ISSUE

Whether Claimant proved by a preponderance of the evidence entitlement to reasonable, necessary, and related medical benefits, specifically physical therapy, massage therapy, chiropractic care, and acupuncture.

FINDINGS OF FACT

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

1. Claimant was employed by the employer when she was involved in a rear-end motor vehicle accident ("MVA") on October 9, 2023.

2. Claimant went to AFC Urgent Care with complaints of left sided neck pain, shoulder, face, and arm complaints. On October 17, 2023, she was referred for an MRI of her neck and to physical therapy.

3. The MRI revealed straightening of the lordosis of the cervical spine, and disc herniations at C3-4, C4-5, and C6-7 with neuroforaminal narrowing with potential compression of left C4 and C5 nerve roots and right C7 nerve roots.

4. On October 17, 2023, Claimant was given temporary work restrictions, limiting her driving to four hours daily.

5. Claimant had started physical therapy, but on November 14, 2023, reported that on workdays her pain was the worst, and she wanted to try a four-hour limitation for both driving and screen time.

6. That same day, Claimant saw Timothy Kuklo, MD, at Denver International Spine Center, who recommended medication and physical therapy. Dr. Kulo's office continued to recommend this treatment, in addition to massage and dry needling.

7. By December 4, 2023, Claimant complained of worsening radiation of pain into her left hand, and ongoing stiffness and paid “with any movements.”

8. Claimant’s work restrictions continued until January 7 through January 11, 2024. At that time, she was released to work her full shift with the freedom to take an hour break as needed.

9. Claimant continued to go to physical therapy, and was given a script for dry needling, and a home TENS unit and neck traction devise. By January 16, 2024, Claimant’s work restrictions increased again to four hours of work when driving or computer work.

10. Claimant work restrictions decreased on January 31, 2024, from four hours to eight hours with breaks as needed. Claimant was also referred to massage therapy.

11. Claimant treated at Mile High Sports on February 20, 2024, who recommended physical therapy, TENS unit, traction, and dry needling.

12. By March 31, 2024, Claimant was receiving physical therapy, dry needling, and massage therapy, as well as pharmaceutical treatment. She reported “waxing and waning improvement.” There were no complications with her return to an eight-hour workday.

13. On April 5, 2024, Claimant had an appointment with her treater Nurse practitioner Slinden at AFC Urgent Care. Because she had been working an eight-hour day with frequent driving and had a six-month duration of treatment with no additional procedures recommended, consideration of an impairment rating was discussed. Claimant was angry, and stated, “You’re not my physical therapist, but you’re trying to end my care.” It was agreed to proceed with physical therapy.

14. On May 3, 2024, Claimant continued to be prescribed physical therapy.

15. On June 7, 2024, Claimant received a referral for chiropractic treatment and was continue with physical therapy.

16. On June 13, 2024, Claimant had a chiropractic treatment at the referral of her provider at AFC Urgent Care. Her pain that day was 6-7/10 with an average of 4-5/10, least 1-2/10 and worst 8-9/10. Claimant reported that improvement of her condition has been very slow, despite attending physical therapy. It was recommended that she proceed with chiropractic care, trigger point dry needling, massage therapy, myofascial release and rehabilitation therapy.

17. At Claimant's request, her chiropractic care was transferred to a new facility, Colorado Chiropractic and Rehabilitation Center

18. By June 25, 2024, Shimon Y. Blau, MD, recommended left C3-4, C4-5 transforaminal epidural steroid injections, which Claimant received.

19. By July 1, 2024, Claimant pain levels averaged 6/10, with the least being 4-5/10 and worst being 7-8/10. This is relatively consistent with the pain ratings from June 13, 2024.

20. On July 5, 2024, Claimant returned to AFC Urgent Care, documenting that Claimant did not think that an appointment with the pain specialist went well "as he barely looked at her." An injection was offered and refused. Claimant was working with restrictions with no complaints.

21. Claimant had chiropractic care on July 5, 2024, with reports of increased pain levels, a burning sensation, sleep disruption, and driving and computer work causing increased pain. These reports are inconsistent with AFC Urgent Care's reports that Claimant had no complaints about working with restrictions.

22. On July 9, 2024, Claimant's pain was 6-7/10, with increased pain with reaching, sitting, and sleeping, and pain while driving, sitting at the computer, and carrying

23. On August 2, 2024, AFC Urgent Care continued to recommend chiropractic treatment, physical therapy, and massage.

24. AFC Urgent Care reported on September 13, 2024, that Claimant had improvement, and then some days/weeks a worsening, which she thought was related to working. She wished to continue with chiropractic care, massage, and physical therapy.

25. On October 18, 2024, AFC Urgent Care noted a deferral of an impairment rating, given Claimant's report that chiropractic care, massage, and physical therapy were helping her. Such treatments were to continue.

26. Dr. Ogin performed an IME on December 13, 2024, at Respondents' request. Dr. Ogin opined that Claimant had an excessive amount of physical therapy and chiropractic treatments, which exceeded the Colorado Medical Treatment Guidelines (Rule 17, Exhibit 8) for passive therapies such as manipulation, mobilization, massage, dry needling, and other modalities. Dr. Ogin testified consistent with his report and explained that Claimant may feel better from passive therapies for the short term, but the immediate improvement is not indicative of long-term improvement as a result of the passive modalities.

27. Yusuke Wakeshima, MD, saw Claimant on December 16, 2024. Claimant did not want to return to Dr. Blau. Dr. Wakeshima concurred with Dr. Ogin's opinion recommending interventional procedures.

28. On January 21, 2025, Dr. Wakeshima reviewed Dr. Ogin's report and opinions in great detail. Dr. Wakeshima mentioned that Claimant had not tried

acupuncture, and that 15 sessions would be reasonable if Claimant's pain decreased within four sessions. Dr. Wakeshima also wrote:

> I would also concur with Dr. Ogin, that the patient has received beyond the 8 weeks of treatment for passive treatments consistent of chiropractor treatment with dry needling, physical therapy, and massage, and therefore, further chiropractic treatment with dry needling, physical therapy, massage would not be warranted prior (sic) to Colorado Division of Workers' Compensation Medical Treatment Guidelines.

29. From November 6, 2023, to January 3, 2025, Claimant attended 110 physical therapy or massage therapy appointments.

30. By January 22, 2025, after about 19 days of not receiving either chiropractic care, massage, or physical therapy, Claimant complained of increased pain. She was released to work with no restrictions.

31. Dr. Wakeshima referred Claimant to Dr. Sacha on February 4, 2025, for left C3-4, C4-5 medial branch blocks. Dr. Sacha performed the procedure on April 17, 2025. The procedure did not provide Claimant with any profound relief. Accordingly, medial branch blocks were recommended at C1-2, C2-3.

32. On April 21, and 22, 2025, Claimant was referred for more physical therapy.

33. Claimant testified that the lack of ongoing passive therapy has caused an increase in pain and a decrease in her function.

CONCLUSIONS OF LAW

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

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

preponderance of the evidence. C.R.S. § 8-43-201. A preponderance of the evidence is that which leads the trier-of-fact, after considering all of the evidence, to find that a fact is more probably true than not. *Page v. Clark*, 197 Colo. 306, 592 P.2d 792 (1979). The facts in a workers' compensation case must be interpreted neutrally; neither in favor of the rights of the claimant nor in favor of the rights of respondents; and a workers' compensation claim shall be decided on its merits. C.R.S. § 8-43-201.

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

3. In deciding whether a party has met the burden of proof, the ALJ is empowered "to resolve conflicts in the evidence, make credibility determinations, determine the weight to be accorded to expert testimony, and draw plausible inferences from the evidence." *See Bodensleck v. ICAO*, 183 P.3d 684 (Colo. App. 2008). The ALJ determines the credibility of the witnesses. *Arenas v. ICAO,* 8 P.3d 558 (Colo. App. 2000). The weight and credibility to be assigned evidence is a matter within the discretion of the ALJ. *Cordova v. ICAO*, 55 P.3d 186 (Colo. App. 2002). The same principles concerning credibility determinations that apply to lay witnesses apply to expert witnesses as well. *See Burnham v. Grant,* 24 Colo. App. 131, 134 P. 254 (1913); *see also Heinicke v. ICAO*, 197 P.3d 220 (Colo. App. 2008). The fact finder should consider, among other things, the consistency or inconsistency of the witness's testimony and actions, the reasonableness or unreasonableness (probability or improbability) of the testimony and actions; the motives of the witness, whether the testimony has been contradicted, and

bias, prejudice, or interest. *See Prudential Insurance Co. v. Cline*, 98 Colo. 275, 57 P.2d 1205 (1936); CJI, Civil 3:16 (2007). A workers' compensation case is decided on its merits. C.R.S. § 8-43-201.

4. Respondents are only liable for medical treatment reasonably necessary to cure or relieve the employee from the effects of a work-related injury. C.R.S. § 8-42-101. Where the relatedness, reasonableness or necessity of medical treatment is disputed, the claimant has the burden to prove that the disputed treatment is causally related to the injury, and reasonably necessary to cure or relieve the effects of the injury. *Ciesiolka v. Allright Colorado, Inc.,* W.C. No. 4-117-758 (ICAO April 7, 2003).

5. W.C.R.P. 17, Exhibit 8, Section 7.b.i. explains that passive therapies are most helpful early in treatment. Further, Recommendation 69 states that Patients in passive therapy must demonstrate functional progress through validated functional assessment measures. If there is no evidence of functional progress within the time to produce effect, the therapy shall be discontinued, and the patient must be referred back to their treating provider for evaluation. Each patient is limited to a maximum of 4 discrete passive therapy trials. Recommendation 71 requires that the frequency of passive therapy *must* decrease over time. Recommendation 72 clarifies that the duration of passive therapy beyond the time to produce effect or maximum warranted in certain circumstances when treatment to date has resulted in measurable and clinically meaningful functional improvement. Such circumstances are not in this case. Further, specific goals with objective measures of functional improvement must be cited to justify extended durations of care.

6. W.C.R.P. 17, Exhibit 8 includes the following time frames for passive therapies:

Time Frames for Passive Therapies			
	Time to produce effect (sessions)	Frequency* (sessions/week)	Maximum duration
Mobilization and Manipulation	up to 6	up to 3 times/week	8 weeks
Massage	1	up to 2 times/week	8 weeks
Acupuncture	up to 6	up to 3 times/week	15 treatments
Heat/cold, short-wave diathermy, unattended electrical stimulation (e.g., TENS**)	up to 4	up to 3 times/week	8 weeks
Trigger point / dry needling	up to 4	up to 2 times/week	8 weeks
Traction (manual)***	up to 3	up to 3 times/week	4 weeks
*See recommendation 71 regarding the expected decreasing frequency over time. **If TENS treatment results in documented functional benefit and is anticipated to extend beyond 4 treatments, consider purchase of a home TENS unit. ***If response is negative after 3 thirty minute treatments, discontinue.			

7. In this case, Claimant received passive therapies well in excess of the Colorado Workers' Compensation Medical Treatment Guidelines but in duration and because she had more than four discrete passive therapies (mobilization and manipulation, massage, TENS, dry needling, and traction). Even with such an excessive and varied amount of treatments, Claimant was unable to decrease the frequency of passive visits over time, without sustaining a setback in pain and/or function. Therefore, passive therapies such as massage, physical therapy, chiropractic treatment, and acupuncture may feel good to her, but at this point in the claim are not reasonable and are not necessary.

8. Since the discontinuation of passive treatments, Claimant has received treatment, including pharmaceutical and interventional procedures as recommended by Dr. Ogin, Dr. Wakeshima, Dr. Blau, and Dr. Sacha.

9. Claimant failed to prove that physical therapy, chiropractic, massage, and acupuncture is reasonable or necessary. As such, the request for additional passive treatment is denied.

ORDER

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

1. Claimant's request for additional physical therapy, chiropractic treatment, massage therapy, and acupuncture is denied and dismissed.

2. Any issues not determined in this decision are reserved for future determination.

DATED: September 2, 2025

Michael A. Perales
Michael A. Perales
Administrative Law Judge
Office of Administrative Courts
1525 Sherman Street, 4th Floor
Denver, CO 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 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 27, OACRP. You may access a petition to review form at: http://www.colorado.gov/dpa/oac/forms-WC.htm.***

Office of Administrative Courts
State of Colorado
Workers' Compensation Number 5-239-298-001

Issues

1. Has Claimant demonstrated, by a preponderance of the evidence, that she suffered an injury arising out of and in the course and scope of her employment with Employer?

2. If the Claimant is found compensable, has Claimant demonstrated, by a preponderance of the evidence, that treatment she has received for the injury (including, but not limited to, treatment through Concentra) constitute reasonable medical treatment necessary to cure Claimant from the effects of the work injury?

3. The endorsed issues of temporary total disability (TTD) benefits and temporary partial disability (TPD) benefits were reserved for future determination, if necessary.

4. The endorsed issue of permanent partial disability (PPD) benefits was withdrawn as that issue is not yet ripe.

Findings of Fact

1. Claimant did not testify at the hearing in this matter. Therefore, the ALJ is limited to consider records admitted into evidence and the testimony of Dr. Kleinman.

2. Claimant worked for Employer as a high school teacher. On April 28, 2023, an Employer First Report of Injury was prepared by Employer. That document identified a date and time of injury of March 22, 2023, at approximately 10:00 a.m. The nature of the injury was identified as "[m]ental stress". More specifically, the injury was described as "[employee] states she is a teacher who has experienced a shooting in her school and has been diagnosed with PTSD".[1]

[1] Post traumatic stress disorder.

3. On May 22, 2023, Respondent issued a Notice of Contest for further investigation regarding whether the claim was compensable.

4. Throughout this claim, providers at Concentra have been Claimant's ATP (authorized treating provider). Claimant began treatment with Concentra on May 2, 2023 and was seen by Dr. Stephen Danahey. At that time, Dr. Danahey recorded that "between 9/7/22 and 3/22/23 [Claimant] has been exposed to several shootings involving her students, other students and faculty. [Claimant] has been exposed to ongoing violence in general, including fights, pulling the fire alarm etc." Dr. Danahey also noted that Claimant was being seen by a counselor provided by Employer. Dr. Danahey diagnosed Claimant with PTSD. He recommended Claimant continue with therapy and engage in "mental rest".

5. Claimant returned to Concentra on May 9, 2023 and was seen by Eric Anderson, PA. At that time, PA Anderson placed Claimant on work restrictions of a four day work week. PA Anderson also recommended a change to Claimant's medications, but he did not specify what that change would entail. In the medical record of that date, Claimant's diagnoses were listed as PTSD and anxiety. In addition, PA Anderson made a referral to a psychologist for treatment.

6. On June 1, 2023, Claimant was seen by Jennifer Sandberg, MA, LPC, for psychotherapy. In the medical record of that date, Ms. Sandberg recorded Claimant's description of the March 22, 2023 school shooting as follows: "Two school administrators were shot by a student and later that evening that same student was found dead due to suicide." Claimant also reported to Ms. Sandberg that:

> prior to this shooting, there were other violent events that took place in or very nearby [Claimant's school] in the months leading up to the March 2023 shooting. These include a large group fight which led to a shooting that hospitalized two students on September 7, 2022, a report of an active shooter in [Claimant's school] on September 19, 2022, which led to a school lock-down and which was later unfounded, a major physical fight between students in the school in October 2022,

and a student was shot in a car outside the high school on February 13, 2023.

7. Also on June 1, 2023, Ms. Sandberg listed Claimant's symptoms as intrusion symptoms, avoidance, negative cognitions, and hyperarousal. Ms. Sandberg listed Claimant's diagnoses as PTSD and adjustment disorder with depressive symptoms. Ms. Sandberg recommended additional treatment of eight to ten sessions of psychological counseling.

8. On June 2, 2023, Claimant was seen at Concentra by Dr. Kristina Robinson. At that time, Claimant continued to experience symptoms of hypervigilance, anxiety, anger, tearfulness, and distress. Dr. Robinson noted that Claimant's workers' compensation claim had been denied. Dr. Robinson recorded Claimant's report that she had experienced "specific hardships of this year with 3 shootings and a fourth SWAT related event".

9. Thereafter, Claimant attended eight therapy sessions with Ms. Sandberg from June 8, 2023 through September 5, 2023.

10. On June 16, 2025, Claimant attended a psychiatric independent medical examination (IME) with Dr. Kleinman. In connection with the IME, Dr. Kleinman reviewed Claimant's medical records, obtained a history from Claimant, and performed a psychiatric evaluation. In his June 16, 2025 report, Dr. Kleinman opined that Claimant does not have PTSD. However, Dr. Kleinman determined that due to her experiences at work (including the incident on March 22, 2023), Claimant has a diagnosis of secondary traumatic stress. With regard to the March 22, 2023 incident at work, Dr. Kleinman stated in the IME report:

> [Claimant] said that on 03/22/2023 she was teaching and on a break in the third floor lounge. Then, the school was put on a lockdown, which had happened previously. During the lockdown, as protocol, she checked the hallway. She saw a student in the hallway who she had come into the lounge with her. There was also a student teacher in the lounge. At first, they weren't sure if this was a drill or a real event.

> While waiting there were text messages about police on the lawn, an active shooter, and a colleague being shot. She feared for her safety and the safety of the student with them, and the other students.

11. Dr. Kleinman also recorded prior incidents that Claimant described to him at the IME. Specifically, Dr. Kleinman noted:

> • On 02/13/2023 there was a drive-by shooting. One person was shot and killed. [Claimant] was teaching at the time, in a classroom. with a window facing the street. She said fortunately the blinds were down because the class was watching a movie. Nevertheless, she heard something which, though she did not know what it was, but apparently was a shot. When the ambulance came, the students started to look out the window.
>
> • Another event was in September 2022 when there was a shooting and a child was shot. [Claimant] was leaving the school at the time and saw the police."

12. Dr. Kleinman noted that Claimant's symptoms at the IME were consistent with PTSD. Those symptoms included intrusion symptoms with nightmares, intrusive thoughts, flashbacks, negative cognitions, secondary traumatic stress, and increased arousal. Dr. Kleinman opined that after the eighth session of therapy on September 5, 2023, Claimant had reached maximum medical improvement (MMI). With regard to post-MMI medical treatment, Dr. Kleinman recommended 12 weekly sessions of trauma specific therapy. Dr. Kleinman assigned a psychiatric permanent impairment rating of three percent, which he related to the March 22, 2023 date of injury.

13. Dr. Kleinman's testimony was consistent with his IME report. Dr. Kleinman testified that he diagnosed Claimant with "other specified trauma and stressor related disorder". Dr. Kleinman explained that this diagnosis is not PTSD because Claimant did not directly experience the events of the March 22, 2023 shooting. However, Dr. Kleinman also testified that due to the shooting event of March 22, 2023 Claimant suffered from anxiety and symptoms indicative of a stress reaction including intrusion

symptoms, avoidance, negative cognition, and increased arousal. Dr. Kleinman further testified that the treatment Claimant has received to date has been reasonable, necessary, and related to the stress reaction and related diagnosis. Dr. Kleinman also testified that Claimant would benefit from additional treatment related to the events of March 22, 2023.

14. The ALJ credits the medical records and the opinions of Dr. Kleinman. The ALJ specifically credits Dr. Kleinman's diagnosis of other specified trauma and stressor related disorder. Although the ALJ recognizes the ongoing occurrence of school shootings in the United States, the ALJ specifically finds that such events are **not** part of a teacher's "usual experience". Furthermore, the ALJ finds that on March 22, 2023, Claimant suffered a psychologically traumatic event. Therefore, the ALJ finds that Claimant has demonstrated that it is more likely than not that she suffered an injury arising out of and in the course and scope of her employment with Employer.

15. The ALJ further credits the medical records and the opinions of Dr. Kleinman and finds that Claimant has demonstrated that it is more likely than not that medical treatment she has received (including, but not limited to, treatment through Concentra), is reasonable medical treatment necessary to cure her from the effects of the work injury.

Conclusions of Law

1. The purpose of the Workers' Compensation Act of Colorado is to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of any litigation. Section 8-40-102(1), C.R.S. A claimant in a Workers' Compensation claim has the burden of proving entitlement to benefits by a preponderance of the evidence. Section 8-43-201, C.R.S. A preponderance of the evidence is that which leads the trier-of-fact, after considering all of the evidence, to find that a fact is more probable than not. *Page v. Clark*, 197 Colo. 306, 592 P.2d 792 (1979). The facts in a Workers' Compensation case are not interpreted liberally in favor of either the rights of the injured worker or the rights of the

employer. Section 8-43-201, *supra*. A Workers' Compensation case is decided on its merits. Section 8-43-201, *supra*.

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

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

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

5. Section 8-41-301(2)(a)., C.R.S., addresses a claim involving a mental impairment. That section provides, in pertinent part, that such a claim "must be proven by evidence supported by the testimony of a licensed psychiatrist or psychologist. . . The mental impairment that is the basis of the claim must have arisen primarily from the claimant's then occupation and place of employment in order to be compensable."

6. Section 8-41-301(3)(a), C.R.S. defines mental impairment as "a recognized, permanent disability arising from an accidental injury arising out of and in

the course of employment when the accidental injury involves no physical injury and consists of a psychologically traumatic event."

7. Section 8-41-301(3)(b)(I), C.R.S. defines a psychologically traumatic event as "an event that is generally outside of a worker's usual experience and would evoke significant symptoms of distress in a worker in similar circumstances."

8. An exception to this definition is carved out in Section 8-41-301(3)(b)(II), C.R.S., for workers that experience psychologically traumatic events as part of their "usual experience". Specifically, that section states that a "[p]sychologically traumatic event" also includes an event that is within a ***worker's usual experience*** only when the worker is diagnosed with post-traumatic stress disorder by a licensed psychiatrist or psychologist after the worker experienced exposure to one or more of the following events: (A) The worker is the subject of an attempt by another person to cause the worker serious bodily injury or death through the use of deadly force, and the worker reasonably believes the worker is the subject of the attempt; (B) The worker visually or audibly, or both visually and audibly, witnesses a death, or the immediate aftermath of the death, of one or more people as the result of a violent event; or (C) The worker repeatedly and either visually or audibly, or both visually and audibly, witnesses the serious bodily injury, or the immediate aftermath of the serious bodily injury, of one or more people as the result of the intentional act of another person or an accident. (***emphasis added***).

9. As found, Claimant has demonstrated, by a preponderance of the evidence, that she suffered an injury arising out of and in the course and scope of her employment with Employer. The ALJ finds that Claimant has met the criteria of Section 8-41-301(2)(a)., C.R.S. As found, Dr. Kleinman has diagnosed Claimant with other specified trauma and stressor related disorder. As found, this diagnosis arose from the events of March 22, 2023 surrounding a shooting at Claimant's school. As found, a school shooting is not a usual aspect of Claimant's employment. Therefore, the additional requirements of 8-41-301(3)(b)(II), C.R.S. are not applicable in this case. As

found, the medical records and the opinions of Dr. Kleinman are credible and persuasive on this issue.

10. 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.; *Sims v. Industrial Claim Appeals Office*, 797 P.2d 777 (Colo. App. 1990).

11. As found, Claimant demonstrated, by a preponderance of the evidence, that treatment she has received for the injury/mental impairment, (including, but not limited to, treatment through Concentra) constitutes reasonable medical treatment necessary to cure Claimant from the effects of the work injury. As found, the medical records and the opinions of Dr. Kleinman are credible and persuasive on this issue.

Order

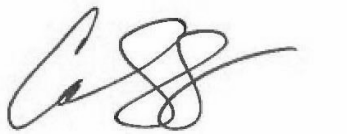
It is therefore ordered:

1. The claim is compensable. Specifically, Claimant suffered a mental impairment in the course and scope of her employment with Employer.

2. All treatment Claimant has received has been reasonable, necessary, and related to her injury.

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

Dated September 3, 2025.



Cassandra M. Sidanycz
Administrative Law Judge
Office of Administrative Courts

If you are dissatisfied with the ALJ's order, you may file a Petition to Review the order with the **Denver Office of Administrative Courts**, 1525 Sherman St., 4th Floor,

Denver, CO 80203. You must file your Petition to Review within twenty (20) days after service of the order, as indicated on the certificate of mailing or service; otherwise, the ALJ's order will be final. Section 8-43-301(2), C.R.S. and OACRP 27. You may access a petition to review form at: https://oac.colorado.gov/resources/oac-forms.

You may file the Petition to Review by mail, as long as the certificate of mailing attached to your petition shows: (1) That you mailed it within twenty (20) days after mailing or service of the order of the ALJ; and (2) That you mailed it to the above address for the **Denver Office of Administrative Courts**. You may file your Petition to Review electronically by emailing the Petition to Review via email to either **oac-ptr@state.co.us** or to **oac-dvr@state.co.us**. If the Petition to Review is emailed to either of the aforementioned email addresses, the Petition to Review is deemed filed in Denver pursuant to OACRP 27(A) and Section 8-43-301, C.R.S. If the Petition to Review is filed by email to the proper email address, it does not need to be mailed to the Denver Office of Administrative Courts. **It is also recommended that you provide a courtesy copy of your Petition to Review to the Grand Junction OAC via email at oac-gjt@state.co.us.**

Issues

I. Whether Claimant established by a preponderance of the evidence that hip surgery is reasonably necessary and related to Claimant's work injury.

II. Whether Respondents' conduct constitutes an unreasonable delay or denial of prior authorization under WCRP 16-7(F), subjecting Respondents to penalties pursuant to 8-43-304(1), C.R.S., and also results in the automatic authorization of the surgery.

Preliminary Evidentiary Issues Regarding Exhibits

At hearing, Claimant's Exhibits 1 through 6, except for Respondents' discovery answers, were admitted into evidence. Respondents submitted Exhibits A through C. Claimant objected to Exhibit C, which contains correspondence from Respondents' counsel denying authorization for the surgery at issue. Claimant contends the letters are inadmissible because Respondents did not move for their admission into evidence, failed to lay the proper foundation pursuant to Rule 901 by properly authenticating and identifying the documents, and because they are hearsay. First, the ALJ considers Respondents' submission of Exhibit C at the beginning of the hearing, and the ALJ's indication that he will take the objection under advisement, to constitute an attempt to offer the letters into evidence. Second, the ALJ finds the letters to be self-authenticating. Each letter has the name of the law firm at the top as well as the name of Respondents' attorney. Moreover, the attorney has filed an Entry of Appearance and a Response to Application for Hearing in this matter and is representing Respondents at this hearing. Nor did Claimant present any argument that would call into question the authenticity of the letters or whether they were sent. While there are some anomalies involving the letters, such as an error on the second page regarding the date of the letter, and the certificate of mailing/service is not completed, those anomalies merely go to the weight to give to such evidence.

Last of all, regarding the hearsay objection, based on the purpose for which the letters were being offered, they are not found to be hearsay. Under CRE 801(a), each letter is a written assertion, making it a "statement." However, under CRE 801(c), each letter is not hearsay because it is not "offered in evidence to prove the truth of the matter asserted." The purpose of offering each letter is to prove the Respondent performed the act of denying authorization and to prove the timing of the denial. The purpose of each letter was not to prove the truth of any factual assertions within the letter about why the denial was warranted. The denial letters therefore constitute legally operative acts or represent legally operative conduct. The Respondents' obligation was to provide timely notice of a denial and take certain action such as scheduling an IME. Each letter serves as evidence of Respondents' actions to fulfill their legal obligations under Rule 16, regardless of whether any explanatory content within the letter is accurate.

Findings of Fact

Pre-Injury Status

1. Before August 15, 2024, Claimant had no history of right hip complaints, treatment, medication use, or any form of medical care related to his hip. He had no work restrictions and was capable of walking miles without difficulty. No diagnostic imaging of the right hip had been performed before that date. Although medical evidence later established the presence of preexisting osteoarthritis in the right hip, with joint space narrowing to 1 millimeter at the edge of the socket, this condition was entirely asymptomatic before the industrial injury on August 15, 2024.

The Industrial Accident

2. On August 15, 2024, Claimant, a 42-year-old man weighing 333 pounds, was working for Employer as a property/store manager. As part of his regular morning duties, he was cleaning debris from the property to ensure it was presentable.

3. While picking up trash on the front portion of the property, Claimant entered an area of tall, uncut grass that concealed underlying water and mud. Claimant lost his footing on the slick surface and fell. The fall caused Claimant to perform a full split - his left leg slid forward at approximately a 30-degree angle and his right leg slid backward - resulting in

hyperabduction of the right hip. Due to the location in the middle of the grassy area, he had nothing to grab onto for support and attempted to brace himself with his left hand. He subsequently fell to his right side.

4. While in the split position, Claimant felt an immediate and forceful “big pop” in his right hip. Immediately after the incident, Claimant developed significant pain in his right hip, inner thigh, groin, and knee, as well as pain in his left hand. He could hardly walk and called his wife to pick him up and take him to the hospital.

Medical Treatment and Recommendations

5. After the accident, Claimant’s wife took him to UC Health emergency department. With help from his wife, Claimant was able to walk into the hospital. The medical records indicate Claimant slipped while walking in wet and muddy grass and slipped into the splits and hyperabucted his right hip. His biggest complaint was sharp pain along his right inner leg from his groin to inner knee. On physical examination, Claimant had soft tissue tenderness in the right anterior portion of his hip. Claimant was able to bear weight on his right leg, but with a shuffling gait. The differential diagnosis included a strain of the right sided adductor magnus muscle, groin strain, left hand contusion and fracture, MCL injury, neurovascular injury, or compartment syndrome. The discharge diagnosis included a strain of his abductor magnus muscle of his right lower extremity, and a contusion of his left hand. But he was also discharged with a knee immobilizer and crutches and advised to follow up with orthopedics or his employer’s workers’ compensation provider.

6. On August 30, 2024, Claimant began treating with Dr. Yamamoto for his work injury. Claimant reported right-sided knee pain rated 7/10, that he immediately felt a pop in his groin after doing the splits with 10/10 pain initially, and current groin pain of 7/10. Dr. Yamamoto’s assessment included an injury involving Claimant’s right groin, right thigh, and a closed fracture of his left hand. He referred Claimant to Dr. Mason for right groin pain, Dr. Hatzidakis for his knee, and Dr. Flemming for his left hand fracture.

7. On September 11, 2024, Claimant returned to Dr. Yamamoto with similar complaints. Dr. Yamamoto assessed Claimant, ordered an MRI for his right knee, and advised Claimant to follow up with him in one week for his knee, hip, and left hand.

8. On September 17, 2024 - just over one month after the industrial injury - Claimant was referred for an MRI of his right hip, reflecting an ongoing concern for a hip injury.

9. The MRI revealed age-indeterminate fraying and capsular-sided tearing of the superior right acetabular labrum.

10. In December 2024, Dr. Yamamoto confirmed that the MRI findings were consistent with a right hip labral tear. As a result, Dr. Yamamoto referred Claimant to Dr. Michael Ellman at Panorama Orthopedics & Spine Center for further evaluation of his hip.

11. On January 16, 2025, Claimant underwent right hip x-rays, which demonstrated moderate osteoarthritic changes, including a large osteophyte off the inferior femoral head-neck junction, joint space narrowing to 1 mm on the right (compared to 3.3 mm centrally and 4.4 mm on the left), and additional osteophyte formation. That same day, Dr. Ellman evaluated Claimant, interpreted the findings as consistent with moderate right hip osteoarthritis, and recommended a total hip replacement. He referred Claimant to Dr. Jesse Chrastill for the procedure. On January 22, 2025, Dr. Yamamoto also made a referral to Dr. Sean Baran at Western Orthopedics for a possible hip replacement.

12. On February 18, 2025, Dr. Baran evaluated Claimant for a second opinion. He concluded that the imaging did not demonstrate sufficient arthritic changes to justify a hip replacement, particularly given Claimant's age (42), and instead recommended conservative treatment, including formal physical therapy, weight loss, anti-inflammatory medications, and corticosteroid injections.

13. On February 27, 2025, Dr. Chrastil evaluated Claimant pursuant to Dr. Ellman's referral. Claimant reported no pain before the work injury but had since developed progressively worsening, deep right hip pain, rated at 8-10 in severity, located in the right groin. Dr. Chrastill documented that conservative measures - including activity modification, over-the-counter anti-inflammatory medications, and physical therapy - had been attempted and failed. Based on his assessment, Dr. Chrastil recommended a right total hip replacement.

IME by Dr. Nathan Hammel

14. On April 22, 2025, Dr. Nathan Hammel, a board-certified orthopedic surgeon with expertise in hip replacements and Level II accreditation in Colorado workers' compensation, performed an independent medical examination of Claimant and issued a report. Dr. Hammel documented that Claimant sustained a hyperabduction injury to the right hip when he slipped on a wet floor and did the side-to-side splits, impacting the palm of his left hand against the ground. He noted that Claimant reported about a one-block walking tolerance.

15. Dr. Hammel diagnosed Claimant with: (1) Right knee strain, related to workplace injury, not yet medically stationary; (2) Left hand contusion, related to workplace injury, not yet medically stationary; and (3) Right hip osteoarthritis, moderate to severe, a preexisting condition.

16. Dr. Hammel concluded that while a total hip arthroplasty would be reasonable, it was unrelated to the workplace injury, stating there was no evidence of progression of the underlying pathology from the claimed injury on August 15, 2024.

17. Dr. Hammel acknowledged the mechanism of injury involved hyperabduction of the right hip and that Claimant consistently reported right groin pain since the incident. However, he did not list an acute hip injury or labral tear in his diagnoses.

18. Dr. Hammel did not provide a reasonable explanation for how Claimant could go from being asymptomatic before the incident to having progressively worsening hip pain and being recommended for hip replacement shortly after the work injury.

19. Dr. Hammel also testified at the hearing. He confirmed that Claimant is a candidate for right hip replacement surgery based on his focally severe arthritis (wear down to 1 millimeter at the edge of the socket) and functional limitations. He testified that arthritis develops over years to decades and that reaching 1 millimeter of joint space takes at least 10 years. He acknowledged it would be surprising for someone with 1-millimeter joint space to be asymptomatic.

20. Dr. Hammel conceded he had no pre-injury diagnostic studies for comparison and could not definitively state the condition had not pathologically worsened.

21. Dr. Hammel testified that labral tears are ubiquitous when arthritis reaches end-stage level, stating "When hips are replaced, every hip has a labral tear."
22. During his testimony, Dr. Hammel used two analogies to describe the industrial injury's role. First, he compared it to "knocking on a door," testifying that arthritis is like "a house on a hillside with a foundation problem" that erodes over decades, and when "someone knocks on the front door, and the house slides down the hill," it's "not really the knocking on the front door that causes the house to slide down the hill." Second, he used an analogy of a rock appearing in a bay as the tide goes out, suggesting the symptoms were merely revealing preexisting pathology rather than being caused by trauma.
23. The ALJ finds Dr. Hammel's testimony regarding causation not credible or persuasive. His analogies minimize what was a significant traumatic event - a 333-pound individual involuntarily doing full splits with hyperabduction of the right hip, experiencing an audible "pop," falling, and having the immediate onset of pain that hindered Claimant's ability to walk. Dr. Hammel acknowledged Claimant has a "one-block walking tolerance" which he described as "a typical level of disability where people are predictably satisfied from the outcome of the surgery." He said it would be "surprising" for someone with 1-millimeter joint space to be asymptomatic, yet failed to explain why Claimant had no symptoms before this specific traumatic event. The ALJ finds that the immediate onset of symptoms with the specific mechanism of injury, including the audible "pop," the immediate onset of pain, and the inability to walk normally is consistent with an acute significant aggravation rather than coincidental symptom onset.
24. Dr. Hammel had no medical records documenting any prior treatment for the right hip, no medical evidence of prior complaints or treatment to the right hip, no prior MRIs of the right hip before the injury, and no medical records documenting any work restrictions for the right hip before August 15, 2024.
25. The ALJ finds Dr. Hammel's opinion that surgery is reasonable and necessary to be credible and persuasive as it is supported by Claimant's testimony, the medical records, and the opinions of Drs. Yamamoto, Ellman, and Chrastill.

Dr. Yamamoto's Response to Dr. Hammel's IME Report

26. On June 17, 2025, Dr. Yamamoto wrote a letter and responded to counsel's May 15, 2025, correspondence and Dr. Hammel's independent medical examination report. Dr. Yamamoto stated that during his most recent examination on April 25, 2025, Claimant continued to report severe right hip pain rated 9/10. He confirmed that Claimant had consistently reported feeling an immediate "pop" in his groin at the time of the industrial injury and had experienced ongoing hip pain since that date.

27. Dr. Yamamoto acknowledged Dr. Hammel's opinion that the hip condition was not work-related, while noting that Dr. Hammel conceded a hip replacement would be reasonable treatment. Dr. Yamamoto observed that the MRI showed age-indeterminate fraying and capsular-sided tearing of the superior right acetabular labrum, and that no pre-injury MRI existed for comparison.

28. Dr. Yamamoto emphasized that before August 15, 2024, Claimant had been working without restrictions and had no history of right hip pain or symptoms. Based on the clinical course and diagnostic findings, Dr. Yamamoto concluded that the right total hip arthroplasty should be considered related to the August 15, 2024, industrial injury.

29. The ALJ finds Dr. Yamamoto's opinion credible and persuasive as it is supported by the emergency room records, his treatment records, and Claimant's testimony.

Request Re: Surgery

30. Sedgwick Claims Management Services, Inc., serves as the third-party administrator adjusting this workers' compensation claim on behalf of Respondents.

31. On March 3, 2025, Sedgwick received documentation from Dr. Chrastil referencing a request for a "Right Total Hip Arthroplasty, Anterior Approach."

32. Neither party established what specific information or documentation was submitted to Sedgwick on March 3, 2025. The evidence does not establish whether Dr. Chrastil's February 27, 2025, report constituted the actual request, as that report does not reference an "anterior approach" as specified in Sedgwick's subsequent correspondence of March 17, 2025, that certified the procedure.

33. There is insufficient evidence to establish that Dr. Chrastil submitted the request using the Division-approved Authorized Treating Provider's Request for Prior Authorization (Form WC 188) or that any documentation submitted was clearly labeled as a "Prior Authorization Request" as required by WCRP 16-7(A).

34. There is also insufficient evidence that any request included the substantive elements required under Rule 16-7(C), including a description of the necessity of the treatment, applicable Medical Treatment Guidelines, and supporting documentation.

Responses to Recommendation for Surgery and Request for Approval

35. On February 6, 2025, before any formal request was submitted, Respondents' counsel wrote to Dr. Ellman acknowledging his January 16, 2025, report discussing total hip replacement. Counsel advised Dr. Ellman that despite not receiving a Rule 16 compliant written request for prior authorization, Respondents were disputing the reasonableness, necessity, and relatedness of the surgery and denied authorization. The letter indicated Respondents scheduled Claimant for an IME with Dr. Hammel.

36. On March 17, 2025, Sedgwick issued a letter to Dr. Chrastill stating that the request for "right total hip arthroplasty, anterior approach" was "certified by nurse" and that the procedure "meets established criteria for medical necessity based on the information presented by the medical provider." The letter stated that the medical provider, injured worker, and workers' compensation claims adjuster were notified. However, the letter contained express limitations on the scope of its determination. It stated: "This review is for medical necessity only. This letter does not guarantee that benefits will be payable under Workers Compensation coverage. Benefit payments are always subject to a determination by the claims adjuster at the time the service was rendered." The letter did not affirmatively state or imply that the requested surgery is causally related to Claimant's accepted work injury. It did not reference the nature or diagnosis of the underlying injury, nor did it affirm a nexus between the injury and the requested treatment. The letter explicitly reserved the authority of the claims adjuster to determine benefit eligibility, stating that coverage will be determined "at the time the service was rendered." Based on this language, the ALJ finds that Sedgwick's certification letter represents a determination that the surgery is reasonable and necessary to treat Claimant's hip condition, but

contains no determination of whether the need for surgery was caused by the work accident and therefore related to the industrial injury, or whether it is merely due to Claimant's underlying preexisting arthritis. The letter's explicit limitation to “medical necessity only” and its reservation of the claims adjuster's authority to determine compensability demonstrates that Sedgwick made no finding regarding the causal relationship between the work injury and the need for surgery. Therefore, Sedgwick's certification letter does not constitute a prior authorization for surgery under the Workers' Compensation Act, as authorization requires both a finding of medical necessity and a determination that the treatment is related to the compensable injury.

37. On March 24, 2025, Respondents’ counsel wrote to Dr. Chrastil stating "the request for authorization for right hip replacement surgery continues to be denied for the following reasons, but not limited to, not reasonable and necessary and may not be related to the admitted injury." The letter included Dr. Baran’s February 18, 2025, report.

38. On April 24, 2025, Respondents’ counsel sent another letter to Dr. Chrastill and Dr. Yamamoto stating "the request for authorization for the hip replacement submitted to Kimberly Joyce of Sedgwick, on or about April 8, 2025, continues to be denied for the following reasons, but not limited to, not be related to the admitted injury." The letter enclosed Dr. Hammel’s April 22, 2025, report.

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. *Univ. Park Care Center v. Indus. Claim Appeals Off.*, 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 Off.*, 183 P.3d 684 (Colo. App. 2008). The weight and credibility to be assigned expert testimony is a matter within the discretion of the ALJ. *Cordova v. Indus. Claim Appeals Off.*, 55 P.3d 186 (Colo. App. 2002). To the extent expert testimony is subject to conflicting interpretations, the ALJ may resolve the conflict by crediting part or none of the testimony. *Colorado Springs Motors, Ltd. v. Indus. Comm'n*, 441 P.2d 21 (Colo. 1968).

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

I. Whether Claimant established by a preponderance of the evidence that the hip surgery is reasonably necessary and related to Claimant's work injury.

Related

Respondents are liable for medical treatment reasonably necessary to cure or relieve the employee from the effects of the injury. § 8-42-101, C.R.S. Nevertheless, the right to workers' compensation benefits, including medical benefits, arises only when an injured employee establishes by a preponderance of the evidence that the need for

medical treatment was proximately caused by an injury arising out of and in the course of employment. § 8-41-301(1)(c), C.R.S.; *Faulkner v. Indus. Claim Apps. Office*, 12 P.3d 844, 846 (Colo. App. 2000). Claimant must establish the causal connection with reasonable probability but need not establish it with reasonable medical certainty. *Ringsby Truck Lines, Inc. v. Indus. Comm'n*, 491 P.2d 106 (Colo. App. 1971); *Indus. Comm'n v. Royal Indem. Co*., 236 P.2d 2993. A causal connection may be established by circumstantial evidence and expert medical testimony is not necessarily required. Indus. *Comm'n v. Jones,* 688 P.2d 1116 (Colo. 1984); *Indus. Comm'n v. Royal Indem. Co., supra*, 236 P.2d at 295-296. All results flowing proximately and naturally from an industrial injury are compensable. *See Standard Metals Corp. v. Ball*, 172 Colo. 510, 474 P.2d 622 (1970).

An aggravation of a preexisting condition is compensable. *Subsequent Inj. Fund v. Thompson*, 793 P.2d 576 (Colo. 1990). If there is a direct causal relationship between the mechanism of injury and resultant disability, the injury is compensable if it caused a preexisting condition to become disabling. *Duncan v. Indus. Claim Apps. Office*, 107 P.3d 999 (Colo. App. 2004). However, there must be some affirmative causal connection beyond a mere assumption that the asserted mechanism of injury was sufficient to have caused an aggravation. *Brown v. Indus. Comm'n*, 447 P.2d 694 (Colo. 1968). It is not sufficient to show that the asserted mechanism could have caused an aggravation, but Claimant must show that it is more likely than not that the mechanism of injury did, in fact, cause an aggravation. *Id*.

Pain is a typical symptom from the aggravation of a preexisting condition, and if the pain triggers the claimant's need for medical treatment, the claimant has suffered a compensable injury. *Merriman v. Indus. Comm'n*, 210 P.2d 448 (Colo. 1949); *Dietrich v. Estes Express Lines*, W.C. No. 4-921-616-03 (September 9, 2016). A claimant need not show an injury objectively caused any identifiable structural change to their underlying anatomy to prove an aggravation. A purely symptomatic aggravation is sufficient for an award of medical benefits if the symptoms were triggered by work activities and caused the claimant to need treatment they would not otherwise have required. *See Cambria v. Flatiron Construction*, W.C. No. 5- 066-531-002 (May 7, 2019) (citing *Merriman v. Industrial Comm'n*, 210 P.2d 448 (Colo. 1949)). But the mere fact that a claimant

experiences symptoms at work does not necessarily mean the employment aggravated or accelerated the preexisting condition. *Finn v. Indus, Comm'n*, 437 P.2d 542 (Colo. 1968); *Cotts v. Exempla*, W.C. No. 4-606-563 (August 18, 2005). Rather, the ALJ must determine whether the need for treatment was the proximate result of an industrial aggravation or is merely the direct and natural consequence of the preexisting condition. *F.R. Orr Const. v. Rinta*, 717 P.2d 965 (Colo. App. 1985); *Carlson v. Joslins Dry Goods Co*., W.C. No. 4-177-843 (March 31, 2000).

Based on the credible opinions of Dr. Yamamoto and Claimant, and rejecting Dr. Hammel's causation opinion for the reasons stated in Finding 23, the ALJ concludes Claimant proved by a preponderance of the evidence that the August 15, 2024, industrial injury aggravated his preexisting but asymptomatic right hip osteoarthritis, proximately causing the need for the right hip replacement surgery. The evidence establishes: (1) Claimant was completely asymptomatic before the injury; (2) the traumatic accident involved a significant hyperabduction with an audible "pop"; (3) Claimant experienced immediate and continuing symptoms; and (4) his condition now requires surgery.

Reasonable and Necessary Treatment

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. Whether the claimant proved treatment is reasonable and necessary is one of fact for the ALJ. *Kroupa v. Industrial Claim Appeals Off.,* 53 P.3d 1192 (Colo. App. 2002).

Based on the credible opinions of Drs. Ellman, Chrastill, Yamamoto, and even a portion of Dr. Hammel's opinion (who agreed surgery would be reasonable), the ALJ finds and concludes that Claimant established by a preponderance of the evidence that the right hip replacement surgery is reasonable and necessary. The surgery is supported by: (1) recommendations from multiple physicians; (2) Claimant's severe functional limitations (one-block walking tolerance); (3) failure of conservative treatment; (4) ongoing severe pain (8-10/10); and (5) Dr. Hammel's testimony that patients with Claimant's level of disability are "predictably satisfied from the outcome of the surgery."

II. Whether Respondents' conduct constitutes an unreasonable delay or denial of prior authorization under WCRP 16-7(F), subjecting Respondents to penalties pursuant to 8-43-304(1), C.R.S., and results in the automatic authorization of the surgery.

a. Penalties

Claimant filed an Application for Hearing specifically seeking penalties under WCRP 16-7(F) for the unreasonable delay or denial of authorizing the hip surgery.[1] However, the rule that Claimant relies on, Rule 16-7(F), was repealed in January 2021. Thus, although prior iterations of WCRP 16 did contain a provision that allowed an ALJ to award penalties for the unreasonable delay or denial of authorization for medical treatment, the rules applicable to this claim do not. As a result, even if Claimant could establish that the denial, or any delay in authorizing the treatment, was unreasonable - he cannot obtain a penalty under Rule 16-7(F).

Therefore, Claimant failed to establish by a preponderance of the evidence that he is entitled to penalties.

b. Surgery Deemed Authorized for failure to Follow the Current Rule 16.

The ALJ has found that Claimant failed to establish that a proper Rule 16 request for prior authorization was submitted to Respondents. Thus, the ALJ found that Respondents obligation under Rule 16 to deny the treatment pursuant to the requirements of Rule 16 were never triggered. Moreover, the ALJ has found that the hip surgery is reasonable and necessary to treat Claimant from the effects of his work injury. As a result, there is no need for the ALJ to address whether the surgery should be deemed authorized based on an alleged violation of WCRP 16 by Respondents.

[1] Rule 16-7(F), which was last effective January 1, 2020, stated "Unreasonable delay or denial of prior authorization, as determined by the Director or an administrative law judge, may subject the payer to penalties under the Workers' Compensation Act." However, the rule was repealed in January of 2021.

Order

It is therefore ordered that:

1. Respondents shall pay for the right hip replacement surgery - subject to the Colorado Workers' Compensation fee schedule.
2. Claimant's request for penalties is denied and dismissed.
3. All matters not determined herein are reserved for future determination.

If you are dissatisfied with the Judge's order, you may file a Petition to Review the order with the Denver Office of Administrative Courts, 1525 Sherman St., 4th Floor, Denver, CO 80203. You must file your Petition to Review within twenty (20) days after mailing or service of the order, as indicated on certificate of mailing or service; otherwise, the Judge's order will be final. You may file the Petition to Review by mail, as long as the certificate of mailing attached to your petition shows: (1) That you mailed it within twenty (20) days after mailing or service of the order of the Judge; and (2) That you mailed it to the above address for the Denver Office of Administrative Courts. For statutory reference, see section 8-43-301(2), C.R.S. For further information regarding procedures to follow when filing a Petition to Review, see Rule 27, OACRP. You may access a petition to review form at: http://www.colorado.gov/dpa/oac/forms-WC.htm.

Dated: September 3, 2025

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

Issues

- Whether Respondents are entitled to a neuropsychological evaluation pursuant to Colorado Rules of Civil Procedure ("C.R.C.P.") 35?

- Whether the ALJ should strike the Division-sponsored Independent Medical Examination ("DIME") report due to the fact that a neuropsychological examination was not obtained prior to the DIME?

Findings of Fact

1. Respondents filed a Motion for Examination pursuant to C.R.C.P. 35 on February 24, 2025, requesting a neuropsychological evaluation with Brent Van Dorsten, Ph.D. The parties proceeded to a prehearing conference with PALJ Carpenter on February 26, 2025 where Respondents argued for an Order compelling Claimant to attend the examination with Dr. Van Dorsten. PALJ Carpenter denied the Motion and Respondents appealed the Prehearing Conference Order.

2. PALJ Carpenter noted in his Order that Dr. Van Dorsten refuses to record his examinations and therefore denied compelling Claimant's attendance at the examination pursuant to Section 8-43-404(2)(a), which requires that all examinations be recorded. PALJ Carpenter further noted that because Claimant had not been assigned a cognitive impairment rating by the treating physician and because Claimant had not yet undergone the DIME, it was unknown whether the DIME would provide a cognitive rating, there was not good cause to compel Claimant to attend the neuropsychological examination at this time.

3. Respondents sought to hold the pending Division-sponsored Independent Medical Examination ("DIME") in abeyance pending the hearing that would involve the appeal of PALJ Carpenter's Order. PALJ Royce Mueller denied that motion on April 4, 2024.

4. Claimant sustained an admitted injury on December 15, 2021 when he fell and struck his head on asphalt. As a result of his injury, Claimant received a litany of medical treatments for cervical pain, shoulder pain, headaches and his psychological condition. Respondents eventually obtained an independent medical examination ("IME") with Dr. Parsons on December 2, 2024. Dr. Parsons concluded that Claimant was at Maximum Medical Improvement ("MMI"). Dr. Parsons provided Claimant with a permanent impairment rating of 6% whole person for occipital neuralgia and 1% of the right upper extremity.

5. Respondents provided Dr. Parsons IME report to Claimant's treating physician, Dr. Olsen, who agreed that Claimant was at MMI. Respondents filed a final admission of liability ("FAL") on December 27, 2024 admitting for the PPD rating provided by Dr. Parsons and Dr. Olson. Claimant objected to the FAL and requested a DIME.

6. Claimant obtained a records review IME report from Dr. Orent on January 6, 2025. Dr. Orent opined that Claimant was not at MMI and recommended Claimant be referred to a headache specialist to further investigate potential treatments for posttraumatic migraine headaches. Dr. Orent also recommended Claimant receive a neuropsychological evaluation.

7. Dr. Olson referred Claimant to Summit Headache Clinic on January 27, 2025.

8. Respondents then sought to compel Claimant's attendance at an examination with Dr. Van Dorsten. Claimant declined, noting Dr. Van Dorsten's refusal to record the IME as required by statute. Based on the rulings by PALJ Carpenter and Mueller, Claimant was not compelled to attend the evaluation and the DIME process was not held in abeyance. Respondents, as an offer of proof at hearing, noted that Dr. Van Dorsten has now agreed to record a portion of the neuropsychological evaluation.

9. Claimant underwent the DIME examination on May 6, 2025 performed by Dr. Yamamoto. Dr. Yamamoto found Claimant was at MMI and provided Claimant

with an impairment rating of 14% whole person for the cervical spine, and 25% whole person for the traumatic brain injury with 3% whole person for anxiety/psychiatric. This provided Claimant with a final impairment rating of 38% whole person.

10. Based upon the evidence presented at hearing, the ALJ finds that Claimant should not be compelled to attend a neuropsychological evaluation pursuant to C.R.C.P. 35 with Dr. Van Dorsten when Dr. Van Dorsten refuses to comply with the Colorado Workers' Compensation Act involving examinations as set forth by Section 8-43-404(2)(a).

11. Notably, while Respondents have presented an offer of proof that Dr. Van Dorsten would agree to record part of the evaluation, Section 8-43-404(2)(a) specifically requires that any examination "shall be recorded in audio in their entirety and retained by the examining physician until requested by any party." Insofar as Dr. Van Dorsten has not agreed to fully comply with Section 8-43-404, C.R.S., the ALJ will not compel Claimant to attend an examination with Dr. Van Dorsten.

12. The ALJ rejects Respondents request for the ALJ to extend the Colorado Rules of Civil Procedure 35 regarding examinations to compel the attendance of the Claimant at an examination where the doctor performing the examination has indicated that he will not comply with Section 8-43-404(2)(a), C.R.S. Certainly, Dr. Van Dorsten cannot be compelled to record his examinations if he chooses not to record the examination in its' entirety. However, the court will not compel Claimant to attend an examination where it is indicated by the doctor performing the examination that he will not comply with the requirements of Section 8-43-404, 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. Section 8-43-404, C.R.S., provides in pertinent part:

> (1)(a) If in case of injury the right to compensation of articles 40 to 47 of this title exists in favor of an employee, upon the written request of the employee's employer or the insurer carrying such risk, the employee shall from time to time submit to examination by a physician or surgeon or to a vocational evaluation, which shall be provided and paid for by the employer or insurer, and the employee shall likewise submit to examination from time to time by any regular physician selected and paid for by the division.
>
> …
>
> (2)(a) The employee shall be entitled to have a physician, provide and paid for by the employee, present at any such examination…. All such examinations shall be recorded in audio in their entirety and retained by the examining physician until requested by the parties. Prior to commencing the audio recording, the examining physician shall disclose

to the employee the fact that the exam is being recorded. If requested, an exact copy of the recording shall be provided to the parties….

4. C.R.C.P. 35 provides in pertinent part:

When the mental or physical condition … of a party … is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in his or her custody or legal control.

5. The ALJ notes that the language of C.R.C.P. 35 is much more lenient than the restrictions set forth in Section 8-43-404, C.R.S., and finds that the intent of Section 8-43-404 would be circumvented by extending C.R.C.P. 35 to allow for an examination of Claimant with a doctor who failed to comply with the strict restrictions set forth in subsection (2)(a) of Section 8-43-404, C.R.S. The ALJ finds that such an order would be improper in this case.

6. As found, based upon the evidence presented at hearing in this matter, Claimant will not be compelled to attend an examination with Dr. Van Dorsten. The evidence fails to establish that Dr. Van Dorsten will comply with the plain language of Section 8-43-404, C.R.S. Therefore, Claimant will not be compelled to attend an examination with Dr. Van Dorsten.

7. The ALJ further finds that the request to vacate the DIME performed by Dr. Yamamoto is likewise denied. Dr. Yamamoto properly performed the DIME in accordance with the DIME process and there is no reason to vacate the DIME report in this case.

Order

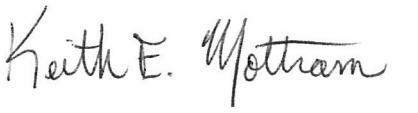
It is therefore ordered that:

1. Respondents request to have Claimant attend an examination with Dr. Van Dorsten pursuant to C.R.C.P. 35 is denied.

2. Respondents request to have the DIME of Dr. Yamamoto vacated is denied.

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: September 3, 2025



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

Office of Administrative Courts
State of Colorado
Workers' Compensation No. WC 5-283-912-001

Issue

1. Whether Respondents have established by a preponderance of the evidence that they are entitled to withdraw their admissions of liability on the basis that Claimant did not suffer a compensable work injury or occupational disease.

Findings of Fact

1. Claimant is a 51-year-old woman employed by Employer as a sales associate.

2. As a sales associate, Claimant makes telephone calls to potential customers. Prior to May 2024, Claimant's telephone calls were automatically dialed using Employer's calling system.

3. For approximately 25 days between May 2024 and June 2024, Claimant was required to use a numeric keypad to manually dial phone numbers to make sales calls. During that time, Claimant was making between 20-40 calls a day.

4. Claimant reports pain in her right fingers, hand, wrist, forearm, and bicep. Claimant testified that her pain began at the end of May 2024. Claimant attributes her pain to having to manually dial phone numbers beginning in May 2024. *See* Ex. L p. 245.

5. Claimant has a variety of pre-existing health conditions, including diagnoses of:

   a. Left arm amputation below the elbow. Ex. C p. 28-30.

   b. Major depressive disorder, panic disorder, and post-traumatic stress disorder. Ex. L p. 220; Ex. L p. 207.

   c. Chronic pain. Ex. L p. 222.

   d. Right shoulder pain. Ex. L p. 207-09.

e. Thyroiditis, obesity, and pre-diabetes. Ex. L p. 235-36.

f. Opioid dependence. Ex. H p. 146-48; Ex. L p. 220.

See generally Ex. L p. 235-36.

6. Because Claimant's left arm is amputated below the elbow, the ALJ reasonably infers that Claimant uses her right hand to complete all tasks – personal and work-related – that require the use of hands.

7. On May 29, 2024, Claimant was seen by her Primary Care Provider Katja Austin, NP (Nurse Austin). Ex. L p. 241. Claimant was seen for medication refill and she reported migraine with aura, daytime somnolence, and right wrist pain. *Id.* at p. 243; *id.* at p. 246 ("Patient is falling asleep at work and struggling with extreme fatigue."); *id.* at p. 245 ("She is also having right wrist pain. This started when she has had to start dialing the phone. She is having a hard time dialing the phone due to the phone. This is now effecting her production at work. She is having a hard time. She feels she needs limited dialing out and have more time in que where calls are coming in. She feels she can do 30 out bound calls a day. She does have a wrist brace she has been wearing. She is having overall weakness in the hand as well. She denies dropping items.").

8. Nurse Austin noted that Claimant reported "arthralgias/joint pain (right wrist pain) but reports no muscle aches, no muscle weakness, no back pain, and no swelling in the extremities; left stump pain." *Id.* at p. 245. A physical examination of Claimant's right wrist showed "limited ROM and tenderness (of joint line right wrist, Phalen's positive)." *Id.* at p. 246. Nurse Austin ordered an x-ray of Claimant's right wrist.

9. By July 2024, Claimant's telephone calls were again automatically dialed using Employer's calling system.

10. Claimant underwent an x-ray of her right wrist on July 18, 2024, which was unremarkable. Ex. E p. 121 ("No fracture or dislocation. Soft tissues are unremarkable."). There is no explanation for why it took approximately a month and a half after the x-ray was ordered for Claimant to have the x-ray.

11. Claimant returned to see Nurse Austin on July 24, 2024. Ex. L p. 260. Claimant reported "struggling with right wrist and hand pain. Pain is in the wrist into the hand and in the index finger. Pain radiates up into the forearm as well. She is struggling with the constant pain and still limited as to what she can do at work." *Id.* at p. 264. Claimant also reported low back pain, headaches, anxiety, panic attacks, and struggling to lose weight. *Id.* Nurse Austin referred Claimant to a hand specialist due to her worsening pain. *Id.* at p. 266 ("She will see Dr. Wallace for possible injection and will refer to hand specialist due to worsening.").

12. Claimant saw Amanda Wallace, MD on August 5, 2024. Ex. L p. 272. Dr. Wallace's note states:

> [redacted] is a 50 year old female who presents today for a consultation to discuss right wrist and hand pain that has been ongoing for 6 months with no inciting event. She reports no associated weakness or numbness. She underwent a recent x ray in July of 2024 and has never undergone physical therapy. She has never tried steroid injections or surgery. She describes her pain as stabbing and throbbing. Her pain becomes worse with using her hand and is relieved with medication.

Id. at p. 276. Dr. Wallace did not independently prescribe Claimant medication or physical therapy for her right wrist. *Id.* Dr. Wallace did refer Claimant to behavioral health for chronic pain syndrome. *Id.* Dr. Wallace's "Assessment/Plan" states that Claimant will "follow up with Hand Surgery Associated referred by her PCP in clinic." *Id.*

13. Claimant testified that she did not tell Dr. Wallace that her wrist and hand pain had been ongoing for 6 months and that the August 5, 2024 note is incorrect. Claimant further testified that she met Dr. Wallace for approximately five minutes and that the notes from Nurse Austin correctly document that her pain began in May 2024 shortly after Employer changed its calling system.

14. Claimant was seen by Nicholas Golinvaux, MD, at Orthopedic Centers of Colorado on August 15, 2024. Ex. N p. 402. Dr. Golinaux's history notes "[t]he complaint involves the right hand. Onset was gradual. This occurred about 6 month(s) ago at work. The patient describes symptoms as moderate to severe and worsening. The pain is described as aching, a deep ache, shooting, throbbing, a discomfort, cramping and sharp. The symptoms occur constantly." *Id.*; *see id.* ("She describes the symptoms as insidious onset of right hand pain and paresthesia for the last 6 months. . . . She describes numbness and tingling in her right hand. Primarily the radial 3 digits. She also has diffuse pain that is migratory around her hand specifically while she is working. She has tried a soft brace over the last week at night with some improvement. No prior nerve test. She has a lot of neck pain and a history of prior neck injuries after a car accident.").

15. Dr. Golinvaux diagnosed Claimant with "[p]ossible right carpal tunnel syndrome versus cervical radiculopathy. The typical carpal tunnel pathophysiology, as well as the course of the intervention, was discussed. She does not perfectly fit the pattern on exam or history. The natural history is generally insidious progression to the point of irreversible motor/sensor loss. . . . Today, given the above discussion and her present symptoms, we have recommended further investigation with an EMG. This will help us better sort out a diagnosis given her imperfect fit." Ex. N p. 402.

16. Claimant returned to Nurse Austin on August 21, 2024. Ex. L p. 285. Nurse Austin noted:

> Pain today is a 10/10. She states she was seen by a hand specialist at Hand Surgery Associates who sent her to neurology for EMG on 10/13/2024 and is on the wait list for an earlier appointment. The hand specialist would like to make sure this is due to carpal tunnel and not other issues. He did give her a new hand brace but she has a hard time wearing the brace with driving and working. She is wearing the new brace at night. This is with Health One Neurology. She is open to seeing another neurologist for EMG if they can get

> her in earlier. She states she is not able to work due to the pain. She continues to struggle being able to function when she is working because she is not able to call[] out as much as needed[.]

Id. at p. 289; *see id.* at p. 310 (September 14, 2024 appointment with Nurse Austin with similar notes including "The hand specialist would like to make sure this is due to carpal tunnel and not other issues as her pain is in . . . her hand, wrist, and shooting pain up the arm. She has a hard time moving her fore finger and thumb. She has a hard time holding a cup of coffee. . . . She is working from home but still unable to perform her job duties. She is wearing the new brace at night. She states she is not able to work due to the pain. She continues to struggle being able to function when she is working because she is not able to call[] out as much as needed.").

17. On September 14, 2024, Claimant continued to report 10/10 pain. Ex. L p. 310. Nurse Austin administered a ketorolac 60 mg/2 mL intramuscular solution injection to Claimant. Ex. L p. 307; 311. Nurse Austin also prescribed Claimant 4 Butrans 20 mcg/hour transdermal patches. *Id.* at p. 306; 312 ("Will start Butrans to see if this helps with nerve pain.").

18. Claimant testified that she reported an occupational injury to Employer on September 15, 2024. *See* Ex. A p. 9 ("She is a full-time employee but she states that she has not worked essentially since she filed her work injury claim on approximately 09/15/2024.").

19. The record does not contain a copy of Claimant's report or Employer's First Report of Injury to the Division of Workers' Compensation.

20. Claimant was first seen by her authorized treating provider (ATP) on September 29, 2024. Ex. K p. 193. Under history of present illness:

> The patient presents with a chief complaint of constant muscle pain of the right upper extremity since Wed., May 15, 2024. It

> has the following qualities: sharp and ache. The patient describes the severity as moderate.
>
> Context – Initial History: The patient reports it was the result of an injury that occurred on 4/15/2024, which was work related, which had a sudden onset. Patient reports that a non-work related event or illness possibly contributed to or is related to development of symptoms. The patient reports that the onset was: not associated with trauma; not associated with heavy lifting; not associated with a recent illness; not associated with a spasm; ASSOCIATED WITH WEAKNESS; not associated with an injection; Pt reported that she was using right hand to dial customer phone just by pressing 1 then there were changes ma[d]e where she had to pick up the phone and dial 2 to call out. She started experiencing pain and tenderness onto her[] wrist area. Pain has been radiating onto her right elbow. Denies trauma or heavy lifting. She started seeing her PCP for care for the past 4 months up until her employer agreed to make this a Worker's comp case. She has been working for this company for the past 3 years. The patient also reports aches/pains as an abnormal symptom related to the complaint.

Id. On physical examination it was noted that Claimant had moderate swelling of her right hand, reduced range of motion of hand/thumb/finger joints, reduced range of motion of wrist, and decreased strength of her distal upper extremity. *Id.* at p. 194. Claimant was referred to Health One Neurology and Orthopedic Centers of Colorado. *Id.* The Physician's Report of Worker's Compensation Injury completed by the ATP listed Claimant's work status as "unable to work" beginning September 29, 2024. *Id.* at p. 204.

21. Claimant underwent an EMG study at Health One Neurology Specialists on October 3, 2024. Ex. O p. 415. The EMG study provided "electrodiagnostic evidence for

very mild right carpal tunnel syndrome." *Id.* The EMG study showed "no evidence for a right cervical radiculopathy." *Id.*

22. Claimant returned to Nurse Austin on October 9, 2024. Ex. L p. 316. Claimant reported:

> Patient had EMG done with neurologist who states she has carpal tunnel but was not able to give her any additional information. She states since the EMG, the pain has been worse. She does already take gabapentin 900 mg three times a day. She does not feel the pain medication is working. She is waiting to hear on an appointment with the hand specialist. Patient would like to see another pain specialist as I am not willing to increase the pain medication. She is struggling with anxiety and depression as well. She is struggling with feeling overwhelmed with all her health issues and all she needs to do with her health. . . . She is not working at all right now because she cannot hold the mouse. She feels that not working is making her depression worse.

Id. at p. 320; *see id.* at p. 322.

23. Respondents filed a general admission on liability (GAL) with the Division of Workers' Compensation on October 10, 2024. *See* Ex. R (PALJ Sisk March 4, 2025 Order). A copy of the GAL is not included in the record.

24. Claimant returned to Dr. Golinvaux on October 14, 2024. Ex. N p. 404. Dr. Golinvaux noted that Claimant's EMG "demonstrates very mild carpal tunnel syndrome." *Id.* However, Dr. Golinvaux concluded that "[g]iven their findings to date, I think it is highly unlikely that her symptoms are coming from her very mild carpal tunnel syndrome. She has far more proximal symptoms that do not add up with her carpal tunnel diagnosis." *Id.* Nevertheless, to help rule out carpal tunnel as the reason for Claimant's

pain, Dr. Golinvaux gave Claimant a steroid injection in order to help with the diagnosis of Claimant's pain.

25. Claimant began treating with Justin Merkow, MD, at Metro Denver Pain Management on October 21, 2024. Ex. M p. 330. Dr. Merkow noted Claimant's right hand, wrist, and arm pain, and noted carpal tunnel syndrome, but ordered a cervical MRI to determine whether Claimant's pain had a radicular component based on "unclear diagnosis of her pain at this time." *Id.* at p. 333.

26. On November 5, 2024, Claimant underwent a vascular ultrasound of her right upper extremity. Ex. E p. 122. Claimant's results were unremarkable. *Id.* ("Normal venous and arterial Doppler ultrasounds.").

27. Claimant continued to treat her pain with Dr. Merkow and Metro Denver Pain Management. Ex. M pp. 339-399.

28. Claimant was seen by Dr. Golinvaux on December 6, 2024. Ex. N p. 406. Claimant reported the carpal tunnel injection "took care of some of her more distal symptoms. Her hand pain is better. She continues to have ulnar-sided wrist pain and some radial sided wrist pain that seems to be worsening. Having a lot of proximal symptoms including radiating stretching pain from the base of her neck down her shoulder and similar pain that also goes down her right leg." *Id.* Dr. Golinvaux concluded that "[i]t does seem that the majority of her symptoms are coming from a more proximal or more generalized neuropathy," so he ordered an MRI of Claimant's cervical spine and right hand "for better evaluation." *Id.* Dr. Golinvaux also recommended Claimant visit a neurologist about her more generalized neuropathy since it "[c]ertainly seems like she is dealing with a lot of different potential reasons for her pain." *Id.*

29. On December 17, 2024, Claimant underwent an upright MRI of her cervical spine and her right hand. Ex. E pp. 126. Outside of mild effusion in all metacarpophalangeal joints on her right hand, Claimant's hand MRI results were generally unremarkable. *Id.*; *see* Ex. M p. 363 ("Her most recent cervical MRI is notable for 1.4mm C5-6 herniation. She recently had a Rt hand MRI that was unremarkable.").

30. Claimant attended an Independent Medical Examination (IME) with Lawrence Lesnak, DO, on February 14, 2025. Ex. A. Dr. Lesnak took Claimant's history and examined Claimant, including completing multiple provocative maneuvers meant to elicit signs of carpal tunnel syndrome. Ultimately, Dr. Lesnak concluded:

> The patient reported to me that . . . in approximately May 2024 she had to "change" her job activities and was required to perform increased outgoing phone calls. She states that to initiate the [out]going phone call to a prospective client, she would have to type in the prospective client's phone number and then use a headset to talk to the prospective client. She reported to me that occasionally she would then need to type some information from the phone call into her computer program. However, the work activities that were reported to me by [redacted] do not meet criteria for any specific risk factors utilizing the State of Colorado, Division of Worker's Compensation Medical Treatment Guidelines for any type of right upper extremity diagnosis, including carpal tunnel syndrome, etc. . . .
>
> . . . .
>
> At this point in time, the patient has diffuse subjective complaints without any abnormal reproducible objective findings on exam whatsoever. . . .
>
> . . . .
>
> [R]egardless of the etiology of her symptomatology involving her right upper extremity, there is absolutely no medical evidence to support that any of her symptoms or any even suspected pathology are in any way related whatsoever to her work activities at Good Sam/Camping World. Once again,

> utilizing the State of Colorado, Division of Worker's Compensation Medical Treatment Guidelines, she does not meet any of the requirements for any increased risk factors that would be related to her work activities and responsible for any of her current symptomatology whatsoever. Therefore, there is absolutely no medical evidence to support that she requires any medical care whatsoever for her reported occupational "incident" of 06/15/2024. As noted above, there is absolutely no medical evidence to support that she sustain any type of injuries or developed any type of medical diagnoses that would in any way pertain to any of her work activities that she was performing in May/June 2024 or be related whatsoever to her reported work "incident" of 06/15/2024.

Id. at p. 16.

31. Claimant was seen by Dr. Golinvaux on March 20, 2025. Ex. N p. 409. Dr. Golinvaux wrote: "I still believe the majority of her symptoms are coming from a more proximal or more generalized neuropathy in a referred fashion. She certainly did get some benefit from her carpal tunnel injection previously and she would like to consider another 1 today to be able to return to work. Certainly we could consider a carpal tunnel release at some point given her response to injection and her prior EMG that shows very mild carpal tunnel syndrome. However I worry that the majority of her symptoms are coming from elsewhere. She certainly would be a risk for minimal or incomplete full relief." *Id.* Claimant received a second steroid injection on March 20, 2025. *Id.*

32. Dr. Lesnak testified by deposition. In pertinent part, Dr. Lesnak testified that:

a. Claimant cannot prove a work-related occupational disease pursuant to Rule 17 of the Colorado Division of Workers' Compensation Treatment Guidelines because Claimant must have an actual diagnosis to prove an occupational injury.

b. For occupational diseases, Rule 17 requires proof that the claimant was exposed to necessary risk factors including force and repetition to prove the claim. Manually dialing phone numbers 20-40 times a day for approximately 25 days is insufficient to satisfy Rule 17.

33. Claimant testified at hearing that:

a. Since stopping work, her right arm pain has increased. Her pain initially started in her fingers, hand, and wrist. After stopping work, her pain now radiates from her fingers, hand, and wrist up into her forearm and bicep.

b. As of the date of the hearing, she had not received a formal diagnosis for her right arm pain. She was diagnosed with carpal tunnel syndrome by Dr. Golinvaux.

34. The ALJ finds the opinions of Dr. Lesnak concerning the medical probability that Claimant's alleged injury and/or occupational disease is not causally related to her employment both credible and persuasive.

35. The fact that Claimant began experiencing pain in her right fingers, hand, and wrist while working in May 2024 does not automatically establish that Claimant experienced a work-related injury or occupational disease. Rather, for an injury or occupational disease to be compensable under workers' compensation, the injury or occupational disease must arise out of and in the course of a claimant's employment.

36. Respondents have established by a preponderance of the evidence that Claimant's right arm pain is not an injury or an occupational disease which arose out of and in the course of Claimant's employment with Employer. Therefore, Respondents have demonstrated by a preponderance of the evidence that Claimant did not sustain a compensable injury or occupational disease.

37. Respondents have established by a preponderance of the evidence that the admissions of liability filed may be withdrawn.

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. Generally, the 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 and Respondents' Request to Withdraw their General Admissions of Liability

Insurers are permitted to "obtain relief from improvident or erroneous admissions." *HLJ Mgmt. Grp., Inc. v. Kim*, 804 P.2d 250, 252 (Colo. App. 1990) (discussing *Vargo v. Indus. Comm'n*, 626 P.2d 1164 (Colo. App. 1981)). Respondents are bound by their admissions and required to continue paying benefits until the law permits them to terminate said benefits, or they obtain an appropriate order from the ALJ. *Snyder v. Indus. Claim Appeals Off.*, 942 P.2d 1337, 1340 (Colo. App. 1997). Once an admission has been filed, the employer may not unilaterally modify that admission if the employer comes to believe an injury is not compensable. § 8-43-201(1), C.R.S.; § 8-43-303(4), C.R.S. Rather, the respondents must request a hearing before an ALJ and continue to make benefit payments until the ALJ enters an order allowing modification of the admission, in full or in part. *Id.*; *see Rocky Mtn. Cardiology v. Indus. Claim Appeals Off.*, 94 P.3d 1182, 1185 (Colo. App. 2004).

Pursuant to section 8-43-201(1), C.R.S., the respondents bear the burden of proof regarding any attempt to modify an issue that has been previously determined by the filing of a general or final admission of liability. In this case, Respondents are seeking to modify an issue determined by their previously filed GAL, namely compensability. Consequently, the burden rests with Respondents to prove that Claimant did not sustain a compensable injury.

> The right to the compensation provided for in articles 40 to 47 of this title, in lieu of any other liability to any person for any personal injury or death resulting therefrom, shall obtain in all cases where the following conditions occur:
>
> (a) Where, at the time of the injury, both employer and employee are subject to the provisions of said articles and where the employer has complied with the provisions thereof regarding insurance;

> (b) Where, at the time of the injury, the employee is performing services arising out of and in the course of the employee's employment;
>
> (c) Where the injury or death is proximately caused by an injury or occupational disease arising out of and in the course of the employee's employment and is not intentionally self-inflicted.

§ 8-41-301(1), C.R.S.

> "Occupational disease" means 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 exposures 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.

§ 8-40-201(14), C.R.S.; *see generally Anderson v. Brinkhoff*, 859 P.2d 819, 822 (Colo. 1993) (discussing occupational disease).

The phrases "arising out of" and "in the course of" are not synonymous and both requirements must be met for an injury to be compensable. *Younger v. Cty. & Cnty. of Denver*, 810 P.2d 647, 649 (Colo. 1991). An injury occurs "in the course of" employment when it is demonstrated that the injury occurred within the time and place limits of employment and during an activity that had some connection with the claimant's work-related functions. *Triad Painting Co. v. Blair*, 812 P.2d 638, 641 (Colo. 1991).

Whether an injury is "arising out of" employment refers to the origin or cause of an injury. *Horodyskyj v. Karanian*, 32 P.2d 470, 475 (Colo. 2001). The "arising out of" requirement is narrower and requires proof that the injury has it "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 fact that a claimant may experience an onset of pain while performing her job duties does not mean that she sustained a work-related injury. Indeed, an incident which merely elicits pain symptoms without a causal connection to a claimant's work duties does not compel a finding that the claimed injury is compensable. *F.R. Orr Const. v. Rinta*, 717 P.2d 965, 968 (Colo. App. 1985); *Barba v. RE1J School Dist.*, W.C. No. 3-038-941 (ICAO, June 28, 1991); *Hoofman v. Climax Molybdenum Co.*, W.C. No. 3-850-024 (ICAO, Dec. 14, 1989); *Parra v. Ideal Concrete*, W.C. Nos. 3-963-659 and 4-179-455 (ICAO, Apr. 8, 1988).

In this case, the evidence presented persuades the ALJ that there is no casual connection between Claimant's right arm pain and her employment. First, after almost a year with multiple imaging studies, examinations, and treatment, Claimant has no diagnosis for her right arm pain. *See* WCRP Rule 17, Ex. 5(D); *Phillips*, Colorado Worker's Compensation Practice and Procedure, § 3.8 ("In repetitive motion cases the initial investigation should focus on identifying the condition and its cause."). Claimant attributes a 25-day change from auto-dialing to manual dialing as the cause of her pain but her medical records do not provide objective support for Claimant's subjective opinion and without a formal diagnosis there is insufficient evidence to link Claimant's right arm pain to her employment.

Second, while Claimant was diagnosed with very mild carpal tunnel syndrome after an EMG, Dr. Golinvaux determined it was "highly unlikely" that Claimant's right arm pain was because of carpal tunnel. Further, the medical records do not demonstrate that the very mild carpal tunnel syndrome is a result of Claimant's employment rather than a hazard she is equally exposed to outside of her employment, particularly when considering Claimant's left arm below the elbow amputation. *See* § 8-40-201(14).

And third, Claimant's pain has only increased since she has stopped working. Logically, if Claimant's right arm pain had its origin in her work-related functions, then Claimant's pain should have improved when she stopped working. *See Phillips*, Colorado Worker's Compensation Practice and Procedure § 3.7 ("[I]f an absence from work for several weeks results in decreased symptoms, the relationship is almost inescapable. On the contrary, if the symptoms are much the same whether at work or not, the relationship is not so clear unless the disease has progressed to a permanent state.").

The ALJ does not doubt that Claimant experiences pain in her right arm. However, the fact that she was working when she began experiencing that pain does not automatically mean that the pain was caused by her employment and that Respondents are responsible for the medical treatment and payment of disability benefits until that pain is resolved. Over a year after Claimant first reported her pain, she still has no diagnoses by which her pain can be linked to her employment. The ALJ credits the medical opinion of Dr. Lesnak that the medical records fail to demonstrate that Claimant's symptomatology is related to her employment with Employer.

Based on the evidence presented, Respondents have proven by a preponderance of the evidence that Claimant did not sustain a compensable work injury or occupational disease. Respondents may, therefore, withdraw all admissions of liability.

Order

It is therefore ordered that:

1. Respondents have demonstrated by a preponderance of the evidence that Claimant did not sustain a compensable work injury to her right arm. Accordingly, Claimant's claim for compensation is denied and dismissed.
2. All matters not determined herein are reserved for future determination.

Signed: September 4, 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 5-199-434-004

Stipulations

At the outset of the hearing, the parties agreed to reserve litigation concerning Claimant's entitlement to maintenance medical care. The parties further stipulated that Claimant reached maximum medical improvement (MMI) on April 23, 2024. The parties' agreements/stipulations were accepted and approved.

Remaining Issues

I. Whether Respondents produced clear and convincing evidence to overcome the whole person impairment rating of Dr. Dwight Caughfield.

Findings of Fact

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

1. The above-referenced claim involves an admitted injury to Claimant's left foot/ankle. (See generally, RHE A). Claimant's treatment history has been protracted, and the medical record is voluminous. Indeed, Claimant's treatment spanned several years during which he underwent multiple left ankle/lower leg surgeries, and both parties have submitted hundreds of pages of exhibits to the ALJ for review.

2. Claimant worked for Employer, who operates a cement plant, in production

repair. (CHE 10, p. 676). On or about March 23, 2021[1], Claimant was working in the raw material crush mill at the plant when he injured his left ankle. (CHE 21, p. 943). Claimant slipped while stepping over some plant machinery catching his left foot/ankle in the process. (CHE 10, p. 676; RHE, J, p. 242). Claimant fell forward twisting his left ankle in the process. *Id*. He heard a loud popping sound followed by severe ankle and calf pain and difficulty bearing weight on the left foot. *Id*.

3. Claimant immediately sought acute care through the Emergency Department (ED) at St. Mary Corwin Hospital. (CHE 2). Upon arrival to the ED, Claimant reported 9/10 pain, stiffness and difficulty weightbearing prompting Dr. Machael Pallini to order a set of left ankle x-rays. *Id*. at 439.

4. Claimant's x-rays revealed a non-displaced distal left fibula fracture. (CHE 2, p. 442). Claimant was splinted, given crutches and referred to orthopedics for additional evaluation. *Id*.

5. Approximately one month later, Claimant was evaluated by Nuse Practitioner (NP) Jennifer Livingstone at Concentra on April 23, 2021. (CHE 1, p. 5-6). NP Livingston ordered repeat x-rays due to ongoing left ankle pain. *Id*. at 5. According to the note from this encounter, there was "No obvious fracture on x-ray." *Id*. Consequently, NP Livingston ordered an MRI of the left ankle. *Id*. at 5,7.

6. An MRI of the left ankle was performed on May 5, 2021. (CHE 8). This study demonstrated mixed signal in the posterior tibialis tendon suggestive of a partial tear along with findings consistent with a mild strain of the anterior talofibular and anterior syndesmotic ligaments. *Id*. at 645.

7. Claimant returned to Concentra on May 7, 2021, with continued complaints

[1] Although there is no dispute over the date of injury, the medical records document multiple different dates of injury, including March 1, 2021 (CHE 1, p. 9), March 20, 2021 (CHE 6, p. 606, 676), March 30, 2021 (CHE 14, p. 754), March 28, 2021 (CHE 16, p. 760) and March 29, 2021 (CHE 21, p. 943).

of left ankle pain. Claimant was not sleeping well secondary to pain and was having difficulty descending stairs. (CHE 1, p. 426).

8. Claimant was evaluated by Dr. Mark Maurer, DPM (Doctor of Podiatric Medicine) on September 7, 2021. (CHE 6, p. 606-607). During this appointment, Claimant reported localized pain over the left lateral malleolus. *Id*. at 606. After noting Claimant's various findings on MRI, Dr. Maurer referred Claimant to physical therapy (PT) and instructed him to return for a follow-up appointment in six weeks. *Id*. at 607.

9. On August 23, 2021, Claimant reported substantial improvement with PT. (CHE 1, p. 426). He reportedly felt 95% improved. *Id.* NP Livingston opined that Claimant was ready for a return to regular duty work. *Id*.

10. Claimant reported a similar level of improvement (90-95%) when he saw Dr. Maurer on August 24, 2021. (CHE 6, p. 613). By August 30, 2021, Claimant's improvement appeared to have plateaued. He reported continued left ankle pain. (CHE 6, p. 616). Accordingly, Dr. Maurer recommended surgery. Id. at 617.

11. Claimant was taken to the operating room on September 2, 2021, where Dr. Maurer performed a left ankle arthroscopic synovectomy, left distal tibiofibular syndesmosis repair, and lateral ankle stabilization. (CHE 6, p. 619-621).

12. Claimant reported "excruciating" pain following surgery. (CHE 1, p. 425). On September 15, 2021, Claimant reported "weird" sensations in the ankle and 6/10 pain during a post-op follow-up with Dr. Maurer. (CHE 6, p. 624). Dr. Maurer initiated pain medicine, including Gabapentin to "improve nightly nerve pain and assist in improving [Claimant's] sleep. *Id.* at 625.

13. Claimant continued to report 6/10 pain at his October 13, 2021, follow-up appointment with Dr. Maurer. Dr. Maurer added Lyrica to Claimant's list of medications to improve his daytime nerve pain. (CHE 6, pp. 628-629).

14. During a follow-up appointment with Dr. Maurer on November 2, 2021, Claimant reported “little to no improvement since his last visit” on 10/13/2021. (CHE 6, p. 632). The Lyrica prescribed for daytime nerve pain was not reducing Claimant’s pain and was causing brain fog and anxiety. *Id*. By his November 19, 2021, follow-up with Dr. Maurer, Claimant had stopped taking Lyrica and was concentrating on improving his range of motion through PT. (CHE 6, p. 634). Dr. Maurer recommended continued PT, use of an ankle brace on uneven surfaces, and advised Claimant to return to his office in a year for a “progress check” and repeat x-rays. *Id*. at 635.

15. Claimant was referred to Dr. Kenneth Finn for a consultation of his persistent left ankle pain. Dr. Finn evaluated Claimant on December 14, 2021. (CHE 4, p. 486-487). During his examination, Dr. Finn observed “slight swelling of the left ankle”. *Id*. at 486. He documented “[a]llodynia and hyperalgesia in the superficial peroneal and sural nerve distribution”. *Id*. Dr. Finn prescribed Duloxetine and Lidocaine cream and ordered a repeat MRI of the left ankle and a second orthopedic opinion following updated imaging. *Id*. at 487.

16. Dr. Finn completed an EMG study on January 13, 2022, which findings suggested a peroneal nerve injury. (CHE 4, pp. 488-492).

17. Claimant underwent repeat MR imaging on January 19, 2022. (CHE 6, p. 637). This imaging revealed a torn anterior talofibular ligament and a small amount of subtalar joint effusion. *Id.* Accordingly, Dr. Finn referred Claimant to Dr. Brad Dresher for an orthopedic consultation. (CHE 3, p. 459).

18. Claimant was evaluated by Dr. Dresher on February 17, 2022. (CHE 3, pp. 459-461). Dr. Dresher noted sensory changes over the left lateral leg and dorsum of the left foot. *Id*. at 460. Dr. Dresher administered an injection of Kenalog (1 cc) and Marcaine (1 cc) into the left ankle and referred Claimant to Dr. Jeffrey Watson. *Id*. at 461. The injection provided no significant improvement in Claimant’s symptoms. (CHE 3, p. 465).

According to the medical records, Dr. Dresher felt that the majority ("most") of Claimant's symptoms were secondary to neurogenic pain. *Id.*

19. Claimant was evaluated by Dr. Watson on March 22, 2022. (CHE 3, pp. 465-466). Dr. Watson recommended a peroneal nerve decompression and neurolysis surgery based on the findings of Claimant's examination and EMG study. (CHE 7, p. 639). Dr. Watson returned Claimant to the OR on April 15, 2022, where he completed the above-mentioned procedure. *Id.*

20. During an April 26, 2022, post-surgical follow-up with Dr. Watson, Claimant reported an improvement in his symptoms. (CHE 3, p. 467). He was referred for a course of PT and instructed to follow-up in 1 month. *Id*.

21. On May 17, 2022, Claimant reported that the nerve decompression surgery resolved about "50%" of his symptoms. (CHE 3, p. 469). Nonetheless, he continued to experience "bandlike pain across the ankle joint." *Id*. Accordingly, Claimant returned to Dr. Dresher for a follow-up visit on June 22, 2022. (CHE 3, p. 472). Dr. Dresher recommended an additional arthroscopic surgery in the form of left ankle debridement. *Id*. at 475.

22. Claimant underwent an arthroscopic left ankle debridement for arthrofibrosis, by Dr. Dresher, July 22, 2022. (CHE 6, p. 642).

23. On August 6, 2022, Claimant was evaluated by Physician Assistant (PA-C) Daniel Czarniawski during which appointment he complained of "severe" post-surgical pain. (CHE 1, p. 424). A post-surgical injection provided no relief, and it was noted that Claimant may require a referral to pain management. *Id*. Claimant was frustrated and "at his wits end." *Id.*

24. Claimant returned to Dr. Finn on September 13, 2022. (CHE 4, p. 493). During this appointment, Dr. Finn noted that Claimant "continues with neuropathic pain", with allodynia and hyperalgesia around the superficial and deep peroneal nerves. *Id*. He also noted "slight discoloration of the left foot when compared to the right. *Id*. He

assessed Claimant with “chronic pain syndrome and neuralgia and neuritis, unspecified. *Id.* Dr. Finn recommended a pain psychology consultation, a spinal cord stimulator consultation and a trial of Nucynta. *Id*. at 495.

25. On November 11, 2022, Claimant underwent an independent medical examination (IME) at Respondents’ request with Dr. Larson, who opined that no additional treatment, including a spinal cord stimulator, was necessary and that Claimant be weaned off of his pain medications. (RHE F, pp. 196-202).

26. On February 20, 2023, Claimant was evaluated by Dr. Scott Primack for a “comprehensive” consultation regarding his persistent left foot/ankle pain. (CHE 11, p. 702). During this appointment, Claimant reported 8/10 pain and a lack of improvement with surgery. *Id.* Dr. Primack noted discoloration at the anterior medial compartment of the left ankle, which he surmised was “probably” from an injection. *Id*. at 703. He did not observe any vasomotor instability of sudomotor atrophy nor increased sweating in the foot/ankle. *Id.* Dr. Primack recommended psychotherapeutic counseling and made a referral to the SABABA Health Group. *Id.*; see also, CHE 1, p. 423.

27. Claimant was evaluated by Licensed Professional Counselor (LPC) Lacoma Luehrman at SABABA on March 30, 2023. (CHE 16). Ms. Luehrman assessed Claimant with a “mood disorder due to known physiological condition with depressive features. Id. at 763. Individual Cognitive Behavioral Therapy sessions were recommended to assist Claimant in developing the skills necessary to cope with the depression and anxiety associated with his chronic pain condition. *Id.*

28. On April 28, 2023, Claimant returned to Dr. Primack in follow-up. (CHE 11, pp. 707-711). Dr. Primack completed a repeat never conduction and EMG study which demonstrated “[c]linical and electrophysiologic evidence of a left persistent common fibular nerve neuropathy.” *Id*. at 711. Dr. Primack noted that Claimant’s treatment options included time and continued rehabilitation, hydrodissection or a peripheral nerve consultation with Dr. Tanya Oswald. *Id*.

29. Claimant was evaluated by Dr. Tanya Oswald on May 1, 2023. (CHE 11,

pp. 714-715; see also, CHE 1, p. 422). Following her evaluation, Dr. Oswald opined that Claimant was a candidate for a "redo release" of his common peroneal as well as his superficial peroneal nerves. *Id*. at 715. Claimant underwent a "redo" release of the common peroneal nerve with Dr. Oswald on May 25, 2023. (CHE 17, pp. 765; see also, CHE 1, p. 422).

30. Claimant initiated psychotherapy on June 14, 2023. (CHE 20).

31. On June 26, 2023, Dr. Oswald requested authorization to proceed with a release of Claimant's superficial peroneal nerve. (CHE 17, p. 765). This request would be submitted to utilization review and ultimately denied because of a diagnosis of complex regional pain syndrome (CRPS). *Id*. at 767. Dr. Oswald encouraged Claimant to undergo testing to confirm or exclude a diagnosis of CRPS. *Id*.

32. On July 6, 2023, Claimant reported to his psychotherapist improved sleep (5-6 hours) before waking due to pain in his ankle. (CHE 20, p. 860). Claimant requested a change in medication back to Wellbutrin ER.

33. On August 2, 2023, Claimant presented to Dr. David Reinhard on the referral of NP Livingston for CRPS screening. On examination, Dr. Reinhard observed "very mild swelling" and a "bluish discoloration over the dorsum of the left foot." (CHE 10, p. 676). There was reported allodynia over the left foot where Claimant described "pins-and-needles" to light touch. *Id.* There was no perceptive temperature differences or excess sweating in the left foot compared to the contralateral limb and there were no trophic changes to the hair, nails or skin of the left foot. *Id*. at 676-677. Dr. Reinhard opined that Claimant was an appropriate candidate to undergo an autonomic testing battery and stress thermography. *Id*. at 677.

34. Claimant's stress thermography yielded "one to two degree" temperature differences (asymmetry) along the lateral calf with two-degree temperature differences at the medial calf and medial left ankle with all differences noted to be cooler in the left lower extremity. (CHE 10, p. 678). There were two-to-three-degree temperature differences along the medial left ankle with three-to-four-degree temperature differences noted along

the anterior ankle and proximal dorsal left foot. Again, the left foot and ankle were cooler by these temperature differences than the unaffected limb. *Id.* Based upon the results of Claimant thermography testing Dr. Reinhard reached the following clinical interpretation: "Diffuse areas of thermal asymmetry which are stable to increasing . . . cold stress, present in a nondermatomal distribution with involvement outside the common peroneal nerve distribution is consistent with and diagnostic for complex regional pain syndrome. This is a positive stress thermogram for left lower extremity CRPS." *Id.* at 679. Claimant scored 4 points on his laboratory testing and 4 points on his clinical scale as part of his autonomic testing battery (QSART), leading Dr. Reinhard to place Claimant in the "high probability" category of having CRPS. *Id*. at 680-682.

35. Claimant saw Physician Assistant Angelica Jeffers (Dr. Finn's PA) on August 22, 2023. (CHE 4, p. 527). During this encounter PA Jeffers noted that Claimant had been diagnosed with CRPS and that Dr. Reinhard had suggested continued use of antineuritic medication, lumbar sympathetic blocks and a trial of spinal cord stimulation. *Id*. at 528; see also, CHE 10, p. 677. Claimant reported continued difficulty sleeping noting that sleeping was "virtually impossible with his current pain." *Id*. at 527. Left lumbar sympathetic nerve block was suggested and Claimant was provided with a referral to Dr. Meyer for evaluation of a spinal cord stimulator. *Id*. at 529.

36. Claimant returned for a psychotherapy session at Impact Psychiatric Care on August 23, 2023. (CHE 20, p. 863). During this appointment, Claimant reported continued difficulty sleeping. *Id.* at 864 He was using other people's medications to improve his sleep and noted a "terrible" mood. *Id.* at 864-865. By October 4, 2023, Claimant was experiencing suicidal ideation and planned to use a gun to commit suicide. (CHE 20, p. 878).

37. Claimant underwent a sympathetic lumbar block by Dr. Finn on October 11, 2023, which reportedly provided 60% pain reduction for 9-10 days. A second injection was administered on October 31, 2023. (CHE 4, pp. 534-537).

38. On December 19, 2023, Claimant underwent a second IME with Dr. Wallace

Larson. Dr. Larson assigned Claimant a 15% impairment rating to the lower extremity or 6% whole person and opined that Claimant was at MMI with no additional treatment required. Dr. Larson disagreed with the findings of peroneal nerve injury and the diagnosis of type II CRPS (CRPS secondary to nerve injury). He disagreed with Dr. Reinhard on the presence of CRPS noting that the diagnosis of CRPS continues to be controversial and that clinical criteria used by the international association for the study of pain is thought to be overly sensitive and unable to differentiate well between those patients with other pain complaints and those patients with actual CRPS. (RHE, G, p. 216). He dismissed Dr. Reinhard's interpretation of Claimant's thermogram as positive for CRPS, noting that the Guidelines require the temperature difference to distinguish those with CRPS from those who did not to exceed 2.2º C and because many asymptomatic patients have temperature differences equal or greater to that amount, the results of Claimant's thermogram did not support a diagnosis of CRPS. *Id*. Dr. Larson did not opine regarding Claimant's psychiatric condition other than to indicate: "The cover letter also requested an opinion regarding a psych evaluation. In my opinion that is indicated an *(sic)* occupationally related." *Id*. at 218.

39. Claimant returned to NP Livingston on January 12, 2024. NP Livingston notes that Claimant had an IME with Dr. Larson, who noted that Claimant did not have CRPS and that a spinal cord stimulator was not necessary. (CHE 1, p. 421). NP Livingston disagreed with Dr. Larson's assessment noting that in her opinion, Claimant had CRPS and would benefit from a spinal cord stimulator, "as evidenced by his pain relief with [the] nerve block performed by Dr. Finn." *Id.*

40. Claimant presented to Dr. Primack on March 26, 2024. (CHE 11, pp. 722-725). Dr. Primack opined that Claimant had reached maximum medical improvement (MMI) and assigned a 24% whole person impairment rating for CRPS based upon Table 1 on page 109 of the AMA Guides. *Id.* at 724. On April 23, 2024, Claimant saw Dr. Kathryn Murray, who concurred with Dr. Primack's date of MMI and impairment. (CHE 1, p. 429).

41. On August 9, 2024, Respondents filed an Amended Final Admission of

Liability (FAL) based on Dr. Primack and Dr. Murray's reports, admitting to 24% whole person impairment. Maintenance care after MMI was also admitted. (RHE A, p. 2). Claimant filed his Objection to Respondents' FAL and filed his Amended Notice and Proposal and Application for a Division Independent Medical Examination (DIME). (RHE A. 048-51).

42. Dr. Dwight Caughfield was selected to perform the DIME. He examined Claimant on January 14, 2025, and determined that Claimant was at MMI as of April 23, 2024. Dr. Caughfield assigned a total whole person impairment of 27%, comprised of 25% for CRPS and 2% for mental health impairment. (RHE J, p. 241, 247). During his examination, Claimant reported that his injury-related symptoms worsened with surgery. He endorsed "intolerable" burning left anterior ankle and leg pain at an 8-9/10 intensity level. *Id.* at 245. Claimant reported that he could stand for approximately 15 minutes before needing to get off his foot. *Id*. Walking was limited to flat surfaces for a distance of approximately ½ block, which Claimant noted interfered with activities of daily living, including shopping. *Id*. Stair climbing was also very limited. *Id*.

43. Claimant reported struggling with depression and suicidal thoughts. (RHE J, p. 245). He described being anxious and having thoughts of self-harm, including amputating his left foot. *Id*. Claimant's depression and anxiety interfered with traveling about the community and interfered with his short-term memory. Indeed, he reported that he only made "essential" trips such as short visits to the grocery store to obtain specific items and had forgotten to pick his son up from school on multiple occasions. *Id*. His sleep was poor and limited to 3-4 hours per day with "poor initiation due to anxiety" and interruption due to pain. *Id.* His situation made him tearful, resulting in avoidance behavior. *Id*. He described his family relationships as "strained" and noted that he had stopped most recreational pursuits. *Id.* He reported the need to take Wellbutrin, Buspar and Trazadone for his depression and anxiety and oxycodone for pain. Dr. Caughfield noted that Claimant was not taking regular medication to manage his mood prior to his March 23, 2021, work injury. (RHE J, p. 245, 247).

44. Dr. Caughfield reviewed the results of Claimant's August 2, 2023, stress

thermogram and QSART testing and reviewed medical records, including Claimant's psychological reports. (RHE J, pp. 242-245). He listed the following as Claimant's clinical diagnosis:

- CRPS Left lower extremity;
- Left peroneal nerve injury;
- Tear of talofibular ligament, left;
- Recurrent Major Depression with anxiety and insomnia.

(RHE J, p. 246).

45. In addressing the basis and rationale for his impairment rating, Dr. Caughfield noted that the rating tips contained at Desk Aid #11, provides that impairment for a diagnosis of CRPS is obtained from Table 1, page 109 of the AMA Guides, which provides for a 25-35% range due to an inability to ambulate on uneven surfaces. Because Claimant was unable to walk on uneven surfaces but could occasionally use ladders and climb stairs, Dr. Caughfield assigned impairment at the lower end of the range, i.e. 25% for Claimant's CRPS. Dr. Caughfield addressed Dr. Larson's concern regarding the CRPS diagnosis by noting:

> Although Dr. Larson did not believe there was evidence of CRPS in the left lower limb, other specialist providers disagreed, and he does meet the Division CRPS guidelines requirements for a diagnosis of CRPS. I appreciate Dr. Larson's opinion that the testing may be overly sensitive and therefore produce false positive findings but per the treatment Guidelines, [Claimant] does meet the criteria in Rule 17, Exhibit 7, CRPS medical treatment guidelines for confirmed CRPS pages 20 and 21. He meets the requirements of Section G.2 with continued pain disproportionate to the injury (G.2.a), reports of allodynia and decreased range of motion (G.2.b), and allodynia/loss of range of motion on clinical examination by providers in the records.

> He also meets the criteria in section G.3 of a positive thermogram and response to sympathetic block. (Dr. Larson disagreed with Dr. Reinhard on whether the QSART was positive, but it is not needed to meet G.3 with the other positive tests).

(RHE J, p. 247).

46. Regarding Claimant's mental impairment, Dr. Caughfield noted:

> I also believe that impairment is appropriate for his mental health condition that was impacted by his injury. Although he has [a] pre-existing diagnosis of depression, anxiety, and insomnia he did not require medication to maintain function and mental health. Since he is not on medications prescribed by his worker's compensation providers with lifetime maintenance needs, impairment is appropriate. Per the mental health worksheet, any need of medication related to [Claimant's] work injury is assigned 1-3% WP impairment. I chose 2% WP for his mental health impairment.

(RHE J, p. 247).

47. Although Dr. Caughfield did not conduct a psychological examination of the Claimant, and abbreviated his use of the Mental Impairment Worksheet, it is clear that he reviewed Claimant's psychological treatment records and obtained a history from him regarding the impact that mental symptoms associated with the work-related injury has had on Claimant's mental functioning over time. Here, Dr. Caughfield noted that Claimant required ongoing psychotropic medication for the psychological sequela associated with his March 23, 2021, work injury and he completed the worksheet as it was intended to be used when the records/history fails to support a separate mental impairment when that injured worker requires medication for their DSM diagnosis. The worksheet provides:

> If this patient has ZERO impairment according to the above criteria and *requires continuing medication for their DSM diagnosis*, *an impairment of 1-3% may be assigned.*

(RHE J, p. 251) (emphasis added). While Respondents contend that Dr. Caughfield imposed a whole person impairment rating of 2% based on the treatment and diagnoses made by other specialists, the medical record is clear that Claimant requires continuing medications to treat the depression/anxiety, i.e. the DSM diagnosis associated with his March 23, 2021, injury in this case. Based upon the evidence presented, the ALJ is convinced that Dr. Caughfield correctly used the mental impairment worksheet to assign a 2% WP mental impairment in this case.

48. Dr. Larson testified at hearing on behalf of the Respondents. He testified consistently with the opinions expressed in his IMEs, namely that the impairment rating assigned by Dr. Caughfield was highly probably incorrect, because Claimant did not meet the diagnostic requirements for CRPS. According to Dr. Larson, Dr. Reinhard incorrectly diagnosed Claimant with CRPS[2] and to the extent that Dr. Caughfield relied on this diagnosis to assign impairment, he erred. Indeed, Dr. Larson opined that Dr. Caughfield "parroted" the diagnosis of the ATPs in this case, even though his physical examination findings were insufficient to make a CRPS diagnosis. Accordingly, Dr. Larson opined that Dr. Caughfield's physical exam findings, including a finding that the left foot was non-colored, had normal hair growth[3], no temperature variation, was equal in circumference to Claimant's right lower extremity did not meet the diagnostic requirements for CRPS diagnosis to be made. However, as noted by Dr. Caughfield, Claimant met the requirements of Rule 17, Exhibit 7, Section G.2 because he had continued pain

[2] Dr. Larson opined that Dr. Reinhard assigned Claimant a score based on "visible swelling otherwise unexplained", noting most of claimant's exams indicated no swelling, no skin discoloration, and adding points for moderate range of motion *otherwise unexplained musculoskeletal pathology* (emphasis added) was also incorrect. (Clt.748-49.). According to Dr. Larson, Claimant had multiple surgeries and scarring in the left ankle, which he felt explained Claimant's limited range of motion as opposed to Dr. Reinhard's opinions/conclusions.

[3] Although Dr. Caughfield noted "normal hair growth on the left foot, he documented some "loss of hair on the left leg. (RHE J, p. 246).

disproportionate to the injury (G.2.a), reports of allodynia and decreased range of motion (G.2.b), and allodynia/loss of range of motion on clinical examination by providers in the records. According to Dr. Caughfield, Claimant also met the criteria in section G.3 due to a positive thermogram and response to sympathetic block, noting further that a positive QSART test was not needed to meet G.3 because of Claimant's other positive tests.

49. The ALJ finds the medical record and the conclusions/opinions of Dr. Caughfield more persuasive than the contrary opinions/testimony of Dr. Larson. Based upon the evidence presented, the ALJ rejects the suggestion that Dr. Reinhard incorrectly diagnosed Claimant with CRPS. Indeed, the ALJ credits the results of Claimant's thermogram and QSART testing along with the balance of the medical records, including the examinations/opinions of NP Livingston and Drs. Finn and Reinhard to find that Claimant probably suffers from CRPS in his left foot, ankle and lower leg. Accordingly, the ALJ is not convinced that Dr. Caughfield erred in assigning 25% WP impairment based upon this diagnosis.

Conclusions of Law

Based upon the foregoing findings of fact, the ALJ draws the following conclusions of law:

A. Respondents' request to set aside the impairment rating opinion of Dr. Caughfield is denied and dismissed. Pursuant to § 8-42-107(8), C.R.S., a DIME physician's opinions concerning permanent medical impairment are binding unless it is overcome by clear and convincing evidence. C.R.S. § 8-42-107(8)(b)(III); *Qual-Med v. Industrial Claim Appears Office*, 961 P.2d 590 (Colo. App. 1998). Clear and convincing" evidence has been defined as evidence which demonstrates that it is "highly probable" the DIME physician's rating is incorrect. *Metro Moving & Storage Co. v. Gussert*, 914 P.2d 411 (Colo. App. 1995). In other words, to overcome a DIME physician's opinion regarding permanent medical impairment, the party challenging the DIME must demonstrate that the physician's determination in this regard is highly probably incorrect and this evidence

must be "unmistakable and free from serious or substantial doubt." *Leming v. Industrial Claim Appeals Office,* 62 P.3d 1015, 1019 (Colo. App. 2002). *Adams v. Sealy, Inc*., W.C. No. 4-476-254 (ICAP, 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. Industrial Claim Appears Office, supra.*

B. In resolving the question of whether the DIME physician's opinions have been overcome, the ALJ may consider a variety of factors including whether the DIME physician properly applied the AMA Guides and other rating protocols. *See Metro Moving and Storage Co. v Gussert,* 914 P.2d 411 (Colo. App. 1995); *Wackenhut Corp. v. Indus. Claim Appeals Office*, 17 P.3d 2002 (Colo. App. 2000); *Aldabbas v. Ultramar Diamond Shamrock*, W.C. No. 4-574-397 (ICAO August 18, 2004). The question whether the DIME properly applied the AMA Guides or other rating protocols is an issue of fact for the ALJ. *See McLane Western Inc. v. Industrial Claim Appeals Office,* 996 P.2d 263 (Colo. App. 1999). Proof that a division independent medical examiner deviated from the AMA Guides does not compel the ALJ to find that the rating has been overcome by clear and convincing evidence. Rather, proof of such a deviation constitutes some evidence which the ALJ may consider in determining whether the challenge to the rating should be sustained. *Wilson v. Industrial Claim Appeals Office,* 81 P.3d 1117 (Colo. App. 2003); *Almanza v. Majestic Industries,* W.C. No. 4-490-054 (Nov. 13, 2003); *Smith v. Public Service Company of Colorado,* W.C. No. 4-313-575 (May 20, 2002). Moreover, § 8-42-101(3.7) provides that all physical impairment ratings must be calculated by reference to the AMA Guides. Section 8-42-101(3.5) (a)(II) requires the Director of the Division of Workers' Compensation ("Director") to establish impairment rating guidelines based on the AMA Guides. Pursuant to that directive, the Director promulgated numerous guidelines, many of which are contained in Desk Aid #11 – Impairment Rating Tips (Tips). The Tips contain the Director's recommendations when assigning impairment ratings. The Tips may be relevant to the impairment rating, so a physician's application of those tips goes to the weight the ALJ gives to an impairment rating. *Serena v. SSC Pueblo Belmont Op Co. LLC,* W. C. No. 4-922-344 (ICAO, December 1, 2015); *Kurtz v. JBS*

Carriers, W.C. No. 4-797-234 (ICAO, December 7, 2011); *Oritz v. Service Experts, Inc.*, W.C. No. 4-657-974 (ICAO, January 22, 2009). The Industrial Claim Appeals Office gives deference to the Workers' Compensation Division's interpretation of the AMA Guides as set forth in the Tips. *Serena, supra; Kurtz, supra; Lenox v. United Airlines*, W.C. No. 4-616-469 (ICAO, June 2, 2006). The rating tips recommend that impairment in cases involving a diagnosis of CRPS be determined by using the spinal cord table, i.e. Table 1, - Section A, pg. 109, AMA Guides. However, the "peripheral nerve tables may be used if the evaluator deems them more appropriate" (Table 14, pg. 46; Table 51, pg. 77, Table 10 pg. 42, AMA Guides) and in "unusual cases where severe vascular symptoms cause additional impairment of ADLs the physician may choose to combine additional impairment for the vascular tables with the neurological impairment." (Table 52, (p.79) and Table 16, (p. 47), AMA Guides). Nonetheless, "[r]ange of motion should not be used, when it is accounted for in the neurologic portion of the rating. A careful review of Dr. Caughfield's DIME report supports the conclusion that he followed, without deviation, the AMA guides and the recommended protocols for rating Claimant's impairment as set out by Desk Aid #11- Rating Tip 8. In this case, Respondents contend, based primarily on the opinions and testimony of Dr. Larson, that because Dr. Reinhard incorrectly diagnosed Claimant with CRPS and Dr. Caughfield relied primarily on this diagnosis to assign impairment, he erred. The ALJ is not persuaded.

C. The Medical Treatment Guidelines (Guidelines) are regarded as the accepted professional standards for care under the Workers' Compensation Act. *Hernandez v. University of Colorado Hospital*, W.C. No. 4-714-372 (January 11, 2008); *See also*, *Rook v. Industrial Claim Appeals Office*, 111 P.3d 549 (Colo. App. 2005). The Medical Treatment Guidelines, Rule 17-2(A), W.C.R.P. provide: "All health care providers shall use the Guidelines adopted by the Division". *Hall v. Industrial Claim Appeals Office*, 74 P.3d 459 (Colo. App. 2003). "Accordingly, compliance with the Guidelines is mandatory for medical providers." *Chrysler v. Dish Network*, W.C. No. 4-951-475-002 (ICAO, July 15, 2020). Despite this direction, it is generally acknowledged that the Guidelines are not sacrosanct and may be deviated from under appropriate circumstances. C.R.S. § 8-43-201(3). Indeed, Rule 17-4 (A) acknowledges that

"reasonable medical care may include deviations from the Guidelines in individual cases." *Chrysler v. Dish Network*, *supra.* Nonetheless, the Guidelines carry substantial weight and should be adhered to unless there is evidence justifying a deviation. *See Hall v. Industrial Claim Appeals Office, supra*; *See Logiudice v. Siemans Westinghouse*, W.C. No. 4- 665-873 (ICAO, January 25, 2011).

D. The Medical Treatment Guidelines (MTGs) for Complex Regional Pain Syndrome are found at WCRP 17, Exhibit 7. Pertinent sections provide:

- WCRP, Rule 17, Exhibit 7(G)(2): **Diagnostic Components of Clinical CRPS**: Patients who meet the following criteria for clinical CRPS, consistent with the Budapest criteria, may begin initial treatment with oral steroids and/or tricyclics, physical therapy, a diagnostic sympathetic block, and other treatments found in the Division's Chronic Pain Disorder Medical Treatment Guideline. All treatment should be periodically evaluated with validated functional measures. Patient completed functional questionnaires such as those recommended by the Division as part of Quality Performance and Outcomes Payments (QPOP, see Rule18-8) and/or the Patient Specific Functional Scale can provide useful additional confirmation. Further invasive or complex treatment will require a confirmed diagnosis. (Emphasis added).

E. To meet the criteria for initial treatment, the patient must establish the following:

- Continuing pain, which is disproportionate to any inciting event; and
- At least one symptom in 3 of the 4 following categories:

  -Sensory: reports of hyperesthesia and/or allodynia;

  - Vasomotor: reports of temperature asymmetry and/or skin color changes and/or skin color asymmetry;

- Sudomotor/edema: reports of edema and/or sweating changes and/or sweating asymmetry; or

- Motor/trophic: reports of decreased range-of-motion and/or motor dysfunction (weakness, tremor, dystonia) and/or trophic changes (hair, nail, skin).

- At least one sign at time of evaluation in 2 or more of the following categories:

  - Sensory: evidence of hyperalgesia (to pinprick) and/or allodynia (to light touch and/or deep somatic pressure and/or joint movement);

  - Vasomotor: evidence of temperature asymmetry and/or skin color changes and/or asymmetry. Temperature asymmetry should ideally be established by infrared thermometer measurements showing at least a 1°C difference between the affected and unaffected extremities;

  - Sudomotor/edema: evidence of edema and/or sweating changes and/or sweating asymmetry. Upper extremity volumetrics may be performed by therapists that have been trained in the technique to assess edema; or

  - Motor/trophic: evidence of decreased range-of-motion and/or motor dysfunction (weakness, tremor, dystonia) and/or trophic changes (hair, nail, skin).

- No other diagnosis that better explains the signs and symptoms. It is essential that other diagnoses which may require more urgent treatment, such as infection, allergy to implants, or other neurologic conditions, are diagnosed expediently before defaulting to CRPS.

- Psychological evaluation should always be performed as this is necessary for all chronic pain conditions.

(WCRP, Rule 17, Exhibit 7(G)(2) (a-e)).

F. To proceed with other invasive treatment, a patient should have a confirmed case of CRPS I or II. (WCRP, Rule 17, Exhibit 7(G)(3). Indeed, the MTGs provide:

- **<u>Diagnostic Components of Confirmed CRPS</u>**: Patients should have a confirmed diagnosis of CRPS to proceed to other treatment measures in this guideline.

  Both CRPS I and II confirmed diagnoses require the same elements. CRPS II is distinguished from CRPS I by the history of a specific peripheral nerve injury as the inciting event.

  Patient must meet the below criteria:

  a. A clinical diagnosis meeting the above criteria in 2, and

  b. At least 2 positive tests from the following categories of diagnostic tests:

     i. Trophic tests

        - Comparative x-rays of both extremities including the distal phalanges.

        - Triple phase bone scan.

     ii. Vasomotor/Temperature test: Infrared stress thermography.

iii. Sudomotor test: Autonomic test battery with an emphasis on QSART.

iv. Sensory/ Sympathetic nerve test: Sympathetic blocks.

G. In this case the evidence presented supports a finding/conclusion that the objective tests required by the Chronic Regional Pain Syndrome MTG to confirm a diagnosis of and treat CRPS were performed and that these tests resulted in positive findings for the condition. The MTGs recognize that the diagnosis of CRPS continues to be "controversial". (WCRP, Rule 17, Exhibit 7(G)(1)). Moreover, the "clinical criteria used by the International Association for the Study of Pain is thought to be overly sensitive and unable to differentiate well between those patients with other pain complaints and those with actual CRPS". Dr. Caughfield recognized this when he concluded that Claimant met the Rule 17, Exhibit 7 criteria for a diagnosis of CRPS. Indeed, Dr. Caughfield noted:

> Although Dr. Larson did not believe there was evidence of CRPS in the lower limb, other specialist providers disagreed, and he does meet the Division CRPS guidelines requirements for a diagnosis of CRPS I. I appreciate Dr. Larson's opinion that the testing may be overly sensitive and therefore produce false results but per the treatment Guidelines, [Claimant] does meet the criteria in Rule 17, Exhibit 7 CRPS medical treatment guidelines for confirmed CRPA pages 20 and 21. He meets the requirements of Section G.2 with continued pain disproportionate to the injury (G.2.a), reports of allodynia and decreased range of motion (G.2.b), and allodynia/loss of range of motion on clinical examination by providers in the records. He also meets the criteria in section G.3 of a positive thermogram and response to sympathetic block. (Dr. Larson disagreed with Dr. Reinhard on whether the QSART was positive, but it is not needed to meet G.3 with other positive tests).

(RHE J, p. 247).

H. Pursuant to the *AMA Guides, Section 1.2, Structure and Use of the Guides*, in practice, the "first key to effective and reliable evaluation of impairment is a review of office and hospital records maintained by the physicians who have provided care since the onset of the medical condition." This same section of the *AMA Guides* continues by noting, "this information gathering and analysis serves as the foundation upon which the evaluation of a permanent impairment is carried out. It is most important that the evaluator obtain enough clinical information to characterize the medical condition fully in accordance with the requirements of the guides." *In Re Goffinett,* W.C. No. 4-677-750 (ICAP, Apr. 16, 2008). In this case, Respondents urge the ALJ to discard the above referenced principles and ignore the content of the medical records and the opinions of multiple medical providers with substantial experience in diagnosing and treating CRPS in favor of Dr. Larson's opinion that Claimant does not have CRPS because the diagnosis is controversial, the tests utilized to confirm the diagnosis are sensitive and Dr. Caughfield. (See Respondents Proposed Findings of Fact, Conclusions of Law and Order). Here, the evidence supports the conclusion that Dr. Caughfield adhered to the above-mentioned principles by conducting a thorough review of the medical records to gather the necessary information to accurately describe Claimant's medical condition fully. Based upon this review and the findings from his examination, Dr. Caughfield then exercised his independent judgment to conclude that Claimant met the criteria for a diagnosis of CRPS per Rule 17, Exhibit 7 as referenced above. While it is true that Dr. Caughfield's examination findings included normal coloring and hair growth and no temperature variation between the left and right lower extremity on this particular date, the results of Claimant's objective testing, i.e. his thermogram, his response to sympathetic blockade and his QSART in combination with his disproportionate pain and the his range of motion findings on multiple clinical examinations, performed by a number of different specialist providers, persuades the ALJ that Claimant's treating physicians were probably correct when they concluded that he suffers from CRPS. Consequently, the ALJ is not persuaded that Dr. Caughfield erred when he assigned 25% WP impairment for a diagnosis of CRPS in accordance with the AMA Guidelines by using the

spinal cord table (Table 1, - Section A, pg. 109, AMA Guides) as recommended by Desk Aid #11, rating tip 8.

I. After considering the totality of the evidence presented, including the medical records of NP Livingston, Dr. Reinhard, Dr. Primack, Dr. Finn, Dr. Murray and the DIME report of Dr. Caughfield, the ALJ concludes that Respondents have failed to produce unmistakable evidence establishing that Dr. Caughfield's impairment rating determination is highly probably incorrect. Indeed, Respondents do not allege that Dr. Caughfield erred regarding the methodology regarding how the impairment rating was calculated. Rather, Respondents contend that Dr. Caughfield's rating is erroneous because the diagnosis of CRPS is highly probably incorrect. As noted above, the ALJ is not persuaded. While Dr. Larson has strong opinions regarding Claimant's testing results and CRPS diagnosis, the ALJ finds/concludes that differences in opinion among physicians are not unusual, nor do such differences in medical opinion reach the required level of "clear and convincing" evidence to establish that Dr. Caughfield's diagnostic and rating opinions are erroneous. *See Gonzales v. Browning Ferris Industries of Colorado*, W.C. No. 4-350-356 (ICAO, March 22, 2000); *Metro Moving & Storage*, 914 P.2d at 415 ("conflicts in the medical evidence are for the ALJ's resolution"); *Lopez*, W.C. No. 4-416-822 at 8-9 (the ALJ did not err in crediting the DIME and treating physicians over the claimant's expert, when the record did not compel crediting the expert over the others, and it supported concluding that the claimant did not overcome the DIME's impairment rating by clear and convincing evidence). Consequently, Respondents has failed to meet the required legal burden to set Dr. Caughfield's impairment rating determination aside. For similar reasons, the ALJ is not convinced that Dr. Caughfield's decision to assign psychological impairment in this case was highly probably incorrect.

Order

It is therefore ordered that:

1. Respondents request to set aside the whole person impairment rating opinion

based on a CRPS diagnosis and mental impairment as determined by Dr. Caughfield is denied and dismissed.

2. Any and all issues not determined herein are reserved for future decision.

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

Dated: September 4, 2025

/s/ Richard M. Lamphere_____

Richard M. Lamphere

Administrative Law Judge

Office of Administrative Courts
State of Colorado
Workers' Compensation Nos. WC 4-809-190-003

Issues

- Whether Respondents have proven by a preponderance of the evidence that Respondents request for a financial tapering of the opioid medications prescribed by Claimant's authorized treating physician ("ATP") should be granted?

Findings of Fact

1. Claimant sustained a compensable workers' compensation injury on November 6, 2009. Claimant was injured when his left arm was crushed between two forklifts. As a result of Claimant's injury, Claimant underwent surgery that involved placement of a plate in the area of the left upper extremity fractures. Claimant eventually underwent partial amputation of the left upper extremity below the left elbow. Claimant was subsequently diagnosed with Complex Regional Pain Syndrome ("CRPS"), phantom limb pain, chronic pain and depression.

2. After Claimant was placed at maximum medical improvement ("MMI") on April 23, 2013, Respondents filed a final admission of liability ("FAL") that admitted for a scheduled impairment rating of 95% of the left upper extremity and a 5% whole person impairment rating along with a 9% psychiatric impairment rating. The FAL also admitted for ongoing maintenance medical benefits. The parties then entered into a stipulation that settled Claimant's rights to indemnity benefits while keeping his medical benefits open in exchange for a certain lump sum payment to Claimant. The Stipulation was approved by the Division of Workers' Compensation on October 25, 2013.

3. Claimant has been under the care of Dr. Anderson-Oeser since before being placed at MMI. Dr. Anderson-Oeser testified at hearing that at the time Claimant was placed at MMI, Claimant's morphine milligram equivalent ("MME") was over 200. Dr. Anderson-Oeser testified that an MME over 100 increases the risk of death of the

patient by three times. Dr. Anderson-Oeser testified that she has attempted to wean Claimant's opioid prescription usage and has decreased the MME to 105, but has only been successful in reducing Claimant's opioid use to 15 mg of oxymorphone 2 times per day and 5 mg. of oxycodone 3 times per day. Dr. Anderson-Oeser testified that the oxymorphone is a long acting opioid that has some known treatment of neuropathic pain.

4. Dr. Anderson-Oeser testified she last decreased Claimant's opioid medication in August 2024 when she lowered Claimant's oxycodone from 5 mg four times per day to 3 times per day and Claimant's oxymorphone from 20 mg 2 times per day to 15 mg 2 times per day. Dr. Anderson-Oeser testified that opioids are a recognized treatment for CRPS and improve Claimant's function by helping reduce his pain. Dr. Anderson-Oeser testified that if Claimant is weaned off the opioid medication, there is not a good medication to substitute for Claimant that would help relieve his pain. Dr. Anderson-Oeser testified that Claimant is capable of working and performing his activities of daily living on his current level of opioid medications and was concerned that if she decreased Claimant's opioid medications, it would negatively effect Claimant's ability to perform his job and activities of daily living.

5. Dr. Anderson-Oeser testified that in addition to the opioid medication, Claimant is also prescribed gabapentin and medication for constipation, which is a side effect of Claimant's opioid use.

6. Respondents arranged for an independent medical examination ("IME") of Claimant with Dr. McCranie on May 10, 2023. Dr. McCranie reviewed Claimant's medical records, obtained a medical history and performed a physical examination as part of her IME. Dr. McCranie noted various modalities that had been attempted through the course of Claimant's care to address his pain complaints including ganglion blocks, acupuncture and medications. Claimant reported pain of 10 out of 10 to Dr. McCranie.

7. Dr. McCranie noted in her IME report that as a result of the November 6, 2009 accident, Claimant had (1) left wrist distal radius fracture; (2) left index finger

avulsion fracture; (3) status post open reduction and internal fixation ("ORIF"), left metacarpal fracture, closed treatment of distal radius fraction; (4) CRPS; (5) status post left forearm amputation; (6) peripheral nerve stimulator, left upper extremity (which ultimately resulted in removal); (7) left shoulder impingement; (8) right elbow pain; (9) adjustment disorder with physical complaints; (10) opioid dependence. Dr. McCranie recommended that Claimant be tapered off his opioid medication.

8. Dr. McCranie provided an amendment to her IME report on February 9, 2024 after reviewing additional medical records. Dr. McCranie noted in this report that while Dr. Anderson-Oeser had initiated a taper of opioid medication, since the May 10, 2023 IME, there had only been an attempt to reduce Claimant's opioid medications by 5 MME's. Dr. McCrainie noted in her supplemental IME report that she continued to recommend that the opioid medications be tapered as there appeared to be more of a dependence on opioid medication than any true functional benefit.

9. Dr. McCranie testified at hearing in this matter consistent with her IME reports. Dr. McCranie noted that at her May 10, 2023 IME, Claimant's MME was 150, which is a dangerous amount of opioids to be taking and placed Claimant in a "high risk" category. Dr. McCranie noted that Claimant's current MME was 105, which is in the "high risk" category. Dr. McCranie opined at hearing that some patient will resist having the opioids reduced as the may have a physical dependence of psychological dependence on the opioid medications. Dr. McCranie noted that the process of tapering the opioid medications requires a lot of reassurance because during the tapering program there will be a temporary increase in pain for the patient.

10. Dr. McCranie opined at the hearing that in Claimant's case, the opioid medications were not reasonable or necessary medical care because Claimant has not indicated that they help his pain or functionality. Dr. McCranie recommended a tapering schedule of 5 mg of oxymorphone per month until Claimant reached 0 mg. Dr. McCranie recommended that after Claimant's oxymorphone was reduced to 0 mg., Claimant's oxycodone be reduced 5 mg per month until Claimant reached 0 mg. This would reduce Claimant's opioid usage to 0 mg over the course of 21 months.

11. Dr. McCranie disagreed with the opinion of Dr. Anderson-Oeser that Claimant's ability to work would be affected by the tapering of the opioid medication. Dr. McCranie opined that if Claimant had an increase in his pain, she would recommend Tylenol or Lidoderm patches or topical gels for Claimant's pain.

12. Claimant underwent a psychiatric IME with Dr. Kleinman on February 26, 2024. Dr. Kleinman noted in his IME report that Claimant had sought psychotherapy with Dr. Bruns every week, which Claimant reported as helpful, but that treatment had stopped about five years ago after a disagreement with Dr. Bruns. Dr. Kleinman noted that Claimant was taking Cymbalta for depression. Dr. Kleinman opined in his IME report that Claimant was using an excessive amount of opioid medications and agreed with Dr. McCranie's opinion that the opioids should be tapered to a safe and reasonable level. Dr. Kleinman noted that it would not be unexpected for Claimant to have an increase in his pain complaints during the tapering, but tapering should continue, regardless. Dr. Kleinman noted that if during the tapering Claimant experienced an increase in irritability or impulsivity, the tapering should be continued and they would consider four sessions with Dr. Bruns to assist with monitoring Claimant's mood.

13. Dr. Kleinman testified at hearing in this matter consistent with his IME report. Dr. Kleinman noted that depression may increase a person's likelihood of abusing opioids and can also cause an increase in sensitivity to pain. Dr. Kleinman noted that opioids are a central nervous system depressive and can cause depression. Dr. Kleinman opined that if Claimant reported a deterioration of his psychologic condition during the tapering process, this was not a good reason to stop the tapering process. Instead, Dr. Kleinman recommended that Claimant's psychiatric treatments increase.

14. Dr. Kleinman testified that he would expect Claimant to be able to continue to work while tapering his opioid medications. Dr. Kleinman testified that if Claimant experienced an in crease in symptoms, the symptoms could be dealt with by other modalities. Dr. Kleinman testified he would expect Claimant to be able to continue to function at his current level during the tapering process.

15. Claimant testified at hearing in this matter. Claimant testified he has been on opioid medication since the date of his workers' compensation injury. Claimant testified he is currently in a lot of pain that he described as burning, electrical and stabling, and at a level of 6 out of 10. Claimant testified that the opioid medications lessen his pain and make the pain more tolerable. Claimant testified that there are times when his pain medication will run out if there is a holiday, and when he runs out of opioid medication his pain worsens. Claimant testified that when this happens, he is unable to work. Claimant testified that he is currently working cleaning bathrooms and residents rooms at an assisted living facility. Claimant testified that he has been at this job since 2022.

16. The medical records in this case are rife with recommendations that Claimant be weaned off the narcotic medications. For example, physicians' assistant ("PA") Lori Nacius recommended Claimant be weaned off the narcotic medications on October 4, 2012. Dr. Bruns contemplated the need to reduce Claimant's narcotic medications on October 8, 2012. Dr. Goldman recommended Claimant be weaned off the narcotic medications on July 13, 2013. Dr. Henry Roth recommended Claimant be weaned off the narcotic medications on May 21, 2014.

17. The ALJ notes that Claimant's current MME of 105 is in excess of the recommended amount set forth by the Colorado Division of Workers' Compensation Medical Treatment Guidelines. However, the ALJ finds that the tapering schedule recommended by Dr. McCranie and Dr. Kleinman to reduce Claimant's opioid MME to 0 mg over the course of 21 months is not reasonable in this case.

18. The ALJ notes that the testimony of Dr. McCranie and Dr. Kleinman that Claimant's opioid medications are not reasonable are based on Claimant's reports to the physicians that he is in constant 10 out of 10 pain. Dr. McCranie and Dr. Kleinman opine that if Claimant is in 10 out of 10 pain, then the opioid medication must not be helping his level of pain.

19. However, the ALJ finds Claimant's testimony at hearing that he is in a level of pain of 6 out of 10 to be credible. Moreover, the ALJ credits the testimony of Dr.

Anderson-Oeser that Claimant's use of opioid medications at the current level allow Claimant to maintain functionality to be credible and persuasive. The ALJ further credits the testimony of Dr. Anderson-Oeser that if Claimant were weaned off the opioid medications she does not have a good medication that she could substitute for Claimant to assist with his pain complaints as credible and persuasive. The ALJ finds the testimony of Claimant and Dr. Anderson-Oeser regarding the issue of the reasonableness and necessity of Claimant's ongoing use of opioid medication at the current level as prescribed by Dr. Anderson-Oeser to be credible and persuasive.

20. Specifically, the ALJ credits the testimony of Dr. Anderson-Oeser that she does not have a good medication that she could substitute for the opioids for Claimant's pain over the testimony of Dr. McCranie that if Claimant had an increase in his pain levels during the tapering, Claimant could be treated with Tylenol and Lidoderm patches.

21. The ALJ credits the testimony of Claimant and Dr. Anderson-Oeser and finds that the Respondents have failed to establish that it is more probable than not that Claimant's opioid prescriptions should be tapered. The ALJ finds the testimony of Dr. Anderson-Oeser that Claimant's use of opioid medications allows Claimant to maintain a level of functionality that permits Claimant to continue to work and perform his activities of daily living is found to be credible and persuasive and supported by the medical records in this case.

22. The ALJ notes that at the commencement of the hearing, the ALJ placed the burden of proof by a preponderance of the evidence on Respondents' to establish that a financial tapering of the opioid medications prescribed by Claimant's authorized treating physician ("ATP") should be granted. The ALJ notes that generally it is Claimant's burden of proof to establish the right to maintenance medical treatment and Respondents' are permitted to contest liability for a particular medical treatment even when general liability for post-MMI maintenance medical benefits is accepted. *See Bolton v. Industrial Claim Appeals Office*, 487 P.3d 999, 1005 (Colo. App. 2019).

23. However, in the present case, Claimant was prescribed opioid medications throughout the course of this case. At the time Claimant was placed at MMI, Dr. Anderson-Oeser testified Claimant was being prescribed opioid medication at over 200 MME, which was subsequently reduced to 105 as of August 2024. The parties eventually settled the issue of indemnity benefits and specifically indicated in their settlement agreement that Respondents would continue to be liable for the reasonable and necessary medical treatment related to Claimant's injury. At the time this agreement was entered into by the parties, Claimant was receiving opioid prescriptions through his maintenance treatment with Dr. Anderson-Oeser which were being paid for by Respondents. The ongoing need for the prescribed opioid medications was therefore, at least implicitly, contemplated by the parties in entering into the stipulation which left Respondents liable for Claimant's ongoing maintenance medical treatment.

24. Moreover, the testimony of Dr. McCranie and Dr. Kleinman specifically indicate that the Claimant should continue to be prescribed opioid medication for the next 21 months. This testimony implies that the opioid medication is reasonable and necessary medical treatment related to Claimant's injury (at least for the 21 months that the weaning schedule recommends Claimant continue to receive the opioid medication, albeit at a reduced amount) as contemplated by the admission for maintenance medical treatment. The opinions of Dr. McCranie and Dr. Kleinman do not represent that the opioid medication is completely unrelated to the injury, but merely that the amount of medication should be reduced over time to 0 mg. But the opinions would still indicate that the opioid medications are reasonable necessary and related for the next 21 months. Therefore, insofar as Respondents are seeking to modify an issue determined by the final admission of liability (and subsequent order approving the stipulation), Respondents bear the burden of proof to establish that the recommended weaning schedule is appropriate in this case.

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, 2009. 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. However, Section 8-43-201 was modified effective August 5, 2009 to provide that a party seeking to modify an issue determined by a general or final admission, a summary order, or a full order shall bear the burden of proof for any such modification. Section 8-43-201(1). Because Respondents are seeking to modify the final admission of liability filed in this case which admitted for maintenance medical treatment, Respondents bear the burden of proof in this case by a preponderance of the evidence. Respondents effectively must prove that the tapering schedule recommended by Dr. McCranie and Dr. Kleinman is appropriate medical treatment for Claimant.

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. As found, the issue in this case involves Respondents request for an order granting a financial tapering of the opioid medications prescribed by Claimant's ATP as a maintenance medical benefit. Respondents admitted in their FAL and the Stipulation entered into by the parties that Respondents are liable for ongoing maintenance medical treatment for Claimant. The testimony presented in this case by Respondents experts, Dr. McCranie and Dr. Kleinman recommend a tapering of the opioid medication over a period of 21 months. As found by the ALJ, these opinions expressed by the physicians imply that the opioid medications are reasonable and necessary medical treatment, but should be reduced over a period of time. Because this application for

hearing attempts to modify an issue admitted to by Respondents in the FAL and the order approving the Stipulation of the parties, Respondents bear the burden of proof pursuant to Section 8-43-203, C.R.S.

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). The need for medical treatment may extend beyond the point of maximum medical improvement where claimant requires periodic maintenance care to prevent further deterioration of her physical condition. *Grover v. Industrial Commission*, 759 P.2d 705 (Colo. 1988). An award for *Grover* medical benefits is neither contingent upon a finding that a specific course of treatment has been recommended nor a finding that claimant is actually receiving medical treatment. *Holly Nursing Care Center v. Industrial Claim Appeals Office*, 992 P.2d 701 (Colo. App. 1999); *Stollmeyer v. Industrial Claim Appeals Office*, 916 P.2d 609 (Colo. App. 1995). Section 8-42-101, C.R.S., thus authorizes the 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.*

5. As found, the ALJ credits the testimony of Dr. Anderson-Oeser and Claimant and finds that the tapering schedule recommended by Dr. McCranie and Dr. Kleinman is not reasonable in this case. As found, the current prescribed opioid medications allow Claimant to maintain his functionality as evidenced by the fact that he remains employed and perform his activities of daily living. Therefore, the ALJ finds that it is not reasonable to implement the tapering schedule that would reduce Claimant's opioid prescriptions to 0 mg over 21 months.

6. As found, the testimony of Claimant and Dr. Anderson-Oeser that Claimant regarding the reasonableness and necessity of Claimant's continued use of opioid medication is found to be credible and persuasive on this issue.

Order

It is therefore ordered that:

1. Respondents' request for an order allowing for a financial tapering schedule for additional opioid liability is denied.

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

NOTE: If you are dissatisfied with the ALJ's order, you may file a Petition to Review the order with the **Denver Office of Administrative Courts**, 1525 Sherman St., 4th Floor, Denver, CO 80203. You must file your Petition to Review within twenty (20) days after mailing or service of the order, as indicated on certificate of mailing or service; otherwise, the ALJ's order will be final. You may file the Petition to Review by mail, as long as the certificate of mailing attached to your petition shows: (1) That you mailed it within twenty (20) days after mailing or service of the order of the ALJ; and (2) That you mailed it to the above address for the **Denver Office of Administrative Courts**. For statutory reference, see section 8-43-301(2), C.R.S. For further information regarding procedures to follow when filing a Petition to Review, see Rule 26, OACRP. You may access a petition to review form at: http://www.colorado.gov/dpa/oac/forms-WC.htm. You may file your Petition to Review electronically by emailing the Petition to Review to the following email address: oac-ptr@state.co.us. If the Petition to Review is emailed to the aforementioned email address, the Petition to Review is deemed filed in Denver pursuant to OACRP 27(A) and Section 8-43-301, C.R.S. If the Petition to Review is filed by email to the proper email address, it does not need to be mailed to the Denver Office of Administrative Courts.

DATED: September 5, 2025

Keith E. Mottram

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. 5-290-801-001

Issues

- Did Claimant prove entitlement to temporary total disability (TTD) benefits from September 25, 2024 through February 17, 2025, and
- Did Respondents prove Claimant was responsible for termination of his employment and therefore ineligible for TTD benefits?

Findings of Fact

1. Claimant worked for Employer as an Operations Coordinator, managing the deployment Employer's electric scooters in the Colorado Springs area.

2. Claimant suffered an admitted injury to his left elbow on February 9, 2023, when he slipped and fell. He saw Dr. Leela Farr, an orthopedic surgeon, who diagnosed a radial head fracture and recommended surgery. However, Claimant declined surgery and opted for conservative treatment. Therefore, Dr. Farr referred Claimant to physical therapy.

3. On April 17, 2023, Dr. Farr documented that Claimant had improved with therapy and had only "mild" residual pain. The physical examination was benign, except for 10-15 degrees of reduction in elbow flexion. Dr. Farr opined that the fracture had healed and advised Claimant to begin more aggressive range of motion techniques and weightlifting. Dr. Farr stated Claimant had "no restrictions with regards to his left upper extremity." He indicated that no further orthopedic follow-up was necessary, and the therapist could discharge Claimant "once they see fit."

4. Claimant worked regular duties at his preinjury job and earned full wages until he was terminated on September 24, 2024.

5. Claimant had received a written warning regarding his job performance on May 20, 2024. The warning referenced "multiple" previous discussions with Claimant about several incidents of "unprofessional conduct." Several specific issues were noted, such as "raising your voice in a team meeting, exhibiting confrontational behavior in verbal and written communication, and questioning teammates' skills and qualifications for their roles." Claimant was advised that "any" other complaints of inappropriate behavior or other instances of misconduct could subject Claimant to discipline, including termination.

6. Employer subsequently received another complaint from a vendor about Claimant's behavior. Employer investigated the complaint and decided to terminate Claimant's employment, effective September 24, 2024.

7. Claimant was awarded unemployment (UI) benefits, commencing September 29, 2024.

8. Claimant sought to reopen to his claim in July 2024 but did not receive authorization for additional treatment until after he was terminated. Claimant does not believe there was any valid basis to terminate his employment. Instead, Claimant believes the termination was pretextual, retaliatory, and undertaken solely to limit Respondents' liability for workers' compensation benefits.

9. Employer's HR representative, Chassagne Hake, testified at hearing. Ms. Hake confirmed that Claimant was not under any work restrictions at the time of his termination, and he had continued to perform the full duties and functions of his job until his separation from employment on September 24, 2024. She testified that Claimant had received multiple warnings about inappropriate interactions co-employees and external business partners, including the written warning in May 2024. Ms. Hake explained that

Claimant was terminated for violating Employer's standards of conduct, rather than the injury. Ms. Hake's testimony is credible and persuasive.

10. Claimant saw Dr. William Runge, an orthopedic surgeon, on November 5, 2024. Claimant told Dr. Runge he resumed his normal activities after completing PT in 2023, but said his elbow "remains somewhat painful." Claimant described episodes of intense pain a few times a week, but more commonly experienced a "dull ache" in the elbow. Claimant had no recent treatment and was taking no medication. There was no mention of a recent worsening or other change in his condition.

11. Claimant received a steroid injection to the elbow.

12. On January 29, 2025, Dr. Runge noted Claimant's motion and strength were continuing to improve, but he was still "somewhat concerned" about the elbow. Dr. Runge reviewed a recent CT scan, which showed an intra-articular malunion and a large loose body. Dr. Runge opined the only surgical option for the malunion was a radial head replacement. However, he thought removing the loose body might improve Claimant's symptoms. Dr. Runge referred Claimant to a colleague who with more expertise in elbow arthroscopies.

13. On February 13, 2025, Dr. Runge authored a "To Whom It May Concern" letter imposing work restrictions of no lifting, pushing, pulling, or dragging more than ten pounds with the left arm. He stated, "these restrictions are to start 2/13/2025." The corresponding medical report is not in evidence, so the basis for the restrictions is unknown.

14. Claimant returned to work for a new employer on February 18, 2025.

15. Claimant failed to prove he left work because of the injury and suffered an injury-related wage loss from September 25, 2024 through February 17, 2025.

16. Respondents proved Claimant was responsible for termination of his employment on September 25, 2024.

Conclusions of Law

A. Claimant failed to prove entitlement to TTD benefits

A claimant is entitled to TTD benefits "in case of temporary total disability lasting more than three working days' duration." Section 8-42-105(1). Proof of "disability" is a threshold requirement for an award of TTD benefits. *PDM Molding, Inc. v. Stanberg*, 898 P.2d 542 (Colo. 1995). The concept of disability incorporates "medical incapacity" and "loss of wage earnings" proximately caused by the injury, either of which can suffice for an award of TTD benefits. *Montoya v. Industrial Claim Appeals Office*, 488 P.3d 314, 318 (Colo. App. 2018). "Medical incapacity" does not necessarily mean complete inability to work but can also be shown by reduced efficiency in the performance of regular job duties. *E.g., Ricks v. Industrial Claim Appeals Office*, 809 P.2d 1118 (Colo. App. 1991). A work injury need not be the sole cause of a wage loss; a disabled claimant is entitled to TTD benefits if the injury contributed "to some degree" to their wage loss. *PDM Molding, Inc. v. Stanberg, supra*. A claim for TTD benefits does not require formal work restrictions or expert opinions but can be supported by any form of competent and persuasive evidence, including the claimant's testimony. *Savio House v. Dennis*, 665 P.2d 141 (Colo. App. 1983).

As found, Claimant failed to prove he left work because of the injury and suffered an injury-related wage loss from September 25, 2024 through February 17, 2025. Claimant worked his regular job without limitations and earned full wages for 18 months after the accident, before he was terminated for reasons unrelated to the work injury. Although Claimant had ongoing symptoms related to the accident, there is no persuasive evidence of any associated functional limitations. To the contrary, Dr. Farr specifically opined in April 2023 that Claimant had "no restrictions with regards to his left upper extremity." This is consistent with Dr. Runge's note from November 2024 that Claimant had resumed "normal activities" after completing PT. Therefore, Claimant was not "disabled" by the injury and suffered no injury-related wage loss.

The mere fact that Claimant was subsequently given work restrictions on February 13, 2025, does not automatically make him eligible for TTD, absent persuasive evidence of a contemporaneous change in his physical capacity. Although the existence or absence of formal work restrictions is certainly a factor to consider when evaluating a claim for disability benefits, work restrictions are not dispositive. *Savio House v. Dennis*, 665 P.2d 141 (Colo. App. 1983).

B. Claimant was responsible for termination of employment

Sections 8-42-103(1)(g) and 8-42-105(4)(a) contain identical language, which provides, "In cases where it is determined that a temporarily disabled employee is responsible for termination of employment, the resulting wage loss shall not be attributable to the on-the-job injury." The "termination statutes" are an affirmative defense to a claim for temporary disability benefits, which Respondents must prove by a preponderance of the evidence. *Gilmore v. Industrial Claim Appeals Office*, 187 P.3d 1129, 1132 (Colo. App. 2008). The termination statues were intended to introduce the limited concept of "fault" into eligibility for TTD benefits. *Colorado Springs Disposal v. Industrial Claim Appeals Office*, 59 P.3d 1061, 1064 (Colo. App. 2002). In this context, fault "is not necessarily related to culpability, but only requires a volitional act or the exercise of some degree of control or choice in the circumstances leading to the discharge from employment." *Richards v. Winter Park Recreational Association*, 919 P.2d 933 (Colo. App. 1996); *see also Padilla v. Digital Equipment Corp*., 902 P.2d 414, 416 (Colo. App. 1995). The ALJ must consider the totality of the circumstances to determine whether the claimant was responsible for their termination. *Padilla v. Digital Equipment Corp., supra*.

As found, Respondents proved Claimant was responsible for termination of his employment. Claimant had received a written warning regarding his job performance on May 20, 2024. The warning referenced "multiple" previous discussions with Claimant about "several" incidents of "unprofessional conduct." Claimant was explicitly advised that any further complaints about his conduct could result in termination. Employer subsequently received another complaint from a vendor about Claimant's behavior, and

after investigating the complaint, decided to terminate Claimant's employment effective September 24, 2024. These volitional acts were within Claimant control and directly led to his termination. Claimant's allegation that the termination was pretextual and retaliatory is not substantiated by persuasive evidence.

Order

It is therefore ordered that:

1. Claimant's claim for TTD benefits from September 25, 2024 through February 17, 2025, is denied and dismissed.

2. 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: September 5, 2025

DIGITAL SIGNATURE

Patrick C.H. Spencer II

Patrick C.H. Spencer II

Administrative Law Judge

Office of Administrative Courts

Office of Administrative Courts
State of Colorado
Workers' Compensation No. WC 5-295-846-002

Issues

I. Whether Claimant established by a preponderance of the evidence that she suffered a compensable injury on September 19, 2024, and is entitled to reasonable and necessary medical treatment to cure and relieve her from the effects of her work injury.

II. Whether Claimant established by a preponderance of the evidence that the need for a right total knee replacement is reasonable, necessary, and causally related to the September 19, 2024, work accident.

Findings of Fact

Background and Pre-Accident

1. Claimant is a 58-year-old woman who has worked for Employer for 28 years. At the time of the accident, Claimant was working as a supervisor in production.

2. Prior to the accident, Claimant maintained an active lifestyle that included participating in folkloric dance while leading several young people in dance activities, walking approximately 10 minutes around the company grounds during work breaks, walking at home in the evenings to manage her diabetes, participating in Zumba classes, and teaching catechism to children at her church while participating in various church activities and events. Moreover, she was not treating for any knee problems and did not have any restrictions that impacted on her ability to perform her job duties.

Accident on September 19, 2024

3. On September 19, 2024, at approximately 6:00 a.m., Claimant was entering the work site entrance doors when she tripped over an object that had been dropped on the

floor. The lighting was not working in the entrance area, preventing Claimant from seeing the object on the floor, and she fell directly onto both knees. After falling, Claimant tried to get up on her own but was unable to do so, prompting her to scream for help and throw small objects at the door to attract attention. Co-workers eventually heard her calls for help and came to help. They had to physically lift Claimant up because she could not get up by herself. Claimant was observed to be bleeding from both knees and was limping, and she was taken to the human resources office where she was treated with bandages to stop the bleeding.

Immediate Post-Injury Travel

4. On September 20, 2024, the day after the accident, Claimant left on a pre-planned vacation to Guadalajara, Jalisco, Mexico, involving a direct flight from Denver International Airport lasting 3.5 hours in economy class seating. Claimant went on vacation. But, instead of participating in planned beach activities, Claimant was unable to engage in many vacation activities due to knee pain and had to remain at her mother-in-law's house. She returned from vacation one week later via the same flight arrangements.

Initial Medical Treatment and Evaluation

5. On October 14, 2024, more than three weeks after the accident, Claimant was evaluated for the first time for her work injury at Concentra by Chelsea Rasis, P.A. At this visit, Claimant was diagnosed with contusions of both knees, as well as a neck sprain. Based on her assessment, she prescribed medications, physical therapy, and a knee brace. Moreover, she also ordered an MRI of each knee to assess the extent of Claimant’s knee injuries. She also provided Claimant restrictions that limited her walking, squatting, bending, and the use of stairs.

6. On October 16, 2024, Claimant returned to Concentra with ongoing pain, and the examination noted swelling of both knees. At this appointment, she was also assessed with a lumbar strain. She was seen again on October 23, 2024, as her symptoms remained fairly unchanged.

Diagnostic Imaging Results and Referrals

7. On November 7, 2024, Claimant underwent MRI imaging of both knees. The MRI of the left knee showed broad areas of high-grade full-thickness cartilage loss with fissuring and subchondral edema in the medial femoral condyle, with full-thickness fissuring of the median ridge and in the trochlea with subchondral cystic change, with the menisci remaining intact. The MRI of the right knee showed a complex tear of the medial meniscus, extrusion of the medial meniscus, full-thickness cartilage loss in the medial compartment with subchondral edema, and full-thickness fissuring of the median ridge with subchondral cystic change.

8. On November 14, 2024, Claimant was evaluated by Dr. Theodore Villavicencio. At this appointment, Claimant's knees, back, and neck were still symptomatic. Dr. Villavicencio performed a physical examination and also reviewed her MRIs. Based on his assessment of Claimant's injuries, he referred Claimant for chiropractic treatment for her neck and back. He also referred Claimant to Dr. Kirk Jeffers, an orthopedic surgeon, to assess her knees.

Orthopedic Consultations

9. On December 11, 2024, orthopedic surgeon Dr. Jeffers conducted an initial evaluation. As part of his evaluation, he obtained a history from Claimant regarding any knee problems before the work accident and her symptoms after the accident. The history notes indicate Claimant had some slight symptoms before her work accident, but yet they were minor compared to her current symptoms – which now consisted of significant pain and dysfunction. He also reviewed her MRIs, independently, and went through in detail what they demonstrated and reviewed her medical records. Lastly, he performed a physical examination, and documented, among other things, a "moderate-to-large effusion" on her right knee. Based on his evaluation, he diagnosed Claimant with bilateral knee chondromalacia with the right knee more severely affected. After his assessment and diagnosis, he then performed a causation assessment. Dr. Jeffers concluded that Claimant sustained an injury to

both knees that arose out of and was caused by the September 2024 work accident. After performing his causation assessment, he discussed her options, and due to the extent of her debilitating pain and dysfunction, combined with the imaging findings and his physical examination, he discussed Claimant having a knee replacement - which Dr. Jeffers thought was reasonable. Therefore, Dr. Jeffers, who does not perform such procedure, referred Claimant to his partner, Dr. Judith Kopinski, who does, to evaluate Claimant for a knee replacement. Overall, the ALJ finds Dr. Jeffers' assessment and causation evaluation to be extremely thorough and well supported. In determining causation, he assessed Claimant's pre-accident symptoms and compared them to her post-accident symptoms and his physical findings, personally reviewed the MRIs, physically examined Claimant and documented his findings in detail, which included documenting the "moderate-to-large" effusion.

10. Subsequently, on January 15, 2025, orthopedic surgeon Dr. Kopinski, of Orthopedic Center of Colorado, evaluated Claimant. As part of her assessment, she ordered additional x-rays and reviewed them and noted that they confirmed arthritis with narrowing of the medial joint space and presence of osteophytes, with the right knee showing more severe changes compared to the left. In her assessment, she concluded that Claimant's fall at work caused an "acute on chronic situation," i.e., the fall aggravated her preexisting arthritis. Dr. Kopinski also discussed a potential right knee replacement if Claimant's symptoms did not improve with additional conservative treatment. In order to exhaust conservative measures before moving on to a knee replacement, Dr. Kopinski recommended a prescription strength anti-inflammatory medication and steroid injections.

Conservative Treatment Attempts

11. Conservative treatment measures were attempted over several months, including physical therapy, massage therapy, and chiropractic treatment from Michael Simone for neck and back tenderness. Additional conservative treatments included anti-inflammatory medications (Ibuprofen 600mg three times daily, later Meloxicam), knee bracing, and activity modifications with work accommodations. Despite these

conservative measures, treatment was unsuccessful in providing lasting relief for Claimant's knee pain and functional impairment.

12. On January 15, 2025, and due to the failure of other conservative treatment, Dr. Kopinski administered an intra-articular cortisone injection to the right knee, which provided significant improvement in pain levels, reducing Claimant's pain by 80 to 90% initially, but lasting only approximately one week before stabilizing at 30% improvement. On January 28, 2025, Dr. Kopinski administered a cortisone injection into the left knee.

Surgical Recommendations

13. On January 28, 2025, following the temporary success but ultimate failure of conservative treatments, Dr. Kopinski discussed with Claimant the option to undergo a right total knee replacement, since Claimant had failed conservative treatments including medications, activity modifications, therapy, and injections. The purpose of going forward with the knee replacement was for Claimant to regain her function, reduce her pain, and improve her quality of life.

14. On April 11, 2025, Dr. Ryan Caufield, also of Colorado Orthopedic Centers of Colorado, evaluated Claimant and confirmed advanced osteoarthritis in both knees with the right knee showing more progressive cartilage loss. Dr. Caufield noted that Claimant had undergone extensive nonoperative management since her injury without significant improvement and recommended a total right knee replacement as the only treatment that would provide significant relief and allow Claimant to return to work. He concluded that Claimant's current and persistent symptoms, that necessitated the need for the knee replacement, were caused by the work accident. Lastly, he requested authorization for a total right knee replacement.

15. All treating physicians based their surgical recommendations on the failure of conservative treatment over approximately seven months to relieve Claimant's pain and improve her functioning as well as the degenerative changes documented on imaging studies.

16. On April 29, 2025, Respondents denied Dr. Caufield's request for authorization to perform the knee replacement surgery.

Automobile Accident

17. In January of 2025, Claimant was involved in a motor vehicle accident. Due to the motor vehicle accident, Claimant filed an insurance claim and alleged that the motor vehicle accident caused her to have neck and low back pain. However, at the hearing, Claimant testified that her current neck and back pain is from her fall at work and not the car accident. There is no credible evidence that Claimant's knee condition was aggravated in any way from the automobile accident.

IME by Dr. Nathan Hammel and Testimony

18. On March 17, 2025, Claimant underwent an Independent Medical Evaluation with Dr. Nathan C. Hammel, MD, orthopedic surgeon, to determine whether the recommended knee replacement was reasonable, necessary, and related to the work accident. Dr. Hammel's evaluation involved physically examining Claimant, reviewing her medical records, and obtaining a detailed history of her injury and symptoms.

19. Dr. Hammel issued a report and testified at the hearing. He concluded that Claimant's need for a right knee replacement is unrelated to the workplace fall. He attributed her condition entirely to end-stage degenerative arthritis and concluded that no aggravation or acceleration of her arthritis occurred as a result of the fall.

20. The ALJ finds that the medical opinions offered by Dr. Hammel are entitled to limited weight. The conclusions contained in his report and testimony are internally inconsistent, insufficiently supported by the objective medical evidence, and do not adequately account for Claimant's post-injury clinical presentation and functional status.

21. Dr. Hammel's conclusion in his report that Claimant returned to her baseline condition by March 17, 2025, is contradicted by the medical record. At the time of his evaluation, Claimant presented with bilateral knee pain rated 9 out of 10, required a cane and knee brace to ambulate, and had work restrictions - none of which existed before the September 19, 2024, fall. Additionally, Dr. Hammel acknowledged that Claimant

sustained bilateral knee contusions from the fall, yet failed to explain how trauma sufficient to cause documented contusions and bleeding would have no lasting impact on the underlying arthritic joint structures. His opinion essentially requires accepting that significant arthritis symptoms that emerged immediately after the fall and have persisted for months are merely coincidental to the trauma.

22. Dr. Hammel's reliance on the MRI findings and injection response to support his causation opinion is also flawed. First, he concluded that because the MRI taken one month post-injury showed only degenerative changes without acute findings like bone bruising or loose bodies, no aggravation occurred. However, it was not established that MRI imaging can reliably detect whether preexisting arthritis has been aggravated or rendered symptomatic by trauma. The ALJ finds that his approach improperly elevates the absence of specific acute MRI findings over documented clinical evidence of aggravation, including immediate onset of pain, functional decline, ongoing disability, and need for medical treatment. Second, Dr. Hammel interpreted the temporary relief from steroid injections as evidence that Claimant's symptoms were solely due to preexisting arthritis rather than the work injury. This reasoning is unpersuasive because it assumes that the effectiveness of the injection disproves the role of trauma in exacerbating the condition, which the ALJ finds to be an unwarranted inference.

23. Dr. Hammel's testimony that Claimant's condition could not worsen because she had "end-stage" arthritis with "no cartilage" contradicts the clinical evidence. While imaging may show advanced degenerative changes, Claimant was fully functional before the fall. Dr. Hammel's assertion that "you can't get worse than zero" ignores that aggravation of arthritis is measured not solely by cartilage loss but by symptoms, function, and disability. The evidence demonstrates that Claimant's functional status objectively worsened following the fall, transforming her from an active individual who participated in dance, Zumba, and walked regularly to someone with constant and significant knee pain, requiring assistive devices, work restrictions and medical treatment.

24. For these reasons, the ALJ does not find Dr. Hammel's opinions regarding causation of Claimant's knee condition and need for knee replacement surgery to be persuasive and assigns them limited weight. His conclusions fail to reconcile the temporal relationship between the fall and symptom onset, rely on an improperly narrow interpretation of what constitutes medical evidence of aggravation, and do not account for Claimant's documented functional decline. As a result, the ALJ finds that the evidence supports a finding that the fall significantly and permanently aggravated Claimant's preexisting degenerative arthritis and proximately caused the need for medical treatment.

25. On the other hand, the ALJ does credit that portion of Dr. Hammel's opinion as set forth in his report that Claimant did sustain a neck and back strain due to her work accident. The ALJ credits this portion of his report since it is consistent with the underlying medical records that document Claimant complaining of neck and back pain after the accident, P.A. Rasis diagnosing Claimant with a neck and lumbar strain and making a referral for chiropractic treatment, as well as Claimant's testimony - which the ALJ credits.

Weighing of the Medical Evidence

26. The ALJ has carefully considered and weighed the medical opinions and treatment records of all evaluating and treating providers. The ALJ assigns greater weight to the medical opinions of Drs. Jeffers, Kopinski, and Caufield, and lesser weight to the opinion of Dr. Hammel, for the reasons set forth above and below.

27. The ALJ assigns significant weight to the opinion of Dr. Jeffers, who performed an orthopedic consultation on December 11, 2024. Dr. Jeffers obtained a detailed medical history from Claimant, conducted an in-person physical examination, personally reviewed the MRIs, and carefully documented his findings. His evaluation included objective findings such as a "moderate-to-large effusion" in the right knee, which he directly observed and recorded. He also assessed Claimant's pre-injury and post-injury condition, noting a material increase in pain and dysfunction following the fall. Based on his comprehensive evaluation, Dr. Jeffers concluded that Claimant sustained bilateral knee injuries arising out of the September 2024 work-related

incident. His causation opinion is well-supported by objective medical evidence and consistent with Claimant's clinical course. Accordingly, the undersigned finds Dr. Jeffers' opinion credible and highly persuasive.

28. The ALJ also assigns significant weight to the opinion of Dr. Kopinski, who evaluated Claimant on January 15, 2025. Dr. Kopinski reviewed imaging studies, obtained x-rays confirming degenerative changes, and assessed Claimant's post-injury clinical presentation. She concluded that the fall caused an "acute on chronic" condition - an aggravation of preexisting arthritis. Dr. Kopinski recommended and administered corticosteroid injections and prescribed anti-inflammatory medications, documenting both the temporary pain relief and the subsequent return of symptoms. After conservative treatment proved insufficient, she discussed surgical intervention. The ALJ finds that Dr. Kopinski's conclusion regarding causation is well-reasoned, grounded in the record, and consistent with both the timing of symptoms and the Claimant's functional decline following the injury.

29. The ALJ also assigns significant weight to the opinion of Dr. Caufield, who evaluated Claimant on April 11, 2025. Dr. Caufield confirmed the presence of advanced osteoarthritis in both knees, with more severe findings in the right knee. He noted that Claimant had undergone extensive conservative treatment for more than six months without significant improvement. Based on the documented failure of nonoperative measures and the persistence of symptoms since the fall, Dr. Caufield concluded that Claimant's current condition was caused by the work injury and recommended a right total knee replacement. His opinion is supported by consistent clinical findings and correlates directly with the chronology and outcome of Claimant's treatment. The undersigned finds Dr. Caufield's opinion credible, consistent, and medically sound.

30. The ALJ also considered the records and treatment rendered by Physician Assistant Chelsea Rasis at Concentra beginning on October 14, 2024. PA Rasis diagnosed Claimant with bilateral knee contusions and prescribed medications, therapy, and bracing. She also immediately referred Claimant to have MRIs for her knees and imposed physical restrictions. The undersigned finds that these early treatment records are consistent with the onset of symptoms immediately following the fall

requiring immediate assessment via MRIs and support the conclusions later reached by the treating orthopedic specialists.

31. The ALJ further notes that Claimant received chiropractic care from Dr. Michael Simone for neck and back complaints attributed to the fall. Although not central to the causation of Claimant's knee condition and need for surgery, the chiropractic treatment supports the continuity and consistency of reported symptoms following the workplace incident and the force exerted on Claimant's body due to the fall. The ALJ also credits the referral for this treatment and Claimant undergoing such treatment to be persuasive evidence that Claimant sustained a cervical and lumbar strain.

32. As previously discussed in detail, the ALJ assigns limited weight to the opinions of Dr. Hammel. His conclusions regarding causation for Claimant's injury to her knees and need for surgery are internally inconsistent and are not well-supported by the medical record. Dr. Hammel concluded that Claimant returned to baseline despite documented ongoing pain, use of assistive devices, and work restrictions at the time of his evaluation. He opined that the fall did not aggravate Claimant's arthritis but failed to persuasively explain how a fall that results in observable contusions and post-injury dysfunction could be unrelated to the workplace trauma. Plus, his reliance on the absence of acute findings on MRI and assertion that the condition "could not be worse than zero" are inconsistent with the documented worsening of symptoms, functional limitations, and treatment needs. As previously indicated, the ALJ finds Dr. Hammel's opinion unpersuasive and contrary to the weight of the medical and testimonial evidence.

33. The ALJ finds that the opinions of the treating orthopedic surgeons - Drs. Jeffers, Kopinski, and Caufield - are well-supported by clinical findings, imaging studies, treatment response, and the chronology of Claimant's condition. Each provider conducted in-person evaluations, reviewed diagnostic imaging, considered Claimant's medical history, and based their opinions on the totality of evidence. These providers consistently concluded that Claimant sustained an aggravation of her preexisting knee condition as a result of the September 19, 2024, workplace fall. Their conclusions are

corroborated by the progression of symptoms, the failure of conservative treatment, and the need for surgical intervention.

34. Accordingly, the ALJ gives greater weight to the treating providers' opinions and finds that the workplace accident significantly and permanently aggravated Claimant's preexisting bilateral knee arthritis, resulting in persistent pain, functional limitations, and the need for ongoing medical treatment, including the right total knee replacement surgery.

35. The ALJ does, however, credit that portion of Dr. Hammel's opinion, as set forth in his report, that Claimant did sustain a neck and back strain. The ALJ credits that portion of his testimony because it is consistent with the underlying medical records as well as Claimant's testimony, which the ALJ credits.

Evaluation of Opinions Re: Reasonable and Necessary Treatment

36. To the extent that Dr. Hammel opined that a total knee replacement is reasonable and necessary, the undersigned credits that portion of his testimony.

37. Each treating orthopedic specialist has evaluated Claimant and concluded that a right knee replacement is the most appropriate treatment at this time due to the degree of Claimant's pain and dysfunction.

38. At this time, none of her treating physicians have proposed any alternative treatment, other than a knee replacement, that is reasonably expected to relieve Claimant from the effects of her work injury.

39. Claimant has undergone and exhausted conservative treatment for her right knee. Based on the credible evidence, the ALJ finds that the total knee replacement that has been recommended is the most reasonable treatment option available to alleviate Claimant's pain and improve her functioning and is therefore reasonably necessary.

Ultimate Findings of Fact

40. Claimant's fall at work significantly and permanently aggravated her preexisting knee arthritis and proximately caused her ongoing bilateral knee pain, resulting disability, and need for medical treatment for both knees.

41. Claimant's fall at work also resulted in a neck and back strain that caused the need for medical treatment.

42. Conservative treatment, including injections, has failed to provide sustained relief for Claimant's knees. A total knee replacement of her right knee is the only remaining treatment option identified to address the effects of the work-related accident that caused a significant and permanent aggravation of the arthritis in her right knee. Therefore, the surgical recommendation is reasonable and necessary.

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 she suffered a compensable injury on September 19, 2024, and is entitled to reasonably, necessary, and related medical treatment.

Claimant is required to prove by a preponderance of the evidence that the conditions for which she seeks medical treatment were proximately caused by an injury arising out of and in the course of her employment. Section 8-41-301(1)(c), C.R.S. Claimant must prove a causal nexus between the claimed disability and the work-related injury. *Singleton v. Kenya Corp.,* 961 P.2d 571 (Colo. App. 1998).

A preexisting disease or susceptibility to injury does not disqualify a claim if the employment aggravates, accelerates, or combines with the preexisting disease or infirmity to produce a disability or need for medical treatment. *Duncan v. Industrial Claim Appeals Office,* 107 P.3d 999 (Colo. App. 2004); *H & H Warehouse v. Vicory,* 805 P.2d 1167 (Colo. App. 1990). An aggravation of a preexisting condition is compensable. *Subsequent Inj. Fund v. Thompson*, 793 P.2d 576 (Colo. 1990). If there is a direct causal relationship between the mechanism of injury and resultant disability, the injury is compensable if it caused a preexisting condition to become disabling. *Duncan v. Indus. Claim Apps. Office*, 107 P.3d 999 (Colo. App. 2004). However, there must be some affirmative causal connection beyond a mere assumption that the asserted mechanism of injury was sufficient to have caused an aggravation. *Brown v. Indus. Comm'n*, 447

P.2d 694 (Colo. 1968). It is not sufficient to show that the asserted mechanism could have caused an aggravation, but Claimant must show that it is more likely than not that the mechanism of injury did, in fact, cause an aggravation. *Id*.

Pain is a typical symptom from the aggravation of a preexisting condition, and if the pain triggers Claimant's need for medical treatment, Claimant has suffered a compensable injury. *Merriman v. Indus. Comm'n*, 210 P.2d 448 (Colo. 1949); *Dietrich v. Estes Express Lines*, W.C. No. 4-921-616-03 (September 9, 2016). Claimant need not show an injury objectively caused any identifiable structural change to their underlying anatomy to prove an aggravation. A purely symptomatic aggravation is sufficient for an award of medical benefits if the symptoms were triggered by work activities and caused Claimant to need treatment they would not otherwise have required. *See Cambria v. Flatiron Construction*, W.C. No. 5- 066-531-002 (May 7, 2019) (citing *Merriman v. Industrial Comm'n*, 210 P.2d 448 (Colo. 1949)). But the mere fact that Claimant experiences symptoms at work does not necessarily mean the employment aggravated or accelerated the preexisting condition. *Finn v. Indus, Comm'n*, 437 P.2d 542 (Colo. 1968); *Cotts v. Exempla*, W.C. No. 4-606-563 (August 18, 2005). Rather, the ALJ must determine whether the need for treatment was the proximate result of an industrial aggravation or is merely the direct and natural consequence of the preexisting condition. *F.R. Orr Const. v. Rinta*, 717 P.2d 965 (Colo. App. 1985); *Carlson v. Joslins Dry Goods Co.*, W.C. No. 4-177-843 (March 31, 2000).

The question of whether the claimant met the burden of proof to establish the requisite causal connection is one of fact for determination by the ALJ. *City of Boulder v. Streeb*, 706 P.2d 786 (Colo. 1985); *Faulkner v. Industrial Claim Appeals Office,* 12 P.3d 844 (Colo. App. 2000).

Thus, in determining whether a preexisting condition has been aggravated, the ALJ can consider Claimant's functional capacity and work-related limitations, not merely diagnostic imaging findings. Disability in workers' compensation cases can be measured by functional impairment and the ability to perform work activities, rather than exclusively by radiographic or other imaging studies. The key inquiry is whether the industrial

accident caused a material change in Claimant's symptoms, functional abilities, and need for medical treatment.

As indicated above, the ALJ finds the opinions of Claimant's treating orthopedic surgeons - Drs. Jeffers, Kopinski, and Caufield - credible, well-supported, and entitled to greater weight than the opinion of Respondents' independent medical examiner, Dr. Hammel. Each treating provider conducted in-person evaluations, reviewed diagnostic imaging, considered Claimant's medical history and functional limitations, and reached consistent conclusions that Claimant's fall at work on September 19, 2024, significantly and permanently aggravated her preexisting bilateral knee arthritis and caused the need for medical treatment.

By contrast, Dr. Hammel's opinions regarding causation were internally inconsistent and failed to adequately account for Claimant's reported pain, clinical findings, and functional limitations following the accident. His conclusions were based primarily on the absence of acute trauma indicators on MRI - such as bone bruising or loose bodies - and appeared to impose an elevated evidentiary threshold for proving an aggravation of a preexisting condition. As indicated above, it was not established that an MRI performed approximately one month after the accident is capable of detecting every type or extent of an aggravation of preexisting arthritis, nor did he explain how such imaging alone could reliably rule out a clinically documented aggravation. By requiring the presence of specific acute MRI findings to support causation, Dr. Hammel effectively disregarded relevant clinical information such as the severity of the fall, the immediate onset and persistence of symptoms, Claimant's functional impairment, and her documented response to treatment. His approach set an unduly high bar for establishing compensability by failing to consider the full range of evidence that can support an aggravation of a preexisting condition. Accordingly, the ALJ finds Dr. Hammel's opinion to be of limited probative value as it relates to her knees.

However, the ALJ does credit that portion of Dr. Hammel's opinion that concluded Claimant suffered a neck and lumbar strain. As found above, this opinion is supported by the underlying medical records that document pain in these areas, the diagnosis of such

conditions by P.A. Rasis and her referral for chiropractic treatment, and Claimant's credible testimony regarding these injuries.

Based on the totality of the credible evidence, the ALJ finds and concludes that Claimant's fall on September 19, 2024, materially, significantly, and permanently aggravated her preexisting bilateral knee arthritis. The evidence establishes that before the work accident Claimant had minor and non-descript symptoms, was not seeking treatment, and was fully functional, and then experienced immediate and persistent knee pain and functional impairment after the work accident and did not improve despite undergoing conservative treatment. The ALJ further finds and concludes that the fall also resulted in Claimant suffering a neck and lumbar strain. Although Claimant might not need any additional treatment for her neck and back, she did establish that the strains were caused by the work accident.

Accordingly, the ALJ finds and concludes that Claimant has met her burden of proof by a preponderance of the evidence to establish that she sustained a compensable injury and that her current bilateral knee condition - and the associated need for continued treatment, including a right total knee replacement - is causally related to the September 2024 work injury. The ALJ also finds and concludes Claimant established by a preponderance of the evidence that she suffered a neck and lumbar strain.

II. Whether Claimant established by a preponderance of the evidence that the need for a right total knee replacement is reasonable, necessary, and causally related to the September 19, 2024, work accident.

To impose liability for medical treatment under the Colorado Workers' Compensation Act, the ALJ must find that the need for treatment was proximately caused by an injury arising out of and in the course of employment. § 8-41-301(1)(b), C.R.S. The question of whether the claimant has established causation is a factual determination for the ALJ. *Faulkner v. Indus. Claim Appeals Office*, 12 P.3d 844 (Colo. App. 2000). To establish causation, it is not necessary for the industrial injury to be the sole cause of the need for treatment. Rather, it is sufficient if the injury is a significant cause - meaning there is a direct relationship between the industrial incident and the need for treatment.

Reynolds v. U.S. Airways, Inc., W.C. Nos. 4-352-256, 4-391-859, 4-521-484 (ICAO May 20, 2003). Accordingly, medical treatment is compensable if the industrial injury aggravates, accelerates, or combines with a preexisting condition to create the need for treatment. *Joslins Dry Goods Co. v. Indus. Claim Appeals Office*, 21 P.3d 866 (Colo. App. 2001*); H & H Warehouse v. Vicory*, 805 P.2d 1167 (Colo. App. 1990); *Seifried v. Indus. Comm'n*, 736 P.2d 1262 (Colo. App. 1986).

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

The ALJ also finds and concludes that Claimant established by a preponderance of the evidence that the proposed total right knee replacement surgery is reasonable, necessary, and causally related to the work injury. The ALJ finds and concludes that the work accident was the proximate and direct cause of Claimant's pain, functional disability, and need for surgery. Drs. Kopinski and Caufield have both recommended surgery after Claimant failed to improve with months of conservative measures, and each attributed the need for surgery to the work-related aggravation of Claimant's condition. Moreover, none of her treating physicians have recommended a different course of action at this time to treat Claimant from the effects of her work injury. Accordingly, the undersigned finds and concludes that Claimant established by a preponderance of the evidence that the right total knee replacement is reasonable and necessary and causally related to her work accident and resulting injury.

Order

It is therefore ordered that:

1. Claimant's September 19, 2024, claim is found to be compensable.
2. Respondents shall pay for all authorized, reasonable, and necessary medical treatment related to Claimant's September 19, 2024, work injury.
3. Respondents shall authorize and pay for the right total knee replacement surgery.
4. All matters not determined herein are reserved for future determination.

If you are dissatisfied with the Judge's order, you may file a Petition to Review the order with the Denver Office of Administrative Courts, 1525 Sherman St., 4th Floor, Denver, CO 80203. You must file your Petition to Review within twenty (20) days after mailing or service of the order, as indicated on certificate of mailing or service; otherwise, the Judge's order will be final. You may file the Petition to Review by mail, as long as the certificate of mailing attached to your petition shows: (1) That you mailed it within twenty (20) days after mailing or service of the order of the Judge; and (2) That you mailed it to the above address for the Denver Office of Administrative Courts. For statutory reference, see section 8-43-301(2), C.R.S. For further information regarding procedures to follow when filing a Petition to Review, see Rule 27, OACRP. You may access a petition to review form at: http://www.colorado.gov/dpa/oac/forms-WC.htm.

Dated: September 9, 2025

/s/ Glen Goldman

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Glen B. Goldman

Administrative Law Judge

Office of Administrative Courts

State of Colorado

Workers' Compensation No. WC 5-199-434-004

ISSUE

The issue addressed by this Summary Order concerns Claimant's entitlement to medical benefits. The specific question answered is:

I. Whether Claimant established, by a preponderance of the evidence, that the right sided reverse total shoulder arthroplasty proposed by Dr. Weinstein is reasonable, necessary and related to his July 3, 2023, work-related motor vehicle accident (MVA). [1]

Based on the evidence presented at hearing, the ALJ finds and concludes as follows:

A. As is the case here, 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); *Snyder v. Industrial Claim Appeals Office*, 942 P.2d 1337 (Colo. App. 1997). However, a claimant is only entitled to such benefits if the care is reasonable, necessary and 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).

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[1] At the outset of the hearing, additional issues identified for hearing included whether the need for the left total knee arthroplasty surgery recommended by Dr. Lao was causally related to the July 3, 2023 work injury, and whether there was a subsequent intervening event that severed any causal connection between the work injury to the left knee and the need for the left total knee arthroplasty. Following Dr. Lao's hearing testimony, Respondents conducted additional investigation with Dr. Ciccone, which caused Dr. Ciccone to change his previous opinion and to state that the need for the left total knee arthroplasty was, in fact, causally related to the July 3, 2023, work injury. In light of this development, Respondents authorized the left total knee arthroplasty. Consequently, the issues of the relatedness of the left total knee arthroplasty and the existence of a subsequent intervening event are now moot and this order does not address these issues. (Depo. Tr. Dr. Ciccone, p. 10, ll. 12-25, p. 11, ll. 1-6).

Section 8-41-301(1)(c), C.R.S.; *Standard Metals Corp. v. Ball,* 172 Colo. 510, 474 P.2d 622 (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. City of Aurora*, 942 P.2d 1337 (Colo. App. 1997). Simply put, the mere occurrence of a compensable injury does not require an ALJ to find that all subsequent medical treatment was caused by the industrial injury. To the contrary, the range of compensable consequences of an industrial injury are limited to those which flow proximately and naturally from the injury. *Standard Metals Corp. v. Ball*, *supra*.

B. The question of whether medical treatment is reasonable and necessary to cure or relieve the effects of an industrial injury is one of fact. *Kroupa v. Industrial Claim Appeals Office*, 53 P.3d 1192 (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. Industrial Claims Office,* 989 P.2d 521 (Colo. App. 1999). Where the relatedness, reasonableness, or necessity of medical treatment is disputed, Claimant has the burden to prove that the disputed treatment is causally related to the injury, and reasonably necessary to cure or relieve the effects of the injury. *Ciesiolka v. Allright Colorado, Inc*., W.C. No. 4-117-758 (ICAO April 7, 2003). In this case, there is little question that the surgery recommended by Dr. Weinstein is reasonable and necessary. Even Respondents retained medical expert, Dr. Ciccone, concedes that the reverse total shoulder arthroplasty is "appropriate and reasonably necessary treatment for Claimant's right shoulder condition at this time". (Depo. Tr. Dr. Ciccone, p. 17, l. 25, p. 18, ll. 1-4).[2] Instead, the question is whether Claimant's need for such surgery is causally related to his July 3, 2023, work-related MVA.

C. Here, the totality of the evidence presented, including Claimant's

[2] In this case, the medical experts agree that Claimant has an irreparable tear of the rotator cuff. (Depo. Tr. Dr. Weinstein, p. 8, ll. 21-25, p. 9, ll. 1-5). Based upon the evidence presented, the ALJ is convinced that Claimant has failed conservative care and that the only treatment that provides a reasonable chance of curing and relieving Claimant's persistent right shoulder symptoms is a reverse total shoulder arthroplasty. Accordingly, the ALJ finds and concludes that Claimant has established that the proposed surgery recommended by Dr. Weinstein is reasonable and necessary in an effort to reduce his pain and improve his function.

testimony, the content of the medical records and the testimony of Drs. Weinstein and Ciccone persuades the ALJ that Claimant's July 3, 2023, MVA probably resulted in an aggravation of pre-existing, yet asymptomatic, degenerative arthritis and tearing in the right rotator cuff giving rise to Claimant's symptoms and need for medical treatment. (Depo. Tr. Dr. Weinstein, p. 12, ll. 1-13; pp. 23-25; Depo. Tr. Dr. Ciccone, p. 18, ll. 10-12).

D. A pre-existing condition "does not disqualify a claimant from receiving workers' compensation benefits." *Duncan v. Indus. Claims Appeals Office*, 107 P.3d 999, 1001 (Colo. App. 2004). To the contrary, a claimant may be compensated if his or her employment "aggravates, accelerates, or "combines with" a pre-existing infirmity or disease "to produce the disability and/or need for treatment for which workers' compensation is sought". *H & H Warehouse v. Vicory*, 805 P.2d 1167, 1169 (Colo. App. 1990). 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, as is the case here, is proximately caused by employment–related activities. *See Merriman v. Industrial Commission*, 120 Colo. 400, 210 P.2d 488 (1940).

E. 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 the result of 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). In this case, the totality of the evidence presented persuades the ALJ that while Claimant probably had pre-existing degenerative arthritis and possibly chronic rotator cuff tearing in the right rotator cuff, he was asymptomatic, was working without limitation and had not been treated for shoulder pain prior to

experiencing significant trauma in an MVA, which resulted in a total loss of his patrol vehicle. As part of his deposition testimony, Dr. Ciccone acknowledged that such MVAs can cause shoulder injuries and/or worsen pre-existing conditions causing symptoms and triggering the need for treatment, including surgery. (Depo. Tr. Dr. Ciccone, p. 28, ll. 13-25, p. 29, ll. 1-3). In this case, there is simply no persuasive evidence to establish that Claimant was symptomatic or receiving active treatment for a right shoulder condition leading up to his July 3, 2023, work-related car crash. Here, Respondents contest the relatedness of Claimant's right shoulder symptoms and need for surgery based primarily on the grounds of delayed symptom reporting, which Dr. Ciccone suggested supports a conclusion that Claimant's symptoms and need for treatment, including a reverse total shoulder arthroplasty arose due to the natural progression of pre-existing degenerative arthritis and/or rotator cuff tearing. Taken in its entirety, the ALJ finds the evidentiary record to contain substantial evidence to support a conclusion that Claimant's work-related MVA is responsible for his current symptoms and hastened, i.e. accelerated his need for a shoulder replacement procedure. In so concluding, the undersigned ALJ rejects Dr. Ciccone's contrary opinions, to find and conclude that Claimant has established the requisite causal connection between his work-related MVA and his need for a right sided reverse total shoulder arthroplasty.

IT IS THEREFORE ORDERED:

1. Respondents shall authorize and pay for all expenses associated with completion of the right sided reverse total shoulder arthroplasty as recommended by Dr. Weinstein. Payment shall be in accordance with the Colorado workers' compensation medical benefits fee schedule.

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

DATED: September 9, 2025

/s/ Richard M. Lamphere
Richard M. Lamphere
Administrative Law Judge

Office of Administrative Courts
State of Colorado
Workers' Compensation No. WC 5-252-719-001

Stipulations

The parties agreed to the following:

1. Claimant earned an Average Weekly Wage (AWW) of $2229.89.

2. Respondents will pay Claimant $1750.00 in disfigurement benefits.

Issues

1. Whether Claimant has established by a preponderance of the evidence that he suffered a compensable right knee injury during the course and scope of employment with Employer on October 27, 2020.

2. Whether Claimant has demonstrated by a preponderance of the evidence that physician recommendations to perform PRP injections and right knee surgery are reasonable, necessary and causally related to his October 27, 2020 work accident.

Findings of Fact

1. Claimant worked as a lighting director for Employer. His job duties involved moving lighting equipment, carrying lighting gear up and down ladders, rigging lights to grids, and using a scissor lift to help secure lighting.

2. On October 27, 2020 Claimant suffered an admitted work injury while he was descending from a scissor lift. Claimant explained that as he was coming down from the back side of the lift, his left knee struck the back of a metal lip. The impact caused "excruciating pain." As he continued to descend, he skipped a step and twisted his right knee.

3. On October 28, 2020 Claimant obtained medical treatment from Rebecca Kornas, MD at the Avista Emergency Room. He reported pain in his left knee due to direct trauma just underneath the left kneecap. Imaging revealed a small knee effusion, prior ACL repair and tricompartmental osteoarthritis. Physicians suspected a soft tissue injury. Claimant received medications and instructions to follow up with orthopedics. He did not mention any right knee symptoms.

4. Claimant remarked that approximately five days after the October 27, 2020 accident, he began to experience right knee pain. He testified that he suffered throbbing and weakness in his right knee. Claimant testified that he was physically active before the work incident. He biked for 45 minutes to one hour each week, swam, and hiked a few times weekly for several hours.

5. On November 10, 2020 Claimant had a consultation with Khemarin Seng, MD at Boulder Centre for Orthopedics. Claimant reported not only left knee pain but also right knee symptoms that began shortly after his October 27, 2020 injury. He specified that his right knee was unstable while walking. Physicians suspected bilateral meniscal pathology and ordered MRI imaging of both knees. Pending the MRI evaluations, Dr. Seng suspected a certain degree of arthritis that would likely respond well to conservative treatment including physical therapy.

6. On January 6, 2021 Claimant underwent a right knee MRI. The imaging revealed a tear in the medial meniscus, Grade I articular cartilage disease in the medial compartment, a probable radial tear of the lateral meniscus, and Grade II cartilage disease in the lateral compartment.

7. On January 12, 2021 Claimant had a telehealth visit with Dr. Seng. Claimant noted that his right knee was more symptomatic than the left knee. After reviewing diagnostic imaging, Dr. Seng suggested conservative options that included nonsteroidal anti-inflammatory medications, physical therapy, and regenerative therapies such as a platelet rich plasma (PRP) injections.

8. Claimant's next appointment with Dr. Seng occurred on June 15, 2021. Dr. Seng noted the MRI revealed left and right knee osteoarthritis. The symptoms were mostly age-related changes. Dr Seng recommended delaying surgery and suggested conservative measures including physical therapy, PRP injections and strengthening. The recommendations were not approved, but Claimant noted the symptoms did not prevent him from working.

9. On September 10, 2021 Claimant underwent an Independent Medical Examination (IME) with Daniel L. Ocel, M.D. Dr. Ocel reviewed Claimant's medical records and conducted a physical examination. Although Dr. Ocel acknowledged that Claimant suffered a left knee contusion on October 27, 2020, he concluded the right knee symptoms were not temporally or causally associated with the work incident.

10. On November 10, 2022 Claimant visited Jon Godin, MD at The Steadman Clinic and Steadman Philippon Institute. Claimant presented with bilateral knee pain that was greater on the right than the left. Notably, his right knee demonstrated both medial and lateral meniscal tears as well as chondromalacia. Treatment options included continued physical therapy as well as injections.

11. After undergoing physical therapy, Claimant had a virtual follow-up appointment with Dr. Godin on November 17, 2023. Claimant reported the right knee was bothering him more than the left. He denied any locking or catching but had pain deep within the knee. Dr. Godin recommended repeat imaging of the knees.

12. On April 8, 2024 Claimant returned to Dr. Godin for an examination. Claimant reported that his left knee symptoms had remained relatively stable. He had undergone formal physical therapy that he completed approximately one year earlier but was doing physical therapy on his own. Claimant noted significant weakness in his right

knee when ascending and descending stairs. Right knee MRI imaging from January 24, 2024 demonstrated a lateral meniscal flap tear, posterior lateral meniscal tear, and medial meniscal flap tear. Dr. Godin detailed that Claimant exhibited flap tears of both the medial and lateral menisci that had already lost their functional capacity and had an extremely low potential for healing. He recommended a right knee medial and lateral meniscectomy as well as PRP therapy. Claimant sought to proceed with surgical intervention.

13. Claimant returned to Dr. Godin on April 4, 2025 for a reevaluation of his bilateral knee pain. Dr. Godin again reviewed the MRIs with Claimant and renewed his recommendations for surgery, beginning with the right knee meniscectomies.

14. On April 5, 2025 Dr. Ocel performed a follow-up IME of Claimant. After considering additional medical records and performing a physical examination, he again concluded Claimant's right knee symptoms were not causally related to the October 27, 2020 incident. Dr. Ocel agreed that Dr. Godin's proposed right knee surgery and treatment with PRP injections was necessary but not causally related to the October 27, 2020 occupational incident.

15. On April 14, 2025 Dr. Ocel issued another report after considering additional medical records. He reasoned the October 27, 2020 occupational incident constituted a transient aggravation of Claimant's pre-existing right knee degenerative arthritis without any organic changes in the pre-existing knee pathology. Dr. Ocel commented that Claimant's reportedly worsening symptoms would be expected with the progression of degenerative changes in the right knee. He maintained the right knee surgery and treatment proposed by Dr. Godin was most likely reasonable but not causally related to the October 27, 2020 occupational incident.

16. On June 18, 2025 the parties conducted the post-hearing evidentiary deposition of Dr. Ocel. He diagnosed Claimant with right knee arthritis based on an MRI that showed degenerative pathology. Dr. Ocel testified that none of Claimant's current

diagnoses were causally related to the October 27, 2020 work incident. He attributed Claimant's right knee condition to progressive degenerative arthritis. Dr. Ocel emphasized that Claimant's current right knee symptoms were one hundred percent a natural progression of a degenerative condition and not an acute injury. He detailed that MRIs of Claimant's right knee from January 6, 2021 and January 24, 2024 revealed chronic meniscal pathology and progressive articular cartilage damage. He also noted a ganglion cyst and minimal joint effusion that were associated with arthritis.

17. Dr. Ocel recounted that Claimant reported right knee pain four to seven days after the October 2020 incident. He acknowledged a "50/50 conjecture" regarding an acute origin. Dr. Ocel suggested that relying on the injured left knee could have exacerbated the pre-existing arthritis in the right knee. However, he emphasized that arthritis is a progressive condition that worsens over months to years, not weeks to months, and symptoms can fluctuate with "good days and bad days." Dr. Ocel explained that Claimant does not require medical treatment for the right knee related to the October 27, 2020 event and any requested care would be for the degenerative condition. While acknowledging that major trauma can exacerbate arthritic conditions, Dr. Ocel reasoned that minor twists typically only cause temporary aggravations and not true organic changes.

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' 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. For a claim to be compensable under the Act, a claimant has the burden of proving that he suffered a disability that was proximately caused by an injury arising out of and within the course and scope of employment. §8-41-301(1)(c) C.R.S.; *In re Swanson,* W.C. No. 4-589-645 (ICAO, Sept. 13, 2006). Proof of causation is a threshold requirement that an injured employee must establish by a preponderance of the evidence before any compensation is awarded. *Faulkner v. Indus. Claim Appeals Off.,* 12 P.3d 844, 846 (Colo. App. 2000); *Singleton v. Kenya Corp.,* 961 P.2d 571, 574 (Colo. App. 1998). The question of causation is generally one of fact for determination by the Judge. *Faulkner,* 12 P.3d at 846.

5. A pre-existing condition or susceptibility to injury does not disqualify a claim if the employment aggravates, accelerates or combines with the pre-existing condition to produce a need for medical treatment. *Duncan v. Indus. Claim Appeals Off.,* 107 P.3d 999, 1001 (Colo. App. 2004). 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 Indus. Outsourcing LP*, W.C. No. 4-898-391-01, (ICAO, Aug. 25, 2014).

6. Section 8-41-301(1)(c), C.R.S. requires that an injury be "proximately caused by an injury or occupational disease arising out of and in the course of the employee's employment." Thus, the claimant is required to prove a direct causal

relationship between the injury and the disability and need for treatment. However, the industrial injury need not be the sole cause of the disability if the injury is a significant, direct, and consequential factor in the disability. *See Subsequent Injury Fund v. Indus. Claim Appeals Off.,* 131 P.3d 1224 (Colo. App. 2006); *Joslins Dry Goods Co. v. Indus. Claim Appeals Off.,* 21 P.3d 866 (Colo. App. 2001).

7. The mere fact a claimant experiences symptoms while performing work does not require the inference that there has been an aggravation or acceleration of a pre-existing condition. *See Cotts v. Exempla, Inc.,* W.C. No. 4-606-563 (ICAO, Aug. 18, 2005). Rather, the symptoms could represent the "logical and recurrent consequence" of the pre-existing condition. *See F.R. Orr Construction v. Rinta,* 717 P.2d 965 (Colo. App. 1985); *Chasteen v. King Soopers, Inc.*, W.C. No. 4-445-608 (ICAO, Apr. 10, 2008). As explained in *Scully v. Hooters of Colorado Springs,* W.C. No. 4-745-712 (ICAO, Oct. 27, 2008), simply because a claimant's symptoms arise after the performance of a job function does not necessarily create a causal relationship based on temporal proximity. The panel in *Scully* noted that "correlation is not causation," and merely because a coincidental correlation exists between the claimant's work and symptoms does not mean there is a causal connection between the claimant's injury and work activities.

8. The provision of medical care based on a claimant's report of symptoms does not establish an injury but only demonstrates that the claimant claimed an injury. *Washburn v. City Market*, W.C. No. 5-109-470 (ICAO, June 3, 2020). Moreover, a referral for medical care may be made so that the respondent would not forfeit its right to select the medical providers if the claim is later deemed compensable. *Id.* Although a physician may provide diagnostic testing, treatment, and work restrictions based on a claimant's reported symptoms, there is no mandate that the claimant suffered a compensable injury. *Fay v. East Penn Manufacturing Co., Inc.*, W.C. No. 5-108-430-001 (ICAO, Apr. 24, 2020); *see Snyder v. Indus. Claim Appeals Off.*, 942 P.2d 1337, 1339 (Colo. App. 1997) ("right to workers' compensation benefits, including medical payments, arises only when an injured employee initially establishes, by a preponderance of the evidence, that the need for medical treatment was proximately caused by an injury arising out of and in the course of the employment"). While scientific evidence is not

dispositive of compensability, the ALJ may consider and rely on medical opinions regarding the lack of a scientific theory supporting compensability when deciding. *Savio House v. Dennis*, 665 P.2d 141 (Colo. App. 1983); *Washburn v. City Market*, W.C. No. 5-109-470 (ICAO, June 3, 2020).

9. As found, Claimant has failed to establish by a preponderance of the evidence that he suffered a compensable right knee injury during the course and scope of employment. Initially, on October 27, 2020 Claimant sustained a compensable injury to his left knee while descending from a scissor lift at work. He contends that he twisted his right knee during the event. Claimant seeks medical treatment and surgical intervention for his right knee because of his injuries and subsequent physical therapy. However, because Claimant has failed to demonstrate a causal connection between his right knee condition and the work incident on October 27, 2020, his claim fails.

10. As found, Claimant's testimony and medical records reflect that he did not initially mention any right knee symptoms at the emergency room. Claimant only noted right knee symptoms about 12 days after the October 27, 2020 work event and testified that he did not have concerns about his right knee until five days after the incident. At a November 10, 2020 evaluation, Dr. Seng suspected a certain degree of arthritis that would likely respond well to conservative treatment including physical therapy. Claimant underwent the recommended care.

11. As found, a January 6, 2021 right knee MRI revealed a tear in the medial meniscus, Grade I articular cartilage disease in the medial compartment, a probable radial tear at the lateral meniscus, and Grade II cartilage disease in the lateral compartment. Dr. Seng noted the MRI documented left and right knee osteoarthritis. The symptoms were mostly age-related changes. Dr Seng recommended delaying surgery but proceeding with conservative care including physical therapy, PRP injections and strengthening for both the right and left knee. The recommendations from Dr. Seng were not approved, but Claimant noted the symptoms did not prevent him from working.

12. As found, Claimant subsequently obtained treatment from Dr. Godin at The Steadman Clinic. He received continued physical therapy as well as injections for his right knee symptoms. By April 8, 2024 Claimant returned to Dr. Godin and noted that he had completed formal physical therapy approximately one year earlier but was doing physical therapy on his own. Claimant reported significant weakness in his right knee when ascending and descending stairs. Dr. Godin detailed that right knee imaging from 2024 revealed flap tears of both the medial and lateral menisci that had already lost their functional capacity and had an extremely low potential for healing. He recommended a right knee medial and lateral meniscectomy as well as PRP therapy. Claimant wished to proceed with surgical intervention. On April 4, 2025 Dr. Godin renewed his recommendations for surgery, beginning with the right knee meniscectomies.

13. As found, Dr. Ocel performed an IME and testified through an evidentiary deposition. In contrast to Dr. Godin's surgical recommendation, Dr. Ocel reasoned the October 27, 2020 occupational incident constituted a transient aggravation of Claimant's pre-existing left knee degenerative arthritis without any organic changes in left knee pathology. He noted that Claimant's worsening symptoms would be expected with the progression of degenerative changes in the right knee. Dr. Ocel concluded that the surgery proposed by Dr. Godin including a right knee arthroscopy, treatment of Claimant's intraarticular pathology, and PRP injections were most likely appropriate and necessary but not causally related to the October 27, 2020 occupational incident. He emphasized that Claimant's current right knee symptoms were one hundred percent a natural progression of a degenerative condition and not an acute injury. Dr. Ocel detailed that MRIs of Claimant's right knee from January 6, 2021 and January 24, 2024 revealed chronic meniscal pathology and progressive articular cartilage damage. He remarked that the findings were consistent with chronic degenerative changes. Dr. Ocel also noted a ganglion cyst and minimal joint effusion that were also associated with arthritis. He emphasized that arthritis is a progressive condition that worsens over months to years, not weeks to months, and symptoms can fluctuate with "good days and bad days." Dr. Ocel commented that Claimant does not require medical treatment for the right knee related to the October 27, 2020 injury and any requested treatment would be for the

degenerative condition.

14. As found, based on the persuasive testimony of Dr. Ocel, in conjunction with the supporting medical reports, the record reveals that Claimant's work activities did not aggravate his right knee condition. Dr. Ocel persuasively explained that Claimant's right knee symptoms were caused by degenerative arthritis. Notably, he explained that the difference in the MRIs over the years showed typical, expected degenerative changes that are found in arthritic joints. Dr. Ocel further testified that even if there was a twisting motion to the right knee on October 27, 2020, the event caused a temporary flare-up of arthritis and was not enough to cause long-term symptoms or aggravation. Accordingly, Claimant has failed to demonstrate that his October 27, 2020 work activities aggravated, accelerated or combined with his pre-existing condition to produce a need for medical treatment. Therefore, Claimant's request for right knee PRP injections and surgical intervention is denied and dismissed.

Order

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

1. Claimant's request for Workers' Compensation benefits for his right knee symptoms is denied and dismissed.

2. Claimant earned an AWW of $2229.89.

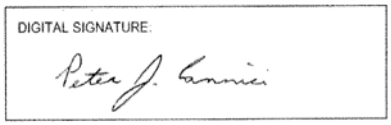
3. Respondents will pay Claimant $1750.00 in disfigurement benefits.

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

If you are a party dissatisfied with the Judge's order, you may file a Petition to Review the order with the Denver Office of Administrative Courts, 1525 Sherman Street, 4th Floor, Denver, Colorado, 80203. You must file your Petition to Review within twenty

(20) days after mailing or service of the order, as indicated on certificate of mailing or service; otherwise, the Judge's order will be final. You may file the Petition to Review by mail, as long as the certificate of mailing attached to your petition shows: (1) That you mailed it within twenty (20) days after mailing or service of the order of the Judge; and (2) That you mailed it to the above address for the Denver Office of Administrative Courts. *For statutory reference, see section 8-43-301(2), C.R.S. (as amended, SB09-070). For further information regarding procedures to follow when filing a Petition to Review, see Rule 26, OACRP. You may access a form for a petition to review at http://www.colorado.gov/dpa/oac/forms-WC.htm.*

Dated: September 10, 2025.



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

ISSUES

I. Whether Claimant established, by a preponderance of the evidence that she sustained a compensable injury on March 22, 2024.

II. If Claimant established that she sustained a compensable neck injury, whether she also established that she is entitled to all reasonable, necessary, and related care for her neck including the surgery performed by Dr. Kim?

III. Whether Claimant established that she is entitled to Temporary Total Disability (TTD) benefits beginning and ongoing?

IV. What is Claimant's Average Weekly Wage?

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 on March 22, 2024, as a building automation specialist. In that position she trouble shoots all the HVAC equipment for the district, both remotely and onsite.

2. On that date, there was an ice storm and Claimant slipped and fell on the ice and hit her neck and back on the concrete. A coworker, Craig Johnson, "C.J" witnessed the incident. At the time of the incident, Claimant was on a break.

3. Claimant testified that anytime there is an incident, a "green sheet" is supposed to be filled out. The person involved in the incident has the option of seeking medical treatment. The Claimant did not seek immediate medical treatment. A green sheet was filled out for this incident. Claimant does not know what happens to the green sheet after it is filled out. Claimant was

familiar with the reporting process based on a prior workers' compensation injury with this employer.

4. Prior to the March incident, Claimant had seen a chiropractor in January 2024. Claimant testified that she did not treat with the chiropractor due to pain, but as a preventative measure. Before this visit Claimant had not seen a chiropractor in 10 years. At this visit in January 2024 the Claimant had adjustments to her neck and back. The diagnoses at this time included somatic dysfunction of the cervical, thoracic, sacroiliac and pelvic region. The Claimant was adjusted again by Dr. Hufford on March 28,2024.

5. On April 11, 2024, Claimant was seen by Dr. Hufford at Kaiser. She was complaining of tight left greater than right, neck, midback and low back. The Chiropractor noted no recent trauma/injuries.

6. Dr. Choong-Fai Too of Kaiser evaluated Claimant on April 30, 2024. She visited the doctor reporting left neck and shoulder pain starting three weeks prior, which would have been on or around April 9, 2024. Claimant did not report or mention the slip-and-fall incident within this record, and she stated that she could not "recall any trauma or activity over the 2 days prior to the onset of the pain".

7. On May 1, 2024, Dr. Doug Bradley evaluated Claimant at Occupational Medical Partners. Claimant did reference the slip-and-fall incident during this appointment. During the follow-up appointment on May 20, 2024, with Dr. Matthew Lugliani, the doctor noted that Claimant did not report any upper extremity weakness or paresthesia.

8. When Dr. Bradley evaluated Claimant on June 3, 2024, Claimant began to complain of upper extremity numbness and paresthesia. This was about two-and-a-half months after the slip-and-fall incident.

9. Claimant had a cervical spine MRI on June 4, 2024. This MRI evidenced severe canal stenosis at C5-C6 that was predominantly due to a 4mm right subarticular disc osteophyte. Additionally, the MRI evidenced severe bilateral neuroforaminal stenosis at C5-C6 and C6-C7 with additional degenerative findings.

10. In a letter dated June 12, 2024, Dr. Bradley stated that he had reviewed Dr. Too's April 30, 2024, record and what Claimant reported to that doctor. Dr. Bradley then stated, "This needs to be evaluated by a spinal surgeon. This would be degenerative, not work related." Resp. Ex. N, 000062-000063. He did not note a review any of the chiropractic records in reaching his conclusion that this was not a compensable injury.

11. Following Dr. Bradley's letter, Claimant sought treatment at Kaiser outside of the workers' compensation system with Dr. Mary Maytan beginning on June 24, 2024. Resp. Ex. O.

12. Claimant eventually underwent surgery on October 7, 2024. See Hearing Tran., 55:23-56:5. The procedure was a C5-C7 anterior cervical fusion with Dr. Robert Kim. See id, 12:3-6. Following the procedure, Claimant reported that following the post-operation recovery period she returned to work and that the symptoms she had were resolved. See id, 31:8-14.

13. Prior to the Hearing, Dr. Carlos Cebrian performed an Independent Medical Examination (IME) on September 9, 2024. Dr. Cebrian issued his IME Report on September 30, 2024. Resp. Ex. A.

14. In his Deposition, Dr. Cebrian testified, "Well, when she saw me, she denied ever having any kind of symptoms before. So I had said previously that she was not forthright." Dr. Cebrian then expressed the importance of an accurate history to the treating providers so that, for example, a chiropractor can provide safe and effective treatment.

15. Overall, Dr. Cebrian concluded the "initial medical records do not correlate her symptoms with an incident from 3/22/2024". In support of his conclusions, Dr. Cebrian noted the pre-date of injury chiropractic treatment for the neck/cervical spine in January 2024; the lack of reports of recent trauma and injuries in the treatment records immediately following the slip-and-fall incident; and the diagnostic findings that solely evidenced chronic cervical spine stenosis and neural foraminal stenosis.

16. Dr. Cebrian also noted the late development of upper extremity paresthesia did not align with an injury that would have occurred on March 22, 2024. Specifically, Dr. Cebrian stated, "If [redacted] had sustained a cervical spine disc herniation or aggravation in the incident of 3/22/2024, the development of symptoms consistent with a disc herniation with radiculopathy would have been present within the first day or two after the incident, in particular as she has a significantly narrowed spinal canal."

17. Regarding the surgery from Dr. Kim, Dr. Cebrian indicated that this procedure was treating genetically proscribed degenerative changes that pre-existed the slip-and-fall incident.

18. Dr. Cebrian testified consistently with the opinions expressed in his IME Report during his Deposition. During his Deposition, Dr. Cebrian stated, "it's my medically probable opinion that [redacted] did not have a work-related injury that resulted in the need for any kind of treatment, as she had a chronic cervical spine condition. The fall that she reported on March 22nd, 2024, didn't do anything to aggravate, cause or accelerate her preexisting condition."

19. Dr. Kimball (the lone surgeon to review the MRIs to evaluate medically probably causation) stated, "The imaging demonstrates a chronic condition without any acute trauma or herniation that I would correlate to a fall. It is

my opinion that within a reasonable degree of medical certainty the cause for surgery is unrelated to a reported work injury on 3/22/24". Dr. Kimball also explained that the late onset of neck pain would not have been consistent with a neck injury from the fall. Accordingly, both Dr. Kimball and Dr. Cebrian agreed that Claimant did not sustain a compensable injury.

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* § 8-41-301, 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).

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. A compensable injury did not occur on March 22, 2024, based on the objective medical evidence. The MRI did not show an acute trauma or injury. Dr. Kimball and Dr. Cebrian analyzed the onset of symptoms with the date of injury to determine causality. Both doctors concluded that an acceleration or exacerbation of Claimant's significant pre-existing condition would have produced symptoms far sooner than what

was seen here. The change in Claimant's baseline long-standing neck pain, by her own report, did not occur until approximately two and a half weeks after the alleged injury and far outside the medically probable scope of symptoms due to an acute spinal trauma. Based upon the evidence presented, the ALJ concludes that the Claimant failed to sustain her burden by a preponderance of the evidence that she sustained an injury to her neck. The ALJ further concludes that the Claimant's neck symptoms started before the slip and fall on ice and progressed naturally, unaffected by the slip and fall. This is further supported by the Claimant's failure to notify her treating providers that her neck pain began immediately after the slip and fall. It was not until May 1, 2024, that the Claimant mentioned that her neck pain was due to a slip and fall. I conclude that the opinions of Dr. Cebrian and Dr. Kimball to be credible and persuasive.

ORDER

It is therefore ordered that:

1. The Claim for compensation is denied and dismissed.

DATED: September 11, 2025

/s/ Michael A. Perales
Michael A. Perales
Administrative Law Judge
Office of Administrative Courts
1330 Inverness Drive Suite 330
Colorado Springs, CO 80210

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.

Office of Administrative Courts

State of Colorado

Workers' Compensation No. WC 5-295-453-001

Issues

The following issues were presented at hearing:

1. Whether Claimant sustained a compensable injury and is entitled to benefits under the Colorado Uninsured Employer Fund.

2. Whether Claimant is entitled to medical benefits as a result of this work-related incident.

3. Whether Claimant is entitled to select his authorized treating physician.

4. Whether Claimant is entitled to wage benefits.

5. Whether Claimant's Average Weekly Wage ("AWW") is $1,380.00, as listed on the Claim for Compensation.

6. Whether Claimant is entitled to out-of-pocket expense reimbursement.

7. Whether Claimant is entitled to interest under §8-43-410(2) C.R.S.

Compensability and Benefits

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. § 8-40-201,

C.R.S. The claimant shoulders the burden of proving by a preponderance of the evidence that he is a covered employee who suffered an “injury” arising out of and in the course of employment. § 8-43-301(1), C.R.S.

For an injury to be compensable, it must “arise out of and occur in the course of” employment. It is the claimant's burden to prove these requirements by a preponderance of evidence. C.R.S. § 8-41-301; *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. Industrial Claim Appeals Office*, 919 P.2d 207 (Colo. 1996); *Popovich v. Irlando*, 811 P.2d 379, 383 (Colo. 1991). An injury is said to have occurred during the course and scope 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.

Additionally, an employee’s injury must be “proximately caused by an injury or occupational disease arising out of and in the scope of the employee’s employment.” Colo. Rev. Stat. Ann. § 8-41-301(1)(c). “Proof of causation is a threshold requirement which an injured employee must establish by a preponderance of the evidence before any compensation is awarded.” *Faulkner v. Indus. Claim Appeals Office of State of Colorado*, 12 P.3d 844, 846 (Colo. App. 2000). The question of causation “is generally one of fact for determination by the ALJ.” *Faulkner v. Indus. Claim Appeals Office of State of Colorado*, 12 P.3d 844, 846 (Colo. App. 2000); *see also Snyder v. Industrial Claim Appeals Office*, 942 P.2d 1337 (Colo. App. 1997).

Generally, compensation is proper if “special circumstances surrounding the employee's injury reflect a causal connection between the conditions under which the work is to be performed and the resulting off-premises injury.” *Woodruff World Travel, Inc. v. Industrial Commission*, 554 P.2d 705 (Colo. App. 1976).

In order 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 and the need for treatment. Although a preexisting condition does not disqualify a claimant from receiving workers' compensation benefits, the claimant must prove a causal relationship between the injury and the medical treatment claimant is seeking. *Snyder v. ICAO*, 942 P.2d 1337, 1339 (Colo.App. 1997). Treatments for a condition not caused by employment are not compensable. *Owens v. ICAO*, 49 P.3d 1187, 1189 (Colo. App. 2002). And where an industrial injury merely causes the discovery of the underlying disease to happen sooner, but does not accelerate the need for the surgery for the underlying disease, treatment for the preexisting condition is not compensable. *Robinson v. Youth Track*, 4-649-298 (ICAO May 15, 2007). Regardless, Claimant here testified there was no pre-existing same or similar conditions, and no evidence was presented to the contrary.

If an injury is found to be causally related to an industrial accident, Respondents are liable for medical treatment reasonably necessary to cure or relieve the employee from the effects of the industrial injury. C.R.S. §8-42-101; *Grover v. Industrial Commission*, 759 P.2d 705 (Colo. 1988). 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). Put another way, the right to medical benefits “arises only when an injured employee initially establishes, by a preponderance of the evidence, that the need for medical treatment was proximately caused by an injury arising out of and in the course of the employment.” *Snyder*, 942 P.2d at 1339. The ALJ’s factual determinations must be upheld if supported by substantial evidence and plausible inferences drawn from the record. *Delta Drywall v. Industrial Claims Appeals Office*, 868 P.2d 1155 (Colo. App. 1993). From testimony, Claimant’s symptoms have not abated in the absence of treatment, and he is entitled to additional medical care to relieve him of the effects of the industrial injuries.

Under the Workers' Compensation Act, if an employee suffers either a temporary or permanent impairment, benefits are payable to that employee in an amount equal to 66 2/3% of the employee's "average weekly wage," up to a statutory maximum. § 8-42-102(1); § 8-42-105(1); and 8-42-106, C.R.S. (1995 Cum. Supp.). Here, the Claim for

Compensation states that Claimant's AWW at the time of the incident was $1,380.00. *See Exhibit 10*.

An essential component of the injured employee compensation design, Temporary Total Disability ("TTD") benefits exist to help offset lost wages when the employee cannot work due to the injury. § 8-42-105, C.R.S. (2004). An employee is eligible for TTD benefits if: (1) the injury or occupational disease causes disability; (2) the injured employee leaves work as a result of the injury; and (3) the temporary disability is total and lasts more than three regular working days. § 8-42-103(1)(a),(b), 8-42-105(1), C.R.S. (2004); *PDM Molding, Inc. v. Stanberg*, 898 P.2d 542, 546 (Colo. 1995).

The injured employee receives TTD benefits until one of the following events occurs: 1) claimant reaches maximum medical improvement; 2) claimant returns to regular or modified employment; 3) claimant is medically released to regular employment; or 4) claimant is medically released to modified employment and fails to begin such employment. § 8-42-105(3)(a)-(d), C.R.S. (2004). Thus, a goal of the TTD provisions is to return employees to work through the avenue of modified employment if available-subject to whatever medical restrictions are appropriate. Here, Claimant has not worked since the work accident and is therefore entitled to wage benefits from November 1, 2024 until one of the above events occurs, which has not yet happened.

Colorado law mandates respondents tender a list of at least four physicians or corporate medical providers to an injured worker within seven (7) business days following the date of notice of injury. C.R.S. § 8-43-404(5)(a)(I)(A); W.R.C.P. 8-2(A)(1). Failure to supply a designated provider list results in selection of the authorized treating physician falling to the injured worker. *Id*. There has been no evidence presented that Claimant was ever provided a Designated provider list.

A claimant selects a physician when he demonstrates, by words or conduct, that he has chosen a physician to treat the industrial injury. *Tidwell v. Spencer Technologies*, 2015 Colo. Wrk. Comp. LEXIS 16 (ICAO. March 2, 2015). In *Tidwell*, the employer failed to refer the claimant to a designated physician. *Id*.

Once a claimant selects a physician through action, he is not permitted to change physician without permission from the insurer or ALJ*. In the Matter of the Claim of Phil Pavelko*, No. W.C. No. 4-897-489-02, 2015 WL 5210532 (Colo. Ind. Cl. App. Off. Sept. 4, 2015); *In the Matter of the Claim of Anthony R. Squitieri*, No. W. C. No. 4-421-960, 2000 WL 1563230, at *1 (Colo. Ind. Cl. App. Off. Sept. 18, 2000).

Section 8-43-410(2), C.R.S., states that "Every employer or insurance carrier of an employer shall pay interest at the rate of eight percent per annum upon all sums not paid upon the date fixed by the award of the director or administrative law judge for the payment thereof or the date the employer or insurance carrier became aware of an injury, whichever date is later." As this is a compensable claim with owed benefits, Respondents will be responsible for interest.

The totality of evidence and testimony proves Claimant sustained an industrial injury in the course and scope of his employment on November 1, 2024. Claimant is entitled to payment of the emergency room visit, all subsequent and related medical expenses and out-of-pocket costs, and all future medical treatment which is reasonable, necessary, and related to relieve Claimant of the effects of the work injury.

Order

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

1. Claimant was an employee of Respondent when he sustained work-related injuries on November 1, 2024; the claim is therefore compensable. Claimant is entitled to workers' compensation benefits under the Act.

2. Claimant's AWW is $1,380.00, and he is entitled to TTD benefits from November 1, 2024, through present, subject to termination pursuant to § 8-42-105(3)(a)-(d), C.R.S.

3. Respondent is responsible for payment of the emergency room visit, along with all associated treatment and costs, including out-of-pocket expenses associated with Claimant's self-pay and care.

4. Claimant is entitled to select his authorized treating provider for future care for claim-related treatment.

5. Claimant is entitled to all reasonable, necessary, and related future medical benefits for injuries sustained on November 1, 2024, with his authorized treating provider.

6. Respondent is responsible for 8% interest under § 8-43-410(2), C.R.S.

7. All other issues are reserved for future determination.

DATED: September 11, 2025.

Office of Administrative Courts

Stephen J. Abbott
Administrative Law Judge

This decision is final and not subject to appeal unless a full order is requested. The Request shall be made at the Office of Administrative Courts, 1525 Sherman Street, 4th Floor, Denver, CO 80203, within seven working days of the date of service of this Summary Order. Section 8-43-215 (1), C.R.S. 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 made, opposing counsel 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.

Office of Administrative Courts
State of Colorado
Workers' Compensation No. WC 5-251-275-005

Issues

1. Whether Claimant established by a preponderance of the evidence that he sustained a compensable injury arising out of the course of his employment on June 23, 2022.
2. Whether Claimant was an "employee" of JGP and/or Symphony within the meaning of § 8-40-202(a)(2), C.R.S., on June 23, 2022.
3. If compensable, determination of Claimant's average weekly wage.
4. If it is determined that Claimant sustained a compensable injury, whether the CUE Fund established by a preponderance of the evidence that penalties should be imposed pursuant to 8-43-7 CCR 1101-3, Rule 3-6, for Symphony and/or JGP's failure to obtain and maintain workers' compensation insurance.

Stipulations

At hearing, Claimant, Symphony, and the CUE Fund stipulated to the following:

1. If Claimant establishes a compensable claim, his treatment to date is reasonable, necessary, and causally-related to the June 23, 2022 injury.
2. If compensable, Claimant is entitled to temporary total disability benefits from June 24, 2022 until terminated by law.
3. Symphony did not have workers' compensation insurance at the time of Claimant's injury.
4. No evidence exists that JGP had workers' compensation insurance at the time of Claimant's injury.

Findings of Fact

1. Claimant is a 47-year-old man who worked as a painter for Jose Garay-Perez ("Garay-Perez") beginning in March 2022. Garay-Perez employed a crew of painters, including Claimant, Nelson Canales and Esau Reyes, and others (collectively the "Painting Crew"). None of the members of the Painting Crew owned their own automobiles, and Garay-Perez provided them transportation to and from job sites, typically by providing a van that one of the crew members would drive to projects.

2. Symphony is a painting contractor that contracted with Garay-Perez to perform painting projects. Symphony had no direct employees, and relied upon subcontractors to perform any painting jobs for which it contracted. During the relevant time period, Nichole Gravier (f/k/a Nicole Green) worked as a project manager for Symphony. Gravier testified that as a project manager, her job duties included communicating with painting subcontractors, assigning subcontractors to painting jobs, purchasing paint for the job, and walking the jobs both initially and upon completion. She testified that she had no access to Symphony's financial information prior to her purchase, and did not write checks on Symphony's behalf, or have access to its bank accounts. In August 2022, Gravier purchased Symphony and currently owns the company.

3. Garay-Perez subcontracted with Symphony for a residential painting project in Elizabeth, Colorado, located approximately ninety-minutes south of Denver ("the Project"). Garay-Perez assigned the Painting Crew to the Project, which was scheduled to begin on June 23, 2022.

4. On the morning of June 23, 2022, Reyes picked Claimant up at his home to drive them both to the Project in a van provided by Garay-Perez. In addition to transporting Claimant and Reyes, the van was used to transport tools and equipment to the Project, and trash from a job completed the previous day.

5. On the way to the Project, Reyes and Claimant stopped at a gas station to purchase coffee. They returned to the van and proceeded to drive toward the Project, with the intent of picking up Canales up to take him to the job site with them. Shortly after purchasing the coffee, the van stalled in traffic. Claimant or Reyes contacted Garay-Perez

who advised them to push the van out of traffic, presumably to the side of the road. At some point, another vehicle driven by an unidentified third-party struck Claimant causing multiple significant injuries. As a result of his injuries, Claimant required an above-the-knee amputation of his left leg. (Ex. 6). Claimant has not worked since June 23, 2022.

6. On June 30, 2022, Garay-Perez incorporated JGP Painting LLC, with the state of Colorado. (Ex. 8). On September 20, 2024, Gravier filed a Statement of Dissolution on behalf of JGP Painting LLC, and the entity was formally dissolved in Colorado. No credible evidence was admitted that JGP Painting existed prior to June 30, 2022, or that Claimant performed work as an employee of JGP Painting after its formation.

7. Claimant credibly testified that he was paid between $170 and $180 per day for the work he performed for Garay-Perez, and that he typically worked Monday through Saturday. Gravier testified, credibly, that from March 2022 until the June 23, 2022 accident, she was aware that Claimant worked for Garay-Perez six days per week, on jobs that Symphony obtained. The ALJ finds that Claimant's average weekly wage at the time of injury was $1020, representing $170 per day, six days per week.

8. Gravier testified that between March 2022 and June 2022, Symphony used Garay-Perez's painting crew for approximately 65 to 70 percent of its painting jobs. For these painting jobs, Symphony would find the work, direct Garay-Perez and his Painting Crew to the specific job site, define the scope of work, and obtain the paint for the job. Symphony would then pay Garay-Perez for the work the Painting Crew performed less the cost of paint. Gravier's testimony was credible.

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).

Claimant's Status as an Employee or Independent Contractor

Pursuant to §8-40-202(2)(a), C.R.S. "any individual who performs services for pay for another shall be deemed to be an "employee" unless the person "is free from control and direction in the performance of the services, both under the contract for performance of service and in fact and such individual is customarily engaged in an independent trade, occupation, profession or business related to the service performed." Claimant has

established that he was an “employee” of Garay-Perez at the time of his injury. Specifically, Claimant performed painting services for Garay-Perez for payment. Thus, Claimant was an “employee” of Garay-Perez under § 8-40-202 (2)(a), C.R.S. No credible evidence was admitted demonstrating that Claimant was an independent contractor vis-à-vis Garay-Perez.

Because JGP Painting did not exist as an entity at the time of the injury, there is no credible evidence that Claimant was employed by that entity at the time of his injury.

Compensability

To establish a compensable injury an employee must prove by a preponderance of the evidence that his injury arose out of the course and scope of employment with his employer. §8-41-301(1)(b), C.R.S. (2006); *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 (Colo. App. 1998).

Generally, injuries sustained by employees while they are traveling to or from work are not compensable because such travel is not considered the performance of services arising out of and in the course of employment. *Madden v. Mountain West Fabricators*, 977 P.2d 861, 863 (Colo. 1999). However, injuries incurred while traveling are compensable if “special circumstances” exist that demonstrate a nexus between the injuries and the employment. *Id.* at 864. In ascertaining whether “special circumstances” exist the following factors should be considered:

- Whether travel occurred during working hours;
- Whether travel occurred on or off the employer's premises;
- Whether travel was contemplated by the employment contract; and

- Whether obligations or conditions of employment created a "zone of special danger" out of which the injury arose.

Id. In considering whether travel is contemplated by the employment contract the critical inquiry is whether travel is a substantial part of service to the employer. *See id.* at 865.

"Special circumstances" may be found where the employment contract contemplates the employee's travel or the employer delineates the employee's travel for special treatment as an inducement. *See Staff Administrators Inc. v. Reynolds,* 977 P.2d 866, 868 (Colo. 1999). While an employer paying for transportation is indicative of travel status, permitting an employee to drive a company vehicle does not necessarily compel the conclusion that the employee is in travel status on the way to and from work. *See Shepard v. Argus Contracting*, W.C. No. 4-512-380 (ICAO May 21, 2003); *Warren v. Olson Plumbing & Heating*, W.C. No. 4-701-193 (ICAO Aug. 24, 2007). In considering whether travel was contemplated by the employment contract, the exception applies when an employer requires a claimant to come to work in an automobile that is then used to perform job duties. This is because the vehicle confers a benefit to the employer beyond the employee's mere arrival at work. *See Whale Communications v. Osborn,* 759 P.2d 848 (Colo. App. 1988); *Benson v. Colorado Compensation Ins. Auth.*, 870 P.2d 624 (Colo. App. 1994).

Moreover, an employee's actions are deemed to be within the scope of employment when an employee directly participates in activities assigned or directed by the employer. *Maryland Cas. Co. v. Messina*, 874 P.2d 1058 (Colo. 1994). If an employee travels at the express or implied request of the employer, then the travel is within the scope of employment. Further if an employee provides transportation or pays the employee's cost of commuting to and from work, then the scope of employment includes the employee's transportation. *Id*.

Claimant has established by a preponderance of the evidence that his injury arose out of the course of his employment with Garay-Perez. Although Claimant was not on a job site at the time of his injury, at the time of the injury he was in the midst of traveling to the location of a project Garay-Perez contracted to perform for Symphony. The van in which Claimant was a passenger was used not only to transport Claimant and his co-worker, but also tools and equipment necessary to perform the work both Garay-Perez

and Symphony contracted to perform. In doing so, Claimant's travel in the van Garay-Perez provided conferred a benefit upon both Garay-Perez and Symphony. Additionally, Claimant's injury occurred while he was moving the inoperable van from traffic at the express direction of his direct employer. Because Claimant was injured while transporting equipment for the benefit of both Garay-Perez and Symphony, and was injured performing an activity at the express direction of his direct employer, the injury had its origins in Claimant's work-related functions and is sufficiently related thereto to be considered part of his services to his employer, and is therefore compensable.

Claimant's Employment Status vis-à-vis Symphony

Although Garay-Perez was Claimant's direct employer, Claimant has established by a preponderance of the evidence that Symphony was his statutory employer at the time of the injury, and is thus liable for Claimant's workers' compensation benefits. Under section 8-41-401(1)(a), C.R.S., a general contractor is ultimately responsible for injuries to employees of subcontractors. *Finlay v. Storage Technology Corp.*, 764 P.2d 62 (Colo. 1988). "Although a given company might not be a claimant's employer as understood in the ordinary nomenclature of the common law, it nevertheless might be a statutory employer for workers' compensation coverage … purposes." *Id*. The purpose of the statutory employer provision is to prevent employers from avoiding liability for workers' compensation benefits by contracting out their regular business to uninsured independent contractors. *Id.*

The test for whether an employer is a "statutory employer" is whether the work contracted out is part of the employer's regular business as defined by its total business operation. *Finlay*, *supra*; *Humphrey v. Whole Foods Market*, 250 P.3d 706 (Colo. App. 2010). In applying this test, courts consider elements of routineness, regularity, and the importance of the contracted service to the regular business of the employer. *Id.* The work must be "such a part of [its] regular business operation as the statutory employer ordinarily would accomplish with [its] own employees." *Snook v. Joyce Homes, Inc.*, 215 P.3d 1210, 1217 (Colo. App. 2009).

Symphony meets the "statutory employer" test. Symphony routinely, regularly, and necessarily contracted out a substantial portion of its regular business operations to

Garay-Perez, such that Symphony was Claimant's statutory employer at the time of his injury. Symphony's regular business is residential and commercial painting. Because Symphony had no direct employees, it could not perform its business operations without subcontracting out painting services. Symphony regularly contracted with Garay-Perez to perform a significant portion of its painting jobs, and could not perform such work without the Garay-Perez and his Painting Crew, including Claimant. Claimant has established that Symphony was his "statutory employer" by virtue of its subcontracting with Garay-Perez to perform Symphony's regular business operations. Claimant was injured while performing work at the direction of Garay-Perez, and within the scope of Garay-Perez's subcontract with Symphony.

Once a claimant establishes a *prima facie* case demonstrating that an upper tier contractor is a statutory employer, the burden of proof shifts to the statutory employer to establish that the injured worker's direct employer held workers' compensation insurance, or that another intermediate subcontractor was the "statutory employer." *See Frazee v. Ideal Trucking*, W.C. No. 3-873-357 (ICAO Aug. 14, 1991). Symphony has failed to establish that Claimant's direct employer – Garay-Perez held workers' compensation or any other defense to its status as a statutory employer. Symphony presented no evidence that Garay-Perez was insured, or that any other person or entity met the criteria of a statutory employer. Accordingly, for the purpose of workers' compensation benefits, Symphony was Claimant's employer at the time of his June 23, 2022 injury, and is responsible for workers' compensation benefits.

Medical Benefits

Under section 8-42-101(1)(a), C.R.S., respondents are liable for authorized medical treatment that is reasonable and necessary to cure or relieve the effects of the industrial injury. *See Owens v. Indus. Claim Appeals Office*, 49 P.3d 1187, 1188 (Colo. App. 2002). The parties have stipulated that if Claimant's claim is compensable, the medical treatment he has received to date is reasonable, necessary, and causally-related to the June 23, 2022 injury. Claimant is therefore awarded medical benefits for all reasonable, and necessary medical treatment rendered to cure or relieve the effects of his industrial injury.

Symphony shall pay for all of Claimant's reasonable and necessary medical expenses related to the June 23, 2022 injury pursuant to the Colorado Medical Fee Schedule. Because insufficient evidence was admitted to permitting the ALJ to calculate the monetary value of the medical benefits to which Claimant is entitled, the issue of the amount owed by Symphony for medical benefits is reserved for future determination.

Average Weekly Wage

Section 8-42-102(2), C.R.S. requires the ALJ to calculate Claimant's average weekly wage (AWW) based on the earnings at the time of injury as measured by the Claimant's monthly, weekly, daily, hourly, or other earnings. However, if for any reason, the ALJ determines the default method will not fairly calculate the AWW, § 8-42-102(3), C.R.S. (2016) affords the ALJ discretion to determine the AWW in such other manner as will fairly determine the wage. § 8-42-102(3), C.R.S. establishes the so-called "discretionary exception". *Benchmark/Elite, Inc. v. Simpson*, 232 P.3d 777 (Colo. 2010); *Campbell v. IBM Corp*., 867 P.2d 77 (Colo. App. 1993). The overall objective in calculating the AWW is to arrive at a fair approximation of Claimant's wage loss and diminished earning capacity. *Campbell v. IBM Corp*., supra; *Avalanche Indus. v. ICAO*, 166 P.3d 147 (Colo. App. 2007). For the reasons set forth in Findings of Fact 7, the ALJ concludes that a fair approximation of Claimant's average weekly wage at the time of injury was $1,020.00.

TTD Benefits

The parties stipulated to Claimant's entitlement to TTD benefits in the event of a compensable claim. TTD benefits are paid at the rate of sixty-six and two-thirds percent of the employee's average weekly wage, and continue until the first occurrence of any of the following: (1) the employee reaches MMI; (2) the employee returns to regular or modified employment; (3) the attending physician gives the employee a written release to return to regular employment; or (4) the attending physician gives the employee a written release to return to modified employment, the employment is offered in writing and the employee fails to begin the employment. § 8-42-105 (1) & (3)(a)-(d), C.R.S.

Claimant is entitled to TTD benefits, based on an average weekly wage (AWW) of $1,020.00 from June 24, 2022 until terminated pursuant to the Act. From June 24, 2022

until September 11, 2025 (a period of 168 weeks), Claimant is entitled to TTD benefits at the weekly rate of $680.00 (i.e., 66 2/3% x $1,020.00 week = $680), totaling $114,240.00. Claimant's TTD benefits shall continue until terminated pursuant to the Act.

Uninsured Employer

Payment of Benefits and Compensation

Pursuant to section 8-43-408(2), C.R.S.: "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 within the state of 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 for 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." The term "compensation" refers to disability benefits. *In Re of Shier,* W.C. No. 4-573-910 (ICAO Dec. 15, 2005). Because Symphony was uninsured at the time of Claimant's injury; thus, the provisions of section 8-43-408(2) are mandatory.

With respect to TTD Benefits, Symphony shall pay to the CUE Fund an amount equal to $114,240.00 plus interest at the rate of 4% per annum. As noted above, the record contains insufficient evidence to permit the ALJ to determine the monetary value of Symphony's liability for medical benefits. This issue is preserved for future determination, and either party may file an Application for Hearing to resolve this issue.

Penalties

The CUE Fund seeks penalties against both JGP Painting and for Symphony's failure to maintain workers' compensation insurance as required by § 8-43-408(1), C.R.S. With respect to penalties, section 8-43-408(5), C.R.S., provides:

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 Colorado uninsured employer fund created in section 8-67-105."

Symphony

The parties stipulated that Symphony did not have workers' compensation coverage at the time of Claimant's work injury. For its failure to obtain and maintain workers' compensation insurance, Symphony shall pay penalties to the CUE Fund in an amount equal to 25% of the total unpaid TTD benefits owed as of September 15, 2025 in the amount of $28,560.00 (*i.e.*, 25% x $114,240.00 = $28,560.00).

Because the record contains insufficient evidence of the amount of medical bills incurred by Claimant for injury-related treatment, the ALJ is unable to calculate any penalty to be assessed as a percentage of medical bills. Consequently, the amount of any penalty based on medical benefits is reserved for future determination.

JGP Painting

As found, JGP Painting did not exist at the time of Claimant's injury, and was not his employer. Accordingly, all claims against JGP Painting for penalties are denied and dismissed.

Order

It is therefore ordered that:

1. Claimant sustained a compensable injury arising out of the course of his employment on June 23, 2022.
2. Claimant is entitled to reasonable and necessary medical benefits to cure or relieve the effects of his June 23, 2022 workplace injury. Claimant's injury-related treatment received to date is reasonable and necessary.

3. At the time of his June 23, 2022 injury, Respondent Symphony Painting, LLC, was Claimant's employer pursuant to § 8-41-401(1), C.R.S.
4. Respondent Symphony Painting, LLC is liable for payment of Claimant's medical expenses pursuant to the Division of Workers' Compensation Medical Fee Schedule. The monetary amount of past medical benefits is reserved for future determination. Because Symphony 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.
5. Respondent Symphony Painting, LLC is also liable for TTD payments in the amount of $114,240.00. Claimant is entitled to TTD benefits from June 24, 2023.
6. Symphony is subject to penalties for failure to maintain workers' compensation insurance. Symphony shall pay to the CUE Fund a penalty equal to 25% of the TTD benefits awarded, totaling $28,560.00.
7. Symphony shall also pay to the CUE Fund a penalty equal to 25% of the Claimant's reasonable and necessary medical expenses related to the June 23, 2022 work injury, the amount of which is reserved for future determination.
8. In lieu of payment of the above compensation and benefits to the Claimant, Symphony Painting, LLC shall:
    a. Deposit the sum of $114,240.00 with the Division of Workers' Compensation as trustee, to secure the payment of all unpaid TTD benefits awarded. The check shall be payable to and sent to the Division of Workers; Compensation Division Trustee, c/o Mariya Cassin, 633 17th Street, Suite 400, Denver, CO 80202; or

b. File a bond in the sum of $114,240.00 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.

   The bond shall guarantee payment of the compensation and benefit awarded.

9. All claims against JGP Painting LLC are denied and dismissed.

10. 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: September 11, 2025

Steven R. Kabler
Administrative Law Judge

Office of Administrative Courts
State of Colorado
Workers' Compensation No. WC 5-219-483-002

Procedural Background

The present matter involves a remand from the Industrial Claim Appeals Office (ICAO). On January 28, 2025 ALJ Cannici issued Findings of Fact, Conclusions of Law, and Order (FFCLO). He imposed penalties against Respondents pursuant to §8-43-304(1), C.R.S. for failing to timely file a Final Admission of Liability (FAL) in violation of Workers' Compensation Rule of Procedure (WCRP) 5-5(E). The ALJ imposed penalties in the amount of $50.00 per day for 360 days for a total amount of $18,000.

Respondents filed a Petition to Review asserting the ALJ erred in ordering them to pay penalties. Respondents do not dispute that the FAL was not filed until February 27, 2024. However, they contended they did not receive the range of motion worksheets by fax until February 14, 2024, and could not have filed a valid FAL until after they received the worksheets. Respondents do not otherwise dispute the amount of penalties awarded.

The ICAO issued its opinion on July 28, 2025. The Panel agreed with the ALJ's determination that Respondents violated WCRP 5-5(E), by failing to request a DIME or file a FAL within 30 days of February 1, 2023. The ICAO also agreed that Respondents' violation of WCRP 5-5(E) was objectively unreasonable and thus affirmed the ALJ's penalty award. However, the Panel remanded the matter because the ALJ's order erroneously apportioned the penalty pursuant to §8-43-203(2)(a), C.R.S. instead of §8-43-304(1), C.R.S.

Issue

A determination of the proper apportionment of penalties between Claimant and the Colorado Uninsured Employer Fund in accordance with §8-43-304(1), C.R.S.

Findings of Fact

1. On April 20, 2022 Claimant sustained an admitted, work-related left knee injury.

After undergoing left knee surgery and follow-up treatment, his Authorized Treating Physician (ATP) determined he reached Maximum Medical Improvement (MMI) on January 17, 2023 and assigned a lower extremity impairment rating. On January 26, 2023 Midtown Occupational Services mailed the MMI report and accompanying documents to Insurer.

2. The record reflects that Respondents received a copy of the report and corresponding work sheets on February 1, 2023. The delivery stamp on the bottom of the report and work sheets specifically reveal that they were received on February 1, 2023.

3. Claimant was terminated from employment shortly after he reached MMI. He remained off work until nine months prior to the commencement of the present hearing. He was out of work for approximately eight months and did not receive any benefits.

4. On February 27, 2024 Respondents filed a FAL. The FAL included the ATP's MMI report and impairment worksheets, but they were not stamped with a receipt date. The impairment worksheet only reveals a stamp noting that it was Faxed on February 14, 2024. The FAL acknowledged a 16% scheduled impairment rating with a value of $12,103.93, but was not copied to Claimant's attorney.

5. On April 6, 2024 Respondents filed a second FAL that was copied to Claimant's counsel. The second FAL also included the ATP's report and worksheets. The attached impairment report and worksheet included the delivery stamp on the bottom of the page revealing Respondents received the documentation on February 1, 2023.

6. Respondents contend they did not receive the impairment worksheet until February 14, 2024. They were thus unable to file a valid FAL under Rule 5-5(A) because they could not include both the narrative report and range of motion worksheets with the FAL. However, despite Respondents' contention, the record reveals that they received both the impairment report and range of motion worksheet on February 1, 2023. Respondents' assertion, based on a Faxed stamp on the range of motion worksheet attached to the February 27, 2024 FAL, is unreasonable and inconsistent with the bulk of the record evidence. Importantly, Midtown Occupational Services mailed the impairment report and rating worksheet to Insurer on January 26, 2023 and the delivery stamp on the bottom of the report and work

sheet specifically note they were received on February 1, 2023.

7. Respondents had 30 days from delivery of the report to either file a FAL or request a DIME. The 30 days would have expired on March 4, 2023. Respondents did not request a DIME. Moreover, Respondents did not file an FAL until February 27, 2024. The FAL was thus not filed until 360 days after the time permitted under Worker's Compensation Rule of Procedure 5-5 (E)(1). Respondents' failure to file the FAL before March 4, 2023 thus constituted a violation of Rule 5-5(E)(1).

8. Respondents' conduct in failing to file an FAL until 360 days after it was due under Rule 5-5(E) was objectively unreasonable. Respondents have only asserted that they did not receive the ATP's impairment worksheets until February 27, 2024 without offering any rationale for the delayed filing of the FAL. Because Respondents failed to offer a reasonable factual or legal explanation for its actions, it is reasonable to infer that Claimant sustained his burden to prove the violation was objectively unreasonable. Respondents' argument is simply not based on a rational argument in law or fact. Accordingly, Respondents' conduct in filing the FAL 360 days late was objectively unreasonable and warrants penalties.

9. Although Insurer failed to timely file the FAL the record is devoid of reprehensible conduct. Moreover, Insurer's motivation for the violation is uncertain, but may simply have constituted a missed deadline. However, Claimant was prejudiced by Respondents' actions because he remained off work for approximately eight months and did not receive any benefits in the absence of an FAL. Therefore, penalties of $50.00 per day for a total of $18,000 are warranted based on Respondents' failure to timely file an FAL pursuant to Rule 5-5(E). The penalty is designed to enforce the Rule as well as deter future misconduct. Pursuant to §8-43-304(1), C.R.S. fifty percent of the penalty shall be paid to the subsequent injury fund, created in §8-46-101, C.R.S. and fifty percent to Claimant.

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' 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. Worker's Compensation Rule of Procedure 5-5(E)(1) provides, in pertinent part:

> For those injuries required to be filed with the Division with dates of injury on or after July 1, 1991:
>
> > (1) Within 30 days after the date of mailing or delivery of a determination of impairment by an authorized Level II accredited physician, or within 30 days after the date of mailing or delivery of a determination by the authorized treating physician providing primary care that there is no impairment, the insurer shall either:
> >
> > > (a) File an admission of liability consistent with the physician's opinion, or
> > >
> > > (b) Request a Division Independent Medical Examination (DIME)

in accordance with Rule 11-3 and §8-42-107.2, C.R.S.,

Thus, Rule 5-5 (E)(1) requires an Insurer to file a FAL or request a Division Independent Medical Evaluation (DIME) within 30 days after the date of mailing or delivery of a determination of impairment by an authorized Level II accredited physician.

5. Section 8-43-304(1), C.R.S. authorizes the imposition of penalties not to exceed $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. Indus. Claim Appeals Off.,* 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), C.R.S. even if the Act imposes a specific violation for the underlying conduct. *Holliday v. Bestop, Inc.,* 23 P.3d 700 (Colo. 2001).

6. 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 conduct constitutes a violation of the Act, a rule or an order. Second, the ALJ must ascertain whether any action or inaction constituting the violation was objectively unreasonable. The reasonableness of an action depends on whether it was based on a rational argument in law or fact. *Jiminez v. Indus. Claim Appeals Off.,* 107 P.3d 965 (Colo. App. 2003) ("reasonableness of conduct in defense of penalty claim is predicated on rational argument based in law or fact.") *In Re Claim of Murray*, W.C. No. 4-997-086-02 (ICAO, Aug. 16, 2017). The question of whether a party's conduct was objectively unreasonable presents a question of fact for the ALJ. *Pioneers Hospital v. Indus. Claim Appeals Off.,* 114 P.3d 97 (Colo. App. 2005); *see Pant Connection Plus v. Indus. Claim Appeals Off.*, 240 P.3d 429 (Colo. App. 2010). Where the violator fails to offer a reasonable factual or legal explanation for its actions, the ALJ may infer the opposing party sustained its burden to prove the violation was objectively unreasonable. *Human Resource Co. v. Indus. Claim Appeals Off.*, 984 P.2d 1194, 1197 (Colo. App. 1999).

7. An ALJ may consider a "wide variety of factors" in determining an appropriate penalty. *Adakai v. St. Mary Corwin Hospital,* W.C. no. 4-619-954 (ICAO, May 5, 2006). However, any penalty assessed should not be excessive or grossly disproportionate to the conduct in question. When determining the penalty, the ALJ may consider factors including the "degree of reprehensibility" of the violator's conduct, the disparity between the actual or potential harm suffered by the other party and the award of penalties, and the difference between the penalties awarded and penalties assessed in comparable cases. *Associated Business Products v. Indus. Claim Appeals Off.,* 126 P.3d 323 (Colo. App. 2005).

8. Penalties awarded under §8-43-304(1), C.R.S. are to be apportioned, in whole or in part, at the discretion of the Director or the ALJ, between the aggrieved party and the Colorado Uninsured Employer fund created in § 867-108. However, the amount apportioned to the aggrieved party shall be a minimum of twenty-five percent of any penalty assessed.

9. As found, Respondents contend they did not receive the impairment worksheet until February 14, 2024. They were thus unable to file a valid FAL under Rule 5-5(A) because they could not include both the narrative report and range of motion worksheets with the FAL. However, despite Respondents' contention, the record reveals that they received both the impairment report and range of motion worksheet on February 1, 2023. Respondents' assertion, based on a Faxed stamp on the range of motion worksheet attached to the February 27, 2024 FAL, is unreasonable and inconsistent with the bulk of the record evidence. Importantly, Midtown Occupational Services mailed the impairment report and rating worksheet to Insurer on January 26, 2023 and the delivery stamp on the bottom of the report and work sheet specifically note they were received on February 1, 2023.

10. As found, Respondents had 30 days from delivery of the report to either file a FAL or request a DIME. The 30 days would have expired on March 4, 2023. Respondents did not request a DIME. Moreover, Respondents did not file an FAL until February 27, 2024. The FAL was thus not filed until 360 days after the time permitted under Worker's Compensation Rule of Procedure 5-5 (E)(1). Respondents' failure to file the FAL before March 4, 2023 thus constituted a violation of Rule 5-5(E)(1).

11. As found, Respondents' conduct in failing to file an FAL until 360 days after it was

due under Rule 5-5(E) was objectively unreasonable. Respondents have only asserted that they did not receive the ATP's impairment worksheets until February 27, 2024 without offering any rationale for the delayed filing of the FAL. Because Respondents failed to offer a reasonable factual or legal explanation for its actions, it is reasonable to infer that Claimant sustained his burden to prove the violation was objectively unreasonable. Respondents' argument is simply not based on a rational argument in law or fact. Accordingly, Respondents' conduct in filing the FAL 360 days late was objectively unreasonable and warrants penalties.

12. As found, although Insurer failed to timely file the FAL the record is devoid of reprehensible conduct. Moreover, Insurer's motivation for the violation is uncertain, but may simply have constituted a missed deadline. However, Claimant was prejudiced by Respondents' actions because he remained off work for approximately eight months and did not receive any benefits in the absence of an FAL. Therefore, penalties of $50.00 per day for a total of $18,000 are warranted based on Respondents' failure to timely file an FAL pursuant to Rule 5-5(E). The penalty is designed to enforce the Rule as well as deter future misconduct. Pursuant to §8-43-304(1), C.R.S. fifty percent of the penalty shall be paid to the subsequent injury fund, created in §8-46-101, C.R.S. and fifty percent to Claimant.

Order

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

1. Claimant's request for penalties for Respondents' failure to timely file a FAL pursuant to Rule 5-5(E) is granted. Respondents are liable for penalties under §8-43-304(1), C.R.S. in the amount of $18,000. Pursuant to §8-43-304(1), C.R.S., fifty percent of the penalty shall be paid to the subsequent injury fund, created in §8-46-101, and fifty percent to Claimant.

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: September 16, 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. WC 5-272-922-001

Issues

1. Whether Respondent established by clear and convincing evidence that the Division Independent Medical Examination (DIME) physician's determination that Claimant is not at maximum medical improvement (MMI) is incorrect.

2. Whether Claimant established by a preponderance of the evidence that surgery recommended by Dr. Faulkner is reasonable, necessary, and related to Claimant's workplace injury of September 26, 2023.

Findings of Fact

1. Claimant began working for employer as a golf course superintendent in March 2021. On September 26, 2023, Claimant sustained an admitted injury to his left shoulder arising out of the course of his employment with Employer. Claimant testified that he was performing his normal job duties, including operating a machine used to roll golf greens on that date which led to symptoms in his left shoulder. The green roller is a machine that is towed throughout the golf course by hitching it to a small utility vehicle or "gator." To use the roller, Claimant was required to unhitch the roller, lift the hitch arm, and then operate the machine on a green, then lower the arm, and hitch the roller to the gator to tow it to the next green. Claimant testified that on September 26, 2023, he rolled 18 to 20 golf greens, and a couple of hours into that activity he began to notice soreness in his neck and left shoulder area. He testified he did not experience any specific trauma, and that the symptoms in his neck and shoulder became progressively worse over the course of the day. Over the following two days, Claimant noticed continued symptoms while performing other work activities.

2. After the symptoms did not subside, Claimant reported the injury to Employer on September 28, 2023, indicating he was experiencing tightness in his left trapezius region

and into the neck, which he attributed to hitching and unhitching the roller from the utility vehicle. (Ex. V).

3. On September 30, 2023, Claimant began treatment at Care Now for symptoms in his left shoulder and upper arm, and was referred to physical therapy. After several months of physical therapy, Claimant's left shoulder symptoms did not improve, and he was referred to an orthopedic surgeon, Dann Byck, M.D. (Ex. 4, 5, 6, 13, 18, 22, 23, 24),

4. Claimant saw Dr. Byck on January 8 and 22, 2024. Dr. Byck noted positive provocative shoulder tests, and diagnosed Claimant with osteoarthritis of the left AC joint, and cervical nerve root compression with radiculopathy. (Ex. 23 & 24)

5. On February 7, 2024, Claimant had a left shoulder MRI which showed a full-thickness tear of the posterior labrum, a deep partial cartilage defect at the superior medial humeral head, and mild AC joint arthropathy. (Ex. 34).

6. Claimant returned to Dr. Byck on March 13, 2024, and he recommended a posterior labral reconstruction and acromioplasty, for a diagnosis of primary osteoarthritis of the left shoulder and left shoulder instability. (Ex. 43).

7. On April 1, 2024, Respondents submitted Claimant's medical records to Quig-Min Chen, M.D., to perform a record review. Dr. Chen concluded that Claimant sustained a work-related muscle strain, and that all of his other issues were pre-existing. Dr. Chen opined that Claimant's labral tear was degenerative, his AC joint arthritis was pre-existing, and that both conditions are unrelated to his work activities. He further opined that Claimant's work activities did not cause a permanent aggravation of his pre-existing conditions. Dr. Chen indicated that Claimant's need for surgery was "certainly medically reasonable and necessary" but unrelated to his work injury. (Ex. 50).

8. On April 8, 2024, Claimant saw Nathan Faulkner, M.D., an orthopedist, for a second opinion. Dr. Faulkner reviewed Claimant's MRI and recommended a left shoulder surgery, to include a posterior labral repair, left shoulder debridement, and mini-open biceps tenodesis. (Ex. 51).

9. Both Dr. Faulkner and Dr Byck submitted requests for authorization of the proposed surgical procedures to insurer. (Ex. 49, 52). Insurer denied authorization for surgery based on Dr. Chen's opinion.

10. Over the following two months, Claimant continued to report ongoing left shoulder pain and instability, and his ATP, Jessica Leitl, M.D, referred Claimant to physiatrist Samuel Chan, M.D.

11. On July 10, 2024, Claimant had a second left shoulder MRI which was interpreted as showing similar findings to the February 2024 left shoulder MRI. (Ex.. 88).

12. On July 11, 2024, Claimant saw Dr. Chan, who reviewed Claimant's MRI and noted that Claimant's surgical recommendations had been denied. Dr. Chan indicated that despite Claimant's ongoing symptoms, Claimant's pain generator was unclear. He noted that Claimant had failed conservative treatment options, and expressed his concern that Claimant had findings consistent with scapulothoracic bursitis, and possibly suprascapular and infrascapular neuritis. He prescribed a muscle stimulator, and indicated that if Claimant had neuritis, nerve blocks may be an option. (Ex. C).

13. On July 18, 2024, Dr. Leitl authored a letter to Respondents indicating that Claimant's mechanism of injury would not result in either an acute posterior labral tear or a permanent exacerbation. She indicated that Claimant likely had myofascial symptoms and that nerve blocks may be reasonable before placing Claimant at maximum medical improvement (MMI). (Ex. N).

14. On August 4, 2024, Dr. Faulkner indicated that he had reviewed video footage of the activities Claimant was performing when his symptoms began, and indicated that based on his review of footage and absence of no prior left shoulder complaints, that his current shoulder pathology was caused by work-related activities. He again submitted a surgical request for an arthroscopy with debridement, posterior labral repair, and biceps tenodesis. (Ex. 92 & 94).

15. On August 8, 2024, Claimant returned to Dr. Chan who noted that the muscle stimulator had been of unclear benefit, and recommended nerve blocks for diagnostic and therapeutic purposes. (Ex. 93).

16. On August 20, 2024, Respondents denied authorization of Dr. Faulkner's surgical request, based on the opinions of Dr. Chen and Dr. Leitl. (Ex. N).

17. On August 22, 2024, Dr. Chan saw Claimant and indicated that Claimant's pain generator was still difficult to ascertain, but now noted that no further diagnostic or therapeutic interventions were necessary. He offered no explanation for abandoning his

recommendation for nerve blocks two weeks earlier. Dr. Chan opined that Claimant was at MMI, and performed an impairment rating. He offered no cogent explanation for placing Claimant at MMI on August 22, 2024, despite the fact that Claimant's reported complaints were essentially unchanged from his visit two weeks earlier. He assigned Claimant a 7% left upper extremity impairment based on range of motion deficits. (Ex. 97).

18. On August 29, 2024, Claimant saw Dr. Leitl who wrote "if you would like to pursue a shoulder steroid injection prior to case closure, I think that is reasonable a may help identify your primary pain generator – please call to schedule with Dr. Faulkner prior to your next visit, otherwise agree that you are likely at MMI in light of repetitive surgery denial by insurer." (Ex. 98).

19. On September 19, 2024, Claimant returned to Dr. Leitl and reported that he elected not to have a cervical steroid injection because he felt the result would be temporary. He continued to report ongoing symptoms in his left arm and shoulder. Dr. Leitl adopted Dr. Chan's impairment rating and found Claimant at MMI as of September 19, 2024. (Ex. 3).

20. On October 7, 2024, Respondents filed a Final Admission of Liability, admitting to an upper extremity impairment rating of 7%, and an MMI date of September 19, 2024, consistent with Dr. Leitl's opinions. (Ex. P). Claimant objected to the FAL on October 16, 2024, and requested a DIME. (Ex. Q).

21. On January 30, 2025, Claimant attended a DIME with David Orgel, M.D. Dr. Orgel found Claimant had not reached MMI, determining that the overhead activity required to operate the green roller was consistent with the abnormalities seen on Claimant's MRI scans, including the labral injuries and chondral effect, and opined that these were work-related conditions. He indicated that Claimant had not reached MMI for this condition due to the need for shoulder surgery. (Ex. E).

22. On April 2, 2025, Dr. Chen performed an IME at Respondents' request. Dr. Chen opined that Claimant's posterior labral tear was not work-related and was not caused by his work activities, but was likely a result of his pre-existing arthritis catching and tearing the labrum. He recommended a diagnostic injection in the glenohumeral joint before proceeding to surgery.

23. On April 24, 2025, Claimant saw Allison Fall, M.D., for a Claimant-requested IME. Dr. Fall opined that Claimant's left shoulder injury was work-related. She indicated that

although Claimant had pre-existing degenerative changes, he was asymptomatic prior to his work injury, and would not have pursued treatment bur for his work activities causing symptoms. She further opined that surgical repair was reasonable, necessary, and work-related. (Ex. M). In her deposition, Dr. Fall testified that Claimant had an aggravation of his underlying asymptomatic condition, and that the abnormalities seen on Claimant's MRI are consistent with his symptoms and consistent with a condition that would be aggravated by his work activities. Dr. Fall further opined that Claimant he is not at MMI from his injury. Dr. Fall's opinions were credible.

Conclusions of Law

Generally

The purpose of the Workers' Compensation Act of Colorado, §§ 8-40-101, et seq., C.R.S. is to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of litigation. *See* § 8-40-102(1), C.R.S. Claimant shoulders the burden of proving entitlement to benefits by a preponderance of the evidence. *See* § 8-43-201, C.R.S. A preponderance of the evidence is that which leads the trier-of-fact, after considering all of the evidence, to find that a fact is more probably true than not. *Page v. Clark*, 592 P.2d 792 (Colo. 1979). The facts in a workers' compensation case must be interpreted neutrally; neither in favor of the rights of the claimant, nor in favor of the rights of respondents; and a workers' compensation claim shall be decided on the merits. § 8-43-201, C.R.S.

Assessing weight, credibility, and sufficiency of evidence in Workers' Compensation proceedings is the exclusive domain of the administrative law judge. *University Park Care Center v. Indus. Claim Appeals* Office, 43 P.3d 637 (Colo. App. 2001). Even if other evidence in the record may have supported a contrary inference, it is for the ALJ to resolve conflicts in the evidence, make credibility determinations, and draw plausible inferences from the evidence. *Id*. at 641. When determining credibility, the fact finder should consider, among other things, the consistency or inconsistency of the witness's testimony and actions; the reasonableness or unreasonableness (probability or improbability) of the testimony and actions; the motives of the witness; whether the testimony has been contradicted; and bias, prejudice, or interest. *Prudential Ins. Co. v. Cline*, 57 P.2d 1205 (Colo. 1936); *Bodensieck v. Indus. Claim Appeals Office*, 183 P.3d

684 (Colo. App. 2008). The weight and credibility to be assigned expert testimony is a matter within the discretion of the ALJ. *Cordova v. Indus. Claim Appeals Office*, 55 P.3d 186 (Colo. App. 2002). To the extent expert testimony is subject to conflicting interpretations, the ALJ may resolve the conflict by crediting part or none of the testimony. *Colorado Springs Motors, Ltd. v. Indus. Comm'n*, 441 P.2d 21 (Colo. 1968).

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

Overcoming DIME With Respect to 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. 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., supra*.

"Clear and convincing evidence" is evidence that demonstrates that it is "highly probable" the DIME physician's opinion 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, supra.*

The mere difference of medical opinion does not constitute clear and convincing evidence to overcome the opinion of the DIME physician. *Javalera v. Monte Vista Head Start, Inc.*, W.C. Nos. 4-532-166 & 4-523-097 (ICAO July 19, 2004); *see Shultz v. Anheuser Busch, Inc.*, W.C. No. 4-380-560 (ICAO Nov. 17, 2000). 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).

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 Public Schools*, 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 injury-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. National 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). Thus, a DIME physician's findings concerning the diagnosis of a medical condition, the cause of that condition, and the need for specific treatments or diagnostic procedures to evaluate the condition are inherent elements of determining MMI.

Respondents have failed to establish by clear and convincing evidence that the DIME Physician erred in finding the Claimant has not reached MMI. The evidence demonstrates that Claimant likely has pre-existing pathology in his left shoulder that was asymptomatic prior to symptoms appearing after conducting work activities in September 2023. No credible evidence was admitted that Claimant had any prior left shoulder complaints or treatment, or that the symptoms he began experiencing were caused by non-work activities. Dr. Orgel determined that the pathology in Claimant's left shoulder, including labral tears and a chondral defect were consistent with the Claimant's mechanism of injury. This is consistent with opinions expressed by Dr. Faulkner and Dr. Fall. The contrary opinions of Dr. Chen and Dr. Leitl are mere differences of opinion and

do not constitute clear and convincing evidence that Claimant has reached MMI. Dr. Chan's opinion that Claimant reached MMI on August 22, 2024, is also not persuasive. Claimant's left shoulder symptoms have continued with little to no improvement since the date of injury despite conservative treatment. The continued symptoms, coupled with the need for surgery demonstrate that it is more likely than not that Claimant has not reached maximum medical improvement.

Authorization of Left Shoulder Surgery

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). The existence of evidence which, if credited, might permit a contrary result affords no basis for relief on appeal. *Cordova v. Industrial Claim Appeals Office*, 55 P.3d 186 (Colo. App. 2002)." *In the Matter of the Claim of Bud Forbes, Claimant*, W.C. No. 4-797-103 (ICAO Nov. 7, 2011). 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),

Claimant has established that the recommended shoulder surgery is causally-related to his work injury. The ALJ credits the opinions of Dr. Faulkner, Dr. Orgel and Dr. Fall that Claimant requires left shoulder surgery as a result of his work-related injuries. The ALJ finds that it is more likely than not that the left shoulder surgery recommended by Dr. Faulker is reasonable and necessary to cure or relieve the effects of Claimant's work injury, and is thus authorized.

Order

It is therefore ordered that:

1. Respondents have failed to establish that the DIME physician's opinion that Claimant has not reached MMI is incorrect.
2. Claimant's request for authorization of left shoulder surgery recommended by Dr. Faulkner is granted.
3. All matters not determined herein are reserved for future determination.

If you are dissatisfied with the Judge's order, you may file a Petition to Review the order with the Denver Office of Administrative Courts, 1525 Sherman St., 4th Floor, Denver, CO 80203. You must file your Petition to Review within twenty (20) days after mailing or service of the order, as indicated on certificate of mailing or service; otherwise, the Judge's order will be final. You may file the Petition to Review by mail, as long as the certificate of mailing attached to your petition shows: (1) That you mailed it within twenty (20) days after mailing or service of the order of the Judge; and (2) That you mailed it to the above address for the Denver Office of Administrative Courts. For statutory reference, see section 8-43-301(2), C.R.S. For further information regarding procedures to follow when filing a Petition to Review, see Rule 27, OACRP. You may access a petition to review form at: http://www.colorado.gov/dpa/oac/forms-WC.htm.

Dated: September 16, 2025

Steven R. Kabler

Administrative Law Judge

OFFICE OF ADMINISTRATIVE COURTS
STATE OF COLORADO
WORKERS' COMPENSATION NO. 5-283-795-001

ISSUE

I. Whether Claimant established, by a preponderance of the evidence that the need for anterior cervical discectomy and disc replacement at C5-C6 recommended by Dr. Child is reasonable, necessary and related to his compensable work related injury?
II. Whether the Claimant is entitled to temporary disability benefits?
III. Whether Respondents met their burden to withdraw their admission of liability?

FINDINGS OF FACT

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

1. Claimant, [redacted] was employed by Alterra Mountain Company as a mountain bike patroller at Steamboat Mountain Resort. His duties included riding rugged downhill trails while carrying first aid and maintenance equipment, responding to injured guests, and performing trail maintenance.
2. On July 12, 2024, during the course of his bike patrol duties, Claimant experienced the onset numbness and tingling in his right thumb while descending the Tenderfoot Trail. These symptoms progressed to pain and tightness in his right arm, shoulder, and neck over the following days.
3. Claimant promptly reported the symptoms to his employer and sought medical treatment. Initial treatment included NSAIDs, oral steroids, physical therapy, and an epidural steroid injection, none of which resolved his symptoms.
4. Diagnostic imaging on August 9, 2024, revealed a cervical disc extrusion at C5-C6 with severe narrowing of the right neural foramen and likely impingement of the right C6 nerve root. The treating physicians diagnosed cervical radiculopathy consistent with Claimant's symptoms.
5. Prior to July 12, 2024, Claimant had no history of cervical radiculopathy, no ongoing neck problems, and no reports of upper extremity numbness or tingling. Claimant testified credibly that he had never experienced these symptoms before

that date. His medical history contained only a minor neck strain at age 12 during a soccer game, which resolved completely without residual issues, and occasional sore necks from ski crashes that never resulted in neurological symptoms.

6. The treating physicians, Dr. Zachary Child and Dr. Elizabeth Wilcox, opined that Claimant's work activities of sustained downhill mountain biking with repetitive braking, jarring, and awkward cervical positioning were more likely than not the cause of a significant aggravating factor of his cervical disc pathology.
7. Dr. Child recommended anterior cervical discectomy and disc replacement at C5-C6 as reasonable and necessary medical treatment. Claimant credibly testified regarding persistent pain, functional limitations, and interference with sleep and work duties.
8. Dr. John Burris conducted two records review at Respondents' request. He issued reports on January 15, 2025, and July 15, 2025. He initially opined that the condition was degenerative and unrelated to work. His opinion was largely based on the fact that there was no acute traumatic event, such as a crash.
9. He did agree with the diagnosis of a herniated disk at C5-6 level which is pinching on the right C6 nerve root. However, he disagreed with Dr. Wilcox' opinion that traversing down the rugged terrain on the downhill mountain bike patrol was more likely to have caused, accelerated or aggravated the disk injury.
10. As a result of his work injury, Claimant has been unable to perform his usual job duties since December 2024 and remains under medical restrictions.
11. Claimant has incurred out-of-pocket expenses related to reasonable and necessary medical treatment for his cervical condition.

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).

D. 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).

Medical Benefits

E. Once a claimant has established the compensable nature of his/her work injury, he/she is entitled to a general award of medical benefits and respondents are liable to provide all reasonable and necessary and related medical care to cure and relieve the effects of the work injury. *Section 8-42-101, C.R.S.*; *Grover v. Industrial Commission*, 759 P.2d 705 (Colo. 1988); *Sims v. Industrial Claim Appeals Office*, 797 P.2d 777 (Colo. App. 1990). However, Claimant is only entitled to such benefits as long as the industrial injury is the proximate cause of his 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*.

F. Where the relatedness, reasonableness, or necessity of medical treatment is disputed, Claimant has the burden to prove that the disputed treatment is causally related to the injury, and reasonably necessary to cure or relieve the effects of the injury. *Ciesiolka v. Allright Colorado, Inc*., W.C. No. 4-117-758 (ICAO April 7, 2003). The question of whether a particular medical treatment is reasonably necessary to cure and relieve a claimant from the effects of the injury is a question of fact. *City & County of Denver v. Industrial Commission*, 682 P.2d 513 (Colo. App. 1984). I conclude that the cervical disk replacement recommended by Dr. Child is related to the work injury. Prior to the date of injury, Claimant had not treated for his neck other than a short period of time when he was 12 years old. Claimant performed a physically demanding job as well as engaged in various sports without neck pain before the date of injury. I am more persuaded by the opinions of Dr. Wilcox and Dr. Child as to the causal relationship of the Claimant's neck injury to his work than the opinion of Dr. Burris regarding the causal relationship. I conclude that the opinions of Dr. Wilcox and Dr. Child are credible.

ORDER

It is therefore ordered that:

1. Claimant's request for the anterior cervical discectomy and disc replacement at C5-C6 is granted.

2. Respondents shall pay Claimant temporary total disability benefits commencing on the date of surgery until modified or terminated under law.

3. Respondents shall reimburse Claimant for all documented out-of-pocket medical expenses related to the compensable injury.

4. Respondents request to withdraw their admission of liability is denied.

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

DATED: September 17, 2025

/s/ Michael A. Perales
Michael A. Perales
Administrative Law Judge
Office of Administrative Courts
1330 Inverness Drive, 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.

Office of Administrative Courts

State of Colorado

Workers' Compensation No. WC 5-300-635-001

Issues

The issues addressed in this decision involve the compensable nature of alleged injuries to Claimant's low back, left hip and left knee occurring June 13, 2024, her entitlement to medical benefits, including surgery for a left total hip arthroplasty and penalties for failing to comply with C.R.S. § 8-43-101(a). The specific questions answered are:

I. Whether Claimant established, by a preponderance of the evidence that she sustained a compensable injury to her low back, left hip, and/or left knee.

II. If Claimant sustained compensable low back, left hip, and/or left knee injuries, whether she also established, by a preponderance of evidence, that she is entitled to reasonable, necessary and related medical care, including treatment through UC Health Occupational Medicine Clinic and their referrals to cure and relieve her of the effects of these injuries.

III. If Claimant established that she sustained a compensable injury, whether she also proved, by a preponderance of the evidence, that Respondents are liable for penalties for failure to comply with C.R.S. § 8-43-101(a).

Findings of Fact

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

Background and Claimant's Alleged June 13, 2024, Work-Injury

1. This is a denied claim per a Notice of Contest filed on April 22, 2025. (RHE B, p. 6).

2. Claimant is a 54-year-old former facility management specialist of Employer. She was hired on October 9, 2000. (RHE A).

3. Claimant was notified on June 4, 2024, that her employment with Employer would be terminated as of June 25, 2024. (RHE J). Claimant's termination was due to an outsourcing of her position with the company and had nothing to do with her performance as an employee. (Hearing Transcript (hereinafter Hrg. Tr.) at p. 72, ll. 11-16). When Claimant found out she was being terminated, she was disappointed and angry with Employer. (Hrg. Tr., p. 71, ll.12-21; p. 72, ll. 3-6). Nine days after being notified of her termination, i.e. on June 13, 2024, Claimant reported an injury to her low back, left hip, and left knee. Indeed, Claimant alleged that excessive air travel and carrying a backpack repeatedly for work over a prolonged period "caused left low back, hip and knee symptoms." (RHE A; CHE 17). Claimant testified that at some point in time in 2024 she began to experience pain and impaired function in her left hip. (Hrg. Tr., p. 28, ll. 10-14). Claimant also noted pain in her left knee and lower back. *Id.* Claimant could not identify an exact date when symptoms started or a specific workplace incident that led to her symptoms. (Hrg. Tr., p. 28, ll.15-25; p. 29, ll. 1-5; RHE L, p. 44). Rather, Claimant attributed her symptoms to muscular fatigue noting that her pain may have started in December and maybe earlier. Indeed, Claimant testified:

> Q: When did you start feeling those symptoms coming on?
>
> A: It -- it was a gradual growing indication of -- when did I start feeling that?
>
> Q: Yes.

> A: It’s hard to say exactly what day and time, because the rigor of carrying a backpack is muscular fatiguing. It is -- it's -- it's still hard work, right? That's why you say. Oh, is your work hard? Yes, that was hard work. But I would say specifically to my left hip, when did that start happening and when -- when did that pain start developing? Probably in the December-ish time frame. Maybe earlier. It would come and go, and that's why I was attributing it to muscular fatigue or muscular problems or hey, I'm just not strong enough. I need to go home and rest.

(Hrg. Tr., p. 28, ll. 15-25, p. 29, ll. 1-3).

4. Claimant later made it clear that her symptoms began around December 2022 and that these symptoms progressed (worsened) during what was characterized as a period of “intense” travel from February 2022 through May 2024. (Hrg. Tr., p. 29, ll. 4-18).

5. Claimant sought medical treatment for her left hip, left knee and low back pain with her primary care provider, Dr. Mark Robinson, on June 11, 2024, one week after she was terminated from her position with Employer and two days before she filed her June 13, 2024, claim. (RHE N, pp. 155-165). During her June 11, 2024, appointment, Claimant reported left knee, hip and low back pain, which had been increasing over the past 9 months. *Id*. at 156. No cause for Claimant’s symptoms was provided. Rather, Dr. Robinson simply noted that Claimant had “chronic left hip pain” and left knee pain of unspecified chronicity. *Id.* at 157, 162. He offered Claimant a Toradol injection, oral medications and a referral to physical therapy (PT). *Id*. Claimant declined Dr. Robinson’s offers and instead requested a referral to orthopedics for imaging and management. *Id.*

6. Before Claimant saw an orthopedist based on Dr. Robinson’s referral, she

reported her symptoms as work related. Claimant testified that after seeing Dr. Robinson, she "assessed" whether her symptoms were "personal" or if she needed to make a report with her Employer. (Hrg. Tr., p. 31, ll. 12-21). After considering the situation, Claimant decided that her symptoms were related to her work, so she reported it. Indeed, Claimant testified:

> I assessed of, okay, this is the information. Is this personal or do I actually report this to my manager? And I said, yep, it's work. I have to report this to my manager. So I took that to my manager and I shared with her, hey, I have an injury here.

(Hrg. Tr., p. 31, ll. 17-21).

Claimant's Initial Treatment at Concentra

7. Claimant reported her alleged injuries to her Supervisor, Patricia Burt. (Hrg. Tr., p. 32, ll. 5-7). After Claimant reported her alleged injury on June 13, 2024, a First Report of Injury was completed, and she was referred to Concentra for evaluation and treatment. (RHE A: Hrg. Tr., p. 33, ll. 2-12).

8. Claimant presented to Dr. Marcie Wilde, D.O. at Concentra on June 13, 2024. (RHE P, pp. 189-193). During this encounter, Claimant reported 6/10 radiating low back and left leg pain. *Id*. at 189. She reported the date of injury as December 6, 2022, and noted that her mechanism of injury (MOI) was prolonged sitting with a heavy backpack. *Id*. An examination of her left hip revealed normal appearance, normal palpation, and full range of motion with pain. *Id*. at 190. An examination of her left knee revealed normal appearance, no deformity, no tenderness, full range of motion, and normal strength. *Id*. An examination of her lumbosacral spine revealed normal appearance, tenderness in the left sciatic notch, normal palpation, and full range of motion. *Id*. at 191. Imaging, orthopedics, and physical therapy were recommended. *Id*.

9. Claimant began physical therapy immediately after seeing Dr. Wilde on June 13, 2024. By the time she met with her Physical Therapist, Katie Peterson, Claimant was reporting 8/10 pain. (RHE P, p. 194). Claimant reported an MOI of "prolonged sitting" and "carrying a heavy backpack." *Id*. She also reported wearing a travel backpack for the past 2.5 years. *Id*. During this encounter, and contrary to her prior belief that her pain was driven by muscular fatigue, Claimant specifically noted that her pain was not muscular and that it felt "deep in the bone and deep in the hip joint." *Id.* Claimant's left hip impingement test was positive prompting Ms. Peterson to note that Claimant's "exam findings do not appear to correlate with the mechanism of injury. She appears to have internal derangement of the hip joint vs. arthritis." *Id*. at 195. Ms. Peterson noted a "guarded prognosis." *Id*. Claimant would call the clinic later after her PT visit to cancel all future PT visits because she had increased pain after her initial evaluation, which Ms. Peterson noted was typical after an initial PT evaluation. *Id.* at 194.

10. After her initial visit at Concentra, Claimant requested a change in providers to UC Health primarily due to personal differences with Physical Therapist Peterson. Indeed, Claimant testified that she did not want to treat with Concentra and Ms. Peterson because:

> They didn't believe me as a patient; they didn't believe me as a person. And instead, when they were examining my leg, the therapist, without any warning, took my left leg and jammed it across my body. And I screamed out in pain. I saw a white flash of bright white light in my eyes. I went flying back. I tried to jerk away from her because it all happened so fast, and she had tested the joint that was actually most injured. And at that time, I really didn't know what type of injury I had. But she was really suspecting, oh, this exactly what this person is going to have. I want to see how bad it is. So she did that movement very fast, very rapidly. And I was, like, oh my gosh. I don't want to continue with a provider like this. I was questioning their

> medical approach to it. So that's when I asked to -- I requested to change to a medical provider I knew, highly reputable, UCHealth.

(Hrg. Tr., p. 63, ll. 21-25, p. 64, ll. 1-11). The change was approved, and Claimant began treating with Dr. Mark Siemer on June 18, 2024.

Claimant's Treatment at UCHealth

11. During her initial evaluation with Dr. Siemer at UCHealth on June 18, 2024, Claimant again reported feeling significant discomfort in her low back and left hip on December 6, 2022. (RHE R, p. 203). She reported excessive travel in and out of airports carrying a backpack for extended periods of time. *Id*. Indeed, she reported that she wore a backpack 14 hours per day and for the first time, estimated that her backpack weighed 40-45 pounds depending on what documents she was carrying. *Id*. Accordingly, Claimant believed her medical symptoms were due to the extensive travel requirements associated with her job. *Id*. She reported feeling dismissed at Concentra and had changed clinics to "establish care and begin a workers related injury." *Id*. at 204. X-rays of the left hip were taken that revealed no acute findings and mild left hip osteoarthritis. *Id*. at 205. X-rays of the lumbar spine were taken that revealed no acute abnormalities in the sacrum and sacroiliac joints and moderate to severe spondylosis at L5-S1. *Id.* No work restrictions were assigned. *Id*. at 206. Dr. Siemer recommended a referral to an orthopedic hip specialist. *Id*.

12. Claimant was evaluated by orthopedist, Dr. Jordan Schaeffer, M.D. on July 10, 2024. (RHE T, pp. 300-303). Dr. Schaeffer reviewed Claimant's imaging (x-rays) and after review opined that Claimant's x-rays demonstrated evidence of "moderate arthritis", with "early joint space narrowing, sclerosis, osteophyte formation with no bone-on-bone collapse." *Id*. at 302. According to Dr. Schaeffer, there was "[m]oderate hip dysplasia with lateral central edge angle measuring 23.5 degrees." *Id.* Dr. Schaeffer opined that Claimant's left hip pain was "likely secondary to degenerative arthritis, labral tear in the

setting of FAI[1] and mild hip dysplasia." *Id.* Dr. Schaeffer ordered an MRI of the left hip to assess the extent of cartilage loss and for the presence of a labral tear. *Id.*

13. An MRI of the left hip was completed on August 24, 2024. (RHE S, pp. 296-297). Findings included "[m]oderate to severe cartilage loss" in the left femoral acetabular articulation along with "[e]xtensive complex tearing of the anterior, anterosuperior, and superior labrum. *Id*. at 296.

14. Claimant returned to Dr. Schaeffer on August 28, 2024. (RHE T, pp. 304-306). Dr. Schaeffer reviewed Claimant's MRI and after review, documented the following assessment/plan: "53-year-old female, with left hip pain secondary to severe degenerative arthritis and degenerative labral tear." . . . We discussed MRI results and given the concurrent presence of both severe arthritis and labral tear, I do not think she is a candidate for an isolated hip arthroscopy with labral repair. Follow-up approximate 3 months to assess response to therapy and discuss next steps such as possible THA."[2] *Id.* at 306. Claimant returned to physical therapy. (RHE U).

15. Claimant returned for a follow-up appointment with Dr. Schaeffer on December 4, 2024. (RHE T, pp. 307-309). Claimant reported "little to no" pain relief with physical therapy along with an increased sense of instability and buckling in the hip. *Id.* at 307. Claimant again reported that her left hip injury was likely secondary to her "extreme activity during her prior job." *Id*. Dr. Schaeffer noted that Claimant had "left hip pain secondary to advanced arthritis and labral tear." *Id.* He discussed the "progressive nature of arthritis and [the] spectrum of treatment options" with Claimant. *Id*. He recommended a THA. *Id.*

16. On January 24, 2025, Claimant was placed on the surgical schedule to proceed with a total hip replacement on April 22, 2025. (RHE T, p. 312).

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[1] Femoroacetabular Impingement. (See Dr. Burris' June 3, 2025, independent medical examination report at RHE L, p. 52).

[2] Total hip Arthroplasty

17. On January 28, 2025, Claimant called the Occupational Medicine Clinic at UC Health wanting to "know if the process for submitting authorization to work comp insurance [for] approval [of] her upcoming surgery [had] been initiated." (RHE R, p. 238). Claimant testified that the request for hip replacement surgery was provided to Respondents in February 2025. (Hrg. Tr., p. 38, ll. 9-13).

18. On March 24, 2025, Tasha Hutchinson sent correspondence to Claimant advising her that her surgery was scheduled for April 22, 2025, and that she needed to complete a pre-operative evaluation to include lab work and an EKG. (RHE T, p. 317-318). Claimant returned to UC Health Orthopedic Clinic on April 4, 2025, for her pre-operative evaluation. Physician Assistant (PA-C), Michael Sciortino's report from this encounter confirmed that the Claimant was scheduled for a left total hip arthroplasty on April 22, 2025. (RHE T, p. 319). In addition to ordering pre-operative lab work, PA-C Sciortino also prescribed post operative therapeutic equipment including a front wheeled walker, commode, shower chair and NICE cold therapy unit and hip wrap. (CHE 12, p. 334).

19. Claimant underwent a preoperative EKG and blood work at Memorial Hospital North on April 4, 2025, in preparation for the total hip arthroscopy scheduled on April 22, 2025. (See generally RHE V, W).

20. Claimant returned to Dr. Siemer in follow-up on April 8, 2025. (RHE R, p. 273). During this appointment, Claimant reported that her pain was approximately 15% worse and that she was "looking forward" to having surgery. *Id*.

21. Dr. Schaeffer's request for authorization to proceed with left total hip replacement surgery was denied on April 15, 2025. (CHE 15, p. 351). Based upon the evidence presented, a copy of the letter denying authorization does not appear to have been sent to the Claimant. *Id.* As noted, Respondents filed a Notice of Contest on April 22, 2025, denying the injury as non-work-related on April 22, 2025. (RHE B, p. 6).

22. Claimant returned to Dr. Siemer for a follow-up visit on May 22, 2025. (RHE R, pp. 277-283). During this appointment, Claimant reported persistent and worsening left hip pain. *Id*. at 281. Dr. Siemer noted that Claimant was scheduled for an Independent Medical Evaluation (IME) on June 3, 2025. *Id.* He advised Claimant to participate in a virtual appointment in six weeks with the hope that she will have had her surgery by then. *Id*. at 282.

The Independent Medical Examination of Dr. John Burris, M.D.

23. Claimant was evaluated at Respondents' request, by Dr. John Burris, M.D., on June 3, 2025. (RHE L). As part of his IME, Dr. Burris obtained a history from Claimant, reviewed her medical records and performed a physical examination. Claimant informed Dr. Burris that she developed an atraumatic onset of left hip "tightness" in 2020. *Id*. at 44. Because she felt this tightness was muscular, Claimant treated her symptoms with stretching and yoga exercises. *Id.* Between 2022 and 2023, Claimant reported that her hip tightness gave way to pain. *Id*. Because her PCP noted that her left knee was swollen at the time of his June 11, 2024, examination, Claimant became concerned that her left hip pain may be more serious than simple muscle tightness. *Id*. at 45. Claimant relayed that between 2022-2024, she was traveling between Colorado Springs and San Jose/Santa Clara, California an average of 2.5-3 times per month. *Id*. Claimant informed Dr. Burris that she used a backpack to carry her work supplies and personal items while traveling. *Id*. This included: a laptop, charging cables, a locking security cable, several battery packs, a change of clothes, her keys, cell phone and toiletries along with paperwork and documents. *Id*. Claimant never actually weighed the backpack but told Dr. Burris that it weighed an estimated 40 pounds when full. *Id.* She also advised Dr. Burris that she never checked the backpack, choosing instead to carry it on and stow it under the seat in front of her. *Id*. According to Claimant, she would rent a car once she arrived in California and would drive directly to one of three jobsites for Employer. *Id*. Once she arrived at the jobsite, Claimant would keep the backpack with her and wear it at all times, except while sitting at her workstation. Because the area around her

designated work area was prone to vandalism and theft from parked cars, Claimant reported that she carried her backpack anytime she was away from her workstation/jobsite. *Id*.

24. Following his evaluation, Dr. Burris opined that Claimant's August 24, 2024, MRI demonstrated "moderate to severe degenerative changes of the left hip (including a degenerative labral tear) and moderate degenerative changes of the right hip, but no acute abnormalities." (RHE I. p. 52). He also noted that Dr. Schaeffer diagnosed [Claimant] with left hip dysplasia and femoroacetabular impingement (FAI). *Id*. Dr. Burris opined that "all of these findings represent pre-existing conditions" and that Claimant's "descriptions of her travels and backpack use would not introduce or involve forces sufficient to cause, aggravate, or accelerate, or contribute in any meaningful manner to her pre-existing left hip condition." *Id.* Instead, Dr. Burris concluded that Claimant's current left hip complaints were "consistent with the natural progression of her left hip arthritis and FAI. Thus, he could not causally relate Claimant's symptoms and need for left hip treatment, including surgery to her workplace activities. *Id.* at 52-53.

Claimant's Testimony

25. As noted above, Claimant testified that her symptoms probably began in December 2022, maybe earlier. (Hrg. Tr., p. 28, ll. 15-25; p. 29, ll. 1-5). However, Claimant never told her Employer about any of these symptoms until June 13, 2024, nine days after being notified of her employment termination. (Hrg. Tr., p. 72, ll. 7-10).

26. Claimant testified that she traveled 2-3 weeks per month from February 2022 through May 2024. When she was not traveling, Claimant sat at a desk on a computer. (Hrg. Tr., p. 20, ll. 2-15). Claimant did not travel between May 6, 2024, through her last day of employment on June 25, 2024. (Hrg. Tr., p. 51, ll. 22-25; p. 52, ll. 3-6).

27. Claimant testified that when she was working in California, she wore her

backpack every workday on average, 75% of the time. (Hrg. Tr., p. 27, ll. 22-25; p. 28, ll. 1-6). She estimated her backpack to weigh 40 pounds because it included tape measures, office supplies, contents from her purse, a laptop, batteries, a change of clothes, and toiletries. (Hrg. Tr., p. 23, ll. 10-25; p. 24, ll. 1-11). Claimant admitted that she never actually weighed her backpack. (Hrg. Tr., p. 97, ll. 4-7). Claimant later testified that she had a second bag to hold her clothes, shoes, and toiletries because they wouldn't fit in her backpack. (Hrg. Tr., p. 94, ll. 5-16).

28. Claimant testified that it took her 4.5-5 hours to travel from Colorado Springs, Colorado to San Jose, California. (Hrg. Tr., p. 95, ll. 8-11). She later testified that she only worked 10-14 hours per day 25% of the time. *Id.* at ll. 15-21.

29. Claimant testified that sitting on a plane causes excruciating pain. (Hrg. Tr., p. 36, ll. 4-7).

30. Claimant started a new job at Cape Design Engineering in Florida in January 2025. (Hrg. Tr., p. 17, ll. 13-17). Claimant testified that her husband and younger son still live in Colorado and that she travels back and forth between Florida and Colorado. (Hrg. Tr., p. 40, ll. 18-24; p. 59, ll. 2-12).

31. Claimant also traveled to Florida by airplane frequently prior to starting her new job in January 2025. (Hrg. Tr., p. 60, ll. 18-24). Claimant went to Florida from July 15, 2024, through August 30, 2024, to work on her family home. *Id*.; Resp. Ex. U at 330.

32. As noted, it was recommended that Claimant have a total left hip replacement in February 2025. (Hrg. Tr., p. 38, ll. 3-13). She has not yet had the recommended surgery but noted that her condition does not prevent her from completing her job duties at Cape Engineering Design despite having to engage in significant travel, including by automobile. (Hrg. Tr., p. 61, ll. 21-25; p. 62-63, ll. 1-16).

33. Claimant suggested that the cause of her symptoms and need for left hip

surgery was her wearing a 40–45-pound backpack up to 14 hours per day. (Hrg. Tr., p. 26, ll. 19-25). However, she testified that she did not wear her backpack while sitting down or while working remotely. (Hrg. Tr., p. 97, ll. 8-16). She also did not wear it while driving from her house to the airport, waiting during a layover, while she was on an airplane, or when she wasn't traveling. (Hrg. Tr., p. 54, ll. 5-25, p. 55, ll. 1-14).

34. Claimant did not work anywhere from June 25, 2024, through January 2025, and was never assigned any work restrictions during this timeframe. (Hrg. Tr., p. 61, ll. 3-5; see also, RHE R).

The Testimony of Patricia Burt

35. Patricia Burt was Claimant's direct supervisor from May 1, 2020, through June 25, 2024. (Hrg. Tr., p. 67, ll. 15-21).

36. Ms. Burt testified that she saw Claimant virtually in meetings weekly/monthly and does not remember ever seeing Claimant wearing a backpack. (Hrg. Tr., p. 67, ll. 22-25; p. 68, ll. 1-3). She testified that Claimant was not required to wear a backpack as part of her job duties. (Hrg. Tr., p. 68, ll. 4-6). According to Ms. Burt, the only items Claimant required for her job were a laptop, charging cord, battery, and cell phone, which Ms. Burt would not expect to weigh 40 pounds. (Hrg. Tr., p. 68, ll. 7-13; p. 74, ll. 4-18).

37. Ms. Burt testified that Employer had secure locations to put computers and/or locks for computers while onsite. (Hrg. Tr., p. 69, ll. 23-25; p. 70, l.1).

38. Ms. Burt testified that for most of the time that Claimant worked for her, she worked from home, but that Claimant's job required travel to Employer's projects. (Hrg. Tr., p. 70, ll. 15-19). She also noted that Claimant might, on occasion, work a 14-hour day. *Id*. at ll. 7-14. Regarding Claimant's travel, Ms. Burt testified that RHE H was

an accurate report of the flights Claimant took while working for Employer between 2021 and 2024. (Hrg. Tr., p. 71, ll. 1-5).

39. Claimant testified that her extensive travel began in February 2022. (Hrg. Tr., p. 47, ll. 13-17). The flight log contained at RHE H demonstrates that Claimant took 50 work-related trips between February 9, 2022, and May 6, 2024. (RHE H, p. 32). Not all trips were to San Jose, California. *Id.* Indeed, forty-four of the aforementioned trips are identified as travel between Colorado Springs and San Jose. *Id.* 100 flights during a 27-month period (816 days) represents that Claimant only traveled for work 12% of the time between February 9, 2022, and May 4, 2024. *Id*.

40. Ms. Burt notified Claimant that her job would be eliminated from the company on June 4, 2024. She testified that Claimant's initial reaction was one of disappointment at first and then shock and anger when she met with Claimant in person. (Hrg. Tr., p. 71, ll. 12-25; p. 72, ll. 1-6). Ms. Burt testified that Employer had no report of injury from Claimant prior to her being told that her employment was being terminated. (Hrg. Tr., p. 72, ll. 7-10).

41. During cross-examination, Mr. Burt admitted that Claimant's travel schedule became more "intense" around February 2022 and running through May 2024. (Hrg. Tr., p. 73, ll. 4-8).

The Testimony of Dr. Burris

42. Dr. Burris testified as an expert in occupational medicine. (Hrg. Tr., p. 77, ll. 18-25; p. 78, l. 1). Dr. Burris reiterated the history concerning the mechanism of injury as provided by Claimant during her June 3, 2025, IME. (Hrg. Tr., p. 80, ll. 2-16). Like Ms. Burt, Dr. Burris testified that he did not believe that Claimant's backpack would have weighed an estimated 40 pounds because, contrary to Claimant's testimony, a backpack weighing 40 to 45 pounds would not be able to fit under the seat in front of you on an airplane. (Hrg. Tr., p. 80, ll. 20-25; p. 81, ll. 1-7; p. 89, ll. 9-15). Based upon the evidence

presented, the ALJ is persuaded that Claimant's weight estimation of the backpack in question is probably overstated.

43. Dr. Burris testified that Claimant reported traveling for two and a half to three weeks a month on average, which didn't match the flight log identified in Respondents' Exhibit H. (Hrg. Tr., p. 81, ll. 9-18).

44. Dr. Burris opined that Claimant has "advanced" degenerative hip arthritis and degenerative labral tearing in the left hip. (Hrg. Tr., p. 81, l. 25; p. 82, ll. 1-9). He opined further that the activities cited by Claimant as being causative of her symptoms and need for treatment, i.e. walking while carrying a backpack are not activities that place "undue stresses on the hip joints and therefore would not accelerate the arthritic findings in the left hip. (Hrg. Tr., p. 82, ll. 10-25; p. 83, l. 1).

45. Dr. Burris testified that Claimant's current symptoms are due to the natural progression of her degenerative hip condition. (Hrg. Tr., p. 13-16). Thus, he concluded that the request for a total left hip replacement to address Claimant's persistent hip pain, while reasonable and necessary, would not be related to any of her reported work activities. *Id*. at ll. 17-19.

46. Dr. Burris testified that neither Dr. Siemer nor Dr. Schaeffer provided any meaningful analysis regarding the cause of Claimant's symptoms or her need for hip surgery. (Hrg. Tr., p. 84, ll. 1-4; p. 87, ll. 21-25; p. 88, ll. 1-7). A careful review of Claimant's medical records, including the reports of Dr. Siemer and Schaeffer, support this conclusion. Moreover, Dr. Burris testified that the physical therapist at Concentra (Katie Peterson) documented that the findings of Claimant's physical examination did not correlate with the reported MOI, which was synonymous with concluding that Claimant's left hip condition was not work-related. (Hrg. Tr., p. 83, ll. 20-25). Claimant presented no expert testimony to refute Dr. Burris.

47. Section 8-43-101(a) C.R.S. requires an employer to keep records of

any employee injuries involving active medical treatment for a period of more than 180 calendar days after the date the injury was first reported to the employer. Within ten days after notice or knowledge that an employee has contracted an occupational disease or injury that results in active medical treatment for a period of more than 180 calendar days after the date the injury was first reported to the employer, the employer is required to report to the Division such injury. See C.R.S. § 8-43-101(a).

48. Claimant reported her injury on June 13, 2024. Active treatment began on that date. (RHE P). One hundred eighty (180) days from June 13th is December 10, 2024. There is a ten-day limit for filing pursuant to the aforementioned statute which would fall on December 20, 2024. Respondents did not file a Notice of Contest until April 22, 2025, which is 121 days beyond the required filing time as mandated by § 8-43-101(a).

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), §§ 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. *Section 8-40-102(1), C.R.S*. The Claimant shoulders the burden of proving by a preponderance of the evidence that she is a covered employee who suffered an "injury" arising out of and in the course of employment. *Section 8-43-301(1), C.R.S.; Faulker 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).* A preponderance of the evidence is that which leads the trier-of-fact, after considering all of the evidence, to find that a fact is more probably true than not. *Page v. Clark, 197 Colo. 306, 592 P.2d 792 (1979)*. The facts in a workers' compensation

case must be interpreted neutrally, neither in favor of the rights of the claimant nor in favor of the rights of respondents. *Section 8-43-201, C.R.S*. A workers' compensation claim is decided on its merits. *Section 8-43-201, supra.*

B. In determining credibility, the ALJ should consider the witness' manner and demeanor on the stand, means of knowledge, strength of memory, opportunity for observation, consistency or inconsistency of testimony and actions, reasonableness or unreasonableness of testimony and actions, the probability or improbability of testimony and actions, the motives of the witness, whether the testimony has been contradicted by other witnesses or evidence, and any bias, prejudice or interest in the outcome of the case. *Colorado Jury Instructions, Civil*, 3:16. 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 all, part or none of the testimony of a medical expert. *Colorado Springs Motors, Ltd. v. Industrial Commission,* 441 P.2d 21 (Colo. 1968); see also, *Dow Chemical Co. v. Industrial Claim Appeals Office*, 843 P.2d 122 (Colo. App. 1992) (ALJ may credit one medical opinion to the exclusion of a contrary opinion). In this case, the undersigned ALJ finds the expert medical opinions of Dr. Burris to be credible and more convincing than the contrary assertions/testimony of Claimant. While Claimant sincerely believes that her left hip pain is related to excessive travel and prolonged use of a 40–45-pound backpack, the medical evidence, including the testimony of Dr. Burris persuades the undersigned that Claimant's left hip pain and need for treatment, including total hip replacement surgery is related to the progressive nature of her pre-existing degenerative hip arthritis and labral tearing rather than the activities associated with her work travel, i.e. walking, sitting and carrying a backpack.

C. In accordance with Section 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 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

D. 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.*

E. The phrases "arising out of" and "in the course of" are not synonymous and a claimant must meet both requirements for the injury to be compensable. *Younger v. City and* County of Denver, 810 P.2d 647, 649 (Colo. 1991); *In re Question Submitted by U.S. Court of Appeals,* 759 P.2d 17, 20 (Colo. 1988). The latter requirement refers to the time, place, and circumstances under which a work-related injury occurs. *Popovich v. Irlando,* 811 P.2d 379, 381 (Colo. 1991). An injury occurs in the course 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). Here, there is little question that Claimant's alleged injuries occurred within the time and place limits of her employment and during an activity related to Claimant's job duties as a Facility Specialist for Employer, namely traveling to/from California to manage the operational effectiveness and stabilize

the research and development of a large commercial laboratory and building campus in San Jose, California. While the evidence presented supports the conclusion that Claimant's alleged injuries occurred in the course of her employment, she must also establish that her alleged injuries arose out of employment-related duties before the claim can be found compensable.

F. 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); *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.* In this regard, there is no presumption that an injury which occurs in the course of a worker's employment also arises out of the employment. *Finn v. Industrial Commission,* 165 Colo. 106, 437 P.2d 542 (1968); *see also, Industrial Commission v. London & Lancashire Indemnity Co.,* 135 Colo. 372, 311 P.2d 705 (1957) (mere fact that the decedent fell to his death on the employer's premises did not give rise to the presumption that the fall arose out of decedent's employment). Rather, it is the Claimant's burden to prove, by a preponderance of the evidence, that there is a direct causal relationship between her employment-related travel duties as a Facility Specialist and her alleged low back, left hip and left knee injuries. See. C.R.S. § 8-43-201; *Ramsdell v, Horn,* 781 P.2d 150 (Colo. App. 1989). Given that Claimant could not identify an exact date when her symptoms started or a specific workplace incident that led to her symptoms, other than repeated exposure to lengthy travel and prolonged use of her travel backpack, the evidence presented persuades the ALJ that Claimant's claims of injury are rooted in the legal principles surrounding the manifestation of an occupational disease.

G. Section 8-40-201(14), C.R.S. defines "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.

H. This section imposes additional proof requirements beyond that required for an accidental injury. An occupational disease is an injury that results directly from the employment or conditions under which work was performed and can be seen to have followed as a natural incident of the work. Section 8-40-201(14), C.R.S.; *Climax Molybdenum Co. v. Walter*, 812 P.2d 1168 (Colo. 1991); *Campbell v. IBM Corporation*, 867 P.2d 77 (Colo. App. 1993). On the other hand, an accidental injury is traceable to a particular time, place and cause. *Colorado Fuel & Iron Corp. v. Industrial Commission*, 154 Colo. 240, 392 P.2d 174 (1964); *Delta Drywall v. Industrial Claim Appeals Office*, 868 P.2d 1155 (Colo. App. 1993). An occupational disease arises not from an accident, but from a prolonged exposure occasioned by the nature of the employment. *Colorado Mental Health Institute v. Austill*, 940 P.2d 1125 (Colo. App. 1997). In this case, the ALJ agrees with Respondents that the evidence presented supports a conclusion that Claimant failed to establish the requisite causal relationship to prove that her left hip, knee and low back symptoms and need for left hip treatment, including surgery are proximately related to her travel schedule and/or the prolonged use of a backpack to transport her personal items and work supplies to her jobsite.

I. It is well established that an incident which merely elicits pain symptoms without a causal connection to work 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); *Scully v. Hooters of Colorado Springs*, W.C. No. 4-745-712 (ICAO, Oct. 27, 2008). Here, the cause of Claimant's symptoms and her need for treatment is complicated by the fact that she suffers from pre-existing

degenerative changes in her lumbar spine along with severe degenerative arthritis and labral tearing in her left hip and similar, albeit less severe, degenerative arthritis in the right hip. Accordingly, the question in this case is whether Claimant's symptoms and need treatment, including left total hip replacement surgery arose out of her travel schedule exposing her to repeated and prolonged use of a 40-45-pound backpack, or what Respondents contend is the progressive effects of severe pre-existing degenerative joint disease present in Claimant's low back and left hip. Relying principally on the opinions of Dr. Burris, Respondents maintain that Claimant's symptoms and need for treatment, including a left THA, are related to the natural progression of her underlying degenerative arthritis and labral tearing.

J. The presence of a pre-existing condition "does not disqualify a claimant from receiving workers compensation benefits." *Duncan v. Indus. Claims Appeals Office*, 107 P.3d 999, 1001 (Colo. App. 2004). Indeed, a claimant may be compensated if his or her employment "aggravates, accelerates, or "combines with" a pre-existing infirmity or disease "to produce disability and/or the need for treatment for which workers' compensation is sought". *H & H Warehouse v. Vicory*, 805 P.2d 1167, 1169 (Colo. App. 1990). Even temporary aggravations of pre-existing conditions may be compensable. *Eisnack v. Industrial Commission*, 633 P.2d 502 (Colo. App. 1981).

K. Pain is a typical symptom from the aggravation of a pre-existing condition and a claimant is entitled to medical benefits for the treatment of pain, so long as the pain is proximately caused by employment related activities and not the underlying pre-existing condition. *See Merriman v. Industrial Commission*, 120 Colo. 400, 210 P.2d 488 (1940). As noted, the fact that Claimant may have experienced an onset of pain while engaged in work duties does not require the ALJ to conclude that the duties of employment caused the symptoms, or that the employment aggravated or accelerated a pre-existing condition. Rather, as Dr. Burris testified, the occurrence of symptoms experienced while in the scope of work may represent the natural progression of a pre-existing condition that is unrelated to Claimant's 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).

L. In this case, the evidence presented supports a conclusion that Claimant's need for left hip treatment, including replacement surgery as recommended by Dr. Schaeffer, is reasonable and per imaging (MRI/x-ray), objectively necessary. Nonetheless, the ALJ is convinced, based on the totality of the evidence presented, that Claimant's low back, left knee and left hip pain, which prompted the need for treatment, is not causally related to Claimant's travel associated work duties. As explained by a Panel of the Industrial Claims Appeals Office in *Scully v. Hooters of Colorado Springs,* W.C. No. 4-745-712 (ICAO, October 27, 2008), a coincidental correlation between a claimant's work and his/her symptoms does not mean there is a causal connection between a claimant's symptoms (injury) and his/her work. In this case, the ALJ credits the opinions and unrefuted testimony of Dr. Burris to find and conclude that Claimant's symptoms and need for treatment, including left hip surgery, are probably related to the natural progression of her underlying pre-existing degenerative arthritis and labral tearing rather than the effects of walking, sitting and/or prolonged use of a backpack while traveling for her job. The contrary assertions/testimony of Claimant are unpersuasive. Because Claimant has failed to establish that she sustained compensable injuries that resulted directly from her employment-related travel duties and/or prolonged use of a backpack, her claim for benefits must be denied and dismissed and her remaining claims for medical benefits and penalties need not be addressed.

ORDER

It is therefore ordered that:

1. Claimant has failed to establish, by a preponderance of the evidence, that her low back, left knee and/or left hip symptoms and need for treatment, including left hip replacement surgery is causally related to her travel related work duties. Accordingly, her request for benefits and penalties is denied and dismissed.

Dated: September 17, 2025

/s/ Richard M. Lamphere

Richard M. Lamphere
Administrative Law Judge
1330 Inverness Drive, Suite 330
Colorado Springs, CO 80910

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 5-220-533-003

Issues

1. Whether Claimant proved by a preponderance of the evidence that he sustained a compensable work injury on October 13, 2022.
2. Whether Claimant proved entitlement to medical benefits to cure and relieve him of the effects of his October 13, 2022, injury.
3. The amount of Claimant's average weekly wage (AWW).
4. Whether Claimant is entitled to temporary total disability (TTD) benefits.
5. Whether Claimant is entitled to select his own authorized treating physician.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Claimant worked as a Painter for Employer. He was paid $200.00 per day and worked five days a week.

2. On October 13, 2022, during the course and scope of his employment, Claimant was tasked with painting a residence by Employer. As he was painting atop a 20-foot ladder, the ladder slipped, causing Claimant to fall approximately twenty feet to the ground. He injured his knees, upper extremities, ribs, back, and neck. He reported the injury to Employer that same day.

3. On the day of his injury, Claimant sought treatment at the Emergency Room of Intermountain Health Good Samaritan Hospital. He was evaluated by Dr. Aaron Blau for complaints of thoracic spine, lumbar spine, right elbow, left hand, left wrist, and bilateral knee pain. Imaging showed a non-displaced fracture of the second middle phalanx base, but no acute fractures to the knees or upper extremities. He was discharged that same day, with crutches, a splint for his finger, and instructions to follow up with orthopedic surgery.

4. Claimant was not provided with a designated provider list of physicians.

5. Employer did not carry workers compensation insurance on October 13, 2022.

6. Claimant was off work from his date of injury until June 1, 2023.

7. Claimant continues to experience physical limitations as a result of the injuries he sustained on October 13, 2022.

8. Claimant proved by a preponderance of the evidence that he sustained a compensable injury on October 13, 2022, arising out of and in the course of his employment with Employer.

9. Claimant proved by a preponderance of the evidence that his average weekly wage is $1,000.00, which corresponds with a TTD rate of $666.67 per week.

10. Claimant proved by a preponderance of the evidence that he is entitled to TTD benefits from October 14, 2022, to June 1, 2023. The amount of TTD owed, prior to interest, is $20,000.00.

11. Claimant has proved by a preponderance of the evidence that he is entitled to medical benefits reasonably necessary to cure and relieve him of the effects of his work injury, including reimbursement for expenses incurred during his treatment at Intermountain Health Good Samaritan Hospital on the date of injury.

12. Claimant has proved by a preponderance of the evidence that he is entitled to select her own authorized treating physician.

ORDER

It is therefore ordered:

1. Claimant suffered a compensable injury under the Colorado Workers' Compensation Act.

2. Respondent shall pay for medical treatment reasonably necessary to cure and relieve Claimant of her October 13, 2022, injury, including, but not limited to, the cost of treatment at Intermountain Health Good Samaritan Hospital on October 13, 2022.

3. Respondent shall pay for TTD benefits commencing October 14, 2022, at a rate of $666.67 per week, and based on an average weekly wage of $1,000.00, and continuing to June 1 2023, totaling $20,000.00, plus interest.

4. Claimant is entitled to select his authorized treating physician.

5. In lieu of payment of the above compensation and benefits to Claimant, Respondent shall deposit a sum equal to the total amount of TTD and medical benefits owed, plus 4% per annum, 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/Trustee. The check

shall be mailed to the Division of Workers' Compensation, P.O. Box 300009, Denver, Colorado 80203-0009, Attention: Trustee. Alternatively, Respondent, within ten days after the date of this Order, shall file a bond with the Director, guaranteeing payment of the compensation and benefits awarded, and signed by two or more responsible sureties who have received prior approval by the Division of Workers' Compensation, or with any other surety company authorized to do business within the state of Colorado. Respondent shall immediately notify the Division of Workers' Compensation and Claimant of payments made pursuant to this Order.

6. All other issues are reserved for later determination.

DATED: September 17, 2025

Office of Administrative Courts

/s/ Stephen J. Abbott

_____

Stephen J. Abbott
Administrative Law Judge

This decision is final and not subject to appeal unless a full Order is requested. The Request shall be made at the Office of Administrative Courts, 1525 Sherman Street, 4th Floor, Denver, CO 80203 within ten working days of the date of service of this Summary Order. § 8-43-215 (1), C.R.S. (2023). Such a Request is a prerequisite to review under § 8-43-301, C.R.S.

If a Request for Specific Findings of Fact and Conclusions of Law is made, Claimant's or Respondents' counsel may submit proposed Amended Specific Findings of Fact, Conclusions of Law, and Order (Amended) that substantially incorporates the above findings of fact and conclusions of law 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.

Office of Administrative Courts
State of Colorado
Workers' Compensation No. WC 5-279-286-001

Issues

I. Whether Claimant established by a preponderance of the evidence that she sustained a compensable injury to her left shoulder and/or cervical spine arising out of the course of her employment with Employer on July 2, 2024.

II. Whether Claimant has established by a preponderance of the evidence that she is entitled to reasonable, necessary, and causally related medical benefits for the July 2, 2024, industrial injury.

Stipulations

The parties reached the following stipulation, and the stipulation was approved and accepted by the ALJ.

- Claimant's average weekly wage Is $1,126.41.

Findings of Fact

Background and Employment History

1. Claimant has been employed as a bus driver with ABM Industries (formerly operating under Republican) since 2016, driving passengers between parking lots and the Denver International Airport.
2. Approximately 20 years ago Claimant underwent left shoulder surgery. She fully recovered from this surgery and experienced no left shoulder problems between that surgery and July 2, 2024.
3. In 2022, Claimant sustained a compensable right wrist injury with Employer, for which she received medical treatment including two surgeries. She was placed at maximum

medical improvement on January 17, 2024, with permanent restrictions of no lifting over 10-15 pounds.

4. Following a Department of Transportation physical examination on February 29, 2024, Claimant was cleared to return to full duty without restrictions. From that date until July 2, 2024, she performed her regular job duties without difficulty.

5. Claimant was able to perform her job duties before the July 2024 accident. Her duties included driving a bus 12-15 trips per shift, loading and unloading passenger luggage weighing approximately 50 pounds per bag, assisting approximately 20 passengers per trip. She typically worked 8-10 hour shifts, five days per week.

6. Claimant's daughter, Ms. Mimi Demese, has lived with Claimant her entire life. Ms. Demese credibly testified that prior to July 2024, her mother was functioning at nearly 100 percent capacity with no visible physical limitations.

July 2, 2024, Accident

7. On July 2, 2024, Claimant's shift began at 4:00 a.m. While at work, she took a restroom break and, upon realizing her bus was scheduled to depart, hurried back toward her vehicle.

8. Claimant fell inside Building A at the workplace. Claimant fell forcefully onto her left side, striking her left shoulder and head/forehead area. The fall was significant enough that other people that were present told her to stay down, and Claimant was visibly shaking afterwards.

9. The record contains various descriptions as to how she fell or what she fell on, including references to rocks, a rug, and concrete/tile flooring. At hearing, Claimant testified she remembered a rug in the area but could not specifically recall whether she tripped on the rug or slipped on the floor nearby.

10. The ALJ finds that the precise mechanism of the fall is immaterial; the essential fact remains that Claimant fell at work on July 2, 2024, inside Building A while performing work-related activities.

Immediate Post-Injury Period

11. On July 2, 2024, Claimant reported the accident to her shift manager, Yolanda, and completed the required paperwork. At that time, she declined medical treatment and stated that she was "fine." However, Claimant continued to experience pain following the accident but initially chose not to seek medical care, believing her condition would improve with time. Plus, as a single mother, Claimant attempted to continue working despite her symptoms to support her family.

12. Ms. Demese, Claimant's daughter, credibly testified that when Claimant returned home on July 2, 2024, she was emotional, clearly in pain, was visibly stiff, and immediately went to bed.

Progression of Symptoms

13. Over the two weeks following the accident, Claimant's symptoms progressively worsened. She experienced increasing pain, stiffness, crying episodes due to pain, and inability to sleep.

14. Ms. Demese credibly corroborated this deterioration, observing decreased range of motion, increasing stiffness, and her mother's need for assistance with daily activities including laundry and carrying groceries.

Medical Treatment

15. On or about July 16, 2024, when the pain became unbearable and Claimant could no longer lift her arm to drive, she reported to Yolanda that she needed medical treatment.

16. On July 16, 2024, Claimant obtained treatment at Medicine Business Industry (MBI) and was seen by Paula Homberger, PA-C. PA Homberger noted that there was a language barrier that inhibited the evaluation. However, she did evaluate Claimant. Regarding Claimant’s neck, she noted a positive Spurling’s test that caused pain to radiate down her left arm. Regarding her left shoulder, she noted that it was difficult to assess strength due to pain. But she also noted Claimant had decreased sensation in her left arm, but the exact location was difficult to determine due to there being a language barrier. Based on her assessment, PA Homberger diagnosed Claimant with a contusion of her left shoulder, sprain of her cervical spine, and cervical radiculopathy. She also referred Claimant for

physical therapy, prescribed various medications, and concluded that Claimant's symptoms were "highly suspicious for disk pathology" and would consider ordering an MRI depending on how Claimant responded to conservative treatment. She provided Claimant restrictions that included no driving and no lifting over 5 pounds with her left arm. Thus, Claimant was unable to perform her regular job duties.

17. On July 18, 2024, Claimant returned to PA Homberger and indicated that her symptoms were about the same. She returned on July 19, 2024, and indicated that her symptoms were getting worse. And while PA Homberger indicated in her report that Claimant might be amplifying the severity of her symptoms, she still concluded that Claimant's left sided shoulder and neck pain, consistent with nerve irritation, with possible disk disease, were caused by the fall.

18. On August 1, 2024, Claimant started treating at Concentra and saw Dr. Shantell TwoBears. At this appointment, she told the doctor that she had a prior left shoulder injury about 20 years ago due to a motor vehicle accident and that her injury resolved. She also told the doctor that in addition to her shoulder and neck pain, she developed left sided hip pain about 5-6 days ago. Dr. TwoBears noted that during her evaluation of Claimant, she became emotional. After her assessment, Dr. TwoBears concluded Claimant has a cervical and shoulder strain and prescribed ongoing physical therapy and some additional medication. Moreover, she also concluded that her objective findings were consistent with the history and/or work-related mechanism of injury.

19. On August 12, 2024, Claimant returned to Concentra and was evaluated by Dr. Ruth Vanderkooi. At this appointment, Dr. Vanderkooi examined Claimant's shoulder and neck. Based on her assessment, she thought Claimant might have a rotator cuff tear as well as radiculopathy involving her neck. Therefore, she ordered an MRI of Claimant's shoulder and neck. Dr. Vanderkooi also concluded that her objective findings were consistent with the history and/or work relatedness mechanism of injury.

20. On August 29, 2024, Claimant underwent an MRI of her cervical spine and left shoulder.

21. The cervical MRI revealed multi-level findings spanning from C2-C3 through C7-T1, involving both the intervertebral discs and facet joints. The imaging demonstrated the following:

- C2-C3: Mild diffuse disc bulging, a small central disc protrusion, and mild bilateral facet arthropathy, resulting in moderate central canal stenosis.
- C3-C4: A disc osteophyte complex and mild bilateral facet arthropathy, resulting in severe central canal stenosis, with mild right and moderate left neural foraminal narrowing.
- C4-C5: A disc osteophyte complex and mild bilateral facet arthropathy, resulting in moderate-to-severe central canal stenosis and severe bilateral neural foraminal narrowing.
- C5-C6: A disc osteophyte complex and mild right facet arthropathy, resulting in mild central canal stenosis, with severe right and moderate left neural foraminal narrowing.
- C6-C7: A disc osteophyte complex with a small superimposed left paracentral disc protrusion, and mild bilateral facet arthropathy, resulting in severe central canal stenosis and mild right and severe left neural foraminal narrowing.
- C7-T1: A disc osteophyte complex resulting in severe bilateral neural foraminal narrowing.

22. On September 27, 2024, Claimant was evaluated by Dr. Sacha. Dr. Sacha diagnosed Claimant with cervical facet syndrome, “whiplash associated” and recommended dry needling and chiropractic care, with the possibility of C3-C7 injections.

23. On October 2, 2024, Claimant was evaluated by Dr. TwoBears. In her report, she noted that Claimant’s claim was denied and that her case should be closed. Thus, she closed the matter and placed Claimant at MMI.

Work Status and Modified Duty Requests

24. Following July 16, 2024, Claimant has not returned to work.

25. Claimant credibly testified she contacted her employer numerous times requesting modified duty, speaking with managers Yolanda, Crosha, Daniel, and Ashley from human resources. Each time, she was told she could not return to work unless able to perform full duty.

Current Condition

26. Claimant continues to experience left shoulder pain, burning sensations, headaches, and severe neck pain. She seeks medical treatment to address these conditions and return to work.

Credibility Determination

27. The ALJ finds Claimant to be credible. Any inconsistencies in her description about the accident are explained by: (a) language barriers, with English being her second language; (b) lack of interpreter services at medical appointments; (c) and the passage of time.

28. Ms. Demese's credible and corroborating testimony regarding her mother's strong work ethic (not missing work, arriving early, working overtime) and the observable deterioration in her condition following the July 2, 2024, accident at work further supports Claimant's credibility.

Dr. Lesnak's IME and Testimony

29. On February 19, 2025, Dr. Lesnak performed an IME on behalf of Respondents for the July 2, 2024, work accident, and issued a report. He also testified by deposition and testified consistently with his report. As part of his evaluation, Dr. Lesnak reviewed Claimant's medical records, obtained a history, and performed a physical examination.[1]

30. Dr. Lesnak concluded in his report that "There is absolutely no medical evidence to support that she sustained any type of injury or developed any type of medical diagnoses that would in any way pertain to [the] reported occupational incident." He also stated that Claimant had no current abnormal reproducible objective findings during his examination, no medical evidence to support Claimant requires any further medical care, and that she does not require any work restrictions.

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[1] Dr. Lesnak also reviewed records from Claimant's 2022 right wrist injury - unrelated to this claim - and concluded that the surgeries were unnecessary and that there was no ratable impairment, despite an 18% impairment rating having been assigned. The ALJ infers this was included to suggest a pattern of unwarranted treatment and impairment findings, but finds the comparison unpersuasive.

31. The ALJ does not find Dr. Lesnak's opinions and conclusions to be credible or persuasive. His assertion that there is "absolutely no medical evidence" that Claimant sustained any injury or developed any condition related to the July 2, 2024, work incident is directly contradicted by the medical record itself. This sweeping statement ignores documented objective findings, contemporaneous clinical diagnoses, and ongoing treatment recommendations. Rather, his conclusions reflect selective interpretation of the evidence, omission of critical facts, and misuse of evaluative tools, all of which substantially undermine the reliability of his opinions and conclusions.

32. Dr. Lesnak's "absolutely no medical evidence" conclusion requires ignoring: (1) PA Homberger's contemporaneous documentation of positive Spurling's tests with symptoms radiating into Claimant’s left upper extremity; (2) her clinical diagnoses of cervical sprain, radiculopathy, and shoulder contusion; (3) work restrictions and medication prescriptions based on injury-related findings; (4) multiple subsequent positive Spurling's tests documented by treating providers; (5) MRI findings at C3-C7 levels deemed clinically significant enough to warrant a referral to a specialist, Dr. Sacha; (6) Dr. Sacha's diagnosis of cervical facet syndrome with treatment recommendations specifically targeting the imaged abnormalities; and (7) ongoing therapeutic interventions including physical therapy, medications, and proposed injections. His position essentially requires concluding that multiple treating providers documented, diagnosed, and treated conditions that did not exist - a medically and logically untenable position in this case.

33. In his deposition, Dr. Lesnak testified that Claimant's initial medical evaluation on July 16, 2024, reflected a "normal examination," citing full range of motion of the neck and left shoulder. However, he failed to address several critical findings documented by PA Homberger on that same date. PA Homberger recorded a positive Spurling's test, with pain radiating into the left upper extremity – which the ALJ infers is a classic clinical sign consistent with the purpose of the test to assist determining whether there is any nerve root or disc pathology. She diagnosed Claimant with a left shoulder contusion, cervical sprain, cervical radiculopathy and expressed clinical concern for possible disc pathology. She prescribed medications, referred Claimant to physical therapy, and imposed work restrictions, including no driving and limited lifting with the left arm. She further concluded that the findings were consistent with the reported work injury.

34. Dr. Lesnak's failure to acknowledge these findings and address them creates a materially incomplete and misleading impression of the initial evaluation. By characterizing the examination as entirely normal, he disregards objective clinical signs documented contemporaneously by a treating provider, which calls into question the thoroughness and objectivity of his analysis.

35. Dr. Lesnak also testified that he could not assess the significance of the repeated positive Spurling's tests in the record because the location of the symptoms was not specified. This assertion is not supported by the record. Notably, PA Homberger's July 16, 2024, report specifically documents pain radiating into the left upper extremity following the maneuver - an observation that must be consistent with a clinically meaningful positive result.

36. While it is true that not every reference to a positive Spurling's test in the record identifies the precise location of the elicited pain, the repeated use of the test - including by Dr. Lesnak himself during his evaluation - demonstrates that it is a standard diagnostic tool for identifying cervical nerve root compression or disc pathology. A positive result, by definition, reflects symptoms into the upper extremity. Dr. Lesnak's contention that these test results were meaningless without a documented pain location seems inconsistent with the fundamental medical purpose of the Spurling's maneuver and the clinical interpretation of a positive result. In other words, it is the positive finding itself that signals the presence and distribution of symptoms - namely, radiation of symptoms into the upper extremity - and thus appears to convey the very information Dr. Lesnak claimed was lacking.

37. Further, while dismissing objective clinical findings such as positive Spurling results, Dr. Lesnak relied heavily on the MRI reports which he contends do not demonstrate "acute" or "subacute" pathology. While it is true that the written MRI radiology reports do not specifically indicate any of the findings are "acute" or "sub-acute," this presumes the radiologist would document acute or sub-acute findings. Moreover, none of Claimant's treating providers have specifically attributed the imaging findings solely to degenerative changes and not supportive of an acute injury or an aggravation of a preexisting condition. Dr. Lesnak's method suggests selective consideration of the evidence: he discounts

findings that are allegedly supportive of a work injury while elevating those that allegedly support his contrary conclusion. This selective approach undermines the reliability of his expert opinion.

38. In addition, Dr. Lesnak's conclusion that "there is absolutely no medical evidence to support that she sustained any type of injury or developed any type of medical diagnoses that would in any way pertain to [the] reported occupational incident" is not supported by the objective imaging findings. To the contrary, the MRI reveals structural abnormalities - particularly at the C3 through C7 levels. Moreover, the abnormalities combined with Dr. Sacha's treatment recommendations, which include consideration of injections at those levels, indicates that the MRI findings reflect that Dr. Sacha concluded that the findings could be producing Claimant's symptoms. Thus, Dr. Lesnak's failure to acknowledge the clinical relevance of these findings substantially diminishes the weight of his opinion.

39. Dr. Lesnak further undermined his credibility by misusing the Distress and Risk Assessment Method (DRAM) screening tool. He testified that all of his independent medical examination (IME) patients complete a computerized DRAM questionnaire, which includes modified indices for depression and somatic pain. In this case, Claimant's overall results fell within the normal range, indicating only minimal psychological or somatic concerns.

40. Nevertheless, Dr. Lesnak repeatedly emphasized psychosocial factors as the primary drivers of Claimant's complaints. He described her symptoms as non-physiological and suggested psychological amplification, despite the overall results of the DRAM screening being normal.

41. This reliance is problematic for several reasons:

    i. The DRAM is a screening tool, not a diagnostic instrument for mental health disorders.

    ii. Dr. Lesnak conceded at deposition that a diagnosis of somatic symptom disorder requires a comprehensive mental health evaluation, which was not done here.

iii. By citing psychological explanations despite a normal screening result, he appears to have used the tool selectively to support a predetermined conclusion.

42. His refusal to accept the normal DRAM test results stands in stark contrast to his refusal to credit well-documented objective findings from treating providers, such as the repeated positive Spurling's tests, consistent diagnoses of conditions multiple providers have associated with Claimant's fall at work, and the MRI findings with treatment recommended by Dr. Sacha towards those findings. This inconsistent treatment of evidence further demonstrates bias and diminishes the weight of his conclusions.

43. Dr. Lesnak's opinion is based primarily on a single IME examination conducted more than seven months after the injury, which he elevates over multiple contemporaneous evaluations by treating providers. These providers documented abnormal findings across several dates - including positive Spurling's tests on July 16, August 1, August 6, August 14, and August 23, 2024 - and ordered follow-up treatments such as physical therapy, prescription medications, MRIs, and work restrictions. Moreover, this also disregards the fact that after her MRIs, Claimant was referred to a specialist, Dr. Sacha, to address Claimant's cervical pain and the fact that Dr. Sacha diagnosed Claimant with cervical facet syndrome, prescribed dry needling and chiropractic care, and indicated that C3-C7 facet injections might be appropriate.

44. While Dr. Lesnak possesses appropriate medical qualifications, credentials alone do not render expert testimony credible. An expert's value lies in the ability to provide objective, comprehensive, and balanced analysis. Here, Dr. Lesnak's testimony reflects selective interpretation of the record, omission of material findings, and misuse of evaluative tools. These deficiencies reveal bias and render his conclusions unpersuasive.

45. Accordingly, the ALJ assigns no weight to Dr. Lesnak's opinions and conclusions, finding them unreliable and inconsistent with the contemporaneous treatment records of Claimant's providers.

Ultimate Findings of Fact

46. Claimant injured her left shoulder and cervical spine on July 2, 2024, when she fell at work.

47. The injuries proximately caused the need for medical treatment and caused her disability that precluded her from performing her regular job duties.

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 she sustained a compensable injury to her left shoulder and/or cervical spine arising out of the course of her employment with Employer on July 2, 2024.

The claimant is required to prove by a preponderance of the evidence that at the time of the alleged injury she was performing service arising out of and in the course of the employment, and that the alleged injury or occupational disease was proximately caused by the performance of such service. Section 8-41-301(1)(b) & (c), C.R.S. The Act creates a distinction 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). *Soto-Carrion v. C & T Plumbing, Inc.,* W.C. No. 4-650-711 (ICAO February 15, 2007).

The ALJ finds and concludes that Claimant has established by a preponderance of the evidence that she sustained a compensable injury to her left shoulder and cervical spine arising out of and in the course of her employment on July 2, 2024.

Claimant suffered an accident when she fell inside while performing work-related activities during her shift while returning from a restroom break to her bus. The accident

caused compensable injuries to Claimant's left shoulder and cervical spine, as demonstrated by: (1) Claimant's credible testimony; (2) multiple treating providers' documentation of clinical findings, including positive Spurling's tests with radiation into the left upper extremity; (3) clinical diagnoses of cervical sprain, cervical radiculopathy, left shoulder contusion, and cervical facet syndrome; (4) MRI findings revealing multi-level cervical abnormalities from C2-C3 through C7-T1; (5) work restrictions imposed shortly after the injury that prevented Claimant from performing her regular job duties; and (6) ongoing need for medical treatment including medical evaluations, medications, physical therapy, and consideration of facet injections.

The temporal relationship between the July 2, 2024, fall and the onset of symptoms, combined with Claimant's credible testimony that she was symptom-free and performing her full duties without difficulty before the accident, establishes the requisite causal connection. The injury both caused disability by preventing Claimant from performing her regular work duties and proximately caused the need for medical treatment.

While the extent of Claimant's injuries as well as the extent of additional treatment that is required to treat Claimant from the effects of her injury might not be clear, such issue is not before this ALJ, the preponderance of the evidence establishes Claimant suffered a compensable injury involving her left shoulder and cervical spine.

II. Whether Claimant has established by a preponderance of the evidence that she is entitled to reasonable, necessary, and causally related medical benefits for the July 2, 2024, industrial 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).

The ALJ finds and concludes that Claimant has established by a preponderance of the evidence that she is entitled to reasonable, necessary, and causally related medical benefits for the July 2, 2024, industrial injury.

Having established that she sustained a compensable injury to her left shoulder and cervical spine on July 2, 2024, that requires medical treatment, Respondents are liable to provide medical treatment that is reasonable and necessary to cure and relieve the effects of the industrial injury pursuant to § 8-42-101(1)(a), C.R.S.

The ALJ finds and concludes that Claimant's need for reasonable and necessary medical treatment was established through Claimant's testimony and the medical records documenting her symptoms, the MRI findings, the assessment of her symptoms and findings by her medical providers, and the treatment provided by her providers to treat Claimant for the effects of her injury and determine the extent of her injury.

The ALJ finds that the treatment Claimant has received to date is reasonable, necessary, and causally related to the work injury as evidenced by: (1) multiple treating providers' consistent diagnoses linking Claimant's conditions to the July 2, 2024 fall; (2) PA Homberger's determination that Claimant's symptoms were "highly suspicious for disk pathology" requiring treatment; (3) Dr. TwoBears' and Dr. Vanderkooi's findings that objective findings were consistent with the work-related mechanism of injury; (4) Dr. Sacha's diagnosis of cervical facet syndrome "whiplash associated" with specific treatment recommendations including dry needling, chiropractic care, and potential C3-C7 facet injections; and (5) the ongoing symptoms of left shoulder pain, burning sensations, headaches, and severe neck pain requiring continued medical intervention.

Order

It is therefore ordered that:

1. Claimant sustained a compensable injury to her left shoulder and cervical spine arising out of and in the course of her employment with Employer on July 2, 2024.

2. Respondents shall pay for all reasonable, necessary, and causally related medical treatment to cure and relieve Claimant from the effects of the July 2, 2024, industrial injury.

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

If you are dissatisfied with the Judge's order, you may file a Petition to Review the order with the Denver Office of Administrative Courts, 1525 Sherman St., 4th Floor, Denver, CO 80203. You must file your Petition to Review within twenty (20) days after mailing or service of the order, as indicated on certificate of mailing or service; otherwise, the Judge's order will be final. You may file the Petition to Review by mail, as long as the certificate of mailing attached to your petition shows: (1) That you mailed it within twenty (20) days after mailing or service of the order of the Judge; and (2) That you mailed it to the above address for the Denver Office of Administrative Courts. For statutory reference, see section 8-43-301(2), C.R.S. For further information regarding procedures to follow when filing a Petition to Review, see Rule 27, OACRP. You may access a petition to review form at: http://www.colorado.gov/dpa/oac/forms-WC.htm.

Dated: September 19, 2025.

/s/ Glen Goldman

Glen B. Goldman
Administrative Law Judge

Office of Administrative Courts

State of Colorado

Workers' Compensation No. 5-252-393-001

Issues

- Did Claimant prove the AWW should be adjusted to include a bonus she received in December 2023?
- Did Claimant prove the admitted average weekly wage ("AWW") should be adjusted based on earnings from concurrent employment?

Findings of Fact

1. Claimant works as a General Manager at Employer's hotel in Colorado Springs. She suffered admitted injuries on September 21, 2023.

2. Claimant was a salaried employee earning $5,940 per month, which equates to $71,280 annually.

3. Claimant's December 2023 paystub includes a "Special Bonus" of $1,650. Claimant credibly testified this payment was a Christmas bonus that she received each year.

4. At the time of the accident, Claimant had a second job at Mateo Salon and Day Spa, where she was paid $18 per hour. Her job title and duties at Mateo Salon are not clear from the record.

5. Claimant's hours at Mateo Salon varied from week to week. In the 16 weeks preceding the work accident, she averaged 15.68 hours per week.

6. There is no persuasive evidence that the injury impaired Claimant's physical ability to perform her pre-injury work at Mateo Salon. Nor did the work injury have any appreciable impact on Claimant's earnings from Mateo Salon. She averaged 15.4 hours per week in the eight weeks after the accident, which is only slightly less than the 15.68 hours she averaged before the work injury. This minor difference probably reflects the natural variability of available work.

7. Claimant was placed at MMI by her ATP on February 5, 2025, with a 9% whole person impairment rating.

8. On April 9, 2025, Respondents filed a Final Admission of Liability (FAL) admitting the 9% rating. The "Remarks" section of the FAL states that the AWW was calculated "based on yearly salary of $71,280 ÷ 52 weeks = $1,370.77."

9. Claimant proved the $1,650 Christmas bonus paid in December 2023 should be included in the AWW. Claimant's AWW for her work with Employer is $1,402.50 ($71,280 + $1,650 = $72,930 / 52 weeks = $1,402.50.

10. Claimant failed to prove the AWW should be adjusted to include concurrent earnings from Mateo Salon and Day Spa.

Conclusions of Law

A. Inclusion of bonuses

Section 8-40-201(19)(a) defines "wages" as "the money rate at which the services rendered are to be recompensed under the contract of hire in force at the time of the injury." The term "wages" excludes "fringe benefits" other than a small handful of items specifically enumerated in § 8-40-201(19)(b). The issue of whether cash bonuses should be included in the AWW is a fact-dependent determination based on the circumstances in a particular case. *E.g.*, *Yex v. ABC Supply Company*, W.C. No. 4-910-373-01 (ICAO, May 16, 2014); *Cowland-Feeley v. Century Communications, Inc*., W.C. No. 4-393-063 (ICAO, April 5, 2000). The primary considerations when evaluating whether cash bonuses constitute "wages" or a non-includable "fringe benefit" are whether the employee has reasonable access to the benefit on a day-to-day basis, or an immediate expectation interest in receiving the benefit under appropriate, reasonable circumstances. *Meeker v. Provenant Health Partners*, 929 P.3d 26 (Colo. App. 1996).

Claimant proved the $1,650 Christmas bonus she received in December 2023 constituted "wages" under § 8-40-201(19)(a). Claimant's testimony that she received a Christmas bonus every year is credible and unrebutted by any persuasive contrary evidence. As such, it is reasonable to consider the bonus part of her overall monetary compensation package as a managerial employee. The persuasive evidence shows Claimant had an expectation interest in receiving the bonus under appropriate, reasonable circumstances. Claimant's AWW is $1,402.50, including the Christmas bonus.

B. Concurrent employment

Section 8-42-102(2), C.R.S. provides that compensation is payable based on the employee's average weekly earnings "at the time of the injury." The "entire objective" of AWW calculation is to arrive at a "fair approximation of the claimant's actual wage loss and diminished earning capacity" because of the industrial injury. *Campbell v. IBM Corp*., 867 P.2d 77, 82 (Colo. App. 1993). To that end, § 8-42-102(3) gives the ALJ wide discretion to "fairly" calculate the employee's AWW in any manner that is most appropriate under the circumstances. *Avalanche Industries v. Clark*, 198 P.3d 589 (Colo. 2008).

The discretionary authority to calculate a "fair" AWW includes the ability to consider wages from concurrent employment. *St. Mary's Church & Mission v. Industrial Commission*, 735 P.2d 902 (Colo. App. 1986). Such adjustments are most commonly made in cases "where the injury impairs the claimant's ability to earn wages from concurrent employment." *Jefferson County Public Schools v. Dragoo*, 765 P.2d 636, 637 (Colo. App. 1988); *see also St. Mary's Church & Mission v. Industrial Commission*, 735 P.2d 902 (Colo. App. 1987).

As found, Claimant failed to prove that earnings from her concurrent employment at Mateo Salon and Day Spa should be included in her AWW calculation. Claimant's injury had no appreciable impact on her earnings from Mateo Salon, as she maintained substantially the same work schedule and hours both before and after the industrial accident. With no showing of impaired earning capacity or actual wage loss from her concurrent employment, there is no persuasive basis to adjust the AWW to include these earnings. *E.g*., *Mason v. United Parcel Service*, W.C. No. 4-637-934 (ICAO, August 1, 2006) (ALJ properly declined to include concurrent wages when the injury did not impair the claimant's ability to work their second job). In this case, the admitted AWW of $1,402.50, based solely on Claimant's earnings from her primary employment, represents the most fair and appropriate calculation.

Order

It is therefore ordered that:

1. Claimant's average weekly wage is $1,402.50.
2. 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: September 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 5-255-854-001

Issues

The following issues were raised for consideration at hearing:

I. Whether Claimant established, by a preponderance of the evidence, that he is entitled to conversion of his 5% scheduled left upper extremity impairment to 3% whole person impairment.

II. Whether Claimant established, by a preponderance of the evidence, that he is entitled to ongoing maintenance medical benefits to cure and relieve him of the effects of his admitted left shoulder injury.

III. Whether Claimant suffered disfigurement to a part of the body normally exposed to public view entitling him to additional benefits pursuant to C.R.S. § 8-42-108.

Findings of Fact

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

1. On September 24, 2023, Claimant, who is employed as a Police Officer for the City of Colorado Springs injured his left shoulder while apprehending a suspect who had attempted to climb over a chain-link fence to evade arrest. As Claimant grabbed the suspect and pulled him off the fence, he heard a "loud pop" in his left shoulder followed by substantial pain requiring emergent medical evaluation and treatment.

2. Claimant was subsequently evaluated at the Colorado Springs

Occupational Health Clinic by Dr. Thomas Centi, M.D. on September 26, 2023. Dr. Centi placed Claimant on modified duty with restrictions including no use of left arm and no driving. (RHE A, p. 2-3).

3. On October 2, 2023, an MRI of left shoulder revealed a recent anterior shoulder dislocation with edematous Hill-Sachs deformity, anterior interior glenoid labral tearing with a bony Bankart lesion; and a superior labral tear extending into the biceps anchor. (RHE B, p. 9-10).

4. On November 15, 2023, Claimant underwent a left shoulder arthroscopic bony Bankart repair with anterior inferior and posterior capsulorrhaphy; and arthroscopic chondroplasty of the humeral head performed by Dr. Walden. (RHE F, p. 22).

5. On November 21, 2023, Claimant started post-operative physical therapy (PT) at the Colorado Springs Occupational Health Clinic. At his session on November 27, 2023, it is noted that Claimant had some mild spasm throughout the posterior shoulder. On November 29, 2023, it is noted Claimant had increased spasm throughout the shoulder. (CHE Ex. 7).

6. Between December 18, 2023, and January 18, 2024, during six physical therapy sessions, Claimant underwent Soft Tissue Mobilization (STM). STM targeted the left deltoid, upper trapezius, and pectoralis minor muscles, with additional treatment to the biceps during some of those sessions. In the notes from the January 4, 2024, PT appointment, it states that supraspinatus impingement was present near end range flexion/scaption PROM; mild cuing was provided to reduce upper trap compensation with scap retract/row motion. (CHE 7, p. 105). On January 11, 2024, it was noted that Claimant's upper trap and deltoid muscles were tender to palpation with spasm present. (CHE 7, p. 109).

7. Dr. Centi referred Claimant to massage therapy for additional soft tissue treatment. Claimant was seen initially by Samanatha Goeke, LMT, CNMT, at Divine Glow

Massage Therapy on January 11, 2024, where he complained of dull, aching shoulder and arm pain. (CHE 8). Claimant completed six massage sessions through February 21, 2024, with Ms. Goeke. During his January 24, 2024 treatment session, Claimant reported 1-2/10 pain and tension in the left shoulder. *Id*. at 134. He reported that heavy lifting and intense PT sessions could increase the pain in his shoulder, but for the most part his pain stays "constant". *Id*. Ms. Goeke noted that Claimant had tension in the left shoulder and neck musculature due to protection and musculature compensation. *Id*. at 136. She noted that Claimant would benefit from continued massage therapy to address compensatory muscle patterns causing tension and tenderness. *Id.*

8. During his January 31, 2024, massage therapy session, Claimant reported continued left shoulder, upper arm and neck pain, which was addressed by massaging the musculature around the left shoulder and neck region. (CHE 8, p. 143). Claimant voiced similar complaints during his February 14, 2024, treatment session. (CHE 8, p. 160). Following his treatment session, Claimant reported 0/10 pain and demonstrated improved range of motion (ROM). *Id.* at 161.

9. On February 21, 2024, during his final massage therapy treatment, Claimant reported 2-3/10 pain and tension in the left shoulder and left cervical region. Claimant's left shoulder and cervical region were treated by addressing the following muscle groups, rotator cuff muscles, traps, lats, levator scapulae, scalenes, longissimus, suboccipitals, pecs, serratus posterior inferior and superior and surrounding fascia. After treatment, Claimant's intensity of pain was again noted at 0/10 with improved ROM. Ms. Goeke again noted that compensatory muscular patterns involving Claimant's left shoulder and neck contributed to tension and tenderness. Claimant responded well to Direct Myofascial Pressure and Stretching (DMPS), trigger point and myofascial release treatment. Further massage therapy was recommended to aid in the release of any abnormal compensation patterns. Additional PT was also recommended once per week for 2-3 weeks or until pain in the left shoulder and arm reduced to 0/10 while at rest. (CHE 8, p. 169).

10. Claimant testified that massage therapy focused on pain management and tension in the left arm, left shoulder, neck and his upper back and that he has not had any massage therapy treatments since February 21, 2024. He further testified that the massage therapy he received was beneficial, and that he would utilize an additional eight sessions if they were granted.

11. Dr. Walden released Claimant from his care on March 12, 2024. (RHE O). Dr. Walden noted that Claimant was hopeful he could return to his position in law enforcement with the City of Colorado Springs, that he thought he could do the job and had been "cleared" by physical therapy. *Id.* at 47. Dr. Walden added: "At this point, I think [Claimant] can be returned to full duty without restrictions. He understands that there is no guarantee that recurrent injuries cannot occur, however this shoulder seems to be very strong, completely stable, and I think he is safe to return to his job. Follow-up will be on an as-needed basis. The patient might benefit from up to 2 visits with orthopedics over the next 6 months for maintenance. *Id.* at 48.

12. Claimant testified that the two maintenance visits with Orthopedics were not authorized. He added that he would utilize them by seeing Dr. Walden if they were approved. Claimant also testified he returned to full duty work after his March 12, 2024, appointment with Dr. Walden.

13. Dr. Centi placed Claimant at maximum medical improvement (MMI) on March 26, 2024. (RHE P). Dr. Centi assigned permanent impairment based on reduced active range of motion in the left shoulder. *Id*. Claimant's range of motion loss was calculated at 8% of the upper extremity. *Id*. at 54. Claimant's 8% scheduled upper extremity impairment equates to 5% whole person impairment. *Id*. No maintenance care was indicated. *Id*. at 52.

14. Claimant attended a Division sponsored Independent Medical Examination (DIME) with Dr. Frank Polanco, M.D. on December 20, 2024. (RHE Q). The "Pertinent Medical Issues/Current Complaints," section of his report is blank, suggesting to the ALJ

that Claimant reported no specific medical issues or current complaints to Dr. Polanco. (See RHE Q, p. 61). Dr. Polanco agreed with Dr. Centi that Claimant reached MMI on March 26, 2024. *Id*. at 56, 62A. Physical examination included an assessment of the cervical and thoracolumbar spine during which Dr. Polanco made the following observations:

> **Cervical Spine Examination**: There is normal appearance and alignment of the cervical spine. Boney palpation is unremarkable and soft tissue palpation reflects normal muscular tone without tenderness, spasm, or trigger points. *He demonstrates pain free full and fluid cervical motion for flexion, extension, lateral, and rotation*.
>
> **Thoracolumbar Spine Examination**: There is normal appearance and alignment of the thoracolumbar spine. Boney palpation is unremarkable and soft tissue palpation reflects normal muscular tone without tenderness, spasm, or trigger points. No facet tenderness and SI joints are mobile and non-tender. *Range of motion was fluid, normal and non-painful. SLR was negative bilaterally*.

(RHE Q, p. 62) (emphasis added).

15. Range of motion of the left shoulder was measured and found to be impaired for flexion measuring 140 degrees and abduction measuring 138 degrees. (RHE Q, p. 63). Claimant's total upper extremity impairment was calculated to equal 5% which equates to 3% impairment of the whole person. *Id.*

16. Dr. Polanco did not recommend maintenance medical care and opined that Claimant was released to "full duty with no work restrictions". (RHE Q, p. 62A).

17. Respondents filed a Final Admission of Liability (FAL) consistent with Dr.

Polanco's upper extremity impairment rating opinion on January 17, 2025. (RHE S). The January 17, 2025, FAL did not admit liability for maintenance medical care after MMI or disfigurement associated with Claimant's left shoulder surgery. *Id*. at 71.

18. On February 12, 2025, Claimant filed an Application for Hearing seeking to convert the 5% scheduled upper extremity impairment rating to 3% impairment of the whole person. He also endorsed maintenance medical and disfigurement benefits as issues for determination. (RHE U).

19. Prior to proceeding to hearing, Claimant requested an opinion from Dr. John Hughes, M.D. Dr. Hughes conducted the requested Independent Medical Examination (IME) on May 27, 2025. (CHE 3). As part of his IME, Dr. Hughes stated Claimant sustained a glenohumeral joint dislocation with post-traumatic Bankart labral tears and fractures, requiring surgical intervention by Dr. Walden. *Id*. at 9-10. Dr. Hughes diagnosed Claimant with "cervicothoracic dyskinesis" which had not been a diagnosis given by Dr. Centi, Dr. Walden, or DIME Physician Dr. Polanco. *Id*. at 13-14. According to Dr. Hughes, Claimant's prognosis included manageable left shoulder arthritis with associated muscular hypertonicity and dyskinesis in the left cervicothoracic region. *Id*. at 13. A physical exam of cervical spine revealed bilateral posterior trapezius hypertonicity as well as left-sided levator scapulae and rhomboid hypertonicity which measurably restricts active right lateral flexion and rotation of the head and neck. *Id.* at 12. Dr. Hughes noted that Claimant reported it was hard to find a comfortable position to sleep, and that he had constant 3-4/10 left shoulder and left lateral neck aching pain. *Id*. at 11. Claimant further reported that when he looked to his right, a sharp shooting pain travels up into the left side of his neck. *Id.* Dr. Hughes assessed that Claimant "sustained functional impairment extending beyond the glenohumeral joint into the regions of the scapulothoracic articulation on the left side as well as the left posterior trapezius musculature." *Id.* at 13. Claimant's dyskinesis resulted in measurable dysfunction in active movement impairing his ability to turn his head to the right suddenly. Therefore, he opined that conversion of Claimant's upper extremity impairment to the whole person was merited. *Id.* Dr. Hughes also endorsed eight additional massage sessions (beyond the

six sessions provided) as maintenance care, which he justified under the Chronic Pain Disorder Medical Treatment Guidelines. *Id.*

20. Claimant testified that he has difficulty sleeping due to pain and trouble finding a comfortable position in which to sleep for any length of time. He tosses and turns nightly which he testified prevents him from getting restful sleep.

21. Claimant testified that his current problems include pain in his left shoulder radiating to the top part of his neck through his back. He testified that he has problems lifting his young child and that pushing a stroller or lawn mower causes pain through his shoulder radiating from his back to his neck. He also reported that looking suddenly to the right causes sudden pain in his neck.

22. Following his initial evaluation and throughout his treatment at the Occupational Health Clinic, Claimant completed a questionnaire asking him to "indicate [his] pain level and frequency for each body part." (RHE A, C, D, E, G, H, I, J, K, and P). This paperwork also asked Claimant to "use the legend to describe the type and location of [his] pain." *Id*. Careful review of the questionnaires and pain diagrams supports a finding that Claimant never reported or depicted pain in his neck or upper back. Indeed, the questionaries are completely devoid of any reference to symptoms (pain) or functional loss impairing the neck, upper back or any body part beyond the shoulder. Moreover, Claimant never identified that pushing a lawn mower, pushing a stroller or turning his head caused pain in his neck or other body part(s) outside the left arm/shoulder. Indeed, other than a report that "bending over to pick something up" nine days (October 3, 2023) after his injury, the pain questionnaires do not identify any activity causing increased pain or functional impairment in his neck or upper back.

23. During direct examination, Claimant was asked why his questionnaires/pain diagrams did not depict any pain in his cervical spine. In response, Claimant testified that even though he did not mark pain in the cervical spine area, he had been experiencing

pain in the neck area adding that he understood that he was to “indicate where my injury took place.”

24. During cross-examination, Claimant conceded that all the pain diagrams he completed demonstrated shoulder pain only. He testified that he was aware of the instructions on the pain diagram that explained that he was to mark the location and type of pain on the body diagram.

25. Dr. Centi testified that Claimant had no functional impairment noted in any body part not included in his anatomical definition of the shoulder joint. (See also, RHE R, pp. 66-67). Dr. Centi also indicated that Claimant was not in need of any maintenance medical treatment as related to this claim. Id. at 67.

26. When asked if Claimant reported functional impairment, including difficulty sleeping and turning his head, pushing a stroller, lifting his toddler and/or pushing a lawn mower, Dr. Centi testified that had Claimant identified any such complaints, they would have been evaluated and treated by the medical team in the clinic. He also confirmed that any functional impairment beyond Claimant’s left shoulder would have been noted in his report of MMI and impairment dated March 26, 2024. Review of the March 26, 2024, MMI report reveals it is without reference to any functional impairment beyond the left shoulder. (See RHE P).

27. When asked directly if Claimant had ever reported neck (cervical spine) pain, scapular pain, or upper back pain, Dr. Centi testified that Claimant never expressed any such complaints until being placed at MMI. He also testified that he found no record of such complaints in the treatment reports from other providers, including Claimant’s PT notes. Because the medical record lacked any reference to any complaint of neck/upper back pain throughout Claimant’s treatment, Dr. Centi testified that the cervicothoracic dyskinesis diagnosis made by Dr. Hughes was inconsistent with the symptoms present throughout Claimant’s treatment and what was observed at MMI.

28. During Dr. Centi’s cross-examination, it was noted that Claimant’s massage

therapy records mentioned neck pain. As referenced above, Claimant's upper extremity and neck muscle tension and pain was reduced to 0/10 by massaging the musculature around the left shoulder, upper back and neck. Regarding Claimant's report of neck pain to his massage therapist, Dr. Centi testified that he put more value the pain complaints noted in the orthopedic and physical therapy records over the subjective complaints noted in the massage therapy reports before adding that mentions of pain in the massage therapy reports do not necessarily equate/correlate with functional impairment for those associated areas.

29. Dr. Centi testified that Dr. Hughes' opinions did not change his mind that Claimant did not sustain functional impairment beyond the left shoulder.

30. Regarding the DIME Report, Dr. Centi testified that the difference between his report of MMI/impairment and Dr. Polanco's DIME opinion concerning impairment was the decreased upper extremity impairment rating assigned by Dr. Polanco. He agreed with Dr. Polanco that Claimant did not require maintenance care, noting that he had been released to full duty work with close to full range of motion at the left shoulder.

31. Upon completion of the oral testimony, the ALJ attempted to evaluate the nature and extent of disfigurement associated with Claimant's left shoulder injury. Due to Claimant's being present virtually, the ALJ found it impossible to assess Claimant's disfigurement reliably. While it was evident that there were three scars located about the left shoulder, it was difficult to appraise the full character of these scars. Accordingly, the ALJ offered Claimant an in-person disfigurement hearing on August 1, 2025, at 9:00 a.m.

32. An in-person inspection of the disfigurement associated with Claimant's left shoulder injury was convened at 9:00 a.m. on August 1, 2025, in Courtroom 1 of the OAC located in Colorado Springs. Claimant appeared pro se. Respondents did not appear or otherwise participate in the hearing. Close visual inspection of the left shoulder reveals that Claimant has visible disfigurement to the body consisting of three (3) arthroscopic surgical scars located on the left shoulder. First, there is an approximately ½ inch in diameter, semi-circular in shape, arthroscopic scar located on the front aspect of the left

shoulder. This scar is pink in color and slightly raised when compared to the contour of the surrounding skin. Second, on the back of the left shoulder there is a similar ½ inch in diameter semi-circular scar. This scar is also pink in color and slightly depressed when compared to the contour of the surrounding skin. Finally, on the top of the left shoulder there is a thin, approximately ½ inch long surgical scar completely embedded within the margins of a large black and gray tattoo covering the top and side of the left shoulder. This scar disrupts some of the ink work associated with the tattoo. Moreover, the scar is slightly raised and pink to light red in color in contrast to the surrounding dark ink enhancing the presence of the scar itself. No appreciable atrophy is noted in the musculature of the left shoulder when compared to the right shoulder.

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) 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.

B. In accordance with Section 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 Clam Appeals Office*, 5 P.3d 385 (Colo. App. 2000).

C. 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*, 98 Colo. 275, 57 P.2d 1205 (1936); CJI, Civil 3:16 (2007).

Conversion of Claimant's Scheduled Impairment

D. Claimant's request for conversion of his scheduled upper extremity impairment to impairment of the whole person is denied and dismissed. When a claimant's injury is listed on the schedule of disabilities, the award for that injury is limited to a scheduled disability award. *Section 8-42-107(1)(a), C.R.S.* However, a claimant may establish that his/her injury has resulted in "functional impairment" beyond the schedule enumerated in C.R.S. §8-42-107(2)(a); thus, entitling him/her to "conversion" of the scheduled impairment to impairment of the whole person. This is true because the term "injury" as used in § 8-42-107(1)(a)-(b), C.R.S., refers to the part or parts of the body which have been impaired or disabled, not the situs of the injury itself or the medical reason for the ultimate loss. *Walker v. Jim Fucco Motor Co,* 942 P.2d 1390 (Colo. App. 1997); *see also Strauch v. PSL Swedish Healthcare System,* 917 P.2d 366 (Colo. App. 1996). In the case of a shoulder injury, the question is whether the claimant has sustained functional impairment beyond the arm at the shoulder. *Langton v. Rocky Mountain Health*

Care Corp., 937 P. 2d 883 (Colo. App. 1996); *Strauch v. PSL Swedish Healthcare System, supra.; Brown v. City of Aurora,* W.C. No. 4-452-408 (ICAO, October 9, 2002).

E. "Functional impairment" is distinct from physical (medical) impairment under the AMA Guidelines and as noted above, the site of functional impairment is not necessarily the site of the injury itself. The site of functional impairment is that part of the body which has been impaired or *disabled*. *Strauch, supra*. Physical impairment relates to an individual's health status as assessed by medical means. On the other hand, disability or functional impairment pertains to a person's ability to meet personal, social, or occupational demands, and is assessed by non-medical means. Consequently, physical impairment may or may not cause "functional impairment" or disability. *Lambert & Sons, Inc. v. Industrial Claim Appeals Office,* 984 P.2d 656, 658 (Colo. App. 1998). Physical impairment becomes a disability only when the medical condition limits the claimant's capacity to meet the demands of life's activities. *Lambert & Sons, Inc., supra* at 658.

F. "Functional impairment" also need not take a particular form. *See Nichols v. LaFarge Construction,* W.C. No. 4-743-367 (ICAO, October 7, 2009); *Aligaze v. Colorado Cab Co.,* W.C. No. 4-705-940 (ICAO, April 29, 2009); *Martinez v. Alberston's LLC,* W.C. No. 4-692-947 (ICAO, June 30, 2008). Indeed, "referred pain from the primary situs of the industrial injury may establish proof of functional impairment to the whole person." *Hernandez v. Photronics, Inc.,* W.C. No. 4-390-943 (July 8, 2005); *Latshaw v. Baker Hughes, Inc., W*.C. No. 4-842705 (ICAO, December 17, 2013) (where conversion granted based upon claimant's testimony regarding ongoing pain radiating from his shoulder to his chest, neck, and back, along with muscle loss, fatigue, and limited arm mobility, which the ALJ found credible and consistent with medical reports). Nonetheless, symptoms of pain do not automatically rise to the level of a functional impairment. To the contrary, there must be evidence that such pain limits or interferes with Claimant's ability to use a portion of his/her body to be considered functional impairment. See *Mader v. Popejoy Construction Co., Inc.,* W.C. No. 4-198-489 (ICAO, August 9, 1996), *aff'd Popejoy Construction Co., Inc.,* (Colo. App. No. 96CA1508,

February 13, 1997)(not selected for publication)(claimant sustained functional impairment of the whole person where back pain impaired use of arm). Thus, in order to determine whether permanent disability should be compensated as physical impairment on the schedule or as functional impairment of the whole person, the issue is not whether Claimant has pain, but whether the injury and the pain associated with the injury has impacted part of his body which limits his "capacity to meet [his] personal, social and occupational demands." *Askew v. Industrial Claim Appeals Office*, 927 P.2d 1333 (Colo. 1996). Claimant bears the burden of proof by a preponderance of the evidence to establish functional impairment beyond the arm at the shoulder and the consequent right to permanent partial disability (PPD) benefits awarded under C.R.S. § 8-42107(8)(c). Whether Claimant met the burden of proof presents an issue of fact for determination by the ALJ. *Delaney v. Indus. Claim Appeals Office*, 30 P.3d 691, 693 (Colo. App. 2000); *Johnson-Wood v. City of Colorado Springs*, W.C. No. 4-536-198 (ICAO June 20, 2005). Although the opinions of physicians can be considered when determining this issue, the ALJ can also consider lay evidence such as the claimant's testimony regarding pain and reduced function. *Strauch v. PSL Swedish Healthcare System, supra*.

G. Based upon the evidence presented, the ALJ finds that Claimant has failed to meet his burden to establish that he has sustained functional impairment beyond the arm at the shoulder. Accordingly, his request for conversion of his scheduled impairment to impairment of the whole person must be denied and dismissed. In this case, Claimant testified that since his admitted shoulder injury he has experienced neck pain, difficulty turning his head, sleeping and lifting his young child, pushing a stroller, and pushing a lawn mower. Claimant argues that these complaints justify the award of whole person impairment. The ALJ is not persuaded for the following reasons: First, Claimant's reports of functional impairment are largely unsupported by the content of the medical records admitted into evidence. Indeed, outside of the massage therapy records, from which the ALJ would expect to find references to muscular pain and tension, the medical records, including Dr. Centi's reports, the DIME report of Dr. Polanco and Claimant's own pain diagrams fail to mention/depict any complaints of neck pain, difficulty sleeping, lifting, pushing or turning of the head. Had Claimant been experiencing such

symptoms/functional impairment, the ALJ finds it unlikely that he would not have mentioned it to his numerous providers, including his orthopedic surgeon. Notably, Dr. Centi testified that had Claimant reported pain and functional limitation related to his cervical spine, neck, or upper back (periscapular region), these pain complaints would have been recorded and treated. Further, Dr. Polanco specifically noted that palpation of the soft tissue of the cervical and thoracolumbar spine reflected normal tone without tenderness, spasm, or trigger points. Importantly, Dr. Polanco also noted that Claimant "*demonstrates pain free full and fluid cervical motion for flexion, extension, lateral, and rotation"* (see RHE Q, p. 62) (emphasis added).[1]

H. Secondly, even if Claimant's complaints of functional impairment were supported by the sum of the medical record, he failed to establish that those complaints have limited his capacity to meet his personal, social and/or occupational demands. Rather, the evidence supports a finding that Claimant returned to unrestricted work as a police officer after Dr. Centi assigned impairment limited to his left upper extremity. As a police officer, Claimant must engage perpetrators in foot chases, but also occasionally fight/wrestle with offenders resisting arrest. Based upon the evidence presented, the ALJ concludes that Claimant's job is physically demanding. Nonetheless, the persuasive evidence supports a conclusion that Claimant never reported that cervical or periscapular pain, causing impaired sleep and difficulty turning his head, resulted in lost time from work or was preventing him from meeting the demands of his physically challenging job. Similarly, while Claimant testified that lifting his young child, pushing a stroller, closing car doors and pushing a lawn mower causes neck pain, the evidence presented fails to persuade the ALJ that this pain has created a disability that interferes with or limits Claimant's ability to meet the demands of life's activities. Indeed, no convincing evidence was presented establishing that Claimant's alleged functional impairment has interfered with his ability to meet his social demands and Claimant appears to be independent with his activities of daily living, including driving. Because the evidence presented establishes

[1] It is noted that Claimant's DIME occurred several months after his last massage therapy appointment suggesting to the ALJ that there may have been further improvement in the condition of Claimant's shoulder and complaints of muscular tension in his neck.

that Claimant's alleged neck and upper back pain has not resulted in any decreased capacity in Claimant to meet his personal, social or occupational demands, the ALJ is persuaded that the situs of Claimant's impairment does not extend beyond the arm at the shoulder. Thus, the ALJ is not convinced that Claimant's request for conversion of his scheduled impairment rating to impairment of the whole person is merited.

Claimant's Entitlement to Maintenance Medical Care

I. A claimant's need for medical treatment may extend beyond the point of maximum medical improvement (MMI) where he/she requires periodic maintenance care to relieve the effects of the work-related injury or prevent further deterioration of his/her condition. *Grover v. Indus. Comm'n*, 759 P.2d 705 (Colo. 1988). The care becomes reasonably necessary where the evidence establishes that, but for a particular course of medical treatment, the claimant's condition can reasonably be expected to deteriorate so that he or she will suffer a greater disability. *Milco Constr. v. Cowan*, 860 P.2d 539 (Colo. App. 1992). In *Milco*, the Court of Appeals established a two-step procedure for awarding ongoing medical benefits under *Grover v. Industrial Commission, supra*. The Court stated that an ALJ must first determine whether there is substantial evidence in the record to show the reasonable necessity for future medical treatment "designed to relieve the effects of the injury or to prevent deterioration of the claimant's present condition." If the claimant reaches this threshold, the Court stated that the ALJ should then enter "a general order, similar to that described in *Grover*."

J. While a claimant does not have to prove the need for a specific medical benefit, and the respondents remain free to contest the reasonable necessity of any future treatment; the claimant must prove the probable need for some treatment after MMI due to the work injury. *Milco Construction v. Cowan*, *supra.* Indeed, a claimant is only entitled to such future 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); C.R.S. § 8-41-301(1)(c). 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 employment. *Snyder v. Industrial Claim Appeals Office,* 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 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*. The question of whether a claimant has presented substantial evidence justifying an award of maintenance medical benefits is one of fact for determination by the Judge. *Holly Nursing Care Center v. Indus. Claim Appeals Off.,* 992 P.2d 701 (Colo. App. 1999).

K. In this case, the ALJ credits the content of the massage therapy records and Dr. Hughes' opinion along with Claimant's testimony to conclude that his present condition will likely deteriorate without maintenance care, including periodic doctor's visits and additional massage and physical therapy. Accordingly, the ALJ concludes that Claimant has proven, by a preponderance of the evidence, that he is entitled to a general award of maintenance medical care. Even with a general award of maintenance medical benefits, Respondents retain the right to dispute whether the need for future massage and/or physical therapy or other medical treatment is reasonable, necessary and related to Claimant's industrial injury. *See Hanna v. Print Expediters Inc.,* 77 P.3d 863 (Colo. App. 2003) (a general award of future medical benefits is subject to the employer's right to contest compensability, reasonableness, or necessity).

Disfigurement

L. The term "disfigurement" as used in the statute, contemplates that there be an "observable impairment of the natural person." See *Arkin v. Industrial Commission*, 145 Colo. 463, 358 P.2d 879 (1961). In this case, visual inspection of the left shoulder reveals that Claimant has sustained a serious permanent disfigurement, as described more fully at FOF ¶ 32, to areas of the body normally exposed to public view, which entitles him to additional compensation pursuant to C.R.S. § 8-42-108 (1).

Order

It is therefore ordered that:

1. Claimant's request for conversion of his 5% scheduled left upper extremity (arm at the shoulder) impairment to 3% whole person impairment is denied and dismissed.

2. Respondents shall authorize and pay for all reasonably necessary post MMI medical treatment from authorized providers to relieve Claimant from the ongoing effects of his industrial injury and/or prevent deterioration of his condition, including but not limited to authorization of an additional eight massage therapy sessions and two follow-up medical appointments with Dr. Walden.

3. Respondents retain the right to challenge any/all future requests for maintenance treatment on the grounds that such care is maintenance in nature, is not reasonable, necessary or related to Claimant's November 18, 2019, industrial injury. *See generally*, *Grover v. Industrial Commission,* 759 P.2d 705 (Colo. 1988); *Stollmeyer v. Industrial Claim Appeals Office,* 916 P.2d 609 (Colo. App. 1995); Section 8-42-101 (1) (a), C.R.S.; *Hanna v. Print Expediters Inc., supra.*

4. Insurer shall pay Claimant $1,200.00 for the visible disfigurement described at FOF ¶32. Insurer shall be given credit for any amount previously paid for disfigurement in connection with this claim.

5. Any and all issues not determined herein are reserved for future determination.

Dated: September 22, 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 5-298-278-001

Issues

1. Whether Claimant established by a preponderance of the evidence that he sustained a compensable injury arising out of the course of his employment on January 24, 2025.
2. Whether Claimant established by a preponderance of the evidence an entitlement to temporary disability benefits.
3. Whether Respondents established by a preponderance of the evidence that Claimant is responsible for his termination of employment.

Stipulations

The parties stipulate that if the claim is found compensable,

1. Medical benefits are not in dispute. The treatment Claimant has received to date is reasonable, necessary, and related to his work injury;
2. Claimant's average weekly wage is $3220.98, with a corresponding temporary total disability (TTD) rate of $1338.96 (the state maximum for Claimant's date of injury); and
3. The parties will work to designate an authorized treating provider near Claimant's home in Helena, Montana.

Findings of Fact

1. Claimant worked as the general manager for Employer, a vacation rental company, beginning in August 2024

2. On January 24, 2025, Claimant was assisting a co-worker moving boxes in a utility room at Employer's office when a chair fell from the top of the boxes and struck Claimant. Claimant testified that following the incident he sat down, and went for a walk with a co-worker to a grocery store. He testified that he began to feel disoriented, and asked a coworker to drive him to the hospital.

3. At approximately 2:30 p.m., on January 24, 2025, Claimant went to the emergency department at Aspen Valley Hospital reporting headaches, intermittent dizziness, and

mild neck pain. On examination, Claimant was noted to have no evidence of head trauma, a normal Glasgow coma score, and no discrete spinal tenderness. Head and cervical CT scans were obtained that showed no acute injury. He was diagnosed with a head injury, and neck strain and discharged. Although the cervical CT showed pathology at the C1 level, this was deemed a chronic finding. Claimant was cleared to return to work on January 27, 2025. (Ex. 5).

4. Claimant returned to work on January 27, 2025, and worked at Employer's office on January 27 and 28, 2025. He testified that he was unable to concentrate and that using a computer screen caused headaches, and fatigue, and did not return to Employer's office to work after that date.

5. On January 29, 2025, Claimant returned to Aspen Valley Hospital reporting additional symptoms, including nausea, headaches, "brain fog" and difficulty concentrating. Claimant's neurological examination was normal. Claimant was provided a one-week work restriction, and was referred to a head injury clinic for physical therapy and occupational therapy. (Ex. 5).

6. Claimant worked remotely for several weeks, until approximately February 12, 2025. He testified that he was not improving at that point, and that after that point, his physicians recommended he stop work until he improved. .

7. Claimant returned to Aspen Valley Hospital on February 4, 2025 and February 12, 2025, and saw Patric Knecht, M.D., reporting ongoing symptoms including headaches and neck pain. Dr. Knecht noted that Claimant had been unable to see the head injury team due to insurance delays. Dr. Knecht recommended Claimant to remain off work until he was able to be evaluated by the hospital's head injury team, and increase activities as tolerated. Although Dr. Knecht stated that this was not a workers' compensation visit, his statement has no bearing on whether Claimant sustained an injury or required work restrictions. (Ex. 6).

8. On February 14, 2025, Claimant filed a workers claim for compensation. (Ex. 1).

9. On February 19, 2025, Claimant began speech-language therapy, where it was noted that Claimant had vestibular and ocular dysfunction, with poor visual tracking, and impaired balance, and difficulty sleeping. (Ex. 7).

10. On February 24, 2025, Claimant returned to Aspen Valley Hospital and saw Dr. Knecht. Given the persistence of reported symptoms, Dr. Knecht recommended Claimant remain out of work for an additional four weeks, and planned to see Claimant again on March 24, 2025 for reevaluation. No credible evidence was admitted indicating that Claimant returned to Dr. Knecht. (Ex. 6).

11. On February 27, 2025, Respondents filed a Notice of Contest, indicating a need for further investigation. (Ex. 2).

12. On March 6, 2025, Claimant saw David Lorab, M.D. (No narrative report from Dr. Lorab was offered or admitted into evidence). Dr. Lorab completed a WC164 form in which he indicated a work-related diagnosis of post concussive syndrome and cervical strain, and that Claimant was unable to work from March 6, 2025, with no stated end date. The record indicates Claimant was scheduled for return appointment three weeks later. From this, the ALJ infers that Claimant's work restriction was from March 6, 2025 until his return appointment.. (Ex. 8). No credible evidence was admitted explaining how Claimant came to see Dr. Lorab, his specialty, or whether he was an authorized treating provider. Claimant testified that he returned to Dr. Lorab on March 27, 2025, but no records of this visit were offered or admitted into evidence.

13. Between February 25 and March 26 2025, Claimant attended physical therapy and occupational therapy sessions, reporting ongoing dizziness, nausea, headaches, and cognitive issues such as brain fog, forgetfulness, and concentration issues. At the last documented visits for both physical therapy and occupational therapy on March 21, 2025 and March 26, 2025, respectively, Claimant reported the same types of symptoms, which he reported had not improved with treatment. (Ex. 7). At his March 26, 2025 occupational therapy visit, Claimant reported that he had been fired from his job the previous week. (Ex. 7).

14. Claimant's last documented medical treatment was June 10, 2025, when he saw family medicine practitioner in Helena, Montana. Claimant reported neck pain, and was advised to be evaluated by an orthopedic physician. (Ex. 9).

15. On or around March 21, 2025, Claimant exchanged text messages with Employer's owner – Ali Gershman. Ms. Gershman indicated that if Claimant was unable to return to work within a few weeks, Employer would need to look for a new general

manager (Claimant's position). Claimant responded by asking if he was being terminated from his position. Ms. Gershman responded that if Claimant was not able to return to work at full capacity in the next two weeks, Employer would find someone to fill his position, and that if Employer had not filled his position, or had another available position, Claimant would be eligible to be rehired. Claimant again asked if he was being terminated, and Ms. Gershman responded "Yes I don't really have a choice. We can can't [sic] continue to wait indefinitely." (Ex. 13). Ms. Gershman testified at hearing that she did not intend to terminate Claimant's employment, that she has not processed a termination, and that she has not provided Claimant with a COBRA notice. Regardless of Claimant's professed intent, her March 2025 email unequivocally informed Claimant that his employment was terminated. Claimant testified that he has not worked since being terminated by Employer.

16. After being terminated from his position, Claimant relocated to Montana at the beginning of April 2025. Claimant testified that he was provided a list of three providers in Montana, but two providers would not accept Claimant as a workers' compensation patient, and that the third was located in Helena, Montana, more than an hour from his home.

17. At hearing Hugo Aragon testified through an interpreter. Mr. Aragon was the co-worker with Claimant when the January 24, 2025 incident occurred. Mr. Aragon testified that he and Claimant were moving a stack of boxes and did not notice a chair on the top of the boxes. He confirmed that the chair had fallen from the top of the boxes, but did not see how it fell or whether it struck Claimant.

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).

Compensability

To establish a compensable injury an employee must prove by a preponderance of the evidence that his injury arose out of the course and scope of employment with his employer. § 8-41-301(1)(b), C.R.S. (2006); *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). 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 Indus. Outsourcing LP*, WC 4-898-391-01, (ICAO Aug. 25, 2014).

Claimant has established by a preponderance of the evidence that he sustained a compensable injury arising out of the course of his employment with Employer. The evidence establishes that it is more likely than not that Claimant was struck by a falling chair in the course of performing work for Employer. Mr. Aragon confirmed, at a minimum, that the chair fell while he and Claimant were moving boxes. Claimant sought treatment on the day of the incident, and reported the incident to Employer. Despite the lack of objective evidence of trauma, he was diagnosed with a head injury and received treatment for that injury through at least March 26, 2025. No evidence was admitted demonstrating that Claimant has been released from care, or found to be at maximum medical improvement. The ALJ finds that Claimant has met his burden of establishing that he sustained work-related injury.

Temporary Disability Benefits

To prove entitlement to temporary disability benefits, a 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. *See* Sections 8-42-103(1)(g), 8-42-105(4), C.R.S.; *Anderson v. Longmont Toyota,* 102 P.3d 323 (Colo. 2004); *City of Colorado Springs v. Indus. Claim Appeals Office,* 954 P.2d 637 (Colo. App. 1997). Temporary disability benefits continue until the first occurrence of any of the following: (1) the employee reaches MMI; (2) the employee returns to regular or modified employment; (3) the attending physician gives the employee a written release to return to regular employment; or (4) the attending physician gives the employee a written release to return to modified employment, the employment is offered in writing and the employee fails to begin the employment. §8-42-105(3)(a)-(d), C.R.S.; *See also* § 8-42-106 (2)(b), C.R.S. (for temporary partial disability benefits). 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) *citing Ricks v. Indus. Claim Appeals Office*, P.2d 1118 (Colo. App. 1991). Because there is no requirement that a claimant must produce evidence of medical restrictions, a claimant's testimony alone is sufficient to demonstrate a disability. *Lymburn v. Symbios Logic,* 952 P.2d 831, 833 (Colo. App. 1997).

Claimant has established by a preponderance of the evidence an entitlement to temporary disability benefits beginning February 13, 2025. Claimant testified that his last day working for Employer was February 12, 2025. As of February 12, 2025, Claimant was placed on work restrictions by Dr. Knecht, that prevented Claimant from performing his job duties. These restrictions remained in place until at least March 24, 2025, based on Dr. Knecht's recommendations. No credible evidence was admitted demonstrating that any of the events set forth in 8-42-105(3), or 8-42-106(2)(b), has occurred, thus no the record contains no evidence upon which the termination of temporary disability benefits may be based. Because Claimant has not worked since February 12, 2025, and his wage loss is attributable to his injury, he is entitled to temporary total disability benefits until terminated pursuant to the Act.

Responsibility for Termination

The Workers' Compensation Act prohibits a claimant from receiving temporary disability benefits if the claimant is responsible for termination of the employment relationship. *Gilmore v. Indus. Claim Appeals Office*, 187 P.3d 1129 (Colo. App. 2008); §§ 8-42-103(1)(g), 8-42-105(4)(a), C.R.S. The termination statutes provide that where an employee is responsible for his termination, the resulting wage loss is not attributable to the industrial injury. *In re of Davis*, W.C. No. 4-631-681 (ICAO Apr. 24, 2006).

"Under the termination statutes, sections 8-42-103(1)(g) and 8-42-105(4), an employer bears the burden of establishing by a preponderance of the evidence that a claimant was terminated for cause or was responsible for the separation from employment." *Gilmore*, 187 P.3d at 1132. "Generally, the question of whether the claimant acted volitionally, and therefore is 'responsible' for a termination from employment, is a question of fact to be decided by the ALJ, based on consideration of the totality of the circumstances." *Gonzales v. Indus. Comm'n*, 740 P.2d 999 (Colo. 1987); *Windom v.*

Lawrence Const. Co., W.C. No. 4-487-966 (ICAO Nov. 1, 2002). *In re Olaes*, WC. No. 4-782-977 (ICAO Apr. 12, 2011). Implicit in the termination statutes is a requirement that Respondents prove Claimant committed an "act" which formed the basis for his termination. Ultimately, the question of whether the claimant was responsible for the termination is one of fact for determination by the ALJ. *Apex Transp., Inc. v. Indus. Claim Appeals Office*, 321 P.3d 630, 632 (Colo. App. 2014).

Respondents have failed to establish by a preponderance of the evidence that Claimant was responsible for termination of his employment. On approximately March 21, 2025, Employer notified Claimant by text message that his employment was being terminated. The stated reason for the termination was Claimant's inability to perform his work at full capacity. At the time of the termination, Claimant was subject to work restrictions which prevented him from performing his full duties as the result of his work-place injury. Respondents have failed to establish that Claimant committed an act which formed the basis of his termination or that he was otherwise responsible for Employer's decision. Accordingly, Respondents have not met the burden of establishing Claimant was responsible for his termination as required by § 8-42-103(1)(g) and 8-42-105(4)(a), C.R.S.

Order

It is therefore ordered that:

1. Claimant sustained a compensable injury arising out of the course of his employment on January 24, 2025.
2. Claimant is entitled to temporary total disability benefits from February 12, 2025 until terminated according to the Act.
3. Respondents have failed to establish that Claimant was responsible for his termination.
4. All matters not determined herein are reserved for future determination.

If you are dissatisfied with the Judge's order, you may file a Petition to Review the order with the Denver Office of Administrative Courts, 1525 Sherman St., 4th Floor, Denver, CO 80203. You must file your Petition to Review within twenty (20) days after mailing or service of the order, as indicated on certificate of mailing or service; otherwise,

the Judge's order will be final. You may file the Petition to Review by mail, as long as the certificate of mailing attached to your petition shows: (1) That you mailed it within twenty (20) days after mailing or service of the order of the Judge; and (2) That you mailed it to the above address for the Denver Office of Administrative Courts. For statutory reference, see section 8-43-301(2), C.R.S. For further information regarding procedures to follow when filing a Petition to Review, see Rule 27, OACRP. You may access a petition to review form at: http://www.colorado.gov/dpa/oac/forms-WC.htm.

Dated: September 22, 2025

Steven R. Kabler
Administrative Law Judge

OFFICE OF ADMINISTRATIVE COURTS
STATE OF COLORADO
WORKERS' COMPENSATION NO. 5-297-108-001

ISSUES

I. Whether Claimant established, by a preponderance of the evidence that he sustained a compensable injury to his right shoulder on December 4, 2024?

II. If Claimant established that he sustained a compensable right shoulder injury, whether he also established that he is entitled to all reasonable, necessary, and related care for his right shoulder?

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 on December 4, 2024. He testified that he had been stocking auto and marine batteries that day. While he was lifting a heavy battery that weighed approximately 50 pounds over his head, he suffered a sharp burning sensation in his right shoulder.

2. Claimant testified that he reported the incident to a co-worker, James. Claimant did not seek immediate treatment. He continued to work until the end of that shift.

3. Claimant already had an appointment with his primary physician on December 5, 2024, for a toe problem. This visit was at UC Health Family Medicine at Woodland Park. Claimant testified that at that appointment Claimant mentioned that he was lifting batteries at work and had a pain in his shoulder. However, the chart states the following in the Assessment and Plan

"1) Weakness of both shoulders (ICD-10: R29.898)
Patient reports weakness following 90 degrees. Consider possible tears, impingement, tendinosis of bilateral rotatorcuff. Will refer to orthopedic". There is an absence of the mechanism of injury in the note. Also attached to that chart is a letter dated December 5, 2024, limiting overhead lifting to less than 20 pounds.

4. There is also a report from UCHealth dated December 5, 2024, that indicates that the primary issue was a preoperative evaluation for knee surgery. However, due to multiple health issues, the surgery was being reconsidered.

5. After the incident he was off for 3 days and was able to rest up.

6. After the three days off, Claimant returned to his regular shift and felt fine. He continued working for two weeks and his shoulder “started acting up again and hurting”.

7. Claimant testified that on December 22, 2024, Claimant provided his manager, Steven, with the restrictions from Dr. Lee. When he provided him with the restrictions, the manager referred him to Human Resources. However, an incident report was not completed until December 28, 2025. The incident form indicates that the incident was reported on December 28, 2024, at 12:00 a.m. To further confuse the date of the report of incident is the statement by Daniel Sloan that he was informed of the incident on December 24, 2024.

8. Although he denied treatment for similar injuries in his Associate Incident Report, on January 19, 2021, Claimant called UCHealth to request a right shoulder MRI, for right shoulder injuries sustained in a motor vehicle accident. Claimant was evaluated at UCHealth on January 20, 2021, for his right shoulder complaints which he related to a September 2020, motor vehicle accident, with aggravation by trying to move a heavy object. Claimant was referred to an orthopedic surgeon.

9. On August 27, 2024, Claimant was again evaluated at UCHealth for bilateral shoulder pain. Claimant reported multiple significant injuries, including the right shoulder injury resulting from a car accident. He explained he did not have much strength, and limited movement, of the shoulders. Claimant’s diagnoses included bilateral shoulder osteoarthritis.

10. After reporting the alleged incident, Claimant saw physician’s assistant Mendy Peterson on January 8, 2025. Claimant gave a history of right shoulder pain after lifting a 50-pound battery onto a shelf. Claimant explained to P.A. Peterson that after the incident, he “could tell something was not right”. Claimant reported pain at a level 8/10. He also noted a mass to the superior posterior aspect of the shoulder that developed one week prior. P.A. Peterson incorrectly documented Claimant’s work status as not working since the date of injury. PA Peterson assessed a right shoulder strain and mass of joint of right shoulder. She noted that the mass was concerning for cancer, with causation being in question, indicating it could be bursitis, old cyst from an old fracture, or from fall

around Christmas. PA Peterson referred Claimant for an MRI, suggesting the MRI will aid in diagnostic and treatment guidelines moving forward and should be promptly obtained to prevent further delay in case treatment and prevent further complication to recovery. PA Peterson also prescribed physical therapy, and medications in treatment of Claimant's right shoulder, and restricted Claimant's work activities to no use of right upper extremity.

11. Claimant underwent a January 9, 2025, right shoulder MRI. Following the MRI, Claimant was evaluated by Dr. Michael Simpson. Dr. Simpson read the MRI as showing a full-thickness multi-tendinous rotator tear with pre-existing fatty atrophy. Dr. Simpson opined Claimant's right shoulder would be best treated with a reverse total shoulder arthroplasty. Dr. Simpson indicated, "From the patient's report, he was able to work full duty without issues and has not had issues with his shoulder previously".

12. Claimant continued treatment with Concentra and its referrals until March 19, 2025, when P.A. Peterson opined Claimant's objective findings were not consistent with a work-related mechanism of injury. She released Claimant to return to full duty work, without impairment, restrictions, or the need for medical treatment post-MMI.

13. Claimant underwent a May 14, 2025, IME with Dr. David Yamamoto at his attorney's request. Dr. Yamamoto testified at hearing as a Level II accredited expert in occupational and family medicine. At the time of Dr. Yamamoto's examination, Claimant gave a history of lifting a 50-pound car battery when he felt acute, high-level pain in his right shoulder, and "he knew something was wrong". Dr. Yamamoto testified the accuracy of a patient's history, as given to the examining physician, and the medical records, are critical to the accuracy of the opinions formed in the case. In Dr. Yamamoto's examination, Claimant denied any pre-existing right shoulder problems. Dr. Yamamoto did not review any medical records predating December 4, 2024, nor did he review the UCHealth records post-dating December 4, 2024. Dr. Yamamoto relied on what Claimant told him about his interactions with the UCHealth physicians in formulating his opinions.

14. On June 30, 2025, Claimant underwent an independent medical evaluation with Dr. Qing Min Chen. Dr. Chen testified at hearing as a Level II accredited expert in orthopedics and orthopedic surgery. Dr. Chen credibly testified that Claimant's denial of right shoulder pain and dysfunction prior to December 4, 2024, is inconsistent with the medical records he reviewed. Dr. Chen credibly testified based on his review of the imaging, given the fatty atrophy and other findings present in Claimant's right rotator cuff, the tears demonstrated on MRI were more probably chronic and degenerative. Dr. Chen credibly testified that lack of edema in the muscle on MRI is inconsistent with an acute rotator cuff tear. Dr. Chen credibly explained it is not medically probable Claimant's right shoulder rotator cuff disease and need for treatment is related to the alleged December

4, 2024, incident. Dr. Chen credibly testified there are many other explanations for Claimant's symptoms and need for treatment including his prior MVA, the fall around Christmas and chronic degeneration of the rotator cuff as demonstrated on MRI.

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* § 8-41-301, 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 are multiple discrepancies in this case. There was a delay in reporting the alleged incident from December 4, 2024 to December 28, 2024 notwithstanding the Claimant's testimony to the contrary. There is the lack of any mention of the incident to Claimant's treating physician on the day after the alleged incident. There are multiple denials of prior symptoms to the Claimant's right shoulder when he had clearly saw a doctor in August of 2024 for symptoms in both shoulders.

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 right shoulder symptoms were caused, aggravated or accelerated by Claimant's work. I conclude that the opinions of Dr. Chen are credible and persuasive that the Claimant's condition was preexisting. Claimant's right shoulder condition was not caused, aggravated or accelerated by his work duties, including his lifting of automobile and marine batteries.

ORDER

It is therefore ordered that:

1. Claimant has failed to prove, by a preponderance of the evidence, that he sustained a compensable injury to his right shoulder.

DATED: September 23, 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.

Office of Administrative Courts
State of Colorado
Workers' Compensation No. WC 5-237-618-005

Issue

Whether Claimant has established by a preponderance of the evidence that the medications prescribed by Authorized Treating Physician (ATP) Naresh P. Singh, MD are reasonable, necessary, and causally related to his April 12, 2023 work injury.

Findings of Fact

1. On April 12, 2023 Claimant suffered shortness of breath while working as a welder for Employer. He specifically kept running out of breath and eventually found himself lying next to his toolbox. Claimant's wife drove him to the emergency room at Parker Adventist Hospital. Treatment notes reflect that Claimant has a history of asthma and presented with shortness of breath. He also mentioned a dry cough and a hoarse voice. Claimant noted his symptoms started two months earlier and began worsening to the point where they had become severe over the past three days. He attributed his symptoms to breathing in fumes and smoke in an unventilated building at work. Claimant underwent a physical examination that revealed his pulmonary effort and breath sounds were normal.

2. After visiting his primary care physician and a second trip to the emergency room, Claimant sought treatment at National Jewish Health. Physicians specifically considered whether Claimant's occupational work exposure could explain his shortness of breath and other pulmonary symptoms.

3. After numerous evaluations and tests, Claimant visited Jeremy Hua, MD and Karin Pacheco, MD at National Jewish Health on June 28, 2023. They issued a report setting forth their assessment and opinions regarding the cause of Claimant's symptoms. They concluded that it is more likely than not that:

- Claimant suffered a marked aggravation of his preexisting mild asthma that was caused by his occupational exposure to welding fumes, vapors, and other irritant dusts, including the significant exposure in March 2023.
- Claimant developed vocal cord dysfunction [VCD], which was also caused by the hazardous occupational exposure to welding fumes and vapors, including the significant exposure in March 2023.
- Claimant's gastroesophageal or silent reflux (a component of GERD) was aggravated by his use of bronchodilators and/or his exposure to particulates at work.

4. On January 11, 2024 Dr. Hua issued a comprehensive report addressing Claimant's clinical history, pulmonary function tests, and improvement in symptoms with medication. He emphasized that Claimant's preexisting asthma was aggravated by his occupational exposure. Dr. Hua further explained that there was no evidence of preexisting GERD before Claimant's exposure. He noted that exposure to fumes can irritate the upper digestive tract, and GERD is a common issue in similar occupational exposures and in those that use bronchodilator inhalers. Finally, Dr. Hua provided references to scientific literature that support the development of VCD after high-dose irritant exposures, including those from welding fumes. He outlined Claimant's symptoms and treatment of VCD that further supported the diagnosis.

5. On September 19, 2024 Administrative Law Judge (ALJ) Glen Goldman issued Findings of Fact, Conclusions of Law, and Order (Order) concluding that Claimant sustained compensable work injuries on April 12, 2023 because of his exposure to welding smoke and fumes. He specifically determined that the exposure caused VCD and GERD, as well as aggravating Claimant's pre-existing asthma condition. ALJ Goldman directed Respondents to provide reasonable and necessary medical treatment to treat Claimant's asthma, VCD and GERD, but did not award any specific medical benefits in the Order.

6. On November 19, 2024 Respondents filed a General Admission of Liability (GAL). Respondents acknowledged medical benefits, an Average Weekly Wage (AWW) of $3,559.50, and ongoing Temporary Total Disability (TTD) benefits starting on July 17, 2024.

7. Based on a recommendation from Dr. Hua to move to a lower altitude, Claimant relocated to Las Vegas, Nevada. On January 30, 2025 Claimant visited Pulmonary Associates, Inc., in Las Vegas where he was evaluated by Authorized Treating Physician (ATP) pulmonologist Naresh P. Singh, MD. Dr. Singh recounted that Claimant had been diagnosed with occupational asthma and VCD at National Jewish following a work exposure to welding smoke. He noted that Claimant reported he had been very symptomatic with cold air and elevation and was advised that he should relocate to a lower elevation. Dr. Singh observed that Claimant had not been on any maintenance medications other than Airsupra and he continued to have shortness of breath. Claimant underwent a further Pulmonary Function Test (PFT) that revealed his FVC was down to 56% "in a restrictive pattern." Claimant's PFT specifically revealed the following: FEV-1: 62.93%, FEV-1/FVC: 112.39%, FVC 57.92%, which was interpreted to suggest a moderately severe restriction.

8. Dr. Singh also observed that Claimant had a dry intermittent hacking cough. Claimant's oxygen saturation was 97% on room air. Dr. Singh diagnosed Claimant with occupational asthma "which [could] be interpreted as reactive airway disease but given the long 8-month gradual progressive exposure until the welding dust that fits more in occupational asthma persistent with PFT showing moderately severe restriction." He thus believed that Claimant needed multimodality therapy and recommended the following:

> [M]ontelukast, benzonatate for his cough, triple inhaler with Symbicort and Spiriva or equivalent with Airsupra as a rescue with follow-up and repeat spirometry in 2 months for interval change to see how much progress.

Claimant received prescriptions for each of the preceding medications.

9. On March 12, 2025 Claimant attended an Independent Medical Examination (IME) with Annu Ramaswamy, M.D. He later issued a report on March 24, 2025. In discussing his injuries with Dr. Ramaswamy, Claimant offered a history consistent with his medical records and ALJ Goldman's prior Order. Dr. Ramaswamy recognized that Claimant had a history of pre-existing mild asthma from when he was about 15 years old.

10. Following his review of Claimant's medical records, history, and examination, Dr. Ramaswamy determined that Claimant had the following diagnosis: (i) history of prior and

temporary work-related aggravation of prior asthma diagnosis that resolved over time; (ii) work-related VCD; and (iii) history of silent GERD. He also noted that Claimant's restrictive lung deficit likely related to his elevated BMI.

11. Dr. Ramaswamy noted that despite extensive treatment for Claimant's asthma diagnosis, he remained symptomatic and only reported slight overall improvement. He also observed that Claimant's PFT results were not consistent with an obstructive airway issue such as asthma. He thus concluded that ongoing asthma was likely not Claimant's main problem. Instead, Dr. Ramaswamy believed that the diagnosis of VCD most likely explained his presentation. He further dismissed Claimant's GERD diagnosis considering Claimant's lack of symptomatology.

12. Dr. Ramaswamy explained VCD as follows:

> Patients with Vocal Cord Dysfunction present with choking sensations, cough, dyspnea and dysphagia. Stridor (noisy breathing) can occur with inspiration, expiration or with both scenarios (this was noted during [Claimant's] examination today). Treatment for asthma (albuterol, corticosteroid inhalers, anticholinergic agents, montelukast) typically does not improve vocal cord dysfunction symptomatology. The mainstay treatment for vocal cord dysfunction has to do with reassurance, supportive care and speech therapy (with the continuation of exercises to focus on breathing with relaxation techniques and vocal hygiene). There is a lack of evidence-based data to suggest that the use of Botox can decrease symptomatology in the setting. Avoiding airway irritants also would be recommended long-term.

Dr. Ramaswamy reasoned that Claimant's work exposure to fumes and smoke likely caused his chronic VCD diagnosis.

13. Dr. Ramaswamy maintained that Claimant had reached Maximum Medical improvement (MMI) as of the date of his evaluation on March 12, 2025. He reasoned that Claimant had been treating for asthma since June 2023 with various long-acting bronchodilators, corticosteroid inhalers and anticholinergic agents/montelukast, but without

significant improvement. Nevertheless, Claimant continued to suffer shortness of breath with choking episodes, coughing and dysphagia. However, he explained that Claimant met the criteria for MMI because he had plateaued and exhausted treatment options for the VCD diagnosis.

14. Dr. Ramaswamy emphasized that Claimant's temporary aggravation of his mild asthma had resolved. He would not expect long-term airway obstruction to continue for almost two years from the initial chemical exposure. Instead, Dr. Ramaswamy maintained that the diagnosis of chronic VCD made much more sense. For further medical treatment, Dr. Ramaswamy recommended that Claimant would need to keep up with his vocal and speech hygiene/exercises long-term. He did not believe that further formal treatment would be necessary and even dismissed Claimant's need for inhalers and medications because they were no longer work-related and did not improve symptoms.

15. On March 27, 2025 Claimant returned to Dr. Singh for an evaluation. Dr. Singh remarked that even though Claimant suffered pre-existing asthma "the amount of exposure definitely was high enough that it triggered his respiratory insufficiency with associated shortness of breath atypical chest pain and vocal cord dysfunction and acid reflux currently he is on maintenance medications[.]" He determined that because the occupational exposure occurred almost two years earlier, Claimant's condition was chronic and would require lifetime, regular follow-up.

16. On June 26, 2025 Claimant returned to Dr. Singh for an examination. Dr. Singh noted that Workers' Compensation had stopped paying for Claimant's medications and he needed to try alternative ways to obtain them. He summarized that Claimant sustained a prior inhalation injury and occupational asthma, Therefore, medications for chronic maintenance were essential and necessary for his health. Dr. Singh continued to diagnose Clamant with occupational asthma and possible reactive airway disease. Claimant requires Montelukast, Benzonatate, and the inhalers, Symbicort, Spiriva and Airsupra for his symptoms. Dr. Singh disagreed with Dr. Ramaswamy and stated that Claimant suffers from persistent asthma. He specifically noted shortness of breath, wheezing and a chronic cough. Dr. Singh emphasized that Dr. Ramaswamy was not a practicing pulmonologist and only examined Claimant on a

single occasion. In contrast, Dr. Singh is a pulmonologist who has been consistently evaluating Claimant. He summarized it was medically necessary for Claimant to continue all medications for the treatment of his continuing conditions.

17. On July 7, 2025 Dr. Ramaswamy issued an addendum report after reviewing additional records. He explained that Dr. Singh's report did not change his opinion. Dr. Ramaswamy emphasized that there was no spirometry performed and Claimant had an oxygen saturation of 98%. He also reiterated that Dr. Singh made no comment "on the diagnosis of [VCD] as an explanation for the ongoing symptomatology (with only slight improvement in shortness of breath) despite the use of multiple inhalers."

18. Claimant testified at the hearing in this matter that he had asthma when he was 15 years old and used an inhaler. However, he ceased using the inhaler several years before his industrial exposure on April 12, 2023. Claimant remarked that his current symptoms are much worse than when he was a child. He commented that he now runs out of breath if he exerts himself in any way. Claimant can have coughing fits that lead to vomiting and a severe asthma attack.

19. Dr. Ramaswamy testified at the hearing in this matter and maintained that Claimant primarily suffers from VCD. He explained that the condition can appear to mimic asthma but the distinction is critical because the treatment is different. Dr. Ramaswamy first explained that Claimant's PFT results were critical in his determination that the work injury only caused a temporary aggravation of asthma that had resolved. Specifically, he reasoned that the results reveal a restrictive lung disease instead of an obstructive lung disease such as asthma. Dr. Ramaswamy reasoned that with an obstructive lung disease, the lungs cannot expel the air. On the other hand, with a restrictive lung disease, the lungs cannot collect the total capacity of air. The conditions look differently on a PFT.

20. Dr. Ramaswamy explained that Claimant's more recent PFT with Dr. Singh in January 2025 revealed more restriction than obstruction, which would not correspond with an asthma diagnosis. He commented that in evaluating Claimant's PFT results from January 30, 2025, Claimant only had 57.92% of his predicted FVC, which represented the volume of air he

inhaled. Dr. Ramaswamy remarked this was a low result with 80% or higher being normal and revealed his lung capacity was restricted. Next, he testified that Claimant's FEV1, which represented the volume of air exhaled, was also low because he only breathed out 62.93% of his predicted value. The result was below the normal 80%. However, Dr. Ramaswamy explained that dividing the preceding to create a ratio, known as FEV1/FVC, reveals the obstruction in an individual's ability to breathe out the air they inhale. He reasoned that Claimant performed at 112% of his predicted value in this regard. Claimant thus does not present with an obstructed breathing deficit that would be caused by asthma because he exhaled more of the air he inhaled than normal. Dr. Ramaswamy summarized that with the preceding results showing no obstructive deficit, there would be no need for bronchodilator testing because that would only address Claimant's obstruction and not restrictive deficit.

21. Dr. Ramaswamy emphasized that one of the most critical issues with the ongoing treatment and medications is that they have not provided Claimant with significant relief. He explained that despite all the medications helping his airway inflammation, Claimant should have significant improvement in function and symptoms. However, the lack of improvement suggests that asthma is not the condition causing Claimant's symptoms. Instead, VCD is the main concern. Dr. Ramaswamy reiterated that further treatment for Claimant's asthma would not be work-related. Instead, the only medication that could be reasonable, necessary, and related would be local anesthetic benzonatate that helps Claimant's coughing related to VCD.

22. Claimant testified in rebuttal that he uses a rescue inhaler between one and four times a day depending on his activity level and that it provides relief from asthma symptoms. He uses the other two inhalers once per day, one in the morning and one in the evening. The evening inhaler helps him sleep. The morning inhaler clears his breathing issues and allows him to go about his day.

23. Claimant has established that it is more probably true than not that the medications prescribed by ATP Dr. Singh are reasonable, necessary, and causally related to his April 12, 2023 work injury. Initially, Claimant sustained compensable work injuries on April 12, 2023 because of his exposure to welding smoke and fumes. The exposure caused VCD and GERD, as well as aggravating his pre-existing asthma condition. Claimant received

conservative pulmonology treatment, including testing and medications, through National Jewish Health. Citing Claimant's clinical history, pulmonary function tests, and improvement in symptoms with medication, Dr. Hua emphasized that Claimant's preexisting asthma was aggravated by his occupational exposure. He further explained that Claimant did not have preexisting GERD, and exposure to fumes can irritate the upper digestive tract. Finally, Dr. Hua referenced scientific literature that support the development of VCD after high-dose irritant exposures, including those from welding fumes.

24. Based on a recommendation from Dr. Hua to move to a lower altitude, Claimant relocated to Las Vegas, Nevada and received treatment from ATP pulmonologist Dr. Singh. On January 30, 2025 Dr. Singh diagnosed Claimant with occupational asthma "which [could] be interpreted as reactive airway disease but given the long 8-month gradual progressive exposure until the welding dust that fits more in occupational asthma persistent with PFT showing moderately severe restriction." He specified that a PFT had revealed Claimant's FVC was down to 56% "in a restrictive pattern." Dr. Singh thus believed that Claimant needed multimodality therapy and recommended the following:

> [M]ontelukast, benzonatate for his cough, triple inhaler with Symbicort and Spiriva or equivalent with Airsupra as a rescue with follow-up and repeat spirometry in 2 months for interval change to see how much progress.

By March 27, 2025 Dr. Singh remarked that because the occupational exposure occurred almost two years earlier, Claimant's condition had become chronic and would require lifetime and regular follow-up.

25. In contrast, Dr. Ramaswamy observed that Claimant's PFT results were inconsistent with an obstructive airway issue such as asthma. Instead, Dr. Ramaswamy believed that the diagnosis of VCD most likely explained Claimant's presentation. He further dismissed Claimant's GERD diagnosis considering Claimant's lack of symptomatology. Dr. Ramaswamy emphasized that Claimant's temporary aggravation of his mild asthma had resolved. He would not expect long-term airway obstruction to continue for almost two years from the initial chemical exposure. Dr. Ramaswamy thus did not believe that further formal treatment would be necessary and even dismissed Claimant's need for inhalers and

medications because they were no longer work-related and did not improve symptoms.

26. By June 26, 2025 Dr. Singh continued to diagnose Clamant with occupational asthma and possible reactive airway disease. Claimant requires Montelukast, Benzonatate, and the inhalers, Symbicort, Spiriva and Airsupra for his symptoms. Dr. Singh disagreed with Dr. Ramaswamy and stated that Claimant suffers from persistent asthma. He specifically noted shortness of breath, wheezing and a chronic cough. Dr. Singh emphasized that Dr. Ramaswamy was not a practicing pulmonologist and only examined Claimant on a single occasion. In contrast, Dr. Singh is a pulmonologist who has been consistently evaluating Claimant. He summarized it was medically necessary for Claimant to continue all medications for the treatment of his continuing condition.

27. Dr. Ramaswamy testified at the hearing and maintained that Claimant primarily suffers from VCD. He explained that Claimant's PFT results were critical in his determination that the work injury only caused a temporary aggravation of asthma that had resolved. Specifically, he reasoned that the results revealed a restrictive lung disease instead of an obstructive lung disease such as asthma. Therefore, further treatment for Claimant's asthma would not be work-related. Instead, the only medication that would be reasonable, necessary, and related would be local anesthetic benzonatate that helps Claimant's coughing related to VCD.

28. Despite Dr. Ramaswamy's opinions, the record reveals that Claimant continues to suffer from work-related asthma, VCD and GERD. Importantly, Dr. Ramaswamy conducted a single evaluation of Claimant and relied almost exclusively on Claimant's PFT testing to determine that he suffers from the restrictive lung disease of VCD and no longer has work-related asthma. Although an analysis limited to the PFT results may support Dr. Ramaswamy's conclusion, the bulk of the record evidence demonstrates that Claimant suffers from a persistent aggravation of his preexisting asthma since his work exposure to smoke and fumes. Importantly, Dr. Singh is a pulmonologist who has been consistently evaluating Claimant. He summarized it was medically necessary for Claimant to continue all medications for the treatment of his continuing condition. Finally, Claimant credibly testified in rebuttal that he uses the rescue inhaler between one and four times a day depending on his activity level and it

provides him with relief from his asthma symptoms. Accordingly, Claimant has demonstrated that continuing medications prescribed by ATP Dr. Singh including: (a) Airsupra; (b) Montelukast; (c) Spiriva; (d) Symbicort; (e) Benzonatate; and (f) Omeprazol are reasonable, necessary, and causally related to his April 12, 2023 work injury.

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 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' 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. Respondents are liable for medical treatment that is reasonable and necessary to cure and relieve the effects of the industrial injury. §8-42-101(1)(a), C.R.S. However, a general admission of liability for medical benefits is not an admission that all future medical treatment that the claimant receives is compensable. *Cautrell v. State of Colorado*, W.C. No. 4-817-183-02 (Dec. 11, 2012). To the contrary, respondents may contest the reasonableness, necessity

and relatedness of any particular treatment. *Id.* Indeed, the right to workers' compensation benefits, including medical benefits, arises only when an injured employee establishes by a preponderance of the evidence that the need for medical treatment was proximately caused by an injury arising out of and in the course of employment. §8-41-301(1)(c), C.R.S.; *Faulkner v. Indus. Claim Apps. Office*, 12 P.3d 844, 846 (Colo. App. 2000).

5. An aggravation of a preexisting condition is compensable. *Subsequent Injury Fund v. Thompson*, 793 P.2d 576 (Colo. 1990). If there is a direct causal relationship between the mechanism of injury and resultant disability, the injury is compensable if it caused a preexisting condition to become disabling. *Duncan v. Indus. Claim Appeals. Off.*, 107 P.3d 999 (Colo. App. 2004). However, there must be some affirmative causal connection beyond a mere assumption that the asserted mechanism of injury was sufficient to have caused an aggravation. *Brown v. Indus. Comm'n*, 447 P.2d 694 (Colo. 1968). A compensable injury may result from a temporary aggravation of a pre-existing condition. *Witt v. James J. Keil Jr.*, W.C. No. 4-225-334 (April 7, 1998). However, to continue to receive medical benefits for that condition the claimant must establish a reasonable probability that the need for additional medical treatment was proximately caused by the aggravation and is not simply a direct and natural consequence of the pre-existing condition. *Id.*

6. As found, Claimant has established by a preponderance of the evidence that the medications prescribed by ATP Dr. Singh are reasonable, necessary, and causally related to his April 12, 2023 work injury. Initially, Claimant sustained compensable work injuries on April 12, 2023 because of his exposure to welding smoke and fumes. The exposure caused VCD and GERD, as well as aggravating his pre-existing asthma condition. Claimant received conservative pulmonology treatment, including testing and medications, through National Jewish Health. Citing Claimant's clinical history, pulmonary function tests, and improvement in symptoms with medication, Dr. Hua emphasized that Claimant's preexisting asthma was aggravated by his occupational exposure. He further explained that Claimant did not have preexisting GERD, and exposure to fumes can irritate the upper digestive tract. Finally, Dr. Hua referenced scientific literature that support the development of VCD after high-dose irritant exposures, including those from welding fumes.

7. As found, based on a recommendation from Dr. Hua to move to a lower altitude, Claimant relocated to Las Vegas, Nevada and received treatment from ATP pulmonologist Dr. Singh. On January 30, 2025 Dr. Singh diagnosed Claimant with occupational asthma "which [could] be interpreted as reactive airway disease but given the long 8-month gradual progressive exposure until the welding dust that fits more in occupational asthma persistent with PFT showing moderately severe restriction." He specified that a PFT had revealed Claimant's FVC was down to 56% "in a restrictive pattern." Dr. Singh thus believed that Claimant needed multimodality therapy and recommended the following:

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By March 27, 2025 Dr. Singh remarked that because the occupational exposure occurred almost two years earlier, Claimant's condition had become chronic and would require lifetime and regular follow-up.

8. As found, in contrast, Dr. Ramaswamy observed that Claimant's PFT results were inconsistent with an obstructive airway issue such as asthma. Instead, Dr. Ramaswamy believed that the diagnosis of VCD most likely explained Claimant's presentation. He further dismissed Claimant's GERD diagnosis considering Claimant's lack of symptomatology. Dr. Ramaswamy emphasized that Claimant's temporary aggravation of his mild asthma had resolved. He would not expect long-term airway obstruction to continue for almost two years from the initial chemical exposure. Dr. Ramaswamy thus did not believe that further formal treatment would be necessary and even dismissed Claimant's need for inhalers and medications because they were no longer work-related and did not improve symptoms.

9. As found, by June 26, 2025 Dr. Singh continued to diagnose Clamant with occupational asthma and possible reactive airway disease. Claimant requires Montelukast, Benzonatate, and the inhalers, Symbicort, Spiriva and Airsupra for his symptoms. Dr. Singh disagreed with Dr. Ramaswamy and stated that Claimant suffers from persistent asthma. He specifically noted shortness of breath, wheezing and a chronic cough. Dr. Singh emphasized that Dr. Ramaswamy was not a practicing pulmonologist and only examined Claimant on a single occasion. In contrast, Dr. Singh is a pulmonologist who has been consistently evaluating

Claimant. He summarized it was medically necessary for Claimant to continue all medications for the treatment of his continuing condition.

10. As found, Dr. Ramaswamy testified at the hearing and maintained that Claimant primarily suffers from VCD. He explained that Claimant's PFT results were critical in his determination that the work injury only caused a temporary aggravation of asthma that had resolved. Specifically, he reasoned that the results revealed a restrictive lung disease instead of an obstructive lung disease such as asthma. Therefore, further treatment for Claimant's asthma would not be work-related. Instead, the only medication that would be reasonable, necessary, and related would be local anesthetic benzonatate that helps Claimant's coughing related to VCD.

11. As found, despite Dr. Ramaswamy's opinions, the record reveals that Claimant continues to suffer from work-related asthma, VCD and GERD. Importantly, Dr. Ramaswamy conducted a single evaluation of Claimant and relied almost exclusively on Claimant's PFT testing to determine that he suffers from the restrictive lung disease of VCD and no longer has work-related asthma. Although an analysis limited to the PFT results may support Dr. Ramaswamy's conclusion, the bulk of the record evidence demonstrates that Claimant suffers from a persistent aggravation of his preexisting asthma since his work exposure to smoke and fumes. Importantly, Dr. Singh is a pulmonologist who has been consistently evaluating Claimant. He summarized it was medically necessary for Claimant to continue all medications for the treatment of his continuing condition. Finally, Claimant credibly testified in rebuttal that he uses the rescue inhaler between one and four times a day depending on his activity level and it provides him with relief from his asthma symptoms. Accordingly, Claimant has demonstrated that continuing medications prescribed by ATP Dr. Singh including: (a) Airsupra; (b) Montelukast; (c) Spiriva; (d) Symbicort; (e) Benzonatate; and (f) Omeprazol are reasonable, necessary, and causally related to his April 12, 2023 work injury.

Order

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

1. Claimant has demonstrated that medications prescribed by ATP Dr. Singh including: (a) Airsupra; (b) Montelukast; (c) Spiriva; (d) Symbicort; (e) Benzonatate; and (f) Omeprazol are reasonable, necessary, and causally related to his April 12, 2023 work injury.

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: September 23, 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. WC 5-055-781-007

Issues

1. Whether Claimant proved by a preponderance of the evidence an additional six chiropractic sessions, one Botox injection (every three months), and an additional nine-month gym membership recommended by ATP Gregory Reichhardt, M.D. on July 21, 2025 is reasonable, necessary and causally related medical maintenance care.[1]

Findings of Fact

1. Claimant worked for Employer as a Pre-Load Supervisor.

2. Claimant sustained an admitted industrial injury on August 30, 2017 when his right hand and arm were caught in a conveyor belt. Claimant suffered a traumatic transhumeral amputation of his right upper extremity.

3. Claimant underwent extensive treatment including muscle reinnervation surgery to his right pectoralis muscle, medication, occupational therapy, physical therapy, chiropractic treatment, and occipital nerve blocks.

4. ATP Kimberly L. Siegel placed Claimant at maximum medical improvement (MMI) on December 17, 2018, with the following diagnoses: traumatic amputation of the right arm above elbow, phantom pain following amputation of upper limb, cervical myofascial

[1] At the commencement of the hearing, Claimant withdrew the issue of authorized provider. As, on July 31, 2025, Respondents approved Dr. Reichhardt's request for a home sleep study and partially approved Dr. Reichhardt's request for chiropractic sessions, Botox injections, and a gym membership, Claimant confirmed the remaining issue before the ALJ with respect to medical maintenance benefits was the treatment recommended by Dr. Reichhardt that remained not approved. On Respondents' Motion, the ALJ struck the issue of penalties due to Claimant's failure to plead the penalty with sufficient specificity.

pain syndrome, cervicogenic headache, back pain, and posttraumatic stress disorder (PTSD). Dr. Siegel noted Claimant had significant phantom limb pain, reactive myofascial pain in the right pectoralis region, neck, occipital region, and back, as well as headaches. As maintenance care Dr. Siegel recommended the following, in relevant part: up to 40 chiropractic visits per year as needed for flareups of neck and upper back pain, to be reassessed every three years; a gym membership for 1 year; medications to be reassessed every 6-12 months; and follow-up with Dr. Siegel or Dr. Reichhardt.

5. On October 10, 2019, Respondents filed a Final Admission of Liability (FAL) admitting for maintenance medical care per Dr. Siegel's 12/17/2018 report.

6. Claimant has continued to treat with ATP Dr. Reichhardt on a regular basis post-MMI. Post-MMI treatment has included, among other things, physical therapy, medication, chiropractic treatment, and Botox injections.

7. On November 4, 2021, ALJ Peter J. Cannici held a hearing on whether maintenance medical benefits in the form of 12 chiropractic visits recommended by Dr. Reichhardt on March 24, 2021 were reasonable, necessary and related. ALJ Cannici issued Findings of Fact, Conclusions of Law and Order (FFCLO) on February 18, 2022. ALJ Cannici determined that the 12 additional chiropractic visits were reasonable, necessary and causally related to Claimant's work injury. He found that the transhumeral amputation created a biomechanical imbalance for Claimant's neck and upper back, and that Claimant had also developed migraine headaches as a result of neck and myofascial pain.

8. Since the November 4, 2021, hearing before ALJ Cannici, there have been at least 41 requests for treatment by Dr. Reichhardt for treatment, 22 denials and 13 modifications of the requested treatment.

9. On April 17, 2023, Claimant reported to Dr. Reichhardt that the lack of availability of Botox injections worsened his symptoms but that chiropractic treatment continued to help. Dr. Reichhardt recommended that Claimant continue with a home exercise program, Botox injections and chiropractic treatments "as they do help him stay functional.

[Claimant] notes that without these, he has difficulty driving by the end of the day and notes because of this, he is at risk for losing his job." Cl. Ex. 4, p. 392.

10. On July 26, 2023, Claimant reported to Dr. Reichhardt that consistent chiropractic treatment and Botox injections resulted in decreased pain levels from 8.5/10 to 1-4/10 and an increased ability to function. Claimant further reported that, without Botox injections, he experienced migraines building throughout the day resulting in having to find a dark place to rest four to five days a week, and significant headaches two to three days a week.

11. Bruce Weber, D.C. has provided authorized chiropractic treatment to Claimant pre-and-post MMI. Dr. Weber's December 18, 2023, medical report notes:

> **Chief Complaint:** an acute mid thoracic, upper thoracic, posterior cervical (neck), right posterior trapezius, right mid thoracic, right side of neck, right posterior shoulder, right anterior shoulder, right anterior trapezius, right chest, anterior cervical (throat), chest and right TMJ complaint patient had his arm taken off on a convayer [sic] belt while working at [Employer] since 8/30/2017. so very sore today in neck and back, hard to tum his neck, coupling motion of spine with the loss of his shoulder is severe due to the lack of attachment points of his muscles of his scaplua [sic] and then to the spine, there is severe assymetry [sic] of his spine and pulling to oppositie [sic] side. curve in Ts with concave to right due to missing arm, causing neck pain and pressure in head and neck. feel [sic] down at home and hit his head on the wall, misjudged a step, without a arm he could not stop his fall as he normally could have, patient is getting a lateral deviation of his upper thoracic spine due to the imbalance of muscle pull from side to side due to the loss of his shoulder acting as an attachement [sic] point to the muscles. he is laterally deviating his neck to the left shoulder significantly, and pain with right lateral flexio [sic], Patients symptoms decrease with treatment, as his arm will not return, his symptoms will never leave without constant care with his neck and upper back, [Claimant] is still trying to get

> used to his mechanical arm, was not able to come in to the office, due to the lack of authorized visits, starting to feel better today from more consistant [sic] treatent [sic], sore with motion and lifting. patient felt so much better after last visit this is the only thing that has helped him function and move better, even with work and traveling he is improving with manipulation, has been feeling much better after consistant [sic] treatment, decreased headache and pain in mid back and shoulder blade area despite trying to work and perform normal ADL, T/L junction very sore in neck and back, woke up in the middle of the night with sharp pain in T6 to T8 radiating from shoulder area, had a lot of pain driving today, needs the prosthesis to help with weight distribution. had a headache and sore with motion, consistant [sic] treatment decreases his headaches, neck pain and mid back pain, has no job now, stressed and sore

R. Ex. M, p. 965.

12. On January 31, 2024, Claimant reported to Dr. Reichhardt worsening symptoms without access to chiropractic treatment and Botox injections. Claimant reported experiencing low-level headaches, which he rated at 1-6/10 pain, on a daily basis starting at about 2:00 a.m. and building throughout the day, and high-level headaches, rated at 3-8/10 pain, occurring five to six times per week, beginning at about 1:00 p.m. rather than 3:00 p.m. Claimant reported daily neck pain, radiating to the occipital area, left greater than right; back pain radiating down the right buttock once per week; 2-6/10 neck pain; 4-6/10 phantom pain. Dr. Reichhardt noted,

> I would recommend Botox injections every three months, chiropractic treatment once a week for 12 weeks, and a gym pass for three months. The chiropractic and the Botox help control his headaches. The chiropractic also helps control his neck pain. Both of these allow him to be more functional, and together would likely improve his job prospects.

Cl. Ex. 4, p. 404.

13. At the request of Respondents, Frederick Paz, M.D. performed three Independent Medical Examinations (IMEs) of Claimant, the first on September 26, 2018 (report dated November 12, 2018); the second on July 1, 2019 (report dated July 19, 2019); and the third on July 3, 2024 (reported dated September 13, 2024).

14. In his September 13, 2024 IME report, Dr. Paz noted that Claimant reported experiencing reduced migraine symptoms with consistent Botox injections. Dr. Paz further noted Claimant stated that the chiropractic manual therapy treatments primarily treated "tightness" and that his headaches and neck pain occurred less frequently with chiropractic therapy. Dr. Paz opined that ongoing chiropractic manual therapies were not reasonable, necessary or causally related to Claimant's work injury. Dr. Paz wrote,

> [Claimant's] primary diagnosis is disarticulation/amputation of the right upper extremity. He, more likely than not, sustained acute myofascial injury of the cervical and upper thoracic regions on the date of injury. However, persistent myofascial pain symptoms years after an acute injury are, more often than not, attributable to an underlying diagnosis. In this specific claim, there is no causally related diagnosis or diagnosis that correlates with the persistent myofascial pain complaints.
>
> Based on a review of the records, during the past many years, there have not been consistent face-to-face examinations that included direct physical examination. The objective findings on physical examination, other than amputation of the right upper extremity, have been intermittent identification of trigger points.

R. Ex. P, p. 1149.

15. Dr. Paz noted that Dr. Reichhardt recommended ongoing chiropractic treatment with the goal of weaning Claimant off opiates, yet Claimant still remained active on opiate therapy for his symptoms. Dr. Paz concluded that Claimant's chiropractic records did not reflect that Claimant experienced functional losses during the periods with chiropractic therapy was denied, nor was there a record that Claimant presented with acute

debilitating symptoms having a functional impact on his vocational or avocational physical activities, such as a history of lost time from work. Dr. Paz opined that no medical cause-and-effect relationship could be established between Claimant's subjective symptoms, findings on physical examination, and the "modest" improvement in symptoms from the chiropractic treatments. Dr. Paz wrote,

> Notwithstanding the phantom limb pain, which is idiopathic, the persistent symptoms, which are assumed to be myofascial without identification of underlying structural etiology, such as a cervical or thoracic structural abnormality, which is causally related to the August 30, 2017, incident, then the chiropractic treatments are not reasonable, necessary, or causally related to the industrial injury.

Id. at 1150.

16. At a follow-up evaluation with Dr. Reichhardt on October 14, 2024, Claimant continued to complain of headaches and left periscapular pain. Dr. Reichhardt noted Claimant again reported improvement with Botox injections, with his headaches starting later in the day and with less severity. Dr. Reichhardt noted that Claimant reported the "pain difference makes a significant functional difference for him as he is able to manage his headaches without going to sleep in a dark room and able to be active and engaged through the evening." Cl. Ex. 4, p. 421.

17. On November 14, 2024, Claimant reported to Dr. Reichhardt continued pain in his neck and periscapular area, as well as some pain extending down the back into the posterior aspect of the right leg. Claimant continued to have cramping pain in his phantom limb on the right side. Claimant reported continued headaches but noted improvement with chiropractic treatment and Botox treatment together. Dr. Reichhardt prescribed 12 chiropractic sessions, Botox injections and a gym pass.

18. In a chart note dated December 16, 2024, Dr. Reichhardt addressed the medical necessity of requested chiropractic treatments, Botox injections, and a gym pass. Dr. Reichhardt explained,

[Claimant] has been diagnosed with migraine headaches by Dr. Strader. He has had improvement with his Botox injections. The benefit would likely be greater if he had consistent availability of the Botox injections. They tend to be approved for one to two sets at a time and then not approved. He did have a chance to undergo Botox injection [sic] two sets in a row, three months apart. His migraines decreased from six per week down to two per week. This results in significant improvement in his function as he can be functional throughout the entire day on days when he does not have migraines. He therefore has only two days where he needs to be inactive in a dark room per week rather than six days per week. He reports he does particularly well when he has the chiropractic treatment combined with the Botox injections. The Botox injections are reasonable and necessary as related to his work-related injury. The cause of the migraines is likely his amputation, and musculoskeletal strain that the amputation places on his neck and upper back region and the secondary myofascial involvement. As a result of the amputation, he has asymmetrical muscle tension with weight balance with the loss of the weight of his right arm. In addition, he has the muscular effort of supporting the prosthesis and moving his prosthesis when he is wearing that. Lastly, his altered body mechanics as a result of using his prosthesis or functioning without a right upper limb when he is not using the prosthesis. All of these factors have contributed to his neck, upper back and periscapular pain and headaches. They do require the availability of the chiropractic treatment outlined initially by Dr. Siegel. Dr. Siegel did outline 40 chiropractic visits per year. She did recommend reassessment every three years. Considering this as a reassessment, the chiropractic treatment is indicated.

I would recommend a gym pass. [Claimant] has been very motivated to maintain an active lifestyle and exercise on a regular basis. I do feel that an active approach to his exercise program is the most appropriate approach to managing his symptoms. Nonetheless, even with such an active approach, he

> does require additional passive treatments of Botox injections and the chiropractic treatments.

Cl. Ex. 4, p. 433.

19. On March 24, 2025, Claimant reported to Dr. Reichhardt worsening periscapular and right arm symptoms with the lack of chiropractic treatment. Claimant further reported that his headaches symptoms were better with Botox injections but not as good as they typically are when combined with chiropractic treatment. Claimant reported experiencing headaches two to three times a week that lasted about five to six hours at a pain level of 5-6/10 compared to 8-9/10 without Botox injections. Claimant was able to function through the headaches with Botox injections, as compared to without Botox treatment. Claimant continued on Oxycodone, 5 mg, two times a week as needed for pain. Dr. Reichhardt prescribed Botox every three months, 12 chiropractic visits, a one-year gym pass, and a home sleep study.

20. On April 21, 2025, Claimant reported to Dr. Reichhardt experiencing good relief of his migraines with Botox injections. Dr. Reichhardt documented,

> He notes that previously he was having migraines daily, and now has them two to three times a day. They are of later onset in the day. He gets them at 5:00 to 6:00 pm compared to 2:00 to 3:00 p.m. without the Botox injections. He notes this would allow him to work essentially a full work day. Previously he had to try to leave to be home by 3:00 p.m. to avoid driving with a migraine, which he was concerned might impact his safety.
>
> In terms of the opioids, he feels these help him stay functional. They help him relieve his high-level pain, which help him stay at a more consistent level of function throughout the week.
>
> Unfortunately, he has not had chiropractic treatment available. He feels this helps him maintain a more normal posture, with less right shoulder

> elevation, He did have photos of his shoulder elevation. I would note that in general, his right shoulder has tended to be more elevated. He notes that with the chiropractic treatment, he is able to help clean the house more regularly. He typically does the vacuuming, and it takes him 50-100% longer if he has not had the chiropractic treatment because he has to do this with shorter movements. He also does high dusting, which his wife has difficulty reaching. He cannot do it if he is not receiving chiropractic treatment, He is able to do the dishes, apparently with or without chiro, He notes that laundry takes him substantially longer because he has to carry loads in smaller proportions, about a third of what he would normally carry if he is receiving the chiropractic treatment. He notes that without the chiropractic treatment, he is unable to move the towels from the washer to the dryer. He notes that raking and lawn care he can do with the chiropractic treatment, but not without it. He notes that even a riding lawn mower is intolerable if he is not getting chiropractic treatment.

Cl. Ex. 4, p. 437.

21. On June 3, 2025, Claimant returned to authorized provider Scott Bradley Strader, M.D. for Botox injections. Dr. Strader noted Claimant last received Botox injections on March 4, 2025. Claimant reported significant reduction in headache frequency and severity with the Botox treatments. Claimant was not currently undergoing chiropractic care. Dr. Strader wrote,

> As previously stated, regular chiropractic care has been shown to be medically necessary for maintenance of functional status in this patient. I would encourage full coverage for resumption for this as soon as possible. He will return in 90 days for repeat Botox treatments; note that an interval of 90 days between injections is required for maximum benefit of this regimen.

Cl. Ex. 5, p. 458.

22. Claimant attended a follow-up evaluation with Dr. Reichhardt on June 18, 2025, reporting some improvement since receiving a Botox injection and resuming chiropractic treatment. Claimant reported that his headache frequency decreased to two to three times per week versus six to seven times per week without those treatments. Claimant further reported that the migraines occurred at 6:00 p.m. or 7:00 p.m. rather than 3:00 or 4:00 p.m., which improved his work prospects. Claimant rated his phantom arm pain 3.5-6.5/10, and his cervical, thoracic and periscapular pain 4-8/10 at baseline and 3-6/10 with consistent treatment. On examination Dr. Reichhardt noted tenderness to palpation about the cervical and periscapular area with mild muscle spasm and decreased cervical range of motion. That same day Dr. Reichhardt submitted a prior authorization request for one Botox injection every three months, 12 chiropractic visits, a one-year gym pass and a home sleep study.

23. A utilization review was conducted and the reviewer contacted Dr. Reichhardt for additional information to make a determination of medical necessity. On June 27, 2025, the requested treatment was conditionally non-certified and the review closed due to not receiving the additional information from Dr. Reichhardt.

24. On July 21, 2025, Dr. Reichhardt submitted another prior authorization request for one Botox injection every three months, 12 chiropractic therapy sessions, a one-year gym pass, and a home sleep study.[2]

25. A utilization review was performed on July 31, 2025 in connection with Dr. Reichhardt's July 21, 2025 request for treatment. The reviewer reviewed Dr. Reichhardt's June 18, 2025 medical report and also spoke with Dr. Reichhardt by telephone on July 31, 2025 noting,

> This discussion included that the injured worker had completed a few sessions that had been certified at the end of May 2025 with progressive improvement in mobility and function and decrease in the frequency and

[2] *See* Cl. Ex. 3, p. 378. Neither Claimant's nor Respondents' exhibits include a copy of the July 21, 2025 prior authorization request.

> severity of headaches but did present with recurrence of stiffness and spasming for which a few additional sessions were requested to address flareup and transition the injured worker to home exercise program. The injured worker did not have adequate equipment at home. The provider indicated that the injured worker needed to perform stretching and conditioning, and strengthening exercises to overcome dystonia and piriformis syndrome, for which a gym membership was recommended on a trial basis.

Cl. Ex. 4, p. 379.

26. Based on the July 31, 2025 utilization review, Insurer modified Dr. Reichhardt's request and certified the request as follows: one Botox injection between 7/21/2025 and 11/20/2025; six sessions of chiropractic treatment between 7/21/2025 and 11/20/2025; a three-month gym pass between 7/21/2025 and 11/20/2025; and a home sleep study.

27. Regarding the Botox injections, the reviewer noted,

> The [Colorado Medical Treatment Guidelines] support Botox injections as medically indicated. The frequency should be no less than 3 months between re-administration, and they should be reassessed after each injection session for approximately 80% improvement in pain and evidence of functional improvement for 3 months.
>
> . . .
>
> Considering the injections significantly reduce headache frequency, a repeat injection is supported. However, the injured worker's response to the injection should be documented prior to additional injections. Therefore, the prospective request for 1 Botox injection (every 3 months) is certified with a modification to 1 Botox injection. The request for every 3 months is non-certified.

Id. at 380.

28. Regarding the requested chiropractic treatment, the reviewer noted that the Colorado Medical Treatment Guidelines provide that a trial of six sessions of chiropractic care may be recommended for neck and lower back pain with a frequency of up to three times per week for a maximum duration of eight weeks. The reviewer explained,

> Successful provider discussion indicated that the injured worker had completed a few sessions that had been certified at the end of May 2025 with progressive improvement in mobility and function and decrease in the frequency and severity of headaches but did present with recurrence of stiffness and spasming for which a few additional sessions were requested to address flare up and transition the injured worker to home exercise program. The request is partially warranted to address this flare up in light of the success of the previous treatment. Based on this additional information provided, the prospective request for 12 chiropractic therapy sessions is certified with a modification to 6 chiropractic therapy sessions. The remaining 6 chiropractic therapy sessions are non-certified.

Id.

29. Regarding the gym membership, the reviewer stated in relevant part,

> The cited guidelines state that a gym membership is not recommended as a medical prescription unless a documented home exercise program with periodic assessment and revision has not been effective and there is a need for equipment. Successful provider discussion indicated that the patient did not have adequate equipment at home, and the Colorado guidelines do recommend an option of gym membership instead of HEP.
>
> . . .
>
> The provider indicated that the injured worker needed to perform stretching and conditioning, and strengthening exercises to overcome dystonia and piriformis syndrome, for which a gym membership was recommended on a

> trial basis. Based on this additional information, with the patient not having adequate equipment to perform recommended exercises, a 3-month membership is recommended to enable the provider to assess the compliance and progress following a 3-month trial of this treatment intervention. Therefore, the prospective request for 1 gym pass (1 year) is certified with modification to 1 gym pass (3 months}. The remaining 9-month gym membership pass is non-certified.

Id. at 381.

30. Claimant credibly testified at hearing. Claimant testified to the ongoing symptoms he currently experiences as a result of his work injury. Claimant experiences constant phantom pain in the area of his amputated right upper extremity, characterized as aching, sharp, burning and stabbing pains. Claimant also experiences cramping and tingling sensations in the phantom limb, hand and digits. Claimant has pain in the right pectoralis region, which has significantly atrophied due to the amputation of his right upper extremity. Additionally, Claimant has sharp, stabbing pains that travel across his upper back and shoulder girdle, at times extending into his lower back and buttocks. Claimant experiences pain radiating up into the back of his neck and head that then wraps around and develops into headaches and migraines. Claimant further has balance issues, overuse of his left side, and atrophy of his upper back and shoulder girdle on the right side. Claimant did not have any of these symptoms prior to the August 30, 2017 work injury.

31. Claimant testified that chiropractic treatment improves his alignment and balance, reduces his pain, helps to relieve his headaches and significantly improves his function. Claimant testified that the Botox injections reduce the severity and frequency of his headaches and migraines and significantly increase his ability to function. Claimant testified that, at one point when he was receiving consistent chiropractic and Botox treatment, he was able to reduce his opioid intake from eight pills a month to four pills a month. Without consistent treatment Claimant takes eight pills a month to manage his symptoms.

32. Claimant testified that prior access to a gym resulted in improved flexibility and ability to use his prosthetic arm. Claimant testified that he is unable to do some of his recommended exercises at home because they should be performed on a universal machine, which he does not have.

33. Dr. Paz testified at hearing on behalf of Respondents as a Level II accredited expert in occupational medicine. Dr. Paz has not evaluated Claimant since July 2024 nor issued any further IME reports since his September 2024 IME report. Dr. Paz testified consistent with his September 2024 IME report. Dr. Paz opined that the recommended chiropractic treatment is not reasonable, necessary or related. Dr. Paz opined that there were not comprehensive physical examinations that associated Claimant's symptoms with any impact on his functionality. Dr. Paz testified that, prior to his 2024 IME, Claimant reported right-sided headaches, while at his 2024 IME Claimant began to report some left-sided headache symptoms. Dr. Paz acknowledged that, in absence of a right upper extremity, Claimant has lost mass on the right side of his body and torso, his body is off-balance, and there is an impact on the functioning of his pectoralis muscle. Dr. Paz further acknowledged that, as a result of the loss of his right arm, Claimant will have the biomechanical imbalance for the rest of his life, abnormal function, and phantom pain.

34. The ALJ finds Claimant's testimony, as supported by the medical records and the opinions of Drs. Reichhardt, Weber and Strader, more credible and persuasive than the testimony and opinion of Dr. Paz.

35. Claimant proved it is more probably true than not the medical maintenance treatment requested by Dr. Reichhardt on July 21, 2025, now consisting of six additional sessions of chiropractic treatment, one Botox injection every three months, and a nine-month gym pass, is reasonable, necessary and related medical maintenance treatment.

36. Claimant is entitled to receive reasonable costs incurred in pursuing the medical benefits ordered herein pursuant to §8-42-101(5), C.R.S. Claimant did not offer any

evidence as to any reasonable costs. Accordingly, the amount of such costs is reserved for future determination.

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).

Dr. Paz Testimony and Report

Claimant contends Dr. Paz's report and testimony should be excluded and cannot be relied upon to deny treatment pursuant to W.C.R.P. Rules 16-7-1(A) and (C).[3]

W.C.R.P. Rule 16-7-1(A) provides,

> If an ATP requests Prior Authorization and indicates in writing, including reasoning and supporting documentation, that the requested treatment is related to the admitted WC claim, the Payer cannot deny solely for relatedness without a medical opinion as required by this Rule. The medical review, independent medical examination (IME) report, or report from an ATP that addresses relatedness of the requested treatment to the admitted claim may precede the Prior Authorization request if:
>
> > 1. The opinion was issued within 365 days prior to the date of the Prior Authorization request; and
> >
> > 2. An admission of liability has not been filed admitting the relatedness of the requested treatment to the admitted claim or a final order has not been entered finding the specific medical condition related to the admitted injury.
>
> If not, the medical review, IME report, or report from the ATP must be subsequent to the prior authorization request.

W.C.R.P. Rule 16-7-1(C) provides, in relevant part,

[3] In effect as of July 1, 2025. The ALJ notes that, under the prior version of Rule 16, in effect January 1, 2023, Rule 16-7-1(A) is the same, while Rule 16-7-1(C) is found under Rule 16-7-2(E).

> Failure of the Payer to timely comply in full with all Prior Authorization requirements shall be deemed authorization for payment of the requested treatment unless the Payer has scheduled an independent medical examination (IME) and notified the requesting Provider of the IME within the time prescribed for responding.
>
> 1. The IME must occur within 30 days, or upon first available appointment, of the Prior Authorization request, not to exceed 60 days absent an order extending the deadline.
> 2. The IME physician must serve all parties concurrently with the report within 20 days of the IME.

Claimant argues that ALJ Cannici's February 18, 2022, FFCLO is a final order in which ALJ Cannici found Claimant's specific conditions, exact symptoms and need for treatment related to the admitted injury; thus, Respondents the requested treatment cannot be denied based on Dr. Paz's prior IME under W.C.R.P. Rule 16-7-1(A). Claimant further argues that Dr. Paz's 2024 IME report and hearing testimony cannot be relied on to deny treatment because Dr. Paz's conducted the IME on July 3, 2024 and issued the report on September 13, 2024, outside of the 20 days mandated by W.C.R.P. Rule 16-7-1(C).

In the first instance, there is no indication Respondents denied the requested treatment at issue before the ALJ based on Dr. Paz's July 2024 IME. As evidenced by the July 31, 2025 letter in Claimant's Exhibit 3, pp. 378-384, the modified certifications of Dr. Reichhardt's July 21, 2025 prior authorization request were based on a utilization review for medical necessity. In explaining his decision, the reviewer references Dr. Reichhardt's June 18, 2025 medical report and a conversation with Dr. Reichhardt. Furthermore, there is no indication that the requested treatment was denied solely for relatedness.

Even assuming, arguendo, Respondents failed to comply with W.C.R.P. Rule 16, such alleged failure does not require the ALJ to exclude Dr. Paz's IME report and testimony in these circumstances. Here, Claimant is not arguing that the requested treatment be deemed authorized due to alleged non-compliance with W.C.R.P. 16, but

that the ALJ make an evidentiary ruling excluding Dr. Paz's report and testimony. The issue before the ALJ, as endorsed in the pleadings, identified by the parties at hearing, and argued by the parties at hearing and in post-hearing position statements, is whether the requested treatment is reasonable, necessary and causally related to Claimant's work injury. "Authorization" and the reasonableness of treatment are separate and distinct issues. *Repp v. Prowers Med. Center*, W.C. No. 4-530-649 (ICAO Sep. 12, 2005), *citing One Hour Cleaners v. Indus. Claim Appeals Office, 914 P.2d 501* (Colo. App. 1995). Respondents are entitled to challenge whether recommended maintenance treatment is reasonable, necessary and related.

Based on the specific issues before the ALJ, Respondents' compliance or non-compliance with W.C.R.P. Rule 16 does not require the ALJ to exclude Dr. Paz's IME report or testimony in making a determination of whether the requested medical maintenance treatment is reasonable, necessary and related to the work injury. Accordingly, the ALJ has not excluded Dr. Paz's September 2024 IME report and testimony and has afforded such evidence the weight she deems appropriate.

Maintenance Medical Benefits

Section 8-42-101(1), C.R.S. requires the employer to provide medical benefits to cure or relieve the effects of the industrial injury, subject to the right to contest the reasonableness or necessity of any specific treatment. *See Snyder v. Indus. Claim Appeals Off.,* 942 P.2d 1337 (Colo. App. 1997). The need for medical treatment may extend beyond the point of MMI where the claimant presents substantial evidence that future medical treatment will be reasonably necessary to relieve the effects of the injury or prevent further deterioration of his condition. *Grover v. Indus. Comm'n*, 759 P.2d 705 (Colo. 1988); *Hanna v. Print Expediters Inc.*, 77 P.3d 863, 865 (Colo. App. 2003). An award of *Grover* medical benefits is neither contingent upon a finding that a specific course of treatment has been recommended nor a finding that the claimant is actually receiving medical treatment. *Holly Nursing Care Center v. Indus. Claim Appeals Off.,* 992 P.2d 701 (Colo. App. 1999); *Hastings v. Excel Electric*, WC 4-471-818 (ICAO, May 16, 2002).

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. No.11*, WC 3-979-487 (ICAO, Jan. 11, 2012). Once a claimant establishes the probable need for future medical treatment he "is entitled to a general award of future medical benefits, subject to the employer's right to contest compensability, reasonableness, or necessity." *Hanna v. Print Expediters, Inc.*, 77 P.3d 863, 866 (Colo. App. 2003); *see Karathanasis v. Chilis Grill & Bar,* WC 4-461-989 (ICAO, Aug. 8, 2003).

The Colorado Division of Workers' Compensation has issued medical treatment guidelines under Rule 17, W.C.R.P., as evidence of professional standards for treatment of high-cost or high-frequency medical procedures. *See* Rule 17-1(A), W.C.R.P. An ALJ is not bound to the treatment guidelines in his or her determination of whether a particular treatment is reasonable and necessary. *See Jones v. T.T.C. Illinois, Inc.*, W.C. No. 4-503-150 (May 5, 2006); *aff'd Jones v. Industrial Claim Appeals Office* No. 06CA1053 (Colo. App. March 1, 2007)(not selected for publication)(it is appropriate for the ALJ to consider the guidelines on questions such as diagnosis, but the guidelines are not definitive). *See also Burchard v. Preferred Machining*, W.C. No. 4-652-824 (July 23, 2008)(declining to require application of medical treatment guidelines for carpal tunnel syndrome in determining issue of PTD); *Siminoe v. Worldwide Flight Services, Inc.*, W.C. No. 4-535-290 (November 21, 2006) (appropriate for ALJ to consider guidelines; however, deviation from medical treatment guidelines does not compel fact finder to disregard the opinion of that medical expert on issue of causal connection between work related injury and particular medical condition). However, it is appropriate for an ALJ to consider the treatment guidelines in determining the reasonableness and medical necessity of a particular treatment. *Stamey v. C2 Utility Contractors, Inc.*, W.C. Nos. 4-503-974 and 4-669-250 at *2 (August 21, 2008).

As found, Claimant proved by a preponderance of the evidence the medical maintenance treatment recommended by Dr. Reichhardt on July 21, 2025 is reasonable, necessary and causally related to Claimant's August 30, 2017 work injury. As Respondents have certified six sessions of chiropractic treatments, one Botox injection, and a three-month gym pass, the remaining treatment at issue involves an additional six

sessions of chiropractic treatment, one Botox injection every three months, and an additional nine months of a gym pass.

Claimant suffered a significant work injury in the form of a traumatic amputation of his right upper extremity. As a result of the work injury, Claimant suffers from a biomechanical imbalance, headaches and migraines, phantom arm pain, neck and thoracic pain, and periscapular pain. Claimant's medical records clearly document Claimant's diagnoses and ongoing symptoms. Claimant has consistently reported and credibly testified, and Dr. Reichhardt has consistently noted and opined, that chiropractic treatment and Botox injections help decrease the severity and frequency of Claimant's headaches and migraines, and that chiropractic treatment decreases Claimant's neck, thoracic pain and back pain and improves his biomechanical imbalance. Claimant has consistently reported and credibly testified, and Dr. Reichhardt has consistently noted and opined, that consistent chiropractic treatment and Botox injections improve Claimant's function. The medical records document that, without consistent treatment, Claimant's symptoms worsen, affecting his ability to function. Additionally, Dr. Reichhardt has credibly opined that a one-year gym pass is reasonable and necessary to allow Claimant to remain active and manage symptoms related to the work injury. Claimant credibly testified he is unable to perform certain recommended exercises at home due to the lack of access to certain equipment.

The ALJ has considered the Colorado Medical Treatment Guidelines with respect to the requested treatment. Nonetheless, based on the totality of the evidence, an additional six sessions of chiropractic treatment, one Botox injection every three months, and an additional nine-month gym pass is reasonable, necessary and related maintenance treatment to relieve the effects of Claimant's work injury or prevent further deterioration of his condition.

Recovery of Costs

Section 8-42-101 (5), C.R.S., provides:

> If any party files an application for hearing on whether the claimant is entitled to medical maintenance benefits recommended by an authorized treating physician that are unpaid and contested, and any requested medical maintenance benefit is admitted fewer than twenty days before the

hearing or ordered after application for hearing is filed, the court shall award the claimant all reasonable costs incurred in pursuing the medical benefit. Such costs do not include attorney fees.

Here, Claimant filed an AFH on Claimant's entitlement to medical maintenance benefits recommended by an ATP that were unpaid and contested. The requested medical maintenance benefit was both admitted to, in part, fewer than 20 days before the hearing and then, pursuant to this order, ordered in remaining part, after the AFH was filed. Accordingly, pursuant to § 8-42-101 (5), C.R.S., Claimant is entitled to all reasonable costs incurred in pursuing the medical benefit. As found, no evidence was offered regarding the alleged reasonable costs. Accordingly, determination of such amount is reserved for future determination.

Order

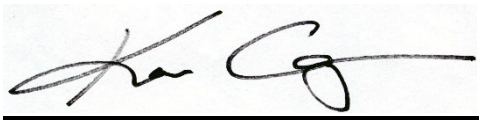
It is therefore ordered that:

1. Respondents shall authorize and pay for the additional six chiropractic sessions, one Botox injection every three months, and additional nine-month gym membership recommended by Dr. Reichhardt on July 21, 2025.
2. Claimant is entitled to receive reasonable costs incurred in pursuing the medical benefit pursuant to § 8-42-101 (5), C.R.S.
3. Any issues not resolved in this Order 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: September 24, 2025



Kara R. Cayce

Administrative Law Judge

Issues

- Whether Claimant has proven by a preponderance of the evidence that the recommended vestibular therapy is reasonable, necessary medical treatment related to his industrial injury?

- Whether Claimant has proven by a preponderance of the evidence that the recommended physical therapy is reasonable, necessary medical treatment related to his industrial injury?

- Whether Claimant has proven by a preponderance of the evidence that the recommended magnetic resonance image ("MRI") scan is reasonable, necessary medical treatment related to his industrial injury?

- Whether Claimant has proven by a preponderance of the evidence that the recommended prescription medication including Zofran, Maxalt and Amitriptyline are reasonable, necessary medical treatment related to his industrial injury?

Findings of Fact

1. Claimant sustained a compensable injury on December 9, 2022 when he was involved in a motor vehicle accident involving Claimant being rear ended at a high rate of speed. Claimant was knocked unconscious as a result of the motor vehicle accident. Claimant was taken from the accident to the emergency room via ambulance.

2. Following Claimant's injury, Claimant came under the care of Work Partners. Claimant was examined by physicians' assistant ("PA") Herrera on December 21, 2022. PA Herrera diagnosed Claimant with a concussion (with loss of

consciousness), head laceration, neck strain, headache, dizziness and visual disturbance.

3. Claimant returned to PA Herrera on December 28, 2022 with continued reports of symptoms related to his concussion. PA Herrera referred Claimant to Kari Mullaney for vestibular therapy and to a chiropractor.

4. Claimant was provided with vestibular therapy with Kari Mullaney initially on February 3, 2023 and returned for an additional therapy appointment on February 8, 2023, before the vestibular therapy was denied by Respondents.

5. Claimant continued to treat with Work Partners until February 15, 2023, after which time his medical treatment was denied after Respondents denied the claim arose out of the course and scope of his employment with Employer.

6. Claimant returned to Work Partners on April 9, 2024, after an order finding Claimant's claim to be compensable was affirmed on appeal. When Claimant returned to PA Herrera on April 9, 2024, PA Herrera noted that Claimant had sustained a neck sprain, concussion, right shoulder pain, left hip pain, bilateral vestibular dysfunction, lumbar sprain, post-concussive syndrome and diplopia. PA Herrera referred Claimant for chiropractic care, vestibular therapy, massage therapy, and consultation for prism glasses.

7. Claimant was examined by Dr. Politzer at Visual Eyes Eyecare on May 31, 2024. Dr. Politzer noted Claimant had disconjugate eye movement, eye skew, and ocular tilt. Dr. Politzer recommended vestibular therapy and an updated glasses prescription.

8. Claimant was referred back to Ms. Mullaney on December 11, 2024, at which time Ms. Mullaney noted Claimant had continued symptoms that included dizziness, nausea and vomiting, balance issues, light sensitivity, neck/shoulder/back pain, headaches and poor sleep. Claimant continued to treat with Ms. Mullaney attending seven vestibular therapy appointments through February 12, 2025.

However, when Claimant returned for an additional appointment on March 5, 2025, further vestibular therapy was denied by Respondents.

9. On June 5, 2024, PA Herrera prescribed Trazadone to assist with Claimant's reported inability to sleep. By November 18, 2024, PA Herrera was recommending medications including Zofran and cyclobenzaprine. PA Herrera continued this recommendation after her examination on January 29, 2025. By March 26, 2025, PA Herrera included in her recommendations for medications Zofran and Maxalt. Amitriptyline was added to the Zofran and Maxalt recommendations after PA Herrera examined Claimant on April 23, 2025. PA Herrera continued this recommendation for Zofran, Maxalt and amitriptyline after her examination on July 9, 2025.

10. Claimant testified at hearing that he felt he was making progress in vestibular therapy when the sessions were denied. Claimant's testimony is supported by the records of Ms. Mullaney which demonstrate Claimant making progress with the vestibular therapy including reporting that the KT tape helped his shoulder on January 29, 2025, and his exercises being better on February 5, 2025. Ms. Mullaney did note some elevated heart rate issues at the February 12, 2025 therapy session.

11. Claimant was subsequently referred to the Wellington Neurology Clinic where he was evaluated by PA Bradley Martin on March 21, 2025. PA Martin noted Claimant was being evaluated for his complaints of migraine headaches since his motor vehicle accident. Dr. Martin noted Claimant complained of headaches, dizziness with driving, right eye deviation, light sensitivity, irregular heart rate and word finding concerns along with a palsy. Following an examination, PA Martin recommended an MRI of the head, given Claimant's ocular palsy, vestibular therapy and medications including Maxalt and amitriptyline.

12. Claimant sought chiropractic treatment with Dr. Angello from January 23, 2023 through February 15, 2023 for four (4) visits and from April 22, 2024 through September 11, 2024 for seven (7) visits. The records from Dr. Angello indicate that Claimant consistently feels slightly better after the chiropractic treatment with his pain

in his low back decreasing from a 4 out of 10 to a three out of 10 over the course of the treatment.

13. Respondents obtained an independent medical examination ("IME") with Dr. Tashof Bernton on December 12, 2024. Dr. Bernton had previously evaluated Claimant on March 14, 2023, prior to the first hearing in this case on the issue of compensability. In the March 14, 2023 IME report, Dr. Bernton noted that he did not have the records for Claimant's chiropractic treatment, physical/vestibular therapy, or optometry notes, but opined in the report that the treatment appeared to be reasonable and consistent with the nature of Claimant's injuries.

14. In the December 12, 2024 IME report, Dr. Bernton noted that Claimant was now 2 years post accident and had multiple persistent complaints including headaches, nausea, dizziness, neck stiffness, low back complaints, and some persistent cognitive complaints. Dr. Bernton opined in his report that the likely cause of Claimant's persistent symptoms are predominantly somatoform, but recommended a work up to rule out potential objective contributions to Claimant's condition. Dr. Bernton recommended that Claimant be referred to an ENT specialist for evaluation as to the cause of Claimant's dizziness. Additionally, Dr. Bernton recommended lumbar and cervical MRI studies. Dr. Bernton opined that Claimant should not continue with physical therapy or vestibular therapy and should discontinue chiropractic treatment, other than to provide instruction and transfer to a home program. Dr. Bernton also recommended a follow up with Neurology for headache complaints.

15. Dr. Bernton testified at hearing consistent with his IME report. Dr. Bernton testified that he did not notice a palsy during his examination, but testified that if a palsy was present, a brain MRI would be recommended, but Dr. Bernton opined that the palsy was not related to Claimant's motor vehicle accident.

16. Claimant testified at hearing that due to the delays in receiving treatment based on the issue of compensability, and the denial of medical treatment after the claim was found compensable, he has not had the opportunity to make as much medical progress since his injury. Claimant testified that he still has symptoms related

to his concussion including visual disturbance, headaches, nausea, balance issues, lack of focus and sleep issues. Claimant testified that his right eye has been wandering since the motor vehicles accident. Claimant testified that he continues to experience neck and back pain and stiffness along with right arm atrophy.

17. The ALJ credits Claimant's testimony at hearing along with the medical records entered into evidence from Claimant's treating physicians and finds that Claimant has proven that it is more likely than not that the recommended vestibular therapy, MRI of the brain, chiropractic treatment and prescription medications represent reasonable medical treatment necessary to cure and relieve Claimant from the effects of his work injury.

18. The ALJ credits the medical records from Dr. Martin that identified a palsy being present and finds that a brain MRI is reasonable medical treatment necessary to cure and relieve the Claimant from the effects of the industrial injury. The ALJ further credits Claimant's testimony with regard to the onset of his eye wandering and finds that Claimant has established that it is more probable than not that the recommendation for the brain MRI is related to his compensable work injury.

19. The ALJ credits the records from Ms. Mullaney and Work Partners and finds that Claimant has established that he was making progress with the vestibular therapy prior to the authorization for the vestibular therapy being revoked. Notably, the records from Ms. Mullaney document Claimant making progress with the vestibular therapy prior to authorization for the treatment being revoked.

20. The ALJ credits Claimant's testimony at hearing along with the records from Dr. Angello and finds that Claimant has established that it is more probable than not that the recommended chiropractic treatment is reasonable medical treatment necessary to cure and relieve Claimant from the effects of his industrial injury.

21. The ALJ credits the Claimant's testimony at hearing along with the records from Work Partners and finds that Claimant has established that it is more probable than not that prescription medications including Zolfran, Maxalt and amitriptyline are reasonable and necessary medical treatment related to Claimant's work injury.

22. The ALJ acknowledges the contrary opinions expressed by Dr. Bernton, but credits the testimony of Claimant along with the supporting medical records over the opinions expressed by Dr. Bernton in his report and testimony at hearing.

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. 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).

4. As found, Claimant has established by a preponderance of the evidence that the recommended medical treatment including the vestibular therapy, the brain MRI and the chiropractic treatment are reasonable medical treatment necessary to cure and relieve Claimant from the effects of his industrial injury.

5. As found, based on Claimant's testimony and the supporting records provided by Ms. Mullaney and Work Partners, Claimant has proven by a preponderance of the evidence that the recommended vestibular therapy is reasonable, necessary and related to Claimant's work injury.

6. As found, based on Claimant's testimony and the supporting records provided by PA Martin, Claimant has proven by a preponderance of the evidence that the recommended brain MRI is reasonable, necessary and related to Claimant's work injury.

7. As found, based on Claimant's testimony and the supporting records from Dr. Angello, Claimant has proven by a preponderance of the evidence that the recommended chiropractic treatment is reasonable, necessary and related to Claimant's work injury. As noted, the chiropractic records demonstrate that Claimant was reporting improvement with the chiropractic care provided by Dr. Angello.

8. As found, based on Claimant's testimony and the supporting records provided by Work Partners, Claimant has proven by a preponderance of the evidence that the recommended prescription medications including Zofran, Maxalt and amitriptyline is reasonable and necessary medical treatment related to Claimant's work injury.

Order

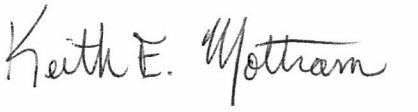
It is therefore ordered that:

1. Respondents shall provide reasonable medical treatment necessary to cure and relieve Claimant from the effects of the work injury including vestibular therapy, the brain MRI recommended by PA Martin, chiropractic treatment provided by Dr. Angello and prescription medication including Zofran, Maxalt and amitriptyline.

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: September 25, 2025



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

Office of Administrative Courts
State of Colorado
Workers' Compensation No. WC 5-284-725-001

Issues

1. Whether Claimant established by a preponderance of the evidence that she is entitle to temporary total disability (TTD) benefits from January 31, 2025 until terminated by statute.

Findings of Fact

1. Claimant worked for Employer as a dental assistant beginning in late 2023. On September 12, 2024, Claimant sustained an admitted injury when a hand-held x-ray machine fell on her left leg and ankle, causing an injury.

2. On September 18, 2025, Claimant saw Patrick Antonio, D.O., at Concentra for her injuries. Dr. Antonio diagnosed Claimant with a crush injury to the left ankle, and assigned work restrictions which required her to remain seated for 80% of her shift. (Ex. I).

3. On September 20, 2024, Claimant saw Paul Plocke, M.D., at Concentra. Dr. Plocek increased Claimant's work restriction to remaining seated 95% of her shift, and allowing breaks for leg elevation for five minutes every hour. (Ex. J).

4. On October 17, 2024, Claimant's work restriction was relaxed to 85% seated, and allowing breaks for leg elevation for five minutes every hour. (Ex. L).

5. On October 31, 2024, Claimant underwent an MRI of the left ankle which showed mild Achilles tendinosis, and sequelae of a chronic lateral ankle sprain. (Ex. 4).

6. On November 12, 2024, Claimant saw Dr. Antonio and reported no improvement in her left ankle. She reported a burning and prickly sensation on the bottom of her foot, and that her symptoms worsened throughout the day, and with physical therapy. Claimant's work restrictions remained unchanged. (Ex. 3).

7. On November 20, 2024, Claimant saw orthopedic foot and ankle specialist, Stuart Myers, M.D. Dr. Myers noted that the findings on Claimant's MRI were incidental, and

ruled out any significant structural or mechanical abnormality. He noted that patients with crush-type injuries such as Claimants may experience altered sensation or allodynia. He recommended a pneumatic walking boot, and prescribed gabapentin. (Ex. M).

8. On December 4, 2024, Claimant saw Nancy Strain, D.O., at Concentra and reported no change in her ankle. Claimant reported receiving the walking boot prescribed by Dr. Myers the day before, and reported that the boot was hurting her and caused bumps and ankle swelling. Dr. Myers noted that she did not see bumps in her evaluation. She noted very mild lateral ankle swelling. Claimant's work restrictions remained unchanged at 85% seated, needing five minutes per hour for leg elevation. (Ex. K).

9. On September 18, 2024, Dr. Myers authored a letter to Insurer indicating Claimant had not improved with immobilization (*i.e.*, the walking boot), and that her symptoms did not correlate with the underlying imaging findings. He recommended a physiatry referral, indicating that no further orthopedic evaluation or diagnostic testing was needed. He further recommended that Claimant discontinue use of the walking boot. (Ex. M).

10. On December 31, 2024, Claimant saw Jeffrey Wallace, P.A., at Concentra, noting that her condition had worsened, and that she was now having pain going into her hip. Mr. Wallace documented examinations of Claimant's left lower leg, left ankle, and left foot/toes. With the exception of tenderness to light palpation in the distal and mid anterior leg, the examination of all three areas was normal. He further noted that Claimant's gait was normal with full weightbearing. Mr. Wallace recommended an EMG/NCS study and MRI of Claimant's left tibia and fibula to evaluate for an occult fracture, noting that if these tests were normal, Claimant would likely be at MMI with no maintenance care. Mr. Wallace modified Claimant's work restrictions to seated work 50% of her shift, with the same leg elevation recommendations. (Ex. 3).

11. On January 7, 2025, Employer contacted Dr. Myers and provided a description of a modified duty position Employer was proposing for Claimant. The modified job duties included assisting doctors in "IM duties" examinations which would be seated 75% of the time, and assisting at the front desk answering phones and clerical work. On January 9, 2025, Dr. Myers signed the offer of modified duty indicating that he approved of the duties, and that Claimant had the physical capability to perform all of the job duties offered.

12. Employer sent Claimant a letter with the modified duty offer on January 9, 2025, which Claimant testified that she received. Claimant testified that the modified offer was a seventy-five percent seated position, but that she did not return to work "Because it was ninety-five percent standing, and my – I can't be standing on my left leg much." Claimant later testified the offer of modified duty did not specify her modified duties, and also that she did not remember receiving the letter which included the seventy-five percent seated job duties. Claimant's testimony was not credible.

13. On January 17, 2025, Claimant underwent an EMG/NCV study of her left leg. The studies were consistent with a crush injury to the sural and distal peroneal nerves, for which readings could not be obtained. (Ex. 5).

14. Claimant testified that she verbally accepted Employe's offer of modified employment on January 24, 2025, and did not recall whether she was supposed to return to work on the following Monday, January 27, 2025.

15. A lower leg MRI was performed on January 28, 2025, which did not identify any fracture, and showed nonspecific subcutaneous and soft tissue edema adjacent to the anterior medial margin of the mid and distal tibia, and mild diffuse circumferential subcutaneous edema. (Ex. 4).

16. On January 29, 2025, Employer sent Claimant a letter indicating that on January 24, 2025, Claimant had indicated she would accept the offer of modified employment from January 7, 2025, and would return to work on January 27, 2025. Claimant did not return to work on January 27, 2025, January 28, 2025, or January 29, 2025. Employer indicated that Claimant was considered to have abandoned her job, and her employment was terminated. (Ex. R, p. 162). Claimant testified that she was terminated on or about January 28, 2025 for violation of Employer's attendance policy. Claimant has not worked in any capacity since January 31, 2025.

17. On January 31, 2025, Claimant returned to Concentra and saw Marie Mueller, NP, whom she had not previously seen. Claimant reported experiencing increased pain since the EMG study, and was having pain radiating to her left gluteal region. Ms. Mueller's physical examination of Claimant's left lower leg, ankle, and foot/toes was virtually identical to the examination documented by Mr. Wallace one month earlier, and did not

document additional or different objective findings. Claimant was referred to a physiatrist, and her work restrictions were increased to being seated 80% of her work shift, with the same requirement for breaks for leg elevation. (Ex. 3). The record contains no explanation or rationale for increasing Claimant's work restrictions from her then-existing restriction of 50% seated to being seated 80% of her shift.

18. Claimant's next documented medical visit was on March 18, 2025, when she saw Samuel Chan, M.D. Dr. Chan reviewed Claimant's medical records and conducted an examination. He noted that imaging and EMG studies did not demonstrate significant pathology, and that EMG studies did not explain the diffuse nature of her pain complaints. He recommended a prescription for Lyrica and lidocaine ointment. (Ex. P).

19. On March 19, 2025, Claimant saw Dr. Antonio reporting that she had ongoing pain that worsened with weather changes, and walking or standing too long. Claimant reported that she had not worked because Employer was not able to accommodate her work restrictions. On examination, Dr. Antonio's examination was consistent with Mr. Wallace's December 31, 2024 examination, and Ms. Mueller's January 31, 2025 examination. Claimant's work restrictions remained unmodified. (Ex. 3).

20. On March 31, 2025, PA Wallace conducted a telehealth visit with Claimant. Claimant reported continued pain and tingling in her entire foot. She had stopped taking the Lyrica prescribed by Dr. Chan, reporting that it did not provide pain relief. Mr. Wallace noted that no pathology was found to explain Claimant's symptoms, and modified Claimant's work restrictions to 75% seated with five-minute breaks each hour. (Ex.

21. On April 9, 2025, Claimant underwent a bone scan which showed no findings to support a diagnosis of lower extremity chronic regional pain syndrome. (Ex. 4).

22. Claimant returned to Dr. Antonio on May 19, 2025 reporting side effects from Lyrica prescribed by Dr. Chan, as well as ongoing left foot and ankle pain, with a pin prick sensations. Dr. Antonio indicated that Claimant was "may be approaching MMI if there are no diagnostic or treatment options," and that Claimant may require permanent work restrictions. Claimant's temporary work restrictions remained unchanged. (Ex. 3).

23. Elizabeth Garcia is an HR Partner II for Employer and testified at hearing. Ms. Garcia testified that she sent the modified duty letter signed by Dr. Myers to Claimant by both email and certified mail. She testified that in conversations with Claimant after issuance of the modified duty letter, Claimant acknowledged that she received the letter, and understood the job duties, but did not agree with the restrictions and duties. Ms. Garcia testified that on January 24, 2025, Claimant verbally indicated she would return to work and then did not return on January 27, 2025. Ms. Garcia indicated Claimant was terminated after not returning to work, and not calling prior to her absence.

24. By refusing to return to work after accepting the offer of modified employment, Claimant voluntarily terminated her employment with Employer on January 29, 2027.

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).

Temporary Total Disability Benefits

Under the termination statutes, §§ 8-42-103(1)(g) and 8-42-105(4), C.R.S., an injured worker who is responsible for termination of employment is not entitled to temporary disability benefits absent a worsening of condition that reestablishes the causal connection between the work-related injury and the wage loss. *Delfosse v. Home Services Heroes Inc.*, W.C. No. 5-075-625-001 (ICAO Apr. 26, 2021), *citing Anderson v. Longmont Toyota, Inc.*, 102 P.3d 323 (Colo. 2004). "A wage loss is caused by a worsened condition if the worsening results in physical limitations or restrictions which did not exist at the time of the termination, and these limitations or restrictions cause a limitation on the claimant's temporary earning capacity which did not exist when the claimant caused the termination." *Id*. The claimant bears the burden of proof to establish a worsening of condition and resulting wage loss. *Id*.

A post-termination increase in work restrictions is not *per se* evidence of a worsening of condition and whether a changed condition caused the claimant's wage loss is a factual question for the ALJ. *See Apex Transp., Inc. v. Indus. Claim Appeals Office*, 321 P.3d 630, 632 (Colo.App.2014). An ALJ may consider several factors in determining

that a worsened condition, and not an intervening termination of employment, caused the claimant's wage loss. *Id.* at 633.

Claimant has failed to establish by a preponderance of the evidence that she suffered a post-termination change in condition. In the two months before her termination Claimant's physicians progressively relaxed her work restrictions to the point where she was recommended to remain seated for 50% of her shift. Employer offered Claimant a modified position permitting her to remain seated 75% of the time, and which was approved by Dr. Myers, one of Claimant's ATPs. Although Claimant accepted the modified duty offer, she elected not to return to work, and was terminated for violation of Employer's attendance policy on January 29, 2025. Two days later, on January 31, 2025, Claimant saw a provider, NP Mueller, whom she had not previously seen and reported increased subjective complaints, and Ms. Mueller substantially increased Claimant's work restrictions to an 80% seated position without explanation, or documentation of any change in Claimant's physical condition. No credible evidence was admitted explaining the rationale for increasing Claimant's work restrictions on January 31, 2025.

Notwithstanding the increase in work restrictions, no credible evidence was admitted indicating that Claimant's physical condition changed between December 31, 2024 and January 31, 2025, that her diagnosis had changed, or that she had suffered a worsening in her physical status. The examination upon which Claimant's increased work restrictions were based was Ms. Mueller's January 31, 2025 physical examination. However, Ms. Mueller's examination findings were virtually identical to Mr. Wallace's physical examination on December 31, 2025, and did not document any different objective findings. From this, the ALJ infers that Claimant's increased work restrictions were based on Claimant's subjective reports of increased symptoms, rather than a worsening of her physical condition. Moreover, later examinations did not document any change in Claimant's physical condition. Claimant's reports of increased pain are not explained by imaging studies, EMG/NCV testing, or a bone scan, none of which demonstrated any pathology correlated to her reported symptoms. Claimant has failed to meet her burden of establishing that she experienced a worsening of her work injury or that her loss of earning capacity after her termination is attributable to her work injury. Claimant's request for TTD benefits after January 31, 2025 is denied.

Order

It is therefore ordered that:

1. Claimant's claim for temporary disability benefits after January 31, 2025 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: September 25, 2025

Steven R. Kabler
Administrative Law Judge

Office of Administrative Courts

State of Colorado

Workers' Compensation No. WC 5-176-695-008

Issues

The issues addressed in this decision concern Claimant's entitlement to medical benefits. The specific questions answered are:

- Whether Claimant established, by a preponderance of evidence, that he requires 24-hour home health care/supervision.[1]

- Whether Claimant has established, by a preponderance of evidence, the need for additional home modifications and durable medical equipment, including a handicapped accessible vehicle designed to accommodate Claimant's physical limitations.[2]

- Whether Claimant's daughters ([redacted] and [redacted] [redacted] should be deemed authorized providers for the purpose of providing home health care/supervision.

Findings of Fact

Based upon the evidence presented at hearing along with the evidentiary deposition testimony of Drs. Reichhardt, Primack, and Kenneally, the ALJ enters the following findings of fact:

Claimant's June 27, 2021, Injury and Subsequent Treatment

[1] Respondent's stipulated that they have authorized the current amount of home health care of up to 6 hours per week recommended by Dr. Reichardt.

[2] Respondents stipulated that they have authorized specific home modifications to the bathroom / shower, a ramp in Claimant's garage, and the provision of a basement stairglide.

1. The above-referenced claim involves an admitted injury to Claimant's left foot, which was struck with a jet of fluid from a high-pressure hose on June 27, 2021. Claimant suffered serious wounds to the foot as the concentrated stream of fluid shot through his boot and a tore into the dorsum of his left foot. (RHE J). It was estimated that Claimant's foot was subjected to 50,000 pounds of pressure per square inch (psi). (RHE K). Claimant's wounds became infected leading to the development of an abscess and compartment syndrome . (RHE I, p. 63; CHE 22, p. 599). He was treated initially with IV antibiotics; however, he would undergo extensive irrigation and debridement of his wounds on June 29, 2021, and July 1, 2021. (CHE 22, pp. 597-600). During Claimant's 6/29/2021 surgery, Dr. George Le discovered an extensive amount of a "petroleum type oil substance in [the] 1st mpj extending proximally to the lateral foot. *Id*. at 599. Claimant required a second operative procedure a few days later on July 1, 2021 at which time he placed a wound VAC. While there was no purulence or oil residue noted proximally in the foot, Dr. Le discovered an additional 3 cc of purulent greyish oil discharge in the first interspace and first metatarsal of the left foot, which he irrigated and debrided. *Id*. at 597. On July 7, 2021, infectious disease specialist, Dr. Jacob Chua Liao Ong, recommended continued IV antibiotic therapy and noted that he would need guidance from the case manager regarding whether to discharge Claimant to a skilled "nursing facility rehab facility" or elsewhere with home health services. (CHE 90). Because Claimant's residence was not a suitable location to return to, he was discharged to his previous residence (5802 West 32nd Street, Greeley) under the care of his ex-wife, who was living at the residence along with his adult children on July 8, 2021. (CHE 28, p. 627). While the plan was to discharge Claimant with HHC (CHE 28, p. 639), the discharge notes do not contain any order for home health care. *Id*. at 627-629.

2. Claimant's subsequent treatment history has been protracted, and the medical record is voluminous. Indeed, Claimant's treatment has spanned several years and both parties have submitted in excess of a 1,000 pages of exhibits to the ALJ for review.

3. On July 23, 2021, Dr. Oscar Sanders, Claimant's primary authorized

treating physician (ATP), counseled Claimant to continue his wound care and dressings as instructed. (RHE I, p. 70).

4. On July 27, 2021, Dr. Le, expressed concern that Claimant was developing "some complex regional pain syndrome in his left secondary to the traumatic power washing incident." (CHE 22, p. 588). He recommended that Claimant be evaluated by a pain management doctor to "manage his pain and assess for complex regional pain syndrome." *Id*.

5. Claimant returned to Dr. Sanders in follow-up on August 10, 2021. Due to Claimant's persistent pain, Dr. Sanders increased his Gabapentin to 400 mg, three times a day and referred him to Reichhardt for further assessment for possible complex regional pain syndrome (CRPS). (RHE I, p. 76).

6. Dr. Sanders referred Claimant to Majia Bruzas, Psy.D., who performed an Initial evaluation on August 30, 2021. Testing showed Claimant had a very high level of somatic complaints and high symptom dependency scores. (CHE 29, pp. 760-761, 763). Claimant's psychometric testing signified that he viewed himself as functionally disabled, which Dr. Bruzas noted could lead to overreliance on others for support which in turn could cause those persons reinforcing his excessive support-seeking behavior. *Id.* at 763. Moreover, Claimant's testing profile demonstrated very low defensiveness scores, i.e. at the 2nd percentile, which Dr. Bruzas noted was consistent with a patient who was openly expressing the difficulties he was experiencing. Id. at 760. Based upon Claimant very low defensiveness scores, Dr. Bruzas noted: "It is possible that [Claimant] is trying to strongly convey the severity of his difficult life circumstances so he gets necessary medical and psychological treatment or he may be magnifying his life difficulties for secondary gain. *Id.*

7. Throughout her course of care, Dr. Bruzas documented Claimant's persistent mental health complaints and physical limitations which he reported were impacting his ADLs; including severe pain described as shocking, needle-like, burning, or

excessively hot, often accompanied by extreme hypersensitivity to light touch, swelling, discoloration and stiffness. He reported anxiety; hopelessness; social isolation; frustration from not working; sadness and grief from loss of his independence with ADLs; guilt from burdening his family; forgetfulness; mental fog; poor concentration exacerbated by sleep disturbance; fatigue; daytime somnolence; headaches; hypersensitivity to light touch (e.g. bedding causes pain); swelling; and dependence upon his knee scooter. He reported multiple panic-like episodes. Role reversal with his daughters bothered him. (CHE 29, pp. pp. 648-746).

8. Dr. Reichhardt evaluated Claimant September 8, 2021, due to CRPS Concerns. (RHE J, p. 758). Dr. Reichhardt specializes in pain management and physical medicine and rehabilitation (PM&R). He noted pain and functional limitations with working, walking, driving, cleaning and showering. He recommended a lumbar sympathetic block[3], a QSART, thermogram and anti-depressants. (RHE J, pp. 759-762).

9. On October 26, 2021, Dr. Schakaraschwili completed a thermogram and administered a autonomic battery (QSART) which were positive for CRPS. (See CHE 18, pp. 198-213). Respondents do not dispute Claimant's CRPS diagnosis.

10. As of November 2, 2021, Dr. Reichhardt noted Claimant demonstrated "good balance and coordination" and an ability to "manage with his knee walker well". (RHE J, p. 771). On January 26, 2022, Dr. Sanders authored a letter addressed to "To whom it may concern," noting Claimant's limited mobility which limited his ADLs and homeowner duties. *Id*. at 148. There is no evidence Dr. Sanders made any recommendations for care at this time or otherwise identify the purpose for his letter. Physical therapy (PT) records dated May 16, 2022 was unable to bear weight on his left foot. (CHE 37, p. 867). During his December 9, 2022 PT session, Claimant reported that

[3] Dr. Reichhardt decided to "hold off" on performing a sympathetic block due to the increased risk associated with the procedure due to Claimant's need for anti-coagulation due to a previous deep vein thrombosis. (RHE J, p. 762).

there was nothing that made his left foot better aside from elevating and keeping it unweighted. *Id*. at 845.

11. On April 25, 2022, Claimant informed UCHealth Pulmonology Clinic during a sleep consultation appointment that he would wake up 2 times per night from pain, without reference to waking due to needing to use the bathroom. (CHE 43, p. 929).

12. Respondents requested the opinions of Dr. Mark Paz who examined Claimant on August 14, 2022. (RHE M). During this independent medical examination (IME), Claimant reported he tries to help around the house and wash dishes but could not shower without assistance. He noted that he sometimes required assistance getting off the toilet but otherwise toileted himself.[4] He was able to feed himself. He did not do laundry, mow the grass or drive his vehicle. He also required assistance putting on his pants and socks and shoes on his right foot. *Id.* at p. 989. Claimant reported using a scooter for mobility outside the home and crutches inside the home emphasizing that he did not "participate in weightbearing with the left lower leg secondary to left foot pain. *Id*. at 988. Physical examination of the left foot revealed a grossly abnormal appearance consistent with the characteristics of CRPS. *Id*. at 992, 996. Dr. Paz noted reviewing surveillance which showed Claimant ambulating, with the use of a leg scooter without the constant distress and discomfort he exhibited at the IME. Indeed, Dr. Paz noted that Claimant ambulated with fluid mobility and movement without pain behaviors. *Id.* at 996.

13. On September 30, 2022, Dr. Reichhardt noted reviewing surveillance video from June 2022, which showed Claimant to be "quite adept with his use of the knee walker" even operating a cell phone while moving with his knee walker. (RHE J, pp. 822-823).

14. On January 13, 2023, Dr. Sanders noted discussing a home health referral

[4] Claimant reported a couple of incidences of incontinence in bed because of difficulty getting out f the bed and to the toilet. (RHE M, p. 989).

for essential services due to Claimant's "difficulty performing ADLs, such as shoveling snow that has even prevented him from being able to attend the pool therapy" because he could not negotiate his driveway covered in snow. (RHE I, p. 315). Dr. Sanders noted that Claimant had "very minimal" assistance at home, and as such believed it would be reasonable to consider providing him with this service." *Id*. Dr. Sanders placed the referral. *Id*. Dr. Paz reviewed the request and issued a report dated January 31, 2023. (RHE M, pp. 1019-1023). Dr. Paz recommended denial of the request based upon his understanding from his August 14, 2022, IME, that Claimant's daughter were available to assist him at home. *Id*. at 1022.

15. On Feb. 10, 2023, Dr. Sanders addressed Dr. Paz's recommended denial noting as follows: "After discussing the report findings with patient and his daughters, it appears his daughters are only present in the home with him during the evenings. Specifically, from the hours of 0732-1700, patient has no assistance in the home . . ." (RHE I, p. 337). Dr. Sanders reiterated his opinion that the lack of snow removal directly interfered with Claimant's ability to access medical treatment. Thus, Dr. Sanders concluded that, "it would be reasonable to reconsider assistance with services such as snow removal. *Id*. Dr. Paz then requested delineation of specific services based upon Dr. Sanders' note requesting services "such as" snow removal. (RHE M, p. 1024).

16. On Mar. 7, 2023, Dr. Sanders recommended a HHC assessment "to better define Claimant's essential services needs around the home." He recorded that Claimant "is often times having difficulty even getting out of bed without assistance, due to his pain." (RHE I, p. 372).

17. On Oct. 23, 2023, Dr. Reichhardt discounted amputation of the left foot/ankle as a treatment option, noting that the results of such a procedure were very unpredictable due to the centralized nature of CRPS and the "substantial risk" that Claimant could have phantom limb pain that would be no better or even worse than his current pain. (RHE J p. 893)

18. Dr. Reichhardt placed Claimant at MMI on February 20, 2024, with a 60% IR. (RHE J, pp. 907-910). Claimant inquired about an electric scooter, but Dr. Reichhardt discouraged the same due to iatrogenic deconditioning concerns. *Id.* at 909.

The Home Evaluations of Kim Mills, Daisy Serrano-Soto, and Drs. Primack and Sanders

19. On May 1, 2024, Dr. Sanders discussed home care needs with Claimant and his daughter. He reiterated his opinion that it would be reasonable to have a home health evaluation completed to determine possible assistance for ADLs. (RHE I, p. 640).

20. Claimant retained Occupational Therapist (OT) Kim Mills to perform a Home evaluation. Ms. Mills completed her evaluation of July 29, 2024. (RHE O, pp. 1050-1054). During this evaluation, Claimant reported he could transfer to his bed, and he demonstrated independence in bed mobility. *Id.* Nonetheless, he reported requiring total assistance to complete his activities of daily living (ADLs). *Id.* Ms. Mills recommended raised toilet seats, a toilet grab bar, shower modifications, a master bath pocket door, a ramp to the garage, a sidewalk from the driveway to the back yard, a stairglide to the basement, a tub transfer bench, a wheelchair, and 24/7 home care for safe transfers, mobility, and emotional needs. *Id.* at 1052.

21. Daisy Serrano-Soto, an RN with Brightstar Care performed a home evaluation pursuant to Dr. Sanders' referral. Nurse Serrano-Soto completed her evaluation on October 1, 2024. (See RHE N, pp. 1045-1048; CHE 8, p. 36-39). During her evaluation, Claimant's daughters informed Nurse Serrano-Soto that Claimant could not be home alone at any time. *Id.* at 1045; CHE 8, p. 36. Nurse Serrano-Soto relied upon the daughters' statement that they provided full time care, that they "[didn't] feel like daughters anymore" and that they "[didn't] have a life". *Id*. at 1047, 38. She recommended CNA and nurse level care. *Id.* She did not state how much care per day he required, other than to state the daughters reported he required "full supervision." *Id.*

22. Dr. Suzanne Kenneally, Psy.D., performed an IME for Respondents on October 3, 2024. (RHE H, pp.). Claimant presented as symptom focused with extreme pain behaviors that were markedly atypical in chronic pain patients. *Id.* at 54. Testing revealed an intellectual disability disorder, which limited Claimant's ability to adjust to his injury. *Id.* at 57. According to Dr. Kenneally, it was clear from Claimant's unassisted function during the IME, that he was able to function independently. *Id.* She noted that the home healthcare assessment from Brightstar appeared to be based upon "[Claimant] and his family's subjective report of symptoms and existing care-giving behaviors", and as such substantially ("grossly") overstated his daily care needs. Dr. Kenneally recommended that the family commit to changing Claimant's home environment and not enable his perceived need for care. *Id.*

23. Dr. Primack performed an IME for Respondents on October 9, 2024. (RHE G, pp. 34-43). Claimant reported to Dr. Primack that he was independent in bed mobility and was able to get dressed. *Id.* at 41. Dr. Primack noted the entirety of Claimant's limitations were based on his pain, and that he should be completely independent with three working limbs. *Id.* Claimant's daughter was present during this examination. She immediately attempted to help Claimant as he started to transfer from his scooter, at which time, Dr. Primack instructed him to try complete the transfer himself, which he was able to do. *Id.* He also noted Claimant had fear avoidance of Dr. Primack touching his leg, but Claimant had the leg wrapped with more pressure already than his touch would apply. *Id.* at 42. Dr. Primack stated kinesiophobia and catastrophic thought processing was driving a belief in Claimant that he was an invalid. *Id.* He reviewed with Claimant and his daughter that that he had three functioning limbs and that in a rehabilitation model there would be no need for any healthcare aide. He reiterated to Claimant that he was safe to put weight on his left lower extremity. He opined 24/7 care was not reasonable and would be harmful, noting that there was a "huge issue" with Claimant being conditioned to be disabled. *Id.* He recommended that he perform a home visit to be able to address the question of home modifications and specific home assistance in detail. *Id.*

24. On October 22, 2024, Dr. Sanders noted being informed that the Brightstar

report recommended 24/7 care. (RHE I, pp. 702-703). He noted that Claimant's daughter noted that she had experienced significant life stressors in attempting to become a full-time caregiver to her father. Id. at 703. She reported that she had recently been divorced and felt like she was neglecting her own children and that her sister had delayed her education to help with Claimant's care. Id. Collectively they felt that "full time home health assistance with ADLs, as well as potential PT/OT and home modifications would provide an unbelievable improvement to the overall quality of life". *Id*. Dr. Sanders noted that he counseled Claimant that he wanted to review the home care recommendations with Dr. Reichhardt and referenced that there was a *Samms* conference set to "help resolve these issues." *Id.* Accordingly, he did not recommend specific home care for Claimant at this appointment. *Id.*

25. Dr. Reichhardt re-evaluated Claimant and commented upon the need for home assistance on December 16, 2024. (RHE J, pp. 912-914). During this encounter, Claimant informed Dr. Reichhardt that he was independent with dressing, had difficulty with meal prep, and required assistance with laundry, shopping, house cleaning, clearing snow, home maintenance, medication setup, finances, and bathing. *Id*. at 912. Dr. Reichhardt spoke with Dr. Sanders, and they agreed to hold off on commenting on Claimant's home care needs pending a home evaluation to be done by Drs. Sanders and Primack, and review of additional records. *Id.* at 914.

26. Dr. Primack and Dr. Sanders performed a joint home visit and issued a joint report following that visit. (See RHE K). Their report notes the need for grab bars for the bed to make for easier transfers, modifications to the bathroom, including for the shower, a ramp from the garage to the kitchen and the potential for occupational therapy visits, but they did not believe Claimant required 24/7 home care. *Id.* at 947. They concluded that Claimant would require 2-3 hours per week for showering/bathing, but anything further would be contraindicated. *Id.*

27. Dr. Reichhardt reviewed the joint report on December 19, 2024, agreeing

Claimant did not require 24/7 care, which he felt would contribute to iatrogenic disability. (RHE J, p. 917). He agreed 2-3 hours of home care per week was reasonable, as would be the recommended modifications. *Id.* On January 23, 2025, Dr. Sanders noted Claimant and his daughter requested additional assistance, but they did not identify why. (RHE I, p. 721).

28. ComForCare was retained to provide the 2-3 hours per week of home health assistance, and they performed an initial assessment on January 30, 2025. (RHE Q, pp. 1188-1195). Records thereafter document provision of care as requested and authorized. *Id.* at 1196-1201. On February 6, 2025, Dr. Reichhardt discussed with Claimant and his daughter why they wanted more home assistance. (RHE J, pp. 924-925). Claimant's daughter advised if he hit his foot on the toilet in the bathroom he would be in pain, that he needed assistance with laundry and social interaction. *Id*. She noted that the family takes him for walks, but they "do not have any other reasons they feel he needs home care." *Id.* Dr. Reichhardt stated it would be reasonable to have 4-6 hours per week of care for bathing and laundry, but he deferred to Dr. Moe on further need for social interaction. *Id.* at 924-926; see also, FOF ¶ 31.

29. Ms. Serrano-Soto performed a second home care evaluation on February 24, 2025, this time by direct retention from Claimant. (See CHE 8, pp. 40-43). During this evaluation, Claimant was noted to be in bed writhing due to pain. (CHE 8, p. 42). Claimant reported that nothing helped his pain and that he just "sucks it up". *Id.* He reported yelling at his daughters because he hurts. *Id.* during her evaluation, Nurse Serrano-Soto assessed the condition of Claimant's foot, noting that he was "unable to lay still and was mumbling explicatives repeatedly under his breath while [she] was palpating any part of his left lower extremity". *Id*. Following this evaluation, Nurse Serrano-Soto recommended constant care by CNAs or nurses.

The Life Care Plan of Elizabeth Kattman

30. Claimant retained Elizabeth Kattman, who works as a life care planner, to

evaluate the case. Ms. Kattman issued a report dated February 24, 2025. (CHE 15). As part of her evaluation, Ms. Kattman obtained information from Claimant's youngest daughter, [redacted] reported that Claimant was assisted with all transfers and that if he needed assistance while in bed, he calls or rings a bell. She advised that he needed help at night with positioning his pillows and body. She told Ms. Kattman that Claimant had episodes of urinary incontinence at night and that the never leave him alone. She relayed that she has helped him get up out of bed to the bathroom as many as four times per night. She also reported that all meal preparation and chores were performed for Claimant. *Id.* at 141-143. Claimant and his oldest daughter, [redacted] reported similar levels of assistance regarding transfers, helping Claimant dress, bathe, set up hygiene routines, and doing all cleaning or household tasks. *Id.* at pp. 144-147. Ms. Kattman opined that Claimant required 24/7 support. *Id.* at 149. She recommended a case manager for medication and appointment management, quarterly house cleanings, 10-15 hours yearly of handyman services, and 35-45 hours yearly for snow removal and yard work. *Id.* at pp. 151-152. She recommended a van with a ramp for an electric scooter, bathroom modifications, a new garage ramp, a stairglide, and a sidewalk from the driveway to backyard. *Id.* at pp. 152-154. Dr. Sanders noted reviewing the reports of Brightstar and Ms. Kattman on February 27, 2025, but did not recommend specific care at that time. (RHE I, p. 739).

The March 6, 2025, Samms Conference

31. A *Samms* conference occurred March 6, 2025. (See CHE *83).*[5] Drs. Reichhardt, Sanders, Primack, and Kenneally participated. Dr. Reichhardt recommended 4-6 hours per week of care for bathing, laundry, and housecleaning. *P. 45.* He stated Claimant does not need 24/7 care, as he is not a fall risk. *PP. 41, 48-49*. Dr. Sanders agreed, noting Claimant can transition by himself and does not require his daughters to get him in and out of his chair or to transition him from sit to stand positions. *PP. 56-57*. Dr. Reichhardt authored a note for his recommendation for 4-6 hours of home assistance per week, as well as recommendations for a roll-in shower, shower chair, handheld

[5] Citations to the *Samms* conference transcript will be by page number of the transcript within the Exhibit.

shower, grab bars for the toilet and shower, a raised toilet seat, garage door ramp, stairlift/stairglide, and bed rail. (See RHE J, p.940). On March 7, 2025, Dr. Reichhardt noted that Dr. Moe advised that Claimant did not require care for psychological or social issues. *Id.* at 941. Dr. Sanders, on April 3, 2025, told Claimant he agreed with Dr. Reichhardt that 24/7 care was not indicated. (RHE I, pp. 753-754). On April 15, 2025, Dr. Moe noted Claimant and his daughter requested greater home care for physical and social assistance. (RHE L, p. 983). Dr. Moe did not agree, noting that limiting the extent care would increase his social functioning. *Id.* at *984*. On May 29, 2025, Dr. Bruzas noted that Claimant informed her he was receiving 6 hours of care for showering, cleaning, laundry, and home exercises. (RHE S). He was appreciative of the help and was sleeping 5-6 hours per night. *Id.*

The Hearing Testimony Daisy Serrano-Soto

32. Nurse Serrano-Soto testified as the Director of Nursing for Bright Star Care, a company that provides skilled and unskilled home care for patients discharged from a variety of medical facilities to their homes. She holds a Master of Nursing level education. Nurse Serrano-Soto testified that at the time of her October 2024 evaluation, Claimant was in bed screaming, and he was unable to get up or adjust his positioning. She concluded that Claimant was a fall risk and required constant assistance due to weakness, imbalance, his scooter then not being functional, having poor bed mobility, being unable to ambulate, being unable to transfer and experiencing incontinence. She also noted that Claimant was unable to complete high level ADLs, including laundry, mopping, yardwork, snow removal, grocery shopping, and driving. himself to appointments. After her second assessment, she also recommended a bed transfer pole/trapeze, an adjustable bed, a stairlift to access the basement, a remodeled shower, an elevated toilet to assist with transfers, and a different ramp in the garage to the house.

33. During cross-examination, Nurse Serrano Soto admitted not reviewing any medical records prior to her assessments. She did not discuss Claimant's case with his physicians, and made recommendations based solely on observations made during the

time she spent in the home during her evaluations, i.e. 2 ½ hours during the first visit and 1 hour and 20 minutes during the second evaluation. She understood Claimant's home care needs were being provided by an outside agency and his daughters. However, she was unfamiliar with the care giver's qualifications nor was she aware of prior complications with medication mismanagement, falls or additional injuries or infections from lack of prior care. She could not state Claimant's diagnosis and reported that she has never treated a patient with his diagnosis. Nevertheless, Nurse Serrano Soto testified that Claimant's physicians were not more qualified to determine what is medically reasonable and necessary than she.

The Hearing Testimony of Elizabeth Kattman

34. Elizabeth Kattman testified at hearing as a Rehabilitation Counselor and certified life care planner with experience in case management. Ms. Kattman testified that she was retained by Claimant to complete a life care plan and in order to complete that assignment, she reviewed records that were supplied by Claimant's attorney. She also interviewed Claimant and his daughters. She noted that Claimant was dependent on others and that he reported requiring assistance with transportation, toileting, getting out of bed, pulling up his shorts, showering, transferring in and out of his recliner, cooking, cleaning, and doing laundry. She opined Claimant required 24/7 unskilled care due to his dependence, the variability of his symptoms affecting his function and being a fall risk. She reiterated the recommendations outlined in her February 24, 2025, report as Claimant's home health care/essential service needs, including snow removal, as testified to during re-direct, so that Claimant could attend medical appointments. (See CHE 15). She recommended a skilled home health aide, not a nurse or necessarily a CNA, but someone with on-the-job training for in-home care. She testified that the average cost of that level of care was $36-$41 per hour. She admitted those were agency rates inclusive of company overhead and profit, not what aides earn. She also testified that the hourly DOWC fee schedule rate was $51 but admitted on cross-examination that was the rate for CNAs. Ms. Kattman recommended a wheelchair accessible van for Claimant to transport his electric scooter. However, she deferred to Dr. Reichhardt's medical

expertise regarding concerns for iatrogenic deconditioning from use of the electric scooter. She did not recommend a modified vehicle Claimant could drive, as he was on a no driving restriction.[6] She recommended a portable ramp to use when in the community, bathroom and shower modifications, a toilet frame with a raised toilet seat and grab bars, a bed rail or trapeze, a permanent ramp in the garage, and a basement stairglide. Ms. Kattman acknowledged Drs. Sanders and Reichhardt do not believe Claimant is a fall risk. Regarding Claimant's fall risk, she testified that "it depends on who is assessing function [and] . . ." the doctor" when asked if physicians were more qualified to make a fall risk determination. She then stated that she is more qualified than Dr. Reichhardt to determine same. She opined that the current level of home care is not adequate and that Claimant needed more control over his life. She testified that she agreed with the recommendations outlined by Ms. Mills and Rehab Without Walls.

35. During cross examination, Ms. Kattman noted that she reviewed the transcript of the Samms conference and that she did not ask Dr. Sanders about the extent of Claimant's home care needs. She also admitted there was no discussion in Dr. Reichhardt's or Sanders reports of Claimant being a fall risk. She also admitted that, outside Claimant and his daughter's reports, there was no record support for claims of incontinence.

The Hearing Testimony of Doctor Bruzas

36. Majia Bruzas, Ph.D. testified at hearing as a Clinical Psychologist with expertise in health psychology. Dr. Bruzas has an extensive treatment history with Claimant having conducted 51 treatment sessions with him by the time of the May 5, 2025, hearing. Dr. Bruzas recommended an estimated amount of 14 hours of home care

[6] At the 6/28/25 hearing, Respondents objected to testimony relating to Claimant's alleged need for a vehicle he could operate on the basis that such a vehicle had not previously been disclosed as requested. Claimant argued it had been the subject of reports and testimony. The ALJ concludes that based upon Ms. Kattman's report and testimony, as well as Claimant's discovery responses and the lack of further evidence in the file preceding the hearing that the vehicle was recommended or requested, that a request for a vehicle Claimant could operate was premature as not previously disclosed as an issue to be litigated at hearing.

per week, to assist Claimant with bathing/showering[7] and tasks around the home, to foster his independence, allow him to access the community, and be less reliant upon his daughters. She also recommended 1-2 hours per week to help him with outside social activities. Dr. Bruzas testified that Claimant's home care should be provided by an outside agency because Claimant's daughters are strained and the current father/daughter relationship involves problematic role reversal concepts. She testified that Claimant's daughters were possibly being overprotective but noted that family involvement did not necessarily mean they were enabling Claimant.

37. When asked if he required care since his hospital discharge, Dr. Bruzas testified that it would have been ideal to have care "earlier on" without specifying from when or how much. She agreed Claimant did not require an aide to keep him company. She testified 24/7 care would undermine Claimant's independence and contribute to deconditioning.

38. Dr. Bruzas testified that Dr. Kenneally's finding of a low IQ did not contribute to a need for more care. She confirmed Claimant's testing results placed him at a higher risk of becoming over-reliant and dependent upon others, testifying that she trusts Dr. Reichhardt and Dr. Sanders to assess in-home care to address Claimant's physical needs.

39. Dr. Bruzas testified that Claimant can prepare basic meals three times per day. She noted that on March 21, 2025, she asked Claimant how much care he needed/wanted in the home, and his response was "twelve" hours per week.

The Deposition Testimony of Dr. Reichhardt

40. Dr. Reichhardt testified by deposition on June 10, 2025. He testified Claimant's condition has been stable since September 2021. (Depo. TR. Dr. Reichhardt, p. 40). Dr. Reichhardt testified that he has balanced Claimant's home care needs against

[7] She noted that Claimant needs the options to bathe daily from a psychological standpoint.

the risk of him becoming over-reliant on others, which Dr. Reichhardt testified leads to decreased function and conditioning. He noted that with CRPS, patient activity is important despite pain, as it increases cardiovascular health, strength, and motion, and decreases pain. *Id.* at pp. 17-20. He explained that iatrogenic deconditioning is caused by overprescribed assistance, causing over-reliance on others and immobilization, which is a concern in this case. *Id.* at p. 21. According to Dr. Reichhardt, Claimant has kinesophobia, which is limiting movement out of fear of pain. *Id.* at pp. 48-50. He testified that 24/7 care would be deleterious. *Id.* at pp. 22-23. Dr. Reichhardt's understanding was Claimant was left at home alone for substantial periods of time and is safe from a functional perspective to be alone for an example period of 7:30 a.m. to 5 p.m. *Id.* at p. 166. He agreed that a patient's report of difficulties with ADLs does not alone indicate a need for home care. *Id.* at p. 168. Regarding night care, he does not recall the family ever raising incontinence issues, but if an issue, a bedside urinal or external catheter could manage the issue. *Id.* at pp. 27-28. According to Dr. Reichhardt, Claimant should be able to transfer from his bed to the bathroom on his own, and he did not recall being told Claimant requires assistance with same. *Id.* at pp. *14; 29-30.* He noted that Claimant is independent with transferring to a chair or raised exam table in his office, and he has never been informed Claimant has fallen. *Id.* at pp. *33-35; 37.* He also noted that Claimant's balance, coordination, motor skills, and motor planning are all good. *Id.* at p. *37.*

41. Dr. Reichhardt confirmed his ongoing opinion for 6 hours per week of home care/assistance. *Id.* at pp. 60-61; 171. He took the opinions of Ms. Mills, Ms. Kattman, and Nurse Serrano-Soto into account when rendering this opinion regarding home care. He also considered his own experience as a physician when making his treatment recommendations, testifying that he did not consider a life care planner as someone who would recommend hours of care. *Id.* at pp. 42-43; 46-47; 142. He did consider the opinions of occupational therapists as a piece of information, but in the end, he noted that the physician has the responsibility of outlining reasonable and necessary long-term care. *Id.* Dr. Reichhardt noted he had several years of experience with Claimant, an understanding of his medical condition, and input from Claimant's treating therapists. *Id.*

Regarding Dr. Bruzas' opinion for 14 hours of home care, Dr. Reichhardt testified it would be reasonable to evaluate what effect he received from the current care to see if his activity changed as a result and whether more was indicated. *Id.* at pp. 58-59. Dr. Reichhardt confirmed the level of care Claimant requires could be completed by an unskilled home health aide, not a nurse or CAN. *Id.* at p. 52. He stated Claimant and his family could utilize grocery delivery services as a family event. *Id.* at p. 125. Dr. Reichhardt does not believe an electric wheelchair or hospital bed are reasonable and necessary. *Id.* at pp. 54-57. He had concerns about a modified vehicle to transport an electric scooter to the extent Claimant received less physical activity as a result of relying upon the electric device. *Id.* at p. 58.

The Deposition Testimony of Dr. Primack

42. Dr. Primack testified as a Level II Accredited expert in physical medicine and rehabilitation (PM&R) and electrical physiology by deposition July 2, 2025. (Depo. Tr. Dr. Primack, p. 6). Dr. Primack testified that Claimant daughter attempted to help him with multiple tasks during the IME. *Id*. at pp. 9-11. Dr. Primack opined that the daughter's behavior was deleterious and reinforcing the concept that Claimant is an invalid. *Id*. at pp. 11-19. According to Dr. Primack, assisting Claimant with his movement reinforces the kinesophobia, which causes deconditioning, and diminishes independence. *Id.* Dr. Primack stated bed grab bars could be installed to help transfer quicker, but Claimant should be able to transfer to and from his bed independently without them. *Id.* at pp. 22-23. Regardless, Claimant and the family advised that he was independent in bed mobility and with modifications, Dr. Primack concluded that there was no functional reason that Claimant could not transfer on and off the toilet. *Id.* at p. 24-26. Claimant also reported he dressed without assistance into sweats and t-shirts. *Id.* at p. 26. Claimant and his family did not report incontinence to him, even in response to toileting questions. *Id.* at pp. 27-28. Dr. Primack testified that Claimant should not have an issue going to the bathroom himself, but if he did, a bedside commode could be used. *Id.* at p.29. He did not feel that an external catheter was necessary. *Id.* at p. 30. He testified it would not be helpful to have a sitter in the same room with Claimant at night noting that the daughters

sleeping in Claimant's room was "reactionary" to a symptom/perceived need which was reinforcing his disability driven behavior. *Id.* at pp. 30-31. He opined Claimant could use 3 hours of unskilled aide care weekly, but 6 hours was not far off. *Id.* at pp. 32-33. He testified understanding CRPS was not within the scope of Ms. Mills, Ms. Kattman, and Nurse Serrano-Soto's practice. *Id.* at pp. 33-34. He described that physiatrists consider all data, including from therapists, the medical condition, and make appropriate recommendations. *Id.* at p. 34. Dr. Primack did not believe Claimant should use an electric scooter, because that would reinforce his disability, nor would he require a modified vehicle to transport the same. *Id.* at pp. 36-38. He stated a hospital bed was not needed. *Id.* at p. 37. He also noted if Claimant were requesting a vehicle that he could operate to access the community himself; the request would be contrary to his position that he required 24-hour care. *Id.* p. 38. He discounted Claimant's risk of falling, testifying that people with three functioning limbs, such as Claimant, don't fall frequently. *Id*. at pp. 57-59. He noted tasks like house cleaning, snow removal, and yard work, are not defined in PM&R practice as ADLs for determining levels of independence. *Id.* at pp. 64-65.

The Deposition Testimony of Dr. Kenneally

43. Dr. Kenneally testified as an expert in clinical and neuro psychology by deposition on July 8, 2025. (Depo. Tr. Dr. Kenneally, pp. 4-5). Dr. Kenneally testified that her IME lasted 4-4 ½ hours and included neuropsychological testing. *Id*. at p. 5. According to Dr. Kenneally, Claimant took care of himself during the time of her IME, including interacting with others in her office, using the restroom, and getting coffee and water. *Id.* at pp. 6, 13-14. He moved to the drink counter with his knee scooter, made coffee, and returned while carrying drinks. *Id*. at pp. 15-16. She described how he transferred from laying prone on a couch to his scooter multiple times without help. *Id*. at p. 16. Claimant reported his sleep included waking up twice per night with an ability to return to sleep but did not report that his daughter sleeps in the same room. Id. at p. 8. When asked if would be psychologically helpful for a person who claimed to have insomnia to have someone in the room talking with him while he was trying to fall back to sleep, Dr. Kenneally testified, ". . . the recommendations of the sleep research and what

we teach people who have middle insomnia is to do as little as possible when you're awakened, right? You don't want to have a conversation with somebody. If you don't have to get up out of bed, don't get out of bed. Don't eat anything. Don't drink anything, because all of those activities wake you up further and make it harder and make it take longer to fall back to sleep. *Id*. at p. 9.

44. Dr. Kenneally testified that Claimant's neuropsychological testing revealed a lifelong intellectual deficit which probably prevented him from reaching the cognitive developmental stage of abstract thought. *Id*. at p. 10. Nonetheless, Dr. Keneally testified that Claimant has the intelligence to manage his own financial affairs, including paying his own bills in addition to managing his medications without assistance. *Id.* at pp. 10-11. She testified that she understood the Bright Star report to indicate that Claimant needed 24/7 care which she did not understand because people who need that level of care require attendants. *Id.* at 18. She noted that Claimant came with his daughter, but she quickly left the office and after she was gone, Claimant, who have never been to her office, managed all of his locomotion and physical activities on his own. *Id.* at 14. She noted that he interacted appropriately with her staff and understood all testing instructions and when he had questions or needed clarifications, he was able to spontaneously ask for that. *Id.* She testified that 24/7 care would probably exacerbate Claimant's depression, noting that dependency is not an indicator of good psychological health. *Id*. at p. 19. She did not understand how Dr. Bruzas' recommendation for more physical assistance would help Claimant socialize, and she did not believe from a psychological perspective that there was a reason to increase Claimant's level of home care from 6 hours per week to something higher. *Id*. at pp. 20-21.

The Hearing Testimony of [redacted]

45. [redacted] testified at hearing. She is Claimant's oldest daughter and works as an orthodontic assistant. She testified that she was employed at the time of Claimant's injury. She noted that her earnings dropped in 2021 because she took time away from work to care for her father and also took maternity leave following the birth of

her second child. At the time of Claimant's injury, [redacted] was living with her 1-year-old son, her now ex-husband, her sister, [redacted] her brother, who moved out of the home in October 2021, and her mother. She testified that following Claimant's discharge to home, everyone helped care for him. According to [redacted] Claimant's care required a team effort, but she and her sister provided the bulk of Claimant's care. [redacted] mother moved from the home about a year after Claimant's injury, and her now ex-husband moved out May 2024. [redacted] testified that initially she and her sister attended to Claimant's PICC line and wound care needs along with transportation to/from medical appointments. Claimant's wound care ended after September 2021. [redacted] testified that after her mother, brother and now ex-husband left the home, she and her sister continued to care for Claimant and the home was rearranged to accommodate his limitations. She testified she helps Claimant transfer off the bed, helps him dress, helps as he brushes his teeth and washes his face, helps him to the car for appointments, and helps him navigate at appointments. She testified she helps Claimant transfer from the bed to the scooter and to the restroom. She reported a need to clean up the bathroom floor frequently because Claimant does not always direct his urine into the toilet. She testified that Claimant has urinary accidents if he cannot get to the bathroom quickly, and he goes to the restroom 4-5 times per night. [redacted] testified that she assists Claimant in the bathroom because it is small and he and difficulty moving about in tight spaces for fear of hitting his foot on the toilet. She testified she has also helped Claimant get his foot into the tub to bathe/shower while he sits on a shower bench. She reported that Claimant's bed mobility is poor and that getting out of bed was problematic until Claimant got a bed of proper height. While Claimant's ability to get in/out of bed has improved, [redacted] testified that Claimant needs standby assistance. [redacted] testified that Claimant relies of Uber or Lyft to get him to/from appointments, but he is frequently late because the drivers do not assist him in getting into the car. According to [redacted] Claimant has difficulty negotiating the driveway to get to his ride if it snows. She testified that Claimant needs a handicapped adapted vehicle to assist with his transportation needs.

46. When asked regarding other work, [redacted] testified that she helps

her sister with her businesses by answering emails, and “that’s it.” She identified her sister’s companies as “Marketing by Jae” and “Your Content Girls.”. She then admitted to being more involved in the latter by creating content at events such as weddings. She acknowledged the website *marketingbyjae.com* lists her as CEO, but she alleged that this designation was incorrect. She testified to being involved in 3-4 events in the 3 months before the May 2025 hearing. She admitted working with her sister to have more flexibility in her schedule than she enjoyed as an orthodontic assistant. She testified that she is still employed as an orthodontic assistant two full days weekly while raising her two children, one with special needs, as a single mom.

47. [redacted] testified that “in the beginning” she left Claimant home alone several hours at a time, with her now ex-husband present. She testified that during the first half of 2022, Claimant was alone with her sister who attended high school virtually, and when school transitioned to in-person attendance she, i.e. [redacted] cut down her work hours, but if she left the house for some reason, her ex-husband or her kids’ nanny would be present with Claimant. She admitted she told Dr. Sanders on February 10, 2023, that Claimant was alone with no assistance from 7:30 a.m. to 5 p.m., but she then stated her kids’ nanny, whom she testified had no medical training, was present and could assist him. She confirmed they were not requesting reimbursement for anyone else besides her and [redacted]

The Hearing Testimony of [redacted]

48. [redacted] testified at hearing. She is Claimant’s youngest daughter and was a high school student at the time of his injury. She testified that since she was on summer break from school when Claimant was injured, she was able to help him when he was discharged to the home where she was living with her sister ([redacted] mother and brother. She testified that she assisted Claimant in using the bathroom, cleaning his foot and driving him to/from medical appointments. At the time of Claimant’s injury, [redacted] was a very accomplished student with a 4.0 grade point average as a Freshman and Sophomore. She was also involved in school organizations, including Future Business

Leaders of America, Student Council, Fellowship of Student Athletes, as a football manager, and a teacher's assistant. She had high school internships with the Town of Johnstown, which required 30 minutes of work per day, and with a magazine her sophomore year for 2 hours every other day. She testified that she planned to attend college and was awarded scholarships from some universities to do so, but she could not attend due to helping her father.

49. [redacted] testified that she started her own company, Marketing by Jae in July 2024 and a second company Your Content Girls later and is making money from both companies. She testified that these companies are involved in social media marketing and in the case of Your Content Girls, her sister [redacted] is listed as CEO because she is older.

50. [redacted] testified that she plays a specific role in caring for her father. Indeed, she reported providing assistance beginning at 10 p.m. each night, sleeping in the same room with Claimant to assist him with positioning, using the bathroom, making sure he does not fall, cleaning the bathroom after use (urine cleanup), and keeping him company. She began doing this about a year ago because his pain has worsened. She moved into his room to sleep because she was afraid that he could fall and she would not hear it. She testified that Claimant has urinary issues and needs to use the bathroom multiple times (4-7) a night and can't get up from the toilet She testified that Claimant can urinate into the toilet himself, but if he is a lot of pain he can miss the toilet while urinating or not make it to the toilet in time and pee in his pants, which then requires extra assist to clen him or the bathroom up before returning to bed. She added that Claimant can be independent in getting in and out of bed if he is having a good day, but even then, he needs help for stability. She fears "something" could happen if she is not there to assist Claimant because his pain levels dictate his independence. During cross-examination, she confirmed she stays in the room because it "comforts me in a way." She testified it comforted both for her to keep him company if he woke up, so he would not be bored.

51. [redacted] testified that there is usually someone in the house, if not her, helping with [redacted] children and Claimant. She testified before the current home care was being provided, she assisted Claimant with bathing. She added that Claimant would benefit from a van he could operate, because it would give him freedom to get outside and go where he wants without having to ask her and [redacted]

The Hearing Testimony of Dr. Sanders

52. Dr. Sanders testified at hearing as a Level II Accredited expert in Occupational Medicine. Dr. Sanders testified that he has never recommended 24/7 home care for Claimant. He added that he agrees with Dr. Reichhardt that 6 hours of home care per week is reasonable and necessary. Moreover, he testified that he would defer to Dr. Reichhardt in terms setting the amount of home care hours needed by Claimant. He testified he has never received any reports of Claimant falling from his scooter and that Claimant is only a fall risk if trying to ambulate without the scooter.

53. Dr. Sanders testified that kinesophobia is a fear avoidance reaction based upon pain that is difficult to move past. He noted that avoiding activities out of fear of pain could lead to disuse and atrophy of the limb, as well as psychologically leading to Claimant becoming more and more dependent upon assistance, which creates iatrogenic disability.

54. Dr. Sander testified that Claimant has always been accompanied by his children who help him transfer in the clinic. Dr. Sanders stated he believed Claimant could generally transfer independently, and functionally Claimant should be able to sit up and turn to transfer in his bed by himself, but with pain. He added that Claimant's functional capabilities have been consistent over the course of his treatment, with no appreciable change in his ability to ambulate, and he was not aware of any recent worsening, as [redacted] alleged. According to Dr. Sanders, Claimant's current limitations were present upon discharge in July 2021, and he has needed some level of assistance to complete ADL's since that time, without specifying how much.

55. Dr. Sanders testified that neither Claimant nor his family have raised any urinary incontinence issues with him at any time. He added that there is not a physical condition related to Claimant's injury that would cause Claimant an inability to hold his urine or fecal matter.

56. Regarding the joint home evaluation completed with Dr. Primack, Dr. Sanders testified that Dr. Primack asked him to be present and that after he reviewed the report from this evaluation and discussed it with him, signed it with the intention of adopting the findings contained therein. He made no changes to the report and testified that he has not had follow-up discussions about it with Dr. Primack.

57. During cross-examination, Dr. Sanders conceded that he did not assess Claimant's ability to complete an exhaustive list of ALDs. Moreover, he did not observe Claimant complete any transfers or bump up or down the stairs as suggested by Dr. Primack. Instead, he noted that Claimant remained in his bed for the duration of the evaluation.

58. Dr. Sanders testified that Claimant was not an independent ambulator and needs both hands to use his scooter properly. He added that should Claimant fall, he likely could not get up and back onto his scooter without assistance from someone or something, such a stable furniture.

59. Regarding Claimant's home health care needs, Dr. Sanders testified that Claimant could not bathe/shower independently. He added that Claimant could not clean his house independently because he could not operate a vacuum from his scooter and could not get on his hands and knees to scrub floors. According to Dr. Sanders, Claimant would also need assistance with yard work. Dr. Sanders testified that shopping and transportation presented additional problems because he could drive to/from the store nor could he load/unload his knee scooter into the vehicle. While he testified that Claimant

should be able to shower daily if he wished, Dr. Sanders testified that Claimant has reported that he wanted to shower more than the schedule allows for currently.

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) 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.

B. 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). 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.

Claimant's Entitlement to Medical Benefits, Essential Services and Supervision

C. Regarding the issues for determination, the ALJ first addresses whether the home health care services requested by Claimant constitute a medical service that is reasonably necessary for treating the injury or that provides therapeutic relief from the effects of his injury. See *Bogue v. SDI Corporation*, 931 P.2d 477 (Colo. App. 1995). Home health care services, including completion of household chores, may fall within this definition. *See Suetrack v. Industrial Claim Appeals Office,* 902 P.2d 854 (Colo. App. 1995). Whether treatment or services provided under § 8-42-101, C.R.S. are reasonable and necessary is one of fact for resolution by the ALJ. *See City of Durango v. Dunagan,* 939 P.2d 496 (Colo. App. 1997); *Wal-Mart Stores, Inc. v. Industrial Claims Appeals Office*, 989 P.2d 251 (Colo. App. 19990. In this case, Claimant seeks 24 hour / 7 day per-week home care services to complete a multitude of different tasks, including assistance with meal preparation, laundry, shopping, house cleaning, clearing snow, home maintenance, medication setup, finances, bathing, dressing, meeting Claimant's social/emotional needs and supervision for safe mobility and transfers.

D. As noted, compensable medical benefits require the service to be medical in nature or incidental to obtaining medical or nursing treatment. *Suetrack v. Industrial Claim Appeals Office, supra.;* see also*, Country Squire Kennels v. Tarshis,* 899 P.2d 362 (Colo. App. 1995). A service is medical in nature if it is reasonably needed to cure and relieve the effects of the injury and related to the claimant's physical needs. *Bellone v. Industrial Claim Appeals Office,* 940 P.2d 1116 (Colo. App. 1997). Services which have been found to be "medical in nature" include home health care services in the nature of "attendant care" if reasonably needed to cure or relieve the effects of the industrial injury. *Atencio v. Quality Care, Inc.*, 791 P.2d 7 (Colo. App. 1990). Such services may encompass assisting the claimant with activities of daily living, including matters of personal hygiene. *Suetrack v. Industrial Claim Appeals Office*, 902 P.2d 854 (Colo. App. 1995). Here, the evidence presented persuades the ALJ that some of the services/supervision rendered to Claimant by his daughters have been central to his personal care, health and wellbeing. Specifically, Claimant has required transportation to get to and from his medical and therapy visits because he is precluded from driving. Moreover, Claimant requires supervision and assistance to take a shower/bath, use the

toilet, and dress his affected limb. Any need to assist with transfers and mobility associated with completion of these tasks is subsumed in the activity itself. Finally, Claimant requires assistance in getting out of his house to engage in mental stimulation and social reintegration to remediate, i.e. cure and relieve the psychological symptoms associated with his condition. Based upon the evidence presented, the ALJ concludes that the services rendered to Claimant by his daughters in connection to the aforementioned activities are reasonably necessary and medical in nature or incidental to obtaining medical care. Consequently, the ALJ concludes that the services associated with completion of these activities are compensable. Having concluded that the services connected to the above-referenced activities are compensable, the ALJ next turns his attention to the request for services linked to doing laundry, going shopping, attending personal (non-medical appointments), attending non-medical appointments, completing house cleaning and home maintenance tasks, clearing snow, and managing finances.

E. In this case, Claimant argues that Drs. Reichhardt and Sanders have not considered additional tasks such as doing laundry, getting to/from personal (non-medical) appointments, grocery shopping, obtaining his prescriptions, completing yardwork and home maintenance, snow shoveling and finance management in their time allotment for home health care. With respect to attending personal appointments, Claimant made no evidentiary showing of whether he does or will have personal medical appointments outside the worker's compensation system or has a need to pick up prescriptions in person, as opposed to delivery. Theoretically, there may be a very occasional need for family to drive Claimant to a personal medical appointment, but Claimant did not submit evidence of an actual need or frequency such that the ALJ can render an award concerning this requested benefit. Simply put, Claimant did not establish a need for this service. Claimant also did not prove a need for assistance with grocery shopping. Indeed, Dr. Reichhardt testified shopping can reasonably be done as a family, with delivery. Claimant did not establish why an aide is needed for him to shop, which cannot otherwise be done as part of the household's shopping, nor would that help him attain medical treatment or relieve the effects of the injury. For similar reasons the ALJ concludes that any request for medication and financial management services is not

warranted. Here, Ms. Serrano-Soto admitted she was not aware of any complications Claimant had to date with managing his medications despite not having a medically trained assistant. Moreover, Dr. Reichhardt testified that Claimant's condition should not limit his ability to manage his medications, but he deferred to Dr. Kenneally, who testified Claimant is cognitively capable of same and managing his own financial and personal affairs.

F. Regarding tasks such as housekeeping including laundry, yardwork, and home maintenance, it is well settled that these services may reasonably be needed to cure and relieve the injured employee from effects of his/her injury and thus would be compensable if it can be demonstrated that such services are incident to any medically necessary attendant care services and are central to Claimant's physical health or personal care. §8–42–101(1)(a) C.R.S.A. However, the court in *Country Squire Kennels v. Tarshis,* 899 P.2d 362 (Colo. App. 1995) applied a relatively narrow standard for the provision of housekeeping/maintenance services. In *Tarshis* the court held that a Claimant who suffered an admitted work-related injury may not receive compensation for medically prescribed housecleaning services if those services are not "incidental to" the expense of providing reasonably necessary medical, nursing, or attendant care treatment services. The *Tarshis* court summarized the existing case law as determining that for expenses incurred for housekeeping services to be compensable, such services must enable the claimant to obtain medical care or treatment or, alternatively, must be relatively minor in comparison to the medical care and treatment. In concluding that Claimant has failed to establish that services for housecleaning, laundry, yard and home maintenance are not incidental to curing and relieving Claimant from the effects of the work injury and thus, not a compensable medical benefit, the ALJ finds the case of *Dery v. ABC Nursery School, LTD & Junior Academy*, W.C. No. 4-104-954 (ICAO, August 15, 2024) instructive. In *Dery,* claimant, who suffered from CRPS, sought the authorization of housekeeping services on the grounds that engaging in house cleaning activities increased her pain and left her "incapacitated and bedridden" for days. *Id*. Claimant's mother took over the duties associated with cleaning the family home. *Id.* Claimant's treating physician recommended authorization of housekeeping services on the grounds that having a clean

house would maintain claimant's dignity. *Id.* The ALJ denied the request on the grounds that the service requested would not cure and relieve the effects of claimant's injury nor was it incidental to obtaining medical treatment. In affirming the ALJ, a Panel of the Industrial Claim Appeals office noted:

> The ALJ further observed that the claimant testified that she was not currently doing any household chores and that her mother was completing them. As such, the ALJ resolved that housekeeping duties were of no consequence to the claimant. Since she did not perform them, she likewise did not experience an aggravation of symptoms from them. Accordingly, the ALJ reasoned a prescription for housekeeping services would provide no medical benefit to the claimant whatsoever, rather, it would only act to reduce the amount of housekeeping the claimant's mother and son complete. He characterized the housekeeping request as one to provide relief to the claimant from something she currently does not do. As a result, it was noted the request would have no effect on her medical condition, negative or positive. The ALJ concluded the provision of housekeeping services would not qualify as a medical benefit.

Id.

G. The same is true in the instant case. While there was ancillary testimony from Claimant's daughters that he did home maintenance and yardwork for the family home prior to his injury, and the record supports that he lived independently from the family in a separate residence, no persuasive evidence was presented that Claimant is currently doing any yardwork, home maintenance, or housekeeping including laundry or that attempts to do so increased his symptoms. Indeed, no evidence was introduced regarding what medically based benefit would be derived from having this or other home maintenance work done by a paid service. *See Hillen v. Tool King*, 851 P.2d 289 (Colo. App. 1993) (finding requested lawn care services do not fall within the medical necessity

standard). While the provision of home care services for housekeeping, home maintenance and yardwork would most certainly provide a benefit to Claimant's daughters by reducing their workload, the ALJ is not convinced that such services are a medical benefit meant to cure or relieve Claimant of the effects of his injury. Indeed, as noted in *Dery*, the provision of such services will have no effect on Claimant's medical condition, positive or negative. Consequently, the ALJ concludes that the request for yardwork, home maintenance, and housekeeping services in this case is not a compensable medical benefit. Nonetheless, the ALJ finds the issue of snow removal services more complicated. In this case, the record supports a finding that Claimant has missed therapeutic treatment sessions designed to cure and relive the pain and dysfunction associated with his injury because of an inability to access ridesharing services due to accumulated snow in his driveway. Dr. Sanders recommended in January 2023 three hours of assistance per week for shoveling specifically to access transportation arranged by respondents when he was at home alone and needing to go to pool therapy. Although Claimant's daughter testified that Claimant is not currently left alone, the record supports a conclusion that he is safely able to be at home alone for extended periods of time. Because Claimant can be home alone and is currently precluded from driving, the ALJ finds/concludes that transportation services outside the family to get him to and from his medical appointments are reasonably necessary to cure and relieve him from the effects of his industrial injury. Clearing the snow from his driveway on days when Claimant has medical/therapy appointments is incidental to obtaining this treatment. Thus, the ALJ concludes that the request for snow removal currently qualifies as a compensable medical benefit in this case.

The Request for 24/7 Home Health Care

H. Having concluded that the majority of the tasks for which authorization is sought do not qualify as compensable medical benefits, the ALJ turns his attention to the question of whether Claimant requires 24 hour / 7 day a week attendant care. In this case, the ALJ credits the opinions of Drs. Reichhardt, Sanders, Primack, Bruzas, and Kenneally, that such care is not reasonable and necessary and would actually be

deleterious. The testimony from the physicians/psychologists who have treated or evaluated the Claimant establishes that providing such care risks increasing his isolation, depression and contributing to kinesophobia and iatrogenic deconditioning and disability. The ALJ is convinced by the unanimous physician opinions of the risk posed by fostering complete dependence for a patient with three working limbs and a medical condition which requires as much activity as possible to mitigate the debilitating effects of the Claimant's condition.

I. The contrary opinions of Ms. Kattman are unconvincing. The ALJ agrees with Dr. Reichhardt that her expertise would not be expected to encompass medical recommendations. Her opinions in this regard carry little weight and are unpersuasive. The ALJ is similarly not persuaded by the opinions of Ms. Mills and Nurse Serrano-Soto. Ms. Mills' opinion was based upon a single evaluation and the subjective reports of Claimant and his family. Nurse Serrano-Soto's opinion was based upon two evaluations, also largely dependent upon subjective reports of the family, without review of relevant medical records. Importantly, the ALJ notes the discrepancy in presentations observed by Ms. Mills and Nurse Serrano-Soto compared to those obtained by Claimant's treating physicians/psychologists. Indeed, Ms. Mills and Nurse Serrano-Soto's opinions are based upon observing Claimant while confined to his bed, which is not likely indicative of his full abilities, especially when one considers that he has three fully functioning limbs. Conversely, the treating providers have observed and interacted with Claimant on a multitude of occasions in a clinical setting which has repeatedly revealed higher levels of functional ability, including instances where Claimant was noted to transfer independently. In support of their conclusion that Claimant requires 24/7 home care, Nurse Serrano-Soto and Ms. Mills assert that Claimant poses as a high fall risk, but without ever observing Claimant attempt to transfer or attempt any activity while lying in bed. The ALJ places greater weight on the opinions of Claimant's treating physicians, Drs. Reichhardt and Sanders, who have opined Claimant is not a high fall risk, in addition to Dr. Primack, who has opined clearly that Claimant has three functioning limbs, which lowers Claimant's fall risk. In this case, Dr. Reichhardt has clarified that Claimant's balance, coordination, motor skills, and motor planning are all good, which supports a

determination Claimant is not a high fall risk.

J. The ALJ further agrees with Drs. Reichhardt and Primack that the information obtained from Ms. Mills and Nurse Serrano-Soto are pieces to a puzzle that rehabilitation physicians are more qualified to address after incorporating the patient's history, the medical diagnosis, reports from treating therapists, and other physician opinions. Here, Nurse Serrano-Soto was not even aware of Claimant's diagnosis, and when informed, agreed she had never treated a patient with CRPS.

K. Dr. Bruzas documented that Claimant reported that he only needed 12 hours of care weekly. Claimant did not testify at hearing to refute same. The ALJ has no reason to question the veracity of Claimant's wishes documented by Dr. Bruzas. The records also establish both Drs. Reichhardt and Sanders have clarified with the family basis for additional care, and they have found that none of the documented explanations correlate to a 24/7 care need. Instead, the ALJ credits Dr. Sanders' February 10, 2023, record documenting that Claimant has been left alone without assistance from 7:30 a.m. to 5 p.m. Dr. Sanders confirmed that this matched his understanding at the time. [redacted] admitted to informing Dr. Sanders of as much, but she then stated her kids' nanny were present in the home and could assist Claimant if necessary. Even if true, a child's nanny being under the same roof as Claimant, or [redacted] being under the same roof while attending school virtually, would not indicate/establish a need for constant care. Nevertheless, the ALJ finds it likely based upon the evidence that Claimant has probably been alone for long periods of time on a regular basis, and his health has not been negatively affected, which argues against a need for 24/7 care. The ALJ also agrees with Dr. Primack that testimony from Claimant's daughters requesting a vehicle he can operate independently to access the community alone is contradictory to their contention that Claimant cannot be left alone at any time and requires constant care. Claimant has failed to prove by a preponderance of the evidence a prospective medical need for 24/7 attendant care. The contrary assertions of Claimant's witnesses have been considered and are rejected as unpersuasive.

Claimant's Request for Home Health Care in Excess of 6 Hours per Week Prospectively

L. The ALJ next addresses Claimant's request for ongoing services more than the 6 hours weekly currently authorized. Claimant did not request a specific number of hours less than 24 per day. Nevertheless, outside of the additional three hours the ALJ determines is reasonably necessary for snow removal when necessary to attend medical appointments, the ALJ concludes that Claimant failed to prove entitlement to additional attendant care. Here, the overwhelming evidence supports the conclusion that Claimant's treating physicians have determined that 6 hours of home care per week is reasonable and necessary. Dr. Reichhardt's opinion is persuasive as the treating physiatrist. He discussed with Claimant and his daughters regarding additional care and affirmed that 6 hours is medically reasonable and necessary. While Claimant reported to Dr. Bruzas that 12 would per week would be sufficient he failed to convince Dr. Reichhardt of the same. The ALJ defers to Dr. Reichhardt's determination and attempt to balance Claimant's in home care needs with the risks of providing medically detrimental care. Dr. Sanders has deferred to Dr. Reichhardt yet has agreed with this amount. Dr. Primack has recommended a lesser amount but deferred to Dr. Reichhardt. Drs. Moe and Kenneally also agree no further care is needed.

M. As noted, Dr. Bruzas provided a contrary opinion, testifying 14 hours per week for household tasks may be indicated to help him socialize, plus 1-2 hours to assist with activities. Dr. Moe disagreed, questioning whether Claimant would increase his socialization. Dr. Kenneally testified it was unclear how help with home housekeeping tasks would result in greater socialization. Dr. Reichhardt testified more care could be considered if his response to the hours currently provided indicated such a psychological benefit could be realized. Importantly, Dr. Bruzas did defer to Dr. Reichhardt and Dr. Sanders regarding assessing the amount of in-home care necessary to address Claimant's physical needs, and her recommendation was for additional physical task assistance to the extent it could provide a peripheral mental health benefit. Yet, Dr.

Bruzas acknowledged that Claimant's psychological testing revealed he was at a higher risk of becoming over-reliant upon others. Claimant did not testify, and he presented no evidence that the current care has resulted in increased socialization, such that Dr. Reichhardt could validate Dr. Bruzas' theory. In this case, finds the combined opinions of Drs. Reichhardt, Sanders, Primack, Kenneally, and Moe more persuasive than the contrary opinions of Dr. Bruzas regarding Claimant's attendant home care benefit needs.

N. Moreover, the evidence presented fails to persuade the ALJ that Claimant's asserted functional limitations necessitate additional care. Here, the evidence supports a conclusion that Claimant can, more probably than not, transfer to and from his scooter to his bed, a chair, a car, his toilet, and shower bench independently. Kim Mills, Claimant's own expert, documented that he was able to transfer to his bed and demonstrated independent bed mobility. Dr. Kenneally observed Claimant transfer from lying prone on a couch to his scooter and back by himself on multiple occasions. Dr. Primack specifically asked Claimant to transfer from his scooter to a chair and noted he was able to do so. Dr. Reichhardt testified Claimant transfers without assistance in clinic, and Claimant should be able to transfer on his own based upon his medical condition. Even [redacted] admitted that Claimant could transfer in and out of the bed independently depending on his pain, and she acknowledged he could transfer independently, but then added that the family assisted out of fear of falls. The family's fear must be weighed against physician opinions that Claimant is not a high fall risk, and that he can independently transfer. The family may choose to assist, but their choice does not render assistance medically reasonable and necessary. Furthermore, their choice to do so out of fear that Claimant will experience pain and/or fall runs contrary to why Drs. Reichhardt, Sanders, Primack, and Kenneally have opined additional home care should not be ordered in this case. Specifically, that providing excessive levels of care results in over reliance and dependance on others, which exacerbates kinesophobia, leading to iatrogenic deconditioning and disability.

O. The ALJ finds these cumulative findings more persuasive than the contrary

reports from Nurse Serrano-Soto and Ms. Kattman, who did not observe Claimant attempt to transfer and relied solely upon the subjective reports of himself and his daughters. Indeed, the reports they received appear to be contradictory to Claimant's true level of function, as documented and described in the reports and testimony of Claimant's treating physicians. Regarding meal preparation, [redacted] testified she prepares dinners for the family. There is no apparent medical need for Claimant to have assistance for meals prepared for the family unit. Indeed, Dr. Bruzas testified that Claimant is now independent in preparing several basic meals for himself per day and Dr. Reichhardt confirmed in his January 14, 2025, note that Claimant could prepare meals himself.

P. [redacted] testimony regarding sleeping in Claimant's room to assist with transfers and toileting at night is also not indicative of a medically reasonable and necessary task. In addition to the evidence regarding Claimant's ability to transfer generally, Dr. Paz documented in 2022 that Claimant reported largely being able to toilet on his own. Dr. Reichhardt discussed with the family their fear Claimant could hit his foot on the bathroom wall, causing pain, but they did not advise Claimant required assistance toileting when asked why they felt more assistance was needed. Both Drs. Reichhardt and Sanders testified Claimant and his daughters at no time reported he required assistance with toileting at night, or that he had incidents of incontinence. Dr. Primack also testified he asked Claimant and his daughter questions regarding his ability to use the bathroom and was not informed of alleged incontinence in response to a direct question on point. Further calling into question whether [redacted] is performing this task is Ms. Kattman's February 2025 evaluation, in which she documented [redacted] informed her Claimant either called them or rang a bell if he needed help at night, yet [redacted] testified she had been sleeping in his room for the past year, which would have encompassed that period. Dr. Kenneally also noted Claimant reported he woke up twice per night with an ability to fall back asleep, contrary to [redacted] testimony that Claimant woke 4-7 times per night with an inability to fall back asleep. Claimant's report to Dr. Kenneally is consistent with what he reported during a sleep consultation in April 2022 when he reported that he woke up twice per night due to pain, without mention of having to use the bathroom at night at all, let alone on a more frequent basis. [redacted] testimony that

she started sleeping in the room with Claimant in the past year due to his alleged worsened condition is also contradicted by Drs. Reichhardt and Sanders, both of whom testified Claimant's condition has remained stable. They were not aware of any alleged worsening of condition which has negatively impacted the scope of his function. Furthermore, Claimant has no medical conditions which would cause incontinence, and no medical explanation was provided for why Claimant would be unable to hold his urine while transferring more slowly himself. Importantly, the ALJ also places weight on the testimony of Drs. Reichhardt and Primack that, even if toileting concerns existed, a simple fix would be a bedside commode, which would eliminate the need to rush to the bathroom completely. Dr. Reichhardt, as the treating physiatrist, was never placed on notice of these alleged toileting issues such that he could have even prescribed this minor device which would have resolved the concerns.

Q. [redacted] testimony that she stays with Claimant during the night to comfort herself also reflects a choice on her part that does not represent a medical benefit for Claimant. As found, she testified that if Claimant woke, she would stay up and talk with him, which comforted her knowing he would not be bored if awake. The ALJ credits the testimony of Drs. Primack and Kenneally that doing so is not medically beneficial to Claimant and therefore not medically reasonable or necessary. In this case, the totality of the evidence does not prove that Claimant has a need for transfer or other assistance at night, or for transferring around his house at any time. The weight of the evidence is not supportive of the reports from the daughters regarding Claimant's need for care at night for toileting concerns. The family's decision to assist Claimant to minimize his pain levels and quicken his ability to transfer with more ease than he is capable of on his own does not rise to the level of a compensable medical task. *See Country Squire Kennels*, *supra* (holding attendant care was not compensable where done, in part, to assist the claimant in and out bed due to pain). The ALJ also places weight on the fact that no physician has opined that it is medically contraindicated for Claimant to perform transfers or other activities independently, even if he felt pain. *See In the Matter of the Claim of Susan Schramek,* W.C. No. 4-601-867 (ICAO June 14, 2011) (affirming denial of attendant care to assist with tasks the claimant was capable of performing himself without

medical contraindication). To the contrary, the ALJ credits the testimony of Dr. Reichhardt and Dr. Primack that people suffering from CPRS should be encouraged to move and maintain physical activity to mitigate their symptoms and increase cardiovascular health and strength. Based upon the totality of the evidence presented, the ALJ concludes that 9 hours of attendant home care per week is reasonable and necessary. This encompasses Dr. Reichhardt's recommendation of 6 hours of care per week and Dr. Sanders' recommendation for 3 hours of snow removal when necessary. The opinions of Drs. Sanders, Primack, Kenneally, and Moe, all support Dr. Reichhardt's recommendation, and the ALJ finds no cause to substitute a higher number of hours outside the need for occasional snow removal where the evidence of increasing Claimant's home care hours is contradictory to best practices for treating CRPS.

Past Home Health Care Since Hospital Discharge

R. The ALJ next evaluates whether [redacted] and [redacted] are entitled to reimbursement for medically reasonable and necessary attendant care services they provided for the period of Claimant's hospital discharge on July 8, 2021, to the time ComForCare began providing services, which began on January 30, 2025. Initially, Respondents argue that ALJs are limited in their ability to award attendant care for periods prior to when an authorized provider has requested authorization. In resolving this issue, the ALJ finds the claim of *Kern v. St. Mary's Hospital*, W.C. 4-391-482 (ICAO, January 17, 2001) instructive. In *Kern*, the Claimant suffered severe head and brain injuries, including a right temporal lobe hemorrhage, a subdural hematoma and a fractured skull. Ms. Kern's husband was spending a substantial amount of time with her performing essential services including "food planning and preparation, cognitive training, encouraging the claimant to eat (because the industrial injury resulted in the claimant's loss of smell and taste), developing daily schedules, assisting the claimant with daily work assignments from Dr. Bowen, preparing daily medications, dispensing daily medications, assisting the claimant with her hearing aide, transporting the claimant to the grocery store where she shops as part of her cognitive training, performing massages, calling in and

picking up prescriptions, assisting the claimant in a prescribed exercise program, and other duties related to the claimant's personal hygiene and incontinence."

S. Citing *Atencio v. Quality Care, Inc*., 791 P.2d 7 (Colo. App. 1990), the *Kern* respondents challenged the provision of essential services on the grounds that such services were "not compensable in the absence of a medical prescription from the attending physician." Because, no treating physician had prescribed attendant services prior to June 3, 1999, the *Kern* respondents reasoned that the record was "legally insufficient to support an award of attendant services prior to that date." The Panel in *Kern* rejected this argument as follows:

> Contrary to the respondents' contention the courts have not interpreted § 8-42-101(1)(a) to limit compensable home health care to services which are medically prescribed. *Atencio v. Quality Care, Inc., supra*. In *Atencio*, the claimant suffered compensable injuries to her upper extremities. As a result of [her] injuries, the claimant was severely limited in the use of her hands. The treating physician prescribed housekeeping and attendant services which were awarded by an ALJ. However, the Industrial Claim Appeals Panel concluded such services were not compensable under the predecessor statute to § 8-42-101(1)(a) and, therefore, set aside the award. The Supreme Court disagreed and concluded that such services are compensable if medically necessary or incidental to obtaining such treatment. Further, the court held that the question of whether the services "qualify under this test" was one of fact for the ALJ. In concluding that the record contained "substantial and sufficient" evidence "both in quality and quantity to support" the ALJ's award, the court relied on the testimony of the claimant and the claimant's attendant that the claimant is unable to bathe, dress, perform home health care or sanitary functions or household chores without assistance. *Id*. at 8. The court also relied on "undisputed"

> evidence that the treating physician prescribed housekeeping and attendant services and that such services were necessary. *Id* at 9. However, nothing in *Atencio* suggests that the medical prescription for attendant care was a prerequisite to the award of attendant services. To the contrary, the court held that the facts "considered together, were sufficient to support" the finding the requested attendant care met the test of being "medical in nature." *Id* at 9. Therefore, we reject the respondents' contention that *Atencio* supports their assertion that as a matter of law, attendant services which are not prescribed by the treating physician are not compensable.

T. In the instant claim, Respondents likewise assert that because no prescription for home care and essential services was written covering the period between July 8, 2021, and January 30, 2025, when ComForCare began providing services, the attendant care provided by Claimant's daughters over this period were not authorized and therefore are not reimbursable. Relying on the Panel's decision in *Repp v. Prowers,* W.C. No. 4-530-649 (ICAO Sept. 12, 2005), Respondents suggest that *Kern* was wrongfully decided. Indeed, Respondent's argue that the Panel in *Kern* cited to *Atencio, supra,* for a rule not actually set forth therein. *Atencio* involved attendant care services which had been prescribed by a treating physician. *See Id.* The question for resolution was whether such care was medical in nature, and the Court ruled that it was. *Id.* at pp. 8-9. The *Kern* Court took *Atencio* one step further though, stating there was nothing in the *Atencio* opinion which suggested a medical prescription for attendant care was a prerequisite to the award of attendant care, noting lay testimony of the claimant and attendant was introduced in *Atencio*. *Kern* at p. 2. However, the court in *Atencio* was not presented with the question of whether a prescription was a pre-requisite to authorization of attendant care. It was illogical for the *Kern* Court to presume the *Atencio* Court meant to convey a medical prescription was not necessary, simply because it considered other evidence in addition to the medical prescription to gauge the medical nature of the services, where the presence of a physician prescription for care existed

and was not disputed. To be sure, even when a medical prescription exists, prescribed services may be found to not be medical in nature. *See Valdez v. Gas Stop*, 857 P.2d 544 (Colo. App. 1993) (holding a medical prescription alone will not support a claim for compensation for housekeeping services). After careful consideration, the ALJ agrees with the conclusions reached by the Panel in *Repp*. In *Repp,* the ALJ found no pre-authorization request for home health services had been submitted, as required by WCRP 16. *Id.* Therefore, the services were not a compensable medical benefit. *Id.* The Panel affirmed, finding the record compelled the conclusion the services could not be authorized without a physician prescription. *Id.* Thus, a prescription is a prerequisite for authorization. The conclusions reached in *Repp* are consistent with W.C.R.P. 18-6(B), which requires prior authorization for home care services. Both *Repp* and W.C.R.P. 18-6(B) are consistent with the general rule that an ALJ is unable to direct a provider to administer treatment that the professional has not recommended as appropriate. *See Torres v. City and County of Denver*, W.C. No. 4-937-329-09, at 3 (ICAO May 15, 2019) (concluding the ALJ is without authority to order an authorized treating physician to provide a particular form of treatment, which has been prescribed only by a physician unauthorized to treat).

U. In this case, the record reflects a no physician request for authorization of home care until January 13, 2023, when Dr. Sanders requested authorization for 3 hours weekly for snow removal. (RHE I, p. 328). Nonetheless, Claimant argues prior references to a potential need for home health care upon discharge constitute authorization for service, but this interpretation is incorrect. (See, e.g., CHE 28, pp. 635, 639; CHE 90). The ALJ concludes that references by providers that they considered the need for home health services do not constitute prescriptions or otherwise meet the authorization requirements of W.C.R.P. 16-7 A.-C.[8] Claimant presented no evidence that the suggestions he cites in the records were memorialized in prescriptions and/or authorization requests. Therefore, the ALJ agrees he is limited to rendering an award for benefits/reimbursement for periods on or after January 13, 2023.

[8] Claimant did not argue that attendant care services should be automatically authorized due to Respondents' failure to timely respond per WCRP 16. This lack of argument is viewed by the ALJ as a tacit admission that the references Claimant asserted were requests for authorization are in fact not actual requests for authorization.

V. Even if the ALJ were inclined to agree that care was indicated at any point after discharge, insufficient evidence was presented to order reimbursement to [redacted] and [redacted] for a specific number of hours. Although Claimant argued that extensive attendant services, if not full 24/7 care, had been provided since discharge through a combination of family members and nannies, they are not requesting reimbursement for anyone other than [redacted] and [redacted] The evidence is insufficient for the ALJ to apportion care amongst the persons who have been present and assisting in the home (Claimant's ex-wife, [redacted] ex-husband, [redacted] and [redacted] brother, and [redacted] children's nanny). It would be an improper windfall to award [redacted] and [redacted] an amount of money for care inclusive of periods of time during which others were, by the evidence presented, also providing care. Moreover, the record reflects [redacted] and [redacted] other life obligations would preclude a finding that they had time to spend the time they suggest assisting Claimant. [redacted] is the head of the household with corresponding meal preparation, child rearing and other duties. She testified her primary purpose for missing work in 2021 was her maternity leave. She has been raising two young children as a single parent since, one with special needs that requires additional attention and appointments. She has worked part time as an orthodontic assistant at varying amounts of hours. More recently, she also is working with [redacted] in with *Marketing by Jae* and *Your Content Girls*, admitting she cut her orthodontic assistant hours not due to taking care of Claimant, but to spend time on those businesses which gave her better flexibility to care for her children. Similarly, [redacted] was a full-time high school student at the time of Claimant's accident. She had numerous other school organization and internship obligations through high school, from which she graduated in May 2024. Subsequent to graduation, she started two companies of her own, which she is currently operating. The ALJ does not doubt that they have assisted Claimant with tasks since his accident. However, the impediments to awarding reimbursement for a certain amount of hours at any time in the relevant approximately 3 ½ years since discharge are (1) Claimant's failure to establish that the tasks with which they assisted him, that were not basic housekeeping services, were tasks he was not functionally capable of completing himself, and (2) Claimant's failure to submit evidence

establishing an amount of hours that [redacted] and [redacted] specifically provided compensable services.

W. Claimant alleged more care was required at various times, for example he alleges that one of his scooters was non-operational over a holiday season resulting in increased care needs. Again though, these allegations were not distilled into an evidentiary showing that for a specific period of time, specific care in an identified number of hours per day or week was provided which constituted a compensable reasonable and necessary medical benefit actually performed by [redacted] and [redacted] Therefore, the ALJ finds Claimant has not met his burden of proving [redacted] and [redacted] should be designated authorized attendant care providers for the purpose of being reimbursed for a set number of hours for past services for the period of July 8, 2021, through January 30, 2025.

Reimbursement Rates

X. To the extent any reimbursement to [redacted] and/or [redacted] is indicated, the ALJ finds a $18 hourly rate appropriate. Drs. Reichhardt, Primack, and Sanders testified an unskilled home health aide could complete the necessary attendant care. Ms. Kattman recommended a "skilled aide," with such skill coming from on-the-job training, not any underlying medical training or need for an RN or CNA. The ALJ agrees the care required can be provided by an unskilled home health aide. W.C.R.P. 18-6(B)(2) sets for rates for CNA level home health aides but not unskilled home health aides. Ms. Kattman testified hourly agency rates ranged from $36-$41, inclusive of agency overhead and profit. Similarly, ComForCare records reflect an agency rate of $40 per hour. (CHE 17). Rates earned by actual caregivers, not agency charges inclusive of overhead and profit, are more appropriate for reimbursement rates. [redacted] presented no evidence of the value of her time. Wage records for [redacted] reflect she has earned up to $26.00 per hour as a medically skilled orthodontic assistant, as opposed to an unskilled home care aide. (CHE 65, 67, 69, & 71). In the absence of additional evidence, the ALJ takes judicial notice of

prior FFCLOs establishing rates for family members.[9] The ALJ finds an $18.00 hourly rate is appropriate, considering the afore-mentioned information. The ALJ does not place value on opportunity cost in determining reimbursement to family. Insufficient evidence was presented as to value of the same, aside from financial aid [redacted] may have received if she attended college. Regardless, the ALJ does not find those considerations relevant in determining an hourly rate for reimbursement of services rendered.

Home Modifications and Equipment

Y. As found, Respondents stipulated to provision of the bathroom/shower modifications, garage ramp, and basement stairglide. Based upon the evidence presented, it is not entirely clear what additional modifications/durable medical equipment (DME) Claimant is requesting. However, removing modifications in the bathroom, the garage ramp, and the basement stairglide, the remaining recommendations contained in reports and/or testimony from Claimant's experts are: (1) hospital/adjustable bed as recommended by Nurse Serrano Soto; (2) electric scooter/wheelchair as recommended by Ms. Kattman and Ms. Mills; (3) bed transfer pole/trapeze as recommended by Ms. Kattman and Nurse Serrano-Soto; (4) a portable ramp to use when in the community as recommended by Ms. Kattman; and (5) a sidewalk from the driveway to backyard as recommended by Ms. Mills and Ms. Kattman. As found, Drs. Reichhardt and Primack testified a hospital bed would not be reasonable and necessary. Similarly, both [redacted] and [redacted] testified that the bed Claimant is currently using is an appropriate height and as noted, Claimant is independent with bed mobility and capable of transferring in and out of his bed independently. Dr. Reichhardt discussed in his testimony concerns he would have regarding provision of a hospital bed as contributing to Claimant's deconditioning. The ALJ agrees and concludes that Claimant has not proven that he has a current medical need for a hospital or other adjustable bed. Dr. Primack noted bed grab bars could allow Claimant to transfer faster, but he also testified they were not required for him to transfer.

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[9] *See* 5-184-000-006, August 21, 2023, establishing a $22 per hour rate; *See also* 4-822-456-001, October 15, 2019, establishing a $15 per hour rate; *See also* 5-044-210-01, establishing a $16 per hour rate. *See also,* 5-214-450-01, June 13, 2023, Findings of Fact 21, in a concurrent employment dispute, noting Claimant's employment as a home health worker earning $15.25 per hour.

Accordingly, the ALJ concludes that Claimant was not established that a bed transfer pole / trapeze is medically necessary for the purpose of transferring from his scooter into bed or vice versa. Rather, this recommendation appears to be one of a matter of convenience.

Z. The ALJ also credits the testimony of Drs. Reichhardt and Primack to find/conclude that Claimant does not require a new electric scooter or wheelchair. As noted, all the physicians involved in this claim agree that Claimant needs to maximize his physical movement in order to mitigate deconditioning and deterioration of his condition. The ALJ credits Dr. Reichhardt primarily, but also Dr. Primack, to conclude that increased use of an electric scooter or wheelchair would risk contributing to deconditioning and a worsening of his kinesophobia, which is likely to result in a greater degree of iatrogenic disability, which is not medically beneficial. By extension, a vehicle capable of transporting an electric scooter/wheelchair and adapted for Claimant's independent use is not a reasonable and necessary expense when the electric scooter/wheelchair is not reasonable and necessary on its own. Even Ms. Kattman, who recommended a wheelchair accessible van, deferred to Dr. Reichhardt's expertise regarding concerns of iatrogenic deconditioning from use of the electric scooter. As noted, Dr. Reichhardt does not believe either use of the scooter or the need for the van is reasonable and necessary. Further, [redacted] testified that Claimant probably would not be able to drive currently. She had safety concerns over Claimant driving noting that he would need training first. The ALJ agrees. Thus, the ALJ finds the request for a handicapped adapted van or other similar vehicle premature.

AA. No substantive testimony was provided relating to why sidewalk which was referenced in reports would be reasonable and necessary, nor did Claimant or his family express a desire for the same. Similarly, no substantive testimony was provided relating to why a portable ramp was needed for Claimant's needs in the community. Claimant and his family did not testify to any places he visits or plans to visit which are not ADA accessible and would require he bring his own ramp to access same.

BB. As found, Claimant has not proven by a preponderance of the evidence the need for the afore-mentioned home modifications and equipment.

Order

It is therefore ordered that:

1. Claimant's request for ongoing attendant care services in excess of six (6) hours per week, including for 24/7 care, is granted in part. Claimant's attendant care shall be increased to a total of 9 hours to account for snow removal as this need is reasonable, necessary and incidental to Claimant's need to obtain medical treatment. All care shall be carried out by an outside agency.

2. Claimant's request to have [redacted] and/or [redacted] [redacted] deemed authorized providers is moot and therefore denied and dismissed.

3. Claimant's request for attendant care reimbursement to [redacted] and [redacted] for past services rendered between July 8, 2021, and January 30, 2025, when ComForCare began providing services is denied and dismissed. The attendant care provided by Claimant's daughters over this period was not authorized and therefore not reimbursable.

4. Claimant's request for additional home modifications and durable medical equipment, including a handicapped adapted van is denied and dismissed.

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

Dated: September 26, 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

ISSUES

1. Whether Claimant proved by a preponderance of the evidence that Dr. Griggs is her authorized treating physician.

FINDINGS OF FACT

1. Claimant sustained a compensable injury on August 10, 2022, arising out of and in the course of her employment with Respondent-Employer. The scope of her injury included a left-sided sternoclavicular strain. The claim was initially denied but was later admitted following an October 26, 2023 hearing on the issue of compensability, among other issues.

2. On August 24, 2022, Claimant mailed to Employer a Notice of One-Time Change of Physician (WC 003), requesting a change of physician from Andrew Hildner, PA-C, and Dr. Ogrodnick to Front Range Occupational Medicine or Concentra. Claimant later testified that the reason for the one-time change of physician was that Dr. Ogrodnick was not treating her properly and was ignoring her complaints about the amount of left arm pain she was experiencing. Claimant further testified that Respondent had "unprofessional" communication with Dr. Ogrodnick, compromising Dr. Ogrodnick's integrity. The Court finds Claimant credible insofar as that was her rationale, but makes no finding as to whether that rationale was valid. Regardless of the rationale for the request, and notwithstanding Claimant's alternative selection of two providers as part of her Notice, the Court finds

Claimant's Notice to be a valid notice of change of physician pursuant to § 8-43-404(5)(a)(III), C.R.S., and Rule 8-5, WCRP.

3. Claimant credibly testified that she never received a response from Respondent regarding her one-time change of physician, and the Court notes that there is no evidence in the record that Respondent provided a written objection to the change of physician within seven days. Therefore, Claimant's authorized treating physician changed to Front Range Occupational Medicine or Concentra in the alternative.

4. On March 15, 2024, ALJ Cannici issued findings from the October 26, 2023 hearing. Those findings included that Claimant had sustained a left-sided sternoclavicular strain on her date of injury but that she did not sustain an injury to her bilateral shoulders.

5. On September 9, 2024, Dr. Ogrodnick's office sent a letter to Respondent's counsel stating that Dr. Ogrodnick had moved out of state and that Intermountain Health was not willing to transfer care to another provider in their system.

6. Because Dr. Ogrodnick was for non-medical reasons no longer willing to see Claimant, Respondent designated Dr. Heather West at Concentra as Claimant's new authorized treating physician. Consequently, Concentra, whom Claimant had chosen as part of her one-time change of physician, became Claimant's authorized treating provider, with Dr. West being her specific authorized treating physician.

7. Dr. West examined Claimant and opined on September 18, 2024, that Claimant did not sustain a work-related injury, notwithstanding ALJ Cannici's March 15, 2024 Order finding that Claimant had a compensable injury. Due to Dr. West's conflict with ALJ Cannici's Order, and her refusal to see Claimant for non-medical reasons, Respondent designated Dr. Miller at Front Range Occupational Medicine as Claimant's new authorized treating physician sometime around October 2,

2024, which was consistent with Claimant's prior Notice of One-Time Change of Physician.

8. On October 4, 2024, Claimant submitted a Request for Change of Physician (WC 197) requesting a change of physician to Dr. Kovachevich at Orthopedic Centers of Colorado. That same day, Claimant also filed a Notice of One-Time Change of Physician (WC 003) requesting a change of physician to Dr. Depreau. While Claimant's October 4, 2024 Notice of One-Time Change of Physician to change to Dr. Depreau was not valid, as Claimant had already made a one-time change and because more than ninety days had passed since her date of injury, the Request for Change of Physician to change to Dr. Kovachevich at Orthopedic Centers of Colorado was a valid request pursuant to § 8-43-404(5)(a)(VI), C.R.S, and Rule 8-7, WCRP. Respondent denied the Request for Change of Physician by checking the "DENIED" box and e-mailing the response back to Claimant that same day. Dr. Miller, therefore, remained Claimant's authorized treating physician.

9. In the meantime, Dr. Miller initially agreed to accept Claimant as a patient. However, prior to seeing Dr. Miller, Claimant e-mailed Dr. Miller stating that she was being forced to see Dr. Miller against her will, that she would have Dr. Miller review all of her medical records on the first visit so that Dr. Miller could make an assessment independent of Dr. Ogrodnick's, and that she was uncomfortable seeing Dr. Miller because she was "100% positive your talking with my employers lawyer" and that Dr. Miller was therefore biased. Based on this e-mail, Dr. Miller decided on October 7, 2024, that he was no longer willing to accept Claimant as a patient.

10. On November 26, 2024, Respondent contacted Dr. Ramaswamy at Peak Form Medical Center. On December 9, 2024, Peak Form Medical Center notified Respondent that they were unwilling to accept Claimant as a patient as Peak Form Medical Center was an acute-phase focused occupational medicine clinic.

11. At some point prior to January 7, 2025, Respondent designated Dr. Zimmerman as Claimant's new authorized treating physician. On January 7, Claimant informed Respondent that she spoke with Dr. Zimmerman's office and that they agreed that Dr. Zimmerman was not a good fit for her given that "he is only pain management and I have an orthopedic injury that required surgery already." Respondent's counsel responded to Claimant informing her that the only admitted condition was the sternoclavicular strain, which did not require an orthopedist.

12. On February 4, 2025, Respondent's counsel advised Claimant that they had designated Dr. Lawrence Lesnak as Claimant's new authorized treating physician.

13. On February 11, 2025, Respondent sent a letter to Claimant advising of a demand appointment or IME appointment on February 24, 2025, at 3:10 P.M., with a check-in time of 2:40 P.M. Several days later, Claimant requested to reschedule the appointment due to a conflict with another medical appointment she had. Dr. Lesnak's office offered Claimant two more dates, and Claimant chose March 24, 2025, at 2:00 P.M., with a check-in time of 1:30 P.M., though she advised she may have to cancel that appointment too due to possibly being out of state.

14. On March 10, 2025, Claimant e-mailed Respondent's counsel indicating that she had called Dr. Lesnak's office to determine whether the appointment was still scheduled and that Dr. Lesnak's office reported that there were no appointments showing. She stated, "I am trying to get email confirmation of this info as enough corruption and fraud has already happened on my WC case." Respondent's counsel promptly responded that the appointment was still scheduled for March 24 at 2:00 P.M., with a check-in time of 1:30 P.M. Claimant immediately responded, "I am rescheduling this appointment. I will be sending out letters. I will not see a provider that LIES and has no medical background with what my MRI results are."

15. On March 11, 2025, Claimant filed a Request for Change of Physician (WC 197) requesting a change of physician from SCL Health to Hand Surgery Associates. Respondent denied the request on the same form the following day.

16. On March 18, 2025, Claimant filed another Request for Change of Physician (WC 197) requesting a change of physician from SCL Health to Concentra with Dr. Kirkegaard. There is no evidence in the record that Respondent denied the request within twenty days on the form, and Dr. Kirkegaard became Claimant's new authorized treating physician. That same day, March 18, 2025, Claimant e-mailed Respondent's counsel to advise that she had cancelled her appointment with Dr. Lesnak as Dr. Villavicencio indicated that he was available to accept her as a patient. Respondent's counsel responded that the appointment was not cancelled and that Dr. Lesnak was the designated physician. Claimant insisted that it was her right to choose her own physician and that she refused to see Dr. Lesnak going forward. She later testified at hearing that Dr. Villavicencio declined to see her as Respondent would not authorize the treatment.

17. On March 21, 2025, Claimant filed a Notice of One-Time Change of Physician (WC 003), indicating a change of physician from PA Hildner to Dr. Villavicencio at Concentra. The Court notes that this Notice was ineffective as Claimant already had her one-time change of physician and because more than ninety days had passed since her date of injury.

18. On the morning of March 24, 2025, Claimant e-mailed Respondent's counsel demanding that the appointment that day with Dr. Lesnak be rescheduled as Claimant had since scheduled a conflicting appointment with Dr. Villavicencio. Respondent's counsel indicated that the appointment would not be rescheduled as it had already been rescheduled once. Claimant nevertheless did not show up for the appointment with Dr. Lesnak.

19. On March 26, 2025, Claimant filed another Request for Change of Physician (WC 197) requesting a change of physician from PA Hildner to Dr. Sean Griggs. There is no evidence in the record that Respondent denied the request within twenty days on the form. Dr. Griggs therefore became Claimant's new authorized treating physician.

20. Following an April 21, 2025 prehearing conference, Prehearing ALJ Plank ordered Claimant to attend a rescheduled May 12 appointment with Dr. Lesnak.

21. On May 7, 2025, Respondent sent a letter to Claimant indicating that she was to attend a demand appointment with Dr. Lesnak scheduled for June 9, 2025, at 10:30 A.M., with a check-in time of 10:20 A.M.

22. On June 9, 2025, Claimant appeared for the demand appointment at 10:22 A.M. Dr. Lesnak refused to see Claimant as she had arrived late for the appointment leaving insufficient time to complete the paperwork prior to the appointment. Dr. Lesnak's office indicated that the appointment was for 10:40 A.M., with a check-in time of 10:10 A.M., which differed from Respondent's May 7, 2025 letter.

23. That same day, Claimant filed a Notice of One-Time Change of Physician (WC 003), indicating a change of physician from Dr. Lesnak to Dr. Griggs. The Court notes that this Notice was ineffective as Claimant already had her one-time change of physician and because more than ninety days had passed since her date of injury.

24. On June 18, 2025, Claimant filed another Request for Change of Physician (WC 197) requesting a change of physician from Dr. Lesnak to Dr. Griggs, which Respondent denied two days later on the form.

25. Respondent scheduled a new demand appointment with Dr. Lesnak for August 4, 2025, at 1:00 P.M., with a check-in time of 12:30 P.M., and sent Claimant a letter on June 18, 2025, advising her of the appointment.

26. In the meantime, on June 25, 2025, Claimant filed Applications for Hearing on the issue of her request for a change of physician.

27. The parties attended a prehearing conference on July 28, 2025, before Prehearing ALJ Mueller on Claimant's request to postpone the demand appointment with Dr. Lesnak pending resolution of the hearing issue concerning her authorized treating physician. Prehearing ALJ Mueller denied Claimant's motion, noting that Claimant was legally obligated to attend the appointment regardless of whether an ALJ would ultimately find it to be a demand appointment with a treating provider or an IME. He further ordered that Claimant attend the scheduled August 4, 2025 appointment with Dr. Lesnak.

28. On August 4, 2025, the date of Claimant's appointment, Dr. Lesnak sent a letter to Respondent advising that he was no longer willing to participate in Claimant's treatment due to Claimant's no-show, tardiness, and behavior towards him and his employees. He explained,

> "I have never evaluated [redacted] but she has emailed my assistant, Heather, more than 162 times. She has also placed phone calls to my front desk staff and scheduling department countless times over the past approximately six months. Once again, I have never even personally evaluated [redacted] whatsoever."

29. Claimant testified consistently with the above findings and her testimony is credible except as indicated above.

Ultimate Findings

30. The Court finds that Claimant's August 24, 2022 Notice of One-Time Change of Physician to be a valid notice of change of physician pursuant to § 8-43-404(5)(a)(III), C.R.S., and Rule 8-5, WCRP. Therefore, as of August 24, 2022, Front Range Occupational Medicine or Concentra became her authorized provider. Claimant was scheduled with Dr. West at Concentra.

31. Due to Dr. West's refusal to treat Claimant for her compensable injury, Respondent effectively designated Dr. Miller at Front Range Occupational Medicine as Claimant's new authorized treating physician sometime around October 2, 2024, pursuant to § 8-43-404(10)(a), C.R.S., and Rule 8-6, WCRP.

32. However, because Dr. Miller on October 7, 2024, declined to treat Claimant due to Claimant's accusations of impartiality, a non-medical reason, Respondent made a valid designation of Dr. Zimmerman, thus making Dr. Zimmerman Claimant's new authorized treating physician.

33. However, Dr. Zimmerman, on January 7, 2025, decided not to accept Claimant as a patient after Claimant had persuaded him that she needed an orthopedist due to her shoulder complaints. This was a non-medical reason for declining to treat Claimant, thus triggering again Respondent's responsibility to designate a new authorized treating physician.

34. Respondent designated Dr. Lesnak as the new authorized treating physician on February 4, 2025, and Dr. Lesnak became Claimant's new authorized treating physician as of that date.

35. However, Claimant's March 18, 2025 Request for Change of Physician, in which she requested a change of physician to Dr. Kirkegaard at Concentra, was valid. Because there is no evidence in the record of a timely denial, Dr. Kirkegaard at

Concentra became Claimant's authorized treating physician as of that date pursuant to § 8-43-404(5)(a)(VI), C.R.S, and Rule 8-7, WCRP.

36. Shortly thereafter, on March 26, 2025, Claimant made a Request for Change of Physician to Dr. Griggs. Again, because there is no evidence in the record of a timely denial, Dr. Griggs at Concentra became Claimant's authorized treating physician as of that date.

37. The Court finds that as of the date of hearing, Dr. Griggs remained Claimant's authorized treating physician by virtue of Claimant's March 18, 2025 Request for Change of Physician.

38. The Court makes no findings with regard to Claimant's conduct toward her designated physicians or with regard to the obstructive effect of her conduct or whether Dr. Griggs is an appropriate authorized treating physician given the scope of Claimant's injury.

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).

Authorized Treating Physician

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

2. "Authorization" refers to the physician's legal authority to treat and is distinct from whether treatment is "reasonable and necessary" within the meaning of § 8-42-101(1)(a), C.R.S. *Leibold v. A-1 Relocation, Inc.*, W.C. No. 4-304-437 (January 3, 2008).

3. Where an authorized physician "refuse[s] to provide medical treatment to the injured employee or discharged the injured employee from medical care for nonmedical reasons . . . and there is no other authorized physician willing to provide medical treatment, then the insurer or self-insured employer shall, within fifteen calendar days from receiving the written notice, designate a new authorized physician willing to provide medical treatment." Section 8-43-404(10)(a), C.R.S.

4. Within ninety days following the date of injury, but before reaching MMI, a claimant may request a one-time change of authorized treating physician to a different physician on the designated provider list. Section 8-43-404(5)(a)(III), C.R.S.; Rule 8-5, W.C.R.P. For the claimant to obtain a change in physician, the claimant must use the Division's form. Rule 8-5. The respondents may make a written objection to the request within seven business days of the request. *Id*.

5. Additionally, section 8-43-404(5)(a)(VI) allows for the injured worker to request a change of physician. *See* Rule 8-7, WCRP. If the request for a change of physician is not responded to within twenty days, the employer or insurance carrier is deemed to have waived any objection to the request for a change of physician.

6. As found, Claimant submitted a valid Request for Change of Physician on March 26, 2025, to Dr. Griggs. Because Respondent failed to timely deny that request within twenty days, Dr. Griggs became Claimant's authorized treating physician by operation of § 8-43-404(5)(a)(VI), C.R.S., and Rule 8-7, WCRP.

ORDER

It is therefore ordered that:

1. Dr. Griggs is Claimant's authorized treating physician.

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

DATED: September 26, 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.