BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MELINDA WILSON, Claimant, v. SEAPAC OF IDAHO, INC., Employer, and STATE INSURANCE FUND, Surety, Defendants.	)	**IC 2007-041720** **2010-027226** **2010-005966** **FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION** Filed: June 22, 2011

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Rinda Just, to whom this matter was submitted for decision, in lieu of hearing, by stipulation of the parties. Dennis R. Petersen of Idaho Falls represents Claimant. Paul J. Augustine of Boise represents Defendants. The parties deposed witnesses and presented stipulated exhibits for admission into evidence, and each filed a legal brief. This matter came under advisement on May 10, 2011, and is now ready for decision.

ISSUE

By agreement of the parties, the sole issue before the Commission in this proceeding is whether Claimant should have arthroscopic surgery on her right wrist, as recommended by her

treating physician, or be treated for reflex sympathetic dystrophy (RSD), as recommended by Defendants' physicians.

CONTENTIONS OF THE PARTIES

Claimant contends that arthroscopic surgery to diagnose the cause of her right wrist pain constitutes reasonable and necessary medical care required by her treating physician and, therefore, is compensable. She relies upon the medical opinion of Tyler R. Wayment, M.D., a plastic surgeon specializing in hand surgery, who believes that her pain is most likely due to an injured ligament.

Defendants counter that Claimant has RSD, a condition which can be severely exacerbated by surgical intervention. They rely upon the medical opinion of William D. Lenzi, M.D., an orthopedic surgeon specializing in hand surgery, and Daniel R. Marsh, M.D., a physiatrist specializing in pain management and rehabilitation, to support their position that Claimant should undergo a series of stellate ganglion block injections.

EVIDENCE CONSIDERED

By stipulation of the parties, the following documents and exhibits constitute the record in this matter:

1. The deposition of Dr. Wayment, taken January 17, 2011;
2. The deposition of Dr. Lenzi, taken February 24, 2011; and
3. Claimant's Exhibits 1-24.

After having considered all the above evidence and briefs of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

RELEVANT PRIOR CONDITIONS AND TREATMENT

1. Claimant had been working full-time for Employer filleting fish for about two months when, on November 6, 2007, she filed the first of three workers' compensation claims related to industrial injuries to her hands and wrists.

2. Claimant has undergone extensive treatment, including four surgeries, by Dr. Wayment, a board-certified plastic surgeon. Dr. Wayment has been a practicing surgeon since 2000, including a one-year fellowship at the University of Louisville, Kleinert Institute for Hand. Claimant has also been subject to a number of independent medical examinations (IMEs) by various providers. Claimant's hand and wrist history leading to her current complaint is of short duration, but is extensively documented.

August 22, 2007 Left Wrist Injury

3. Claimant heard a "pop" in her left wrist when a fish cart she was pushing overturned. She was diagnosed with a left wrist sprain which resolved with conservative care.

November 6, 2007 Bilateral Thumb Pain

4. Douglas Stagg, M.D., an occupational medicine specialist, diagnosed bilateral DeQuervain's tenosynovitis and flexor tenosynovitis due to overuse. David Jensen, D.O., a physiatrist, performed an IME, concurring in Dr. Stagg's opinion, and recommending follow-up with Dr. Wayment. Dr. Wayment performed bilateral thumb releases in June and July of 2008.

January 2009 Return of Pain

5. In January 2009, Claimant again reported bilateral hand pain. Dr. Wayment diagnosed osteoarthritis in Claimant's bilateral CMC joints and treated her conservatively with occupational therapy until February 2009, when he administered pain injections and work restrictions. When Claimant had not improved after six weeks of conservative care, he recommended bilateral CMC joint arthroplasties. Dr. Lenzi conducted an IME and diagnosed a number of conditions, including osteoarthritis. Dr. Lenzi opined that Dr. Wayment's diagnosis was premature; he recommended a more thorough course of conservative care, including thumb splinting and anti-inflammatory medications, before progressing to surgery. Claimant did not improve with splinting and anti-inflammatories, and she declined further injections because they provided only short-term relief from her pain.

September 2009 Right Hand Surgeries

6. In September 2009, Dr. Wayment performed several surgical procedures on Claimant's right hand and wrist, including endoscopic carpal tunnel release, trigger releases on all four fingers, CMC joint ligament arthroplasty, and an extensor carpi radialis longus (ECRL) tendon transfer. Dr. Lenzi agreed with the flexor tenosynovitis diagnosis and the recommendation to perform trigger finger releases, but opposed right carpal tunnel surgery both before and after these procedures. In particular, he cited Claimant's refusal to obtain further injections, normal nerve conduction tests, and weak indicia on examination for carpal tunnel syndrome as support for his position. By December 2009, Claimant's right hand symptoms had greatly improved, but her left hand pain had intensified.

January 2010 Left Hand Surgeries

7. On January 20, 2010, Dr. Wayment performed multiple surgical procedures on Claimant's left hand and wrist including endoscopic carpal tunnel release, trigger releases on all four fingers, CMC joint ligament arthroplasty and thumb flexor carpi radialis tendon transfer. Dr. Lenzi was in agreement with Dr. Wayment regarding Claimant's need for all of the procedures, including the left carpal tunnel surgery. Dr. Lenzi wrote to Surety in December 2009:

> As you know, Melinda Wilson's examination points strongly to having carpal tunnel syndrome. Personally, I was quite surprised the nerve conduction tests were negative, but as we know, 10% of these tests are inaccurate. I feel under the circumstances the carpal tunnel should be release [*sic*] at the same time as the trigger finger release.

Ex. 17, p. 14. Claimant's left hand symptoms improved significantly following surgery, more quickly and to a greater degree than her right hand healed following her previous surgery.

CLAIMANT'S CURRENT CONDITION

8. Prior to Claimant's right hand surgeries in 2009, Dr. Wayment noted swelling over her second and third digits related to her tenosynovitis. Claimant reported significant swelling at that site at the end of December 2009, after she jammed her right thumb. Within a week or so, she reported no residual pain and Dr. Wayment observed only minimal swelling.

9. On February 8, 2010, Claimant reported to Dr. Wayment that her right hand was again causing pain. She had been using it more due to the left hand surgery. Also, in January 2010, Claimant suffered two new injuries. The first occurred when a coworker pulled a tray out of her right hand, and the second occurred when a sleever door came down on it. Claimant rated

her right hand pain at 8/10. Dr. Wayment restricted Claimant's lifting to ten pounds with her right hand, and prescribed physical therapy for both hands, along with pain medications.

10. On February 26, 2010, Claimant reported 10/10 pain in her right hand with swelling. Her pain had grown progressively worse since the tray incident in January. Claimant's pain prevented her from doing any therapy with her right hand and she was unable to do things she could do before, like cutting a steak and opening bottles and jars. Dr. Wayment took Claimant off work for one month and continued her medications.

11. On March 26, 2010, Claimant again reported 10/10 pain in her right hand. Dr. Wayment noted swelling over the dorsum of her wrist ("the wrist is very inflamed"), and that it was warm and extremely tender over the scapholunate interval. Further:

> The entire carpus has severe pain with palpation. She has severe pain to palpation over the scapholunate interval. She has mild pain to palpation of the snuff box. No pain on the volar aspect. She does not have pain proximal to the radiocarpal joint or distal to the radiocarpal joint. It is really isolated right over the scapholunate interval today. No pain to palpation of the TFCC or the lunotriquetral joint. She has a negative Sheer test. She has a negative Watson's test but pain with Watsons's [*sic*] maneuver.

Ex. 15, p. 101. Dr. Wayment did not know the cause of Claimant's symptoms, but he suspected "more than a simple strain." *Id.* He administered a steroid injection and extended her time off work, pending an MRI arthrogram of her right wrist. The MRI arthrogram disclosed no pathology.

Dr. Wayment's Recommendation for Exploratory Arthroscopic Surgery

12. On April 21, 2010, Claimant continued to report 10/10 pain in her right wrist and her swelling was worse. Her hand therapist also reported that Claimant's hand has remained swollen. He described her pain reports on examination:

> …she has severe pain to palpation over the dorsum of her scapholunate interval, lunotriquetral interval and in the snuff box. She has a negative Watson's maneuver but has severe pain with Watson's test. She has zero grip strength in that hand and cannot even hold the Jamar in her hand today. There is a significant amount of swelling right over the dorsum of the wrist that actually extends distally down towards the first web space. The pain does not radiate down her ECR or ECL tendons or in the 1st dorsal compartment. She still has good range of motion of her digits and thumb today but has severe pain when she moves the fingers.

Ex. 15, p. 109. Claimant declined any further injections, so Dr. Wayment recommended exploratory arthroscopic surgery to determine the cause of her symptoms.

Dr. Lenzi's Diagnosis of RSD

13. Relying upon a June 10, 2010 IME report by Dr. Lenzi, Surety refused to authorize the exploratory arthroscopic surgery. Dr. Lenzi's report did not mention the MRI arthrogram, but did reference x-rays that provided no explanation for Claimant's symptoms. Dr. Lenzi noted severe pain on palpation and reports of skin shininess and hair texture changes over the affected area. Dr. Lenzi also observed shiny skin with mottling and a decreased sweat pattern on Claimant's right wrist down through her hand. Dr. Lenzi stated his opinion without equivocation: "This is obvious reflex sympathetic dystrophy (RSD) and even walking into the room one could discern the difference between the two hands." Ex. 17, p. l8. He attributed the condition in whole or in part to Claimant's January 2010 reinjury.

14. Dr. Lenzi advised against any arthroscopic surgery on Claimant's right hand due to the risk of exacerbating her RSD. Instead, he recommended aggressive treatment consisting of a series of five stellate ganglion blocks followed immediately by physical therapy.

Dr. Marsh's Diagnosis of RSD

15. Dr. Marsh practices physical medicine and rehabilitation with a subspecialty in pain medicine. He has practiced medicine in some capacity since 2001. Dr. Marsh performed an IME at Defendants' behest on September 29, 2010. He did not testify in these proceedings.

16. Dr. Marsh acknowledged the diagnostic dispute between Drs. Wayment and Lenzi, opining that Claimant's right wrist symptoms were due to RSD sparked by reinjury in January 2010. He based his opinion on a number of factors:

- Claimant's reports of "constant severe pain with occasional burning and numbness and tingling, stabbing pain also affecting her right index finger" over both the dorsal and volar surfaces of her right wrist that changes over time, with swelling that is sometimes severe, hyperesthesia sometimes with only blowing on the affected area, color changes (on occasion blue), possible hair pattern changes, heat changes compared with her left hand, and no neck or arm pain. Ex. 20, p. 1. In addition, Claimant presented a picture of her right wrist from two weeks prior the examination, when it was red and swollen.

- A negative MRI.

- His examination confirming moist skin and hyperesthesia to light touch and pinprick over her index finger, thenar eminence on the right and dorsal and volar surfaces of the wrist.

- Claimant's improvement following surgery in September 2009 until reinjury in January 2010.

17. Dr. Marsh explained why he believed RSD was the proper diagnosis and why he did not recommend exploratory arthroscopy:

> I see that there is a debate in the medical record between exploring the right wrist and treating the patient for chronic regional pain syndrome.[1] I think there are sufficient clinical criteria to make the diagnosis of chronic regional pain syndrome. I think that opening the wrist could be potentially worsening [*sic*] this

[1] Chronic Regional Pain Syndrome-I (CRPS) is an updated term for RSD. It is generally referred to as RSD by most of the witnesses in this case, but either term may be used herein to identify the condition which Drs. Lenzi and Marsh have diagnosed.

> patient's pain and making it even more difficult to treat. I think a commonsense approach in light of significant evidence of [CRPS] would be to proceed with a series of sympathetic blocks in the neck. This should help confirm the diagnosis of [CRPS]…I feel the patient has nothing to lose by proceeding with cervical sympathetic blocks, a series [*sic*].

Ex. 20, pp. 2-3. Dr. Marsh did not note whether he believed the efficacy of his recommended treatment was limited by any temporal considerations.

Dr. Wayment's Continued Pursuit of Authorization for Surgery

18. Dr. Wayment continued to recommend exploratory arthroscopy for Claimant despite the opinions of Drs. Lenzi and Marsh:

July 12, 1010 Letter to Surety

19. Upon reviewing Dr. Lenzi's report, but before again examining Claimant, Dr. Wayment wrote:

> I am going to have to strongly disagree with what Dr. Lenzi had to say. I do not think that this is a complex regional pain syndrome or RSD at all. Ms Wilson [*sic*] was doing just fine prior to injuring this hand. It was working beautifully and she had full range of motion of her fingers. Her thumb was working great, until she injured her wrist. She did not have any clinical findings when I previously saw her, that would suggest RSD at all.
>
> I do not think that this pathway for treatment would be beneficial to her at all and I do not feel that she would get any progress at all!

Ex. 15, p. 112. Claimant again reported 10/10 pain when Dr. Wayment examined her on July 14, 2010.

August 18, 2010 Chart Note

20. After recording Claimant's continuing severe pain and dorsal wrist swelling, Dr. Wayment wrote, "I still think this is all coming from her wrist. I recommended that she be

evaluated by Dr. Thurman[2] in Idaho Falls, for another opinion on this. I strongly advised her of that today."

September 15, 2010 Chart Note

21. Dr. Wayment observed swelling of Claimant's right hand, an inability to pronate and supinate, and that her 10/10 pain had brought her to tears in the office. Dr. Wayment wrote:

> There is something going on here and we need to get this resolved with [workers' compensation]. They will not make a decision and she continues to have pain. They do not agree with me. The 2nd opinion that they got was in left field on his diagnosis as this is not RSD. There is some type of pathology going on within the carpus or tendinitis. Today, because she is in so much pain I have convinced her to allow me to place a little bit of steroid in her tendon sheaths to try to settle this down and help with the swelling.
>
> …I will take her off of work because she is too tender and painful to work. We will get authorization for a 3rd opinion. She really needs treatment. She is suffering and we are not making any progress. She is worse today than I have ever seen her in the past several months.

Ex. 15, p. 120.

November 4, 2010 "Check-box" Letter to Claimant's Attorney

22. Dr. Wayment indicated to Claimant's attorney that he still recommended exploratory arthroscopy in spite of the opinions of Drs. Lenzi and Marsh.

November 17, 2010 Chart Note

23. Claimant was still experiencing 10/10 pain and swelling, though the swelling was worse on her prior exam. Dr. Wayment wrote:

> She has been discussing this with her attorney how to get [workers' compensation] to allow us to operate on the wrist. [Workers' compensation] is trying to push her to have nerve blocks done in Boise, but as we have discussed

[2] Dr. Wayment was apparently referring to Robert Thurman, M.D., another plastic surgeon specializing in hand surgery.

> previously, I do not feel that this is even in the realm of what is going on in her arm. There is definitely something going on in the wrist; [*sic*] which is her issue. She does not want any more injection [*sic*].

Ex. 15, p. 125. Dr. Wayment continued:

> I remain adamant that this is not RSD. I told her that I would be happy to operate on that hand for her to try to figure out what is going on and what can be done to help it. We will continue to wait to hear from [workers' compensation] and her attorney. I still think that she needs a 2nd opinion with Dr. Esplin.[3] I will keep her off work.

Id., at p. 127.

January 17, 2011 Deposition of Dr. Wayment

24. Dr. Wayment stated that he believes Dr. Marsh is an anesthesiologist, commenting, "Yeah, in my opinion, that's a worthless examination. I mean, he's not even qualified to examine a hand." Dr. Wayment Depo., pp. 31-32.

25. For nearly six months following Dr. Lenzi's report, while he waited for surgical authorization from Surety, Dr. Wayment's treatment of Claimant was limited to non-use of the hand, oral pain medication, and two steroid injections[4] of unknown efficacy. Dr. Wayment testified that the injections were helpful: "…I've placed steroids in there, and it's helped her pain tremendously, to get rid of the swelling and get rid of the pain…You don't put injections in an RSD wrist and get any relief." *Id.,* p. 28. However, there is nothing in Dr. Wayment's chart notes to confirm the efficacy of the injections and Claimant refused a second steroid injection, even though she reported her pain as 10/10.

[3] Dr. Wayment is apparently referring to Vernon S. Esplin, M.D., an orthopedic hand surgeon.
[4] Dr. Wayment testified that he saw Claimant for the last time on December 15, 2010 and administered a steroid injection at that time. He did not know whether it improved her symptoms. No medical records of this visit were admitted into evidence.

DISCUSSION AND FURTHER FINDINGS

26. The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. *Ogden v. Thompson*, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). However, the Commission is not required to construe facts liberally in favor of the worker when evidence is conflicting. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

REASONABLE MEDICAL TREATMENT

27. Idaho Code § 72-432(1) obligates an employer to provide an injured employee reasonable medical care as may be required by her physician immediately following an injury and for a reasonable time thereafter. It is for the physician, not the Commission, to decide whether the treatment is required. The only review the Commission is entitled to make is whether the treatment is reasonable. *See, Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989).

28. The Idaho Supreme Court has held that medical treatment is reasonable when three circumstances exist: 1) the claimant made gradual improvement from the treatment received; 2) the treatment was required by the claimant's physician; and 3) the treatment received was within the physician's standard of practice, and the charges were fair, reasonable and similar to charges in the same profession. *Id.* However, the *Sprague* standard is retrospective and it is not readily applicable to care that is prospective in nature. *See*, *Richan v. Arlo G. Lott Trucking, Inc.*, IC 2007-027185 (Feb. 2011).

29. To determine whether the care required by Dr. Wayment is "reasonable," the Commission must ascertain whether the required care is likely to be efficacious. In other words, if the medical evidence adduced by Claimant establishes that it is more probable than not that the care required by Dr. Wayment will improve Claimant's condition, the care is "reasonable."

Will Claimant Improve With Arthroscopic Surgery?

Risks vs. Benefits

30. In order for Claimant to prove that Dr. Wayment's proposed surgery will improve her condition, she must establish that the potential benefits outweigh the potential risks of the surgery. Dr. Wayment proposes exploratory arthroscopic surgery on Claimant's right wrist because he does not know what is causing Claimant's symptoms, though he is certain that she does not have RSD. He suspects a ligamentous injury that escaped confirmation by Claimant's diagnostic MRI arthrogram:

> The purpose is to detect any ligamentous injury looking inside the wrist that you can't detect by MRI or – clinically, you have a notion it's there. But to diagnostically detect and look at it physically, that's why you want to do a wrist scope.

Dr. Wayment Depo., p. 27. Dr. Wayment does not explain the specific benefits he expects from the surgery if his suspicions prove out. Since he sees the risks of exploratory surgery as minimal, he apparently believes the benefits of surgically investigating his working diagnosis outweigh the risks.

31. Neither Dr. Lenzi nor Dr. Marsh believes that exploratory arthroscopy would improve Claimant's condition. More importantly, they believe that surgery would pose an unacceptable risk of worsening her RSD symptoms. According to Dr. Lenzi:

> Whenever someone is recommending surgery, you have to balance the thing to see how much damage you can do or how much good you can do and what is going to be in favor of the patient.
>
> In my past experiences, if you have a patient with active RSD…it gets worse. And it can get dramatically worse.
>
> We have patients that have unusable arms after invasive repeat--all surgery, really, is trauma with attempts to repair the-- [the witness is then interrupted by the next question].

Dr. Lenzi Depo., pp. 15-16.

32. Claimant does not dispute the likelihood that her condition would worsen if she has RSD and undergoes exploratory arthroscopic surgery. The Referee finds that Claimant has failed to prove the benefits of surgery (including her potential ultimate outcome following the treatments indicated by that surgery) outweigh the potential risks of the surgery in the presence of an RSD diagnosis.[5] Therefore, for Dr. Wayment's recommendation to be reasonable, an RSD diagnosis must be ruled out.

RSD or Not?

33. All three physicians who offered an opinion as to whether Claimant has RSD alluded to symptoms, but none actually defined the condition or provided any differential diagnosis. The *AMA Guides, Sixth Edition* (Sixth Ed.) provides a working definition of CRPS I, or RSD:

> An uncommon, chronic condition characterized by burning pain that usually involves an upper or lower extremity, and rarely other body parts. Physical findings include hypersensitivity to touch plus vasomotor, sudomotor, and later trophic changes…CRPS I may complicate an injury or illness, or occur spontaneously.

Sixth Ed., p. 610.

[5] This is keeping in mind that RSD and a ligamentous injury are not mutually exclusive.

34. Dr. Wayment determined that the RSD diagnosis was incorrect after he reviewed Dr. Lenzi's report, but before he reexamined Claimant. His chart notes indicate he maintained this position and continued his subsequent examinations without seeking out additional information from Claimant specific to an RSD diagnosis. The record as a whole holds few clues as to the basis for his staunch position. Dr. Wayment testified that Claimant does not have RSD because she was recovering well following her surgery, had no skin or hair growth changes, and had swelling and pain in specific points as opposed to throughout her whole arm:

> …one, she did beautify [*sic*] the surgery and her pain was all gone. Typically, in the literature and in my experience, somebody who develops RSD, they get it from the onset of the surgery. And it's not something they all of a sudden develop acute months after they've done fine. Plus, she didn't have any skin changes. She didn't have any increased hair growth. It was very point specific. She had swelling in a specific area…Typically with RSD, the whole arm, the whole extremity is painful, it's all stiff, they don't move. And in her it was all just isolated on the dorsum of the hand towards the base of the thumb, in the wrists. But the fingers were fine, they moved fine. Digits two through five, that was not an issue for pain for her. It was all isolated right on the back of her hand. And the swelling was very point specific as well.

Dr. Wayment Depo., pp. 25-26. Dr. Wayment continued:

> The thumb moved fine. The pain was not in the thumb. It was all in the wrist. And with RSD, it's a global thing, the whole hand is a hurting mechanism, not point specific. Like in her exam, it's always been around the snuffbox, over that scapholunate interval, lunotriquetral area, right around that radial carpal joint, but mostly on the radial side that was causing her the pain.

Id., at pp. 26-27.

35. Countering Dr. Wayment's analysis, however, is the Sixth Ed.*,* which states RSD can arise spontaneously or complicate another injury. Drs. Lenzi and Marsh both opined that the January 2010 tray incident likely triggered Claimant's RSD—opinions that are consistent with the definition of RSD in the Sixth Ed.

36. All three physicians and Claimant (as per medical records) observed vasomotor and/or sudomotor skin changes over her right hand and wrist. Dr. Wayment noted warmth in March 2010. Dr. Lenzi noted shininess, mottling, decreased sweat pattern and possible hair texture changes in June 2010. Claimant reported skin shininess and possible hair pattern changes. At the end of September 2010, Dr. Marsh noted skin moist to touch, the photo of Claimant's red, swollen hand from two weeks earlier, and Claimant's reports of color changes, possible hair pattern changes, and temperature changes. All three physicians noted constant swelling and diminished motor function.

37. Dr. Wayment only noted pain and swelling on the dorsum of Claimant's right wrist and pain when moving her fingers, while Dr. Marsh reported hyperesthesia on the volar side of Claimant's wrist, as well as on the thenar eminence (palm-side base of the thumb) with mere blowing. Dr. Lenzi noted Claimant's right hand was too painful to examine for accurate findings. Both Drs. Marsh and Lenzi found Claimant's pain distribution consistent with a diagnosis of RSD. In addition, Dr. Marsh noted, consistent with the Sixth Ed. definition, that Claimant reported occasional "burning" pain. Ex. 20, p. 1.

38. Dr. Wayment was more familiar with Claimant's case because he had examined and treated her regularly, including performing four surgeries, since her November 2007 industrial injury. However, it is not apparent from his chart notes or his testimony that he was particularly familiar with RSD symptoms or that he ever specifically investigated whether she may have RSD. For example, it does not appear as if he ever asked Claimant about the quality of her right wrist pain or looked for evidence of sudomotor or vasomotor changes. In any event, he did not regularly record the presence or absence of such symptoms, even after he was aware

other physicians had diagnosed RSD. In addition, as noted above, Dr. Wayment testified that he believed Claimant would have shown RSD symptoms, if at all, immediately following surgery, contradicting Drs. Lenzi and Marsh, as well as the Sixth Ed., with respect to accepted etiologies for RSD.

39. In addition, Dr. Wayment described Claimant's course as including "acute flares," which Dr. Lenzi had not observed:

> …one of the reasons why I feel so strongly she doesn't have RSD, [Dr. Lenzi] never gets to see this patient when she's in these acute flares. And I've placed steroids in there, and it's helped her pain tremendously, to get rid of the swelling and get rid of her pain.

Dr. Wayment Depo., p. 28. But Dr. Wayment does not explain why an "acute flare" would be more consistent with a ligamentous injury than with RSD. Neither do his records reflect that Claimant's pain improved due to either of the two injections he administered. They indicate instead that Claimant declined another injection until three months after the first one, reporting 10/10 pain in the interim. Had the injection been as effective as Dr. Wayment asserted, it is unlikely Claimant would have forgone continued treatment when she was in such severe pain.

40. Except with respect to Dr. Wayment's carpal tunnel surgery on Claimant's right upper extremity, Dr. Lenzi ultimately[6] concurred in Dr. Wayment's other surgical recommendations for Claimant.

41. Notwithstanding Dr. Wayment's harsh judgment that Dr. Marsh is an anesthesiologist who knows nothing about hands, the Referee finds Dr. Marsh's background as a

[6] Dr. Lenzi initially believed Dr. Wayment's surgical recommendations in March 2009 were premature. However, he concurred after Claimant did not improve with subsequent conservative measures.

pain specialist sufficiently qualifies him to provide an opinion as to the diagnosis of RSD in the hands.

42. All three physicians are credible. However, Dr. Wayment's basis for dismissing the RSD diagnosis is not persuasive in light of the opinions of Drs. Lenzi and Marsh, which are more consistent with both Claimant's symptomatology and the Sixth Ed. definition of RSD.

43. The Referee finds that, on the medical evidence before her, a diagnosis of RSD is more likely. Therefore, Claimant runs a heightened risk of exacerbating her symptoms if she undergoes the exploratory arthroscopy recommended by Dr. Wayment. Claimant has failed to prove that the potential benefits of the arthroscopy outweigh its potential risks. As a result, she has failed to establish that her condition is likely to improve with Dr. Wayment's required treatment, regardless of whether she has a ligamentous injury. The Referee is consequently compelled to find that the required treatment is not reasonable.

44. Claimant has proven by a preponderance of evidence that she is entitled to reasonable medical care for presumptive RSD, including but not limited to a series of sympathetic nerve blocks and physical therapy as recommended by Drs. Lenzi and Marsh.

45. Nothing in these findings precludes the possibility that Claimant does have a compensable ligamentous injury; such pathology and RSD are not mutually exclusive. However, appropriate evaluation and treatment of Claimant's right hand and wrist pain going forward must incorporate considerations and safeguards appropriately given to RSD patients unless and until such diagnosis is ruled out by expert medical evidence.

CONCLUSIONS OF LAW

1. Claimant has failed to prove that exploratory arthroscopic surgery on her right wrist currently constitutes reasonable and necessary medical care pursuant to Idaho Code § 72-432.

2. Claimant has proven that treatment for RSD, including a series of sympathetic nerve blocks and physical therapy, constitutes reasonable and necessary medical care to treat her right wrist symptoms.

RECOMMENDATION

Based upon the foregoing Findings of Fact, Conclusions of Law, and Recommendation, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this 3 day of June, 2011.

INDUSTRIAL COMMISSION

/s/_____
Rinda Just, Referee

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MELINDA WILSON, Claimant, v. SEAPAC OF IDAHO, INC., Employer, and STATE INSURANCE FUND, Surety, Defendants.	)	**IC 2007-041720** **2010-027226** **2010-005966** **ORDER** Filed: June 22, 2011

Pursuant to Idaho Code § 72-717, Referee Rinda Just submitted the record in the above-entitled matter, together with her proposed findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with this recommendation. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has failed to prove that exploratory arthroscopic surgery on her right wrist currently constitutes reasonable and necessary medical care pursuant to Idaho Code § 72-432.

2. Claimant has proven that treatment for RSD, including a series of sympathetic nerve blocks and physical therapy, constitutes reasonable and necessary medical care to treat her right wrist symptoms.

3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 22 day of June, 2011.

INDUSTRIAL COMMISSION

/s/_____
Thomas E. Limbaugh, Chairman

/s/_____
Thomas P. Baskin, Commissioner

/s/_____
R.D. Maynard, Commissioner

ATTEST:

/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of June, 2011, a true and correct copy of the foregoing **FINDINGS, CONCLUSIONS,** and **ORDER** were served by regular United States Mail upon each of the following persons:

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