

**SOAH DOCKET NO. 453-04-1158.M2
TWCC MR NO. M2-03-1785-01**

TEXAS MUTUAL INSURANCE COMPANY, Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
V.		
LINH VO, D.C., Respondent		

DECISION AND ORDER

Texas Mutual Insurance Company (Petitioner) requested a hearing before the State Office of Administrative Hearings following a Decision of the Texas Workers' Compensation Commission (Commission) acting through Independent Review Incorporated, an Independent Review Organization (IRO). The Commission's Order granted a preauthorization request for work conditioning for _____ (Claimant).

This decision grants the relief requested by Petitioner and denies the requested preauthorization for work conditioning.

A hearing convened on April 22, 2004. Patricia Eads represented Petitioner. Neither Linh Vo, D.C. (Respondent) nor Claimant appeared at the hearing.¹ David Alvarado, D.C., testified on behalf of Petitioner. There were no contested issues of notice or jurisdiction. The record closed upon adjournment of the hearing on April 22, 2004.

Claimant sustained a work-related injury to his back on _____. Claimant underwent conservative treatment including physical therapy prior to surgery. On February 21, 2002, Claimant underwent an L4 to sacrum fusion and a discectomy, L5-S1. Following surgery, Claimant received physical therapy and then completed a six-week work hardening program. On discharge from work hardening, Claimant could lift some 75 pounds. He was returned to work with his employer with restrictions on lifting. Claimant entered a chronic pain management program in April 2003. The nature of Claimant's back injury renders it highly unlikely Claimant will ever return to work as a carpet installer.

Petitioner's preauthorization review and internal appeal process determined that work conditioning was not medically necessary. By letter dated October 3, 2003, the IRO concluded that work conditioning was medically necessary for the treatment of Claimant's condition.²

¹ Although Respondent did not request to appear by telephone, a telephone call was placed to his office and he was not present.

² The IRO reviewer indicated in the decision that there was no evidence of any rehabilitative exercise program following surgery, only a chronic pain management program.

Work conditioning uses real or simulated work activities, in conjunction with conditioning tasks, to assist an injured worker in returning to work. Work conditioning is a component or subset of work hardening. While work conditioning is a single disciplinary approach, work hardening is an interdisciplinary approach. In addition to the physical and functional components that work conditioning addresses, work hardening addresses behavioral and psychological aspects as well. The record contains no evidence of any intervening events, such as a post-work hardening surgery, that would warrant work conditioning. As Claimant has already undergone the more extensive interdisciplinary work hardening program post-operatively, there is no medical necessity for Claimant to now undergo work conditioning.

Petitioner had the burden of proof in this proceeding. Pursuant to the 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. Under the Act, 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.

In this instance, Petitioner proved by a preponderance of the evidence that work conditioning is not medically necessary for the treatment of Claimant's condition.

II. FINDINGS OF FACT

1. _____ (Claimant) sustained a work-related injury on _____.
2. Claimant, a carpet installer, underwent conservative treatment prior to surgery.
3. On February 21, 2002, Claimant underwent an L4 to sacrum fusion and a diskectomy, L5-S1.
4. Following surgery, Claimant received physical therapy.
5. Beginning in August 2002, Claimant underwent a six-week work hardening program.
6. On discharge from work hardening, Claimant could lift some 75 pounds.
7. Claimant was returned to work with his employer, but not as a carpet installer, with restrictions on lifting.
8. Claimant entered a chronic pain management program in April 2003.
9. Work conditioning uses real or simulated work activities, in conjunction with conditioning tasks, to assist an injured worker in returning to work.
10. Work conditioning is a component or subset of work hardening.
11. Work conditioning is a single disciplinary approach while work hardening is an interdisciplinary approach.
12. Work hardening addresses behavioral and psychological aspects as well as the physical and functional components that work conditioning addresses.

13. There are no intervening events that would warrant work conditioning following a work hardening program.
14. The nature of Claimant's injury renders it highly unlikely Claimant will ever return to work as a carpet installer.
15. Linh Vo, D.C., (Respondent) of Houston Injury Rehab, recommended four weeks of work conditioning for Claimant.
16. Texas Mutual Insurance Company's (Petitioner) preauthorization review and internal appeal process determined that work conditioning was not medically necessary.
17. By letter dated October 3, 2003, Independent Review Incorporated, an Independent Review Organization (IRO), concluded that work conditioning was medically necessary for treatment of Claimant's condition.
18. Petitioner requested a hearing before the State Office of Administrative Hearings (SOAH).
19. By letter dated November 13, 2003, the Texas Workers' Compensation Commission (Commission) issued a notice of hearing.
20. Petitioner requested a continuance and the request was granted.
21. A hearing was convened by Administrative Law Judge Howard S. Seitzman on April 12, 2004, in the hearing rooms of SOAH.
22. Patricia Eads represented Petitioner. Neither Respondent nor Claimant appeared.
23. There were no contested issues of notice or jurisdiction.
24. The record closed upon adjournment of the hearing on April 22, 2004.

III. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 413.031.
2. The IRO decision is deemed a Decision and Order of the Commission.
3. 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. § 413.031(d) and TEX. GOV'T. CODE ANN. ch. 2003.
4. Petitioner timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.

5. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.
6. Petitioner had the burden of proof in this matter, which was the preponderance of evidence standard. 28 TAC §§ 148.21(h) and (i).
7. 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. TEX. LAB. CODE ANN. § 408.021(a).
8. Pursuant to TEX. LAB. CODE ANN. § 413.014, for a carrier to be liable for certain services and supplies, the service must be preauthorized by the carrier or by order of the Commission.
9. The requested work conditioning program is not medically necessary.

ORDER

THEREFORE IT IS ORDERED that Petitioner's request for relief is **GRANTED** and the Respondent's request for a work conditioning program to treat Claimant is **DENIED**.

SIGNED April 23, 2004.

**HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**