

DOCKET NO. 453-03-1710.M2
[MDR TRACKING NO. M2-03-0336-01]

AMERICAN HOME ASSURANCE COMPANY, PETITIONER	§	BEFORE THE STATE OFFICE
	§	
vs.	§	OF
	§	
TEXAS WORKERS' COMPENSATION COMMISSION AND KENNETH BERLINER M.D., RESPONDENTS	§ § §	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

American Home Assurance Company (Petitioner) appealed the decision of the Texas Workers' Compensation Commission's (Commission) designee, an Independent Review Organization (IRO), which granted preauthorization to Kenneth Berliner, M.D., (Respondent) for a right ulnar nerve transposition but denied preauthorization for a right carpal tunnel release procedure for a workers' compensation claimant (Claimant). This decision finds both the requested procedures are reasonable and medically necessary healthcare for Claimant.

**I. JURISDICTION, NOTICE, PROCEDURAL HISTORY AND
EVIDENTIARY MATTERS**

There were no contested issues of jurisdiction, notice or venue. Therefore, those issues are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing in this matter was held February 11, 2003, at the State Office of Administrative Hearings, 300 W. 15th Street, Austin, Texas, with Administrative Law Judge (ALJ) Ann Landeros presiding. Petitioner appeared through its attorney, Dan Kelley. Respondent Dr. Kenneth Berliner appeared pro se. Respondent Commission did not appear or participate in the hearing. After receipt of evidence and argument, the record closed that same day.

A. Request for Deemed Admissions

At the hearing, Petitioner moved that the matters asserted in its request for admissions be deemed true. The request for admissions were alleged to have been served on Dr. Berliner on January 16, 2003, by electronic mail (email) by a company called "eFax.com." Petitioner's proof of service was a copy of an email confirming a nine page fax was sent to the "remote identifier" of A281 875 0316" on January 16, 2003. This email did not state what sort of document had been transmitted. Petitioner argued that because Dr. Berliner had not responded to the requests for admissions, the ALJ must deem the requests true and exclude evidence that contradicted the facts sought to be established by the admissions.

Dr. Berliner admitted his office had a facsimile transmission number of A281 875 0316" but he testified he was not aware any discovery documents had been received at his office, and expressed ignorance about the significance of such documents. In his testimony, Dr. Berliner disagreed with the admissions and asserted both the carpal tunnel release and ulnar nerve

transposition were medically necessary for Claimant.

Because Dr. Berliner was appearing by telephone and had not seen the admissions, the ALJ reserved her ruling until after the evidentiary presentation concluded. Dr. Berliner was given a short period of time to review the admissions and submit further objections thereto.

Having considered the situation, the ALJ found Petitioner's request to deem the admissions true should be denied. Petitioner failed to show proper service upon Dr. Berliner. The SOAH Rules of Procedure allow service by electronic transmission only "upon agreement of the parties" 1 TEX. ADMIN. CODE (TAC) § 155.25. Petitioner failed to show Dr. Berliner agreed to accept service by email. Additionally, as worded, both requests called for admissions regarding the ultimate issues of fact in this matter.¹ As Petitioner's counsel was informed in a previous TWCC appeal,² requests for admissions are not proper vehicles for establishing ultimate issues of fact.

Even had the admissions been properly served and deemed admitted, Dr. Berliner's objections to the admissions served as a request to withdraw deemed admissions, an act within the

¹ The requests were: "Request for Admission No. 1: Admit that the right ulnar nerve transmission is not reasonable or medically necessary," and "Request for Admission No. 2: Admit that the diagnosed carpel [sic] tunnel syndrome was not caused by the work related compensable injury."

² See Order No. 2 in SOAH docket 453-02-3787.M2 issued by Judge Leslie Craven on September 11, 2002, which stated:

The Texas Supreme Court has found that the "ultimate purpose of discovery is to seek the truth . . ." *Jampole v. Touchy*, 673 S.W.2d 569, 573 (Tex. 1984), and "[the discovery rules were *not designed as traps for the unwary nor should we construe them to prevent a litigant from presenting the truth.*" *Stelly* at 622; *Burden* at 256. "The primary purpose of [Rule 198] is to simplify trials by eliminating matters about which there is *no real controversy*, but which may be difficult and expensive to prove. It was *never intended to be used as a demand upon a plaintiff or defendant to admit that he had no cause of action or ground of defense.*" *Sanders v. Harder*, 148 Tex. 593, 227 S.W.2d 206, 208 (1950).

The Texas Supreme Court has determined that the threshold standard for withdrawal of deemed admissions is good cause, and it has found that good cause can be established by a showing that the failure to respond was not intentional or the result of conscious indifference. *Wal-Mart Stores, Inc. v. Deggs*, 968 S.W.2d 354, 356 (Tex. 1998); *Stelly* at 622; *Burden v. John Watson Landscape Illumination, Inc.*, 896 S.W.2d 253, 255 (Tex. App.—Eastland 1995, writ denied); *North River Ins. Co. of New Jersey v. Greene*, 824 S.W.2d 697, 700 (Tex. App.—El Paso 1992, writ denied); *Employers Ins. of Wausau v. Halton*, 792 S.W.2d 462,465 (Tex. App.—Dallas 1990, writ denied).

* * * *

The ALJ finds good cause exists to allow withdrawal of the deemed admission and provide both parties the opportunity to present evidence regarding the merits of Petitioner's appeal. In deciding this question, "the controlling issue is the absence of a purposeful or bad faith failure to answer which reflects a conscious indifference. Consequently, even a slight excuse will suffice, especially where delay or prejudice will not result against the opposing party." *Greene* at 700; *Gotcher v. Barnett*, 757 S.W.2d 398, 401 (Tex. App.—Houston [14th Dist.] 1988, no writ).

ALJ's discretion pursuant to SOAH rule at 1 TAC § 155.31. The ALJ finds that all three conditions (good cause, no undue prejudice to the admission's proponent, and presentation on the merits would be subserved by the admissions) were established in the matter so that, even if deemed, the ALJ would have withdrawn them and allowed testimony on the issues addressed in the requests.

B. Scope of Appeal

By letter dated December 18, 2002, Petitioner informed the Commission that it "disagrees with the Decision and Order" of the IRO and requested a hearing "to appeal this matter and overturn the Decision and Order." Petitioner's appeal letter failed to recognize that it had prevailed on the carpal tunnel release issue. Although it is usually the losing party who appeals a denial, either party may do so. Petitioner's appeal letter did not distinguish between the two procedures considered by the IRO. The appeal letter's broad language included the decision on the denial of carpal tunnel release procedure along with the granting of the ulnar nerve transposition. Therefore, the ALJ must consider whether either procedure is medically necessary for Claimant.

II. DISCUSSION

A. Background Facts

In _____, Claimant sustained an injury compensable under the Texas Workers' Compensation Act (Act) to her right arm. At the time of the compensable injury, Claimant's employer had workers' compensation insurance coverage with Petitioner. At the time of her injury, Claimant was both obese and a diabetic, but had no preexisting medical problems with her right arm.

According to Claimant's medical records, the injury occurred when she used her right arm to catch a 60-pound box as it dropped from an overhead shelf. (Exh. 1, p. 50). She caught the box with her right hand but could not stop its downward momentum so that her right arm was "jammed" or "jerked" as the box drug it to the ground. (Exh.1, p. 50-51).

Claimant was initially seen by Dr. Glenn Shipley, D.O., and Dr. James Hood, M.D., of Concentra Clinic in Houston. Both doctors diagnosed her with lateral epicondylitis. (Exh.1, pp. 40-45). Dr. Shipley released her to return to work in February 2000 with restricted use of her right arm. (Exh. 1, p. 44).³

In April 2000, Dr. Brian Schulman, M.D., performed an EMG and nerve velocity conduction (NVC) study on Claimant. In Dr. Schulman's interpretation, the studies showed Claimant had ulnar entrapment at the elbow, which might require repositioning of the ulnar nerve. He also noted some of the test readings might have been affected by Claimant's diabetic neuropathy. (Exh.1, p. 22). In July 2000, Dr. Brent Powell, D.C., became Claimant's treating physician.

In August 2000, Claimant underwent an ulnar transposition surgical procedure on her right

³ Claimant apparently did return to work for some period because she sustained another injury (to her left arm) in _____ that was the subject of a separate workers' compensation claim. (Exh. 1, p. 5).

elbow to relieve pain that had not resolved after months of conservative care. (Exh.1, p.57). Post-operatively, she continued to complain of pain, numbness, tingling, and weakness in her right arm from the elbow down. An EMG/NVC by Dr. Phillip Blum, M.D., in September 2001, revealed “findings compatible with a moderate chronic right ulnar neuropathy” and “mild lesion of the right median nerve at the wrist compatible with carpal tunnel syndrome” in Claimant’s right arm. (Exh.1, p. 28).

In December 2001, Claimant was referred to Dr. Berliner for a surgical consult. Preauthorization was requested from Petitioner for a carpal tunnel release and ulnar transposition operations on Claimant’s right arm. Due to her pregnancy, which ended in April 2002, Claimant’s surgery was postponed. Petitioner denied the requests claiming the operations were not medically necessary. This denial was appealed to the Commission, and referred to the IRO for consideration.

The IRO reviewer granted the preauthorization for right ulnar nerve transposition but denied the carpal tunnel release procedure. The IRO reviewer stated:

MAXIMUS’s physician reviewer indicated that the patient suffered an injury to her right arm and elbow on _____ due to blunt trauma from a falling pallet of boxes. . . . the subsequent examinations and neurological studies demonstrated right cubital tunnel syndrome, for which the patient underwent surgery. . . .her right upper extremity symptoms have either persisted or recurred. . . . ongoing treatment for persistent or recurrent right cubital tunnel syndrome is indicated for treatment of this injury. However . . . there is no information in the provided records that would support a causal relationship between the patient’s injury and her diagnosis of bilateral carpal tunnel syndrome. Therefore . . . [this] reviewer concluded that right ulnar nerve transposition is medically necessary for treatment of the patient’s injury but that right carpal tunnel release is not medically necessary for treatment of this injury at this time.

B. Legal Standards

Petitioner has the burden of proof in this proceeding. 28 TAC §§ 148.21(h) and (i). Pursuant to the Act, an employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. § 408.021(a). Health care includes all reasonable and necessary medical services including a medical appliance or supply. TEX. LAB. CODE ANN. §401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31). For a carrier to be liable to reimburse a provider, certain services, including surgery, must be preauthorized by the carrier. 28 TAC 134.600(h).

The IRO had authority to review the parties positions and issue a decision pursuant to the Commission’s rule at 28 TAC §§133.305 and 133.308.

C. Medical Records Supported Need For Both Procedures

The medical records in this case supported the medical necessity of both the ulnar nerve transposition and the carpal tunnel release procedures. Petitioner's evidence, the opinions of several medical reviewers, lacked weight or persuasiveness.

1. Petitioner's Evidence

Petitioner argued the requested procedures were not medically necessary and not related to Claimant's compensable injury. As a basis for its denials, Petitioner relied on three physician reviewers, Drs. Freeman, Gagni, and Tonn.

Orthopedist Dr. Gary Freeman examined Claimant in January 2001, and after reviewing "many medical records" concluded her "nonspecific, self-asserted, self-reported invisible industrial injury claim" had received "unreasonable, unnecessary and excessive" treatment including "excessive and inappropriate" narcotics. He concluded that "the claimant probably had no actual credible injury event" but had "mild ulnar compression neuropathy due to obesity and diabetes with the activities of daily living as opposed to the lifting activities per se." He understood Claimant was injured while "lifting cases." (Exh.1, p.18-19). He cited to lack of a "demonstrable, objective, credible resultant loss of range of motion, or credible resultant neurological dysfunction" as a basis for his opinion. (Exh.1, p. 20). Finally, Dr. Freeman stated: "In my opinion, the surgery performed by Dr. Varon was a far greater injury to the claimant than the nebulous event at issue. The secondary factors are obvious and operative. These factors speak for themselves. Unfortunately, the prognosis is extremely guarded due to the secondary factors which are not best exemplified by the pain behavior, lack of objective pathology, and a continuation of chiropractic attentions." (Exh.1, p. 20).

Dr. Freeman attributed Claimant's receipt of unnecessary care to the fact her attorney referred her to Dr. Powell, a chiropractor. He claimed Dr. Shipley found Claimant without impairment in March 2000. He found it inconsistent that Drs. Hood and Powell discussed lateral epicondylitis but that Dr. Varon performed a medial ulnar nerve operation.

In October 2002, Dr. John Gagni, M.D., who is board-certified in physical medicine, reviewed Claimant's medical records, including Dr. Freeman's report. Dr. Gagni found Dr. Freeman's analysis "significantly useful because he takes the objective point of view on the basis of the mechanism of injury . . ." which Dr. Gagni understood to be "the result of moving some boxes . . . without any direct trauma." (Exh. 1, p.114). Dr. Gagni found the 7% drop in the April 2000 EMG insufficient to diagnose an ulnar compression lesion. He did not mention the findings reported by Dr. Blum in the September 2001, which found evidence of both ulnar nerve compression and carpal tunnel syndrome. Dr. Gagni thought the carpal tunnel syndrome might "very well" be the result of Claimant's obesity and diabetes.

Dr. Berliner reported a conversation with Petitioner's medical reviewer Dr. Tonn⁴ in September 2002. According to Dr. Berliner, Dr. Tonn attributed Claimant's ongoing complaints to

⁴ The record does not contain Dr. Tonn's first name.

her pregnancy and caring for her child, indicating her wrist pain must be from carrying the child. Dr. Tonn “seemed to feel that the patient was faking the injury because, despite having a wrist injury, she was able to be active enough to get pregnant.” (Exh.1, p. 112). In Dr. Berliner’s opinion Dr. Tonn saw no need for “salvage” surgery, such as Dr. Berliner proposed on the ulnar nerve, “as she feels all surgery should be 100% successful the first time.” (Exh.1, p.113).

In addition, the record also contained a one-page report from Dr. Howard Grant, M.D., who found Claimant at MMI on June 21, 2002. This report, apparently a summary of the MMI examination, mentioned only that Claimant’s pain response “is more or less inappropriate” without a stating a basis for this opinion. Without more detail, the ALJ could not give this report much weight.

2. Respondent’s Evidence Dr. Berliner noted that Claimant’s injury had been treated by multiple doctors who found she suffered a traumatic injury to her right arm.⁵ Additionally, the injury was objectively verified by x-rays, and two EMG/NVC procedures. In the functional capacity evaluation done in April 2001, using a standard evaluation criteria, chiropractor Dr. Marie Bielamowicz found Claimant’s ability to use her right arm “abysmal.” (Exh. 1, p. 31).

Claimant’s medical records showed she had an infection in her right arm after Dr. Varon performed the ulnar nerve transposition in August 2000. (Exh.1, p. 59-62, 65). This infection apparently resolved with a course of antibiotics. Repeated medical examinations after the ulnar nerve transposition surgery noted Claimant’s reports of pain and weakness in her right arm. Dr. Berliner asserted that Claimant’s pregnancy (which ended in April 2002) delayed her treatment but did not cause her arm symptoms. He noted that, had her pregnancy caused the carpal tunnel syndrome, the pregnancy’s end should have resolved that malady. Further, Dr. Berliner noted that Claimant was both obese and diabetic before her January 2000 injury, yet she had no arm problems before the injury.

3. Analysis

The medical evidence in the record established the medical necessity of both the ulnar nerve transposition and the carpal tunnel release procedures.

⁵ These doctors and their diagnoses were: Dr. Brent Powell, D.C. (ulnar neuropathy of the right elbow; carpal tunnel syndrome of the right wrist and hand - July 2000); Dr. Brian Schulman, M.D. (ulnar entrapment-April 2000); Dr. Philip Blum, M.D.(chronic right ulnar neuropathy; carpal tunnel syndrome -October 2001); Dr. James Hood, M.D. (lateral epicondylitis - February 2000); Dr. Glen Shipley (lateral epicondylitis - January 2000); Dr. Robert Leventhal, M.D. (right ulnar neuropathy - June 2000); Dr. Jacob Varon (ulnar nerve transposition surgery - August 2000); Dr. Tin Aung, M.D (entrapment neuropathy right elbow; epicondylitis-October 2000).

Beginning with Drs. Shipley, Hood, and Powell, all the doctors who treated Claimant after the _____ injury diagnosed her with lateral epicondylitis or ulnar nerve neuropathy or both. In the medical reports from 2000, Claimant's hand pain is generally attributed to her ulnar entrapment. (Exh. 1, pp. 40, 47). However, in March 2001, Dr. Powell found ". . .The patient has progressively increasing weakness of the right hand which needs to be addressed due to disuse function." (Exh. 1, p. 80). As seen by the April 2001 FCE results, Claimant had little or no use of her right hand. (Exh. 1, p. 29). By May 2001, Claimant had been diagnosed with right hand carpal tunnel syndrome. (Exh.1, p. 85). Dr. Blum found carpal tunnel syndrome in the September 2001 EMG/NVC studies and Dr. Powell included it as a diagnosis in the November 2001 impairment rating. (Exh.1, pp.12, 96). In his initial examination in December 2001, Dr. Berliner also diagnosed Claimant with right hand carpal tunnel syndrome. (Exh.1, p. 99). Claimant's documented inability to use her right hand due to her elbow injury resulted in progressive weakening of the hand, which was diagnosed as carpal tunnel syndrome. There was sufficient evidence that carpal tunnel syndrome was a symptom related to the compensable injury to Claimant's right arm.

Neither Dr. Freeman nor Dr. Gagni's opinions were given much weight. In addition to the vitriolic tone of Dr. Freeman's report, which indicated a less than objective review, he premised his opinion on his belief that no compensable injury occurred. For the purposes of this proceeding, the compensability of the injury is not an issue in dispute. Because Carrier either did not contest or lost any contest over the medical necessity of Dr. Varon's right ulnar nerve transposition, it waived or lost its right to contest procedures medically necessary to correct problems resulting from that surgery's failure. Despite Dr. Freeman's insinuation that Claimant received unnecessary treatment because she went to chiropractor Dr. Powell, it was Drs. Shipley and Hood, not Dr. Powell, who first diagnosed Claimant with lateral epicondylitis. Also, Dr. Leventhal had scheduled Claimant for surgery before she was referred to Dr. Powell. (Exh. 1, p. 51) Dr. Powell simply confirmed the previous diagnosis and pursued an ongoing course of treatment that resulted in surgery.

Disregarding Dr. Freeman's initial premise that this case lacks a compensable injury, there is not much left to note about his opinion except that he mischaracterized the nature of the injury. Claimant's arm was injured by a sudden trauma when the box fell, not by lifting boxes. Dr. Gagni did not examine Claimant and he gave too much weight to Dr. Freeman's ill-considered report. He also misunderstood the nature of the injury and disregarded Dr. Blum's September 2001 EMG/NVC studies. Ultimately, Dr. Gagni's opinion was even less helpful than Dr. Freeman's. Finally, as reported by Dr. Berliner, Dr. Tonn's opinion lacked any useful information, consisting chiefly of insulting statements about the nature of the patient's complaints. Despite her opinion that Claimant's pregnancy and child care were intervening factors causing the wrist pain, Claimant was diagnosed with carpal tunnel before her child was born and those symptoms did not remit after the child was born, discounting both Dr. Tonn's theories.

While there was evidence that Claimant was deconditioned and suffering from chronic illnesses (obesity and diabetes) at the time of her injury, prior to that date those illnesses had not caused her arm any problems. Without some indication that a preexisting condition was the primary cause of a disabling injury, the presence of such conditions or the fact they contribute to the disability does not disqualify a worker from receiving workers' compensation insurance benefits.

Flores v. Employees' Retirement System of Texas, 74 S.W.3rd 532, 549 (Tex. App. - Austin 2002, pet den.).

In short, for Petitioner to prevail in this appeal, the ALJ would have to believe that Dr. Berliner and eight other doctors misdiagnosed Claimant repeatedly over a two-year period, including misreading objective diagnostics. There is no evidence to support this argument. Dr. Freeman may be correct that Claimant was more harmed than helped by the ulnar nerve transposition surgery she had in August 2000. However, the record established that surgery was done to treat a compensable injury. Symptoms unresolved by surgery are still symptoms derived from the compensable injury under the Act. Additionally, the record established that Claimant's carpal tunnel syndrome developed from the deconditioning effects of the compensable injury.

Dr. Varon's ulnar nerve transposition surgery in August 2000 was not successful. It is worth noting that Petitioner refused to approve the recommended post-operative physical therapy for Claimant. (Exh.1, p. 80, 86). An appropriate treatment at this time for Claimant's compensable injury is a repeat ulnar nerve transposition as a "salvage" procedure. Additionally, deconditioning and strain from the elbow injury caused Claimant to develop right hand and wrist carpal tunnel syndrome which also needs surgical intervention.

Preauthorization should be granted for the requested right arm ulnar nerve transposition and carpal tunnel release procedures for Claimant.

III. FINDINGS OF FACT

1. In _____, Claimant sustained an injury to her right arm compensable under the Texas Workers' Compensation Act (Act).
2. At the time of her compensable injury, American Home Assurance Company (Petitioner) was the workers' compensation insurer for Claimant's employer.
3. Claimant's compensable injury was caused by trauma sustained when she reached for a 60-pound box on an overhead shelf and the box fell, jerking her arm downwards as it went.
4. Prior to her compensable injury, Claimant was both diabetic and obese, but she had no problems with her right arm.
5. Neither Claimant's diabetes nor her obesity were not the cause of her compensable injury to her right arm.
6. As established by at least eight doctors, Claimant has right elbow ulnar neuropathy or lateral epicondylitis or both as a result of her compensable injury.
7. As a result of disuse because of her elbow pain, Claimant's right hand became progressively weaker.

8. By March 2001, Claimant had also been diagnosed with right wrist and hand carpal tunnel syndrome.
9. In April 2001, Claimant had little or no use of her right hand.
10. About eighteen months after her injury, Claimant became pregnant and delivered a child around April 2002.
11. Claimant's carpal tunnel syndrome did not resolve after she gave birth.
12. Claimant's pregnancy was not the cause of her right arm carpal tunnel syndrome.
13. A treatment for ulnar neuropathy or lateral epicondylitis is a ulnar nerve transposition.
14. In August 2000, Claimant underwent a right elbow ulnar nerve transposition but it failed to relieve the pain, numbness, tingling, and weakness in her right arm.
15. Orthopedic surgeon Kenneth Berliner requested preauthorization for another right ulnar nerve transposition surgery to correct the prior failed surgery on Claimant's right arm.
16. Dr. Berliner also requested preauthorization of a right wrist carpal tunnel procedure for Claimant to relieve her hand pain and weakness.
17. Dr. Berliner appealed Petitioner's denial of preauthorization for both requested procedures to the Texas Workers' Compensation Commission (Commission).
18. The Commission's designated Independent Review Organization (IRO) upheld Petitioner's denial of the carpal tunnel procedure but granted preauthorization of the ulnar nerve transposition procedure for Claimant.
19. Petitioner appealed the entire IRO decision.
20. Pursuant to the Commission's notice of hearing, both Petitioner and Dr. Berliner appeared and were represented at the hearing in this matter held February 11, 2003.
21. The notice of hearing set forth the date, time, and location of the hearing and provided references to the applicable statutes and rules as well as a short, plain statement of the matters in dispute.

IV. CONCLUSIONS OF LAW

22. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (Act), TEX. LABOR CODE ANN. § 413.031.
23. 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 § 413.031(d) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
24. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX.ADMIN.CODE (TAC) §§ 133.305 and 133.308.
25. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
26. Petitioner had the burden of proof in this proceeding. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41.
27. The IRO had authority to review the parties' positions and issue a decision pursuant to the Commission's rule at 28 TAC §§133.305 and 133.308.
28. Pursuant to the Act, an employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. §408.021(a).
29. Health care includes all reasonable and necessary medical services, including a medical appliance or supply. TEX. LAB. CODE ANN. §401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31).
30. For a carrier to be liable to reimburse a provider for surgery, the service must be preauthorized. 28 TAC § 134.600(h).
31. A right arm ulnar nerve transposition procedure is reasonable and medically necessary healthcare for Claimant and should be preauthorized.
32. A right arm carpal tunnel release procedure is reasonable and medically necessary healthcare for Claimant and should be preauthorized.

ORDER

It is ORDERED that the request of Kenneth Berliner, M.D., for preauthorization of a right arm ulnar nerve transposition procedure and a right arm carpal tunnel release procedure for Claimant is granted.

SIGNED this 3rd day of March 2003.

**ANN LANDEROS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**