

—,	§	BEFORE THE STATE OFFICE
<i>PETITIONER-CLAIMANT</i>	§	
	§	
V.	§	OF
	§	
AMERICAN CASUALTY COMPANY	§	
OF READING PENNSYLVANIA,	§	
<i>RESPONDENT</i>	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER
I. DISCUSSION

A. Background

___ (Claimant), an injured worker, challenges the decision of an Independent Review Organization affirming the denial of preauthorization for carpal ligament decompression and reconstruction. The Administrative Law Judge (ALJ) concludes the medical necessity of the procedure was not established by the evidence.

A hearing convened August 28, 2003, before ALJ Gary Elkins. Claimant appeared and was assisted by Texas Workers' Compensation Commission Ombudsman Luz Loza. Respondent, American Casualty Company of Reading, Pennsylvania, appeared and was represented by Attorney David Swanson. There were no contested issues of notice or jurisdiction. Following the submission of additional evidence, the record closed on September 8, 2003.

2. Evidence and Argument

Claimant's work-related injury manifested itself in ___ when she developed pain throughout her upper extremities and extending from the cervical area of her neck to her hands. The pain began while Claimant was engaged in repetitive-type activities.

In support of her assertion that the proposed surgery is medically necessary, Claimant presented the testimony of her treating doctor, Joseph Neustein, M.D., who would be performing the surgery. Dr. Neustein, who is board certified in wrist reconstruction and release procedures, concluded based on his ongoing treatment of Claimant, examinations of her, and certain test results, that the proposed surgery was necessary to relieve symptoms associated with carpal tunnel syndrome in both of Claimant's wrists.

Gary Pamplin, M.D., who testified as an expert witness on behalf of Carrier, has practiced orthopedic and hand surgery since 1972 and estimated that he has performed more than more than 1,000 carpal tunnel release procedures during that time. Dr. Pamplin concluded that the proposed carpal tunnel release was not reasonable and necessary based on his review of Claimant's medical records. Before proceeding with a medical procedure, he argued, one must ensure that it will help the patient. Because Claimant was experiencing, at most, a mild case of carpal tunnel syndrome, the proposed carpal tunnel surgery was not warranted, according to Dr. Pamplin.

In support of his conclusion, Dr. Pamplin referred to the absence of abnormal test results or other findings relating to Claimant's wrists and hands. He characterized Dr. Neustein's approach to testing Claimant by touching her hands as ineffective. Dr. Pamplin then proceeded to describe what, in his opinion, is the standard approach to testing the level of sensation in a person's hand: using a simple two-point discrimination test that utilizes a small instrument to determine how the nerves in the hand are working. He explained that this approach would provide for a diagnosis, which is a prerequisite to administering treatment.

Notwithstanding his opinion that Dr. Neustein's approach to testing the level of sensation in Claimant's hand was ineffective, Dr. Pamplin referred to Dr. Neustein's findings of essentially normal nerve sensation in Claimant's hands. Furthermore, Dr. Pamplin noted, Dr. Neustein never documented any sensations to be abnormal. Even though Claimant did exhibit mild effects of carpal tunnel syndrome in some test results, Dr. Pamplin testified, such results should be interpreted not as calling for surgery but as providing an opportunity to pursue more conservative courses of treatment without the risk of compromising Claimant's health.

Dr. Pamplin stated that such courses of treatment might include cortizone injections into the carpal tunnel. Even though Dr. Neustein's notes reflected that injections were previously administered-a point confirmed by Claimant, who testified about an instance where cortizone was injected into her hand but provided no pain relief-the medical records do not reflect when the injections were administered, what medicine was used, or what results were achieved.

2. Analysis

Although Claimant clearly is suffering the effects of irritation to the carpal tunnels in her wrists, the documentary evidence fails to establish that the level of unresolved injury supports the proposed carpal ligament decompression and reconstruction as medically necessary. The results of medical tests suggest that the carpal tunnel syndrome is relatively mild, and evidence that reasonable efforts have been made to conservatively treat Claimant are scant at best. Consequently, the ALJ concludes the requested surgery appears premature at this time. Accordingly, the request for preauthorization should be denied.

II. FINDINGS OF FACT

1. ____ (Claimant) sustained a work-related injury in ____ when she developed pain throughout her upper extremities extending from the cervical area of her neck to her hands. The pain began while Claimant was engaged in repetitive-type activities.
2. On July 24, 2002, Claimant was diagnosed with mild to moderate carpal tunnel syndrome in her left wrist and mild carpal tunnel syndrome in her right wrist.
3. At the time of Claimant's injury, her employer maintained workers' compensation insurance coverage through American Casualty Company of Reading, Pennsylvania (Carrier).
4. Claimant's treating doctor is Joseph Neustein, M.D.

5. To relieve Claimant's carpal tunnel syndrome, Dr. Neustein proposes to perform carpal ligament decompression and reconstruction on Claimant's wrists. Dr. Neustein sought preauthorization for the procedure.
6. Carrier denied the request for preauthorization, concluding that the procedure had not been shown to be medically necessary.
7. On September 18, 2002, and October 10, 16, and 30, 2002, Claimant exhibited sensitivity in the carpal tunnels of both wrists. Otherwise, she was neurologically intact.
8. On August 7, 2002, and later, on March 21, 2003, the sensation in both of Claimant's hands was intact in response to light touch.
9. On June 11, 2003, Dr. Neustein concluded that Claimant was neurologically intact but had tenderness over both carpal tunnels.
10. On August 20, 22, 23, 26, 28, and 29, 2002, and September 12 and 13, 2002, Claimant reported to a physical therapist that she was improving in regard to her carpal tunnel syndrome and rotator cuff tear.
11. The documentary evidence fails to reflect, and Claimant failed to demonstrate, that reasonable efforts have been made to pursue conservative, non-invasive remedial measures prior to resorting to the proposed surgical procedure.

III. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 413.031.
2. 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. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003.
3. Claimant timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.
4. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. § 2001.051 and 2001.052.
5. 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).
6. Claimant had the burden of proof in this matter by a preponderance of the evidence. 28 TAC §§ 148.21(h) and (i); 1 TAC §155.41(b).

7. Based on the Findings of Fact, Claimant failed to prove by a preponderance of the evidence that the proposed surgery is medically necessary.

ORDER

IT IS ORDERED that Claimant ___ request for preauthorization for carpal ligament decompression and reconstruction to be provided by Joseph Neustein, M.D. is DENIED.

SIGNED October 7, 2003.

**GARY W. ELKINS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**