

**SOAH DOCKET NO. 453-03-1016.M2**  
**[MDR TRACKING NO. M2-02-0702-01]**

**AMERICAN CASUALTY COMPANY  
OF READING, PA.,  
Petitioner**

**V.**

**\_\_\_\_ AND TEXAS WORKERS'  
COMPENSATION COMMISSION,  
Respondent**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

**I. Introduction**

American Casualty Company of Reading, PA. (Carrier) has appealed a decision of an independent review organization (IRO) recommending preauthorization of a medical service for \_\_\_\_\_. (Claimant). The only disputed issue is whether the service for which preauthorization is sought—neurolysis and anterior intramuscular transposition of the Claimant's right ulnar nerve (Requested Service)—is reasonably medically necessary to treat pain stemming from the Claimant's compensable injury.

As set out below, the Administrative Law Judge (Judge) concludes that the Requested Service is not reasonably medically necessary and denies preauthorization.

**II. Discussion of Issue**

On or before \_\_\_\_\_, the Claimant sustained a work-related injury to her wrist, which she first reported to her employer on \_\_\_\_\_. The injury stemmed from repetitive motion in her job tasks. The Claimant has not returned to work since then. On October 8, 1998, the Claimant complained to her treating physician, Alonso Escalante, M.D., that she had pain and paresthesia, e.g. numbness and tingling, in both of her hands. On October 28, 1998, the Claimant also complained of tenderness over the ulnar nerves in her elbows. Thereafter, the Claimant predominantly complained of neck pains and numbness and weakness in her left arm, and only occasionally in her right. On June 18, 1999, the Claimant had a triple spinal cervical fusion to treat her symptoms. For some time thereafter, she said that she felt better.

However, on March 15, 2000, the Claimant began to complain more specifically of problems with her *left* elbow—not the *right* on which she seeks the Requested Service—including paresthesia radiating down into her fingers. This persisted for some time. On November 6, 2000, the Treating Physician noted considerable tenderness of *both* of her cubital tunnels, through which the ulnar nerve runs. On December 13, 2000, the Treating Physician diagnosed the Claimant as having

bilateral cubital tunnel syndrome. Then on February 6, 2002, the Treating Physician added a related diagnosis, that the Claimant had a subluxation—a partial dislocation—of her ulnar nerves. On February 15, 2002, the Treating Physician prescribed the Requested Service to treat the alleged cubital tunnel syndrome and asked the Carrier to preauthorize that service. The Carrier denied the requested preauthorization.

The Carrier argues that there is no objective evidence that the Claimant suffers from cubital tunnel syndrome or subluxation of the ulnar nerve in her right arm. The two peer-review physicians, Dr. Leela Rangaswamy and Dr. Bill H. Berryhill, and Carrier's witness, Dr. Michael Albrecht, are orthopedic surgeons who reviewed the Claimant's medical record but did not examine the Claimant. They all concluded that those records contain no objective evidence that the Claimant has an ulnar-nerve injury or a subluxation or cubital tunnel syndrome related to that nerve. Accordingly, they also concluded the Requested Service was not medically necessary.

In fact, there is objective evidence that the Claimant *does not* have a right ulnar nerve injury. A conduction velocity study measures the speed at which a nerve carries an electrical signal. The day after the Claimant first claimed to be compensably injured, on \_\_\_\_\_, the Claimant's Treating Physician, Alonso Escalante, M.D., prescribed a conduction velocity study. That study was conducted on October 28, 1998, and showed a normal response of her right ulnar nerve, indicating no dysfunction. On March 15, 2000, apparently after the Claimant's elbow pains increased, the Treating Physician recommend a second nerve conduction study, to assess her ulnar nerves across her elbows to decide if anything needed to be done about her cubital tunnels. The study did not occur for some time, due to various disputes among the Parties. However, a second nerve conduction study was finally performed on March 5, 2002. Once again, it was normal.

The physician who conducted both of the studies, Dr. H.N. Kumara, concluded on both occasions that the study results did not suggest that the Claimant had cubital tunnel syndrome in either arm. Additionally, Dr. Albrecht testified that, in his opinion, the nerve conduction study is definitive in determining whether a nerve is functioning properly and that, in his active practice, he had never performed the Requested Services on a patient that had a normal nerve conduction study. He acknowledged, however, that others in his specialty area have performed the Requested Service despite a normal nerve study.

Despite those normal nerve studies, it is possible that the Claimant suffers from either cubital tunnel syndrome or subluxation involving her right ulnar nerve. However, there is little evidence that she does or that those conditions, if they exist, stem from her injury that she first reported over four years ago. The evidence indicates that the Claimant's right elbow pain was infrequent and minor from the reported injury date until almost two years later. While the Treating Physician conclusively asserted that the Claimant suffered from cubital tunnel syndrome or a subluxation, he did not set out a rational basis for reaching that conclusion. The IRO accepted the Treating

Physician's subluxation conclusion and speculated that there might be other causes for her elbow pain that might require the Requested Services.

Under these circumstances, the two normal nerve conduction studies make it more likely than not that the Claimant's right ulnar nerve is functioning normally and the other evidence does not indicate otherwise. Accordingly, the Judge concludes that the Requested Services are not reasonably medically necessary and that they should not be preauthorized.

### **III. Findings of Fact**

1. On or before \_\_\_\_\_, \_\_\_\_\_ (Claimant) sustained a work-related injury to her wrist, which she first reported to her employer on \_\_\_\_\_.
2. The injury stemmed from repetitive motions required in the Claimant's job tasks.
3. The Claimant has not returned to work since her work-related injury.
4. On the date of injury, the Claimant's employer was \_\_\_\_\_. and its workers' compensation insurance carrier was American Casualty Company of Reading, PA. (Carrier).
5. On \_\_\_\_\_, the Claimant had pain and paresthesia, e.g. numbness and tingling, in both of her hands.
6. A conduction velocity study measures the speed at which a nerve carries an electrical signal and is objective evidence of improper nerve function.
7. On October 20, 1998, a conduction velocity study of both the Claimant's median nerves—running through her wrists—and her ulnar nerves—running through her elbows—showed normal responses.
8. On October 28, 1998, the Claimant complained of tenderness over her ulnar nerves in her elbows.
9. On January 28, 1999, the Claimant's ulnar nerve along her right elbow was not compressed.
10. On February 23, 2000, the Claimant had full range of motion of her elbows and no tingling over her right elbow in response to a Tinel's test.
11. On March 15, 2000, the Claimant had a full range of motion of her right elbow and no pain there.
12. On November 6, 2000, the Claimant had problem with both elbows, including paresthesia

radiating down into her fingers.

13. On November 6, 2000, the Claimant's Treating Physician, Alonso Escalante, M.D., diagnosed the Claimant as having considerable tenderness of both cubital tunnels, through which her ulnar nerves run.
14. On December 13, 2000, the Treating Physician recommend that the Claimant have repeat nerve conduction studies to assess her ulnar nerves across her elbows to decide if anything needed to be done about her cubital tunnels.
15. On December 22, 2000, hyperflexion of the Claimant's right elbow did not reproduce paresthesia in her right fingers.
16. On May 7, 2001, the Claimant had numbness with testing along her right ulnar nerve distribution.
17. On February 6, 2002, the Treating Physician diagnosed that the Claimant as having cubital tunnel syndrom on her right side.
18. On February 15, 2002, the Treating Physician prescribed neurolysis and anterior intramuscular transposition of the Claimant's right ulnar nerve (Requested Service).
19. On February 15, 2002, the Treating Physician requested the Carrier to preauthorize the Requested Services.
20. On March 5, 2002, conduction velocity studies of the Claimant's right ulnar nerve showed a normal response.
21. The October 20, 1998, and March 5, 2002, conduction velocity studies showing a normal response of the right ulnar nerve, suggest that nerve functions normally and that she does not suffer from cubital tunnel syndrome.
22. On March 18, 2002, the Treating Physician diagnosed the Claimant as having a problem with subluxation of her ulnar nerves, which had not previously been present since the compensable injury.
23. On March 28, 2002, the Treating Physician again sought preauthorization from the Carrier for the Requested Service.

24. On February 21, 2002, and again on April 5, 2002, the Carrier denying the requested preauthorization for the Requested Service, contending that there were no objective findings of sensory or motor loss to determine that it was medically necessary.
25. The Treating Physician requested medical dispute resolution by the TWCC concerning the Requested Service.
26. An independent review organization (IRO) reviewed the medical dispute and found that:
  1. the Claimant had subluxation of her ulnar nerves, which can caused microtrauma of the nerve with repetitive activity;
  2. this was a dynamic condition in which it is not uncommon for conduction velocity studies to be within normal limits; and
  3. that the Requested Service is reasonably medically necessary and should be preauthorized.
27. On October 11, 2002, the Carrier asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (Judge) concerning the preauthorization of the Requested Service.
28. By letter of December 11, 2002, the Treating Physician indicated that he would not appear at the hearing.
29. Notice of a January 27, 2003 contested-case hearing concerning the dispute was faxed to the Carrier and the TWCC Staff and mailed to the Treating Physician and the Claimant on December 23, 2002.
30. On January 27, 2003, SOAH ALJ William G. Newchurch held a contested-case hearing on the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.
31. The Claimant telephonically appeared at the hearing on her own behalf.
32. The Carrier appeared at the hearing through its attorney, Jane Lipscomb Stone.

#### **IV. Conclusions of Law**

33. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2002) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2001).

34. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
35. SOAH's Chief ALJ has jurisdiction to adopt procedural rules for SOAH hearings, and a referring agency's procedural rules govern a hearing only to the extent that SOAH's rules adopt them by reference. Gov't Code § 2003.050 (a) and (b).
36. Under TWCC's rules, the party seeking relief has the burden of proof. 28 TEX. ADMIN. CODE (TAC) §148.21(h) (2002).
37. Under TWCC's rules, the IRO's decision has presumptive weight in all appeals from reviews of medical necessity disputes. 28 TAC § 133.308(v).
38. The Chief ALJ has not adopted TWCC's burden-of-proof or IRO-decision-presumptive-weight rules, and no statute requires the use of those rules.
39. In determining the burden of proof, the referring agency's documented policy is to be considered, but it must be modified to consider the parties' access to and control over pertinent information and so that no party is required to prove a negative. 1 TAC § 155.41(b).
40. Based on the above Findings of Fact, Conclusions of Law, and TWCC's documented policy set out in its rules, the Carrier should have the burden of proof in this matter.
41. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Labor Code § 408.021 (a).
42. TWCC must specify by rule which health care treatments and services require express pre-authorization by a carrier. A carrier is not liable for those specified treatments and services unless pre-authorization is sought by the Claimant or a health care provider and either obtained from the carrier or ordered by TWCC. Labor Code §413.014
43. Pre-authorization is required for the Requested Service. 28 TAC § 134.600(h)(2).
44. Based on the above Findings of Fact and Conclusions of Law, the two normal nerve conduction studies make it more likely than not that the Claimant's right ulnar nerve is functioning normally.
45. Based on the above Findings of Fact and Conclusions of Law, the Requested Services are not reasonably medically necessary and should not be preauthorized.

**ORDER**

**IT IS ORDERED THAT** the Requested Services are not preauthorized.

**Signed February 7, 2003.**

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**WILLIAM G. NEWCHURCH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**