

**SOAH DOCKET NO. 453-05-0578.M2  
TWCC NO. M2-04-1633-01**

<b>AMERICAN HOME ASSURANCE CO., Petitioner</b>	§ § § § § § §	<b>BEFORE THE STATE OFFICE</b>
<b>V.</b>		<b>OF</b>
_____, <b>Respondent</b>		<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

American Home Assurance Co., (Carrier) appealed the decision of an Independent Review Organization (IRO) authorizing right carpal tunnel release with right ulnar nerve transposition (wrist surgery) for Claimant, \_\_\_\_\_. The Administrative Law Judge (ALJ) finds that this matter has previously been adjudicated before the State Office of Administrative Hearings (SOAH) and that Carrier presented sufficient evidence that there has been no change in Claimant's condition since the prior SOAH decision was rendered. Therefore, the ALJ does not order Carrier to preauthorize the requested wrist surgery.

The hearing convened and closed on January 27, 2005, before the State Office of Administrative Hearings with ALJ Steven M. Rivas presiding. Carrier was represented by Dan Kelley, attorney. Claimant was represented by Peter Rogers, attorney.

**I. DISCUSSION**

**A. Background Facts**

Claimant sustained a compensable wrist injury on \_\_\_\_\_. In 2001, Claimant's treating doctor recommended Claimant undergo wrist surgery, and sought preauthorization from Carrier, which was denied based on Carrier's assertion that the surgery was not medically necessary. The dispute was referred to an IRO, which stated in its report dated September 8, 2003, that the requested wrist surgery was medically necessary. Carrier appealed the IRO decision to SOAH, which held in a SOAH Decision and Order dated November 4, 2003<sup>1</sup> that the requested wrist surgery was not medically necessary. The Decision and Order was not appealed, nor was a motion for rehearing filed.

In 2004, Claimant again requested the same kind of wrist surgery for the same body part relating to the same compensable injury. Carrier again denied preauthorization for lack of medical necessity, and the dispute was again referred to an IRO, which stated in its report dated September 7, 2004,<sup>2</sup> that the requested wrist surgery was medically necessary. Carrier again

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<sup>1</sup> Docket No. 453-04-0610.M2, ALJ Katherine Smith. Judge Smith found that Claimant exhibited non-specific, regional arm complaints, and the requested wrist surgery would not resolve these complaints. See Findings of Fact Nos. 14 and 15.

<sup>2</sup> The author's rationale for finding the wrist surgery medically necessary was because, "the patient was not adequately represented at the SOAH hearing. The physician who testified for the Carrier was not qualified to make surgical decisions regarding carpal tunnel release or ulnar nerve transposition."

appealed the IRO decision to SOAH.

## **B. Applicable Law**

Under TEX. LAB. CODE ANN. § 413.031(k), a party to a medical dispute that remains unresolved after a review of the medical service under this section is entitled to a hearing. The hearing shall be conducted by the State Office of Administrative Hearings within 90 days of receipt of a request for a hearing in the manner provided for a contested case under Chapter 2001, Government Code (the administrative procedure law). A party who has exhausted the party's administrative remedies under this subtitle and who is aggrieved by a final decision of the State Office of Administrative Hearings may seek judicial review of the decision. Judicial review under this subsection shall be conducted in the manner provided for judicial review of contested cases under Subchapter G, Chapter 2001, Government Code.

Under TEX. GOV'T CODE ANN. § 2001.171, a person who has exhausted all administrative remedies available within a state agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter.

Additionally, under 28 TEX. ADMIN. CODE § 134.600(g)(4), a request for preauthorization for the same health care shall only be resubmitted when the requester provides objective documentation to support that a substantial change in the employee's medical condition has occurred.

## **C. Analysis and Conclusion**

The ALJ finds the requested wrist surgery is not medically necessary. This dispute has already been adjudicated in a prior SOAH Decision and Order. Claimant's prior request for wrist surgery was addressed in an IRO decision and a SOAH Decision and Order. Under 413.031(k), a party who has exhausted the party's administrative remedies and who is aggrieved by a final SOAH decision may seek judicial review of the decision.

The ALJ is unclear how this dispute reappeared before the Commission and how it was subsequently forwarded to an IRO. Regardless, the ALJ noted the author of the subsequent IRO decision that recommended preauthorization relied on additional records and the prior SOAH Decision and Order. Furthermore, the ALJ found that the IRO reviewer questioned the prior ALJ's rationale in the previous Decision and Order. The IRO reviewer also challenged the credibility of the Carrier's doctor who concluded that Claimant's diagnostic tests were inconclusive and that her condition should have resolved within a few months of the her injury.

Under § 134.600(g)(4), a Claimant may resubmit a request for preauthorization if documentation supports that a substantial change of condition has occurred. In this case, Claimant presented a report from the designated doctor, Ingrid Zasterova, M.D., dated January 29, 2004. This report was made after the prior SOAH Decision and Order, but does not note a substantial change in Claimant's condition. Additionally, Dr. Zasterova relied on improper diagnostic tests performed on Claimant by her treating doctors based on testimony by Gary Pamplin, M.D. According to Dr. Pamplin, the diagnostic tests administered before and after the prior SOAH were improperly performed because the temperature of Claimant's arm was not noted in the records. Dr. Pamplin asserted temperature was a crucial element that had to be noted because the temperature of an extremity plays a large part on how nerves are transmitted through that extremity. Dr. Pamplin testified that failing to include Claimant's temperature in the record invalidated the result of any diagnostic test performed on Claimant. Additionally, Dr. Pamplin noted there was no record of a non-involved extremity (Claimant's uninjured wrist) on

the diagnostic tests relied on by the designated doctor. With no record on the condition of Claimant's uninjured wrist, Dr. Pamplin asserted it would be impossible to properly diagnose Claimant's injured wrist. For these reasons, the ALJ finds Carrier met its burden of proving by a preponderance of the evidence that Claimant did not experience a substantial change of condition from the prior SOAH decision.

## II. FINDINGS OF FACTS

1. Claimant sustained a compensable injury on \_\_\_\_.
2. In 2001, Claimant's treating doctor recommended Claimant undergo right tunnel release with right ulnar nerve transposition (wrist surgery).
3. Claimant sought preauthorization from American Home Assurance (Carrier), which was denied as not medically necessary.
4. Claimant sought medical dispute resolution with an Independent Review Organization (IRO), which held the requested treatment was medically necessary.
5. Carrier timely appealed the IRO decision to the State Office of Administrative Hearings (SOAH).
6. On November 4, 2003, in SOAH Docket Number 453-04-0610.M2, Administrative Law Judge Smith held the requested wrist surgery was not medically necessary, and did not order the Carrier to preauthorize the requested treatment.
7. The Decision and Order in Finding of Fact No. 6 was not appealed nor was a request for rehearing filed with SOAH.
8. In 2004, Claimant again sought preauthorization for the same type of wrist surgery for the same body part relating to Claimant's same compensable injury, which was denied by Carrier as not medically necessary.
9. Claimant again sought medical dispute resolution with an IRO, which held the requested treatment was medically necessary.
10. Carrier again timely appealed the IRO decision to the SOAH.
11. Notice of the hearing in this case was mailed to the parties on September 28, 2004. 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. In the notice, the Commission's staff indicated that it would not participate in the hearing.
12. The hearing convened and closed on January 27, 2005, before ALJ Steven M. Rivas. Carrier appeared and was represented by Dan Kelley, attorney. Provider was represented by Peter N. Rogers, attorney.
13. The requested wrist surgery has already been adjudicated before SOAH.
14. Claimant failed to seek judicial review of the prior SOAH Decision and Order.

15. The diagnostic tests performed on Claimant were improperly administered because they did not contain the temperature of Claimant's injured wrist.
16. The diagnostic tests perform on Claimant were improperly administered because they did not contain the condition of Claimants' uninjured wrist for comparison.
17. The reports made following the prior SOAH decision relied on these improperly performed diagnostic tests.

### **III. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. § 413.031.
2. SOAH has jurisdiction over 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. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 and 28 TEX. ADMIN. CODE (TAC) § 148.4.
4. Carrier had the burden of proof by a preponderance of the evidence, pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TAC §148.21(h).
5. Under TEX. LAB. CODE ANN. § 413.031.(k), Claimant was entitled to a hearing at the State Office of Administrative Hearings for the medical dispute that was unresolved after review by the Commission's Medical Review Division.
6. Under TEX. GOV'T CODE ANN. § 2001.171, Claimant, as an aggrieved party, was entitled to judicial review of the prior Decision and Order.
7. Under § 28 TAC 134.600(g)(4), Claimant did not experience a substantial change of condition from the prior SOAH decision.
8. Based on the above Findings of Fact and Conclusions of Law, the requested wrist surgery should not be preauthorized to treat Claimant's compensable injury.

### **ORDER**

**IT IS ORDERED THAT** the requested wrist surgery not be preauthorized.

**SIGNED March 3, 2005.**

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**STEVEN M. RIVAS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**