APPENDIX

A

COLORADO SUPREME COURT OF APPEALS deny cert
MANDATE ISSUED 2/26/24.

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: February 26, 2024
Certiorari to the Court of Appeals, 2022CA2093 Industrial Claim Appeals Office, WC5009761	
Petitioner: Larry E. Webster, Jr., v. **Respondents:** Industrial Claim Appeals Office of the State of Colorado, Czarnowski Display Service Inc., and Trumbull Insurance Company.	Supreme Court Case No: 2023SC714
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, FEBRUARY 26, 2024.

APPENDIX

D

COURT OF APPEALS REHEARING
DENIED. 9/7/23.

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: September 7, 2023
Industrial Claim Appeals Office WC5009761	
Petitioner: Larry E Webster, Jr, v. **Respondents:** Industrial Claim Appeals Office, Czarnowski Display Service Inc, and Trumbull Insurance Co.	Court of Appeals Case Number: 2022CA2093
ORDER DENYING PETITION FOR REHEARING	

The PETITION FOR REHEARING filed in this appeal by:

Larry E. Webster, Jr., Petitioner,

is **DENIED**.

Issuance of the Mandate is stayed until: September 22, 2023

If a Petition for Certiorari is timely filed with the Supreme Court of Colorado, the stay shall remain in effect until disposition of the cause by that Court.

DATE: September 7, 2023

BY THE COURT:
Harris, J.
Lipinsky, J.
Schutz, J.

APPENDIX

E

COURT OF APPEALS DENY CERTIORARI
OPINION ISSUED 8/3/2023.

COLORADO COURT OF APPEALS DATE FILED: August 3, 2023

Court of Appeals No. 22CA2093
Industrial Claim Appeals Office of the State of Colorado
WC No. 5-009-761

Larry E. Webster, Jr.,

Petitioner,

v.

Industrial Claim Appeals Office of the State of Colorado, Czarnowski Display Service Inc., and Trumbull Insurance Company,

Respondents.

ORDER AFFIRMED

Division VI
Opinion by JUDGE SCHUTZ
Harris and Lipinsky, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced August 3, 2023

Larry E. Webster, Jr., Pro Se

No Appearance for Respondents

¶ 1 In this workers' compensation action, claimant, Larry E. Webster, Jr., seeks review of a final order of the Industrial Claim Appeals Office (Panel) affirming an administrative law judge's (ALJ) denial of Webster's petition to reopen his workers' compensation claim. We affirm the Panel's order.

I. Background

¶ 2 In March 2016, while working as a warehouse employee, Webster fell and sustained injuries.

¶ 3 An authorized treating physician placed Webster at maximum medical improvement (MMI) with no impairment on October 21, 2016. Webster requested a division-sponsored independent medical exam (DIME). The DIME physician agreed with the treating physician that Webster was at MMI on October 21, 2016, but concluded Webster had suffered a documented injury to his lumbar spine when he fell and assigned Webster an impairment rating of 8% — 7% for a spinal injury and 1% for psychological impairment. The DIME physician opined that Webster needed only limited maintenance care — "a gym and pool pass for 6-12 months" — and imposed no work restrictions on him.

¶ 4 Although Webster challenged the DIME physician's findings, an ALJ determined he had not overcome the DIME physician's opinions, and the Panel affirmed that decision. A division of this court dismissed Webster's appeal of the Panel's decision. *See Webster v. Indus. Claim Appeals Off.*, (Colo. App. No. 18CA0714, Feb. 14, 2019) (not published pursuant to C.A.R. 35(e)) (*Webster I*).

¶ 5 Webster continued to seek medical treatment for ongoing pain complaints and filed an application for a hearing in September 2019. Following hearings on the application, the ALJ determined that Webster failed to establish that he was either "permanently and totally disabled" or "in need of post-MMI medical maintenance." The ALJ therefore denied Webster's request for permanent total disability (PTD) and medical maintenance benefits. The Panel affirmed, holding that because substantial evidence supported the ALJ's findings and determinations, it could not set aside the ALJ's order. Webster once again appealed, and a division of this court affirmed the Panel's order. *See Webster v. Indus. Claim Appeals Off.*, (Colo. App. No. 20CA1529, Mar. 25, 2021) (not published pursuant to C.A.R. 35(e)) (*Webster II*).

¶ 6 In October 2021, Webster filed a petition to reopen his claim pursuant to section 8-43-303, C.R.S. 2022, based on alleged worsening of his condition. In that petition, he asserted, among other things, that respondents had violated section 8-43-503(3), C.R.S. 2022, by communicating with his treatment providers, and he sought penalties for alleged fraud, malpractice, and negligence.

¶ 7 At the hearing on Webster's motion, the ALJ said that she would initially address whether Webster had established that he was entitled to reopen his claim, and that she would address his other arguments only if he proved by a preponderance of the evidence that fraud, a mistake, an error, or a change in condition warranted reopening the claim.

¶ 8 After a day-long hearing, the ALJ denied Webster's petition to reopen in a comprehensive written order. First, the ALJ found that, to the extent Webster was attempting to relitigate issues of causation, MMI, permanent partial disability benefits, medical benefits, penalties, appeals of prehearing orders, and PTD benefits, such issues were decided in prior orders that were upheld on appeal, and issue preclusion barred relitigation of those claims. Next, addressing Webster's claim that errors and mistakes

warranted reopening his claim, the ALJ, after reviewing all the evidence and testimony, found that none of those alleged circumstances warranted reopening. With regard to Webster's argument that respondents had interfered with his treatment, the ALJ found that no respondent committed fraud or improperly communicated with his doctors. Finally, the ALJ found that Webster failed to present persuasive testimony or evidence to support his assertion of a changed condition after he reached MMI.

¶ 9 The Panel affirmed the ALJ's decision. The Panel found that Webster was not denied due process or the ability to appeal prior decisions, and that he failed to state a viable claim for monetary damages. The Panel also agreed with the ALJ's determination that issue preclusion barred Webster's attempt to relitigate the issues addressed in prior orders and proceedings. Finally, the Panel concluded that the ALJ did not abuse her discretion by denying Webster's petition because, as the ALJ found, Webster's assertions of mistakes, errors, fraud, and changed conditions did not justify reopening the claim.

II. No Error in Application of Issue Preclusion

¶ 10 Webster contends that the ALJ erred by applying collateral estoppel to his assertions of error, fraudulent misrepresentation, negligence, malpractice by multiple doctors, penalties, and his worsening or changed condition. We perceive no error.

¶ 11 Collateral estoppel, also known as issue preclusion, is a "judicially created, equitable doctrine that operates to bar relitigation of an issue that has been finally decided by a court in a prior action[,]" and it applies to administrative proceedings, including those involving workers' compensation claims. *Sunny Acres Villa, Inc. v. Cooper*, 25 P.3d 44, 47 (Colo. 2001). The doctrine serves to relieve parties of repetitive lawsuits, conserve judicial resources, and promote reliance on the judicial system by preventing inconsistent decisions. *Id.* Under this doctrine, a party is precluded from relitigating an issue if (1) the issue is identical to one actually litigated and necessarily adjudicated in the prior proceeding; (2) the party against whom estoppel is sought was a party to or was in privity with a party to the prior proceeding; (3) there was a final judgment on the merits in the prior proceeding;

and (4) the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue. *Id.*

¶ 12 Because issue preclusion presents a question of law, we review its application de novo. *See Morris v. Indus. Claim Appeals Off.*, 2020 COA 129, ¶ 14.

¶ 13 In her order, the ALJ found that, to the extent Webster was seeking to address the issues of causation, MMI, permanent partial disability benefits, medical benefits, penalties, appeals of prehearing orders and PTD benefits based on error, mistake, fraud, or change of condition, those issues were identical to issues addressed in prior ALJ orders that were upheld on appeal.

¶ 14 In affirming the ALJ's decision, the Panel agreed that issue preclusion barred Webster from relitigating these issues. We perceive no error.

¶ 15 Webster unsuccessfully challenged the MMI finding and the DIME report in prior hearings, and one of the prior ALJs rejected his penalty claims. In addition, the division in *Webster II* addressed Webster's claims regarding PTD and maintenance medical benefits, and also found that the issue of MMI had already been fully litigated and could not be relitigated. *Webster II*, slip op. at 7-15.

Consequently, we agree with the ALJ and Panel that issue preclusion bars Webster's attempt to relitigate any claims challenging the DIME and various doctors' reports, MMI, PTD, maintenance medical benefits after reaching MMI, and penalties. *See Sunny Acres Villa, Inc.*, 25 P.3d at 47.

III. No Abuse of Discretion by Denying Petition to Reopen

¶ 16 On appeal, Webster recounts most of his medical history as well as the issues he experienced with various doctors after sustaining his injury. Interpreting his allegations as an assertion that the ALJ abused her discretion by denying his petition to reopen, we find no basis for setting aside the ALJ's decision or the Panel's order.

¶ 17 Once a workers' compensation claim is closed, as it was here, it is not subject to further litigation unless the claimant establishes grounds for reopening the claim under section 8-43-303(1). *Berg v. Indus. Claim Appeals Off.*, 128 P.3d 270, 272 (Colo. App. 2005). To reopen a claim, a claimant must show error, mistake, or change in condition. § 8-43-303(1). The party seeking to reopen a claim bears the burden of proof. § 8-43-303(4); *see also Justiniano v. Indus. Claim Appeals Off.*, 2016 COA 83, ¶ 9.

¶ 18 We review an ALJ's denial of a claimant's request to reopen a workers' compensation claim for an abuse of discretion. *See* § 8-43-303(1), (2)(a), (2)(b) (conferring discretionary authority by stating an ALJ "may" reopen an award); *Justiniano*, ¶ 9 (noting that an ALJ has "broad discretionary authority to determine if a claimant has met [his] burden of proof in support of reopening"). Consequently, we may reverse an ALJ's decision denying a petition to reopen only for fraud or a clear abuse of discretion. *Justiniano*, ¶ 10; *see also Heinicke v. Indus. Claim Appeals Off.*, 197 P.3d 220, 222 (Colo. App. 2008). An abuse of discretion occurs when the ALJ's order is beyond the bounds of reason, as when it is unsupported by the evidence or contrary to law. *Jarosinski v. Indus. Claim Appeals Off.*, 62 P.3d 1082, 1084 (Colo. App. 2002).

¶ 19 Here, as grounds to reopen his claim, Webster asserted that (1) the DIME physician and other physicians committed error; (2) prior ALJs and preliminary hearing ALJs committed errors in addressing MMI, permanent total impairment, and his entitlement to maintenance medical benefits; (3) the respondents committed fraud; and (4) his condition had changed.

¶ 20 In rejecting Webster's claims, the ALJ addressed in detail all of Webster's arguments and the evidence he presented at the hearing, and concluded that there was no mistake, error, fraud or change in condition that justified reopening the claim. Specifically, ALJs previously rejected these issues, and Webster identified no persuasive evidence indicating any improper conduct in the administration of his claim. The ALJ also found that, even if there were some errors or omissions as Webster alleged, they were not the type of mistake that justified reopening. In addition, the ALJ found that Webster failed to present any evidence to support his assertion that his condition had changed.

¶ 21 We, like the Panel, conclude that the evidence supports the ALJ's determination and agree that the mistakes Webster alleged are not the type of mistakes that justify a reopening. Therefore, because the record supports the ALJ's findings of fact, we conclude that the ALJ did not abuse her discretion or authority by denying Webster's petition to reopen. *Id.*

IV. Section 8-43-307 Is Not Unconstitutional

¶ 22 Webster next contends that section 8-43-307, C.R.S. 2022, is unconstitutional because it denies him access to the courts. We disagree.

¶ 23 We review de novo the ALJ's and the Panel's legal conclusions. *See Colo. Dep't of Lab. & Emp. v. Esser*, 30 P.3d 189, 193 (Colo. 2001).

Section 8-43-307(1) provides:

> The final order of the panel constitutes the final order of the division. If a person in interest . . . is dissatisfied with any final order of the division that determines compensability of a claim or liability of any party, that requires any party to pay a penalty or benefits, or that denies a claimant any benefit or penalty, the person may commence an action in the court of appeals against the industrial claim appeals office as defendant to modify or vacate the order on the grounds set forth in section 8-43-308[, C.R.S. 2022].

¶ 24 Contrary to Webster's contention, the statute plainly authorizes any interested party in a proceeding before the Division of Workers' Compensation to appeal a final order from the Panel to this court.

¶ 25 Webster appears to base his argument on the supreme court's decision in *Allison v. Industrial Claim Appeals Office*, 884 P.2d 1113, 1121 (Colo. 1994). But when *Allison* was decided, section 8-43-307(1), C.R.S. 1994, provided that "any person in interest, . . . being dissatisfied with any final order of the division, may *file a petition for a writ of certiorari* in the court of appeals." (Emphasis added.) The supreme court held that such language violated the claimant's right to access the courts because the availability of an application for writ of certiorari provided only for this court's discretionary review, and not for mandatory review. *Allison*, 884 P.2d at 1121.

¶ 26 In 1995, however, the legislature amended section 8-43-307(1) to remove the reference to certiorari review by this court and provided instead that "any person of interest, . . . being dissatisfied with any final order of the division, may *commence an action* in the court of appeals against the industrial claim appeals office." Ch. 83, sec. 3, § 8-43-307(1), 1995 Colo. Sess. Laws 235 (emphasis added). Thus, because an interested person now enjoys a non-discretionary right to appeal to this court, we reject Webster's constitutional challenge to section 8-43-307(1).

V. No Error In Denying Penalty Request

¶ 27 Finally, Webster challenges the ALJ's decision regarding penalties. As best we can discern, Webster is challenging (1) a prior ALJ's determination that he was not entitled to penalties for the respondents' failure to file notices required by section 8-43-203(1), C.R.S. 2022, and (2) the ALJ's denial of his request for penalties for the respondents' alleged violation of section 8-43-503(3) (prohibiting employers, insurers, claimants, and their representatives from dictating to any physician the type or duration of a claimant's treatment or degree of physical impairment).

¶ 28 We, like the Panel, must uphold the ALJ's factual determinations if they are supported by substantial evidence in the record. *See* § 8-43-308; *see also Leewaye v. Indus. Claim Appeals Off.*, 178 P.3d 1254, 1256 (Colo. App. 2007); *Wal-Mart Stores, Inc. v. Indus. Claims Off.*, 989 P.2d 251, 252 (Colo. App. 1999). The reviewing court is bound by the ALJ's factual determinations even if the evidence was conflicting and could have supported a contrary result. It is the sole province of the fact finder to weigh and resolve contradictions in the evidence. *Metro Moving & Storage Co. v. Gussert*, 914 P.2d 411, 415 (Colo. App. 1995) (reviewing court must

defer to the ALJ's credibility determinations and resolution of conflicts in the evidence and may not substitute its judgment for that of the ALJ).

¶ 29 The issue regarding Webster's claim for penalties under section 8-43-203 was addressed in a previous hearing before a different ALJ. As discussed above, because that issue was previously decided, it is barred by issue preclusion. *See Sunny Acres Villa, Inc.*, 25 P.3d at 47.

¶ 30 In addition, we perceive no error in the ALJ's rejection of Webster's contention that the respondents violated section 8-43-503(3) by contacting multiple providers throughout the duration of his claim to dictate the type or duration of Webster's treatment or his degree of physical impairment. In her order, the ALJ indicated that she was not persuaded by Webster's testimony that any communications from respondents to the doctors dictated the amount or type of care he was to receive. Thus, she found there was no evidence to support this claim.

¶ 31 While it appears that Webster raised this argument in his lengthy memorandum in support of his appeal to the Panel, it does not appear that the Panel specifically addressed this claim.

Nevertheless, the ALJ did not find Webster's testimony credible and, therefore, concluded there was no evidence to support a finding that respondents violated section 8-43-503(3). Because we must defer to the ALJ's credibility determinations and factual findings, we perceive no error in the ALJ's determination that Webster failed to prove a violation of that statute. *See Leewaye*, 178 P.3d at 1256; *Metro Moving & Storage Co.*, 914 P.2d at 415.

VI. Disposition

¶ 32 The Panel's order is affirmed.

JUDGE HARRIS and JUDGE LIPINSKY concur.

APPENDIX

F

INDUSTRIAL CLAIM APPEALS OFFICE STATE OF COLORADO
APPEAL DENIED
MARCH 8, 2022

INDUSTRIAL CLAIM APPEALS OFFICE

W.C. No. 5-009-761-014

IN THE MATTER OF THE CLAIM OF:

LARRY E WEBSTER,

Claimant,

v.

CZARNOWSKI DISPLAY SERVICE INC,

Employer,

and

TRUMBULL INS CO,

Insurer,
Respondents.

FINAL ORDER

The claimant seeks review of an order of Administrative Law Judge Tenreiro (ALJ) dated March 8, 2022, [1] that denied the claimant's petition to reopen his claim. We affirm the ALJ's order.

This matter went to hearing on the issue of the claimant's petition to reopen. Because the ALJ denied the claimant's petition to reopen, she did not address the other issues of whether the claimant overcame the Division Independent Medical Examination (DIME), permanent total disability benefits, medical benefits and penalties. After hearing, the ALJ entered the factual findings and conclusions of law, that for purposes of review, are summarized below.

I. ALJ Order

The claimant sustained an admitted injury on March 9, 2016, when he tripped over a large tote while carrying a metal table base and fell. The claimant reported the injury to the employer on March 11, 2016, stating that he tripped and fell, hitting his chest and knee on concrete and sustaining injuries to his right hand, left knee and low back. The claimant started medical treatment on March 11, 2016, and saw various providers through

[1] Although the order was dated March 8, 2022, the certificate of mailing indicates that the order was sent to the parties on March 7, 2022.

September 12, 2016, when he was placed at maximum medical improvement (MMI) by Dr. Duren. The claimant was released to regular duty with no restrictions.

Dr. Burris performed an impairment rating on October 21, 2016, stating that the examination was benign with no objective findings. Dr. Burris agreed with MMI and concluded that the claimant did not sustain any permanent impairment or maintenance care. The respondents filed a final admission of liability, to which the claimant objected and requested a DIME.

Dr. Sacha performed the DIME on April 18, 2017. The DIME physician placed the claimant at MMI as of October 21, 2016, and assigned a whole person impairment rating of eight percent, consisting of seven percent for the lumbar spine and one percent for psychiatric dysfunction. The DIME physician further stated that the claimant could work full duty without restrictions. The DIME also recommended maintenance care of six visits to a pool therapist and six months of psychiatric medical regimen.

The claimant challenged the DIME opinion. In an order dated November 9, 2017, ALJ Cayce determined that the claimant failed to overcome the DIME physician's opinion by clear and convincing evidence and failed to show any disfigurement. The claimant appealed the order to the Industrial Claim Appeals Office (ICAO). ICAO affirmed the order on April 2, 2018. The claimant appealed to the Colorado Court of Appeals, which dismissed his appeal on February 14, 2019. The claimant's petition for certiorari with the Supreme Court was denied on April 22, 2019. On October 28, 2019, ALJ Cayce denied, with prejudice, the claimant's motion to vacate/void the November 9, 2017, order.

The claimant proceeded to file multiple applications for hearing. ALJ Felter issued an order on September 18, 2018, granting summary judgment on the issues of compensability, medical benefits, modification of temporary total disability, death benefits and penalties, but allowing the claimant to proceed with a hearing on the issue of permanent total disability. The claimant appealed to ICAO, who affirmed the decision on February 7, 2019.

On February 25, 2019, the Director of the Division of Workers' Compensation issued an order prohibiting the claimant from filing any further applications for hearing without a PALJ order determining the ripeness of the issues.

In an order dated March 17, 2020, ALJ Felter denied the claimant's claim for permanent total disability benefits and maintenance medical benefits, and the

respondents' request for sanctions against the claimant. ALJ Felter rejected, as incredible, the claimant's assertions of fraud, malfeasance and misrepresentations by Dr. Sacha, allegations of collusion among providers or the respondents. The claimant appealed to ICAO, and ICAO affirmed the ALJ's decision in an order dated August 26, 2020. The claimant appealed to the court of appeals, which also affirmed on March 25, 2021. The Supreme Court denied the claimant's petition for certiorari on August 16, 2021.

On May 18, 2020, ALJ Felter ordered the claimant to cease and desist from further filing during the pendency of his appeal. The claimant however, continued to file multiple applications for hearing which were eventually struck and vacated after ALJ Felter determined that this was a serious abuse of the workers' compensation adjudication system.

On October 15, 2021, the claimant filed an application for hearing on multiple issues. On November 5, 2021, a pre-hearing administrative law judge (PALJ) issued an order limiting the issues for hearing to the claimant's petition to reopen the claim. ALJ Tenreiro affirmed that procedural order on November 15, 2021, and also denied the claimant's motion for summary judgment. The parties agreed that if the claimant was successful in reopening the claim pursuant to §8-43-303, C.R.S., all issues including medical benefits, permanent partial disability, permanent total disability, penalties and appeal of the multiple prehearing conference orders would be at issue for the hearing.

The ALJ denied the claimant's motion for recusal at the commencement of the January 28, 2022 hearing, noting that the claimant's motion was not accompanied by the required affidavit, documentation or other evidence pertinent to recusal.

The ALJ made comprehensive findings on the claimant's evidence and arguments which are not repeated in detail here in this order. The claimant made numerous arguments at hearing that the DIME and Dr. Burris minimized his injuries in their reports, specifically excluding his traumatic brain injury (TBI) and broken back, and that the insurance company and respondents' attorney colluded with the claimant's doctors and the DIME physician. The ALJ was not persuaded by the claimant's evidence or arguments.

Generally, the ALJ determined that the "new medical evidence" submitted by the claimant would not change ALJ Cayce's decision in her November 9, 2017, order. ALJ Order at 11-13.

The ALJ also addressed the claimant's assertions that he was dissatisfied with the medical treatment he had received and his perceived mistreatment from the physicians at various medical facilities, the assertions of fraud against Dr. Sacha and the DIME and the allegations of collusion between the respondents and Dr. Wright. The ALJ was not persuaded by the claimant's evidence in this regard and concluded that the claimant failed to show that there was fraud in this matter. ALJ Order at 13-14

The ALJ rejected the claimant's allegations that multiple physicians made a mistake by failing to consider all of his medical history, medical records and the history of his complaints. The claimant also alleged that ALJ Felter made a mistake in failing to award him medical care. The ALJ was not persuaded by the claimant's evidence on this issue. ALJ Order at 14-16.

The ALJ rejected the claimant's assertions that Dr. Sacha and Dr. Burris committed error in failing to appreciate the damage to the claimant's thoracic and cervical spine, possible TBI and in reading the CT scan and in their interpretation of the statement that the claimant was not a surgical candidate given that he had no symptoms prior to the injury. Nor was the ALJ persuaded that the physicians committed error in overlooking the claimant's anxiety and dysarthria. The ALJ also found no error in the MMI determination from Dr. Wright and Dr. Duren. *See* ALJ order 16-18.

The ALJ rejected the claimant's contentions that there were errors in the vocational reports and errors in ALJ Felter's determination that the claimant did not prove permanent total disability. The ALJ also rejected the claimant's allegations that ALJ Felter incorrectly denied his penalty request and that ALJ Felter erred in his determination that there was no collusion between the respondents and the doctors. ALJ Order 19-20.

The claimant also attempted to appeal the pre-hearing conference orders previously issued in this case. The ALJ found no meritorious arguments in this regard and determined that the orders were properly addressed by PALJs who had the authority to address pre-hearing matters of discovery and ripeness and to control the discovery and litigation process and that the PALJs appropriately did so here. ALJ Order at 22.

Based on these findings, the ALJ concluded to the extent the claimant addressed the issues of causation, MMI, permanent partial disability, medical benefits, penalties, appeals of PALJ orders and permanent total disability benefits based on error, mistake fraud or change of condition, these are the identical issues addressed by ALJ Cayce and ALJ Felter in their orders. These orders were appealed and were upheld, and the

claimant exhausted his appellate rights. The claimant, therefore, was barred from re-litigating the same issues or any issues that could have been previously raised by the doctrine of issue preclusion.

The ALJ further denied the claimant's request to reopen. The ALJ determined that even if there were mistakes here, these mistakes were not the types of mistakes that justify reopening and the claimant's allegations were either immaterial to the prior ALJ orders, the ALJs considered such evidence and were not persuaded, or the arguments and evidence should have been previously addressed by the claimant on appeal but were not.

The ALJ, therefore, concluded that the claimant failed to prove he is entitled to reopen the March 9, 2016, claim based on error, mistake, fraud, or change of condition. The ALJ denied and dismissed the claimant's claim for further benefits, noting that the March 9, 2016, claim is closed. All other issues, therefore, were moot due to the denial of the reopening request.

II. Claimant's Appeal:

The claimant filed a timely petition to review dated March 22, 2022, and also requested that a transcript be prepared. A briefing schedule was issued in this case on April 5, 2022, noting that no transcript had been filed with the Office of Administrative Courts (OAC) and giving the claimant 20 days to file a brief in support. The claimant filed a brief in support on April 25, 2022. Subsequently, the OAC requested preparation of the transcript on June 7, 2022. The transcript was prepared, and a new briefing schedule was issued on July 19, 2022, again giving the claimant 20 days to file a brief in support. The record on review does not show that the claimant filed another brief. We therefore consider the claimant's April 25, 2022, brief in this matter.

The claimant's petition to review is 178 pages and the claimant's brief in support is 51 pages. OAC Rule of Procedure (OACRP) 26(E) limits briefs to 20 pages. The claimant requested permission to extend the word count of his brief to 9,500 words. In an order dated July 28, 2022, an ALJ granted the claimant's motion to file a larger brief in support of his petition to review. The ALJ noted that OACRP 26(E) provides a 20-page limit on briefs and does not contain a limit on word count. The ALJ, therefore, allowed the claimant to file a 35-page brief which approximated the 9,500-word count requested by the claimant. The claimant, however, exceed this order and filed a 51-page brief.

We do not find, however, that it is necessary to strike the brief submitted by the claimant and note that the argument portion of the claimant's brief is 8614 words. *See*

People v. Rodriguez, 914 P.2d 230 (Colo. 1996) (in its discretion, a court may grant permission to file an oversize brief).

The claimant's petition to review contends that the ALJ abused her authority in entering the March 7, 2022, order. The claimant repeats his arguments made at hearing and cites to evidence he asserts supports his contentions. The claimant repeatedly contends that ALJ Tenreiro erred in her assessment of the evidence, abused her authority and failed to act in a "fair and equal" manner in reviewing the evidence and in making her conclusions. The claimant also argues that the ALJ erred in failing to recuse herself. The claimant also makes repeated allegations that the ALJ violated his due process and constitutional rights, specifically the denial of his access to the courts.

The claimant's brief in support similarly groups the issues for appeal as whether the ALJ abused her authority in failing to assess the evidence on reopening, overcoming the DIME, claimant's entitlement to permanent total disability, medical maintenance benefits and penalty violations.

III. Conclusions on Appeal

The claimant's contentions on appeal are wholly without merit. As noted above, the ALJ made detailed findings and those findings indicate that she carefully addressed and considered the claimant's arguments at hearing.

The claimant's plain assertions of due process violations and allegations of unfairness and abuse of authority do not, in our view, provide an adequate basis for an allegation of bias and prejudice. *See Nesbit v. Industrial Commission,* 43 Colo. App. 398, 607 P.2d 1024 (1979)*; see also In Re Marriage of Johnson*, 40 Colo. App. 250, 576 P.2d 188 (Colo. App. 1977) (adverse ruling alone does not support conclusion that hearing officer biased); *People ex rel. A.G.,* 262 P.3d 646 (Colo. 2011) (party's allegation of bias did not contain any facts to support conclusion that judge was actually biased). Regardless, the ALJ is entitled to presumption of integrity, honesty, and impartiality, and is presumed to be competent and unbiased. *Wecker v. TBL Excavating, Inc.*, 908 P.2d 1186 (Colo. App. 1995); *Ski Depot Rentals, Inc. v. Lynch*, 714 P.2d 516 (Colo. App. 1985).

The fundamental requirements of due process are notice and an opportunity to be heard. Due process contemplates that the parties will be apprised of the evidence to be considered and afforded a reasonable opportunity to present evidence and argument in support of their positions. Inherent in these requirements is the rule that parties will

receive adequate notice of both the factual and legal bases of the claims and defenses to be adjudicated. *See Hendricks v. Industrial Claim Appeals Office* , 809 P.2d 1076 (1990). As detailed above, in our view, the claimant had ample notice and opportunity to be heard. Additionally, contrary to the claimant's assertion, he has not been denied access to the courts. Section 8-43-307, C.R.S., provides for review by the court of appeals. Here, the claimant went through the entire appeal process in the Workers' Compensation Act, twice and exhausted the appeals process. The 2017 order from ALJ Cayce and the 2020 order from ALJ Felter are final orders and not subject to further review.

Because the issues here are factual in nature, we must uphold the ALJ's determinations if supported by substantial evidence in the record. Section 8-43-301(8), C.R.S. This standard of review requires us to consider the evidence in a light most favorable to the prevailing party, and defer to the ALJ's credibility determinations, resolution of conflicts in the evidence, and plausible inferences drawn from the record. *Wilson v. Indus. Claim Appeals Office*, 81 P.3d 1117 (Colo. App. 2003). Substantial evidence in the record, as listed in the ALJ's order supports the ALJ's determination.

To the extent the claimant attempts to reargue the issues of causation, overcoming the DIME, MMI, permanent partial disability benefits, medical benefits, penalties, appealing pre-hearing orders and permanent total disability or allegations of bias against the ALJ who entered the prior orders on his claims, we agree with the ALJ that re-litigation of these issues is precluded by issue preclusion. Under issue preclusion, "once a court has decided an issue necessary to its judgment, the decision will preclude re-litigation of that issue in a later action involving a party to the first case." *Youngs v. Industrial Claim Appeals Office*, 297 P.3d 964, 974 (Colo. App. 2012) (*quoting People v. Tolbert*, 216 P.3d 1, 5 (Colo. App. 2007)); *see also Sunny Acres Villa, Inc. v. Cooper*, 25 P.3d 44, 47 (Colo. 2001).

Issue preclusion completely bars re-litigating an issue if the following four criteria are established: (1) the issue sought to be precluded is identical to an issue actually determined in the prior proceeding; (2) the party against whom issue preclusion is asserted has been a party to or is in privity with a party to the prior proceeding; (3) there is a final judgment on the merits in the prior proceeding; and (4) the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior proceeding. *Sunny Acres Villa, Inc. v. Cooper*, 25 P.3d at 47. Issue preclusion applies to administrative proceedings, including those involving workers' compensation claims. *Id.*

We agree with the ALJ's determination that all elements for issue preclusion to apply have been established. As discussed above, the claimant is seeking to re-litigate

the same issues addressed in the prior orders, the parties were the same in the prior proceedings, the prior orders became final orders and the claimant had a full and fair opportunity to litigate the issues in the prior proceedings. The relief requested by the claimant is, therefore, barred by issue preclusion.

To the extent that the claimant also argues on appeal that the claim should be reopened based on error, mistake, and/or fraud or change of condition, the issues would not be identical and issue preclusion would not apply. *See Feeley v. Industrial Claim Appeals Office*, 195 P.3d 1154 (Colo. App. 2008); *Handson v. Northwest Pipe Company*, 4-559-615 (April 2, 2009) (issue preclusion rarely applicable in the context of reopening). We, nonetheless, are not persuaded that the ALJ abused her authority or her discretion in denying the claimant's request to reopen the claim.

Section 8-43-303(1) C.R.S., authorizes the ALJ to reopen any award within six years after the date of injury on a number of grounds, including error, mistake, or a change in condition. *Heinicke v. Industrial Claim Appeals Office*, 197 P.3d 220 (Colo. App. 2008); *Cordova v. Industrial Claim Appeals Office*, 55 P.3d 186 (Colo. App. 2002). Reopening may be granted based on any mistake of fact which calls into question the propriety of a prior award. Section 8-43-303(1), C.R.S.; *Standard Metals Corp. v. Gallegos*, 781 P.2d 142 (Colo. App. 1989). When a party alleges that a prior award is based on mistake, the ALJ must determine whether a mistake was made, and if so, whether it is the type of mistake which justifies reopening the case. *Travelers Insurance Co. v. Industrial Commission*, 646 P.2d 399 (Colo. App. 1981). In determining whether a particular mistake of fact or law justifies reopening, the ALJ may consider whether the mistake could have been avoided if the party seeking reopening timely exercised procedural or appellate rights prior to entry of the award. *Industrial Commission v. Cutshall*, 164 Colo. 240, 433 P.2d 765 (1967); *Klosterman v. Industrial Commission,* 694 P.2d 873 (Colo. App. 1984).

Generally, the authority to reopen a claim under § 8-43-303(1), C.R.S., is discretionary with the ALJ. Thus, we may not interfere with the order unless there is fraud or a clear abuse of discretion. *Renz v. Larimer County School District Poudre R-1,* 924 P.2d 1177 (Colo. App. 1996). An abuse is not shown unless the order is beyond the bounds of reason, as where it is unsupported by the law or contrary to the evidence. *See Coates, Reid & Waldron v. Vigil*, 856 P.2d 850 (Colo. 1993).

Here, after extensive review and consideration of the claimant's arguments, the ALJ found that there was no mistake, error, fraud or change in condition that justified reopening of the claim. The ALJ concluded that the claimant's issues were fully litigated

and resulted in final orders. The ALJ further found that even if there were the kind of mistakes as alleged by the claimant, they were not the type of mistake that justified reopening. We agree that the "mistakes" alleged by the claimant are not the type of mistakes which justify a reopening. We, therefore, conclude that the ALJ did not abuse her discretion or authority in denying the claimant's petition to reopen.

The claimant also states that he should be granted negligence, malpractice and bad faith and §8-41-104, C.R.S. acceptance and surrender $170,000,000. The claimant, however, has not stated a claim for which relief can be granted in a workers' compensation hearing.

IV. Claimant's November 8, 2022, Email to ICAO.

The claimant sent an email to the parties and ICAO on November 8, 2022, stating the "social security administration is my witness" that the respondents "withheld injuries." The workers' compensation statute does not provide for such a "reply brief," on appeal. As noted above the claimant's petition to review and opening brief were lengthy and address the same arguments he now raises in the email. We perceive no need for a reply brief or further argument. Consequently, to the extent the claimant is requesting consideration of the November 8, 2022, email, the request is denied. *See* § 8-43-301(9), C.R.S., (grants us power to "issue such procedural orders as may be necessary to carry out" our appellate review.)

Moreover, to the extent the claimant has submitted new evidence with this email that was not presented to the ALJ, we may not consider it on appeal. *See City of Boulder v. Dinsmore*, 902 P.2d 925 (Colo. App. 1995) (appellate review limited to the record before the ALJ); *Voisinet v. Industrial Claim Appeals Office*, 757 P.2d 171 (Colo. App. 1988). The claimant's question with the OAC's issuance of the briefing schedules is addressed above, as is the rejection of the claimant's argument that he has been denied access to the courts.

The claimant's remaining arguments have not persuaded us that there is any error in the ALJ's order.

IT IS THEREFORE ORDERED that the ALJ's order dated March 8, 2022, is affirmed.

INDUSTRIAL CLAIM APPEALS PANEL

Brandee DeFalco-Galvin

Kris Sanko

Additional material from this filing is available in the Clerk's Office.