INDUSTRIAL CLAIM APPEALS OFFICE

W.C. No. 4-783-192

IN THE MATTER OF THE CLAIM OF

KEVIN MILAN,

Claimant,

v.

FINAL ORDER

SOUTH METRO FIRE AND RESCUE, CITY OF GOLDEN, CASTLEWOOD FIRE DEPARTMENT, AND PARKER FIRE PROTECTION DISTRICT,

Employers,

and

SELF-INSURED, COLORADO INTERGOVERNMENTAL RISK SHARING AGENCY; AND PINNACOL ASSURANCE,

Insurers,
Respondents.

The respondents, City of Golden (Golden) and its insurer Colorado Intergovernmental Risk Sharing Agency (CIRSA), seek review of an order of Administrative Law Judge Henk (ALJ) dated January 18, 2012, that ordered the claimant's claim for prostate cancer compensable and that ordered Golden and CIRSA solely liable for the claimant's medical benefits. We affirm.

The ALJ found that the claimant has been employed as a firefighter since 1990. The claimant worked as a firefighter for Castlewood Fire Department from March 7, 1998, through July 30, 2001. The claimant worked as a firefighter for Golden from July 30, 2001, through September 5, 2007, and he worked as a Captain for the Parker Fire Protection District (Parker) from September 6, 2007, through December 31, 2008. The claimant has worked as a volunteer firefighter for Golden from February 5, 2008, to the present time. Parker merged with South Metro Fire and Rescue (South Metro) on January 1, 2009, and the claimant has worked for South Metro since this time. At all times relevant herein, CIRSA insured Golden.

The claimant's work as a firefighter for over 21 years has involved the suppression and overhaul of residential and commercial structural fires. The claimant's work also has involved containing hazardous materials and spills as well as chemical and car fires.

Firefighters suffer regular exposures to multiple chemicals that vary by fire type. As pertinent here, when the claimant worked for South Metro, he primarily worked as a training and safety officer.

The claimant has a family history of prostate cancer, which is considered a familial predisposition, and prostate cancer is considered a cancer of the genitourinary system.

On July 24, 2007, the claimant underwent a physician examination which included a digital rectal exam and prostate exam and both were normal. At this time, the claimant's prostate specific antigen (PSA) was 2.5. In 2007, a 2.5 PSA was not high enough to recommend a biopsy.

On November 4, 2008, when the claimant was 49 years old, his PSA was 3.6. Dr. Harris referred the claimant to his family physician who felt that his PSA was high enough to warrant a urological consultation. The claimant underwent a biopsy on December 18, 2008, that showed he had clinically significant prostate adeno carcinoma. The claimant underwent prostate cancer surgery on April 8, 2009.

A hearing subsequently was held on the issues of compensability, medical benefits, and assigning liability for the claimant's medical benefits. At the time of the hearing, the respondents did not dispute that the claimant had prostate cancer or that he had been employed as a firefighter for five or more years. Tr. (July 1, 2011 v.1) at 13-17, 25-26.

During the hearing, the claimant and the respondents introduced conflicting medical evidence. Dr. Mayer testified on behalf of the claimant and opined that there was no medical documentation that the claimant's family or hereditary history would result in the development of prostate cancer. Dr. Mayer instead opined that the claimant's family or hereditary history increased his risk of developing the cancer. Tr. (July 1, 2011 v.2) at 27-28. Dr. Mayer further opined that while she did not know the cause of the claimant's prostate cancer, there was "no preponderance of the medical evidence that shows that the clinical presentation of his prostate cancer at age 49 . . . was completely unaffected by his years of exposure to carcinogens as a firefighter, an occupation associated with a 28% increased risk of prostate cancer." Claimant's Ex. 15 at 341; Tr. (July 1, 2011 v.2) at 14-16. In forming her opinions, Dr. Mayer relied upon a study conducted by Grace K. LeMasters, Ph.D., *Cancer Risk Among Firefighters: A Review and Meta-analysis of 32 Studies*. Tr. (July 1, 2011 v.2) at 28-29. Claimant's Ex. 18 at 379, Table 5. Dr. Mayer testified that based on this study, firefighters were found to have a 28% increased risk of prostate cancer compared to the population at large. Id. Dr. Mayer further explained that since the claimant had only one relative, or one of 17

first male cousins who developed prostate cancer at 49 years of age, she did not believe that his family predisposition outweighed the other risk factors, including employment as a firefighter, for the development of prostate cancer. Tr. (Aug. 12, 2011) at 193-196.

Conversely, at the hearing, the respondents' expert witnesses, Drs. Weiss, Augspurger, and Milliken, attempted to dispute the scientific validity of the Colorado General Assembly's presumption in §8-41-209, C.R.S. that firefighting could give rise to a claim for occupational disease. The respondents' medical experts also attempted to attribute the development of the claimant's prostate cancer to his familial predisposition. Dr. Weiss testified that it is not known whether there is a causal contribution of firefighting to the occurrence of prostate cancer or whether firefighting aggravates or accelerates prostate cancer. Tr. (Aug. 12, 2011) at 25, 38. Dr. Weiss testified that while he was suspicious of the observed 28% increase, it was certainly possible that there was some increase of prostate cancer in firefighters. Tr. (Aug. 12, 2011) at 36-37. Dr. Weiss opined that he did not know the cause of the claimant's cancer, but that it was medically probable that the claimant would have developed prostate cancer even if he never served as a firefighter. Dr. Weiss opined that he believed the claimant's cancer was not caused by firefighting but instead was caused by his familial predisposition. Tr. (Aug. 12, 2011) at 29-30. Similarly, Dr. Augspurger testified that to a reasonable degree of medical probability, the cause of the claimant's prostate cancer is family and hereditary reasons. Tr. (Aug. 12, 2011) at 63. Dr. Milliken testified that while the claimant's genetic risk factors for prostate cancer may not be the sole cause or there may be other factors involved, he could not identify from the large group of other risk factors which one, if any, was the significant co-conspirator or co-contributor to carcinogenesis or the development of prostate cancer. Dr. Milliken testified that he did not know if anyone could make this identification. Tr. (Aug. 12, 2011) at 109-111.

In her order, the ALJ found that Dr. Mayer persuasively opined that the medical evidence presented by the respondents failed to demonstrate that the claimant's prostate cancer did not occur on his job. The ALJ further found that Dr. Mayer credibly and persuasively testified that although the exact cause of the claimant's prostate cancer was unknown, his cancer is likely the result of the synergistic interaction between familial factors and his carcinogen exposures as a firefighter. Findings of Fact at 7 ¶24. The ALJ also found as persuasive Dr. Mayer's opinion that the claimant's younger onset of prostate cancer was not consistent with a familial history of his other first degree relatives. Findings of Fact at 7 ¶26. As such, the ALJ found that the claimant's diagnosis of prostate cancer at his much younger age was suggestive that other factors, including occupational exposures, combined with familial risk and unknown genes to create prostate cancer. Findings of Fact at 7 ¶25. The ALJ further found that Drs. Augspurger's, Milliken's, and Weiss's opinion that prostate cancer is not caused by firefighting or related thereto, was not persuasive enough to overcome the statutory

presumption. The ALJ concluded that the respondents did not prove that it is more likely than not that the claimant's cancer is not the result of his firefighting occupation. Consequently, the ALJ concluded that the claimant's prostate cancer is occupationally related and compensable under §8-41-209, C.R.S. Conclusions of Law at 14 ¶14.

The ALJ also found that according to the persuasive and consistent testimony of Drs. Milliken and Augspurger, given the claimant's PSA between 2.5 and 2.8 at age 47, it was medically probable that the claimant had prostate cancer in July 2007, before he went to work for Parker and South Metro. Findings of Fact at 10 ¶39. Dr. Augspurger persuasively testified that the practice of prostate cancer medicine has evolved sine 2007, and that he probably would have ordered the biopsy when the claimant's PSA was 2.5 in 2007. Tr. (August 12, 2011) at 67. Today, physicians are suspicious of the existence of prostate cancer when a male who is under 50 years of age has a PSA of more than 1.0. Findings of Fact at 5 ¶15. The ALJ also found that Dr. Augspurger persuasively opined that there is no medical literature to suggest that once the prostate cell has undergone malignant transformation, exposure to carcinogens would directly affect the cells or have any influence on the progression of the disease. Findings of Fact at 10 ¶42. Consequently, the ALJ found that more likely than not the claimant had prostate cancer in July 2007 and while employed by Golden, and that the course of the prostate cancer was not aggravated or accelerated by carcinogen exposures or firefighting duties after July 2007. Thus, the ALJ concluded that pursuant to §8-41-304(1), C.R.S., Golden was solely liable for the claimant's prostate cancer. Conclusions of Law at 15 ¶20.

I.

We first consider Golden's and CIRSA's argument that the ALJ misapplied the law by requiring them to prove a heightened standard, or proving the actual cause of the claimant's cancer. Golden and CIRSA further argue that even if the claimant was entitled to the rebuttable presumption, the ALJ erred by not finding that they presented sufficient medical evidence to rebut the presumption. We are not persuaded that the ALJ committed reversible error.

The firefighter presumption is contained in §8-41-209, C.R.S. and provides as follows:

> (1) Death, disability, or impairment of health of a firefighter of any political subdivision who has completed five or more years of employment as a firefighter, caused by cancer of the brain, skin, digestive system, hematological system, or genitourinary system and resulting from his or her employment as a firefighter, shall be considered an occupational disease.
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> (2) Any condition or impairment of health described in subsection (1) of this section:

> (a) Shall be presumed to result from a firefighter's employment if, at the time of becoming a firefighter or thereafter, the firefighter underwent a physical examination that failed to reveal substantial evidence of such condition or impairment of health that preexisted his or her employment as a firefighter; and
>
> (b) Shall not be deemed to result from the firefighter's employment if the firefighter's employer or insurer shows by a preponderance of the medical evidence that such condition or impairment did not occur on the job.

Clearly, the rebuttable presumption enumerated within §8-41-209, C.R.S. has the effect of making it easier for firefighters to prove that their cancer of the brain, skin, digestive system, hematological system, or genitourinary system resulted from their employment as a firefighter and has the effect of resolving doubts in their favor. Section 8-41-209, C.R.S. By adopting this rebuttable presumption, the General Assembly recognized the importance of firefighters in society and the unique dangers, exposures, and hazards of their job. The General Assembly concluded that such exposures and hazards may have a direct effect on a firefighter's health, and it applied the rebuttable presumption to cancers whose causes are not always known with medical certainty. Section 8-41-209, C.R.S.; *see also Davison v. Indus. Claim Appeals Office*, 84 P.3d 1023, 1029 (Colo.2004) (in construing statutes, we must determine and give effect to intent of General Assembly; we first resort to statutory language, giving effect to the plain and ordinary meaning of the words used).

To rebut the presumption, the employer or insurer must show, by a preponderance of the medical evidence, that the cancer or impairment of health did not occur on the job. Section 8-41-209(2)(b), C.R.S.; *see Page v. Clark*, 592 P.2d 792 (Colo. 1979) (preponderance of the evidence has been defined as more probably true than not); *Jimenez-Chavez v. Cargill Meat Solutions*, W.C. No. 4-704-536 (October 29, 2008); *see also Krueger v. Ary*, 205 P.3d 1150 (Colo.2009) (rebuttable presumption shifts burden of going forward to party against whom it is raised, and if burden is not met, establishes the presumed facts as a matter of law).

Here, Golden's and CIRSA's argument notwithstanding, we do not view the ALJ's order as requiring a heightened burden of proof or requiring them to establish the exact cause of the claimant's prostate cancer. In fact, in her order, the ALJ correctly cited the definition of the "preponderance of the evidence" standard as requiring the proponent to establish the existence of a contested fact as more probable than its nonexistence. Conclusions of Law ¶5, ¶7. As explained above, the claimant introduced evidence of the LeMasters study, which Dr. Mayer testified showed that firefighters were

found to have a 28% increased risk of prostate cancer compared to the population at large. Tr. (July 1, 2011 v.2) at 28-29. Claimant's Ex. 18 at 379, Table 5. The ALJ credited Dr. Mayer's opinion that the claimant's cancer is likely the result of the synergistic interaction between familial factors and his carcinogen exposures as a firefighter. Findings of Fact at 7 ¶24. We therefore view the ALJ's order as concluding that because the respondents' medical experts testified that due to the claimant's familial predisposition he had an increased risk of developing prostate cancer, that this did not constitute medical evidence demonstrating by a preponderance of the evidence that his prostate cancer did not occur on the job. Further, as noted above, Dr. Weiss testified that it certainly is possible that there is a small increase of incidents of prostate cancer in firefighters. Tr. (Aug. 12, 2011) at 36. Similarly, Dr. Milliken testified that the claimant's genetic risk factors for prostate cancer may not be the sole cause or there may be other factors involved. Dr. Milliken testified that he did not know if anyone could make this identification. Tr. (Aug. 12, 2011) at 109-111. The clear language of §8-41-209, C.R.S. requires the respondents to prove by a preponderance of the medical evidence that the claimant's prostate cancer did not occur on the job. The ALJ concluded, with record support, that the respondents did not satisfy this burden.

Additionally, Golden's and CIRSA's argument essentially attacks the ALJ's role as fact finder, as they reassert the opinions of Drs. Augsuprger, Weiss, and Milliken that the claimant's cancer was caused by his familial predisposition rather than his employment as a firefighter. The ALJ weighed the conflicting medical evidence, noting that Drs. Augsupurger, Weiss, and Milliken opined that the claimant's prostate cancer was to a reasonable degree of medical probability caused by his familial predisposition and disputed that the claimant's cancer was not occupationally related. Again, the ALJ was persuaded by Dr. Mayer's opinion that because the claimant was diagnosed as developing prostate cancer at a younger age than his other first degree relatives, that this suggested other factors, including occupational exposures, combined with familial risk and unknown genes to create prostate cancer. 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). The appellate standard on review of an alleged abuse of discretion is whether the ALJ's order exceeds the bounds of reason, as where it is contrary to the applicable law or unsupported by the evidence. *Rosenberg v. Board of Education of School District #1*, 710 P.2d 1095 (Colo. 1985). We conclude substantial evidence supports the ALJ's factual findings concerning the claimant's prostate cancer and the respondents' failure to overcome the presumption within §8-41-209, C.R.S. Section 8-43-301(8), C.R.S.

Golden and CIRSA further interpret the ALJ's order as disregarding evidence of risk factors. We do not view the ALJ's order as such. Rather, the ALJ did, in fact, consider familial and hereditary risk factors as testified to by Drs. Weiss, Augspurger,

and Milliken. Once again, the ALJ found that the claimant's diagnosis of prostate cancer at a much younger age suggested that other factors, including occupational exposures, combined with familial risk and unknown genes to create his prostate cancer. Findings of Fact at 7 ¶¶24, 25. Essentially, therefore, the ALJ found, with record support, that the testimony of Drs. Weiss, Augspurger, and Milliken did not eliminate the claimant's work as a firefighter as a cause of his prostate cancer. Consequently, the respondents failed to establish by a preponderance of the medical evidence that the claimant's cancer did not occur on the job. Section 8-43-301(8), C.R.S.; *see Wanstrom v. N.D. Workers Comp. Bureau*, 621 N.W.2d 864, 867 (N.D.2001) (under firefighter presumption, a worker's employment need not be sole cause of the lung disease); *cf. City of Edmond v. Vernon*, 210 P.3d 860 (Okla.Civ.App. Div. 4, 2008) (workers' compensation court received conflicting medical evidence and concluded that City had not overcome statutory presumption; since there was competent evidence to support court's determination, decision was sustained).

II.

Golden and CIRSA also argue that the ALJ incorrectly applied the presumption set forth in §8-41-209, C.R.S. by refusing to consider medical evidence that they submitted challenging the causal connection between firefighting and prostate cancer. Golden and CIRSA reason that the ALJ misapplied the law when "explaining that an employer may not challenge the legislatively determined presumption that a causal connection exists between firefighting and certain cancers." Golden and CIRSA also assert that the ALJ erred in relying on *Christ v. Littleton Fire Rescue*, W.C. No. 4-745-560 (November 3, 2009) (currently on appeal 10CA1494) because the Panel's holding in that case is incorrect. We disagree.

In *Christ v. Littleton Fire Rescue, supra*, the Panel specifically held that the plain and ordinary meaning of the language of the presumption in §8-41-209, C.R.S. cannot be rebutted by the opinions of medical experts that there is no causal connection between the firefighting in general and the cancer in question. The Panel held in pertinent part as follows:

> In our view the plain and ordinary meaning of the language of the presumption in §8-41-209 cannot be rebutted by the opinions of medical experts that there is no causal connection between the occupation in general and the disease in question. The legislature has by statute created that causal connection, as evidenced by the clear legislative purpose of 8-41-209 to shift the burden of proof to show work-relatedness from employees to employers in cases where the statutory presumption applies.
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> * * * *

> We are persuaded that the enactment of the firefighter presumption represents a legislatively adopted premise that the occupational exposure of firefighters causes cancer. Here the expert medical opinions offered by the respondents merely denied the underlying legislative premise of a causal relationship between the firefighter's occupational exposure and the development of cancer.. Therefore such evidence is insufficient to rebut the presumption contained in §8-41-209.

Here, we agree with the Panel's Order in *Christ* that the presumption in §8-41-209, C.R.S. cannot be rebutted by the opinions of medical experts that there is no causal connection between firefighting and the disease in question. A showing of an absence of medical evidence linking firefighting with a particular type of cancer merely represents a void of information, and cannot be considered evidence sufficient to overcome the presumption enumerated in §8-41-209, C.R.S. As stated by the Panel in *Christ*, the General Assembly has decided that work common to firefighting contributes causally to certain cancers, such as cancer of the genitourinary system, when the firefighter has completed five or more years of employment and at the time of becoming a firefighter or thereafter, the firefighter underwent a physical examination that failed to reveal substantial evidence of such cancer that preexisted his or her employment as a firefighter. Under such circumstances, therefore, legal causation is established. Consequently, we conclude that the ALJ did not incorrectly apply the presumption set forth in §8-41-209, C.R.S.

III.

Next, Golden and CIRSA argue that the ALJ incorrectly applied the law by failing to assign medical liability to either Parker or South Metro. Golden and CIRSA specifically assert that by concluding that all respondents failed to overcome the presumption contained within §8-41-209, C.R.S., the ALJ necessarily determined that the claimant's employment with Castlewood, Golden, Parker, and South Metro caused the claimant's prostate cancer and impairment. Golden and CIRSA therefore contend that since Parker and South Metro did not overcome the presumption, the ALJ was precluded from assigning liability solely to Golden, and that the ALJ necessarily found that the claimant's employment with Parker and South Metro caused the need for medical treatment. Golden and CIRSA further argue that for the ALJ to later conclude that the claimant's employment with Parker and South Metro did not cause the claimant's need for treatment is inherently inconsistent and not legally sustainable. We disagree.

Initially, to the extent that the claimant contends that we only should consider South Metro's argument regarding the ALJ's assignment of liability solely to Parker, we agree. *See* Section 8-43-301(2), C.R.S.

Section 8-41-209, C.R.S. is silent as to assignment of liability between employers subject to the presumption of entitlement to benefits. Nevertheless, the General Assembly is presumed to act with awareness of prior decisional law on the subject matter under inquiry when it amends a statute. *People v. Zapotocky*, 869 P.2d 1234 (Colo. 1994). Thus, we look for guidance to established precedent on the issue of last injurious exposure.

Section 8-41-301, C.R.S. governs liability for occupational diseases and provides in pertinent part as follows:

> Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease and suffered a substantial permanent aggravation thereof and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier.
> . . .

In *University Park Care Center v. Industrial Claim Appeals Office*, 43 P.3d 637 (Colo. App. 2001), the Colorado Court of Appeals held that when compensation is sought for an occupational disease to which the claimant has been exposed in successive employments, liability is assigned based upon the "last injurious exposure" rule. The Court noted that by placing such liability on the last employer where the claimant sustained an injurious exposure to a harmful concentration of a hazard and a substantial permanent aggravation of the disease, the rule obviates the "onerous, if not impossible, task of proving which employer caused the disability." *Robbins Flower Shop v. Cinea*, 894 P.2d 63, 65 (Colo.App.1995). It is well settled, however, that the "last injurious exposure" rule does not govern the assignment of liability for medical benefits necessitated by an occupational disease. The cost of those benefits is, instead, placed upon the carrier "on the risk" at the time such expenses are incurred. *Royal Globe Insurance Co. v. Collins*, 723 P.2d 731, 733 (Colo.1986). Nevertheless, in *University Park Care Center*, the Court held as follows:

> [E]ven if liability for medical benefits were to be assigned to the carrier "on the risk," we read that phrase as a reference to the insurer that provided coverage to the employer whose conditions of employment caused the need for treatment. Thus, to impose liability for medical benefits on a particular employer, the evidence must demonstrate that the employment with that employer caused, aggravated, or accelerated the claimant's injury. *See Singleton v. Kenya Corp.*, 961 P.2d 571 (Colo.App.1998) (causal relationship between the injury and the disability must be established to

obtain medical benefits); *Snyder v. Industrial Claim Appeals Office*, 942 P.2d 1337 (Colo.App.1997) (right to medical benefits arises only when claimant initially establishes that need for medical treatment was proximately caused by industrial injury). *Id.* at 640.

Here, Golden and CIRSA initially assert that the ALJ concluded that Castlewood, Parker, and South Metro did not overcome the presumption enumerated within §8-41-209, C.R.S., and that this issue, therefore, is interlocutory as to these respondents. We disagree with Golden's and CIRSA's argument and instead conclude that the ALJ's order that Castlewood, Parker, and South Metro are not liable for the claimant's medical benefits is final and reviewable. *See* 8-43-301(2), C.R.S.

We further perceive no error in the ALJ's order assigning liability solely to Golden. The ALJ found, with record support, that it was medically probable that the claimant had prostate cancer in July 2007, before he went to work for Parker and South Metro. In forming this opinion, both Drs. Milliken and Augspurger relied upon the claimant's PSA between 2.5 and 2.8 at age 47. Further, the ALJ found that the claimant did not sustain a substantial permanent aggravation of his cancer during his subsequent employment with Parker or South Metro. The ALJ credited Dr. Augspurger's opinion that there was no medical literature to suggest that once the prostate cell has undergone malignant transformation, exposure to carcinogens would directly affect the cells or have any influence on the progression of the disease. Dr. Augspurger specifically explained that he did not know of any literature which says that additional exposure would change the individual cancer cell as it grows. Tr. (Aug. 12, 2011) at 69. The ALJ also credited Dr. Milliken's opinion that once a person has prostate cancer, the cancer has a natural progression and it is unlikely that subsequent firefighting exposures would have been significant in altering the course of the claimant's prostate cancer that existed in July 2007. Tr. (Aug. 12, 2011) at 166-169. Additionally, the ALJ found that when the claimant worked for South Metro, he primarily worked as a training and safety officer. *See George v. City of Westminster*, W.C. Nos. 4-791-814 & 4-787-897 (January 14, 2011) (in firefighter's work for RWB, ALJ found he was not exposed to toxic chemicals that firefighters are presumed to be exposed to as contemplated under §8-41-209 and therefore the claimant's condition did not occur on the job with RWB).

Additionally, we disagree with Golden's and CIRSA's argument that to avoid liability, subsequent fire departments, such as Parker and South Metro, had to overcome the presumption contained within §8-41-209, C.R.S. As explained in detail above, §8-41-209, C.R.S. merely provides that as long as a firefighter has completed five or more years of employment and there was a physical examination that failed to reveal substantial evidence of cancer or impairment of health, then there is a rebuttable

presumption that such condition was caused by his or her employment. Nothing in this statute provides that the last employer who employed a firefighter and who fails to overcome the statutory presumption is solely liable. Rather, as correctly found by the ALJ, to impose liability for medical benefits on Parker and South Metro, the evidence must demonstrate that employment with such employers caused, aggravated, or accelerated the claimant's condition. *University Park Care Center v. Industrial Claim Appeals Office, supra.* There is substantial evidence in the record demonstrating that employment with Parker and South Metro did not cause, aggravate, or accelerate the claimant's prostate cancer. Section 8-43-301(8), C.R.S.

IT IS THEREFORE ORDERED that the ALJ's order dated January 18, 2012, is affirmed.

INDUSTRIAL CLAIM APPEALS PANEL

Brandee DeFalco-Galvin

Kris Sanko

NOTICE

- This order is **FINAL** unless you appeal it to the **COLORADO COURT OF APPEALS.** To do so, you must file a notice of appeal in that court, either by mail or in person, but it must be **RECEIVED BY** the court at the address shown below within twenty (20) calendar days of the mailing date of this order, as shown below.

- A complete copy of this final order, including the mailing date shown, must be attached to the notice of appeal, and you must provide five (5) copies of both the notice of appeal and the complete final order to the Colorado Court of Appeals.

- You must also provide copies of the complete notice of appeal package to the Industrial Claim Appeals Office, the Attorney General's Office (addresses shown below), and all other parties or their representative whose addresses are shown on the Certificate of Mailing on the next page.

- In addition, the notice of appeal must include a certificate of service, which is a statement certifying when and how you provided these copies, showing the names and addresses of these parties and the date you mailed or otherwise delivered these copies to them.

- An appeal to the Colorado Court of Appeals is based on the existing record before the Administrative Law Judge and the Industrial Claim Appeals Office, and the court will not consider documents and new factual statements that were not previously presented or new arguments that were not previously raised.

- Forms are available for you to use in filing a notice of appeal and the certificate of service. You may obtain these forms from the Colorado Court of Appeals online at its website, www.colorado.gov/cdle/CTAPPFORM or in person, or from the Industrial Claim Appeals Office.

- The court encourages use of these forms. Proper use of the forms will satisfy the procedural requirements of the Colorado Appellate Rules for appeals to the Colorado Court of Appeals. **For more information regarding an appeal, contact the Court of Appeals at 303-837-3785.**

Colorado Court of Appeals
101 West Colfax Avenue, Suite 800
Denver, CO 80202

Industrial Claim Appeals Office
633 17th St., Suite 600
Denver, CO 80202

Attorney Generals Office
State Services Section
1525 Sherman St., 7th Floor
Denver, CO 80203

CERTIFICATE OF MAILING

Copies of this order were mailed to the parties at the addresses shown below on

7/6/2012 by RP .

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