

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 June 19, 2009 to decide the following disputed issues:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that work hardening 3-5 times per week for 4-5 weeks is not healthcare which is reasonably required for treatment of the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by MM, ombudsman. Carrier appeared and was represented by CL, attorney. JM, M.D., Petitioner did not appear.

BACKGROUND INFORMATION

Claimant is a 43-year-old dye cutter for a box manufacturer who injured his right shoulder while carrying a heavy wooden dye and metal cover to a machine. Claimant had surgery for the right shoulder on September 25, 2007. He had persistent symptoms thereafter, and had an additional surgery for release of adhesive capsulitis in June, 2008. MRIs on July 10, 2008 and August 22, 2008 showed a recurrent tear of the right shoulder rotator cuff tendon which Claimant attributed to overdoing therapy. There is a proposal by Dr. S for a third arthroscopic procedure for repair of this lesion depending on Claimant's progress. Claimant has continued with trigger point injections and TENS unit. He has had a course of physical therapy. Treating physician Dr. M and the therapist, PD, feel that Claimant had improved with physical therapy, and that he should now have work hardening for further improvement.

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 ODG. With regard to work hardening for shoulder injuries, the ODG provides as follows:

Work conditioning, work hardening

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

As noted previously herein, “health care reasonably required” means 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 that evidence is not available, generally accepted standards of medical practice recognized in the medical community. Treatment provided pursuant to the *ODG* is presumed to be health care reasonably required. Based on a careful review of the evidence presented in the hearing, the Provider and the Claimant failed to meet their burden of overcoming the IRO decision by a preponderance of the evidence-based medical evidence. The IRO decision in this case is based on the *ODG* and the evidence revealed that the claimant failed to meet all of the necessary criteria for work hardening prescribed in the *ODG*. Claimant has not worked in almost two years, and there was no attempt to describe any job for which the work hardening would prepare Claimant and no showing that there is a documented specific job available with demands that exceed Claimant's ability. Further, the need for additional surgery has not been ruled out. The preponderance of the evidence-based medical evidence is not contrary to the decision of the IRO and, consequently, the claimant is not entitled to the proposed work hardening.

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. Claimant sustained a compensable injury on _____.
 - D. On April 29, 2009, the Independent Review Organization determined that work hardening 3 - 5 times per week for 4 - 5 weeks is not healthcare reasonably required for treatment of the compensable injury of _____.
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. Claimant did not meet the requirements of the ODG for admission to a work hardening program of a defined return to work goal, or a documented specific job with demands that exceed abilities, and that he was not a candidate for surgery.
 4. Work hardening 3-5 times per week for 4-5 weeks is not healthcare reasonably required for treatment of 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 hardening 3-5 times per week for 4-5 weeks is not healthcare reasonably required for treatment of the compensable injury of _____.

DECISION

Claimant is not entitled to work hardening 3-5 times per week for 4-5 weeks for treatment of 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 **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is:

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

Signed this 25th day of June, 2009.

Warren E. Hancock, Jr.
Hearing Officer