

____ § BEFORE THE STATE OFFICE
v. § OF
AMERICAN HOME ASSURANCE CO. § ADMINISTRATIVE HEARINGS
§

DECISION AND ORDER

I. INTRODUCTION

____ (Claimant) has appealed a decision of the Texas Workers' Compensation Commission (TWCC) Medical Review Division (MRD), which was based on an independent review organization (IRO) review. That decision denied preauthorization of a right carpal tunnel release (Proposed Release) for the Claimant. The IRO found that the Proposed Release was not reasonably medically necessitated by the Claimant's compensable injury.

The only issue is whether the Proposed Release is medically necessitated by the compensable injury. As set out below, the Administrative Law Judge (ALJ) finds it is and preauthorizes it.

The Parties agree that TWCC has already determined that the Claimant has carpal tunnel syndrome in both arms and that it is a compensable work-related injury. However, the Carrier believes that TWCC's decision was incorrect. It contends that the Claimant's obesity, not her job duties, caused her carpal tunnel syndrome. The Carrier's expert witness, John A. Gragnani, M.D., so testified. Based on that belief, the Carrier argues that the Proposed Release is not medically necessary because the Claimant's right carpal tunnel syndrome, if she has that condition, was not caused by her work duties.

Though attempting to phrase it as a medical-necessity dispute, the Carrier is attempting at SOAH to again contest the work-relatedness, hence compensability, of the Claimant's right carpal tunnel syndrome. The ALJ has no jurisdiction over that dispute; TWCC does. A SOAH ALJ has jurisdiction over only certain types of workers' compensation disputes,¹ not including disputes over whether an injury is compensable or the extent of that injury.

On the other hand, the ALJ does have jurisdiction to determine whether the Claimant reasonably needs the Proposed Release to treat her right carpal tunnel syndrome that TWCC has found is compensable. The Claimant's need for the Proposed Release is clear.

The Claimant's Treating Doctor, Danny R. Bartel, M.D., testified that the Claimant needs the Proposed Release. He is a neurologist and neurophysiologist. He testified that the Claimant's right carpal tunnel syndrome has been treated with splints, limitations of activities, and anti-inflammatory agents, but her condition has not improved.

¹ Tex. Labor Code Ann. § 402.073(b) (West 2003).

The Claimant has had two electromelograms (EMGs) relevant to this dispute. These were tests to evaluate her nerve functions and particularly those of her right median nerve, the one that the Proposed Release would relieve. The EMGs showed the following nerve latencies:

**Claimant's Right Arm Nerve Latencies
(in milliseconds)**

	August 3, 2001	December 10, 2002
median sensory	3.8	4.0
median motor	3.5	3.5
ulnar motor	2.1	2.2

Dr. Bartel testified that a sensory latency of more than 3.0 milliseconds (ms) is a sign of lost nerve function. He also testified that a median-nerve *sensory* latency that is 0.5 ms or more than the median-nerve *motor* latency is a sign of a median-nerve problem. Additionally, he stated that a *median-nerve* motor latency that is 1.0 ms or more than the *ulnar-nerve* motor latency is highly indicative of carpal tunnel syndrome. The above EMGs show that the Claimant's right-arm nerve latencies exceed each of those levels.

Based on the EMGs and his own examination of the Claimant, Dr. Bartel concluded that the Claimant continues to have carpal tunnel syndrome in her right arm and needs the Proposed Release to correct that problem. He also indicated that the success rate with the Proposed Release is high and that the Claimant likely will be able to return to work after it. He noted that the Claimant previously had a similar left carpal tunnel release that was successful.

The Carrier's expert witness, John A. Gagnani, M.D., is board certified in physical, rehabilitation, occupational, and environmental medicine and a professor in those fields at two universities in Missouri. He agreed that the Claimant has right carpal tunnel syndrome and likely needs the Proposed Release to relieve it.

Based on the consensus of the experts, the ALJ concludes that the Proposed Release is medically necessitated by the Claimant's compensable right carpal tunnel syndrome. The ALJ pre-authorizes the Claimant's right carpal tunnel release.

II. FINDINGS OF FACT

1. _____ (Claimant) sustained a work-related injury on ____, while her employer was _____ and its workers' compensation insurer was American Home Assurance Co. (Carrier).
2. The Claimant's compensable injury includes bilateral carpal tunnel syndrome.
3. The Claimant had a left carpal tunnel release procedure on September 1, 2001, which was successful.

4. The Claimant's right carpal tunnel syndrome has been treated with splints, limitations of activities, and anti-inflammatory agents, but her condition has not improved.
5. The Claimant has had two electromyelograms (EMGs) relevant to this dispute. These were tests to evaluate her nerve functions and particularly those of her right median nerve.
6. The EMGs showed the following nerve latencies:

**Claimant's Right Arm Nerve Latencies
(in milliseconds)**

	August 3, 2001	December 10, 2002
median sensory	3.8	4.0
median motor	3.5	3.5
ulnar motor	2.1	2.2

7. A sensory latency of more than 3.0 milliseconds (ms) is a sign of lost nerve function.
8. A median-nerve sensory latency that is 0.5 ms or more than the median-nerve motor latency is a sign of a median-nerve problem.
9. A median-nerve motor latency that is 1.0 ms or more than the ulnar-nerve motor latency is highly indicative of carpal tunnel syndrome.
10. The above EMGs show that the Claimant's right-arm nerve latencies exceed each of those levels.
11. The Claimant continues to have carpal tunnel syndrome in her right arm and needs a release of her right median nerve (Proposed Release) to correct that problem.
12. The success rate with the carpal tunnel releases is high and the Claimant likely will be able to return to work after it.
13. The Claimant's Treating Doctor is Danny R. Bartel, M.D.
14. The Treating Doctor sought preauthorization from the Carrier for the Proposed Release.
15. The Employer timely denied the requested pre-authorization, maintaining that the Proposed Release was not medically necessitated by the compensable injury.
16. The Claimant timely filed a request for medical dispute resolution with TWCC, which referred it to the IRO.

17. The IRO reviewed the medical dispute and found that the Proposed Release was not medically necessitated by the Claimant's compensably injury.
18. After the IRO decision was issued, the Claimant asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) concerning the medical necessity dispute.
19. Notice of a September 23, 2003, hearing in this case was mailed to the Claimant and the Carrier on August 19, 2003.
20. On September 23, 2003, William G. Newchurch, an Administrative Law Judge (ALJ) with SOAH held a hearing on this case at the William P. Clements, Jr. Building, 300 W. 15th Street, 4th Floor, Austin, Texas. The hearing concluded and the record closed on that same day.
21. The Carrier appeared at the hearing through its Attorney, Dan C. Kelly.
22. The Claimant telephonically appeared at the hearing and represented herself.
23. The Treating Doctor telephonically appeared at the hearing and testified as a witness for the Claimant.
24. TWCC Assistant Ombudsman Luz Loza appeared at the hearing to assist the Claimant.

IV. CONCLUSIONS OF LAW

1. 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 2003) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2003).
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code § 2003.050 (a) and (b), 1 Tex. Admin. Code (TAC) § 155.41(b) (2003), and 28 TAC §§ 133.308(v) and 148.21(h) (2002), the Claimant has the burden of proof in this case.
4. 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).
5. Pre-authorization is required for the Proposed Release. 28 TAC § 134.600(h).
6. Based on the above Findings of Fact and Conclusions of Law, the Proposed Release is medically necessitated by the Claimant's compensable right carpal tunnel syndrome.
7. Based on the above Findings of Fact and Conclusions of Law, the Proposed Release should be pre-authorized.

ORDER

IT IS ORDERED THAT the Claimant's right carpal tunnel release is pre-authorized.

SIGNED October 28, 2003.

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