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TENNESSEE COURT OF
WORKERS' COMPENSATION
CLAIMS

TENNESSEE BUREAU OF WORKERS' COMPENSATION
IN THE COURT OF WORKERS' COMPENSATION CLAIMS
AT KNOXVILLE

CANDACE JONES, **Employee,** **v.** **CRITICAL NURSE STAFFING, LLC/CNS CARES,** **Employer,** **and** **TECHNOLOGY INS. CO.,** **Carrier.**	**Docket No. 2024-30-4429** **State File No. 50318-2022** **Judge Pamela B. Johnson**

COMPENSATION ORDER

Candace Jones injured her neck at work, settled her original award for permanent disability, and now seeks either extraordinary relief or increased benefits. Critical Nurse moved for partial summary judgment on the issue of extraordinary relief. For the reasons below, the Court grants the motion for partial summary judgment and dismisses Ms. Jones's claim for extraordinary relief. Instead, she is awarded increased benefits.

Claim History

Ms. Jones is a 30-year-old resident of Scott County with a 12th grade education. She worked for Critical Nurse with an average weekly wage of $896.05.

On July 9, 2022, she injured her neck while assisting a patient. She received authorized treatment with Dr. Paul Johnson, who diagnosed a disc herniation with cervical radiculopathy. Dr. Johnson placed Ms. Jones at maximum medical improvement in October 2023 and assigned a 3% impairment.

Ms. Jones saw Dr. William Kennedy for an independent medical evaluation, and he assigned a 15% impairment. In his report, Dr. Kennedy noted that Dr. Johnson gave Ms. Jones a rating of 3% without referring to the AMA Guides, Sixth

Edition. Further, Dr. Johnson's 3% rating "was clearly wrong because he did not use the correct diagnosis, [and] failed to use his own repeated diagnoses [of radiculopathy, cervical region]."

In his deposition, Dr. Kennedy testified that Dr. Johnson performed a three-level cervical fusion, but Ms. Jones continued to have pain, numbness, and tingling radiating into her left arm and hand. Dr. Kennedy assigned significant permanent restrictions.

Ms. Jones then requested an evaluation through the Medical Impairment Rating Registry, and the parties selected Dr. Patrick Bolt. Like Dr. Kennedy, he assigned a 15% impairment. Dr. Bolt noted that Dr. Johnson's 3% impairment was "consistent with a cervical sprain/strain" and, "given the presence of cervical radiculopathy and MRI findings consistent with herniated disc, a more appropriate diagnosis . . . would be 'intervertebral disc herniation[.]" Dr. Bolt further stated that Ms. Jones was treated for intervertebral disc herniations at multiple levels and had documented signs of residual radiculopathy.

The parties settled Ms. Jones's case for an original award of 15% permanent partial disability with future medical benefits, which the Court approved in October 2024. Her initial compensation period expired on January 20, 2025. According to the settlement agreement and order approving it, Ms. Jones may file a petition to determine whether she is entitled to increased benefits or extraordinary relief. The Medical Impairment Rating Registry report was attached to the settlement documents.

After the initial compensation period expired, Ms. Jones filed a petition for increased benefits and extraordinary relief.[1] Critical Nurse moved for summary judgment. Both were set for hearing on the same day.[2]

Motion for Partial Summary Judgment

Critical Nurse argued that Ms. Jones did not qualify for extraordinary relief, since the authorized treating physician assigned a 3% impairment and the statute

[1] Ms. Jones also claimed she was permanently and totally disabled but abandoned the claim.

[2] Two weeks before trial, Critical Nurse moved to continue the compensation hearing so the summary judgment motion could be heard and decided first. Ms. Jones objected. The Court heard the motion on the day of trial and denied the motion to continue for lack of good cause.

requires an impairment of 10% or greater. She settled knowing the authorized treating physician assigned only a 3% impairment. She did not depose Dr. Johnson to ask whether he would revise his rating or agree with the Medical Impairment Registry rating. Based on the plain language of the statute, Ms. Jones is not entitled to extraordinary relief, and any change to the law must be made by the General Assembly not the trial court.

Ms. Jones opposed the motion. She asserted additional material facts that the parties "authorized" Dr. Bolt to perform the Medical Impairment Rating Registry evaluation, and his 15% impairment is presumed legally correct, only rebuttable by clear and convincing evidence. Dr. Johnson's impairment was not accurate under the AMA Guides, as noted by both Dr. Kennedy and Dr. Bolt. The parties settled based on that 15% impairment as the "final rating." Michael Galloway, a vocational expert, concluded that Ms. Jones is 100% vocationally disabled. The trial court must construe the statute in a manner that avoids making the law unintelligible or results in absurdity.

The Court took the motion under advisement and heard the proof on the petition.

Hearing Testimony

Ms. Jones testified she worked as a home health nurse, which required lifting patients, driving them to appointments, and assisting them with feeding, cleaning, and cooking. She denied any problems performing her job and had no work restrictions before the injury.

On July 9, 2022, she felt a pop in her neck with pain and tingling into her left arm. She came under Dr. Johnson's care, who performed fusion surgery in April 2023. After surgery, she continued to experience numbness and tingling. Dr. Johnson placed her at maximum medical improvement in October 2023, assigned a 3% impairment, and released her to return to work without restrictions.

Dr. Johnson retired, and Ms. Jones selected Dr. Luke Madigan from a panel in May 2025. In August, Dr. Madigan ordered a functional capacity evaluation and assigned permanent restrictions of no lifting greater than 30 to 35 pounds. He also completed a physician certification form that Ms. Jones was unable to perform her pre-injury occupation.

Ms. Jones said she is not working and is unable to physically perform her prior

job duties. She has trouble lifting, pushing, carrying, and doing household chores including repetitive movements. She also has difficulty lifting her youngest child and needs help with driving, housework, and lawncare.

On cross-examination, Ms. Jones said she is a high school graduate. She attended school to become a licensed practical nurse, becoming licensed in 2017, and her license is still active. She has experience in clinical charting and clerical work. She went back to work with Critical Nurse after her injury on light duty and did desk work, handed out medications, and assisted mobile patients.

As for her vocational abilities, Mr. Galloway noted in his report that Ms. Jones tested average to high-average in reading, and average in math. He classified her past work as light duty up to heavy physical demands. Based on the restrictions from Dr. Madigan and Dr. Kennedy, Ms. Jones cannot return to work as a licensed practical nurse. She has no transferable skills.

Mr. Galloway testified that Ms. Jones sustained an 85% vocational disability based on Dr. Madigan's restrictions and 100% vocational disability based on Dr. Kennedy's restrictions. He identified entry level and unskilled jobs including cashiers, receptionists, information clerks, production line assemblers, inspectors/testers, machine feeders, and conveyor operators.

Findings of Fact and Conclusions of Law

Summary Judgment

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04 (2025).

As the moving party, Critical Nurse must either: (1) submit affirmative evidence that negates an essential element of Ms. Jones's claim, or (2) demonstrate that her evidence is insufficient to establish an essential element of her claim. Tenn. Code Ann. § 20-16-101 (2025); *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 264 (Tenn. 2015). If Critical Nurse meets this burden, then Ms. Jones must establish that the record contains specific facts upon which the Court could base a decision in her favor. *Rye*, 477 S.W.3d at 265.

Here, the essential element at issue is whether Ms. Jones is eligible to recover

additional benefits up to 275 weeks under section 50-6-242(a)(2). These benefits are available in extraordinary cases where the injured employee is eligible for increased benefits, but, upon a showing by clear and convincing evidence, limiting recovery to increased benefits would be inequitable considering the totality of the circumstances. The Court must make specific, documented findings that:

A. Ms. Jones has impairment ratings totaling at least 10% by *authorized treating physicians*;
B. Her authorized treating physician has certified that she is unable to perform her pre-injury occupation due to permanent restrictions caused by the work injury; and
C. She is earning less than 70% of her pre-injury average weekly wage.

Tenn. Code Ann. § 50-6-242(2)(a)(A-C) (emphasis added).

The first eligibility factor is the only "fact" at issue and involves principles of statutory construction. The Workers' Compensation Law "shall not be remedially or liberally construed but shall be construed fairly, impartially, and in accordance with basic principles of statutory construction" and "shall not be construed in a manner favoring either the employee or the employer." *Id*. § 50-6-116.

In applying the basic principles of statutory construction, the Appeals Board instructed that "the search for the meaning of a [statute] begins with its words, which must be given their plain and ordinary meaning in light of the context in which they are used." *Hadzic v. Averitt Express*, 2015 TN Wrk. Comp. App. Bd. LEXIS 14, at *8 (May 18, 2015) (internal citations omitted). "Courts must avoid a construction that unduly restricts or expands the meaning of the language used, as every word is presumed to have meaning and purpose." *Id*. "[W]hen the words used 'clearly mean one thing, the courts cannot give them another meaning under the guise of construing them.'" *Id*. Moreover, a court must "presume that the legislature did not intend an absurdity." *Martin v. Kirby Bldg. Sys., LLC*, 2026 TN Wrk. Comp. App. Bd. LEXIS 19, at *8-9 (Mar. 20, 2026) (appeal docketed) (internal citations omitted).

Here, the plain language of section 50-6-242(a)(2) requires impairment ratings totaling at least 10%, according to the AMA Guides, given by the *authorized treating physician*. Both Drs. Kennedy and Bolt noted that Dr. Johnson's 3% rating was assigned based on a misclassification of Ms. Jones's injury as a cervical sprain/strain instead of a disc herniation with cervical radiculopathy. However, neither Dr. Johnson nor Dr. Madigan were asked to reassess the 3% impairment or whether they would agree and/or adopt the 15% rating assigned by Dr. Kennedy and

Dr. Bolt.

The only "authorized treating physician" to rate Ms. Jones was Dr. Johnson, who assessed a 3% rating. The 3% rating does not meet the requirements in section 50-6-242(a)(2), so Ms. Jones cannot claim extraordinary relief.

Applying the plain language of section 50-6-242(a)(2)(A) may seem unfair or unjust when considering the Workers' Compensation Law as a whole. However, its application does not reach the level of absurdity. This section explicitly requires ratings from authorized treating physicians without consideration of legal presumptions attached to opinions of the physicians selected through the Medical Impairment Rating Registry. And, even if Ms. Jones were more disabled than the 3% rating reflects, any remedy of the resulting unfairness or injustice requires legislative action. This Court must apply the laws as written. *See Hadzic*, 2015 TN Wrk. Comp. App. Bd. LEXIS 14 at *10.

Because no material issue of disputed fact exists, Critical Nurse is entitled to partial summary judgment as a matter of law. Thus, Ms. Jones's claim for extraordinary relief is denied and dismissed with prejudice.

Increased Benefits

The Workers' Compensation Law provides that Ms. Jones may qualify for an increased benefit equal to 1.35 times the original award when the initial compensation period ends if she has not returned to work for any employer earning at least the same rate of pay as before the injury. This is known as the "resulting award." The Court can further increase this award if she: (i) lacks a high school diploma or high school equivalency (1.45 factor), (ii) is over 40 years old when the initial compensation period ends (1.2 factor), or (iii) worked in a county where the unemployment rate was 2% points higher that the yearly average unemployment rate in Tennessee (1.3 factor). These benefits are called "increased benefits." Tenn. Code Ann. § 50-6-207(3)(B).

Ms. Jones's initial compensation period expired on January 20, 2025. On that date, she had not returned to work for any employer, was 29 years old, had a high school diploma, and worked in a county whose unemployment rate was not 2% above the state yearly average. Thus, the only applicable factor is the 1.35 factor for no return to work, entitling Ms. Jones to a resulting award of $14,112.87.[3]

[3] 450 Weeks x 15% x $597.37 = $40,322.48 x 1.35 factor = $54,435.35 - $40,322.48 original

Attorney Fees and Costs

Post-trial, Ms. Jones moved for attorney fees and discretionary costs. Ms. Jones's attorney also filed an affidavit supporting the request. Critical Nurse did not file a response or a fee affidavit.

Section 50-6-226(a)(1) addresses attorney fees recoverable under the Workers' Compensation Law. For attorneys representing employees, the statute provides that fees are subject to court approval, provided that no attorney's fees charged to the employee shall exceed 20% of the employee's recovery and paid by the party employing the attorney. *Id.* For employers' attorneys, all attorney fees are subject to review for reasonableness of the fee and subject to approval by the Court when the fee exceeds $10,000. *Id*.

Turning first to Ms. Jones's counsel, the Court must make specific findings under Tennessee Supreme Court Rule 8, Rules of Professional Conduct 1.5(a). *Wright ex rel. Wright v. Wright,* 337 S.W.3d 166, 169-170 (Tenn. 2011). The Court finds this case required considerable time and labor, involved complex issues, and required experienced counsel. Ms. Jones's fee arrangement was a contingency fee and customary for workers' compensation cases. Therefore, all applicable factors support the reasonableness of the requested fees. Ms. Jones's attorney is entitled to a fee of 20% of the recovery, or $2,822.58 to be paid from Ms. Jones's award.

The Court presumes that Critical Nurse's attorney fees were less than $10,000 and awards its attorney a fee not to exceed $10,000.

Finally, Ms. Jones moved for costs totaling $3,632.60 based on:

Dr. William Kennedy's deposition testimony	$1,950.00
Court Reporter & Transcript Cost	$432.60
Michael Galloway court appearance	$1,250.00

Two provisions address recoverable costs. First, section 50-6-239(c)(8) authorizes a trial court, in its discretion, to "assess discretionary costs including reasonable fees for depositions of medical experts against the employer upon adjudication of the employee's claim as compensable." Second, Tennessee Rule of Civil Procedure 54.04 allows discretionary costs for court reporter expenses and

award = $14,112.87 resulting award.

expert witness fees for depositions and trial.

Here, Ms. Jones's costs were associated with her claim for extraordinary relief. Considering Critical Nurse's successful partial summary judgment, the requested costs are not recoverable. *See Oldham v. Freeman Webb Co. Realtors,* 2024 TN Wrk. Comp. App. Bd. LEXIS 37, at *42 n.9 (Nov. 8, 2024), *aff'd*, No. E2024-01747-SC-R3-WC, 2026 Tenn. LEXIS 63 (Tenn. Workers' Comp. Panel Feb. 27, 2026) (Costs relative to unsuccessful claims cannot be awarded). Thus, Ms. Jones's motion for discretionary costs is denied.

IT IS, THEREFORE, ORDERED as follows:

1. Ms. Jones's claim for extraordinary relief is denied and dismissed with prejudice.

2. Ms. Jones is entitled increased benefits of $14,112.87 to be paid in a lump sum.

3. Ms. Jones's attorney is entitled to a fee of 20% of the award of increased benefits, or $2,822.58, to be paid from Ms. Jones's award.

4. Ms. Jones's claim for discretionary costs is denied.

5. Critical Nurse shall provide future medical benefits under Tennessee Code Annotated section 50-6-204.

6. Critical Nurse shall file a statistical data form within ten business days of entry of this order.

7. Critical Nurse shall pay the $150.00 filing fee within five business days of entry of this order.

8. Unless appealed, the order becomes final 30 days after issuance.

ENTERED September 9, 2026.



JUDGE PAMELA B. JOHNSON
Court of Workers' Compensation Claims

APPENDIX

Exhibits:

1. Settlement Documents
2. Physician Certification Form
3. Michael Galloway's Vocational Assessment and Curriculum Vitae
4. Dr. William Kennedy's deposition transcript with attachments

CERTIFICATE OF SERVICE

I certify that a copy of this order was sent as shown on September 9, 2026.

Name	Email	Service sent to:
Timothy Roberto, Employee's Attorney	X	troberto@brownandroberto.com
Dan Cowell, Employer's Attorney	X	dan.cowell@petersonwhite.com

Penny Shrum

PENNY SHRUM, COURT CLERK
wc.courtclerk@tn.gov

Right to Appeal:

If you disagree with the Court's Order, you may appeal to the Workers' Compensation Appeals Board. To do so, you must:

1. Complete the enclosed form entitled "Notice of Appeal" and file it with the Clerk of the Court of Workers' Compensation Claims before the expiration of the deadline.
   - If the order being appealed is "expedited" (also called "interlocutory"), or if the order does not dispose of the case in its entirety, the notice of appeal *must* be filed *within seven (7) business days* of the date the order was filed.
   - If the order being appealed is a "Compensation Order," or if it resolves all issues in the case, the notice of appeal *must* be filed *within thirty (30) calendar days* of the date the Compensation Order was filed.

   When filing the Notice of Appeal, you must serve a copy on the opposing party (or attorney, if represented).

2. You must pay, via check, money order, or credit card, a **$75.00 filing fee** *within ten calendar days* after filing the Notice of Appeal. Payments can be made in-person at any Bureau office or by U.S. mail, hand-delivery, or other delivery service. In the alternative, you may file an Affidavit of Indigency (form available on the Bureau's website or any Bureau office) seeking a waiver of the filing fee. You must file the fully-completed Affidavit of Indigency *within ten calendar days* of filing the Notice of Appeal. **Failure to timely pay the filing fee or file the Affidavit of Indigency will result in dismissal of your appeal.**

3. You are responsible for ensuring a complete record is presented on appeal. If no court reporter was present at the hearing, you may request from the Court Clerk the audio recording of the hearing for a $25.00 fee. If you choose to submit a transcript as part of your appeal, which the Appeals Board has emphasized is important for a meaningful review of the case, a licensed court reporter must prepare the transcript, and you must file it with the Court Clerk. The Court Clerk will prepare the record for submission to the Appeals Board, and you will receive notice once it has been submitted. For deadlines related to the filing of transcripts, statements of the evidence, and briefs on appeal, see the applicable rules on the Bureau's website at https://www.tn.gov/wcappealsboard. (Click the "Read Rules" button.)

4. After the Workers' Compensation Judge approves the record and the Court Clerk transmits it to the Appeals Board, a docketing notice will be sent to the parties.

   If neither party timely files an appeal with the Appeals Board, the Court Order becomes enforceable. See Tenn. Code Ann. § 50-6-239(d)(3) (expedited/interlocutory orders) and Tenn. Code Ann. § 50-6-239(c)(7) (compensation orders).

For self-represented litigants: Help from an Ombudsman is available at 800-332-2667.

NOTICE OF APPEAL

Tennessee Bureau of Workers' Compensation
www.tn.gov/workforce/injuries-at-work/
wc.courtclerk@tn.gov | 1-800-332-2667

Docket No.: _____

State File No.: _____

Date of Injury: _____

_____
Employee

v.

_____
Employer

Notice is given that _____
[List name(s) of all appealing party(ies). Use separate sheet if necessary.]

appeals the following order(s) of the Tennessee Court of Workers' Compensation Claims to the Workers' Compensation Appeals Board (check one or more applicable boxes and include the date file-stamped on the first page of the order(s) being appealed):

☐ Expedited Hearing Order filed on _____ ☐ Motion Order filed on _____

☐ Compensation Order filed on _____ ☐ Other Order filed on _____

issued by Judge _____.

Statement of the Issues on Appeal

Provide a short and plain statement of the issues on appeal or basis for relief on appeal:

_____
_____
_____
_____

Parties

Appellant(s) (Requesting Party): _____ ☐ Employer ☐ Employee
Address: _____ Phone: _____
Email: _____
Attorney's Name: _____ BPR#: _____
Attorney's Email: _____ Phone: _____
Attorney's Address: _____

** Attach an additional sheet for each additional Appellant **

Employee Name: _____ Docket No.: _____ Date of Inj.: _____

Appellee(s) (Opposing Party): _____ ☐ Employer ☐ Employee
Appellee's Address: _____ Phone: _____
Email: _____
Attorney's Name: _____ BPR#: _____
Attorney's Email: _____ Phone: _____
Attorney's Address: _____

** Attach an additional sheet for each additional Appellee **

CERTIFICATE OF SERVICE

I, _____, certify that I have forwarded a true and exact copy of this Notice of Appeal by First Class mail, postage prepaid, or in any manner as described in Tennessee Compilation Rules & Regulations, Chapter 0800-02-21, to all parties and/or their attorneys in this case on this the _____ day of _____, 20 ____.

_____
[Signature of appellant or attorney for appellant]

Tennessee Bureau of Workers' Compensation
220 French Landing Drive, I-B
Nashville, TN 37243-1002
800-332-2667

AFFIDAVIT OF INDIGENCY

I, _____, having been duly sworn according to law, make oath that because of my poverty, I am unable to bear the costs of this appeal and request that the filing fee to appeal be waived. The following facts support my poverty.

1. Full Name:_____ 2. Address: _____

3. Telephone Number: _____ 4. Date of Birth: _____

5. Names and Ages of All Dependents:

_____ Relationship: _____

_____ Relationship: _____

_____ Relationship: _____

_____ Relationship: _____

6. I am employed by: _____

My employer's address is: _____

My employer's phone number is: _____

7. My present monthly household income, after federal income and social security taxes are deducted, is:

$ _____

8. I receive or expect to receive money from the following sources:

AFDC	$ _____	per month	beginning _____
SSI	$ _____	per month	beginning _____
Retirement	$ _____	per month	beginning _____
Disability	$ _____	per month	beginning _____
Unemployment	$ _____	per month	beginning _____
Worker's Comp.	$ _____	per month	beginning _____
Other	$ _____	per month	beginning _____

9. My expenses are:

Rent/House Payment	$ _____ per month	Medical/Dental	$ _____ per month
Groceries	$ _____ per month	Telephone	$ _____ per month
Electricity	$ _____ per month	School Supplies	$ _____ per month
Water	$ _____ per month	Clothing	$ _____ per month
Gas	$ _____ per month	Child Care	$ _____ per month
Transportation	$ _____ per month	Child Support	$ _____ per month
Car	$ _____ per month		
Other	$ _____ per month (describe: _____)		

10. Assets:

Automobile	$ _____	(FMV) _____
Checking/Savings Acct.	$ _____	
House	$ _____	(FMV) _____
Other	$ _____	Describe: _____

11. My debts are:

Amount Owed	To Whom
_____	_____
_____	_____
_____	_____
_____	_____

I hereby declare under the penalty of perjury that the foregoing answers are true, correct, and complete and that I am financially unable to pay the costs of this appeal.

_____
APPELLANT

Sworn and subscribed before me, a notary public, this

_____ day of _____, 20_____.

_____
NOTARY PUBLIC

My Commission Expires: _____