

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 September 18, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is entitled to 80 hours of work hardening to the right knee for treatment of the compensable injury of _____?

PARTIES PRESENT

Claimant/Respondent appeared and was assisted by LB, ombudsman. Carrier/Petitioner appeared and was represented by NM, adjuster.

BACKGROUND INFORMATION

Claimant sustained an injury to his right knee on _____ while working as a cable technician. Claimant underwent a right knee arthroscopy on February 13, 2009 and subsequently completed 12 sessions of post-operative physical therapy and rehabilitation. Pre-work hardening consultations and two FCE's were performed and Claimant was recommended to undergo 80 hours of work hardening which was denied at the pre-authorization level and referred to an IRO who overturned the adverse determination noting that the Claimant appeared to meet all admission criteria for 10 sessions/80 hours of work hardening. The Carrier has appealed the approval of the requested treatment.

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. Also, in accordance with Division Rule 133.308 (t), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division are considered parties to an appeal. In a Contested Case Hearing (CCH), the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of evidence-based medical evidence."

Pursuant to the ODG for 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"

The Carrier argued that work hardening was not medically necessary because the Claimant's pre-injury job was in the light physical demand level and the Claimant could have returned work in that capacity pursuant to the FCE recommendations. The Claimant testified that his pre-injury job did require heavy lifting (50 pounds), climbing ladders and prolonged walking. Although the job description provided by the Claimant's pre-injury employer indicates that the job was in the light physical demand level, it appears that the job duties are more accurately reflected in the medium physical demand level. The Claimant testified that he was terminated from his pre-injury employment, he did complete the work hardening program and he has returned to work for a roofing company in the medium physical demand level. The basis for the Carrier's appeal of the IRO determination was that the Claimant met the requirements to return to a light physical demand job and that he did not meet the *ODG* criteria for work hardening.

Based on the evidence presented, the Carrier failed to meet its burden of overcoming the IRO decision by a preponderance of the evidence-based medical evidence. The IRO decision is based on the *ODG* and the evidence revealed that the Claimant has met all of the necessary criteria for work hardening prescribed in the *ODG*. The Carrier failed to present an evidence-based medical opinion from a competent source to overcome the IRO's decision. Therefore, Carrier has not met the requisite evidentiary standard required to overcome the IRO decision and the preponderance of the evidence-based medical evidence is not contrary to the decision of the IRO that the Claimant is entitled to the proposed work hardening program.

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 right knee injury on _____.
 - D. The IRO determined that 80 hours of work hardening to the right knee was 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 met the requirements of the *ODG* for admission to a work hardening program.
4. A work hardening program of 10 sessions/80 hours is health care 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 Claimant is entitled to 80 hours of work hardening to the right knee for treatment of the compensable injury of _____.

DECISION

Claimant is entitled to 80 hours of work hardening program to the right knee for treatment of the compensable injury of _____.

ORDER

Carrier is 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 the **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** 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 18th day of September, 2009.

Carol A. Fougerat
Hearing Officer