

SOAH DOCKET NO. 453-04-0150MR

—,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
ALBERTSON’S, INC.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

—, the Petitioner in this case, seeks preauthorization for a repeat tenolysis of the extensor tendon of his right middle finger, with tissue interposition between the tendon and the proximal phalanx. The Administrative Law Judge (ALJ) concludes the procedure should be preauthorized.

I. FACTUAL AND PROCEDURAL HISTORY

The Petitioner, who was a butcher at — was injured in a circular saw accident on —. He underwent surgery to repair the extensor tendon on his right middle finger and ring finger approximately a week later. After that surgery, scarring developed. He underwent tenolysis in March 2002,¹ then again in June 2002, and a third time in August 2002, followed by physical therapy. Unfortunately, his right middle finger remains injured; he is unable to bend the middle finger enough to make a fist. In February 2003, his treating doctor, Robert R. Bell, M.D., stated the Petitioner had reached maximum medical improvement, with 57 percent impairment of the middle finger.

The Petitioner no longer is able to work as a butcher. Presently he is employed as a long-distance truck driver. He testified his middle finger still hurts and that the pain gives him some difficulty in his present job.

The Petitioner has changed treating doctors. His new doctor, Jose J. Monsivais, M.D., sought preauthorization for the procedure in dispute in this case. Albertson’s denied the request, after which the Petitioner filed a request for medical dispute resolution with the Medical Review Division (MRD) of the Texas Workers’ Compensation Commission (the Commission). The MRD sent that request to an Independent Review Organization (IRO), which denied the request based on the recommendation of its physician advisor. The Petitioner then filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).

¹“Tenolysis” is “a surgical procedure to free a tendon from surrounding adhesions.” Merriam-Webster’s Medical Dictionary (Merriam-Webster 1995). In the March 2002 operation, tenolysis was also performed on the adjoining fingers, which had become tight due to the tightness of the middle finger.

The hearing was held June 8, 2004, before ALJ Henry D. Card. The Petitioner himself and Dr. Monsivais testified on the Petitioner's behalf; Sofia Weigel, M.D., testified for Albertson's. Various documents were also admitted into evidence. The hearing was adjourned the same day.

II. DISCUSSION

Dr. Monsivais testified that the requested surgery was likely to improve the Petitioner's condition. He stated tenolysis is more likely to succeed when the skin is supple, after the passage of approximately a year. The first tenolysis had taken place sooner than one year after the accident, and the other ones shortly thereafter. Dr. Monsivais testified he would interpose tissue between the bone and the tendon to prevent future scarring.

The IRO reviewer found no indication that the Petitioner would profit from another tenolysis after the previous ones, combined with physical therapy, had failed. Dr. Weigel testified there was a low likelihood of success from the surgery, and a chance of other complications.

Dr. Monsivais raised several points that were unsupported by the evidence. First, he stated the IRO reviewer was not board-certified in hand surgery. Second, he suggested that the IRO reviewer was biased in favor of the Petitioner's prior treating physician, Dr. Bell. Third, he asserted that an atmosphere of mistrust between the prior surgeon and the Petitioner had prevented the Petitioner from benefitting fully from his previous physical therapy. The record does not support those assertions.

Dr. Monsivais also pointed out, however, that this requested surgery would include the interposition of tissue between the bone and the tendon. The previous tenolyses, according to the operative reports, did not include the tissue interposition. Dr. Monsivais testified the interposition of the tissue should prevent the scarring that had prevented the Petitioner's finger from healing in the past. Neither the IRO nor Dr. Weigel specifically addressed that aspect of the request. The ALJ finds the new requested procedure to be reasonable and necessary, based on that difference between it and the previous procedures and Dr. Monsivais' testimony. Therefore, the ALJ concludes, and orders, that the procedure be preauthorized.

III. FINDINGS OF FACT

1. ____, the Petitioner, who was a butcher at ____, was injured in a circular saw accident on ____.
2. The Petitioner underwent surgery to repair the extensor tendon on his right middle finger and ring finger approximately a week after his accident.
3. After the initial surgery, scarring developed.
4. The Petitioner underwent tenolysis in March 2002, then again in June 2002, and a third time in August 2002, followed by physical therapy.

5. The Petitioner's right middle finger remains injured; he is unable to bend the middle finger enough to make a fist.
6. In February 2003, the Petitioner's treating doctor, Robert R. Bell, M.D., stated the Petitioner had reached maximum medical improvement, with 57 percent impairment of the middle finger.
7. The Petitioner no longer is able to work as a butcher.
8. Presently the Petitioner is employed as a long-distance truck driver.
9. The Petitioner's right middle finger still hurts; the pain gives him some difficulty in his present job.
10. The Petitioner has changed treating doctors to Jose J. Monsivais, M.D.
11. Dr. Monsivais sought preauthorization for a repeat tenolysis of the extensor tendon of the Petitioner's right middle finger, with tissue interposition between the tendon and the proximal phalanx.
12. Albertson's denied the request, after which the Petitioner filed a request for medical dispute resolution with the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (the Commission).
13. The MRD sent that request to an Independent Review Organization (IRO), which denied the request based on the recommendation of its physician advisor.
14. The Petitioner filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
15. Notice of the hearing was sent to the parties September 18, 2003.
16. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
17. The hearing was held June 8, 2004, before ALJ Henry D. Card. The Petitioner himself and Dr. Monsivais testified on the Petitioner's behalf; Sofia Weigel, M.D., testified for____. Various documents were also admitted into evidence. The hearing was adjourned the same day.

18. The requested surgery would include the interposition of tissue between the bone and the tendon.
19. The previous tenolyses did not include the tissue interposition.
20. The interposition of the tissue should prevent the scarring that has prevented the Petitioner's finger from healing in the past.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Chapter 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
3. Under 28 TAC §148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. §413.031.
4. The procedure for which preauthorization has been sought is reasonably required under TEX. LAB. CODE ANN. § 408.021.
5. The requested procedure should be preauthorized.

ORDER

It is therefore, ordered, that Petitioner ____ is entitled to preauthorization for a repeat tenolysis of the extensor tendon of his right middle finger, with tissue interposition between the tendon and the proximal phalanx.

SIGNED June 25, 2004.

**HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**