

**DOCKET NO. 453-03-2713.M5**  
**[MDR TRACKING NO. M5-02-3013-01]**

**ST. PAUL FIRE & MARINE  
INSURANCE CO., *Petitioner***

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**BEFORE THE STATE OFFICE**

**V.  
WORK & ACCIDENT CLINIC and  
TEXAS WORKERS' COMPENSATION  
COMMISSION, *Respondents***

**OF  
  
ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

**I. SUMMARY**

Work & Accident Clinic (Provider) sought reimbursement for work hardening services, provided to Claimant \_\_\_\_\_. St. Paul Fire & Marine Insurance Co. (Carrier) denied payment for all treatments as medically unnecessary. The Independent Review Incorporated, an Independent Review Organization (IRO), reviewed the claim and granted reimbursement on the basis that the work hardening was medically necessary. Carrier appealed the IRO's decision.

After reviewing the evidence and arguments, the Administrative Law Judge (ALJ) concludes the work hardening program was not reasonable and medically necessary for the injury incurred.

**II. PROCEDURAL HISTORY**

On July 8, 2003, ALJ Stephen J. Pacey convened and closed the hearing at the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. Provider was represented by Paul Wilkinson, attorney, and Carrier was represented by Steve Tipton, attorney. The Texas Workers' Compensation Commission (TWCC) did not participate in the hearing. The parties did not contest notice or jurisdiction, and those matters are discussed in the findings and conclusions without further discussion here.

**III. EVIDENCE AND ASSERTIONS**

1. Background

On \_\_\_\_\_, Claimant, crushed his left index finger when a crane lowered a panel on top of the panel that Claimant was holding. On the date of the injury, Kelly Kunkel M.D., initially evaluated him for a near amputation of the tip of the left index finger. Dr Kunkel amputated Claimant's left index finger to the level of the middle part of the middle phalanx and sutured the digital nerves to the dorsal surface of the finger.

On September 21, 2001, Bryan Drazner, M.D., evaluated Claimant and recommended that Claimant attend 16 additional therapy sessions with modalities of myofascial release and manipulations at the Work & Accident Clinic. After Claimant completed the additional therapy sessions, Provider performed a Functional Capacity Evaluation (FCE) on November 20, 2001. Based on the FCE results, Provider recommended work hardening, which Claimant attended from November 26, 2001, through January 4, 2002.

## 2. Carrier's Evidence and Assertions

Carrier cited two reasons for the proposition that work hardening was not medically necessary to treat Claimant's finger pain. First, at the time Claimant entered work hardening, Claimant was already physically at the target area for his fork lift job duties. Second, because Claimant suffered from neuroma, neither chiropractic practices nor work hardening could relieve his finger pain.<sup>1</sup>

The FCE described Claimant as a carpenter, but Claimant said that he was a fork lift operator and sat on the fork lift for extended periods of time. Casey Cochran, M.D., who is board certified in Occupational Medicine and specializes in the treatment of injured workers, explained that Claimant was able to perform his fork lift duties before he entered the work hardening program. In Dr. Cochran's opinion, the physical demand level for a fork lift operator is to lift 50 pounds and to lift overhead 40 pounds. Dr. Cochran said that the FCE reflected that he could perform both these functions. In addition, according to Dr. Cochran, work hardening for a finger injury is very rare, and he would never recommend work hardening for a finger injury. Dr. Cochran explained that work hardening should be tailored to the person's injury, and Provider's work hardening program was not tailored for a finger injury. In Dr. Cochran's opinion, Claimant's walking for one hour or standing for one hour has no benefit for a finger injury. After reviewing other doctors' reports, Dr. Cochran concluded that the work hardening was not medically necessary and prolonged Claimant's pain.

During work hardening, two peer reviews were performed. On November 27, 2001, Roger Canard, D.C., indicated in his report that chiropractic care beyond the three to four weeks postoperative rehabilitation is not medically reasonable. On December 12, 2001, Michael Doyle, M.D., an orthopaedic hand surgeon, evaluated Claimant's constant index finger pain. Dr. Doyle diagnosed Claimant with neuroma formation of the digital nerves following amputation of the left index finger tip. Dr. Doyle indicated a 50% permanent impairment of the left index finger secondary to the work injury and recommended desensitization to the injured fingertip versus surgical removal of the neuroma and/or index finger ray amputation.

On January 28, 2002, and after work hardening, Lisa R. Reznick, M.D., American Board of Orthopaedic Surgery, submitted a peer review. According to Dr. Reznick, Claimant's problem appeared to be residual pain secondary to digital nerve neuroma formation following the partial amputation of his left index finger. Dr. Reznick explained that the residual pain will affect his left grip strength and use of the left hand in general. Dr. Reznick concluded that work hardening would not improve these symptoms or prepare Claimant to return to work. Dr. Reznick's report also reflected that the work hardening was completed without significant relief or improvement of Claimant's symptoms because Claimant's symptoms were due to the digital neuroma. On September 18, 2002, Tom Diliberti, M.D., performed a neuroma resection, which relieved Claimant's pain and allowed him to return to work.

## 3. Provider's Evidence and Assertions.

Provider presented the 242 page record of the IRO proceeding; and requested that the ALJ study the documents and follow the IRO's recommendation.

## 4. Analysis and Recommendation.

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<sup>1</sup> *Dorland's Illustrated Medical Dictionary* 28<sup>th</sup> Edition defines neuroma as a tumor growing from a nerve or made up largely of nerve cell and nerve fibers.

Carrier proved by a preponderance of the evidence that work hardening not only was not medically necessary, it also prolonged Claimant's pain. A finger injury is not the type of injury that is suitable to a work hardening program; therefore, Provider should have used extra precautions, rather than rush a finger injury into a work hardening program. This case is especially troublesome because Claimant was already at the physical demand level of a fork lift operator when he entered work hardening.

Carrier's request for reimbursement for work hardening and incidental office visits is denied.

#### **IV. FINDINGS OF FACT**

1. On \_\_\_\_\_, Claimant, sustained a compensable injury when he crushed his left index finger.
2. At the time of her injury, Claimant's employer had workers' compensation insurance through St. Paul Fire & Marine Insurance Co. (Carrier).
3. On August 15, 2001, Kelly Kunkel, M.D., amputated Claimant's left index finger to the level of the middle part of the middle phalanx and sutured the digital nerves to the dorsal surface of the finger.
4. On September 21, 2001, Bryan Drazner, M.D., evaluated Claimant and recommended that Claimant attend 16 additional therapy sessions with modalities of myofascial release and manipulations at the Work & Accident Clinic (Provider).
5. After Claimant completed the additional therapy sessions, Provider performed a Functional Capacity Evaluation (FCE) on Claimant on November 20, 2001.
6. Based on the FCE results, Provider recommended work hardening, which Claimant attended from November 26, 2001, to January 4, 2002.
7. Claimant's only work-related injury was to his index finger.
8. When Claimant was injured the physical demands of his job required a lifting ability of 50 pounds and an overhead lifting ability of 40 pounds.
9. Claimant was able to perform the physical demand levels of his fork lift duties before he entered the work hardening program.
10. Claimant's constant pain was caused by a neuroma formation of the digital nerves following amputation of the left index finger tip.
11. A neuroma is a tumor growing from a nerve or made up largely of nerve cells and nerve fibers.
12. A work hardening program cannot cure the cause or relieve the symptoms of a neuroma formed on the scar tissue of a partial amputation.

13. Claimant should not have been placed in the work hardening program.
14. Provider submitted a claim for payment of \$8896.46 for the work hardening treatments provided Claimant by Provider from November 26, 2001 through January 4, 2002.
15. Carrier denied payment for the services on the basis that they were not medically necessary.
16. Provider timely requested medical dispute resolution by the Medical Review Division of the Texas Workers' Compensation Commission (Commission).
17. On November 20, 2002, after reviewing Provider's claim, the Independent Review Incorporated, an Independent Review Organization (IRO), granted reimbursement for the work hardening program.
18. The Commission adopted the IRO's decision, and on February 13, 2002, notified Petitioner of the decision.
19. Carrier and Provider timely appealed the IRO decision.
20. The Commission sent notice of the hearing to the parties on April 10, 2003. The hearing notice informed the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the statutes and rules involved; and the matters asserted.
21. The hearing was held and the record closed on July 8, 2003, with ALJ Stephen J. Pacey presiding. Carrier appeared through its attorney, Stephen Tipton. Provider appeared through its attorney, Paul Wilkinson.

## **V. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented, pursuant to the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. §413.031.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073 and 413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
3. Carrier and Provider timely filed notice of appeal of the IRO decision, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. ch. 2001 and 28 TAC § 148.4(b).
5. Claimant met the physical demand level of his applicable job duties before entering the work hardening program, and Claimant's pain was caused by a neuroma that cannot be reasonably

cured or relieved by a work hardening program; therefore, the work hardening program was not reasonable and necessary medical care under TEX. LABOR CODE ANN. §§ 408.021(a)(1-3) and § 401.011(19).

6. Provider's request for reimbursement for services provided from November 26, 2001, through January 4, 2002, should be denied.

**ORDER**

**IT IS THEREFORE, ORDERED** that Provider, Work & Accident Clinic, is denied reimbursement from Carrier, St. Paul Fire & Marine Insurance Co., for work hardening services provided to Claimant, from November 26, 2001, through January 4, 2002.

**SIGNED this day 13<sup>th</sup> of August, 2003.**

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**STEPHEN J. PACEY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARING**