order – Page 2, 2nd paragraph – PALJ Plank states "On February 17, 2025, Respondents file a AFH to overcome the DIME physician’s opinions.”
- 08/28/2025 – ALJ Hearing Order regarding ATP – Findings of Fact #16 – ALJ Kabler finds “On February 17, 2025, Respondents filed an Application for Hearing seeking to overcome Dr. McLaughlin’s DIME opinion.”

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).

4. Section 8-42-107.2(4)(c), C.R.S. states the following:

> within twenty days after the date of the mailing of the division's notice that it has received the IME's report, the insurer or self-insured employer shall either file its admission of liability pursuant to section 8-43-203 or request a hearing before the division contesting one or more of the IME's findings or determinations contained in such report.

5. DOWC Rule 1-2(A) specifies that "the date a document or pleading is filed is the date it is mailed or hand delivered to the Division of Workers' Compensation or the Office of Administrative Courts."

6. OAC Procedural Rules 1(G) states that "[m]ailing as used in these rules shall include first class mail, or email."

7. A properly executed certificate of mailing creates a presumption that a notice was received. *Campbell v. IBM Corp.*, 867 P.2d 77 (Colo. App. 1993). There "is a presumption that a document which is properly addressed and mailed is received by the addressee." *See Olsen v. Davidson*, 142 Colo. 205, 350 P.2d 338 (1960). Further, the certificate of service on a document creates a presumption of delivery. *See Allred v. Squirrel*, 37 Colo. App. 84, 543 P.2d 110 (1975); *Dresselaers v. Fed. Express,* W.C. No. 5-034-457-02 (ICAO, Mar. 22, 2019).

8. Here, Dr. McLaughlin completed the DIME on January 28, 2025. On January 29, 2025 the DOWC issued a Notice DIME Report "Not at MMI." The 20-day deadline to file an AFH to overcome the DIME was thus February 18, 2025.

9. The record includes substantial evidence that Respondents' AFH was filed within the 20-day time period. Notably, Respondents' February 17, 2025 AFH was filed with the OAC Denver Office at 7:17pm on Monday, February 17, 2025. Claimant was copied on the e-mail. The e-mail shows it was sent simultaneously to both Claimant and the OAC.

10. Furthermore, the OAC's system shows there was a February 17, 2025 AFH filed by Respondents' counsel. In fact, the OAC screenshots document that the February 17, 2025 AFH was received twice – once when originally filed on February 17, 2025 and again when re-sent on February 19, 2025.

11. Respondents also provided a Sworn Attestation and Affidavit from their counsel affirming the AFH was filed on February 17, 2025. The Affidavit noted that Ms. Feldmeier "completed the Application for Hearing on the evening of February 17, 2025 as the undersigned was working late due to plans to be out of the office most of the day on February 18, 2025." The document also specified that "[t]he undersigned's sent mail box contained the completed February 17, 2025 e-mail sent to Claimant and the OAC with the Application for Hearing attached."

12. There is a presumption of delivery that the AFH was timely filed February 17,

2025 based on the signed certificate of service. This is supported by the e-mail showing it was filed on February 17, 2025, the sworn affidavit and attestation of Respondents' counsel, the DOWC chronological history, and the OAC screenshots and e-mails noting the AFH as having been filed on February 17, 2025.

13. Claimant has not provided a sworn attestation, affidavit, or testimony under oath regarding her non-receipt of the February 17, 2025 e-mail. Claimant's only evidence that she did not receive the February 17, 2025 is an e-mail she wrote alleging non-receipt.

14. The record demonstrates that Respondents timely filed an AFH on February 17, 2025 seeking to overcome Dr. McLaughlin's DIME determinations. Respondents' AFH was filed with the OAC Denver Office at 7:17pm on Monday, February 17, 2025. Claimant was copied on the e-mail. Claimant has not provided sufficient evidence to rebut the presumption of delivery. Moreover, the OAC system contains numerous entries that the AFH was filed on February 17, 2025. The DOWC chronological history further reveals that the DOWC received an AFH on February 17, 2025. Finally, multiple prior ALJs and PALJs have issued orders noting the AFH was filed on February 17, 2025. Based on the preceding overwhelming evidence in the record, Respondents timely filed an AFH on February 17, 2025.

15. Because Respondents timely filed an AFH to challenge Dr. McLaughlin's DIME opinion, the OAC retains jurisdiction of the matter. Therefore, ALJ Sidanycz had jurisdiction to conduct a hearing and issue an FFCLO on November 14, 2025. She determined that Respondents had overcome Dr. Mclaughlkin's opinion on the issues of MMI and PPD. ALJ Sidanycz' conclusion that Claimant reached MMI on August 22, 2025 with a 5% whole person impairment rating is thus valid and binding.

Order

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

1. Respondents timely filed their February 17, 2025 AFH within the 20-day deadline in §8-42-107.2(4)(c), C.R.S.

2. ALJ Sidanycz had jurisdiction to conclude in her November 14, 2025 FFCLO that Respondents overcame Dr. Mclaughlkin's opinion on the issues of MMI and PPD. Claimant reached MMI on August 22, 2025 with a 5% whole person impairment rating.

3. 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: November 19, 2025.

DIGITAL SIGNATURE:
Peter J. Cannici

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 No. 5-300-957-001

Issues

1. Did Claimant prove he suffered a compensable injury on February 19, 2025?

2. If Claimant proved a compensable injury, are Respondents liable for treatment provided by and on referral from Dr. John Kunstle?

Findings of Fact

1. Claimant worked for Employer as a Regional Director, managing retail shopping centers at several locations in Colorado. The job required regular site inspections, to which Claimant drove his personal vehicle and Employer provided mileage reimbursement.

2. On February 19, 2025, Claimant was involved in a motor vehicle accident on I-25, while traveling between two of Employer's properties. Claimant's vehicle was rear-ended when traffic backed up and came to a stop.

3. Immediately after the accident, Claimant felt "shaky" with adrenaline and "a little bit odd," but had no back or neck pain. He completed a Colorado State Patrol Driver's Statement form at the scene, on which he indicated he was not injured. Claimant continued up to Fort Collins and attended his scheduled meetings the next morning.

4. Claimant reported the accident to his supervisor on February 20, 2025. However, he did not report any symptoms or request medical treatment at that time.

5. Claimant saw Dr. John Kunstle, a primary care physician, on February 27, 2025, for a new patient evaluation. The appointment had been scheduled before the MVA occurred. The visit included a thorough history and physical examination. The musculoskeletal exam was entirely normal with no swelling, tenderness, or deformity noted. Range of motion was normal throughout. The cervical spine examination specifically documented normal range of motion, a supple neck, and no tenderness. Neurological examination showed no deficits. Dr. Kunstle's note contains no mention of the MVA and no documentation of any neck or back complaints.

6. Claimant returned to Dr. Kunstle on March 6, 2025, with complaints of pain in his neck, thoracic spine, and lumbar spine, along with headaches. Claimant reported constant pain fluctuating from 3/10 to 10/10. Dr. Kunstle noted that Claimant had been involved in a vehicular collision on February 19, 2025. Physical examination revealed tenderness throughout the spine, trapezius, occiput, parathoracic, and paralumbar musculature. Dr. Kunstle diagnosed cervical, thoracic, and lumbar spine pain. He ordered X-rays and referred Claimant to physical therapy.

7. Claimant started PT at Fyzical Therapy and Balance Centers on March 19, 2025. Claimant reported daily headaches and neck pain extending from the middle of his shoulder blades to his neck. The physical therapist opined Claimant's symptoms were likely related to a whiplash injury.

8. Claimant testified he noticed "stiffness" shortly after the accident and the symptoms became "unbearable" about five days after the accident. Claimant stated he initially thought the symptoms would resolve, so he "waited it out" rather than seek immediate treatment. Claimant also testified he delayed seeking treatment because his mother was dying from cancer and he had other priorities. Claimant testified the symptoms progressively worsened before the March 6, 2025 visit with Dr. Kunstle.

9. Claimant failed to prove he suffered a compensable injury. Specifically, Claimant failed to prove that the neck and back pain first documented on March 6, 2025, was caused by the February 19, 2025 motor vehicle accident. Although Claimant testified that he reported the MVA and associated neck and back pain to Dr. Kunstle on February 27, 2025, this testimony is not substantiated by the contemporaneous medical report from that date. And there is no persuasive evidence to explain why Claimant would experience a two-week delay in the onset of symptoms following the accident. Although Claimant was undoubtedly involved in a motor vehicle accident while traveling for work, the persuasive evidence does not establish a causal connection between that accident and his later complaints.

Conclusions of Law

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), C.R.S.; *see, Faulkner v. Industrial Claim Appeals Office*, 12 P.3d 844 (Colo. App. 2000); *City of Boulder v. Streeb*, 706 P.2d 786 (Colo. 1985); *Pacesetter Corp. v. Collett*, 33 P.3d 1230 (Colo. App. 2001). The claimant must prove that an injury directly and proximately caused the condition for which benefits are sought. *Wal-Mart Stores, Inc. v. Industrial Claim Appeals Office*, 989 P.2d 251 (Colo. App. 1999); *Snyder v. Industrial Claim Appeals Office*, 942 P.2d 1337 (Colo. App. 1997). The claimant must prove entitlement to benefits by a preponderance of the evidence.

The Workers' Compensation Act recognizes a distinction between an "accident" and an "injury." The term "accident" refers to an "unexpected, unusual, or undesigned occurrence," whereas an "injury" is the physical trauma caused by the accident. Section 8-40-201(1), C.R.S. In other words, an "accident" is the cause, and an "injury" is the result. *City of Boulder v. Payne*, 426 P.2d 194 (Colo. 1967). Benefits are only payable if an accident results in a compensable "injury." The mere fact that an incident occurred at work and caused symptoms does not necessarily establish a compensable injury. Rather, a compensable injury is one that requires medical treatment or causes a disability. *E.g., Montgomery v. HSS, Inc*., W.C. No. 4-989-682-01 (ICAO, August 17, 2016).

As found, Claimant failed to prove he suffered a compensable injury on February 19, 2025. Specifically, Claimant did not prove that the neck and back pain first documented on March 6, 2025, was caused by the February 19, 2025 motor vehicle accident. Although Claimant testified that he reported the MVA and associated neck and back pain to Dr. Kunstle on February 27, 2025, this testimony is not substantiated by the contemporaneous medical report. And there is no persuasive evidence to explain a two-week delay in the onset of symptoms following the MVA. Although Claimant was undoubtedly involved in an accident while traveling for work, the persuasive evidence does not establish a causal connection between that accident and his later complaints that prompted him to seek treatment. Therefore, he did not prove that the "accident" resulted in an "injury."

Because the claim is not compensable, the other endorsed issues are moot.

Order

It is therefore ordered that:

1. Claimant's claim for workers' compensation benefits is denied and dismissed.

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: November 21, 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. 5-288-528-001

Issues

Did Claimant prove he suffered a compensable injury on November 1, 2024?

Stipulations

If the claim is compensable, the parties stipulated that:

- Claimant's average weekly wage from Employer is $781.93.
- Claimant is entitled to TTD benefits commencing on November 1, 2024, and continuing until terminated by law.
- The treatment Claimant has received for the injury was reasonably needed, causally related, and authorized.

Findings of Fact

1. Claimant is a professional lacrosse player. He alleges an injury to his right foot on November 1, 2024, while participating in mandatory, pre-season training camp activities.

2. It is undisputed that Claimant had a pre-existing condition involving his right foot. An MRI dated June 5, 2024, documented a nondisplaced intra-articular fracture of the distal calcaneus.

3. Claimant saw an orthopedic surgeon, Dr. Gregory Lundeen, on July 23, 2024, who noted Claimant's right foot pain was "slowly improving" and recommended conservative care.

4. Claimant established care with Dr. Lauren Molchan, DPM, on August 8, 2024. He reported a history of a right foot injury about 12 weeks prior. Dr. Molchan assessed a "chronic . . . fracture of anterior process of the calcaneus with delayed healing," which she noted was a "nonunion fracture."

5. At an October 17, 2024 follow-up visit, Dr. Molchan documented that Claimant was "not feeling pain with walking in his regular shoe or with cross training." Radiographs at that time were interpreted as showing "improved" but not complete osseous healing.

6. Claimant participated in PT for approximately 12 weeks, and PT records show steady improvement in symptoms and function. At the final session, on October 31, 2024, the therapist documented that Claimant had “no issues with max effort,” was “feeling great without foot pain or discomfort,” and was “feeling ready for camp physically and mentally.” The examination noted no palpable tenderness at the previous fracture site.

7. That same day, October 31, 2024, Claimant underwent a pre-season physical examination with Dr. Michelle Wolcott, Employer’s head team physician. Employer’s head athletic trainer, Mishaal Amjed, had placed Claimant on a specific list for Dr. Wolcott’s review because of his prior injury. After her examination, Dr. Wolcott cleared Claimant for “full” play with no limitations.

8. Claimant participated in the first day of training camp on November 1, 2024. The morning session required him to complete a rigorous fitness test consisting of three 300-yard timed sprints. Ms. Amjed, who was accepted as an expert in athletic training, described the sprints as a “hundred percent intensity” test that was “very rigorous” and required “a lot of force and impact” on the feet and joints.

9. Claimant completed the morning activities and returned to his hotel room to rest. When he awoke from a brief nap, he developed severe and acute pain in his right foot, which he described as a “constant throbbing” and a “take-your-breath-away kind of pain.” At that point, he could not bear weight on the foot.

10. Ms. Amjed observed Claimant before the sprints and saw no indication his foot was problematic. After the sprints, Claimant was in obvious pain and could not put pressure on his foot. Ms. Amjed completed an injury report stating that Claimant “felt severe pain following fitness test. No specific incident (probably due to repetitive nature of test and intensity).” Ms. Amjed reiterated her opinion at hearing that the sprints caused Claimant’s foot to become symptomatic.

11. A CT scan of the right foot, performed on November 1, 2024, showed a “non-united longitudinal intra-articular fracture of the anterior process of the calcaneus.”

12. Claimant saw Dr. Kenneth Hunt, a foot specialist, on November 5, 2024. Dr. Hunt noted Claimant had a “nonunion of a transverse fracture of the anterior process of

the calcaneus" and that his "pain persists and the fracture has not healed despite nearly 6 months of conservative treatment." Dr. Hunt recommended surgery.

13. Dr. Hunt performed an open reduction and internal fixation of the right calcaneus fracture on November 15, 2024.

14. Dr. David Orgel performed a record review for Respondents on January 13, 2025, and opined that Claimant's condition was not work-related.

15. Dr. Eric Lindberg, a board-certified orthopedic surgeon specializing in foot and ankle orthopedics, performed an independent medical examination (IME) for Respondents on July 10, 2025. Dr. Lindberg opined that the calcaneal fracture was "clearly present" before November 1, 2024, and that Claimant did not suffer a "new injury." Dr. Lindberg opined that while there had been some healing, there was no "bone to bone integration," and Claimant was left with a fibrous nonunion. Dr. Lindberg further opined that given the nonunion, it was unlikely that the foot fracture would have healed on its own and that "any significant episode of increased running or activity would have been more likely than not to cause the fracture to become symptomatic again." He opined that the training camp activities "over stressed the zone of injury" and that the foot's tissues "were injured as a result of his training camp activities."

16. Regarding treatment, Dr. Lindberg agreed that the surgery performed by Dr. Hunt was appropriate because "conservative care rarely works for a non-union because it's already decided it's not going to heal." He also opined that the surgery was "reasonable, necessary, and directly related to Claimant's calcaneal fracture." Dr. Lindberg conceded that Claimant suffered a symptomatic aggravation at training camp, but he believed there was no new structural injury. Therefore, in his view, the need for surgery was primarily related to the original fracture.

17. Dr. Wolcott, Employer's team physician, reviewed Dr. Lindberg's IME report. Dr. Wolcott opined that the volume of activity required for a professional athlete at training camp aggravated Claimant's pre-existing foot condition and "led to his need for treatment." She agreed with Dr. Lindberg's opinions that the pre-existing nonunion "was made symptomatic by his training camp activities" and that the surgery performed by Dr. Hunt was reasonable, necessary, and related to the aggravation.

18. Claimant proved he suffered a compensable injury on November 1, 2024. Claimant's testimony is credible. Dr. Wolcott's opinions are credible and persuasive. Dr. Lindberg's opinions are credible and persuasive to the extent they support an aggravation of a pre-existing condition. Despite the nonunion, the pre-existing fracture had become asymptomatic and healed sufficiently that Claimant was cleared to participate in training camp. Although Dr. Lindberg may be correct that a reinjury was inevitable, and potentially could have happened in other settings, the acute worsening Claimant experienced on November 1, 2024 was precipitated by the rigorous training camp activity he performed that day. At a minimum, Claimant's work duties caused a symptomatic aggravation of the pre-existing calcaneal fracture, which proximately caused disability and a need for treatment. Therefore, the injury is compensable regardless of whether it caused any new structural pathology.

Conclusions of Law

A. 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 existence of a pre-existing condition does not preclude a claim for medical benefits if an industrial injury aggravated, accelerated, or combined with the pre-existing condition to produce the need for medical treatment. *H & H Warehouse v. Vicory*, 805 P.2d 1167 (Colo. App. 1990). The ultimate question is whether the need for treatment is proximately caused by an industrial aggravation or is merely the direct and natural consequence of the pre-existing condition. *F.R. Orr Construction v. Rinta*, 717 P.2d 965 (Colo. App. 1985); *Carlson v. Joslins Dry Goods Company*, W.C. No. 4-177-843 (March 31, 2000).

The claimant need not prove that the work injury is the sole cause of the need for treatment. Rather, it is sufficient to show that the injury is a "significant" cause in that there is a direct relationship between the precipitating event and the need for treatment. *E.g.*, *Reynolds v. U.S. Airways, Inc.*, W.C. No. 4-352-256, 4-391-859, 4-521-484 (ICAO, May 20, 2003). To prove an aggravation, a claimant need not show an injury objectively caused any identifiable structural change to their underlying anatomy. Rather, a purely

symptomatic aggravation is a sufficient basis for an award of medical benefits if it caused the claimant to need treatment they otherwise would not have required but for the accident. *Merriman v. Industrial Commission*, 210 P.2d 448 (Colo. 1949); *Cambria v. Flatiron Construction*, W.C. No. 5-066-531-002 (ICAO, May 7, 2019). Thus, if pain triggers the claimant's need for medical treatment, the treatment is compensable. *Dietrich v. Estes Express Lines*, W.C. No. 4-921-616-03 (ICAO, September 9, 2016).

As found, Claimant proved he suffered a compensable injury on November 1, 2024. Claimant's testimony is credible. Dr. Wolcott's opinions are credible and persuasive. Dr. Lindberg's opinions are credible and persuasive to the extent they support an aggravation of a pre-existing condition. Despite the nonunion, the pre-existing fracture had become asymptomatic and healed sufficiently that Claimant was cleared to participate in training camp. Although Dr. Lindberg may be correct that a reinjury was inevitable, and potentially could have happened in other settings, the acute worsening Claimant experienced on November 1, 2024 was precipitated by the rigorous training camp activity he performed that day. At a minimum, Claimant's work duties caused a symptomatic aggravation of the pre-existing calcaneal fracture, which proximately caused disability and a need for treatment. Therefore, the injury is compensable regardless of whether it caused any new structural pathology.

B. TTD and medical benefits

Respondents agreed, if the claim is compensable, Claimant is entitled to the requested TTD and medical benefits. As a result, there is no need for specific analysis of these issues.

Order

It is therefore ordered that:

1. Claimant's claim for an injury on November 1, 2024 is compensable.

2. Claimant's average weekly wage is $781.93, with a corresponding TTD rate of $521.29.

3. Insurer shall pay Claimant TTD benefits, at the rate of $521.29 per week, commencing November 1, 2024, and continuing until terminated by law.

4. Insurer shall pay Claimant statutory interest of 8% per annum on all compensation not paid when due.

5. Insurer shall cover medical benefits from authorized providers reasonably needed to cure and relieve the effects of the compensable injury, including charges from the November 15, 2024 surgery by Dr. Hunt.

6. 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: November 19, 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 5-271-387-002

Issues

1. Whether Claimant proved by a preponderance of the evidence that she suffered a compensable injury at work on April 20, 2024.

2. If compensable, whether Claimant proved by a preponderance of the evidence that her Takotsubo cardiomyopathy and the resulting treatment she received for that diagnosis was casually related, reasonable, and necessary to cure and relieve her of the effects of her April 20, 2024 injury.

3. If compensable, whether Claimant proved by a preponderance of the evidence that she is entitled to temporary total disability (TTD) benefits from April 21, 2024 to May 15, 2024.

4. A determination of Claimant's Average Weekly Wage (AWW).

Findings of Fact

Work Injury

1. Claimant is a 62 year-old woman with a significant history of heart disease. Employer is a fast-food restaurant. Claimant works for Employer as a general manager and Claimant's job duties include checking the temperature of the walk-in freezer at her location.

2. On April 20, 2024, Employer's walk-in freezer stopped working. Claimant reported the broken freezer to her supervisor sometime between 11:30 a.m. and noon. A freezer technician was called but it was determined that the freezer could not be immediately fixed.

3. At the direction of her supervisor, Claimant ordered 200 pounds of dry ice to keep the contents of the walk-in freezer cold. Claimant credibly testified that the dry ice was delivered between 1:30-2:00 p.m. Claimant and her coworkers moved as much food as they could from the broken walk-in freezer to standing freezers in the restaurant.

4. At the time the dry ice was placed in the freezer, the freezer door was held open by bungee cords. The door remained open until around 3:00 p.m. when Claimant and

her coworkers finished moving food out of the walk-in freezer. Claimant then removed the bungee cord and the freezer door automatically closed.

5. The walk-in freezer had no ventilation and the dry ice began off-gassing carbon dioxide into the closed room. Claimant instructed her coworkers not to enter the freezer in order to ensure the food remaining in the freezer stayed cold. No employees entered the walk-in freezer between approximately 3:00 p.m. and 7:30 p.m.

6. Between 7:30-8:00 p.m. Claimant opened the door to the walk-in freezer to retrieve cookie dough for the ice cream bar. Claimant was found laying on the ground facedown in the cooler leading to the walk-in freezer by coworkers at approximately 9:00 p.m. RHE p. 1572; RHE p. 2480 (Claimant discovered by coworker at 9:10 p.m.).

7. Claimant credibly testified that she was in the walk-in freezer for approximately ten seconds and that she saw fog and was immediately lightheaded, dizzy, and experienced shortness of breath. She then turned to leave the walk-in freezer and lost consciousness.

8. A preponderance of the evidence supports a finding that Claimant more likely than not lost consciousness due to her exposure to carbon dioxide and that as she sought to exit the walk-in freezer she fell forward into the cooler landing on her right side. The walk-in freezer door then automatically closed behind Claimant, cutting off the flow of carbon dioxide from the walk-in freezer.

9. An Occupational Safety and Health Administration (OSHA) report concerning the incident found that Claimant was exposed to levels of carbon dioxide exceeding the concentration Immediately Dangerous to Life or Health as set by the National Institute for Occupational Safety and Health. RHE pp. 2426, 2480.

10. Claimant's coworkers called an ambulance. While Claimant's coworkers reported to emergency medical services personnel that Claimant was awake and alert when they found her in the cooler, RHE p. 1572, Claimant does not remember regaining consciousness at the restaurant and instead "woke up" in the ambulance with an oxygen mask on while being transported to Swedish Medical Center.

11. Claimant was initially treated at the emergency department for her syncopal episode. Claimant also reported pain in her right shoulder and hip. RHE pp. 1569-1591.

12. Claimant underwent testing that included measuring carbon dioxide. RHE p. 1575. Claimant's carbon dioxide level was 20 L, slightly below the normal range of 21-32

mmol/L. *Id.*; *see id.* at p. 1632 (Claimant's carbon dioxide levels on 4/21 at 1150 was 19 L, 4/21 at 1604 was 21 L, and at 4/21 at 2047 was 21 L). Claimant was provided oxygen in the ambulance and she was in the cooler for approximately an hour before being found by her coworkers. The ALJ infers that Claimant's brief exposure to high levels of carbon dioxide followed by regular air and then oxygen likely resulted in her slightly depressed carbon dioxide testing results.

13. While treating Claimant for her syncopal episode, Claimant's testing showed her troponin levels were "rising." RHE p. 1573; *see id.* at p. 1575 (at 2149 Claimant's troponin level was 209 HC; at 2259 Claimant's troponin level was 651 HC). It was determined Claimant needed to be admitted to the hospital "for further trending troponin." *Id.*; *see id.* at p. 1574 ("[T]he patient presented and described a history . . . more consistent with a[n] orthostatic event, other significant cardiovascular etiologies were considered or even toxic exposure. Though there could be a demand element, her elevated troponin does raise the possibility of a primary ischemic event causing the non-perfusing rhythm. She has been here without anginal equivalent, with no other significant traumatic injuries found, and will be admitted for further troponin trending and potential consultation.").

14. Claimant testified she was told in the emergency department that the left side of her heart was not working.

15. Claimant was ultimately admitted to the intensive care unit. *Id.* at p. 1604 ("Persistent hypotension in the setting of HFrEF with anterior wall motion abnormality concerning cardiogenic shock and high risk NSTEMI requiring emergent coronary angiography. . . . The patient must remain in the ICU for ongoing evaluation of the comprehensive management plan outlined in this note.").

16. Claimant met with James Pellerin, M.D. on April 21, 2024. Dr. Peller noted:

> [redacted] is a very pleasant 61-year-old female past medical history of HTN, HLD, history of CAD status post MI and PCI back in 2015 at St. Vincent Hospital in Indianapolis in addition to carotid artery disease status post intervention who presented after syncopal episode while at work. She works as a manager at Steak 'n Shake and states she was in the freezer when she started to feel dizzy and passed out and had

> chest pressure. She states she has been having intermittent chest pressure which is similar to when she had her heart attack back in 2015 and got her stent. She had nonischemic EKG without evidence of STEMI and was notably hypotensive persistently in the ED with intermittent chest pain. Troponins continued to trend upwards and cardiology was consulted for further recommendations.

RHE p. 1594.

17. Claimant also reported "chest fullness/pressure intermittently that is severe and has been ongoing off and on for 4 days. She works out 2-3 x weekly and noticed chest pressure similar to now when she was exercising on Thursday." RHE p. 1605.

18. Claimant underwent an emergent coronary angiography. RHE p. 1604. An Impella CP device was placed to provide temporary circulatory support. RHE pp. 1934.

19. Claimant was ultimately diagnosed with Takotsubo cardiomyopathy (also known as broken heart syndrome) resulting in cardiogenic shock. RHE p. 1614 (claimant "presented after syncopal episode while at work and chest pressure found to eleveted [sic] troponin, concerning for an NSTEMI, but found to have nonobstructive CAD and diagnosed with Takotsubo cardiomyopathy.")

20. Claimant was discharged from the hospital on April 26, 2024. RHE p. 1690.

21. Claimant returned to work on May 16, 2024.

Prior History of Heart Disease

22. Claimant has a significant family history of heart disease. RHE p. 79.

23. In 2014, Claimant had a heart stent placed. *Id.*

24. Prior to 2020, Claimant had a history of arrhythmia, hyperlipidemia, and stroke. RHE p. 78-79; *see id.* at p. 86 (Claimant reported a stroke twenty years prior and myocardial infarction five years prior).

25. On January 8, 2020, Claimant presented to Reid Hospital and was diagnosed with atherosclerotic heart disease of native coronary artery with unstable angina pectoris and occlusion and stenosis of her right carotid artery. RHE pp. 73, 83. Claimant's history of hypertension, hyperlipidemia, and carotid artery disease was noted. *Id.* at p. 78-79.

26. On January 31, 2020, Claimant underwent a carotid endarterectomy to address stenosis of her right carotid artery and distal carotid artery kink. RHE p. 313.

27. In her independent medical examination with Laurence Lesnak, D.O., Claimant reported a myocardial infarction and cardiac stent insertion in 2014, a stroke in either 2019 or 2020, and acute left hemiparesis and symptomatic left-sided neuropathy. RHE p. 2272.

Additional Facts

28. Dr. Lesnak testified on behalf of Respondents. Dr. Lesnak testified that in his professional opinion Claimant's preexisting heart conditions caused her syncopal episode, rather than her exposure to carbon dioxide. Dr. Lesnak conceded on cross-examination that he could not confirm or dispute the OSHA report findings that Claimant was exposed to an estimated 87,912 to 175,824 parts-per-million (ppm) concentration of carbon dioxide and that 40,000 ppm is immediately dangerous to life or health.

29. The ALJ finds Dr. Lesnak's opinion that Claimant's exposure to high concentrations of carbon dioxide was unlikely to cause her syncopal episode unpersuasive.

30. Claimant testified that she experiences pain in her right arm every day since her work injury. Her right arm aches and throbs.

31. The ALJ finds Claimant's testimony credible.

32. Claimant proved it is more likely than not that she sustained a compensable work injury arising out of and in the course of her employment for Employer on April 20, 2024.

33. Claimant presented insufficient credible expert or lay evidence to establish a causal connection between her diagnosed Takotsubo cardiomyopathy and her exposure to carbon dioxide resulting in her syncope and fall on April 20, 2024.

34. Claimant failed to prove it is more likely than not that her April 20, 2024 industrial injury caused a disability lasting more than three work shifts, she left work as a result of that disability, and the disability resulted in actual wage loss. Claimant missed work due to her diagnosed Takotsubo cardiomyopathy that was unrelated to her April 20, 2024 work injury.

Conclusions of Law

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).

Compensability

To establish a compensable injury an employee must prove by a preponderance of the evidence that her injury arose out of the course and scope of employment with her employer. § 8-41-301(1)(b), C.R.S.; *see City of Boulder v. Streeb*, 706 P.2d 786, 791 (Colo. 1985). An injury occurs "in the course of" employment when a 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. *Triad Painting Co. v. Blair*, 812 P.2d 638, 641 (Colo. 1991). The "arising out of" requirement is narrower and requires the claimant to demonstrate that the injury has its "origin in an employee's work-related functions and is sufficiently related thereto to be considered part of the employee's service to the employer." *Popovich v. Irlando*, 811 P.2d 379, 383 (Colo. 1991). The claimant must prove a causal nexus between the claimed disability and the work-related injury. *Singleton v. Kenya Corp.*, 961 P.2d 571, 574 (Colo. App. 1998).

Claimant has established by a preponderance of the evidence that her syncopal episode and concomitant fall on April 20, 2024 constituted a compensable work injury. First, a preponderance of the evidence supports a conclusion that Claimant's injury occurred "in the course of" her employment because her injury occurred within the time and place limits of her employment and during an activity that had some connection with her work-related functions. After informing her supervisors of the broken freezer and taking possession of 200 pounds of dry ice, Claimant entered the freezer, felt shortness of breath, turned around to exit the freezer, and lost consciousness, falling forward into the cooler and landing on her right side. Respondents suggest that Claimant's preexisting heart issues, rather than her exposure to carbon dioxide inside the freezer, caused Claimant's loss of consciousness but the ALJ concludes it more likely than not that it was Claimant's exposure to the suspected toxic levels of carbon dioxide caused the syncopal episode.

Second, Claimant has established it is more probable than not that her injury arose out of her employment. The ALJ is mindful of the logical fallacy of mistaking temporal proximity for a causal relationship. *See Washburn v. City Market*, W.C. No. 5-109-470 (ICAO, June 3, 2020); *Shaffstall v. Champion Technologies*, W.C. No. 4-820-016 (ICAO, Mar. 2, 2011) (discussing *Scully v. Hooters of Colo.*, W.C. No. 4-745-712 (ICAO, Oct. 27,

2008)). But in this case, the ALJ finds and concludes that the temporal proximity of Claimant's loss of consciousness after entering the freezer which had been trapping the carbon dioxide off-gassing from the dry ice used to keep the freezer cool establishes by a preponderance that Claimant's syncopal episode and concomitant fall arose out of her employment.

Medical Benefits

Once a claimant has established the compensable nature of her work injury, she 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 (Jan. 2, 2024). However, a claimant is only entitled to such benefits if the care is reasonable, necessary, and the industrial injury is the proximate cause of her 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).

The question of whether medical treatment is reasonable and necessary to cure and relieve the effects of an industrial injury is one of fact. *Kroupa v. Indus. Claim Appeals Off.*, 53 P.3d 1192, 1197 (Colo. App. 2002). Similarly, the question of whether the need for treatment is causally related to the industrial injury is also one of fact. *Walmart Stores, Inc. v. Indus. Claim Appeals Off.*, 989 P.2d 251, 252 (Colo. App. 1999). 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. *Ciesiolka v. Allright Colo. Inc.*, W.C. No. 4-117-758 (ICAO, Apr. 7, 2003).

The ALJ finds and concludes that Claimant's medical treatment in the form of her ambulance ride, treatment in the emergency department, and any treatment Claimant may still require to alleviate her from the effects of her syncope and subsequent fall are

casually related, reasonable, and necessary to cure her of the effects of her April 20, 2024 industrial injury.

However, the ALJ further concludes that Claimant has failed to establish by a preponderance of the evidence that her diagnosed Takotsubo cardiomyopathy is casually related to her syncopal episode and subsequent fall. As highlighted in the findings of fact, Claimant has both a personal and a family history of heart disease. She has been diagnosed with hypertension, hyperlipidemia, and carotid artery disease and she has a history of myocardial infarction and stroke. Most importantly, the medical records establish that Claimant had been experiencing severe chest fullness/pressure for 4 days prior to her April 20, 2024 syncopal episode. As Claimant herself reported experiencing the symptoms that ultimately lead to her Takotsubo cardiomyopathy diagnosis days prior to the industrial injury, the ALJ concludes that Claimant has failed to establish that her diagnosed heart condition is casually related to her April 20, 2024 work injury.

Ultimately, Claimant has to burden to establish that her diagnosed Takotsubo cardiomyopathy, and the care she received for that diagnosis, is casually related to her work injury. Here, Claimant failed to meet that burden.

Temporary Total Disability (TTD)

To prove entitlement to TTD benefits, a claimant must prove that the industrial injury caused a disability lasting more than three work shifts, she left work as a result of the disability, and the disability resulted in an actual wage loss. § 8-42-103(1), C.R.S.; § 8-42-105(1), C.R.S.; *Anderson v. Longmont Toyota*, 102 P.3d 323, 327 (Colo. 2004); *Martinez v. Performance Radiator Pacific LLC*, W.C. No. 5-233-367-001 (ICAO, Nov. 19, 2024).

Section 8-42-103(1)(a), C.R.S., requires the claimant establish a causal connection between a work-related injury and a subsequent wage loss in order to obtain TTD benefits. *Lindner Chevrolet v. Indus. Claim Appeals Off.*, 914 P.2d 496, 498 (Colo. App. 1995). The term “disability” connotes two elements: (1) medical incapacity evidenced by loss or restriction of bodily function; and (2) impairment of wage-earning capacity as demonstrated by claimant’s inability to resume his or her prior work. *Culver v. Ace Electric*, 971 P.2d 641, 649 (Colo. 1999). The impairment of earning capacity element of disability may be evidenced by a complete inability to work or by restrictions

which impair the claimant's ability effectively and properly to perform his or her regular employment. *Ortiz v. Charles J. Murphy & Co.*, 964 P.2d 595, 597 (Colo. App. 1998). Because there is no requirement that a claimant 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).

Here, Claimant has failed to establish her entitlement to TTD benefits. Claimant did not present credible evidence that her syncope and fall caused a disability. Instead, Claimant missed work because of her diagnosed Takotsubo cardiomyopathy, which the ALJ has determined is not casually related to her industrial injury. Similarly, it was her Takotsubo cardiomyopathy and the treatment she needed for that diagnosis that caused her actual wage loss.

Because Claimant has failed to establish entitlement to TTD benefits, the ALJ does not determine her AWW.

Order

It is therefore ordered that:

1. Claimant sustained a compensable work injury on April 20, 2024 arising out of and in the course and scope of her employment with Employer.
2. Claimant's diagnosed Takotsubo cardiomyopathy and the resulting treatment she received for that diagnosis is not causally related to her April 20, 2024 industrial injury.
3. Claimant has failed to establish entitlement to TTD benefits.
4. All matters not determined herein are reserved for future determination.

Signed: November 10, 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 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 5-187-179-002

Issues

1. Whether Claimant proved by a preponderance of the evidence that the left thumb PRP injection recommended by Craig Davis, M.D., is reasonable, necessary, and casually related to his October 5, 2021 work injury.

Findings of Fact

1. Claimant suffered an admitted injury to his left shoulder on October 5, 2021. CHE p. 3-75.

2. Claimant underwent left shoulder surgery with Michael Hewitt, M.D., on February 8, 2022, and later developed left elbow triceps tendinitis and lateral epicondylitis that was treated with steroid injections and then a platelet right plasma (PRP) injection by Craig Davis, M.D. CHE p. 295-97 (surgery); CHE p. 311 (left elbow evaluation); CHE p. 320 (PRP injection).

3. Dr. Davis determined Claimant's left elbow triceps tendinitis and lateral epicondylitis resolved on January 17, 2023. CHE p. 327.

4. Claimant was placed at MMI by his Authorized Treating Physician Brenden T. Matus, M.D., on February 17, 2023, and given a 15% scheduled upper extremity impairment rating for his shoulder. RHE p. 25-28.

5. Dr. Matus recommended Claimant "have ongoing maintenance care for at least 12 more months consisting of access to Dr. Hewitt for shoulder and Dr. Davis for elbow and wrist on as needed basis for recheck visits and possible repeat injections and medication refills." RHE p. 25.

6. At Claimant's appointment with Dr. Matus on February 17, 2023, it was noted that Claimant's "left wrist" had "[m]ild TTP over CMC joint and some discomfort with CMC grind." RHE p. 25. Under "treatment plan," Dr. Matus wrote that Claimant "developed triceps tendonitis and lateral epicondylitis *with some apparent thumb CMC joint aggravation of likely underlying OA*; these were successfully treated by Dr. Davis with steroid and PRP injections." *Id.* (emphasis added).

7. Claimant's medical records from his treatment with Dr. Davis[1] between July 25, 2022, and February 17, 2023, Dr. Davis did not make notes concerning Claimant's left thumb carpometacarpal (CMC) joint or diagnose Claimant with osteoarthritis of his left thumb CMC joint related to his October 5, 2021 industrial injury. CHE p. 309-329; CHE p. 310 (Claimant reports "at times some numbness extending over the dorsal aspect of the thumb over the forearm"); CHE p. 311 (physical exam shows no swelling of "left elbow, forearm, wrist, or hand"); CHE p. 313 ("Most recently he had an injection around the radial tunnel area around the left elbow. This significantly helped the sharp pain he was having in this area. This also helped with positional numbness of the thumb. Currently he is not having any numbness in the hand."); CHE p. 315 (no mention of thumb); CHE p. 316 (no mention of thumb); CHE p. 320 (no mention of thumb); CHE p. 323 ("He does not notice any tingling in his thumb antiemetic noted."); CHE p. 327 ("He also had numbness in his thumb before which is mostly better.").

8. Dr. Matus did not provide Claimant with an impairment rating for his left hand, wrist, or elbow. RHE p. 28.

9. Respondents filed an Amended Final Admission of Liability (FAL) on August 8, 2023, admitting in pertinent part to maintenance medical care benefits pursuant to Dr. Matus's recommendation. CHE p. 48.

10. After being placed at MMI, Claimant returned to Dr. Davis on April 7, 2023. CHE p. 330. At that appointment, Claimant reported that after his shoulder surgery he noticed "a lot of pain around the elbow as well as in his thumb once he came out of his sling and began doing therapy. He is not sure if this was bothering him at the initial time of injury but did not have any problems until recently. The elbow is doing fairly well but he is noticing continued pain especially with use in the thumb itself. This seems to be

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[1] At Claimant's appointments with Dr. Davis, he was often seen by either Timothy Abbott, PA-C, or Bella Wolf, PA-C. *See* CHE p. 320-321 (Dr. Davis); CHE p. 324 (PA Abbott); CHE p. 330 (PA Abbott); CHE p. 338 (PA Wolf). However, for each appointment, including diagnosis and treatment, Dr. Davis signed off on the medical record created. Therefore, for ease of reference the ALJ refers to all appointments as with "Dr. Davis" regardless of whether Claimant met with Dr. Davis, PA Abbott, or PA Wolf.

around the thumb CMC joint, greatest in the volar aspect. He notices pain with gripping which []he does a lot with his job as a delivery driver. No triggering or crepitation that he is aware of. No significant numbness but he does get intermittent tingling in the hand. His main concern is the pain which seems to localize fairly well." *Id.*

11. Claimant's report of "a lot of pain" in his thumb after surgery is inconsistent with his medical records where he only reported numbness in his thumb.

12. Dr. Davis ordered x-rays of Claimant's thumb and noted "moderate degenerative changes including decreased joint space, small osteophyte at the metacarpal base, and slight radial subluxation of the base of the first metacarpal." CHE p. 330.

13. Dr. Davis diagnosed Claimant with arthritis of the CMC joint of his left thumb. CHE p. 330; *see id.* ("Impression: Left thumb CMC [degenerative joint disease (DJD)] with possible tendonitis around the thumb CMC joint."); CHE p. 337 ("Bilateral thumbs show obvious enlargement over the CMC joint consistent with joint disease."). Dr. Davis did not state that the Claimant's arthritis was caused by or aggravated by his October 5, 2021 industrial injury. *Id.*

14. On April 7, 2023, Claimant underwent an injection of lidocaine and Depo-Medro and given a thumb CMC brace. CHE p. 330. Claimant noticed "fairly good pain relief from the lidocaine." *Id.*

15. Claimant followed up with Dr. Davis on May 26, 2023, and reported doing "fairly well." CHE p. 332. Claimant asked to be released to occupational medicine understanding that if his symptoms recurred he could follow up as needed. *Id.*

16. At Claimant's May 26, 2023 appointment, Dr. Davis's impression was that Claimant had degenerative joint disease of the left thumb CMC joint. CHE p. 332. Again, Dr. Davis did not indicate that Claimant's degenerative joint disease of the left thumb CMC joint was caused by or aggravated by his October 5, 2021 industrial injury. *Id.*

17. Claimant's admitted medical records do not contain appointments with Dr. Davis between May 27, 2023 and December 29, 2024. The December 30, 2024 appointment note is incomplete. CHE p. 362-363 (page 1/3 and 3/3 included).

18. In November 2024, Claimant underwent a PRP injection in his left thumb CMC joint and possibly in his right thumb CMC joint. *Compare* CHE p. 367 (February 10, 2025 medical note stating: "Patient is now about 12 weeks post PRP injections into both the

left and right thumb CMC joints.") *with* CHE p. 337 (April 7, 2025 medical note stating: "Of note, he is also had 1 injection into the right thumb CMC joint because there was some PRP left over, this is not being treated under Worker's Comp."); *see generally* CHE p. 337 (Claimant "had an injection of PRP into the CMC joint in November 2024"); CHE p. 353 (approval for PRP injection).

19. On February 10, 2025, Claimant received PRP injections of both the left and right thumb CMC joint. CHE p. 365; CHE p. 368 ("Under clean conditions, the left thumb CMC joint as well as the volar capsule was anesthetized with 1% lidocaine under ultrasound guidance. Once the lidocaine taken effect, 1 cc of PRP was injected into the CMC joint from a dorsal and volar approach again under ultrasound guidance. He also has some DJD of the right thumb CMC joint which is not covered under workmen's compensation, but was still anesthetized in the same fashion and then injected with 1 cc of PRP into the right thumb CMC joint under ultrasound guidance was well. Patient tolerated the injections well.").

20. Claimant met with Dr. Davis on April 7, 2025. CHE p. 337. His physical exam notes state "[b]ilateral thumbs show obvious enlargement over the CMC joint consistent with degenerative joint disease. Minimal tenderness over the right thumb CMC joint, however he is tender over the dorsal and volar aspects of the CMC joint of the left thumb. He has crepitus with axial load and grind bilaterally, however seems to just have quite a bit of pain with this maneuver on the left. He otherwise has good motion of the thumb and good strength but does have pain with resisted motion especially opposition of the left thumb." *Id.*

21. At the April 7, 2025 appointment Dr. Davis first noted Claimant's diagnosis as "left thumb CMC DJD, *which was aggravated by a work injury*." CHE p. 337 (emphasis added).

22. On April 8, 2025, Dr. Davis requested a third PRP injection for Claimant's left thumb CMC joint. CHE p. 335. Respondents denied the request.

23. Claimant attended an Independent Medical Examination (IME) with F. Mark Paz, M.D., on July 8, 2025. RHE p. 30-55. Dr. Paz opinioned that it is not medically probable that Claimant's left thumb osteoarthritis is casually related to his October 5, 2021 industrial injury. RHE p. 34.

Claimant's Testimony

24. Claimant testified at hearing that when he began physical therapy after his shoulder surgery he experienced tingling and sharp pain in his left elbow into his left thumb.

25. Claimant testified he is still experiencing aching, tingling, and stabbing symptoms in his left thumb. While the symptoms are not constant, they are annoying.

26. Claimant testified he does not have any issues with his right thumb.

27. The ALJ finds Claimant's testimony lacks credibly based on contradictory medical records.

28. Claimant conceded on cross-examination that he first received treatment for his left thumb approximately a year after he began treatment for his left elbow.

Dr. Paz's Testimony

29. Dr. Paz was admitted as an expert in occupational medicine and is Level II accredited by the Colorado Division of Workers' Compensation.

30. Dr. Paz testified consistent with his IME report. RHE p. 30-55.

31. Dr. Paz testified that Dr. Davis originally diagnosed Claimant with lateral epicondylitis and radial tunnel syndrome of the left elbow. Radial tunnel syndrome affects the wrist, forearm, and upper extremity. Meanwhile, the CMC joint is unrelated to the anatomical system impacted by radial tunnel syndrome. Therefore, in his opinion, Dr. Matus recommended Claimant receive maintenance medical care of his left wrist consistent with his diagnosed radial tunnel syndrome.

32. The purpose of PRP injections for osteoarthritis is to treat the inflamed capsule around the joint. Claimant received PRP injections into both his left thumb and his right thumb CMC joint. In his professional opinion, a medical provider will not administer PRP injection to an asymptomatic body part because of potential side effects such as traumatizing a nerve, damaging the joint, or advancing the osteoarthritis.

33. Dr. Paz noted that the medical records provided contained no casual analysis concerning Claimant's industrial injury and his later-reported left thumb CMC joint complaints.

34. Ultimately, in his professional opinion, it is not medically probable that Claimant's left thumb CMC joint osteoarthritis is casually related to his October 5, 2021 industrial

injury. Further, it is not medically probable that Claimant's left thumb CMC joint osteoarthritis was aggravated or accelerated by the October 5, 2021 industrial injury.

35. The ALJ is persuaded by Dr. Paz's report and testimony.

36. Claimant failed to prove it is more likely than not that his diagnosed left thumb CMC joint osteoarthritis is casually related to his October 5, 2021 industrial injury.

Conclusions of Law

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).

Maintenance Medical Benefits

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 (Jan. 2, 2024).

In the case of maintenance medical benefits after a claimant has been found at MMI, the award of benefits is general in nature, subject to the respondent's right to challenge a particular treatment. *Grover*, 759 P.2d at 709; *Trujillo v. State of Colorado*, W.C. 4-668-613-03 (ICAO Aug. 21, 2021) ("An award of Grover medical benefits is typically general in nature and is subject to the respondent's subsequent right to challenge particular treatment.").

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).

The question of whether medical treatment is reasonable and necessary to cure and relieve the effects of an industrial injury is one of fact. *Kroupa v. Indus. Claim Appeals Off.*, 53 P.3d 1192, 1197 (Colo. App. 2002). Similarly, the question of whether the need for treatment is causally related to the industrial injury is also one of fact. *Walmart Stores, Inc. v. Indus. Claim Appeals Off.*, 989 P.2d 251, 252 (Colo. App. 1999). 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. *Hanna v. Print Expediters Inc.*, 77 P.3d 863, 866 (Colo. App. 2003) ("Once the claimant establishes the probability of a need for future treatment, the claimant is entitled to a general award of future medical benefits, subject to the employer's right to contest compensability, reasonableness, or necessity."); *see Ciesiolka v. Allright Colo. Inc.*, W.C. No. 4-117-758 (ICAO, Apr. 7, 2003).

As found, Claimant has failed to establish by a preponderance of the evidence that his need for a PRP injection of his left thumb CMC joint is proximally caused by his October 5, 2021 injury.

The first medical record which conclusively states that Claimant's left thumb CMC degenerative joint disease is related to his October 5, 2021 industrial injury is Dr. Davis's April 7, 2025 note which states the "Left thumb CMC DJD, which was aggravated by a work injury" without analysis. This conclusory statement is made approximately 3.5 years after the injury and more than 2 years after Claimant was placed at MMI. While Dr. Matus noted on February 17, 2023 that after surgery Claimant "developed triceps tendonitis and lateral epicondylitis with some apparent thumb joint aggravation of likely underlying OA," Dr. Davis had made no such diagnosis at the time. Instead, Dr. Davis diagnosed Claimant with triceps tendonitis and lateral epicondylitis and only ever noted Claimant reporting numbness in his left thumb which was fully resolved by the time Claimant was placed at MMI.

Claimant testified that prior to MMI he told his providers about his thumb symptoms and that he has experienced the same left thumb symptoms (notably pain) since his shoulder surgery. But Claimant's testimony is contradicted by the medical records where he only ever reported numbness in his left thumb. And the medical records indicate that Claimant has the same degenerative joint disease in his right thumb CMC joint. While the ALJ acknowledges that the records state Claimant's left thumb symptoms are more severe than his right thumb, the ALJ concludes that evidence fails to establish by a preponderance that Claimant's October 5, 2021 injury aggravated his left thumb CMC joint osteoarthritis.

Because Claimant has failed to establish by a preponderance that his left thumb CMC joint osteoarthritis is casually related to his October 5, 2021 industrial injury, the ALJ

concludes that the requested PRP injection to treat his left thumb CMC joint osteoarthritis must be denied.

Order

It is therefore ordered that:

1. Claimant's request for authorization of a left thumb PRP injection as recommended by Dr. Davis is denied.
2. All matters not determined herein are reserved for future determination.

Signed: November 20, 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 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 5-280-861-003

Issues

I. Whether Claimant established by a preponderance of the evidence that he suffered a compensable injury on May 4, 2024, as an employee of Foothills or G. Walker.

   a. Whether Claimant established by a preponderance of the evidence that he was an employee of Foothills or G. Walker and was injured within the course and scope of that employment.[1]

   b. Whether Foothills or G. Walker established by a preponderance of the evidence that Claimant was an independent contractor.

II. Whether Claimant established by a preponderance of the evidence that he is entitled to medical benefits.

III. Whether Claimant established by a preponderance of the evidence that he is entitled to temporary disability benefits from May 5, 2024, through October 31, 2024.

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[1] In his Proposed Specific Findings of Fact, Conclusions of Law, and Order, Claimant concedes that, based on the evidence, his injury did not arise out of and occur within the course and scope of his employment with Foothills. Instead, Claimant contends that the evidence establishes his injury arose out of and occurred within the course and scope of his employment with G. Walker.

IV. Whether Claimant has established that he is entitled to disfigurement benefits, and if so, the amount.

V. Claimant's Average Weekly Wage

Stipulations

- Co-Respondent G. Walker is uninsured.
- Co-Respondent G. Walker and Claimant have stipulated to an average weekly wage of $70.00 per week.
- Respondent Foothills and Claimant have stipulated to an AWW of $817.85.

Findings of Fact

Background and Company Structure of Foothills

1. Foothills is a residential and commercial tree service company engaged in cutting, trimming, and pruning trees, and is owned by K. Walker.
2. K. Walker is an arborist who performs the estimate and bidding process to obtain contracts for Foothills. Customers pay Foothills directly for the tree services and the funds are deposited in a Foothills account.
3. G. Walker is the son of K. Walker and an employee of Foothills and is employed as a foreman. G. Walker has been working for Foothills for over 20 years and serves as Claimant's supervisor.
4. Foothills performs its tree service work Monday through Thursday each week, but work is occasionally performed on Fridays and, less often, Saturdays, if weather prevents work during the normal Monday through Thursday work week.
5. Foothills employees are regularly paid via a formal payroll system via check or direct deposit. Neither K. Walker nor Foothills ever pays employees via Apple Pay, Cash App, Venmo, Facebook Pay, or other messaging or application-based payment methods for any work performed for Foothills.

6. K. Walker usually communicates job assignments and schedules to employees himself at daily meetings, but if he is absent for any reason, G. Walker conducts those communications and morning meetings.

Claimant's Employment with Foothills

7. Claimant worked for Foothills as a bucket truck operator for an approximate total of five years, from 2018-2021, and most recently from January 2023 through May 2024.
8. As a bucket truck operator, Claimant's duties included driving the bucket truck to and from jobsites, operating the lift bucket and then performing tree cutting, trimming, and pruning with a chainsaw.
9. Claimant was a full-time employee for Foothills, working forty hours per week, Monday through Thursday, in four ten-hour days. Claimant was paid $24.00 per hour via direct deposit. Foothills did not offer overtime.
10. At no time has Claimant been customarily engaged in the independent business of tree trimming.

Side Jobs - General Practice at Foothills

11. K. Walker allowed trusted employees with the necessary skill, experience, and care for equipment to use Foothills' equipment for performing "side jobs" as an employee benefit, which allowed them to earn additional money apart from their wages from Foothills. These side jobs were usually residential jobs and were performed outside the normal schedule of Foothills' operations, typically on Fridays and weekends when Foothills is not operating.
12. While performing work for Foothills, crew members were often approached by residents to perform work at their properties. When that occurred, they would direct them to G. Walker. Then, if G. Walker, decided to take the "side jobs" – on his own time - he would recruit other Foothills employees to work for him if the job required more work than he could perform alone.
13. Neither K. Walker nor Foothills collected any rental or use fees, percentage cut, or received any other financial benefit from work performed by crew members on any

side job. The understanding was that crew members would be respectful of the equipment and return it in clean and working order with any used fuel replaced for the following week at the users' expense.

14. All equipment used for side jobs, including expensive equipment such as bucket boom trucks, chipper trucks, and chainsaws, is owned by Foothills and is visibly branded with the "Foothills Tree Experts" name.

15. It was the understanding of crew members that when they were working side jobs, they were working for themselves rather than Foothills. All monies paid for side jobs were paid by property owners directly to the individual who was in charge of the side job; the funds were never paid to, banked by, or distributed through Foothills.

16. G. Walker did not always have to ask for permission to use the equipment for side jobs; at times he would just take the equipment and use it.

Claimant's Side Job Work with G. Walker

17. In addition to his regular employment with Foothills, Claimant worked on "side jobs" that were arranged and supervised by G. Walker. Over the years he worked for Foothills, Claimant performed around fifty side jobs, all of which were set up and directed by G. Walker.

18. G. Walker approached Claimant for the first side job and offered him $21 per hour for the work, and Claimant agreed to that rate of pay for side jobs with him.

19. For these side jobs, Claimant was consistently paid an hourly wage of $21.00 per hour directly by G. Walker, typically through a cash application like Facebook Pay or Facebook Messenger. Claimant earned between $200-$400 per month from working on side jobs arranged by G. Walker. For this work, G. Walker never split the profits of any side job with Claimant and Claimant was never a partner with G. Walker.

20. Claimant was not permitted to use Foothills equipment for his own side jobs.

21. Claimant felt his full-time job at Foothills would be in jeopardy if he refused to work side jobs for G. Walker.

Corroborating Testimony Regarding Side Jobs and Payment

22. Claimant's co-worker, Benjamin Thone, testified at the hearing and his testimony is found to be credible. Mr. Thone corroborated Claimant's testimony. Mr. Thone credibly testified that he also worked numerous side jobs for G. Walker, was always paid hourly by G. Walker and G. Walker never split the profits with him. Mr. Thone testified that he was paid $18 per hour working for Foothills but received $20 per hour working side jobs with G. Walker. Mr. Thone also testified that he felt pressured into doing the side jobs and felt that his job would be in jeopardy if he refused to work on a side job with G. Walker.

23. Jessica Erickson testified at the hearing and her testimony is found to be credible. Ms. Erickson, is an employee of Foothills who is paid $29 per hour. She stated that when working for Foothills, there is a morning meeting at the office with a sign-in, safety meeting, and then the work assignments are given by K. Walker. The sign-in safety meeting procedure is not followed when she works side jobs, but they do use Foothills equipment for side jobs. When using Foothills equipment for side jobs, she confirmed there is no rental or use fee, but the equipment is to be cleaned and refueled at the user's expense after completing side jobs.

24. Ms. Erickson also testified that the proceeds of side jobs are not split in any way with Foothills or K. Walker and that she considers herself to be working for herself when performing side jobs. She earns $50-$70 per hour when working side jobs. When working side jobs, she, however, splits the proceeds with the other workers evenly after receiving payment from the customer directly.

25. Ms. Erickson testified that in her first year working for Foothills, she worked some side jobs with G. Walker, was paid directly by him (not Foothills), and was paid an hourly rate for two jobs and a piece-rate for one. Ms. Erickson credibly testified that she was aware that G. Walker was paying Foothills' employees hourly to complete side jobs with him based on the comments made to her by her co-workers when she split the proceeds with them.

G. Walker's May 4, 2024, Side Job – Work Accident

26. The subject of this claim is a job that took place on May 4, 2024, at the residence of Ms. Maya Sherry.

27. At the end of April or early May 2024, Ms. Sherry approached a Foothills crew working in her neighborhood to ask about having some tree work performed at her house. She was directed to G. Walker, who was identified as the "son of the owner of the company." Ms. Sherry credibly testified that she discussed having tree work done at her home with G. Walker and that she believed she was hiring Foothills to perform the work.

28. Ms. Sherry dealt exclusively with G. Walker for the bid and contracting. After their initial conversation, she received the quote from G. Walker via text message, which was how they communicated until he arrived back at her house on May 4, 2024.

29. The agreed-upon price for the job was $3,000.00. Ms. Sherry paid for the job by writing a check directly to G. Walker.

30. K. Walker credibly testified that the job for Ms. Sherry was not a job or bid that was contracted with Foothills, and that he was not involved in, nor had knowledge of, the side job until Claimant was injured.

31. The May 4, 2024, job bore none of the hallmarks of Foothills work: it occurred on a Saturday outside normal business operations, lacked the required morning safety meeting and sign-in procedures, was not on Foothills' work schedule, generated no Foothills paperwork, and resulted in payment directly to G. Walker rather than to Foothills. While Ms. Sherry may have believed she was hiring Foothills, the objective facts establish this was G. Walker's personal side job.

The May 4, 2024 , Side Job and Injury

32. G. Walker arranged to perform the side job for Ms. Sherry on Saturday, May 4, 2024. Claimant and Mr. Thone agreed to work for G. Walker on the side job on Saturday, which was one of their days off. Claimant did not know the amount of the bid for the

job. Once Claimant agreed to work for G. Walker that Saturday, G. Walker told Claimant to be at the Foothills shop on Saturday morning at 7:15 a.m., as was his co-worker Mr. Thone. Claimant and Mr. Thone met at the Foothills shop as instructed, took the Foothills branded boom truck and chipper truck, and drove to the job site at Ms. Sherry's house without G. Walker to start the job. Claimant and Mr. Thone began working after they arrived at Ms. Sherry's house. G. Walker arrived at the job site later in the day.

33. At approximately 4:00 p.m., G. Walker, who was in charge of the job, directed Claimant to go back up in the bucket of the boom truck and prune something on a tree that he missed or that was not done correctly. While pruning the tree, Claimant sustained a catastrophic injury when a branch fell causing Claimant's chainsaw to hit his left arm, resulting in a severe laceration to his left forearm, wrist, and hand.

34. Ms. Sherry, who is a nurse, heard yelling in her backyard and administered first aid until Claimant could be transported to the emergency department for treatment.

35. As a result of the injury, Claimant was transported by ambulance to UCHealth Medical Center of the Rockies and then transferred to Poudre Valley Hospital, where he underwent emergency surgery.

36. After the injury, Claimant sent a text message to K. Walker's wife, Maryann, stating, "it didn't happen at work so don't worry." Claimant testified he sent this because he was confused. However, at the time of the injury, Claimant believed he was working for G. Walker.

Post-Injury Medical Treatment and Work Status

37. After the injury and need for additional surgery, Claimant could not work. Due to financial hardship and lack of assistance, Claimant relocated to Shreveport, Louisiana, where he underwent subsequent surgeries, including a wound debridement and a skin graft using skin from his left leg.

38. After Claimant's injury, Foothills continued paying Claimant his usual earnings through June 18, 2024. K. Walker testified that he continued to pay Claimant following the

injury because he felt bad about Claimant's injury and "wanted to make it work for him," but after some time Claimant stopped communicating, stopped returning phone calls, and disappeared, so Foothills stopped paying him.

39. After his injury, Claimant did not return to work for either G. Walker or Foothills because he was unable to perform his regular job duties. Due to his injury, Claimant was unable to work until November 1, 2024, when he began modified work as an equipment operator for a company called Tree Shepherds.

Payment for May 4, 2024, Side Job

40. On May 5, 2024, after completion of the work, Ms. Sherry paid G. Walker for the work that was done at her house, via a check made out to Mr. G. Walker, for $3,000. She did not make the check out to Foothills or anyone else.

41. On May 6, 2024, two days after the injury, G. Walker sent Claimant a text message stating, "19 hours I got you for. Want me to send you the money now." G. Walker then sent Claimant $400.00 via Facebook Pay/Facebook Messenger application. Claimant credibly testified that, and the ALJ finds that this payment represented his hourly wage for the May 4th job and payment for a previous side job for G. Walker.

Alleged Partnership and Profit-Sharing

42. G. Walker testified that although Claimant was initially paid on an hourly basis, he later began treating Claimant as a partner after Claimant demonstrated his abilities. G. Walker denied that Claimant was his employee and asserted that they operated as business partners. However, he produced no written agreement, documentation, or other credible evidence to support the existence of a partnership with Claimant.

43. Regarding the $3,000 job performed on May 4, 2024, at Ms. Sherry's residence, G. Walker testified that he and Claimant each received $1,500. He claimed that he paid Claimant $1,500 in cash at the hospital, consistent with their alleged partnership arrangement.

44. Claimant disputed G. Walker's account. He testified that he was paid hourly for side jobs, never operated as a partner, and did not receive any portion of job proceeds.

Claimant also denied receiving any cash payment - whether $1,500 or $1,100 - for the May 4, 2024, job. He specifically stated that he was not paid in cash at the hospital or by any other means for that work. The undersigned finds Claimant's testimony credible and concludes that G. Walker did not pay Claimant $1,500, whether in cash or through any other method, for the May 4th job.

45. G. Walker testified that he paid the other worker on the May 4th job, Mr. Thone, on an hourly basis. Mr. Thone credibly testified that he was paid $20 per hour via Facebook Pay and received approximately $300 for his work at Ms. Sherry's residence, since Mr. Thone returned the following day to complete the job. His testimony supports Claimant's assertion that G. Walker paid his employees hourly and did not treat anyone as a partner.

46. G. Walker's testimony regarding payment to Claimant for the May 4th job was inconsistent and contradicted by other credible evidence. In his sworn interrogatory responses, G. Walker stated that he paid Claimant $400 via Chime and an additional $1,100 in cash. At the hearing, however, he changed his account, asserting that the $400 Chime payment likely related to a different job and that Claimant was paid $1,500 in cash, allegedly to purchase a Harley Davidson motorcycle. He acknowledged that his interrogatory response was incorrect. No documentation or other credible evidence was submitted to support any cash payment to Claimant for the May 4th job.

47. Additional inconsistencies undermine G. Walker's claim that he and Claimant evenly split the $3,000 proceeds from the May 4th job. Mr. Thone also worked on the job and was paid approximately $300, reducing the amount available to split. Thus, under G. Walker's own version, i.e., that they were partners, Claimant would not have been entitled to $1,500. Moreover, testimony established that individuals using Foothills' equipment for side jobs were required to replace the gasoline that was used. This cost, which G. Walker did not account for, would have further reduced any amount allegedly available to divide with Claimant.

48. No other witness corroborated G. Walker's claim that he and Claimant operated as partners. Claimant's testimony that he was paid hourly was consistent with Mr. Thone's testimony and supported by documentary evidence. In contrast, G. Walker's

testimony was inconsistent, self-serving, and contradicted by both credible witness testimony and the available documents. Based on these inconsistencies, the lack of corroboration, and G. Walker's demeanor while testifying, the undersigned does not find his testimony regarding the existence of a partnership to be credible.

49. The ALJ finds that Claimant and G. Walker were not partners in performing side jobs. Rather, the ALJ finds G. Walker operated a business that was independent of Foothills and that he hired individuals, including Claimant, on an hourly basis, to work for him. The working relationship between G. Walker and Claimant reflected that of a typical employer and employee. Thus, on May 4, 2024, Claimant was performing services for G. Walker in exchange for hourly compensation and was therefore an employee of G. Walker at the time he was injured.

Whether Claimant was Injured Within the Course and Scope of his Employment with Foothills

50. In his proposed order, Claimant conceded that he was not injured within the course and scope of his employment with Foothills. Instead, Claimant contends he was injured during the course and scope of his employment with G. Walker. G. Walker did not submit a proposed order. But even if G. Walker were to argue that Claimant was performing work for Foothills at the time of injury, the evidence does not support such a finding. As found above, the May 4, 2024 job bore none of the hallmarks of Foothills work: it occurred on a Saturday outside normal business operations, lacked the required morning safety meeting and sign-in procedures, was not on Foothills' work schedule, generated no Foothills paperwork, provided no income to Foothills, and resulted in payment directly to G. Walker rather than to Foothills. Therefore, regardless of which party raises the issue, the evidence establishes that Claimant's injury did not arise out of and in the course of employment with Foothills.

Whether Claimant Was an Employee of G. Walker and Injured within the Course and Scope of that Employment

51. At the time of the injury, Claimant was working for G. Walker, performing tree trimming services on a job obtained by G. Walker, and was being paid hourly by G. Walker for that work.

52. The tree trimming work was performed at a residential property for a customer of G. Walker's tree trimming business that G. Walker operated on the side in addition to his regular employment with Foothills.

53. G. Walker secured the job, directed Claimant to the job site, provided the necessary equipment, and instructed Claimant on the tasks to be performed in completing the job for G. Walker's landscaping business.

54. While cutting a tree limb at the assigned location in the course of performing that work for G. Walker, Claimant sustained an injury.

55. The injury resulted directly from the physical act of tree trimming performed for and in furtherance of G. Walker's tree trimming business.

56. The ALJ finds that, at the time of the injury, Claimant was an employee of G. Walker and was acting within the course and scope of his employment with G. Walker when he was injured.

Whether Claimant was an Independent Contractor

57. There was no written agreement between Claimant and G. Walker establishing that Claimant was an independent contractor or containing the language required by § 8-40-202(2)(b)(I), C.R.S.

58. For side jobs, G. Walker paid Claimant at an hourly rate of $21.00 rather than at a fixed or contract rate based on the total job price. G. Walker determined when and where Claimant would work, directed Claimant to report to particular job sites at particular times, and supervised the manner in which Claimant performed the work. Claimant did not control the scope of the work or the means and methods of its performance.

59. G. Walker supplied the tools and equipment required for the jobs, including bucket trucks, chipper trucks, and chainsaws. Claimant did not provide his own equipment, did not make any financial investment in the side jobs, and did not bear the risk of loss, since he was paid hourly regardless of the profitability of the work.

60. Claimant did not operate an independent tree trimming or landscaping business. He had no business card, business listing, business address, or business telephone number for such services. He did not bid jobs or set prices, did not hire or employ others to perform the work, did not carry liability insurance for tree trimming or landscaping, and did not receive payment in the name of any business entity.

61. Payments from G. Walker were made directly to Claimant, including by personal electronic payment methods such as Facebook Pay, and not to any trade or business name associated with Claimant.

62. Claimant performed tree trimming services for G. Walker on multiple occasions for the benefit of G. Walker's personal tree trimming business. In addition, Claimant worked approximately 40 hours per week for Foothills in a separate employment relationship. The evidence does not show that Claimant provided tree trimming services to other customers as part of an independent business of his own.

63. Claimant's work for G. Walker was performed under G. Walker's direction and control. There is no credible evidence that Claimant held himself out to G. Walker or to the public as an independent contractor with respect to the side jobs.

Temporary Disability Benefits

64. Due to his injury, Claimant was unable to work from May 5, 2024, through October 31, 2024.

Average Weekly Wage

65. Pursuant to the stipulation of the parties, Claimant's average weekly wage at Foothills is $817.85 and his average weekly wage with G. Walker is $70.00. Claimant's injury precluded him from working 40 hours per week for Foothills as well as performing side

jobs for G. Walker on his days off from Foothills. This results in an average weekly wage, based on concurrent employment, of $887.85, and a TTD rate of $591.90

Disfigurement

66. Due to his injury and resulting surgeries, Claimant has scarring on his left forearm extending from his palm up his forearm approximately 8 inches long and 3 inches wide. Plus, the scarring is indented, and the scarring is different in color and texture from the surrounding, uninjured skin. Moreover, Claimant is unable to make a fist with all four fingers and is unable to fully extend his left pinky finger and such limitation is readily apparent and is therefore disfiguring. Claimant also has scarring on his left thigh measuring approximately 3 inches by 8 inches where skin was harvested for his skin graft. Thus, Claimant has permanent disfigurement to parts of his body that are normally exposed to public view. However, Claimant's scarring does not rise to the level of "extensive body scars."

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).

I. Whether Claimant was an Employee of G. Walker or an Independent Contractor

Under § 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 meets specific criteria for independent contractor status. Once a claimant establishes that he was performing services in exchange for remuneration, the burden shifts to the putative employer to rebut that presumption by proving that the claimant was an independent contractor. *Baker v. BV Properties, LLC*, W.C. No. 4-618-214 (ICAO, Aug. 25, 2006).

To rebut the statutory presumption of employment, the putative employer must demonstrate that: (1) the worker is free from control and direction in the performance of services, both under contract and in fact, and (2) the worker is customarily engaged in an independent business related to the service performed. § 8-40-202(2)(a), C.R.S. This

determination is a question of fact for the ALJ. *Nelson v. Industrial Claim Appeals Off. of Colo*., 981 P.2d 210 (Colo. App. 1998).

The analysis requires consideration of: (1) the nine factors enumerated in § 8-40-202(2)(b)(II), C.R.S.; (2) the overall nature of the working relationship; and (3) indicia of whether the worker operates an independent business in the field. *Indus. Claim Appeals Office v. Softrock Geological Services*, 325 P.3d 560 (Colo. 2014); *Pella Windows & Doors, Inc. v. Indus. Claim Appeals Off*., 458 P.3d 128 (Colo. App. 2020). No single factor is conclusive, and not all must be present for a finding of employee or independent contractor status. § 8-40-202(2)(b)(III), C.R.S.

Claimant established by a preponderance of the evidence that on May 4, 2024, he was providing tree trimming services to G. Walker in exchange for an hourly wage of $21.00 per hour. Because Claimant performed services for pay, he is presumed to be an employee of G. Walker under § 8-40-202(2)(a), C.R.S. The burden therefore shifted to G. Walker to rebut this presumption by proving that Claimant was an independent contractor.

Section 8-40-202(2)(b)(II), C.R.S., sets out nine factors for determining whether an individual is an employee or an independent contractor. Application of these factors to the facts demonstrates that G. Walker failed to establish Claimant was an independent contractor:

1. Exclusivity of work. Claimant also worked full-time for Foothills, and there was no written requirement that Claimant work exclusively for G. Walker.

2. Control and quality standards. G. Walker exercised substantial control beyond merely specifying the desired result. He directed when and where Claimant worked and supervised how Claimant performed the tasks. G. Walker directed Claimant to go back up in the bucket truck and trim a specific branch that he had not previously trimmed - the task during which Claimant was injured. This level of supervision and control over the manner and means of performance supports employee status.

3. Method of payment. Claimant was paid $21.00 per hour, not a fixed contract price for completed work.

4. Right to terminate. There was no written contract limiting G. Walker's right to discontinue using Claimant's services at any time.

5. Training. The record shows direction and supervision on the job but no substantial formal training was provided by G. Walker.

6. Provision of tools. G. Walker supplied all necessary equipment, including trucks, chipper, chainsaws, and other tools. Claimant made no capital investment in equipment or tools.

7. Dictating time of performance. G. Walker set the times and locations for side jobs, including the one at Ms. Sherry's residence. Claimant did not set his own schedule or have discretion over when the work would be performed.

8. Method of payment (personal vs. business). G. Walker paid Claimant personally through electronic methods such as Facebook Pay, and not to a business entity. Payments were made directly to Claimant as an individual, not to a trade or business name.

9. Combination of business operations. There was no combination of business operations. Claimant was merely paid hourly to work for G. Walker.

The ALJ finds and concludes that the overwhelming weight of the statutory factors supports a finding that Claimant was an employee of G. Walker and not an independent contractor.

Beyond the nine statutory factors, *Softrock* and *Pella* require consideration of whether the worker is customarily engaged in an independent business in the same field. *Softrock*, 325 P.3d at 565. Relevant indicia of operating an independent business include: using an independent business card, listing, address, or telephone; making a financial investment such that there is a risk of suffering a loss on the project; using one's own equipment; setting prices or bidding jobs; employing others to complete projects; and carrying liability insurance.

Here, Claimant exhibited none of these indicia. He had no business name, address, phone number, business cards, or advertising for tree services. He did not bid on jobs, set prices, hire others, or carry liability insurance. He did not use his own equipment; all equipment was provided by G. Walker. He made no financial investment in the side jobs and bore no risk of loss, as he was paid hourly regardless of job profitability or completion. Although Claimant also worked 40 hours per week for Foothills, that work was performed as an employee, not as part of an independent tree trimming business.

The ALJ finds and concludes that these facts demonstrate conclusively that Claimant was not customarily engaged in an independent business related to tree trimming services. He was simply providing labor services for an hourly wage.

Considering the statutory presumption in § 8-40-202(2), C.R.S., the nine factors in § 8-40-202(2)(b)(II), the guidance in § 8-40-202(2)(b)(III) and § 8-40-202(2)(a), and the additional *Softrock* factors, the ALJ finds and concludes that G. Walker has not rebutted by a preponderance of the evidence the presumption that Claimant was his employee.

The evidence establishes that Claimant performed services for G. Walker for hourly pay under G. Walker's direction and control, using G. Walker's equipment, and without operating any independent business. As a result, the ALJ finds and concludes that Claimant was an employee of G. Walker, and not an independent contractor, at the time of his May 4, 2024, injury.

II. Whether Claimant established by a preponderance of the evidence that he is entitled to medical benefits for his May 4, 2024, injury.

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

Claimant established by a preponderance of the evidence that he suffered an injury during the course and scope of his employment with G. Walker and the injury proximately caused the need for medical treatment. As a result, Claimant is entitled to all reasonable

and necessary medical treatment to cure and relieve him from the effects of his work injury.

Therefore, Employer G. Walker shall pay for all of Claimant's reasonable and necessary medical expenses related to the injury pursuant to the Colorado Medical Fee Schedule, when applicable. Because insufficient evidence was admitted to permit the ALJ to calculate the monetary value of the medical benefits to which Claimant is entitled, the issue of the amount owed by G. Walker for medical benefits is reserved for future determination.

III. Claimant's Average Weekly Wage

Respondent Foothills and Claimant have stipulated to an AWW of $817.85 and Co-Respondent G. Walker and Claimant have stipulated to an average weekly wage of $70.00 per week. Earnings from concurrent employment may be included in a claimant's AWW where the injury impairs earning capacity from such employment. *Jefferson County Schools v. Dragoo*, 765 P.2d 636 (Colo. App. 1988).

In this case, Claimant was working for Foothills and G. Walker concurrently. Because Claimant's injury prevented him from performing his duties at both jobs, the earning capacity from both sources of concurrent employment is properly included in calculating his average weekly wage. As a result, the ALJ finds and concludes that Claimant established by a preponderance of the evidence that his average weekly wage is $887.85.

IV. Whether Claimant established by a preponderance of the evidence that he is entitled to temporary disability benefits from May 4, 2024, through October 31, 2024.

To prove entitlement to TTD benefits, a claimant must prove that: (1) the industrial injury caused a disability lasting more than three work shifts; (2) he left work as a result of the disability; and (3) the disability resulted in an actual wage loss. *Anderson v. Longmont Toyota*, 102 P.3d 323 (Colo. 2004); *PDM Molding, Inc. v. Stanberg*, 898 P.2d 542 (Colo. 1995); *City of Colorado Springs v. Indus. Claim Appeals Office*, 954 P.2d 637

(Colo. App. 1997). Section 8-42-103(1)(a), C.R.S., requires the claimant to establish a causal connection between a work-related injury and a subsequent wage loss in order to obtain TTD benefits. *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 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).

TTD benefits ordinarily continue until one of the occurrences listed in § 8-42-105(3), C.R.S. *City of Colorado Springs, supra*.

The existence of disability presents a question of fact for the ALJ. There is no requirement that the claimant produce evidence of medical restrictions imposed by an authorized treating physician (ATP) or by any other physician. Rather, lay evidence alone may be sufficient to establish disability. *Lymburn v. Symbios Logic*, 952 P.2d 831 (Colo. App. 1997).

Payments made to a claimant that are not wages - that is, money that is not paid in exchange for services - are gratuitous and not considered payment of wages that will offset an employer's obligation to pay temporary disability benefits. *See Shaw v. Pueblo Cnty. Sch. Dist. 70*, W.C. Nos. 5-261-474-001, 5-270-216-001 (May 5, 2025).

In this case, Claimant suffered a significant injury to his left arm on May 4, 2024, while performing tree trimming services for G. Walker. The injury was disabling and prevented Claimant from performing his regular job duties. The injury caused Claimant to be unable to work, resulting in wage loss beginning May 5, 2024.

Claimant remained unable to work due to the injury until he returned to work on November 1, 2024. The injury therefore caused a disability lasting more than three work shifts, Claimant left work as a result of the disability, and the disability resulted in actual wage loss from May 5, 2024, through October 31, 2024.

Although Foothills paid Claimant his regular earnings through June 18, 2024, such payments were not wages. These payments were not made in exchange for services performed by Claimant but rather were gratuitous payments. Therefore, these payments cannot be used to reduce or offset G. Walker's obligation to pay TTD benefits to Claimant.

Claimant established by a preponderance of the evidence that he is entitled to TTD benefits from May 5, 2024, through October 31, 2024. G. Walker's obligation to pay TTD is not offset or reduced by the gratuitous payments Foothills made to Claimant through June 18, 2024. Therefore, Employer G. Walker shall pay Claimant $15,220.29 in TTD benefits.[2]

V. Whether claimant has established that he is entitled to disfigurement benefits, and if so, the amount.

Section 8-42-108(1), C.R.S., provides that if an employee is seriously, permanently disfigured about the head, face, or parts of the body normally exposed to public view, in addition to all other compensation benefits provided in the Act, the director may allow compensation not to exceed four thousand dollars to the employee who suffers such disfigurement.

Section 8-42-108(2), C.R.S., provides that if an employee sustains any of the following disfigurements, the director may allow up to eight thousand dollars as compensation to the employee in addition to all other compensation benefits: (a) extensive facial scars or facial burn scars; (b) extensive body scars or burn scars; or (c) stumps due to loss or partial loss of limbs.

Section 8-42-108(3), C.R.S., requires that the director adjust the limits on the amount of compensation for disfigurement annually by the percentage of adjustment made to the state average weekly wage pursuant to § 8-47-106, C.R.S.

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[2] Claimant is entitled to weekly payments of $591.90, his TTD rate, for 25 weeks and 5 days.

To qualify for disfigurement benefits under § 8-42-108(1), C.R.S., a claimant must establish that the disfigurement is: (1) serious; (2) permanent; and (3) affects the head, face, or parts of the body normally exposed to public view.

In this case, Claimant's injuries and resulting surgeries have caused serious and permanent disfigurement to parts of his body normally exposed to public view. Specifically, Claimant has scarring on his left forearm extending from his palm up his forearm approximately 8 inches long and 3 inches wide. The scarring is indented and differs in color and texture from the surrounding, uninjured skin. Additionally, Claimant is unable to make a fist with all four fingers and is unable to fully extend his left pinky finger. This functional limitation is readily apparent and therefore also constitutes disfigurement.

Claimant also has scarring on his left thigh measuring approximately 3 inches by 8 inches where skin was harvested for his skin graft. The forearm and the thigh are parts of the body normally exposed to public view. These disfigurements are both serious and permanent. Thus, his disfigurement satisfies the requirements of § 8-42-108(1), C.R.S.

However, Claimant's scarring does not rise to the level of "extensive body scars" as contemplated by § 8-42-108(2)(b), C.R.S. Therefore, Claimant is entitled to disfigurement benefits under subsection (1), which allows compensation not to exceed four thousand dollars (as adjusted pursuant to subsection (3)).

The ALJ finds and concludes that Claimant is entitled to disfigurement benefits under § 8-42-108(1), C.R.S. in the amount of $6,846.50.

VI. Payment to the Colorado Uninsured Employer Fund for Failure to Insure

Pursuant to § 8-43-408(5), C.R.S., an employer who was uninsured at the time of a compensable injury is required to pay an amount equal to twenty-five percent (25%) of the total compensation or benefits awarded to the claimant to the Colorado Uninsured Employer Fund (CUE Fund).

In this case, Employer, G. Walker, was uninsured. The total compensation awarded to Claimant under this Order is $22,066.79; accordingly, Employer, G. Walker, is liable for a contribution of $5,516.70 to the CUE Fund.

Order

It is therefore ordered that:

1. G. Walker was Claimant's employer on May 4, 2024.
2. Claimant sustained a compensable injury on May 4, 2024, in the course and scope of his employment with G. Walker.
3. G. Walker did not maintain Workers' Compensation insurance on the date of injury and was uninsured.
4. G. Walker shall pay for all reasonable and necessary medical expenses incurred by Claimant to cure and relieve him from the effects of his work injury pursuant to the Colorado Division of Workers' Compensation Medical Fee Schedule. Because G. Walker is liable for payment of Claimant's medical costs associated with his work injury, no medical provider shall seek to recover such costs from Claimant, pursuant to § 8-42-101(4), C.R.S. The monetary amount of past medical benefits is reserved for future determination.
5. Claimant's average weekly wage, based on his concurrent employment, is $887.85.
6. Claimant's temporary total disability rate is $591.90 per week.
7. G. Walker shall pay the following compensation and benefits to Claimant:

    a) Temporary total disability benefits for the period May 5, 2024, through October 31, 2024: $15,220.29[3], and

    b) Disfigurement benefits: $6,846.50.

    c) **Total: $22,066.79**

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[3] Claimant is entitled to weekly payments of $591.90, his TTD rate, for 25 weeks and 5 days.

8. Pursuant to § 8-43-408(5), C.R.S., G. Walker shall pay $5,516.70 to the Colorado Uninsured Employer Fund, representing 25% of the total benefits awarded to Claimant. Payment of the penalty to the CUE Fund shall be mailed to the Division of Workers' Compensation (DOWC) Revenue Assessment Unit, 707 17th St., Suite 2300, Denver, CO 80202-3404.

9. To secure payment of the compensation and benefits awarded above to Claimant, G. Walker shall:

   a) Deposit the sum of $22,066.79 with the Division of Workers' Compensation as trustee, to secure the payment of all unpaid benefits awarded to Claimant. The check shall be payable to and sent to the Division of Workers' Compensation (DOWC), Division Trustee, c/o Mariya Cassin, 707 17th Street, Suite 2300, Denver, CO 80202; **OR**

   b) File a bond in the sum of $22,066.79 with the Division of Workers' Compensation within ten (10) days of the date of this order:

      i. Signed by two or more responsible sureties who have received prior approval of the Division of Workers' Compensation; or

      ii. Issued by a surety company authorized to do business in Colorado.

   c) The bond shall guarantee payment of the compensation and benefits awarded.

10. All claims against Foothills Tree Experts, Inc., are denied and dismissed.

11. 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: November 19, 2025

/s/ Glen Goldman

Glen B. Goldman
Administrative Law Judge

OFFICE OF ADMINISTRATIVE COURTS
STATE OF COLORADO
WORKERS' COMPENSATION NO. 5-141-704-005

ISSUES

Is Respondent entitled to an order of repayment?

If so, what are the appropriate repayment terms?

Is Claimant entitled to reasonable attorneys fees and costs?

FINDINGS OF FACT

1. Claimant sustained an admitted injury to his low back on June 27, 2019, while working for the Employer.

2. A prior order issued by Judge Cannici on July 19, 2024 determined that there was an overpayment of $18,266.59. That order became final on December 10, 2024 when it was affirmed by ICAO.

3. Following that Order, Claimant's condition worsened, and Respondent and Claimant entered into a stipulation that Respondent would pay TTD benefits from the date of surgery, March 10, 2025. They also agreed that Respondent would file an Amended General Admission admitting for the TTD and Claimant would waive penalties. No mention was made regarding overpayment or repayment of the overpayment. The stipulation was approved on April 25, 2025.

4. There is no persuasive evidence Claimant withheld information from Respondent or otherwise contributed to the creation of the overpayment.

5. C.R.S. §8-43-212(c) provides "If an attorney request a hearing or files a notice to set a hearing on an issues that is not ripe for adjudication at the time the request or filing is made, the attorney may be assessed the reasonable attorney fees and costs of the opposing party in preparing for the hearing or setting".

6. Respondent did request PALJ Plank for recovery of overpayment from future TTD and TPD benefits and to add that issue for the then Application for hearing. That motion was denied and that Application for hearing was stricken.

7. Respondent filed another application for hearing on May 28, 2025 for the issue of repayment of overpayment.

8. The application for hearing on repayment of the overpayment and to challenge ALJ Planks order was a ripe issue. Additionally, this ALJ declines to

award attorney fees and costs since the statute is permissive based on the use of the work "may".

CONCLUSIONS OF LAW

A. Repayment terms

Section 8-42-113.5(1)(c) provides for recovery of overpayments where the Respondent is unable to recover them from ongoing temporary disability benefits. The Respondent is able to request an order for repayment. The statute prescribes no specific recovery rate or period, and repayment terms are left to the ALJ's discretion. *Louisiana Pacific Corp. v. Smith*, 881 P.2d 456 (Colo. App. 1994).

ORDER

It is therefore ordered that:

1. Respondent's request for repayment of the overpayment from ongoing TTD benefits is denied until such time as Claimant is at MMI and is given a new impairment rating.

2. Claimant's request for attorneys fees and costs is denied.

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/oacforms

DATED: November 5, 2025

Michael A. Perales

Michael A. Perales
Administrative Law Judge

Office of Administrative Courts

State of Colorado

Workers' Compensation No. WC 5-274-772-002

Stipulations

At the outset of the hearing, the parties agreed to reserve the issues of average weekly wage and temporary disability benefits. The parties' agreements/stipulations were accepted and approved.

Remaining Issues

I. Whether Claimant established, by a preponderance of the evidence, that she sustained compensable injuries to her hips and low back on either, or both, October 5, 2022, and March 14, 2024.

II. If Claimant established that she suffered compensable hip and low back injuries, whether she also established, by a preponderance of the evidence, that she is entitled to reasonable and necessary medical benefits to cure or relieve the effects of these industrial injuries.

Findings of Fact

Based on the evidence presented at hearing, along with the deposition testimony of Dr. Chen, the ALJ enters the following Findings of Fact:

Claimant's October 5, 2022, and March 14, 2024, Low Back Injuries

1. Claimant has worked for Employer as a housekeeper since August 2022. She testified

that when she was first hired, Employer was remodeling the hotel, and her duties were to move mattresses and “reaccommodate” the rooms, so that they were clean and ready for booking to customers.

2. Claimant testified that she suffered an injury on October 5, 2022, while setting up a

room. According to Claimant, she and a co-worker were “throwing” a king size mattress over some furniture in a room in order to set it on top of a boxspring, when the co-worker accidently dropped her side of the mattress leaving Claimant to support all its weight. Claimant testified that she felt something in her hips, heard a noise and started feeling pain in her lower back. Claimant testified that she had never felt any similar pain previously.

3. Claimant testified that after her low back pain did not subside after a couple of days,

she elected to report the injury to her employer. According to Claimant, Employer referred her to a chiropractor. Claimant presented to Lamar Chiropractic on October 12, 2022, where it was noted that she complained of pain to her low back and hip following the October 5, 2022, incident. (RHE B, p. 11). According to Claimant, she never was treated by a physician for her low back and hip complaints following the Octboer 5, 2022, incident.

4. Claimant reported that she saw a chiropractor several times, but that her pain never

completely subsided. She reported some days were worse than others as far as her pain was concerned. Claimant was taken out of work by the Chiropractor for two days until he could re-examine her on October 14, 2022. (RHE B, pp. 13-14).

5. Claimant testified that she continued to work for Employer while in pain and that while

she continued to work, her duties changed. Indeed, Claimant testified that she stopped all heaving lifting and started performing lighter tasks such as light cleaning and changing

light switches. The records reflect that Claimant was returned to work with "no heavy lifting" on October 14, 2022. (RHE B, p. 15).

6. On March 14, 2024, Claimant suffered a second work injury while working for Employer. According to Claimant, the hotel had opened after the remodel, at which time she was promoted to Housekeeping Manager. At the time of her second injury, Claimant had been advised by the chiropractor not to climb stairs or bend over due to her prior low back injury. Claimant testified that she reported these restrictions to Employer and that they were aware of her limitations. Claimant testified that she injured her low back a second time when she was moving heavy, wet laundry (sheets and towels) from baskets into Employers washing machines and then into the clothes dryer. Per Claimant, as she was transferring multiple sets of sheets from a bent over position, she experienced a sudden burning pain in her low back that then moved to her hips and feet.

7. Claimant testified that she reported this second work injury to her Employer about two

days later. Claimant then returned to Lamar Chiropractic and was provided with a Disability Release Form dated March 19, 2024, providing her with work restrictions of "No heavy stuff", including "no making beds" and "no lifting heavy laundry." (RHE B, p. 16). Five days later, i.e. on March 24, 2024, Claimant was seen at the Arkansas Valley Regional Medical Center in La Junta where she was evaluated by Dr. William Jurgens, M.D. (RHE C, p. 19-24). Dr. Jurgens noted that Claimant presented to the clinic with complaints of mid lower back pain over the right SI (sacroiliac) joint that was radiating into the right buttock area. *Id*. at 20. Concerning the mechanism of injury (MOI), Claimant reported "[s]he had a back injury about a year ago when she was lifting some heavy things, she was seen by chiropractor but then was told she may be having a disc problem, symptoms improved, but recently she was lifting heavy laundry at work and again started having pain in her low back area." *Id.* Claimant reported seeing the chiropractor "without much relief" during which she was advised she may need an MRI. *Id.* Claimant was given an injection of Toradol and a muscle relaxant for her pain. *Id.* at 23. X-rays revealed minimal degenerative narrowing of the L4-L5 disc but no acute bone abnormality. *Id.* at 24. Dr. Jurgens assigned work restrictions and advised Claimant to follow up with a work-

comp provider or her primary care physician (PCP), noting that she may need a referral for an MRI for further evaluation. *Id*. at 19, 23.

8. After her second work injury on March 14, 2024, Claimant testified that she continued

to work checking rooms. She stopped doing laundry. According to Claimant, she continued to work until her pain became so severe that she sought treatment through the emergency room (ER). Claimant presented to the ER on April 3, 2024, with complaints of back pain that had been ongoing for a year and a half after suffering a work-injury when "she and a co-worker were lifting a concise (king-size) mattress to get it onto a bed and the other worker dropped her side and the [Claimant] twisted and had pain in her low back area and subsequently dropped the mattress as well." (RHE D, p. 30). Claimant reported doing better until her second injury and reported further that going up and down stairs was aggravating her pain. *Id.* Physical examination revealed tenderness over the midline of the upper lumbar spine along with paraspinal tenderness. *Id.* at 31. Disc herniation was suspected. Id. at 32. Claimant was given an injection of Toradol and a lidocaine patch and instructed to follow-up with workers' compensation given the anticipated need for an MRI. She was given a diagnosis of "exacerbation of work-related [Injury] from 1 ½ years ago. *Id.* at 29. Claimant returned to work with restrictions (see RHE D, p. 29),

but testified that because she had pain with ascending stairs and she had to climb stairs over two floors in the hotel about 20 times per day, she could not continue working. Claimant reported that she stopped working at the end of September of 2024.

9. Claimant testified that she did not receive any physician directed treatment to her low

back after September 2024 because the insurance company would not confirm that they would pay for her care. She testified that she continues to have pain in her low back below the waist and into her legs.

10. Respondents sought an opinion from Dr. Qing-Min Chen, who performed an

independent medical evaluation (IME) of Claimant on November 5, 2024. Claimant provided a similar history regarding the MOI concerning both her October 5, 2022, and March 14, 2024, injuries to Dr. Chen. (RHE A, p.p.3-4). Following a physical examination and records review, Dr. Chen opined that Claimant suffered a "Lumbar strain from an injury on October 5, 2022", which he concluded was related to Claimant's employment and was medically stationary. *Id*. at 6. He did not reach any specific diagnostic impressions concerning Claimant's alleged March 14, 2024, injury. Indeed, the remainer of Dr. Chen's diagnostic impressions are noted as follows: "2. L4-5 degenerative disc disease, pre-existing/not related. 3. Low back pain of unknown etiology." *Id*.

11. Regarding Claimant's alleged injuries, Dr. Chen noted:

> Based on the medical records, the claimant sustained at most a lumbar muscle strain that resolved within a couple of months. I do not have any documentation past October 14, 2022, although the claimant says that she went to see a chiropractor for six months. I would expect a soft tissue strain to resolve within about six weeks to three months at the most. The claimant is medically stationary with respect to her lumbar strain as of January 5, 2023, three months from the date of the original injury. The claimant then states that she actually had a separate injury on March 14, 2024. Based on the medical records, she was lifting heavy laundry. This is based on a note on March 19, 2024. However, the claimant tells me that the laundry was not that heavy, and she could change the weight / amount of laundry as needed, but that at most it was about 10-15 pounds. She was lifting it into a washer. I do not have any medical records or any report of an injury that occurred on March 14, 2024. The note on March 24, 2024, is pretty vague as to the timing of this 'injury.' A subsequent x-ray showed L4-5 degenerative disc disease, which is a typical finding given her age. At this point, it is unknown what is

> causing her diffuse pain over her entire lumbar spine going down into her right buttocks and her tailbone. An L4-5 disc injury, in theory, should not cause that sort of diffuse pain. I do not have anything objective on examination to support subjective complaints, and I do not have great evidence from the timeline standpoint that an injury actually occurred on March 14, 2024, that would be related to this claim. Given that these are two distinct injuries, there is no evidence of aggravation here of her prior 2022 claim. At this point, I do not see anything here that is work related. As such, the claimant's need for treatment including chiropractic care and her imaging studies should be treated outside the workmen's compensation system.

(RHE A, pp. 6-7).

12. Claimant initiated physical therapy (PT) at Prowers Medical Center on February 14,

2025. (RHE H). According to the initial evaluation report, Claimant was referred to physical therapy (PT) for low back pain. *Id.* at 118. Claimant provided the following history to the physical therapist during her initial evaluation:

> Patient reports that in 2022 she injured her back. Patient says that she was told she injured discs but is unsure of which level. Patient worked in a hotel doing laundry – bending forward, picking up laundry, carrying things up/down stairs, last year in March her workload increased, and she says her pain got worse to the point that she could not walk.

Id.

13. At the time of her initial PT evaluation, it was noted that in addition to the worsening

of her 2022 injury in March 2024, Claimant was also in her 3rd trimester of pregnancy and that her pain and deficits in range of motion, lower extremity weakness and hypermobility in the lumbar vertebrae were limiting her functional capacity. (RHE H, p. 120). Accordingly, Claimant was determined to be "appropriate for skilled Physical Therapy." *Id*.

14. Respondents sent additional medical records to Dr. Chen seeking updated opinions

and commentary concerning reports outlining medical care Claimant received in 2015 following a motor vehicle accident and a subsequent sleep study performed in 2017. (RHE A, pp. 8-9). Following his review of the records, Dr. Chen discounted their relevance to Claimant's current low back complaints noting instead that the reports submitted "do not really go into anything in the lumbar spine." *Id*. at 9. Accordingly, Dr. Chen's previously expressed opinions remained unchanged. *Id*.

Claimant's Testimony

15. Claimant admitted that she was working a second job with Big R Stores (Big R) at the

time of her October 2022 incident. Her employment with Big R began prior to starting her job with Employer. Following the October 2022 incident, Claimant was able to continue working her normal hours for Big R. Claimant testified that her job duties at Big R were not strenuous and that she continued to work at Big R until the end of May 2023, when she was separated from employment due to what she testified was not having the proper permission to work there. She specifically denied that she left her employment with Big R because her October 2022 injury was interfering with her ability to carry out her job duties there.

16. Claimant testified she had a period of self-employment from July 2023 to December

2023. Claimant agreed that during the period from the October 2022 incident to December 2023, she was able to work her full-time job with Employer, as well as her second job, be it at Big R or when she was self-employed.

17. Claimant testified that she became pregnant following the March 2024 incident and

her baby was born on April 9, 2025. During the pregnancy, Claimant advised her doctor that she was feeling increased back/hip pain. She testified that her doctor advised her that the weight of the baby on her hips was causing her increased pain. She testified on redirect that following the birth of her baby on April 9, 2025, her back pain has persisted.

The Deposition Testimony of Dr. Chen

18. Dr. Chen testified as a board-certified expert in orthopedic surgery and independent

medical examinations on June 5, 2025; although, he did not hold the independent medical examination board at the time he completed his IME of Claimant on November 5, 2024. (Depo. Tr. Dr. Chen, pp. 5, ll. 17-25, 6-7, ll. 1-12) (reference to the transcript is by page and line from the computer pagination from the electronic transcript because the transcript filed with the OAC does not contain page numbers).

19. Dr. Chen testified that there was nothing "objective" evidence to that would require

some sort of medical treatment. (Depo. Tr. Dr. Chen, p. 14, ll. 2-6). Accordingly, Dr. Chen testified that when he indicated that Claimant suffered an injury to her low back in October 2022, he was "basically just talking about the event itself". *Id*. at ll. 7-10. Dr. Chen testified that when he identified that Claimant had suffered an injury in October 2022 (during his previous testimony at p. 12, ll. 13-14), his conclusion was based "purely on the mechanism of injury and [Claimant's] complaints at the time." *Id.* at p. 18, ll. 11-20. He did not have anything objective from his examination to "show [him] that [Claimant] strained her muscle, or she sprained a ligament or anything." *Id.* at ll. 20-22.

20. According to Dr. Chen, the “majority” of muscle strains are “self-limiting” and don’t

require a significant treatment. (Depo. Tr. Dr. Chen, p. 20, ll. 2-7). Nonetheless, Dr. Chen testified that “sometimes” patients “may need therapy just to kind of help you stretch your back out again, to regain range of motion.” *Id.* at ll. 10-12.

21. Regarding Claimant’s alleged March 14, 2024, injury, Dr. Chen noted:

> A. You know, just like the October one, it could be -- it could be a soft tissue strain or maybe she pulled another muscle. It -- it could be just something -- a natural progression of her arthritic conditions in her back. We don't have a whole lot of documentation of medical treatment, and we don't really have a specific diagnosis at this point.

(Depo. Tr. Dr. Chen, p. 24, ll. 15-22). Accordingly, Dr. Chen testified that it would be fair to say that for the second alleged injury, there was just nothing to establish that Claimant sustained a work-related injury. *Id*. at ll. 22-25, p. 25, l. 1.

22. Dr. Chen testified that even if Claimant sustained a lumbar strain on March 14, 2024,

that it would have self-resolved within three months, with a latest maximum medical improvement (MMI) date of June 14, 2024, and with no entitlement to an impairment rating because there was not six months of medically documented pain and rigidity. (Depo. Tr. Dr. Chen, p. 25, ll. 3-16).

23. Dr. Chen testified that if Claimant did sustain an injury on March 14, 2024, it would

have been a new injury, and not an aggravation of any potential injury from October 2022. (Depo. Tr. Dr. Chen, p. 26, ll. 3-14).

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).

Compensability

C. A "compensable injury" is one that requires medical treatment or causes disability.

Romero v. Industrial Commission, 632 P.2d 1052 (Colo. App. 1981); *Aragon v. CHIMR, et al.,* W.C. No. 4-543-782 (ICAO, Sept. 24, 2004); *H & H Warehouse v. Vicory*, 805 P.2d 1167, 1169 (Colo. App. 1990). No benefits flow to the victim of an industrial accident unless the accident results in a compensable "injury." *Romero*, supra; § 8-41-301, C.R.S. To sustain her burden of proof concerning compensability, Claimant must establish that

the condition for which she seeks benefits was proximately caused by an “injury” arising out of and in the course of employment. *Loofbourrow v. Industrial Claim Appeals Office*, 321 P.3d 548 (Colo. App. 2011), aff’d *Harman-Bergstedt, Inc. v. Loofbourrow*, 320 P.3d 327 (Colo. 2014); Section 8-41-301(I)(b), C.R.S.

D. The phrases "arising out of” and "in the course of" are not synonymous and a claimant

must meet both requirements for a claimed 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 and scope 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). Conversely, 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). Here, there is little question that Claimant’s alleged injuries occurred within the time and place limits of her employment and during activities related to Claimant’s duties as a housekeeper working in Respondents’ hotel, namely, moving a mattress while setting up a guest room and removing wet bed sheets and towels from a washing machine to a dryer. While the evidence presented supports a finding/conclusion that Claimant was injured in the course and scope of her employment, it is necessary to address whether her symptoms/injury arose out of that employment.

E. As noted, the term "arises out of” refers to the origin or cause of an injury. *Deterts v.*

Times Publ'g Co. supra. There must be a causal connection between the injury and the work conditions for the injury to arise out of the employment. *Younger v. City and County of Denver, supra.* There is no presumption that an injury, which occurs in the course of

employment, also arises out of the employment. *Finn v. Industrial Commission*, 165 Colo. 106, 437 P.2d 542 (1968). The determination of whether there is a sufficient "nexus" or causal relationship between a claimant's employment and the injury is one of fact and one that 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).

F. In this case, Respondents argue, based primarily upon the opinions of Dr. Chen, that

Claimant's injuries are not compensable because the records he reviewed contained only "minimal" medical documentation regarding Claimant's alleged injuries and an absence of any objective evidence to suggest that Claimant sustained a work injury. Thus, Respondents contend that even if Claimant's work duties caused a lumbar injury, this injury would have self-resolved within three months with activity modification and without the need for medical treatment. Accordingly, Respondents maintain that Claimant failed to present sufficient evidence that she sustained an injury requiring medical treatment, i.e., arising out of her employment on either October 5, 2022, or March 14, 2024. The ALJ is not persuaded.

G. In this case, the totality of the evidence presented persuades the ALJ that Claimant's

October 5, 2022, hip/low back injuries have their origins in her work-related functions as a housekeeper, i.e. moving a mattress and are sufficiently related to those functions, so as to be considered part of her service to Employer. Based upon the evidence presented, the ALJ is convinced that not only did Claimant's October 5, 2022, injuries occur within the time and place limits of her employment, but also that her symptoms and need for treatment "arose out of" her work duties as a housekeeper for Employer. Even Dr. Chen testified that Claimant was "injured" on October 5, 2022, before walking back this testimony by adding that when he used the term "injured," he was referring to the incident itself and not specific injury. The fact that Claimant may have suffered a low back "strain", which Dr. Chen felt would "self-resolve" after three months does not negate the compensable nature of those injuries or compel a finding that they are not work-related

as suggested by Respondent. Claimant is not required to prove the occurrence of a dramatic event to prove a compensable injury. *Martin Marietta Corp. v. Faulk,* 158 Colo. 441, 407 P.2d 348 (1965). Even a "minor strain" can be a sufficient basis for a compensable claim if, as is the case here, it arose from a claimant's work activities and caused him/her to seek medical treatment. The ICAO's decision in *Garcia v. Express Personnel*, W.C. No. 4-587-458 (ICAO, August 24, 2004) is instructive regarding the minimal extent of an injury needed to satisfy the basic threshold requirement of compensability. In Garcia, the claimant felt pain in her abdomen and hip while lifting a piece of glass at work. The employer referred the claimant to Dr. Caughfield, who diagnosed a lumbar strain, but opined she had already reached MMI. The ALJ found that the claimant suffered a "minor back sprain," but also found the sprain had "resolved" within five days of the incident. The ALJ denied the claim on the grounds that the claimant failed to prove she suffered a compensable "injury." The ICAO reversed and held that the claimant had established a compensable injury as a matter of law.

H. In this case, the evidence presented supports a finding/conclusion that Claimant

experienced a sudden onset of pain while performing work-related functions on October 5, 2022. These work-related duties caused symptoms in Claimant's low back and hips prompting her to report an injury to Employer and request medical attention. Claimant was directed to a Chiropractor where she complained of low back and hip pain related to moving a mattress at work. Between October 5, 2022, and March 14, 2024, Although Claimant had some continued discomfort following her October 5, 2022, injury, she was doing better until she sustained a second work injury on March 14, 2024. On that date, Claimant was moving heavy, wet sheets/towels while bent over. In the process of moving this laundry, Claimant felt a burning pain beginning in her low back and progressing to her hips and feet prompting her to seek treatment through the Arkansas Valley Regional Medical Center and subsequently through Prowers Medical Center and Valley Wide Health Systems, Inc. Claimant attributed this pain to her work duties and noted that her pain was increased above that she was feeling before the March 14, 2024, incident involving wet heavy laundry. Based upon the totality of the evidence presented, the ALJ is convinced that a logical causal connection exists between Claimant's work duties on

October 5, 2022, and March 14, 2024, and her hip/low back symptoms and need for treatment.

I. To prove causation, it is not necessary to establish that the industrial injury was the

sole cause of the need for treatment. Rather, it is sufficient if the injury is a "significant" cause of the need for treatment in the sense that there is a direct relationship between the precipitating event, i.e. Claimant's trip and fall and the need for treatment. A pre-existing condition, such as Claimant's L4-5 degenerative disc disease, does not disqualify her from receiving workers' compensation benefits. *Duncan v. Indus. Claims Appeals Office*, 107 P.3d 999, 1001 (Colo. App. 2004). Indeed, if the alleged industrial injury aggravates, accelerates, or "combines with" a pre-existing infirmity or disease "to produce disability and/or cause a need for treatment, the treatment is compensable. *H & H Warehouse v. Vicory, 805 P.2d 1167 (Colo. App. 1990).* Contrary to Dr. Chen's suggestion, a claimant need not show that his/her injury objectively caused an identifiable structural change to their underlying anatomy to prove a compensable aggravation. Rather, a purely symptomatic aggravation is a sufficient basis for an award of medical benefits if it causes the claimant to need treatment that he/she would not otherwise have required but for the accident. *Merriman v. Industrial Comm'n*, 210 P.2d 448 (Colo. 1949); *Dietrich v. Estes Express Lines*, W.C. No. 4-921-616-03 (ICAO, September 9, 2016). See also, *Industrial Commission v. Pacific Employers Insurance Co*., 128 Colo. 411, 262 P.2d 926 (1953) (trigger of symptoms from Claimant's dormant hemorrhoids from working in cramped conditions determined to constitute compensable aggravation of a pre-existing condition).

J. Even temporary aggravations of pre-existing conditions may be compensable. *Eisnack v. Industrial Commission*, 633 P.2d 502 (Colo. App. 1981). Pain is a typical symptom from the aggravation of a pre-existing condition. Thus, a claimant is entitled to medical benefits for treatment of pain, so long as the pain is proximately caused by the claimant's employment–related activities and not his/her underlying pre-existing condition. *See Merriman v. Industrial Commission*, 120 Colo. 400, 210 P.2d 488 (1940).

K. While pain may represent a symptom from the aggravation of a pre-existing condition,

the fact that Claimant may have experienced an onset of back/hip while performing her housekeeping duties does not compel the ALJ to conclude that the duties of her employment caused her symptoms, or that her employment aggravated or accelerated any pre-existing condition. Rather, the occurrence of symptoms at work may, as noted by Dr. Chen, represent the natural progression of Claimant's pre-existing L4-5 degenerative disc disease process that is unrelated to her employment. *See F.R. Orr Construction v. Rinta,* supra; *Cotts v. Exempla, Inc.,* W.C. No. 4-606-563 (August 18, 2005). In this case, the totality of the evidence presented persuades the ALJ that while Claimant probably had pre-existing degenerative disc disease in her lumbar spine, she was nevertheless asymptomatic, was working without limitation and had not been treated for low back/hip prior to the February 5, 2024, incident involving moving a king-sized mattress. The evidence persuades the ALJ that the February 5, 2022, mattress lifting incident probably caused a traumatic strain of Claimant's lumbar spine in addition to aggravating her underlying degenerative disc disease, both of which gave rise to her symptoms and need for treatment. The evidence presented supports a conclusion that Claimant was doing better following her October 5, 2022, injury, until she experienced a sudden increase in her low back pain while lifting heavy laundry from a bent over position some 17 months later.

L. Based upon the evidence presented, the ALJ finds that while it is possible that Claimant's laundry incident could have caused a second lumbar strain, the ALJ is convinced that there was a second more significant aggravation of Claimant's pre-existing L4-5 degenerative disc disease on March 14, 2024, and that this incident caused worsening symptoms and a greater degree of disability. Indeed, Claimant was given a diagnosis of "exacerbation of work-related [Injury] from 1 ½ years ago by the ER physician on April 3, 2024. Moreover, Claimant was completely unable to work due to the symptoms associated with the March 14, 2024, injury by September 2024. Thus, while Claimant's pre-existing condition had become manifest due to her previous injury/aggravation after October 5, 2022, the March 14, 2024, incident caused worsened symptoms and a greater degree of disability. Such injuries constitute compensable aggravations of pre-existing

conditions. See, *Subsequent Injury Fund v. Devore*, 780 P.2d 39 (Colo. App. 1989); *Seifried v. Industrial Commission*, 736 P.2d 1262 (Colo. App. 1986). While Dr. Chen suggests that there must be some quantum of objective evidence to support a conclusion that there has been an aggravation of a pre-existing condition, this ALJ is unaware of any such requirement and Respondents cited no legal authority for this proposition. As noted, it is well established that a purely symptomatic aggravation is a sufficient basis to award medical benefits if it causes, as is the case here, Claimant's need for treatment. Because the ALJ finds/concludes that Claimant's October 5, 2022 mattress lifting incident probably strained her low back and aggravated a pre-existing, yet asymptomatic condition in her lumbar spine and because the ALJ is convinced that the March 14, 2024 laundry lifting incident aggravated this pre-existing condition further, both giving rise to Claimant's symptoms, disability and need for treatment, the ALJ is persuaded that Claimant's alleged injuries have their origins her work related functions, and are sufficiently related thereto so as to be considered part of her service to Employer. *Horodyskyj v. Karanian*, 32 P.3d 470, 475 (Colo. 2001). Simply put, Claimant has established the requisite causal connection between her alleged work-related injuries and her employment duties. Consequently, the ALJ concludes that Claimant has proven the compensable nature of her October 5, 2022, and March 14, 2024, injuries. The contrary opinions of Dr. Chen have been considered and are rejected as unpersuasive.

Claimant's Entitlement to Medical Benefits

M. 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, 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, 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*. As noted above, Claimant has proven that she suffered compensable injuries to her hips/low back. Moreover, the evidence presented persuades the ALJ that the treatment Claimant received through Lamar Family Chiropractic, Arkansas Valley Regional Medical Center, Prowers Medical Center (Tracy MacEachern, M.D.) and Valley Wide Health Systems, Inc. (Glenn R. Waite, M.D.) was related to her compensable October 5, 2022 and March 14, 2024, injuries and that this treatment was otherwise reasonable and necessary to relieve her of the effects of these injuries. Accordingly, Respondents shall pay for all medical expenses, pursuant to the Workers' Compensation medical benefits fee schedule, to cure and relieve Claimant from the effects of her hip and low back injuries.

N. All matters not determined herein, and not closed by operation of law, are reserved for future determination.

So Ordered this 5th day of November 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 5-227-056-001

Issues

1. Whether Respondents established by clear and convincing evidence that the DIME physician's opinion that Claimant is not at maximum medical improvement (MMI) is incorrect.
2. If the DIME opinion is incorrect regarding MMI, whether Claimant is entitled to maintenance medical benefits.
3. If the DIME opinion is incorrect regarding MMI, determination of Claimant's permanent impairment rating.
4. Whether Claimant established by a preponderance of the evidence that medical treatment recommended by the DIME physician is reasonable, necessary, and causally related to Claimant's industrial injury.

Findings of Fact

1. Claimant sustained an admitted injury on January 5, 2023, while working as cook for Employer. Claimant's injury occurred after tripping and falling on a large rolling kitchen mixer.

2. On January 6, 2023, Claimant saw Stephen Danahey, M.D., at Concentra, reporting injuries to his left knee, left thumb, and back. Dr. Danahey referred Claimant to physical therapy for his knee and back, and to occupational therapy for his left thumb. Dr. Danahey also ordered a left knee MRI which showed edema and swelling, consistent with a mild bony contusion.

3. Over the following months, Claimant received treatment for his left knee, left thumb, and lower back through Dr. Danahey and other providers at Concentra, and other providers to whom he was referred by Dr. Danahey.

Left Knee

4. Claimant received treatment for his left knee through John Schwappach, M.D., who performed a steroid injection which provided significant relief in February 2023. Dr. Schwappach diagnosed Claimant with an acute exacerbation of end-stage arthritis in the left knee. By March 15, 2023, Dr. Schwappach indicated that Claimant's left knee injury was close to resolving, and released Claimant from his care. (Ex. B).

Lower Back

5. After his initial evaluation with Dr. Danahey, Claimant began physical therapy at Concentra on January 6, 2023. At his January 9, 2023 physical therapy session, Claimant reported experiencing lower back pain radiating down his leg into his big toe. He continued to report symptoms radiating from his lower back into his leg throughout the course of physical therapy. On at least one occasion, the physical therapist noted that the radiating symptoms were reproduced with palpation of L4-5, and that Claimant had positive straight leg raise tests. (Ex. 5).

6. On April 13, 2023, PA Anderson ordered a lumbar MRI due to continued complaints of lower back pain and reports of pain radiating down Claimant's right leg. The MRI, performed on April 21, 2023, showed a prior left-sided surgery at L5-S1; multilevel degenerative changes with moderate foraminal impingement on the right at L3-4, L4-5; moderate foraminal impingement at L5-S1 on the left; and a minimal disc bulge, mild facet and ligamentum flavum hypertrophy at L5-S1. (Ex. H). On April 27, 2023, PA Anderson referred Claimant for a physiatry evaluation with Robert Kawasaki, M.D. (Ex. 5).

7. Claimant saw Dr. Kawasaki on May 26, 2023, reporting severe pain in his lower back with shocking sensations down his right leg with weakness. Claimant reported pain levels of 10/10 at night, and 8/10 during the day. Dr. Kawasaki reviewed Claimant's MRI and noted that Claimant has scar tissue around the L5 level to the right, and symptoms consistent with L5-S1 radiculopathy, and possibly facetogenic pain. He recommended a transforaminal epidural steroid injection (TFESI), and prescribed tramadol. (Ex. 5).

8. On June 12, 2023, Dr. Kawasaki performed a right-sided TFESI. Claimant subsequently reported limited relief from the injection lasting only one hour. Dr. Kawasaki

then recommended a facet injection and medial branch blocks to evaluate Claimant for facetogenic pain. (Ex. 5).

9. Claimant reported to PA Anderson on June 22, 2023, that the TFESI made his symptoms worse, and that he had developed bowel and bladder issues with continued radicular pain in the right leg. (Ex. B).

10. Claimant returned to Dr. Kawasaki on July 14, 2023, reporting no changes in his lower back symptoms, and that the TFESI irritated his symptoms. On July 19, 2023, Dr. Kawasaki performed bilateral medial branch blocks a L4-L5, and L5-S1. (Ex. 5).

11. At a follow up visit on August 4, 2023, Claimant reported decreased pain from the medial branch blocks lasting one to two hours, but no further relief. Dr. Kawasaki noted that Claimant was scheduled to see surgeon Michael Rauzzino, M.D., for a surgical consult and that Claimant had reached MMI for conservative care of his lower back. From which the ALJ infers that Dr. Kawasaki believed no further conservative care was likely to improve Claimant's condition. (Ex. 5).

12. Claimant saw Dr. Rauzzino on August 15, 2023, reporting severe back pain radiating down both legs. Based on his review of imaging, Dr. Rauzzino indicated that he could not identify Claimant's pain generator, noting no central canal stenosis. He indicated that Claimant was not a surgical candidate and was at MMI for his lumbar spine. He also expressed concern for symptom magnification based on his exam. (Ex. 5).

13. On August 25, 2023, Claimant returned to Dr. Kawasaki who opined that Claimant had reached MMI for his lumbar spine. (Ex. 5).

14. Claimant continued to see Dr. Danahey and others at Concentra through June 2024 for his work injuries, including his lower back and bilateral radiating symptoms. On those visits when lower back examination was documented, the providers noted tenderness in the lumbar spine, pain with range of motion, and positive straight leg raise tests. (Ex. 5).

15. In February 2024, Claimant began a second course of physical therapy at Select Physical Therapy reporting bilateral lower extremity symptoms, and pain shooting into his

left foot. Claimant attended 16 visits through May 22, 2024, without reported improvement. (Ex. 5).

Left Thumb/Wrist

16. On February 14, 2023, Claimant underwent an MRI of his left thumb, which showed degenerative cysts and arthritis of the lunate and capitate, and severe arthritis in first carpometacarpal (CMC) joint. (Ex. H). Based on the MRI and continued left thumb symptoms, Dr. Danahey's physician assistant, Eric Anderson, PA, referred to hand surgeon Craig Davis, M.D., for evaluation.

17. On February 28, 2023. Dr. Davis reviewed Claimant's thumb MRI, agreed with the radiologist's reading, and indicated Claimant had obvious enlargement of the left thumb CMC joint with significant tenderness. He opined that Claimant had severe degenerative arthritis aggravated by his fall at work, and performed a left CMC joint injection, noting that Claimant may require surgery. (Ex. 5).

18. Claimant returned to Dr. Davis on April 11, 2023, reporting minimal improvement for a couple of days after the injection, and then returning to baseline. Dr. Davis noted Claimant had severe activity-related pain, remained on light duty, and was using a brace. He diagnosed Claimant with severe aggravation of his left thumb CMC joint arthritis and likely increased instability, and recommended an arthrodesis surgery, which was performed on May 1, 2023. (Ex. 5).

19. During the months after the arthrodesis surgery, Claimant attended occupational therapy for his left thumb and continued to slowly improve. However, in August 2023, Claimant began reporting numbness in his left arm and hand during occupational therapy sessions. (Ex. 5).

20. On September 6, 2023, Claimant saw Dr. Davis' physician assistant, Timothy Abbott, PA, and reported a 1–2-week history of numbness in the fingers of his left hand. PA Abbott noted a positive Tinel's sign and median nerve compression testing and opined that Claimant likely had left carpal tunnel syndrome. (Ex. I).

21. At Claimant's August 25, 2023, visit with Dr. Kawasaki, Dr. Kawasaki noted positive Tinel's signs and compression signs over carpal tunnel, and recommended

electrodiagnostic testing to rule out a median nerve compression neuropathy vs. cervical radiculopathy. Dr. Kawasaki conducted nerve conduction velocity (NCV) and EMG testing on September 15, 2025, and confirmed that Claimant had moderate left median nerve compression neuropathy at the left wrist, consistent with mild carpal tunnel syndrome. (Ex. J).

22. On October 4, 2023, Dr. Davis noted that Claimant had a likely trigger finger of the middle left finger, and carpal tunnel syndrome. He opined that Claimant's carpal tunnel syndrome was likely due to a combination of swelling, overuse of the left hand, and compensation for his left thumb arthritis, and the May 2023 thumb surgery. He recommended that Claimant undergo a carpal tunnel release and requested authorization of the surgery from Insurer. Dr. Davis also performed an injection in the flexor sheath of the thumb and middle finger to address Claimant's trigger finger. (Ex. I).

23. Claimant returned to Dr. Davis on December 19, 2023, reporting virtually constant numbness in the fingers of his left hand. Dr. Davis noted that the request for authorization of carpal tunnel release surgery had been denied, and an appeal was also denied. He indicated that although Claimant's trigger finger had improved with the prior injections, Claimant had very little use of his left hand. Because the release surgery had been denied, Dr. Davis performed an injection to attempt to address Claimant's carpal tunnel syndrome. He indicated that Claimant would return once he had private insurance to perform surgery for carpal tunnel syndrome. (Ex. 5).

Maximum Medical Improvement (MMI) Determination

24. On June 18, 2024, Dr. Danahey placed Claimant at MMI for his work injuries, which included bilateral low back pain, lumbar radiculopathy, and his thumb injury. He assigned Claimant a 4% upper extremity rating for his thumb, an 18% impairment for his lumbar spine (consisting of a 5% impairment for specific disorders under Table 53 of the AMA Guides, and 14% for range of motion impairments). No impairment rating was assigned for Claimant's left knee.

Division Independent Medical Examination (DIME)

25. On September 27, 2024, Respondents requested a DIME. (Ex. 4).

26. On December 27, 2024, Claimant saw Blake Kandah, M.D., for the DIME. Dr. Kandah concluded that Claimant has sustained work-related injuries including lower back pain caused by a L5-S1 disc disorder with left-sided lumbosacral radiculopathy; work-related left thumb CMC joint pain; and left-hand 2nd and 3rd digit paresthesia consistent with moderate left median neuropathy (*i.e.*, carpal tunnel syndrome). Dr. Kandah opined that Claimant's left thumb median neuropathy was likely caused by a combination of swelling and overuse of the left hand, and compensation for Claimant's thumb arthritis and surgery, consistent with Dr. Davis's opinion. He also indicated that Claimant's left-sided lumbosacral radiculopathy was not at MMI. On examination, Dr. Kandah noted left lower extremity neural tension pain in an L5-S1 distribution, and tenderness over the L5-S1 spinal area, while being non-tender over the remainder of the lumbar spine. He further noted positive provocative testing in the SI joints, and positive straight leg raise test on the left, and negative on the right.

27. Dr. Kandah recommended that Claimant undergo a left-sided L5-S1 TFESI injection with Dr. Kawasaki, and bilateral electrodiagnostic studies of his bilateral legs for diagnostic purposes to rule out acute denervation and active lumbosacral radiculopathy. He indicated that Claimant's left thumb injury was at MMI as of June 18, 2024, but that Claimant's left median neuropathy was not at MMI. He recommended an endoscopic left carpal tunnel release and post-operative occupational therapy as recommended by Dr. Davis.

28. Dr. Kandah assigned provisional impairment ratings[1], including a 17% left upper extremity rating, and an 18% spine rating. In determining Claimant's spine rating, Dr. Kandah performed three sets of range of motion measurements for each movement, determined that Claimant's lumbar flexion rating was invalid, and assigned no impairment for lumbar flexion. Claimant's spine rating consisted of a 7% rating for specific disorders under Table 53, II.C., of the AMA Guides, 5% for range of motion deficits, and 7% for neurologic system. (Ex. 6 & 8).

Independent Medical Examination (IME)

[1] Dr. Kandah initially assigned higher ratings, but these were modified after the Division issued an Incomplete Notice, leading Dr. Kandah to revise his upper extremity ratings on February 28, 2025. (See Ex. 7 & 8).

29. On June 27, 2025, Claimant saw Qing-Min Chen, M.D., for an independent medical examination at Respondent's request. Dr. Chen testified at hearing and was admitted as an expert in orthopedic surgery. Dr. Chen opined that Claimant sustained a work-related lumbar strain, possible knee strain, and possible hand contusion, and that Claimant had reached MMI for all conditions, without permanent impairment.

30. Dr. Chen opined that Claimant displayed signs of pain behavior, symptom magnification, and inappropriate responses. At hearing, he testified that Claimant's reported 10/10 pain which he deemed inconsistent with Claimant's objective findings. In addition, he performed various maneuvers he characterized as "validity testing," which he indicated elicited non-anatomic responses. For example, he testified that Claimant reported an "incorrect response" of median nerve symptoms when Dr. Chen squeezed Claimant's fist; and that Claimant reported a non-anatomic increase in left leg symptoms when Dr. Chen manipulated Claimant's knee and performed a hip abductor test. He testified that these maneuvers should have elicited the response Claimant reported. Based on these tests, Dr. Chen indicated that his exam was invalid, and that he could not trust his examination because Claimant was "essentially making stuff up."

31. Dr. Chen indicated that Claimant's CMC surgery was in a location that would not affect the median nerve, and that he doubted that Claimant had post-surgical swelling that would affect the median nerve, or that Claimant overused his left hand post-surgery. Dr. Chen's opinions on the cause of Claimant's CTS, while credible, do not rise to the level of clear and convincing evidence that Dr. Kandah's opinion, which is based on the opinion of Dr. Davis, is incorrect.

32. Dr. Chen relied heavily on his own "validity testing" which he characterized as "Waddell signs" for concluding that Claimant's injuries are not as claimed. Waddell signs include five categories of clinical signs: (1) tenderness: superficial and non-anatomic; (2) pain with stimulation: axial loading and rotation, (3) regional findings: sensory and motor, inconsistent with nerve root patterns; (4) distraction/inconsistency in straight leg raising findings, and (5) over-reaction to physical examination maneuvers. See WCRP Rule 17, Ex. 1, p. 11 (2014). Significance may be attached to positive finding in three out of five categories, but not to isolated findings. *Id*. Dr. Chen did not document the

performance of tests for each of these five categories, and instead apparently performed testing of his own creation which he characterized as Waddell signs.

33. Dr. Chen was critical of Dr. Kandah for not documenting Waddell signs or conducting "validity testing," which Dr. Chen stated would determine "whether or not this claimant's issues are valid," and that "These are huge red flags, and you cannot take those findings as truth or verbatim. Otherwise, you get these gigantic impairment ratings without any evidence of validity." These statements demonstrate a misapplication of Waddell signs and "validity testing" to accomplish a purpose for which they are not intended and also conflates Waddell-type signs with the validity testing required for impairment ratings.

34. As discussed in an older version of the Colorado Medical Treatment Guidelines for Low Back Pain, WCRP Rule 17, Ex. 1, p. 11 (2014), "It is generally agreed that Waddell's[2] signs are associated with decreased functional performance and greater subjective pain levels, **though they provide no information on the etiology of pain**." (Emphasis added). Further, "Waddell's signs cannot be used to predict or diagnose malingering. It is not an appropriate test for assessing non-physiologic causes of low back pain. The sole purpose of the Waddell's signs is to identify low back pain patients who may need further psychosocial assessment prior to surgery." Colorado Medical Treatment Guidelines for Chronic Pain Disorders, WCRP Rule 17, Exhibit 9, p. 18. Moreover, Waddell signs "were researched on American and Western European populations, thus the results may not be applicable to cultures with differing concepts of pain." WCRP Rule 17, Ex. 11, p. 12 (2014).

35. In contrast to the 'validity testing" Dr. Chen performed, validity testing in the context of impairment rating requires that a rating physician obtain three separate range of motion measurements to assess the reproducibility of abnormal motion. *See* AMA Guide, Section 3.3a, p. 78. The purpose of repeat testing is to determine whether ROM the measurements taken during an impairment rating are consistent and valid, and to assess optimum effort. Contrary to Dr. Chen's opinion, Dr. Kandah did perform "validity testing" while performing Claimant's impairment rating, found that Claimant's lumbar flexion

[2] The Medical Treatment Guidelines refer to both "Waddell's signs" and "Waddell signs."

measurements were invalid, and assigned no impairment for lumbar flexion. Nothing in the AMA Guides requires an examiner to perform "validity tests" suggested by Dr. Chen or incorporate Waddell signs into the assessment.

36. Dr. Chen's reliance on "validity testing" and Waddell signs highlights a logical fallacy in his analysis. Specifically, that positive Waddell signs or nonanatomic responses to "validity testing" establish that an injured worker's injuries do not exist. So called "validity testing" – whether it be through Waddell signs or Dr. Chen's tests – does not disprove the existence of an injury. Even if one accepts that Dr. Chen's tests are reliable, such testing only reflects the patient's reporting of symptoms and does not exclude the presence of an organic disease or condition. This is illustrated by Dr. Chen's testing for Claimant's median nerve neuropathy, which has been objectively confirmed though electrodiagnostic testing. That Claimant reported numbness in his fingers when Dr. Chen squeezed Claimant's hand does not disprove the existence of a median nerve neuropathy, only that Claimant's report of symptoms may be influenced by other factors. In short, as with Waddell signs, Dr. Chen's "validity testing" merely establishes that Claimant's pain behavior may have a psychosocial component but does not rule out a physical component. As such, Dr. Chen's "validity testing" is of limited evidentiary value when determining whether Claimant's conditions are work-related, or whether Claimant has reached MMI.

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. *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 MMI

Respondent has failed to establish by clear and convincing evidence that the DIME physician erred in finding that Claimant has not reached 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." § 8-40-201(11.5), C.R.S. MMI is primarily a medical determination involving diagnosis of the claimant's condition. *Berg v. Indus. Claim Appeals Office,* 128 P.3d 270

(Colo. App. 2005); *Monfort Transp. v. Indus. Claim Appeals Office,* 942 P.2d 1358 (Colo. App. 1997). A determination of MMI requires the DIME physician to assess, as a matter of diagnosis, whether various components of the claimant's medical condition are causally related to the industrial injury. *Martinez v. Indus. Claim Appeals Office*, 176 P.3d 826 (Colo. App. 2007); *Powell v. Aurora Pub. Sch.,* W.C. No. 4-974-718-03 (ICAO Mar. 15, 2017). A finding that the claimant needs additional medical treatment (including surgery) to improve his work-related medical condition by reducing pain or improving function is inconsistent with a finding of MMI. *MGM Supply Co. v. Indus. Claim Appeals Office,* 62 P.3d 1001 (Colo. App. 2002); *Reynolds v. Indus. Claim Appeals Office,* 794 P.2d 1090 (Colo. App. 1990); *Sotelo v. Nat'l By-Products, Inc.,* W.C. No. 4-320-606 (ICAO Mar. 2, 2000). Similarly, a finding that additional diagnostic procedures offer a reasonable prospect for defining the claimant's condition or suggesting further treatment is inconsistent with a finding of MMI. *Abeyta v. WW Constr. Mgmt.,* W.C. No. 4-356-512 (ICAO May 20, 2004).

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. § 8-42-107(8)(b)(III), C.R.S.; *Magnetic Eng'g, Inc. v. Indus. Claim Appeals Office,* 5 P.3d 385 (Colo. App. 2000); *Kamakele v. Boulder Toyota-Scion,* W.C. No. 4-732-992 (ICAO Apr. 26, 2010). "Clear and convincing evidence" is evidence that demonstrates that it is "highly probable" the DIME physician's rating is incorrect. *Qual-Med, Inc. v. Indus. Claim Appeals Office*, 961 P.2d 590, 592 (Colo. App. 1998); *Lafont v. WellBridge,* W.C. No. 4-914-378-02 (ICAO June 25, 2015). 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 enhanced burden of proof reflects an underlying assumption that the physician selected by an independent and unbiased tribunal will provide a more reliable medical opinion. *Qual-Med v. Indus. Claim Appears Office*, *supra*.

A 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). Rather it is the province of the ALJ to assess the weight to be assigned conflicting medical opinions on the issue of MMI. *Oates v. Vortex Indus.,* WC 4-712-812 (ICAO Nov. 21, 2008); *Licata v. Wholly Cannoli Café* W.C. No. 4-863-323-04 (ICAO July 26, 2016).

Dr. Kandah's opinion regarding Claimant's median nerve neuropathy is consistent with that of Dr. Davis (Claimant's treating hand surgeon). The ALJ finds the opinions of Dr. Davis and Dr. Kandah more credible than Dr. Chen's opinion, which constitutes merely a difference of opinion. The Claimant's need for additional treatment, including that recommended by Dr. Davis, for his median nerve neuropathy is inconsistent with a finding of MMI. With respect to Claimant's lumbar spine, although Claimant likely has exaggerated his reported symptoms, Dr. Kandah identified neurological issues consistent with a left-sided L5-S1 radiculopathy, which he attributed to a L5-S1 lumbosacral disc disorder and lumbosacral radiculopathy. He further indicated that Claimant likely had upper buttock pain due to a sacroiliac joint dysfunction which likely resulted from altered biomechanics and persistent guarding since the January 5, 2023 injury. Dr. Chen's disagreement with Dr. Kandah does not rise to the level of clear and convincing evidence or demonstrate that it is highly likely that Dr. Kandah is incorrect. Thus, Respondent has failed to meet its burden of establishing by clear and convincing evidence that Dr. Kandah erred in finding Claimant has not reached MMI.

Specific Medical Benefits at Issue

Respondents are liable to provide medical treatment that is reasonable and necessary to cure and relieve the effects of the industrial injury. Section 8-42-101(1)(a), C.R.S. A service is medically necessary if it cures or relieves the effects of the injury and is directly associated with the claimant's physical needs. *Bellone v. Indus. Claim Appeals Office,* 940 P.2d 1116 (Colo. App. 1997); *Parker v. Iowa Tanklines*, Inc., W.C. No. 4-517-537, (ICAO May 31, 2006). The question of whether the claimant proved treatment is reasonable and necessary is one of fact for the ALJ. *Kroupa v. Indus. Claim Appeals Office,* 53 P.3d 1192 (Colo. App. 2002). *Hobirk v. Colorado Springs School Dist.,* W.C. No. 4-835-556-01 (ICAO Nov. 15, 2012). Respondents are also liable for treatment where "employment-related activities aggravate, accelerate, or combine with a preexisting

condition to cause a need for medical treatment." *Schoenberger v. Dillons Co.*, W.C. No. 4-934-299-02 (ICAO Aug. 10, 2016). When the respondents challenge the claimant's request for specific medical treatment the claimant bears the burden of proof to establish entitlement to the benefits. *Martin v. El Paso School Dist.*, W.C. No. 3-979-487, (ICAO Jan. 11, 2012); *Ford v. Regional Transp. Dist.,* W.C. No. 4-309-217 (ICAO Feb. 12, 2009).

In conjunction with the DIME examination, Dr. Kandah recommended treatment for Claimant's median nerve neuropathy and his lumbar spine. With respect to the median nerve neuropathy, Dr. Kandah's recommendation is consistent with the treatment recommended and requested by Dr. Davis in October 2023 – a left carpal tunnel release surgery. Based on the opinions of Dr. Kandah and Dr. Davis that Claimant's left median nerve neuropathy is causally-related to his January 5, 2023 injury, Claimant has established that a left carpal tunnel release surgery is reasonable and necessary to cure or relieve the effects of his work injury. Claimant's request for authorization of the carpal tunnel release procedure recommended by Dr. Davis is granted.

With respect to his lumbar spine, Dr. Kandah recommended a left-sided L5-S1 and S1 TFESI injection, and electrodiagnostic studies of the bilateral lower extremities. A DIME physician, however, is not authorized to treat a claimant, and his recommendations for treatment are not the equivalent of an ATP's treatment recommendations. WCRP Rule 11-2(G). Here, no credible evidence was admitted demonstrating that any of Claimant's ATPs have recommended or prescribed left-sided TFESIs or further electrodiagnostic studies of the lower extremities. Because the ALJ lacks jurisdiction to order an ATP to provide or recommend a particular form of treatment which has not been prescribed or recommended by the ATP, the ALJ is without authority to grant Claimant's request for authorization of these procedures. *Potter v. Ground Servs. Co.*, W.C. No. 4-935-523-04 (ICAO Aug. 15, 2018); *Torres v. City and County of Denver*, W.C. No. 4-937-329-03 (ICAO May 15, 2018) *citing Short v. Property Mgmt. of Telluride*, W.C. No. 3-100-726 (ICAO May 4, 1995). Accordingly, Claimant's request for authorization of TFESIs and electrodiagnostic testing is denied.

Order

It is therefore ordered that:

1. Respondent has failed to establish that the DIME physician's opinion that Claimant has not reached MMI is incorrect.
2. Claimant's request for authorization of a left-sided carpal tunnel release procedure recommended by Dr. Davis is granted.
3. Claimant's request for authorization of left-sided TFESIs and electrodiagnostic procedures is denied.
4. Because Claimant has not reached MMI, the remaining issues, regarding determination of Claimant's impairment rating and medical maintenance treatment are moot.
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: November 12, 2025

Steven R. Kabler
Administrative Law Judge