

AMERICAN CASUALTY COMPANY OF READING, PA,	§ § § § § §	BEFORE THE STATE OFFICE
Petitioner		
VS.		OF
INDUSTRIAL ATHLETICS, UC.,		
Respondent		ADMINISTRATIVE HEARINGS

DECISION AND ORDER

American Casualty Company of Reading, PA (Carrier) is appealing the decision of the Texas Workers' Compensation Commission's (Commission's) designee, an independent review organization (IRO), which disagreed with the Carrier's denial of a claim for reimbursement for work hardening provided by Industrial Athletics, UC, to Claimant _____. This decision concludes that Carrier is not required to reimburse Industrial Athletics because Carrier proved that the work hardening program was not medically necessary.

I. PROCEDURAL HISTORY

The hearing was held on August 13, 2003, before the undersigned Administrative Law Judge (ALJ) at the State Office of Administrative Hearings, 300 West 15th Street, Austin, Texas. Carrier appeared and was represented by Attorney James Loughlin. Industrial Athletics appeared and was represented by Charles Blevins, a licensed occupational therapy assistant and owner of Industrial Athletics. The record closed the day of the hearing. The parties did not contest notice or jurisdiction.

II. DECISION

1. Background

Claimant suffered a compensable injury on _____, while working as a delivery salesman for _____. He injured his right knee when he climbed into his truck and felt his knee pop. He had arthroscopic surgery on the knee on February 8, 2001. At issue are work hardening sessions provided to Claimant from September 10 through September 28, 2001.

2. Applicable Law

Pursuant to the Texas Workers' Compensation Act, an employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment.¹

Work hardening is an individualized, highly structured, goal-oriented treatment program designed to maximize the ability of the person receiving the treatment to return to work. Work hardening programs are interdisciplinary and intended to address the functional, physical, behavioral, and vocational needs of the injured worker.² The Commission has adopted rules governing work hardening programs. The rules, found in the MFG, relate to, among other things, when work hardening is appropriate and what documentation is required of work hardening providers.

In addition to the MFG, the Commission's Lower Extremities Treatment Guideline (LETG) sets certain ground rules for treating injuries to the lower extremities.³ LETG Ground rule (e)(2)(A) provides that treatment of a work-related injury must be:

1. adequately documented;
2. evaluated for effectiveness and modified based on clinical changes;
3. provided in the least intensive setting;

¹ TEX. LAB. CODE ANN. § 408.021(a).

² Medical Fee Guideline (MFG) Medicine Ground Rule II.E. at 28 TEX. ADMIN. CODE (TAC) § 134.201.

³ 28 TAC § 134.1003. Although the LETG was repealed, effective January 1, 2002, it was in effect at the time of the injury and treatments in question.

4. cost effective;
5. consistent with this guideline or contain a documented clinical rationale for deviation from this guideline;
6. objectively measured and demonstrate functional gains; and
7. consistent in demonstrating ongoing progress in the recovery process by appropriate re-evaluation of the treatment.

Carrier bears the burden of proof in this proceeding.⁴

3. Analysis

Relying on the testimony of its expert witness Samuel Bierner, M.D., a board certified physical medicine rehabilitation specialist, Carrier asserts that work hardening was not medically necessary because Claimant was proceeding well with physical therapy and because Claimant had no behavioral issues warranting the multi-disciplinary program. According to Dr. Bierner, the more appropriate course of treatment would have been additional physical therapy or work conditioning. Carrier also notes that Industrial Athletics did not perform a functional capacity evaluation (FCE) showing that work hardening was necessary.

Mr. Blevins testified that Claimant was referred to Industrial Athletics on August 15, 2003, because of several months of de-conditioning. After attending three weeks of physical therapy, Claimant underwent work hardening because he could not meet certain lifting and lunging requirements of his job. According to Mr. Blevins, performing an FCE would have been an unnecessary expense because the staff of Industrial Athletics was aware of Claimant's capabilities. Mr. Blevins pointed out that Claimant was able to return to work at full duty after completing only 14½ days of work hardening treatment.

Despite the apparent success of the program, the ALJ agrees with Carrier that the need for work hardening was not justified in this case. Although Claimant is entitled to "all health care reasonably required by the nature of the injury as and when needed . . . that cures or relieves the effects naturally resulting from the compensable injury,"⁵ that does not mean that the Claimant is

⁴ 28 TAC § 148.21(h) and (i).

⁵ TEX. LAB. CODE ANN. § 408.021.

entitled to every treatment available. The LETG Ground rules require that treatment be cost effective and provided in the least intensive setting. More extensive treatment is not warranted if a lesser, accepted method is working. As Dr. Bierner noted, Claimant was progressing well with the physical therapy, enough so that his injured right knee was functioning better than his left. (Ex. 1 at 41, 45, 47). At the start of the work hardening program, he also had good range of motion and strength. (Ex. 1 at 60). In addition, Claimant was highly motivated and had no behavioral or psychological problems that interfered with the physical therapy. As Dr. Bierner testified, that Claimant progressed so well in such a short period of time indicates that work hardening was likely unnecessary.

Dr. Bierner also noted the purpose of work hardening is to transition between management of the initial injury and return to work.⁶ In this case, Claimant had actually returned to light duty in July 2001 and remained so until at least August 16, 2001. (Ex. 1 at 28, 30, 31, 37). Although there may have been a reason for taking Claimant off work for further treatment, the record provides no explanation for the change in status. Dr. Bierner testified that once an injured worker returns to work, the preferable treatment is to arrange for further conditioning in the work setting itself.

Although it is commendable that Industrial Athletics wanted to save the insurance carrier the cost of an FCE, Industrial Athletics made that decision to its detriment. The MFG and LETG are unequivocal that documentation is required to justify all treatment. According to Dr. Bierner, work hardening is needed if there is a significant injury impairing an injured worker's ability to perform specific tasks necessary for his or her job and there is a significant mismatch between an injured worker's job requirements and what he is capable of doing. Because no FCE was performed, a significant mismatch between Claimant's inadequacies and his job requirements was not apparent.⁷ Because there was no initial FCE, the need for mental health treatment was also not apparent.⁸ As such, Industrial Athletics failed to show why the more intensive treatment of a work hardening

⁶ Medicine Ground Rule II.E.

⁷ Medicine Ground Rule II.E.1.b.

⁸ Medicine Ground Rule II.E.2.a.

program was needed beyond the physical therapy that was working or beyond work conditioning, which could have provided less costly treatment to prepare Claimant for specific job tasks.

The ALJ also agrees with Dr. Bierner's criticism of the IRO's decision, which determined that "a patient with an 8 month history of work restriction and pain from an injury would likely have depression related to chronic pain." Dr. Bierner testified that the statement was not based on any evidence in the record and was not valid because one cannot assume that an injured worker is depressed just because he or she has been off work for a number of months.

In conclusion, because Carrier has shown that Claimant did not meet the entrance requirements for work hardening, Industrial Athletics is not entitled to reimbursement.

III. FINDINGS OF FACT

1. Claimant____ suffered a compensable injury on_____, while working as a delivery salesman for_____. He injured his right knee when he climbed into his truck and felt his knee pop. He had arthroscopic surgery on the knee on February 8, 2001.
2. Industrial Athletics, UC, provided Claimant with work hardening sessions from September 10 through September 28, 2001.
3. American Casualty Company of Reading, PA (Carrier) denied reimbursement on the basis that the work hardening program was medically unnecessary.
4. Industrial Athletics appealed the denial to the Texas Worker's Compensation Commission (Commission).
5. The Commission's Medical Review Division issued the decision of its designee, an independent review organization, on February 24, 2003. The decision found that the work hardening program was medically necessary.
6. Carrier filed a request for a hearing on March 4, 2003.
7. The Commission sent notice of the hearing to the parties on April 9, 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.
8. No medical documentation was provided justifying why Claimant was removed from work for work hardening after returning to work in July 2001.

9. Industrial Athletics did not perform a functional capacity evaluation (FCE) prior to the beginning of the work hardening program
10. Because no FCE was performed, there was no indication that Claimant's injury interfered with his ability to perform specific tasks required in his job.
11. Because there was no initial FCE, the need for mental health treatment was also not apparent.
12. Claimant was progressing well with the physical therapy, enough so that his injured right knee was functioning better than his left. He also had good range of motion and strength. Claimant was highly motivated and had no behavioral or psychological problems that interfered with the physical therapy.
13. Claimant did not meet the entrance requirements for a work hardening program and was not an appropriate candidate for the program.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the Texas Workers' Compensation 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. TEX. LAB. CODE ANN. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. The Carrier filed a timely notice of appeal as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
4. Adequate and timely notice of the hearing was provided. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. The Carrier had the burden of proof in the case. 28 TAC §148.21(h).
6. The Carrier showed that Claimant did not meet the admission criteria of a work hardening program according to Medical Fee Guideline (MFG) Medicine Ground Rule II.E.1. and 2. at 28 TAC § 134.201.
7. The Carrier showed that work hardening was not cost effective and was not the least intensive treatment as required by the Lower Extremities Spine Treatment Guideline Ground Rules at 28 TAC § 134.1003(e)(2)(A).
8. Enrollment in a work hardening program was not reasonably required health care under TEX. LAB. CODE ANN. § 408.021.

9. Based on the foregoing findings of fact and conclusions of law, Industrial Athletics is not entitled to reimbursement for the work hardening program.

ORDER

IT IS, THEREFORE, ORDERED that American Casualty Company of Reading, PA is not required to reimburse Industrial Athletics, UC for the work hardening provided to the Claimant from September 10 through September 28, 2001.

Signed October 20, 2003.

**KATHERINE L. SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**