

**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.

**ISSUE**

A contested case hearing was held on April 23, 2009, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to work conditioning, 10 sessions, for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Claimant appeared and was assisted by DJ, ombudsman. Petitioner appeared and was represented by AH, lay representative. Carrier appeared and was represented by PP, attorney.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury to his right shoulder and upper arm on \_\_\_\_\_. He has had shoulder surgery, 36 sessions of physical therapy, and 10 sessions of work hardening. Dr. SS requested approval for 10 more sessions of work conditioning. The Carrier denied pre-authorization. The IRO doctor, board certified in anesthesiology with a certificate of added qualifications in pain management, upheld the denial.

Texas Labor Code Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Health care reasonably required is further defined in Texas Labor Code Section 401.011 (22a) as health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with evidence based medicine or, if evidence based medicine is not available, then generally accepted standards of medical practice recognized in the medical community. Health care under the Texas Workers' Compensation system must be consistent with evidence based medicine if that evidence is available. Evidence based medicine is further defined in Texas Labor Code Section 401.011 (18a) to be the use of the current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts and treatment and practice guidelines.

In accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by Division Rule 137.100. This rule directs health care providers to provide treatment in accordance with the current edition of the Official Disability Guidelines (ODG), and such treatment is presumed to be health care reasonably required as defined in the Texas Labor Code. Thus, the focus of any health care dispute starts with the health care set out in the Official Disability Guidelines (ODG).

The ODG entry for work conditioning, work hardening provides:

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) There is limited literature support for multidisciplinary treatment and work hardening for the neck, hip, knee, shoulder and forearm. (Karjalainen, 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) The need for work hardening is less clear for workers in sedentary or light demand work, since on the job conditioning could be equally effective, and an examination should demonstrate a gap between the current level of functional capacity and an achievable level of required job demands. As with all intensive rehab programs, measurable functional improvement should occur after initial use of WH. It is not recommended that patients go from work conditioning to work hardening to chronic pain programs, repeating many of the same treatments without clear evidence of benefit. (Schonstein-Cochrane, 2008)

**Criteria for admission to a Work Hardening Program:**

- (1) Work related musculoskeletal condition with functional limitations precluding ability to safely achieve current job demands, which are in the medium or higher demand level (i.e., not clerical/sedentary work). An FCE may be required showing consistent results with maximal effort, demonstrating capacities below an employer verified physical demands analysis (PDA).
- (2) After treatment with an adequate trial of physical or occupational therapy with improvement followed by plateau, but not likely to benefit from continued physical or occupational therapy, or general conditioning.
- (3) Not a candidate where surgery or other treatments would clearly be warranted to improve function.
- (4) Physical and medical recovery sufficient to allow for progressive reactivation and participation for a minimum of 4 hours a day for three to five days a week.
- (5) A defined return to work goal agreed to by the employer & employee:
  - (a) A documented specific job to return to with job demands that exceed abilities, OR
  - (b) Documented on-the-job training
- (6) The worker must be able to benefit from the program (functional and psychological limitations that are likely to improve with 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.
- (7) 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.
- (8) Program timelines: Work Hardening Programs should be completed in 4 weeks consecutively or less.
- (9) Treatment is not supported for longer than 1-2 weeks without evidence of patient compliance and demonstrated significant gains as documented by

subjective and objective gains and measurable improvement in functional abilities.

(10) Upon completion of a rehabilitation program (e.g. work hardening, work conditioning, outpatient medical rehabilitation) neither re-enrollment in nor repetition of the same or similar rehabilitation program is medically warranted for the same condition or injury.

**ODG Physical Therapy Guidelines – Work Conditioning**

10 visits over 8 weeks

See also Physical therapy for general PT guidelines

The IRO doctor noted that the ODG calls for 10 sessions of work hardening, which had been performed. The IRO doctor saw no indication for additional work hardening sessions. The ODG entry for work conditioning, work hardening, quoted above, provides in pertinent part:

(10) Upon completion of a rehabilitation program (e.g. work hardening, work conditioning, outpatient medical rehabilitation) neither re-enrollment in nor repetition of the same or similar rehabilitation program is medically warranted for the same condition or injury.

**ODG Physical Therapy Guidelines – Work Conditioning**

10 visits over 8 weeks

Claimant completed a program of 10 sessions of work hardening. Petitioner was seeking approval for repetition of the same program for the same injury.

AH, a licensed physical therapist who works for Petitioner and represented Petitioner at the hearing, argued that all of the physical goals for Claimant had not been attained. Claimant testified the 10 sessions of work conditioning he already had resulted in a lot of improvement, but he still was not back to his pre-injury condition. Neither of them contended the ODG criteria had been met. There was no showing of evidence based medical evidence to overcome the IRO decision.

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 the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
  - B. On \_\_\_\_\_ Claimant was the employee of (Employer).
  - C. On \_\_\_\_\_ Claimant sustained a compensable injury.
  - D. The Independent Review Organization determined Claimant is not entitled to work conditioning, ten sessions for the compensable injury of \_\_\_\_\_.

2. Carrier delivered to Petitioner and 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. Claimant did not meet the ODG criteria for the requested treatment.
4. There was no showing of evidence based medical evidence to overcome the IRO decision.
5. Work conditioning, ten sessions is not health care reasonably required 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 the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of the IRO that work conditioning, ten sessions is not health care reasonably required for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to work conditioning, ten sessions, 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 of the Act.

The true corporate name of the insurance carrier is **FIDELITY AND GUARANTY INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TEXAS 78701**

Signed this 23rd day of April, 2009.

Thomas Hight  
Hearing Officer