

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>MARIA AMAYA</b>	)	
Claimant	)	
	)	
V.	)	
	)	AP-00-0470-983
<b>SMITHFIELD FARMLAND CORP.</b>	)	CS-00-0258-725
Respondent	)	
	)	
AND	)	
	)	
<b>SAFETY NATIONAL CASUALTY CORP.</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant requested review of the September 23, 2022, Post-Award Medical Award issued by Administrative Law Judge (ALJ) Gary K. Jones. The case has been placed on the summary docket for disposition without oral argument.

**APPEARANCES**

Robert R. Lee appeared for Claimant. Dallas L. Rakestraw appeared for Respondent and its insurance carrier (Respondent).

**RECORD AND STIPULATIONS**

The Board considered the post-award record, consisting of the transcript of the Post-Award Hearing held February 28, 2022; the transcript of the Evidentiary Deposition of Maria A. Amaya from March 24, 2022; the transcript of the Evidentiary Deposition of Pedro A. Murati, M.D., from April 26, 2022, with exhibits attached; the transcript of the Evidentiary Deposition of Douglas C. Burton, M.D., from August 16, 2022, with exhibits attached; the documents of record filed with the Division; and adopted the stipulations listed in the Award.

**ISSUE**

Is Claimant entitled to additional medical treatment in relation to her work injury?

FINDINGS OF FACT

Claimant sustained repetitive-use injuries to her cervical spine and upper extremities beginning January 1, 2016, while working as a meat packer for Respondent. As a result, Claimant received treatment and injections for bilateral elbow pain and underwent an anterior cervical discectomy with fusion on September 29, 2017.

Claimant continued having neck symptoms after surgery and was referred to Dr. Douglas Burton, a board certified orthopedic surgeon. Dr. Burton provided treatment, and noted Claimant's fusion was "solid" following a review of a CT scan on April 5, 2019.<sup>1</sup> A functional capacity evaluation was ordered, and Claimant received permanent work restrictions of a medium-light work level. Dr. Burton continued treating Claimant until her release at maximum medical improvement (MMI) on December 6, 2019.

Claimant again met with Dr. Burton with pain complaints in August 2020. Dr. Burton testified:

Q. Was there any medical treatment that you felt was necessary to her to treat her pain complaints at that time?

A. No. I mean, I – I really have encouraged her to limit what she's doing. If she can't do it, don't do it and to do the exercise she learned in therapy. I mean, that's really the treatment that I recommend for all my patients with axial pain complaints.<sup>2</sup>

Claimant settled her claim on October 7, 2020, retaining her right to additional medical treatment. Rating opinions were provided by Drs. Burton, Fluter, and Estivo for injuries sustained January 1, 2016, and each and every work day thereafter, though no involved body parts were identified in the settlement.

After her surgery, Claimant was also treated by Dr. Darla Rivera with trigger point injections through October 19, 2021. Claimant testified:

Q. And when was the last time you saw Dr. Rivera?

A. October.

Q. And what treatment did she provide you at that time?

A. Injections.

Q. And where did she provide injections?

A. Back here – (Indicating) – on my neck.

Q. And did those injections provide a benefit to you?

A. Yes.

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<sup>1</sup> Burton Depo. at 7.

<sup>2</sup> *Id.* at 10.

Q. And you've had injections in the past from Dr. Rivera; is that correct?

A. Yes, that is correct.

Q. And have they always provided benefit to you when you get them?

A. Yes.

Q. How long does that benefit last?

A. A little bit over the two months.<sup>3</sup>

Claimant returned to Dr. Burton with ongoing complaints through June 2022. Dr. Burton considered Claimant still at MMI. He did not recommend further treatment. He said, "Nothing's really made her better and I didn't have other interventional medical treatment to offer her."<sup>4</sup> Dr. Burton suggested Claimant stop working and apply for Social Security Disability benefits if her symptoms continued. Claimant applied for Social Security Disability, with benefits set to begin May 2022.<sup>5</sup> Claimant's deposition was taken March 24, 2022, and her current status is unknown.

When asked about trigger point injections, Dr. Burton answered:

Q. Okay. What about trigger point injections into the neck?

A. Well, that's certainly a treatment that people do. You know, I don't think that there's much evidence that that's efficacious treatment. I don't ever prescribe it to people and I wouldn't have prescribed it to her.<sup>6</sup>

Dr. Burton agreed Claimant continues to experience neck pain due to her injury, but does not send patients for injections for "years on end."<sup>7</sup>

Using her health insurance, Claimant concurrently treated with Dr. Rivera, receiving trigger point injections in her neck and fingers. Claimant explained her fingers lock, and she has continued elbow problems related to her work injury. Claimant indicated the injections in her neck provided relief for two months, and Dr. Rivera recommended ongoing cervical spine injections and physical therapy. Claimant last saw Dr. Rivera in October 2021. Claimant resigned from Respondent on October 29, 2021, and no longer has health insurance.

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<sup>3</sup> Claimant Depo. at 6-7.

<sup>4</sup> Burton Depo. at 12.

<sup>5</sup> See Claimant Depo. at 6.

<sup>6</sup> Burton Depo. at 13-14.

<sup>7</sup> *Id.* at 18.

Dr. Pedro Murati examined Claimant at her counsel's request on April 5, 2022. Dr. Murati is board certified in pain medicine and physical medicine and rehabilitation. Dr. Murati reviewed Claimant's available medical records, history, and performed a physical examination. He provided the following impression:

1. Status post C5-6 ACDF by Dr. Dickerson in September 2017.
2. Bilateral carpal tunnel syndrome.
3. Bilateral ulnar cubital tunnel syndrome.
4. Tenosynovitis of the bilateral 3<sup>rd</sup> digits.
5. Bilateral medial epicondylitis.
6. Bilateral rotator cuff sprain versus tear with probable labral involvement on the right.
7. Myofascial pain syndrome of the bilateral shoulder girdle extending into the cervical and thoracic paraspinals.
8. Occipital neuralgia.<sup>8</sup>

In his report, dated April 5, 2022, Dr. Murati opined Claimant's work injury was the prevailing factor causing her conditions. Dr. Murati recommended conservative treatment, including medications, injections, and physical therapy, with referrals for surgical care should treatment be ineffective. Dr. Murati testified:

Q. Doctor, the reason we're here, she had had some post-award treatment, evaluations by neurosurgeons and things of that nature which you document in your report. She has also had some injection therapy by Dr. Rivera that she says has been helpful to her.

A. Yes.

Q. And what we're requesting on a post-award basis, Doctor, is that Dr. Rivera be authorized to provide the injection therapy, and what I want to know in your opinion, would she benefit from additional injection therapy?

A. Yes, she would. She has a lot of conditions that would respond very well to cortisone shots.<sup>9</sup>

Dr. Murati also indicated Claimant may require additional cervical fusion in the future.

After the Post Award Medical hearing, the ALJ found:

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<sup>8</sup> Murati Depo., Ex. 2 at 6.

<sup>9</sup> Murati Depo. at 7-8.

The Court finds the medical opinion from Dr. Burton the more credible. He is a spine specialist. He originally performed an IME for the Court. He has seen the Claimant on several occasions through the years. His opinion that the Claimant does not need injections or physical therapy for the injury that occurred several years ago is persuasive.

Dr. Murati saw the Claimant on one occasion at her attorney's request. He did not see the Claimant until several years after the original injury. He did not testify about prevailing factor. His report and testimony [are not as] persuasive as the testimony from Dr. Burton.

Although the Claimant is likely suffering from symptoms now, the preponderance of the evidence does not show that the injury from 2016 and 2017 is the prevailing factor for those symptoms.<sup>10</sup>

### **PRINCIPLES OF LAW AND ANALYSIS**

Claimant argues the ALJ's Award should be reversed. Claimant contends she benefited from injection therapy and will benefit from additional treatment in the future, including injection therapy.

Respondent maintains the ALJ's Award should be affirmed because Claimant is not entitled to further medical treatment for her work injury.

K.S.A. 2015 Supp. 44-510k states:

(a)(1) At any time after the entry of an award for compensation wherein future medical benefits were awarded, the employee, employer or insurance carrier may make application for a hearing, in such form as the director may require for the furnishing, termination or modification of medical treatment. Such post-award hearing shall be held by the assigned administrative law judge, in any county designated by the administrative law judge, and the judge shall conduct the hearing as provided in K.S.A. 44-523, and amendments thereto.

(2) The administrative law judge can (A) make an award for further medical care if the administrative law judge finds that it is more probably true than not that the injury which was the subject of the underlying award is the prevailing factor in the need for further medical care and that the care requested is necessary to cure or relieve the effects of such injury, or (B) terminate or modify an award of current or future medical care if the administrative law judge finds that no further medical care is required, the injury which was the subject of the underlying award is not the prevailing factor in the need for further medical care, or that the care requested is not necessary to cure or relieve the effects of such injury.

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<sup>10</sup> ALJ P.A.M. Award (Sept. 23, 2022) at 5.

Claimant underwent a cervical fusion as the result of a compensable injury by repetitive trauma. She also suffered injuries to her upper extremities. She continues to have pain. She was treated for some time with injections to the cervical spine, which provided relief. Now she seeks continued medical treatment, including injections.

In determining if injection therapy should be ordered, the ALJ gave more weight to Dr. Burton, who does not believe injections are appropriate treatment and never prescribes injection therapy to anyone. The Board disagrees with the ALJ's decision to adopt the opinions of Dr. Burton.

Dr. Murati is board certified in pain medicine and physical medicine and rehabilitation. By virtue of his board certifications, Dr. Murati is more qualified to make recommendations on the treatment of ongoing pain symptoms. Dr. Murati, in his report, found Claimant's work activities the prevailing factor causing the need for medical treatment to the neck and upper extremities. Dr. Murati recommended injection therapy, which has provided Claimant with relief in the past. In this case, the Board gives more weight to the opinions of Dr. Murati.

As required by the Workers Compensation Act, all five members of the Board considered the evidence and issues presented in this appeal.<sup>11</sup> Accordingly, the findings and conclusions set forth reflect the majority's decision and the signatures below attest this decision is that of the majority.

#### **CONCLUSION**

Claimant is in need of treatment for her ongoing pain complaints. Claimant's request for post-award medical treatment is granted.

#### **AWARD**

**WHEREFORE**, it is the decision of the Board the Award of ALJ Gary K. Jones, dated September 23, 2022, is reversed and remanded to the ALJ to order medical treatment with a physician specializing in the treatment of ongoing pain complaints.

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<sup>11</sup> K.S.A. 2022 Supp. 44-555c(j).

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of January, 2023.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

e: Robert R. Lee, Attorney for Claimant  
Dallas L. Rakestraw, Attorney for Respondent and its Insurance Carrier  
Hon. Gary K. Jones, Administrative Law Judge