

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

ISSUES

A contested case hearing was held on September 25, 2008, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to the requested ten (10) sessions of work-hardening for the right knee and right lower leg for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by JS.
Respondent/Carrier appeared and was represented by KP.

BACKGROUND INFORMATION

Claimant was the only witness at the September 25, 2008, CCH. At the time of the _____, work-related injury, Claimant was working as a welder when a steel plate fell hitting his right leg above the knee. On _____, the right thigh wound (8 cm x 16 cm) was irrigated, debrided, and closed with sutures. On May 30, 2008, Claimant was referred for a Functional Capacity Evaluation. The FCE summary determined that Claimant provided a sub-maximal effort and did not exhibit the physiologic and biomechanical changes normally observed when an individual is providing maximum effort. Claimant was found to be at a PDC of Indeterminate which indicates an overall sub-maximal or inconsistent effort suggesting problems such as simple lack of effort, malingering, somatoform disorder, or self-limitation secondary to pain. Based on the testing, it was determined that Claimant should be considered at least capable of a PDC of Medium. (See Claimant Exhibit 5, page 4.)

On April 18, 2008, Claimant's treating doctor recommended work hardening for the right knee and right lower leg for eighty hours (10 sessions). The pre-authorization request was denied, and the reconsideration was also denied. An IRO was requested and on May 27, 2008, the IRO upheld the denial. The IRO reviewer was an M.D., board certified in Physical Medicine and Rehabilitation. In the "Analysis and Explanation" section, the reviewer opined:

Upon independent review of the provided medical records and ODG Guidelines, the reviewer finds that the requested 10 sessions of work hardening for right knee and right lower leg is not medically necessary. The ODG reports that work hardening is designed to recreate the work simulation. It is recorded that he has received Physical Therapy and home instruction for exercise and treatment and not followed through with therapeutic exercises that should have maximized strength and flexibility. The likelihood of success is also in question since

Therapy Services reports on 4/15 that the "Patient is being discharged from Physical Therapy Services due to attendance compliance issues." And there is no documentation of a specific job to return to. His decision not to go to (City 1) implies that he may not have a job to return to.

The ODG description for work conditioning and work hardening for the lower extremity follows:

Recommended as an option, depending on the availability of quality programs, and should be specific for the job individual is going to return to. (Schonstein-Cochrane, 2003). Work Conditioning should restore the client's physical capacity and function. Work Hardening should be work simulation and not just therapeutic exercise, plus there should also be psychological support. Work Hardening is an interdisciplinary, individualized, job specific program of activity with the goal of return to work. Work Hardening programs use real or simulated work tasks and progressively graded conditioning exercises that are based on the individual's measured tolerances. (CARF, 2006) (Washington, 2006).

Criteria for admission to a Work Hardening Program:

1. Physical recovery sufficient to allow for progressive reactivation and participation for a minimum of 4 hours a day for three to five days a week.
2. A defined return to work goal agreed to by the employer & employee.
 - a. A documented specific job to return to, OR
 - b. Documented on-the-job training
3. The worker must be able to benefit from the program. Approval of these programs should require a screening process that includes file review, interview and testing to determine likelihood of success in the program.
4. The worker must be no more than 2 years past date of injury. Workers that have not returned to work by two years post-injury may not benefit.
5. Program timeliness: Work Hardening Programs should be completed in 4 weeks consecutively or less.

ODG Physical Therapy Guidelines - Work Conditioning 12 visits over 8 weeks.
See also Physical therapy for general PT guidelines.

At the September 25, 2008, CCH, Claimant offered no evidence-based medicine to overcome the IRO determination of non-entitlement. Claimant is currently working full-time as a welder for a different employer and averaging 40 to 45 hours per week. Claimant was surprised to learn that work hardening would require participation of a minimum of 4 hours per day for three to five days a week, and expressed doubt that he could attend work hardening and keep his current job. He testified that he had not spoken with his current employer about the proposed work hardening. No documentation was submitted in Claimant's behalf about "A defined return to work goal agreed to by the employer & employee." Based upon all the evidence submitted, Claimant has been unable to meet his burden of proof.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

FINDINGS OF FACT

1. The parties stipulated to the following facts:
 - A. Venue is proper in (City 2) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. On _____, Claimant was the employee of (Employer), and sustained a compensable injury.
2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. 10 sessions of work hardening for the right knee and right lower leg is not reasonably required medical treatment for the compensable injury of _____.

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in (City 2) Field Office.
3. The preponderance of the evidence is not contrary to the decision of the IRO that 10 sessions of work hardening for right knee and right lower leg is not reasonably required medical care for the compensable injury of _____.

DECISION

The preponderance of the evidence is not contrary to the decision of the IRO that 10 sessions of work hardening for the right knee and lower leg is not reasonably required medical care for the compensable injury of _____.

ORDER

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS SUITE 1050
AUSTIN, TX 78701**

Signed this 26th day of September 2008.

Cheryl Dean
Hearing Officer