



## II. STATEMENT OF THE CASE

Administrative Law Judge (ALJ) Lilo D. Pomerleau convened the hearing in this docket on March 9, 2005, at SOAH facilities in the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. Petitioner was represented by Nicky Otts. Respondent was represented by Kevin J. Franta, attorney. The hearing was adjourned and the record closed that same day.

On \_\_\_\_, Claimant was injured at work and subsequently diagnosed with carpal tunnel syndrome. She received ten carpal tunnel steroid injections (from February 14, 1992, to August 11, 2000) and had five surgeries on her hands. She continued to have significant bilateral hand pain. EMG studies dated September 27, 2000, demonstrated bilateral, median, and ulnar pathology. On July 9, 2003, November 10, 2003, and March 24, 2004, Claimant received medication prescribed by her treating doctor, Paul D. Pace, M.D., specifically, Celebrex 200 mg, #180. In a response to a peer review opinion, in early 2003, Dr. Pace indicated his patient continued to have ongoing symptoms of carpal tunnel syndrome and associated pain.<sup>1</sup> The diagnosis on the September 25, 2003 letter of medical necessity for Celebrex 200 mg states carpal tunnel syndrome has history gastric problems.<sup>2</sup>

## III. THE EVIDENCE AND ARGUMENTS

### A. Petitioner

Rick Taylor, D.O. testified on behalf of Petitioner. Dr. Taylor has a degree in osteopathic medicine and is board certified in family medicine and pain management. He testified that Celebrex is a reasonable and necessary medication for treatment of the pain associated with carpal tunnel syndrome because it is an anti-inflammatory medication and, as such, it treats one component of Claimant's pain. According to Dr. Taylor, the medication is conservative care because Claimant has not responded to surgery. Dr. Taylor has treated patients for carpal tunnel syndrome and has prescribed Celebrex in approximately 20% of such cases. Dr. Taylor stated that Celebrex is a good choice for an anti-inflammatory medication because it has a lower incidence of bleeding ulcers with

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<sup>1</sup> Petitioner's Ex. 1 at 4. Dr. Pace's letter is dated February 5, 2003, on the cover page but April 5, 2003, on the running head.

<sup>2</sup> Petitioner's Ex. 1 at 1.

long term use, and Celebrex is not addictive or dangerous. In Dr. Taylor's opinion, the IRO decision was not performed by a matched peer because the reviewing doctor was an anesthesiologist not an orthopedic surgeon like Claimant's treating physician, Dr. Pace. Moreover, Dr. Taylor took issue with the IRO doctor's statement that no prescription medication is reasonable or necessary unless it provides clear clinical benefit without any side effects.<sup>3</sup> Dr. Taylor explained that few prescriptions have no side effects, rather the issue is whether the side effect is tolerable in light of the medication's benefit. Also, he testified there is often no objective showing of improvement when treating a patient for pain-rather, a treating doctor must rely on a subjective evaluation.

In closing argument, Petitioner argued that the facts showed Celebrex to be medically necessary to treat Claimant's pain.

## **B. Respondent**

Respondent did not call a testifying witness. In closing argument, Respondent noted there was no evidence of the medication relieving the effects of the injury or allowing the patient to return to work. Respondent argued there is no showing of subjective pain relief the only evidence is a form letter (the letter of medical necessity) from Dr. Pace.

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<sup>3</sup> August 12, 2004 IRO decision, Respondent's Ex. 1 at 4.

#### IV. ANALYSIS

The few patient notes written by Dr. Pace are sparse. On May 22, 2001, Dr. Pace reported that Claimant had associated symptoms of bilateral carpal tunnel syndrome and myofascial pain. At the time of the report, he stated she had made good progress with her hand and his stated plan was to allow her to use the hand normally and she will continue taking anti-inflammatory agents.<sup>4</sup> According to the letter of medical necessity signed by Dr. Pace on September 25, 2003, Dr. Pace, on November 27, 2002, authorized a prescription of Celebrex 200 mg over an indefinite period of time based on a diagnosis of carpal tunnel syndrome with a notation that Claimant had a history of gastric problems. He further indicated that Claimant had a good prognosis. This letter is the most on-point, direct evidence in support of the prescriptions at issue here. On January 31, 2003, Dr. Pace examined Claimant and indicated she had a recurrence of significant pain.<sup>5</sup> Dr. Pace's February 5, 2003 response to Carrier's peer review (by Dr. John Harney) indicates Claimant is continuing treatment because of pain associated with carpal tunnel-but that letter does not mention the prescription.<sup>6</sup>

The record in this case supports a finding that Claimant had ongoing pain. Claimant's treating doctor prescribed an anti-inflammatory drug to relieve the pain of a re-occurrence of carpal tunnel. The prescribed drug, Celebrex, reduces inflammation and is a good choice for long-term use because it has a lower incidence of gastrointestinal bleeding, according to Dr. Taylor. Dr. Taylor concurred with Claimant's treating doctor that treating Claimant's pain was necessary. Dr. Taylor also testified that it is normal to have a patient on Celebrex for over two years as it is one of the safest medicines in the anti-inflammatory group of medications.

Petitioner bears the burden of proving by a preponderance of the evidence that Celebrex was medically necessary. In the ALJ's view, Petitioner met that burden with evidence that Claimant's

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<sup>4</sup> Respondent's Ex. 1 at 42.

<sup>5</sup> Respondent's Ex. 1 at 44.

<sup>6</sup> Petitioner's Ex. 1 at 3-4.

prescription was given to conservatively treat symptoms of her carpal tunnel syndrome-pain and inflammation-with a medicine that, with long term use, has a lower incidence of intestinal side effects. Under §408.021 of the Act, an injured worker is entitled to health care reasonably required to relieve the effects of the injury or to enhance the ability to continue working. However, care that provides only superficial improvement or relief at inordinate cost is not reasonably required. In this case, the medicine relieves the effects of the injury and, according to Dr. Taylor, the treatment is conservative. The ALJ further finds the IRO's conclusions slightly less persuasive than the testimony of Dr. Taylor because some of the conclusions or stated rationale were faulty. The ALJ concludes that Petitioner demonstrated by a preponderance of the evidence, as legally required, that prescription for Celebrex was medically necessary.

## V. CONCLUSION

The ALJ finds that, under the record provided in this case, the prescription medication at issue has been shown to be medically necessary. Carrier should reimburse Petitioner for the medication provided on the dates July 9, 2003, November 10, 2003, and March 24, 2004.

## VI. FINDINGS OF FACT

1. On\_\_\_, Claimant was injured at work and subsequently she was diagnosed with carpal tunnel syndrome. The injury was a compensable injury under the Texas Worker's Compensation Act (the Act), TEX. LABOR CODE ANN. §401.001 *et seq.*
2. Claimant's injury produced persistent pain in her hands; from February 14, 1992, to August 11, 2000, she received ten steroid injections. She also had five surgeries on her hands.
3. EMG studies dated September 27, 2000, demonstrated bilateral, median, and ulnar pathology.
4. Claimant's treating doctor is Paul D. Pace, M.D.
5. Dr. Pace prescribed for Claimant Celebrex 200 mg, 180 pills, and Orthopaedic Institute Pharmacy (Petitioner) disbursed these prescribed medications on July 9, 2003, November 10, 2003, and March 24, 2004.
6. On September 25, 2003, Dr. Pace wrote a letter of medical necessity for the prescription Celebrex 200 mg, authorized on November 27, 2002, which states carpal tunnel syndrom has history gastric problems.

7. Petitioner sought reimbursement for the prescription medication noted in the above Finding of Fact from Liberty Mutual Fire Insurance Company (Respondent), the insurer for Claimant's employer.
8. Respondent denied the requested reimbursement.
9. Petitioner made a timely request to the Texas Workers' Compensation Commission (Commission) for medical dispute resolution with respect to the requested reimbursement.
10. The independent review organization (IRO) to which the Commission referred the dispute issued a decision on August 12, 2004, and concluded the services provided by Petitioner were not medically necessary.
11. The Commission's Medical Review Division reviewed and concurred with the IRO's decision in a decision dated August 17, 2004, in dispute resolution Docket No. M5-04-3840-01.
12. Petitioner requested in a timely manner a hearing with the State Office of Administrative Hearings (SOAH), seeking review and reversal of the MRD decision regarding reimbursement.
13. The Commission mailed notice of the hearing's setting to the parties at their addresses on September 16, 2004.
14. A hearing in this matter was convened on March 9, 2005, at the William P. Clements Building, 300 W. 15<sup>th</sup> Street, Austin, Texas, before Lilo D. Pomerleau, an Administrative Law Judge with SOAH. Petitioner was represented by Nicky Otts and Respondent was represented by Kevin J. Franta, attorney. The record closed that same day.
15. Claimant had ongoing bilateral pain during the dates July 9, 2003, through March 24, 2004, when she was had prescriptions for Celebrex filled by Provider.
16. Pain associated with carpal tunnel syndrome may be related to inflammation.
17. Celebrex is an anti-inflammatory medicine used for the treatment of pain associated with carpal tunnel syndrome.
18. Long term use of Celebrex results in a lower incidence of gastronomic problems than other anti-inflammatory medicines.
19. Claimant had a history of gastric problems.
20. There is sufficient evidence that the Celebrex provided Claimant on the dates July 9, 2003, November 10, 2003, and March 24, 2004, treated Claimant's pain.

## VII. 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 § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
2. 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) §§148.001-148.028.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Petitioner, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TAC § 148.21(h).
5. Based upon the foregoing Findings of Fact, medication dispersed on July 9, 2003, November 10, 2003, and March 24, 2004, represents elements of health care medically necessary under §408.021 of the Act.

### ORDER

**IT IS THEREFORE, ORDERED** that the appeal of Orthopaedic Institute Pharmacy, seeking reimbursement for medication dispersed on July 9, 2003, November 10, 2003, and March 24, 2004, should be granted, as these particular disputed services were shown to be medically necessary. Orthopaedic Institute Pharmacy should be reimbursed \$1,769.84.

**SIGNED May 2, 2005.**

**LILO D. POMERLEAU  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**