

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 July 27, 2009 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is entitled to twenty sessions of work hardening for the _____ compensable injury?

PARTIES PRESENT

Petitioner/Carrier appeared and was represented by GP, adjuster.
Respondent/Claimant appeared and was assisted by SG, ombudsman.

BACKGROUND INFORMATION

Claimant was injured in the course and scope of his employment as an electrician's helper. Claimant was working approximately thirty five feet off the ground using a scissor lift. Claimant lost his balance while pulling wire. Claimant testified that he grabbed a large piece of metal to keep from falling. Claimant testified that he immediately felt pain in both hands and wrists. Claimant was initially diagnosed with bilateral wrist contusions, but the diagnosis was revised to bilateral carpal tunnel syndrome. Claimant has undergone surgery on each wrist, received physical therapy and medications. Claimant also participated in a pain management program. The claimant's treating doctor is requesting twenty sessions of work hardening in order to return the claimant to his prior level of functioning. The request for work hardening was denied twice by the carrier's URA doctors and the request was appealed to the Independent Review Organization (IRO). The IRO, a family practitioner, overturned the carrier's adverse determinations.

DISCUSSION

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. Section 401.011(22-a) defines health care reasonably required 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: (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community." "Evidence based medicine" is further defined, by Section 401.011(18-a) as 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 making decisions about the care of individual patients.

The Division of Workers' Compensation has adopted treatment guidelines under Division Rule 137.100. That rule requires that health care providers provide treatment in accordance with the current edition of the *Official Disability Guidelines* (ODG), and treatment provided pursuant to those guidelines is presumed to be health care reasonably required as mandated by the above-referenced sections of the Texas Labor Code. The initial inquiry, therefore, in any dispute regarding medical necessity, is whether the proposed care is consistent with the ODG.

With regard to work hardening, 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"

To meet its burden of proof, the Petitioner/Carrier offered medical records and the expert testimony of Dr. E. Dr. E testified that the decision of the IRO was not in accordance with the ODG for several reasons: (1) The medical records did not show any significant improvement after the claimant underwent physical therapy following carpal tunnel release: (2) Claimant underwent pain management to address his pain and psychological condition in 2008 and the records indicated that the claimant did not benefit from the program. Dr. E testified that the ODG does not recommend repetition of similar programs without evidence of clear benefit: (3) The ODG does not include work hardening/conditioning as a treatment option for carpal tunnel syndrome: (4) The medical records from the claimant's medical providers and the required medical examination with Dr. W indicate that the claimant is a surgical candidate for a second carpal tunnel release on the right hand due to ongoing symptoms. The claimant also testified that his doctors have told him that he is a surgical candidate. Dr. E testified that it is his opinion that Claimant is not entitled to the requested 20 sessions of work hardening. In light of Dr. E's opinion, Claimant's failure to meet the criteria set forth in the ODG for work hardening, and the lack of evidence to support a request for physical therapy in excess of that recommended in the ODG, the hearing officer finds that the preponderance of the evidence is contrary to the IRO decision. Based upon the evidence presented, the carrier has shown by a preponderance of evidence based medicine that the requested twenty sessions of work hardening is not healthcare reasonably required for the compensable injury.

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. The Independent Review Organization (IRO) determined that the claimant should have 20 sessions of work hardening.
2. Carrier delivered to Claimant and Provider 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. Twenty sessions of work hardening are 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 contrary to the decision of the IRO that twenty sessions of work hardening is health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to twenty sessions of work hardening 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 STREET SUITE 1050
AUSTIN, TEXAS 78701-3232**

Signed this 29th day of July, 2009.

Jacquelyn Coleman
Hearing Officer