

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>BELIA CARRILLO</b>	)	
Claimant	)	
V.	)	
	)	CS-00-0237-048
<b>TYSON FRESH MEATS, INC.</b>	)	AP-00-0454-371
Self-Insured Respondent	)	

**ORDER**

Claimant appealed the November 25, 2020, Post-Award Medical Decision issued by Administrative Law Judge (ALJ) Pamela J. Fuller.

**APPEARANCES**

Scott J. Mann appeared for the Claimant. Thomas Munsell appeared for self-insured Respondent.

**RECORD AND STIPULATIONS**

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of Settlement Hearing from June 25, 2019; the Court-ordered independent medical evaluation of Dr. Carabetta dated March 18, 2019; the transcript of Post-Award Hearing from September 14, 2020; and the documents of record filed with the Division. No testimony from the Claimant was taken and the record was stipulated to include the reports of Dr. Murati, dated January 20, 2020; and Dr. Fevurly, dated July 27, 2020.

**ISSUE**

Is Claimant entitled to additional medical treatment in accordance with K.S.A. 2016 Supp. 44-510k?

**FINDINGS OF FACT**

The ALJ found Claimant did not meet her burden of proving that she is entitled to additional medical treatment. The ALJ relied on the opinion of Dr. Fevurly that Claimant was not in need of any additional treatment, including the treatment recommended by Dr.

Murati. The ALJ noted Claimant has already received extensive medical treatment and Claimant felt it was of no benefit to her.

Claimant was injured while at work on April 8, 2016 when she slipped on a wet floor and landed on her right elbow and right buttock region. Around four months after the accident, Claimant developed cervical pain with right upper extremity symptoms that was felt to be secondary to a disc protrusion at C5-C6 and C6-C7 causing spinal stenosis and neural foraminal narrowing, right greater than left. On June 12, 2017, Claimant had an instrumented ACDF to C5-6 and C6-7 surgery with Dr. Matt Henry. Claimant also developed right shoulder pain with associated full thickness tear of the supraspinatus and partial thickness tears of the infraspinatus. On January 24, 2018, Claimant underwent right shoulder arthroscopic rotator cuff repair and subacromial decompression by Dr. Prohaska.

Dr. Vito Carabetta evaluated Claimant on March 18, 2019 at the Court's request. Claimant presented with residual right-sided neck pain she described as burning, aching and constant in the right cervical area and residual lateral right shoulder pain with deep aching and burning pain that remaining completely unimproved. A few times a week, Claimant experienced various dysesthesias that shot down the right upper extremity for a few seconds at a time. Any use of the right shoulder made Claimant's symptoms worse. She described midline aching and burning pain in the lumbosacral region, and it was constant and varying in intensity and showed no improvement. Sitting for longer than 60 minutes made the low back pain worse, along with rising from a sitting position, bending forward and lifting.

Dr. Carabetta diagnosed Claimant with status-post anterior cervical discectomy and fusion, multilevel; status-post right rotator cuff tear repair; and low back pain. Despite surgery and extensive medical treatment, Claimant reported she had no improvement in her right shoulder and cervical spine complaints. Dr. Carabetta did not see the need for additional treatment for Claimant because prior efforts were not successful and he believed it would likely cause anxiety and frustration for Claimant.

Dr. Carabetta found Claimant had a 36 percent permanent partial impairment to the body as a whole. Claimant settled her claim on June 25, 2019, based on Dr. Carabetta's rating.

Dr. Pedro Murati examined Claimant on January 20, 2020, at the request of Claimant's attorney. Claimant reported complaints of difficulty turning her neck, lifting, or bending her neck down; pain in the neck radiating up to head; lower back pain with fatigue that causes her back to feel caved in; headaches due to neck pain; difficulty driving due to limitation of neck movement; some depression and anxiety from constant pain; pain in right shoulder radiating down arms and elbows; difficulty sitting, standing and walking for long periods of time due to low back pain; discomfort in her throat including dryness and a raspy sensation.

Dr. Murati reviewed Claimant's prior records, examined her and diagnosed: status-post right shoulder diagnostic arthroscopy arthroscopic rotator cuff repair, and arthroscopic subacromial decompression with Dr. Prohaska; status-post C5-C6 anterior cervical discectomy with decompression of neural elements at C5-C6, interbody allograft fusion at C5-C6, anterior cervical discectomy at C6-C7 with decompression of neural elements at C6-C7 interbody allograft fusion at C6-C7, anterior cervical fixation of C5, C6 and C7, with Dr. Henry; myofascial pain syndrome of the right shoulder girdle extending into the cervical and thoracic paraspinals; low back pain with signs of radiculopathy; and dysphagia.

Dr. Murati offered the following treatment recommendations: for the myofascial pain syndrome, appropriate physical therapy with myofascial pain release techniques and cortisone trigger point injections and anti-inflammatory and pain medication as needed, along with Zanaflex for muscle spasms; and for the low back pain with signs of radiculopathy, an MRI of the lumbar spine to rule out disc pathology, a bilateral lower extremity NCS/EMG to include the lumbar paraspinals to evaluate and or document any radiculopathy, appropriate physical therapy, anti-inflammatory and pain medication as needed and a series of lumbar epidural steroid injections. If these treatment recommendations failed to improve Claimant's low back pain, a surgical evaluation would be acceptable. Claimant may also benefit from a trial of Gabapentin or Lyrica. He also recommended an ENT consultation for treatment and evaluation for the dysphagia.

Dr. Murati previously examined Claimant on June 13, 2018. Dr. Murati's diagnoses and treatment recommendations were the same for Claimant then as they were for the January 2, 2020, evaluation, except for the dysphagia.

Dr. Chris Fevurly examined Claimant on July 27, 2020, at Respondent's request. Claimant presented with complaints of constant cervical spine pain with limited range of motion in the neck; constant right shoulder pain at the extreme range of all right shoulder motions; constant low back pain with occasional pain into both legs; weakness in the low back and weakness in both arms and legs on a constant basis. Claimant was able to ambulate without any kind of assistive device. Claimant did not appear to be in any distress while sitting or ambulating. Claimant demonstrated mildly exaggerated pain behaviors and inconsistencies in testing of the right upper extremity neurologic examination. Claimant had a well-paced and nonantalgic gait.

Dr. Fevurly completed examination of Claimant's shoulder, cervical spine, upper extremity and hands, and diagnosed from the work event, low back pain with nonverifiable radicular symptoms, managed without surgery; and right elbow contusion which resolved completely without residual right elbow pain. Claimant had two level cervical fusion surgery, which was reportedly not beneficial, according to Claimant's report that day. Claimant also had right shoulder surgery, which was not beneficial, according to Claimant's report that day. In addition, she developed dysphagia following the surgery (as the likely result of the hardware placement for the instrumented fusion);

Dr. Fevurly did an extensive review of Claimant's medical records and detailed those records in his report.

Dr. Fevurly found no evidence of neurogenic compromise to the lower extremities. Claimant's low back was consistent with lumbago without neurogenic compromise or vertebral segmental instability. He found Claimant regained full range of motion in the right shoulder despite reporting not being any better after surgery. Claimant reported neck pain and right C6 and C7 radiculopathy that was treated with cervical decompression and fusion surgery. Claimant had giveaway weakness in her right arm and inconsistencies in right grip strength, but there was no convincing evidence for myotomal weakness in the right arm. He found Claimant would not benefit from any further surgical procedures to the right shoulder or cervical spine.

According to Dr. Fevurly Claimant's lumbar spine was consistent with regional low back pain and no evidence for radiculopathy. Claimant had a surgical evaluation of her low back pain, including an MRI of her low back with Dr. Henry. The MRI showed degenerative changes at L4-L5, but nothing warranting surgical intervention. Dr. Fevurly believed there was little chance Claimant would benefit from any more physical therapy, epidurals or surgical intervention and Claimant would be harmed by any additional intervention to the spine. He found Claimant's dysphagia may have resulted from hardware in the cervical spine, but it is not severe enough to recommend removal of the hardware. Dr. Fevurly opined reassurance and non-opioid pain medication for future medical treatment for Claimant.

#### PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2016 Supp.44-510k states in part:

(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. . .

. . .

(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.

...

(4) No post-award benefits shall be ordered, modified or terminated without giving all parties to the award the opportunity to present evidence, including taking testimony on any disputed matters. A finding with regard to a disputed issue shall be subject to a full review by the board under subsection (b) of K.S.A. 44-551, and amendments thereto. Any action of the board pursuant to post-award orders shall be subject to review under K.S.A. 44-556, and amendments thereto.

Respondent argues the ALJ's decision should be affirmed as Claimant failed to meet her burden of proof she is entitled to post-award medical treatment.

The problem with this post award medical application is the lack of specificity of what additional medical treatment Claimant wants. Two doctors are recommending future medical treatment. However, their recommendations for treatment are disparate in nature and extent. Claimant has a 36 percent permanent impairment and she had a two level cervical fusion and right shoulder surgery. As a result, her medical condition justifies future medical treatment.

The ALJ's decision is reversed and remanded to determine what future medical treatment Claimant should receive.

#### CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the Post-Award Medical Decision of the ALJ should be reversed and remanded to the ALJ to determine what future medical treatment Claimant should receive.

#### AWARD

**WHEREFORE**, it is the finding, decision and order of the Board the Post-Award Medical Decision of Administrative Law Judge Pamela J. Fuller dated November 25, 2020, is reversed and remanded to the ALJ to determine what future medical treatment Claimant should receive.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of January, 2021.

\_\_\_\_\_  
BOARD MEMBER

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BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

c: (Via OSCAR)

Scott J. Mann, Attorney for Claimant  
Thomas Munsell, Attorney for Self-Insured Respondent  
Pamela J. Fuller, Administrative Law Judge