

**DOCKET NO. 453-05-2774.M5  
TWCC MR# M5-04-4174-01**

<b>BUENA VISTA WORKSKILLS, Petitioner</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
<b>VS.</b>	§	<b>OF</b>
	§	
<b>LIBERTY MUTUAL INSURANCE COMPANY, Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
	§	

**DECISION AND ORDER**

Buena Vista Workskills (Provider) challenges the decision of an Independent Review Organization (IRO) upholding the decision of Liberty Mutual Insurance Company (Carrier) denying reimbursement for a work hardening program provided to an injured worker. Because Provider failed to prove the program was medically necessary, reimbursement should be denied.

Administrative Law Judge (ALJ) Gary Elkins convened and closed a hearing in this case on August 15, 2005. Provider appeared and was represented by Attorney Peter Rodgers. Carrier appeared and was represented by Attorney Charlotte Salter.

**II. DISCUSSION**

**A. Background**

In, Claimant suffered compensable injuries to his thoracic and lumbar spine. Following the injury, Claimant completed 25 sessions of physical therapy between January 13, 2004 and March 12, 2004. Claimant then entered into a work hardening program with Provider from March 23, through May 28, 2004. Carrier denied reimbursement for the work hardening program and associated functional capacity evaluations.

In response, Provider sought medical dispute resolution. The reviewing IRO concluded that the work hardening program and functional capacity evaluations were not medically necessary for the following reasons:

- Claimant's diagnosis was of a non-specific self-limited sprain/strain of his thoracic and lumbar spine.
- There was no documentation of an abnormal neurologic exam.
- There was no objective documentation in the form of electro-myelogram nerve conduction studies, x-rays, or an MRI.
- Claimant successfully completed 25 sessions of physical therapy prior to entering the work hardening program.
- Claimant could perform repetitive lifting activities at a medium level capacity after completing physical therapy.
- There was no clearly documented clinical rationale explaining why a well-structured home exercise program, bracing, return-to-work accommodations, and ergonomic assessment would be any less effective than the work hardening program and functional capacity evaluations for which Provider seeks reimbursement.

Provider challenged the IRO decision by requesting a hearing before the State Office of Administrative Hearings, which culminated in a hearing and this Decision and Order.

## **B. Evidence and Argument**

Through the testimony of its clinical director, Phil Bohart, Provider presented the following evidence and arguments in support of the disputed work hardening program:

- Claimant was at a light-medium duty physical demand level prior to entering the work hardening program, but his job required medium-heavy physical demand capabilities.

- The treating doctor recommended work hardening, and a March 1, 2004, Functional Capacity Evaluation (FCE) reflected he was functioning at only 60 percent.
- Work hardening was recommended both in a designated doctor examination and by other doctors.
- Claimant exhibited anxiety and depression.

Carrier, through expert witness Casey Cochran, M.D.,<sup>1</sup> presented the following reasons for opposing a CPM program:

- Because no significant mismatch existed between Claimant's post-injury physical demand abilities and the demands of his job, his return to work or his participation in an at-home program were the best treatment alternatives.
- Work hardening is not an approach to treating an injury. It is a boot camp for getting a person back in shape to return to work when de-conditioning has occurred.
- An effective FCE requires proof that the injured worker gave maximum effort during the evaluation, but the evidence indisputably reveals Claimant did not give such effort.
- Any psychological indicators supporting work hardening were mild; the psychological interview was not necessary.
- It is not clear how Claimant ever got into work hardening; it was never actually recommended. The Buena Vista physical therapist that performed an FCE on Claimant on February 24, 2004 did not recommend work hardening. Instead, he simply stated that work hardening might be necessary following two to four weeks of therapeutic exercise.
- A March 3, 2004, MRI revealed no significant pathology in Claimant's back.
- Although Designated Doctor Aaron Levine, M.D., concluded Claimant was not suffering from radiculopathy but that epidural steroid injections (ESIs) might be necessary, ESIs are necessary only when there is radiculopathy.

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<sup>1</sup> Dr. Cochran testified that he is board certified in occupational medicine, teaches designated doctor training courses, and has both taught and taken work hardening courses.

- Work hardening was over-used on Claimant. If he was not able to go back to work before the work hardening program, he certainly was not ready to return to work afterward.

### **C. Analysis and Conclusion**

The evidence does not support the medical necessity of either the work hardening program or the FCEs. Provider relied primarily on the February 24, 2004 FCE together with what it characterized as recommendations supporting the need for the work hardening program. As noted by Carrier, however, although some evaluating doctors mentioned work hardening as a possibility, none recommended it unequivocally. Even Provider did not make a hard recommendation for work hardening, concluded in its February 24, 2004 that work hardening might be appropriate after two to four additional weeks of therapeutic exercise. In addition, Aaron Levine, M.D., who Provider cited as recommending work hardening, concluded in his report on a designated doctor examination only that work hardening might be required.

The ALJ was more persuaded by the testimony of Carrier witness Casey Cochran, M.D., that there appeared to be no significant gap between Claimant's physical abilities following his injury and the requirements of his job. Consequently, returning him to work or prescribing an at-home exercise program followed by periodic re-assessments along the way would have been the best approach to his rehabilitation.

Also persuasive was Dr. Cochran's testimony that while Claimant appeared to still be suffering the effects of his injury, Provider erroneously chose to place him in a work hardening program. Dr. Cochran characterized work hardening as a "boot camp" for re-conditioning injured workers who would be able to return to work but for having become de-conditioned by their injury. It is not a proper approach to treating the injury itself. Because Claimant was still suffering the effects of his injury when he entered the work hardening program, the ALJ agrees with Dr. Cochran that the program was inappropriate.

Dr. Cochran also challenged the reliability of the FCEs, which he described as reflecting a less-than-maximum effort by Claimant while being tested. Dr. Cochran's conclusion was based on

what he described as a slight differential in Claimant's heart rate taken before and during various strength-testing components of the FCE. According to Dr. Cochran, had Claimant been exerting maximum effort he would have been exhibiting a heart rate more closely approaching his maximum estimated rate. Provider offered little in rebuttal to this argument.

Provider also failed to show that Claimant suffered psychological impairment worthy of treatment in a work hardening program. In fact, a February 24, 2004 Psychological Screen conducted by Provider revealed Claimant was experiencing only low levels of anxiety and minimal depressive symptoms.

#### **D. Decision**

Because Provider failed to meet its burden of demonstrating the medical necessity of the work hardening program or the functional capacity evaluations, its reimbursement request should be denied.

### **III. FINDINGS OF FACT**

1. Claimant suffered a compensable injury to his thoracic and lumbar spine in\_\_\_.
2. At the time of Claimant's injury, his employer held workers' compensation insurance coverage through Liberty Mutual Insurance Company (Carrier).
3. Following the accident, Claimant completed 25 sessions of physical therapy between January 13, 2004 and March 12, 2004.
4. Claimant participated in a work hardening program with Provider from March 23, 2004 through May 28, 2004.
5. Provider sought reimbursement from Carrier for the work hardening program and for Functional Capacity Evaluations (FCEs) performed on February 24, 2004, April 22, 2004, and May 4, 2004.
6. Carrier denied reimbursement for the work hardening program and FCEs as not medically necessary.
7. In response to Carrier's denial, Provider sought medical dispute resolution.

8. The Independent Review Organization (IRO) that reviewed Provider's claim concluded that the work hardening program and FCEs were not medically necessary.
9. Provider challenged the IRO decision by requesting a hearing before the State Office of Administrative Hearings.
10. Notice of the hearing was sent to the parties on December 16, 2004. The notice informed the parties of the date, time, and location of the hearing, the matters to be considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.
11. The SOAH hearing convened and closed on August 15, 2005.
12. Claimant was still suffering from the effects of his injury while participating in Provider's work hardening program.
13. On February 24, 2004, Claimant exhibited only mild levels of anxiety and minimal levels of depressive symptoms.
14. The symptoms referred to in Finding 13 did not warrant a psychological interview.
15. No substantive psychological component existed in association with Claimant's injury.
16. Psychological treatment of Claimant was not necessary.
17. Claimant did not exert maximum effort while being tested during his FCEs.
18. As of March 3, 2004, little pathology was present in Claimant's lumbar spine.
19. Claimant did not significantly improve after undergoing work hardening.
20. Prior to Claimant's entering the work hardening program, there was no significant difference between his level of work ability and the requirements of his job.

#### **IV. CONCLUSIONS OF LAW**

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031 and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
3. The disputed services were not shown to be reasonably required by the nature of Claimant's injury. TEX. LAB. CODE ANN. §408.021.

4. Provider failed to prove the disputed services either promoted Claimant's recovery or enhanced his ability to return to employment. TEX. LAB. CODE ANN. §408.021.
5. The disputed services were not medically necessary.

**ORDER**

**IT IS ORDERED** that the reimbursement request of Buena Vista Workskills for functional capacity evaluations and a work hardening program provided to Claimant during the period of March<sup>o</sup> 23, 2004 through May 28, 2004 is denied.

**Signed October 17, 2005.**

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**GARY W. ELKINS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**