

**OFFICE OF ADMINISTRATIVE COURTS  
STATE OF COLORADO  
WORKERS' COMPENSATION NO. WC 4-880-583**

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**ISSUES**

- I. Whether Claimant proved by a preponderance of the evidence her settlement should be reopened on the grounds of fraud.
- II. Whether Claimant proved by a preponderance of the evidence penalties should be imposed against Respondent.
- III. Whether Respondent proved by a preponderance of the evidence Claimant's request to reopen her settlement is barred by the equitable doctrine of laches.

**PROCEDURAL HISTORY**

On October 2, 2023, Claimant filed an Application for Hearing in W.C. No. 4-880-583, listing the date of injury as January 12, 2012, on the issues of petition to reopen and penalties alleging that the offset for benefits was obtained through fraud, citing the reopening statute §8-43-303, C.R.S. and the overpayment statute §8-42-113.5, C.R.S. On January 14, 2024, Respondent filed a Motion to Strike Application for Hearing With Prejudice and Vacate Hearing seeking dismissal with prejudice. Claimant filed Objections on January 16 and 17, 2024. On January 17, 2024, ALJ Cannici issued an Order Striking Claimant's Application for Hearing with Prejudice and Vacating Hearing for Claimant's failure to state her fraud claim with the requisite particularity required by Colorado Rule of Civil Procedure 9(b). On January 24, 2024, Claimant filed a Petition to Review ALJ Cannici's January 17, 2024 Order. On June 25, 2024, the Industrial Claim Appeals Office (ICAO) entered an order reversing ALJ Cannici's January 17, 2024 order and remanding the matter to the Office of Administrative Courts (OAC) for further proceedings, including a setting a hearing on Claimant's petition to reopen her claim.<sup>1</sup>

**FINDINGS OF FACT**

*W.C. No. 4-874-358*

1. Claimant alleged she sustained a work injury or occupational disease with an injury date of July 28, 2011. A claim was filed for this alleged injury on December 26, 2011, W.C. No. 4-874-358. Ex. 2. The DOWC claim file for W.C. No. 4-874-358 documents under "Accident description/cause" "EE states excessive driving causing

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<sup>1</sup> ICAO's June 25, 2024 order also affirmed an order of ALJ Cannici granting summary judgment in W.C. No. 5-231-380, which is not before the ALJ. On February 21, 2023, Claimant filed a Workers' Claim for Compensation for injuries related to workplace mold exposure that allegedly occurred on February 9, 2012, W.C. No. 5-231-380. On January 9, 2024, ALJ Cannici issued an order granting Respondent's motion for summary judgment dismissing W.C. No. 5-231-380 with prejudice.

pain.” Ex. 2, p. 4.<sup>2</sup> The part of body is listed as “Mul neck Inj – Any combo.” Ex. 2, p. 2. As reflected in the DOWC claim file, [Redacted, hereinafter BE] was the initial third party adjuster (TPA) on the claim. Respondent denied the claim on December 29, 2011. On July 6, 2021, [Redacted, hereinafter CL] became the TPA on the claim.<sup>3</sup>

2. Claimant testified that a transfer from Employer’s Cripple Creek office to the Golden office resulted in her driving 125 miles one-way from her home to work. Claimant testified she began experiencing issues with her neck and shoulders locking up, which she attributed to the long drive. Claimant testified that workers’ compensation paperwork was filled out for the alleged injury. Hrg. Tr. 44:21-23.

*W.C. No. 4-880-583*

3. On January 11, 2012, Claimant sustained the admitted work injury that is the subject of the this hearing, W.C. No. 4-880-583. Claimant slipped and fell on ice, falling backwards onto her back and striking her head. Ex. 1.

4. Claimant underwent evaluation and treatment for the January 11, 2012 work injury including, among other things, CT scans of the brain, cervical and thoracic spine MRIs, EMGs, neuropsychological testing, and neurological evaluations. Ex. 1.

5. Dale P. Mann, Ph.D. performed a Neuropsychological Evaluation of Claimant and issued a report dated December 12, 2012. Ex. 3. Dr. Mann noted he originally saw Claimant for a psychological evaluation on May 10, 2012. Dr. Mann documented the following diagnostic impression in the December 12, 2012 report:

- Axis I: Adjustment disorder with depressed mood  
Pain disorder with psychological factors and general medical condition  
Cognitive disorder not otherwise specified, mild
- Axis II: No current diagnosis
- Axis III: Chronic neck, back and head pain with a history of sleep apnea and acid reflux disease
- Axis IV: Psychosocial stressors involving significant, ongoing work distress
- Axis V: Global assessment of functioning of 60

Ex. 3, p. 3.

6. Dr. Mann concluded in the December 12, 2012 report, in relevant part, “The overall results of this comprehensive neuropsychological evaluation and neuropsychological testing revealed an individual who is experiencing increased psychological and somatic distress which is primarily related to her continuing stress in

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<sup>2</sup> As Claimant did not number the pages of her exhibits, page numbers cited for Claimant’s exhibits refer to the sequence of pages in hard copy exhibit packet provided to the Court and Respondent at hearing.

<sup>3</sup> The DOWC claim file for W.C. 4-880-583 in exhibit 1 also documents a change in TPA from BE[Redacted] to CL[Redacted] on July 6, 2021.

her work place and losing her driver's license." Id. He recommended Claimant follow up with a neurologist for dizziness and participate in an employee assistance program to address her ongoing and significant workplace distress.

7. Daniel A. Olson, M.D. placed Claimant at maximum medical improvement (MMI) on April 1, 2013 for the January 11, 2012 work injury. Dr. Olson's April 3, 2013 MMI report notes Claimant complained of back pain in the upper thoracic area, neck pain, headaches and dizziness.

8. Dr. Olson noted in his report, in relevant part, "Dr. Dale Mann did some neuropsychological testing. He felt that she was experiencing psychological and somatic distress which he attributed to her driver's license being removed. He also noted some mild difficulties with memory, attention and concentration." Ex. 1, p. 22.

9. Dr. Olson's assessment/diagnosis included, in relevant part: head contusion; continued intermittent headaches; thoracic contusion with MRI showing moderate disc protrusion at T6-T7; and preexisting cervical myofascial pain with stable appearance on MRI scan of her cervical spondylosis. He noted that, according to neuropsychological testing, Claimant also had some mild cognitive problems. Dr. Olson assigned a 12% whole person impairment rating, consisting of 7% impairment for the thoracic spine and 5% impairment for episodic headaches. Ex. 1.

10. On April 12, 2013, Respondent filed a Final Admission of Liability (FAL) in W.C. No. 4-880-583. Ex. 1. Respondent admitted for 12% whole person impairment rating and reasonable, necessary and related medical treatment with an authorized treating physician per Dr. Olson's April 3, 2013 report, which was attached to the FAL. The FAL noted the following remarks and basis for the permanent disability award: "Per the attached rpt from Dr. Olson dated 4/13/13 the IW is at MMI with a 12% WP rating.  $1.14 \times 400 \times 588.46 \times 12\% = 32,200.53$ . There is an over payment of TTD benefits of \$168.13 that will be deducted from impairment rating." Ex. 1, p. 20.

11. The certificate of mailing on the FAL certifies that copies of the FAL were mailed to Claimant as well as her attorney at the time. Ex. 1.

### *Settlement Agreement*

12. On August 6, 2013, Claimant signed and executed a Workers' Compensation Settlement Agreement: Represented Claimant for W.C. No. 4-880-583 and W.C. No. 4-874-358 (Settlement Agreement). Ex. 1.

13. The Settlement Agreement provided, in relevant part:

1. Claimant sustained or alleges injuries or occupational diseases arising out of and in the course of employment with the employer on or about January 11, 2012 and July 28, 2011 including, but not limited to her back, hip, head, and neck, as well as all consequences and effects of these injuries/conditions. Other disabilities, impairments and conditions that may be the result of these injuries or diseases but that are not

listed here are, nevertheless, intended by all parties to be included in and resolved FOREVER by this settlement.

2. In **full and final** settlement of all benefits, compensation, penalties and interest to which Claimant is or might be entitled to as a result of these alleged injuries or occupational diseases, Respondents agree to pay and Claimant agrees to accept the following **Nineteen Thousand Five Hundred Dollars** and no cents (**\$19,500.00**), in addition to all the benefits that have been previously paid to or on behalf of the Claimant...
3. As consideration for the amount paid under the terms of this settlement, Claimant rejects, waives, and forever gives up the right to claim all compensation and benefits to which Claimant might be entitled for each injury or occupational disease claimed here, including but not limited to the following, unless specifically provided otherwise in paragraph 9A of this agreement:

...

- g. All penalties, interest, costs, and attorneys' fees up to the date of this settlement is approved by the Division. The parties do not waive the right to seek post-approval penalties should either side fail to comply with the terms of the approved settlement agreement.

...

7. Claimant understands that this is a final settlement and that approval of this settlement by the Division of Workers' Compensation or by an administrative law judge from the Office of Administrative Courts dismisses this matter with prejudice and FOREVER closes all issues relating to this matter. Claimant is agreeing to this settlement of Claimant's own free will, without force, pressure, or coercion from anyone. Claimant is not relying upon any promises, guarantees, or predictions made by anyone as to Claimant's physical or mental condition; the nature, extent and duration of the injuries or occupational diseases as to any other aspect of this matter.

...

11. The Claimant has reviewed and discussed the terms of this settlement with Claimant's attorney, has been fully advised, and understands the rights that are being given up in this settlement. The parties agree to the terms of the settlement as contained in this agreement and waive a personal appearance of Claimant before the Director of the Division of Workers' Compensation or an Administrative Law Judge. Claimant

authorizes Respondents to send the settlement check directly to Claimant's attorney.

Ex. 1, pp. 6-8.

14. Claimant, as well as Claimant's attorney at the time, signed the Settlement Agreement. Ex. 1.

15. The Director of the DOWC issued a Settlement Order approving the Settlement Agreement on August 6, 2013. Ex. 1.

16. Claimant testified she had the advice of counsel when entering into the Settlement Agreement and that she relied on her former attorney's advice when deciding to enter into the Settlement Agreement. She testified she believed that the attorney had her best interests in mind at the time, but that she later came to believe the attorney did not actually represent her interests and "was in cahoots with the insurance company and the doctors and whoever else was involved in this case, and I had no idea." Hrg. Tr. 41:10-12.

#### *Fraud Allegations*

17. Claimant testified to her belief that the settlement is "void" due to fraud committed by various actors involved in her claim. She testified, "The settlement is void, that contract has no standing, based on fraud. The fraud of my attorney, the fraud of the doctors, the fraud of my employer. They were all conspiring against me and committed fraud." Hrg. Tr. 79:10-13.

18. Claimant testified that, after entering into the Settlement Agreement, she became aware of an alleged diagnosis of Post-traumatic Stress Disorder (PTSD) by Dr. Mann related to her January 11, 2012 work injury. Claimant alleges she was diagnosed with PTSD prior to entering into the Settlement Agreement, and that her former attorney, doctors and Respondent committed fraud by concealing such diagnosis. Claimant testified,

So then, in -- I -- after I signed all these [settlement] documents and I was no longer working, and it was about two years later; it wasn't until November of 2014, that I figured out -- I had taken a neurological examination by Dr. Mann and never received any results. And I am, like, why was I never given this. And this is all part of neurological problems that I have where I don't remember things and then things come back to me.

I found out that they never gave me anything about these exams that they were doing, and that I was diagnosed. I finally got the results of that testing on February 2nd, 2015, and that document that I received via fax to my personal physician, Dr. Jeffery Snyder, was a document saying I had PTSD with pain, is what I was diagnosed with caused by my employer.

Hrg. Tr. 49:9-21.

19. Claimant testified she no longer has Dr. Mann's alleged report that documents the alleged PTSD diagnosis because that report was somehow "replaced" on her computer by a series of emails from her former attorney. Claimant testified,

You don't have that document. It was replaced on my computer in a series of emails from [former attorney], my attorney; after I had received that document, I scanned it into my computer and sent it to him. And it took him a month to get back with me. And during this time he keeps sending me emails – oh, and finally, he told me, send this to me again.

Well, what I have figured out is that they put links into their emails with me, and in the process of using Dropbox, they replaced the documents saying I had PTSD with pain, with a document saying what was on the workers' comp documents that are a part of the evidence, which is some other kind of diagnosis that I've never heard of, at which time I contacted [former attorney] and told him what I had figured out. And he denied everything, of course, and told me I couldn't reopen because of I had signed this contract.

Hrg. Tr. 49:22-25, 50:1-11.

20. Claimant alleges Dr. Mann's December 12, 2012 Neuropsychological Evaluation report, contained in Claimant's exhibit 3, is not his original report. Claimant testified that the two fax headers at the top of Exhibit 3 demonstrate the report was replaced and is fake. She testified,

Exhibit 3 is a neuropsychological evaluation that is part of -- is from my workers' comp. If you look at that exhibit, you'll notice there is two dates at the top of this fax. One date shows page 2 of 21. That would be the original report that -- that they replaced. I no longer have a copy of that report.

This one is the -- at the top you'll also see another column and they were sent, like, one -- within a few minutes of each other.

So there was two reports sent to my doctor's office. The one for PTSD with pain caused by my employer, and this one which was a neuro psych - - neuro psych evaluation that diagnosed me with -- let's see here, adjustment disorder with depressed mood, pain disorder with psychological factors and a general medical condition, cognitive disorder not otherwise specified, mild. Which I did have mild cognitive issues at that point.

Hrg. Tr. 51:7-22.

21. There are two fax headers at the top of Exhibit 3, one showing a transmission date and time of 02/02/2015 12:29 p.003/007, and the other showing 02/02/2015 12:33 P.002/021.

22. Claimant alleges all of her records have been replaced with forged records. She testified,

So all my -- all my medical records I have figured out have been replaced with forgeries.

And I -- that has happened since living in the apartment that I live in who is -- which is owned by an insurance -- insurance recovery company. And they have been stalking me and harassing me for four years since I moved in there. They -- they put people in the apartment above me who get up at 3:00 in the morning and stomp above my head. They do things to harass me, to get me to explode because I do have PTSD and things do bother me, I guess, that I do explode when they harass me.

So all of my records that I have and that I'm assuming [former attorney] has, that they got from doctors are fraud. They are forged documents; they have changed the timelines of everything that happened. So those records are not accurate.

Hrg. Tr. 66:3-17.

23. Claimant testified she first discovered the alleged fraud on February 2, 2015, when she purportedly received copy of Dr. Mann's alleged report diagnosing her with PTSD. Hrg Tr. 73:20-25.

24. Claimant also accuses her primary care provider, Jeffrey Snyder, M.D. at Mountain View Medical Group, of withholding treatment for her alleged diagnosis of PTSD. In an email to Dr. Snyder in June 2015 Claimant wrote, "I have finally figured it out. PTSD and why are you withholding treatment for it? After telling you I have been told by 2 physicians that I needed counseling you failed to provide a referral for it..." Ex. 11, p. 1. Dr. Snyder replied,

if you just now have figured it out, how can I be withholding treatment for it?

But I am very sorry if this has come up in the past and I haven't addressed it, though I do not remember any specific conversations in this regard. I have put in a referral to a very good psychiatrist, who also handles occupational injury cases, in Colorado Springs, who I think would be a very good resource for you, Dr. Mann...

Id.

25. Exhibit 9 is a list entitled "Problems- Mountain View Medical Group" Claimant obtained from Dr. Snyder's office. The document lists Claimant's several conditions and

their “effective date.” PTSD is included on the list with an effective date of 06/29/2015. Dr. Snyder included PTSD on the list per Claimant’s request. Claimant testified, “It was after I got the – after I confronted my doctor, he put it on my list as having PTSD...Exhibit 9, yes; it lists PTSD, effective date 6/29/2015, but that’s – Dr. Snyder was obviously involved in the fraud.” Hrg. Tr. 72:3-5, 9-11.

26. Claimant testified she also gave what she alleges was Dr. Mann’s original report with the alleged PTSD diagnosis to another unnamed personal physician she saw after Dr. Snyder. She testified that she then never saw the report again as that doctor “mysteriously left the state” and relocated to North Carolina. Hrg. Tr. 62:3-4.

27. Claimant began seeing a personal concierge doctor, Dr. Amber, after ceasing treatment with Dr. Snyder. Claimant presented email correspondence between herself and Dr. Amber as purported evidence of alleged fraud. On April 22, 2021, Claimant asked Dr. Amber to look at the documents Claimant provided to her and claiming her lawyer “hacked my computer and replaced the report in my computer the day after I sent it to him. I have found several documents that have changed.” Ex. 4. Dr. Amber responded, “It looks like I have the first pages of that evaluation. This fax looks like the original fax was 21 pages but this version was only 7 from the heading.” Id. On May 18, 2021, Claimant emailed Dr. Amber stating, “Just to let you know the report you have is fake. The report that I received was diagnosing me with PTSD and said it was caused by my employer. My crooked attorney apparently had something to do with the replacement of the original report.” Id.

28. Claimant called [Redacted, hereinafter SO] as a witness at hearing. SO[Redacted] is a senior paralegal with [Redacted, hereinafter CA]. Claimant questioned whether SO[Redacted] once worked for [Redacted, hereinafter RA], the same law firm that represented Respondent in this claim in 2012-2013. SO[Redacted] credibly testified he worked for RA[Redacted] from January through August 2013 but did not work on Claimant’s case at that time.

29. Claimant testified that fraud was also committed because she did not undergo evaluation of her low back for the January 11, 2012 work injury. She further testified to her belief that the various accused actors were able to commit fraud because of her cognitive issues, which she alleges were, in part, purposely caused by the medications prescribed to her by her providers. She testified,

And then I -- so I've never had that -- that would be another area of fraud where they never even -- you know, if somebody slipped and fell flat on their back I would think you would want to X-ray the entire back and not just the upper back, which I had all that upper back pain prior to the slip and fall. I never had any lower back pain at that time, until the end of June of 2013, when I no longer could work because I was in so much pain, and they put me on oxycodone methocarbamol, tramadol. I was taking all three of those at once, and I believe they were doing that because it added to my cognitive issues.



Hrg. Tr. 54:9-18.

30. The only two reports by workers' compensation providers presented as evidence, Dr. Olson's April 3, 2013 MMI report, and Dr. Mann's December 12, 2012 Neuropsychological Evaluation report, do not document any low back complaints or findings. The records from Claimant's personal providers note Claimant's reported low back pain. On November 27, 2012, Claimant underwent a rheumatology consultation upon the referral of Dr. Snyder. Claimant complained of diffuse musculoskeletal pain, including pain in the neck shoulder girdles and low back. She was assessed with backache and fibromyalgia. Ex. 16. On July 30, 2015, Claimant saw Adam Smith, M.D. at South Denver Neurosurgery on the referral of Dr. Snyder. Claimant complained of lumbar pain and chronic pain she related to her January 2012 work injury. Dr. Smith assessed Claimant with lumbosacral spondylosis without myelopathy and congenital spondylolysis lumbosacral. Ex. 17. Neither report includes a medical opinion relating Claimant's reported low back pain to her work injury.

31. Claimant further alleges CL[Redacted] filed a workers' compensation claim for PTSD under her name without her knowledge. Claimant attempted to offer into evidence a one-page Worker's Claim for Compensation, contained in Exhibit 8, that the ALJ did not enter into evidence due to lack of authentication and foundation. Claimant testified she found the one-page form in a tub full of documents she had at home. She testified,

And so there – that's fraud. I mean they covered up that they gave me PTSD. And they even filed a claim for it, which was filed, apparently by CL[Redacted] – or with CL[Redacted], which I had never heard of that company prior to reopen – trying to reopen my claims a filing a mold case.

And since then, I found out my ex-husband's wife is – was the vice president of CL[Redacted]. And I – I don't have proof, but I'm thinking she embezzled a bunch of money and filed a false claim for PTSD with CL[Redacted]. I never got any money from CL[Redacted] that I'm aware of. The only people I had interactions with was BE[Redacted]. So I don't know how CL[Redacted] got in the mix...

Hrg. Tr. 57:2-12.

32. Claimant testified that, on June 30, 2012, she reached into a cabinet for coffee and her back locked up. She testified she sought treatment at the emergency room. Claimant testified this was the same date CL[Redacted] allegedly filed a claim for PTSD in her name without her knowledge:

The other areas, on 6/30/12, that was the day I couldn't get to the doctor. That's the date the PTSD claim was filed, 6/30/12. That's the date I went into -- I locked up in pain reaching for the coffee, and I went to the emergency room because I couldn't get to Colorado Springs to a workers' comp doctor.

And that's the -- matches the date that they filed the PTSD claim. I did not file that. So they filed a claim that I have no knowledge of, and I don't know the details of it because it's not in my contract. It's not in my settlement, even though there was a claim filed by CL[Redacted] for PTSD.

...

I think I've already exhibited that, that they covered up that they gave me PTSD, because I knew nothing about it until I -- you know, almost two years after I closed that workers' comp claim. I knew nothing about this, even though there's a claim for it. It's under my name. I know nothing of this claim. And they combined it with the other claim; the 488-0583, the settlement includes for 487-358; it's at the top of that settlement; it lists that claim number.

Hrg. Tr. 57:16-25; 58:1, 7-15.

33. The Request for Services forms dated July 14, 2023, attached to the claim files in Claimant's exhibits 1 and 2, notes a request for copies of the complete files for any and all claim files by Claimant. Claimant presented as evidence the claim files for WC Nos. 4-880-583 and 4-874-358. Claimant did not present as evidence a DOWC claim file for an alleged prior claim for PTSD filed by CL[Redacted].

34. Claimant testified she relied entirely on her doctors and her former attorney, who she believes were all aware of the alleged fraud regarding the purported PTSD diagnosis. Claimant testified she has suffered financially, medically and mentally as a result of the alleged fraud. She testified she suffers from unmanageable stress and anxiety and no longer trusts doctors, lawyers or employers.

35. Claimant acknowledges there is no documentation of her having PTSD prior to entering into the Settlement Agreement. She testified that this is because of the alleged fraud.

36. Claimant testified Respondent also committed fraud by allegedly withholding money for owed child support obligations, based on a citation to C.R.S. 8-42-124 in a General Admission of Liability (GAL) entered April 2, 2012. She further testified Respondent also "stole wages" from her. Claimant testified,

It states that date of first payment of temporary total disability, and it says 8-42-124. And if you look that up, it -- it says that if they owe child support. I had no child support orders. I was a single parent. And so where did this money go, because I never received it. That's another fraud.

And I also had wages -- they put me on bi-monthly payroll. And during that time I was shorted \$3,000-something dollars. I had a spreadsheet at home that I calculated how much I didn't receive during that time, and they had shorted me \$3,000-something dollars. And I was going around -- and they

were harassing me and they were -- what do you call it? There's a name -- gaslighting -- I think they were gaslighting me.

Hrg. Tr. 60:9-21.

37. Respondent filed a General Admission of Liability (GAL) dated March 28, 2012, stamped by the DOWC as “Entered” April 2, 2012. Ex. 1, p. 30. Under the section “Date of first payment paid TTD” it states “8-42-124” and under “Remarks” it states, “Benefits paid to employer per CO 8-42-124. Admit to back, hip and head.” Id. The standard language of the GAL states, in relevant part, “YOU ARE ALSO NOTIFIED that if a child-support obligation is owed, compensation benefits may be attached and payment of the child-support obligation may be withheld and forwarded to the obligee pursuant to sections 8-24-124 and 26-13-122(4), C.R.S.” Id.

38. The remarks section of a GAL dated November 9, 2012 and entered November 15, 2012 state “Benefits paid to employer per 8-42-124. As of 10/19/12 the IW will be receiving TTD benefits directly.” Ex. 1, p. 32. A letter from Respondent to BE[Redacted] dated November 1, 2012 notes Claimant exhausted injury leave as of October 18, 2012, Claimant had not returned to work, and requested TTD benefits be processed for the period of 10/22/12-11/1/12. Ex. 1, p. 34. The March 28, 2012 GAL nor any of the GALs or FAL in evidence indicate any of Claimant’s compensation benefits were attached to or payment withheld due to any child support obligations, nor were other offsets incorrectly or fraudulently applied.

#### *Ultimate Findings of Fact*

39. The ALJ finds Claimant failed to prove her claim should be reopened on the grounds of fraud or that penalties should be imposed on Respondent.

40. The ALJ finds Respondent failed to prove Claimant’s request to reopen should be barred by the equitable doctrine of laches.

41. Evidence and inferences contrary to these findings were not credible and persuasive.

## **CONCLUSIONS OF LAW**

### **Generally**

The purpose of the Workers’ Compensation Act of Colorado (the “Act”), Sections 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. §8-40-102(1), C.R.S. Claimants shoulder 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, 592 P.2d 792 (1979). The facts in a workers' compensation case must be

interpreted neutrally, neither in favor of the rights of claimants nor in favor of the rights of respondents. §8-43-201, C.R.S.

Assessing weight, credibility, and sufficiency of evidence in a 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. When determining credibility, the fact finder should consider, among other things, the consistency or inconsistency of the witness' 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*, 98 Colo. 275, 57 P.2d 1205 (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*, 165 Colo. 504, 441 P.2d 21 (1968).

The ALJ's factual findings concern only evidence found to be dispositive of the issues involved; the ALJ has not addressed every piece of evidence 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).

### **Reopening**

Section 8-43-303(1), C.R.S. provides that a settlement may be reopened at any time on the grounds of fraud or mutual mistake of material fact. The party attempting to reopen the issue or claim bears the burden of proof. §8-43-303(4), C.R.S. To reopen a claim on the ground of fraud, a claimant must prove the following:

To prove fraud, it must be shown that (1) the party misrepresented or concealed a material existing fact that in equity and good conscience should be disclosed; (2) the party knew they were making a false representation or concealing a material fact; (3) the other party was ignorant of the existence of the true facts; (4) the party making the representation or concealing a fact did so with the intent to induce action on the part of the other party; and (5) the misrepresentation or concealment caused damage to the other party. See *Valdez v. Alstom Inc.*, WC 4-784-196-002 (ICAO), Dec. 30, 2021), citing *Morrison v. Goodspeed*, 60 P.2d 458 (Colo. 1937); *Ingels v. Ingels*, 487 P.2d 812, 815 (Colo. App. 1971); *Beeson v. Albertson's, Inc.*, W.C. No. 3-968-056 (April 30, 1996); see also *Tygreff v. Denver Water*, WC 4-979-139-002 (ICAO, Dec. 7, 2021). To succeed on a claim for fraudulent concealment or nondisclosure, a party must show the other party had a duty to disclose material information. *Poly Trucking, Inc. v. Concentra Health Servs., Inc.*, 93 P.3d 561, 563–64 (Colo. App. 2004).

Claimant alleges Respondent, her former attorney, and multiple physicians, both in the workers' compensation system, and her own personal physicians, committed fraud with respect to her claim. Claimant's allegations of fraud against her doctors and former attorney are not relevant with respect to reopening her workers' compensation settlement with Respondent. Claimant's dissatisfaction with her medical treatment and her former attorney do not provide a basis to reopen her settlement on the ground of fraud, nor do her other grievances. To the extent Claimant contends her former attorney and physicians effectively conspired with Respondent to commit fraud, the ALJ is not persuaded.

The crux of Claimant's argument is that, prior to settlement of this claim in August 2013, Respondent purposely concealed a diagnosis of PTSD related to her January 11, 2012 work injury. In support of her argument, Claimant relies on a purported report of Dr. Mann she claims to have received in February 2015 that allegedly documents a diagnosis of PTSD. Claimant did not present the alleged report as evidence, nor any other evidence credibly documenting a PTSD diagnosis prior to the settlement. Claimant contends she does not have the relevant documentary evidence because her computer was somehow hacked by her former attorney, resulting in her documents being replaced with "forgeries." There is no credible or persuasive evidence this occurred or was even plausible in Claimant's case. The different fax headers on Dr. Mann's December 12, 2012 report contained in Exhibit 3 are insufficient to support Claimant's account of any alleged forgeries of documents. No credible or persuasive evidence was presented demonstrating Claimant's former attorney used some method to access her computer files and replace original documents with forged documents, let alone any evidence Respondent did so.

Any references to PTSD in Claimant's admitted exhibits are based on Claimant's reports to her personal physicians. Per Claimant's own testimony, Dr. Snyder added PTSD to her list of diagnoses at Claimant's request, and he did so noting a start date of June 2015. The ALJ notes Dr. Olson's April 3, 2013 MMI report does document that Dr. Mann performed neuropsychological testing and felt Claimant was experiencing some psychological and somatic distress. This report was attached to the April 12, 2013 FAL which, per the certificate of service on the FAL, was sent to both Claimant and her attorney prior to settlement. Even if Claimant did not receive the FAL and report, the evidence does not demonstrate Respondent purposefully concealed any psychological diagnosis. Even assuming, *arguendo*, there was a PTSD diagnosis prior to settlement, Claimant failed to present any credible or persuasive evidence establishing Respondent was aware of the diagnosis and intentionally concealed or misrepresented such information.

In her position statement, Claimant notes the DOWC claim file documents a claim filed for excessive driving causing pain, but alleges that "there was no claim pursued for that claim as BE[Redacted] denied the claim. I sent the denial to my attorney and he was supposed to be pursuing the denial." That Respondent initially denied the claim does not mean the claim was never filed. The DOWC records clearly show a claim was filed for the alleged July 28, 2011 work injury involving excessive

driving, assigned claim number 4-874-358, and that the claim was subsequently included as a part of the Settlement Agreement. Claimant further argues in her position statement that the records demonstrate a lump sum payout to her by CL[Redacted] in W.C. No. 4-874-358, but the Settlement Agreement does not mention CL[Redacted]. As found, the DOWC records demonstrate CL[Redacted] replaced BE[Redacted] as the TPA on these claims in July 2021. At the time of the Settlement Agreement, BE[Redacted] was the TPA.

Claimant's contention that CL[Redacted] somehow filed a worker's compensation claim for PTSD in her name without her knowledge, resulting in someone other than Claimant receiving payment under such claim, is unsupported by any credible or persuasive evidence. The one-page document Claimant offered that was not admitted into evidence lacked foundation and authentication. No DOWC claim file or other credible or persuasive evidence was presented demonstrating a claim was filed for PTSD in Claimant's name as she alleges. Claimant's allegations of some conspiracy involving CL[Redacted] and its involvement with alleged fraud is wholly unsupported by any credible or persuasive evidence.

Claimant also contends Respondent failed to evaluate her low back and ignored recommendations for further evaluation and treatment. Claimant presented no credible evidence that this involved any false representation of a material existing fact, a representation as to material fact with reckless disregard of its truth, or concealment of a material existing fact by Respondent. Furthermore, the Settlement Agreement specifically provided that the settlement forever resolved the January 11, 2012 and July 28, 2011 work injuries and/or occupational diseases, its consequences and effects, and any other disabilities, impairments and conditions that may be the result of the injuries or diseases. Claimant acknowledges she was represented by counsel at the time she entered into the Settlement Agreement. The ALJ is not persuaded Claimant did not understand the Settlement Agreement at the time.

Claimant testified to alleged stolen wages and wrongly withheld benefit payments with no corroborating evidence. Claimant presumes the citation to C.R.S. 8-42-124 in the March 28, 2012 GAL signifies that her compensation benefits were attached to, and payment thus withheld, for some child support obligation. There is no credible or persuasive evidence this was the case. Section 8-42-124, C.R.S. applies to various matters involving the assignability and exemption of claims with respect to payment to employers including, for example, wage continuation plans and payment of temporary indemnity benefits when an employer has charged an employee with injury leave or sick leave. Claimant testified she was not subject to any child support obligations. The citation to Section 8-42-124, C.R.S. in the GALs and FAL does not support Claimant's allegations. No credible or persuasive evidence was presented demonstrating Respondent withheld payment for child support obligations, or otherwise fraudulently withheld any payments or deducted any offsets.

Based on the totality of the evidence, Claimant failed to meet her burden to prove her settlement should be reopened on the grounds of fraud. The credible and persuasive evidence does not establish Respondent knowingly falsely represented a

material existing fact, represented a material fact with reckless disregard of its truth, or concealed a material existing fact with the intent that Claimant act upon such representation or concealment.

### Penalties

Section 8-43-304(1), C.R.S. provides that a daily monetary penalty may be imposed on any employer 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 Business Products v. Industrial Claim Appeals Office*, 126 P.3d 323 (Colo. App. 2005).

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. Industrial 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).

The question of whether the insurer's conduct was objectively unreasonable presents a question of fact for the ALJ. *Pioneers Hospital v. Industrial Claim Appeals Office*, 114 P.3d 97 (Colo. App. 2005); see *Pant Connection Plus v. Industrial Claim Appeals Office*, 240 P.3d 429 (Colo. App. 2010). A party establishes a prima facie showing of unreasonable conduct by proving that an insurer violated a rule of procedure. See *Pioneers Hospital* 114 P.2d at 99. If the claimant makes a prima facie showing the burden of persuasion shifts to the respondents to prove their conduct was reasonable under the circumstances. *Id.*

Section 8-43-304(1), C.R.S. authorizes the imposition of penalties of not more than \$1000 per day if an employee or person "fails, neglects, or refuses to obey any lawful order made by the director or panel." This provision applies to orders entered by a PALJ. See §8-43-207.5, C.R.S. (order entered by PALJ shall be an order of the director and is binding on the parties); *Kennedy v. Industrial Claim Appeals Office*, 100 P.3d 949 (Colo. App. 2004). A person fails or neglects to obey an order if she leaves undone that which is mandated by an order. A person refuses to comply with an order if she withholds compliance with an order. See *Dworkin, Chambers & Williams, P.C. v. Provo*, 81 P.3d 1053 (Colo. 2003). In cases where a party fails, neglects or refuses to obey an order to take some action, penalties may be imposed under §8-43-304(1), even if the Act imposes a specific violation for the underlying conduct. *Holliday v. Bestop, Inc.*, 23 P.3d 700 (Colo. 2001).

Section 8-43-304(4), C.R.S., provides that in “any application for hearing for a penalty pursuant to subsection (1) of this section, the applicant shall state with specificity the grounds on which the penalty is being asserted.” The failure to state the grounds for penalties with specificity may result in dismissal of the penalty claims. *In re Tidwell*, WC 4-917-514-03 (ICAO, Mar. 2, 2015).

The issue of any penalties that occurred prior to entering into the settlement are covered by paragraph 3(g) of the Settlement Agreement and are thus closed, as the ALJ determined there is no basis to reopen Claimant’s settlement on the grounds of fraud. Even assuming, *arguendo*, there was a basis to address such prior penalties, Claimant offered no evidence penalties should be imposed. Claimant contends Respondent fraudulently applied an offset of benefits, which is not supported by any credible or persuasive evidence, as discussed above. Claimant failed to identify any statute, rule or order that was otherwise allegedly violated. Claimant did not allege Respondent failed to comply with the terms of the approved Settlement Agreement. Claimant failed to present any evidence that Respondent violated any statute, rule or order. Accordingly, Claimant failed to prove penalties should be imposed against Respondent.

### **Laches**

The doctrine of laches is an equitable defense that may be used to deny relief to a party whose unconscionable delay in enforcing his or her legal rights is prejudicial to the party against whom enforcement is sought. *Safeway, Inc. v. Industrial Claim Appeals Office*, 186 P.3d 103 (Colo. App. 2008); *Burke v. Industrial Claim Appeals Office*, 905 P. 2d 1 (Colo. App. 1994); *Bacon v. Industrial Claim Appeals Office*, 746 P.2d 74, 75-76 (Colo. App. 1987). The elements of laches are: (1) full knowledge of the facts; (2) unreasonable delay in the assertion of an available remedy; and (3) intervening reliance by and prejudice to another. *Cullen v. Phillips*, 30 P.3d 828 (Colo. App. 2001), citing *Manor Vail Condominium Ass’n v. Town of Vail*, 199 Colo. 62, 604 P.2d 1168 (1980). The prejudice may include a detrimental change of position by the defendant, loss of evidence, death of witnesses, or other circumstances arising during the period of delay that affect the defendant’s ability to defend. *Id.*, citing *Board of County Commissioners v. Blanning*, 29 Colo. App. 61, 479 P.2d 404 (1970). The Respondents have the burden of proof to establish laches. *Johnson v. Industrial Commission*, 761 P.2d 1140 (Colo. 1988).

Claimant acknowledges she became aware of the alleged fraud in February 2015. Claimant did not file an Application for Hearing on the issue until October 2023. Claimant offered no explanation regarding the eight-year delay in asserting her legal rights. Accordingly, the ALJ concludes Claimant had full knowledge of the facts and the eight-year delay in asserting her legal rights is unconscionable. Nonetheless, Respondent failed to prove they were prejudiced by Claimant’s delay.

Respondent argues in its position statement that Claimant’s delay inhibited Respondent’s ability to fully investigate the fraud allegation, as material witnesses of employees of Respondent have retired or otherwise left employment and retention



policies complicate the task of procuring relevant documents several years later. Respondent offered no evidence in support of its argument. Thus, while the ALJ can imagine the potential difficulties that may result from an eight-year delay in a claimant failing to assert his or her legal rights, the ALJ cannot conclude Respondent was prejudiced solely based on argument and assumption without evidence. Respondent did not present any witnesses nor offer any exhibits. The evidence offered by Claimant and admitted to the record does not demonstrate any prejudice suffered by Respondent. Accordingly, Respondent failed to establish Claimant's request to reopen her settlement on the grounds of fraud should be barred by the doctrine of laches.

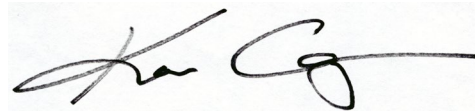
### **ORDER**

It is therefore ordered that:

1. Claimant's petition to reopen her settlement is denied and dismissed.
2. Claimant's request for penalties is denied and dismissed.
3. Respondent's laches defense is denied and dismissed.
4. All matters not determined herein are reserved for future determination.

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

DATED: October 30, 2024



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Kara R. Cayce  
Administrative Law Judge  
Office of Administrative Courts  
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Denver, CO 80203