

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H207643**

DARAPHONE SAEGSATHEUANE, EMPLOYEE	CLAIMANT
TRANE COMMERCIAL SYSTEMS, EMPLOYER	RESPONDENT
TRAVELERS INDEMNITY COMPANY, CARRIER	RESPONDENT

OPINION FILED **JULY 3, 2024**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by GUY ALTON WADE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 18, 2024, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on April 4, 2024, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. All prior Opinions are *res judicata*.
3. The employee/employer/carrier relationship existed on November 3, 2021.
4. Compensation rates are not an issue.

By agreement of the parties, the issues to be litigated and resolved at the forthcoming hearing were limited to the following:

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1. Whether claimant is entitled to medical benefits, specifically ESI injections, and prescriptions medications.
2. Whether claimant is entitled to temporary total disability benefits from August 10, 2023, to August 23, 2023, in the amount of \$1,046.50.
3. Attorney's fees on said temporary total disability benefits in the amount of \$299.00.

All other issues are reserved by the parties.

The parties announced that issue #2 was resolved by the parties before the hearing, making issue #3 moot.

The claimant contends that "That her authorized treating physician has recommended cervical epidural steroid injection at C5-6 and the respondents have refused to authorize that injection. Claimant's attorney requested respondents' attorney to reconsider the non-certification; however, although the request was made more than 3 weeks ago, it is the claimant's understanding that the injection has still not been approved. The claimant contends entitlement to prescription medications prescribed by her authorized treating physician. Claimant was seen by her authorized treating physician on February 19, 2024, and was prescribed pain medication and muscle relaxers to which the pharmacy has been unable to obtain authorization for the prescribed medications."

The respondents contend that "The ESI injections are not reasonable, necessary, or related to the work injury. Respondents contend they are paying all reasonable, necessary, and related medical treatment."

From a review of the entire record including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on April 4, 2024, and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has met her burden of proof by a preponderance of the evidence that she is entitled to additional medical benefits from Dr. Brent Whatcott for her neck and left shoulder injury.

FACTUAL BACKGROUND

This matter was previously before this court for a hearing on March 21, 2023. An opinion was rendered on June 15, 2023, in which I found, among other things, that claimant had met her burden of proof that she was entitled to additional medical benefits from Dr. Brett Whatcott for her neck and left shoulder injury. That opinion was not appealed to the Full Commission, and the parties have stipulated that it is *res judicata* for this hearing.

HEARING TESTIMONY

Claimant says she has been under Dr. Brett Whatcott's treatment since the last hearing in this case. She testified that her left shoulder was still very painful and that sometimes it gets numb. She believes her condition is getting worse. Claimant denied receiving any injections for her shoulder and is currently taking painkillers and muscle relaxers (Hydrocodone, Acetaminophens, and Tizanidine, HCL 4mlg.). She said she was having to use Medicaid to get the painkiller filled because workers' compensation had not been paying for it. Claimant denied any new injury since the job-related accident.

On cross-examination, claimant said that she spends her day now driving her kids around to games, church, and practice. She cooks dinner but does not lift anything heavy

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because her hand is very numb and painful. She stated that she did physical therapy until workers' compensation denied the claim. She wanted to do more but it was denied. Claimant recalled that she had an injection which initially did not help but after a while it did. Her doctor requested some more, and it was denied. Claimant was shown the report from Dr. Whatcott from July 18, 2023, which showed normal findings, including no tenderness or spasms, normal lordosis, and a normal range of motion for her age. Claimant said during that visit, she was only feeling pain in her shoulder but not as painful throughout her arm. Claimant first denied that the doctor had done an examination but when questioned further, she conceded that he did physically touch her in July 2023.

Claimant says that she does not do long drives but is able to do short ones to go grocery shopping. She cleans around the house, washing dishes, and clothes. She sometimes vacuums but when she cannot her son does the vacuuming. Claimant has not looked for work because of the pain she has at night and when she sits for very long, her neck is very painful.

On redirect-examination, claimant confirmed that her main problem is on her left side, which is where there is a disc herniation at C5-6. She said again that the pain interferes with her ability to sleep and that she treats it by heating a towel to put on her neck and shoulders. She said the pain starts in her shoulder and goes down her arm.

#### REVIEW OF THE EXHIBITS

Claimant submitted a few records from her treating physician, Dr. Whatcott, which were prepared since the last hearing in this matter. On June 19, 2023, he saw claimant and recorded what she told him. Among other things, claimant reported that her current course of treatment had caused her to sleep better and do routine activities. An occipital nerve block was mentioned.

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She returned to see Dr. Whatcott on July 18, 2023, and his record of that visit included more history than the previous one. The most notable entries are as follows:

**1. Cervical radiculopathy-**

07/18/2023 We are reordering PT as she has not heard from them yet. Her attorney is trying to help so we can get her the CESI that she needs. Of note, it is well documented in medicine that the longer there is pressure from a disc on a spinal nerve root, the greater the chance of permanent nerve damage.

06/19/23 PT notes received dated 05/16/23. However, I don't know what else really to do as worker's comp is denying every treatment. Apparently, they are requiring more PT, I will order this.

Has received her TENS unit, already.

Her insurance is denying CESI yet again. This is after failing PT which they requested. She would like TENS unit. Furthermore, worker's comp will not pay for pain medication.

A cervical epidural is indicated and considered medically necessary for this patient based on the following:

- Radiculopathy
- Disc displacement
- Spinal stenosis
- Pain level of  $\geq 5$
- Pain lasting longer than 3 months
- Inadequate pain relief from NSAID, physical therapy, exercises, topical, lifestyle changes etc.

Repeat MIR reviewed with same findings as CT. Disc herniation at C5-C6, but now with bilateral foraminal stenosis, left greater than right. This suggests that the disc herniation has progressed. Started PT on 02/14. It is not helping. She wants to be off of opiates for now so I will add muscle relaxers.

Having worsening neck pain, we need to proceed with CESI. Still fighting worker's comp over this. Pain continues to worsen. Apparently, they are requiring outpatient physical therapy. I will order this through Mercy and will get a new MRI to evaluate any changes. No refills needed today.

CT reviewed. Left sided disc herniation at C5-C6. Based on failure of

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shoulder treatments, this must be the source of pain as it is on the same side.

M54.12: radiculopathy, cervical region

- Tizanidine 4 mg tablet- Take 1 tablet(s) every day by oral route at bedtime for 30 days. Qty (30) tablet refills: 5 Pharmacy CVS 17357 IN TARGET
- PHYSICAL THERAPIST REFERRAL – Schedule Within: provider’s discretion  
Reason for Referral: Evaluate and treat

**2. Long-term drug therapy –**

She was able to get at least a seven-day script of tramadol from her PCP. I am ok with this as we are not having any luck getting her some medicine. UDS and PMP as expected.

Z79.899: Other long-term (current) drug therapy.<sup>1</sup>

Respondent submitted an internal Utilization Review Determination by Dr. Edrick

Lopez. The relevant parts of it are reproduced below:

**Cervical epidural steroid injection C5-6 is Non-Certified**

ODG by MCG([www.mcg.com/odg](http://www.mcg.com/odg)), Evidence-based Medical treatment Guidelines, Section:

Pain: Epidural Corticosteroid Injection

Reviewer’s Conclusion & Comments

This is a 50-year-old who sustained an industrial injury on 11/3/2021. The individual was working full-time. Per the office visit by Kristina Dean, APRN-FNP, on 01/03/2024, there was documentation of neck pain, related 8/10 radiating to the bilateral shoulders down to the fingers. The individual was taking hydrocodone currently. The individual had an injection in 2015 which helped somewhat. The PT did not help with the pain. With the current treatment, the individual was able to do routine activities, and the pain level, ability to sleep, and overall function had improved significantly. The cervical spine MRI dated 01/30/2023 revealed degenerative changes most pronounced at C5-C6 with grade 1 retrolistheses, mild-to-moderate spinal stenosis, and mild bilateral neuroforaminal stenosis. The neck exam revealed tenderness. The left upper extremity exam revealed tenderness and

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<sup>1</sup> In this one chart entry, I count at least five references to difficulties claimant was having getting respondents to provide her with the benefits I had previously awarded.

painful and restricted ROM. The diagnosis was cervical radiculopathy. Per the UR decision dated 05/03/2023, the request was non-certified.

The request is for cervical epidural steroid injection C5-C6. Per the ODG, it is recommended for cervical radiculopathy when there is a failure to respond  $\geq 1$  weeks of conservative care. Cervical ESI is not recommended at levels above C6-C7 or C7-T1. In this case, per prior UR Determination dated 05/03/2023, the request for cervical ES at C5-6 was non-certified as there were no abnormal neurologic findings on the exam and no indication of exhaustion of conservative care. The updated records still lack evidence of objective findings of any myo-comal or derma-comal deficits suggesting nerve root compression or neurological deficits. Further, records indicate the individual's overall function and pain level had improved with the current treatment regimen thus questioning the need for additional treatment. Also, the guidelines do not recommend cervical ESI above C6-7 or C7-T1. Hence considering these facts the request for Cervical epidural steroid injection C5-C6 is non-certified.

#### ADJUDICATION

I had a sense of *déjà vu* as I read the record in this matter. In my previous opinion on this issue of additional medical care, I said:

“It was stipulated that claimant had a compensable injury on November 3, 2021. Once it has been established that a claimant has sustained a compensable injury, she is not required to offer objective medical evidence to prove entitlement to additional benefits, *Ark. Health Ctr. v. Burnett*, 2018 Ark. App. 427, at 9, 558 S.W.3d 408, 414.

The evidence on this point boils down to whether the testimony of the claimant and the opinion of her treating physician is more persuasive than the report of a doctor who only reviewed records provided to him. I find Dr. Whatcott's recommendation is more credible in light of the conservative care claimant has received to this point in her course of treatment, and therefore claimant's proof is sufficient to support her request for continued medical treatment for her compensable injury.”

Nothing in the current record has changed my mind. The Utilization Review cited a previous review that denied benefits which was relevant mainly to show yet another instance where respondent had denied claimant treatment that had been recommended by her treating

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physician. It also used the Official Disability Guidelines instead of the proper standard in Arkansas, *The AMA Guides To The Evaluation Of Permanent Impairment, 4<sup>th</sup> Edition*. I again find claimant to be a credible witness and that the report of Dr. Whatcott is more persuasive than an opinion of a physician that (a) has not seen the claimant and (b) used a criterion that is irrelevant to making a decision under Arkansas law. I find Dr. Whatcott's remark from almost a year ago to be most concerning: "...it is well documented in medicine that the longer there is pressure from a disc on a spinal nerve root, the greater the chance of permanent nerve damage."

Respondents' continued denial of treatment as recommended by her treating physician and as previously awarded in this case is inexcusable. Such may well end up costing them more money in the long run, but more importantly, it may cause a permanent injury to claimant that could be avoided with appropriate and timely care.

ORDER

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment as recommended by Dr. Whatcott for her compensable injury, including ESI injections and prescription medications.

Respondent is responsible for paying the court reporter her charges for preparation of the transcript.

**IT IS SO ORDERED.**

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JOSEPH C. SELF  
ADMINISTRATIVE LAW JUDGE