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SOAH DOCKET NO. 454-08-3006.M5

**NORTH TEXAS PAIN RECOVERY
CENTER,**
 Petitioner

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BEFORE THE STATE OFFICE

V.

OF

**OLD REPUBLIC INSURANCE
COMPANY,**
 Respondent

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Petitioner, North Texas Pain Recovery Center (NTPRC), seeks reimbursement for a work hardening program it provided Claimant The Administrative Law Judge (ALJ) finds that NTPRC did not prove the program was medically necessary, and orders no reimbursement.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003. Adequate and timely notice of the hearing was sent to the parties on May 27, 2008. The SOAH hearing was conducted June 11, 2008, before ALJ Charles Homer III. Michael Walker, NTPRC's administrative director, appeared for NTRPC. Attorney S. Rhett Robinson appeared for Carrier. The hearing was adjourned and the record closed that same day.

NTPRC provided the work hardening program at issue from April 19, through May 7, 2004. The workers' compensation carrier, Old Republic Insurance Company (Carrier), determined that the program was not medically necessary under the rules and guidelines of the

Texas Department of Insurance, Division of Workers' Compensation (DWC), and denied reimbursement. After NTPRC submitted the matter to the DWC, it was reviewed by an Independent Review Organization (IRO), which ruled in favor of the Carrier. NTPRC appealed that decision and requested a hearing before SOAH.

II. DISCUSSION

Claimant, _____, suffered compensable injuries to his right shoulder while lifting heavy windows, part of a load he was transporting, on _____. On November 21, 2003, Claimant had rotator cuff repair surgery on the affected shoulder. At NTPRC, Claimant received a Functional Capacity Evaluation (FCE) on April 1, 2004, performed by NTPRC's physical therapist. Kenneth Walker, Ph.D., clinical director of NTRPC, performed the behavioral screening portion of the FCE. Claimant stated that his goal was to return to his previous duty. On April 7, 2004, NTPRC began Claimant on a work hardening program. In May 2004, Claimant was taken off the work hardening program because "it became apparent that he was unlikely to meet program goals."¹

The IRO based its decision on two considerations: First, it found there was no specific position of work for Claimant to return to, as required by the Official Disability Guidelines (ODG). Second, the IRO found insufficient evidence that Claimant had been screened for attributes of a successful work hardening candidate.

NTPRC presented treatment documentation and the testimony of Dr. Kenneth Walker. Dr. Walker testified about NTPRC's screening program and identified NTPRC's documentation of its screening of Claimant.² NTPRC's exhibits demonstrate that Claimant satisfied most conditions for admission to work hardening, including an adequate screening program. But

¹ NTPRC Ex. A, at 6.

² NTPRC Ex. A, at 10-18.

NTPRC did not provide evidence of a specific position of employment that the employer and Claimant had agreed on.

NTPRC acknowledges that the Official Disability Guidelines require that there be a specific job awaiting a Claimant. NTPRC argues that Claimant's goal, to return to his old position, specifies the available position of work. Dr. Walker testified that the Official Disability Guidelines do not require a written agreement between employer and Claimant concerning a specific job to which Claimant may return. The relevant excerpts from the ODG, admitted into evidence, state the requirement as follows:

Criteria for Admission to a Work Hardening Program:

...

2. A defined return to work goal agreed to by the employer & employee:
 - a. A documented specific job to return to, OR [*sic*]
 - b. Documented on-the-job training[.]³

According to NTPRC's records and Dr. Walker's testimony, the employer indicated it had light duty available, but nothing more specific.⁴ Nor is the record reasonably clear about what job Claimant had agreed to accept. Claimant's treatment records suggest that he wanted to return to full duty, which he apparently could not do, while his employer was offering him light duty. "Light duty" as offered by his employer is neither "specific employment" nor a specific job. NTPRC argues that, because work hardening is a return-to-work program, an employee's agreement to accept a position offered by his employer may be inferred from his participation in work hardening. That approach would obviate the ODG requirement.

NTPRC did not provide evidence of a specific job or job category for which it proposed to "harden" Claimant. As Dr. Walker observed, part of work hardening consists of increasing pain tolerance and alleviation of psychological barriers to returning to work. But another part

³ Carrier Ex. 1, at 9. *ODG Integrated Treatment/Disability Duration Guidelines - Shoulder Disorders* (June 10, 2008) <www.odg-twc.com/odgtwc/shoulder.htm>.

⁴ NTPRC Ex. D, at 1-2.

of work hardening is development of specific physical capabilities required to perform a specific job. Claimant indicated that he wanted to return to his former job of . There is no evidence that the employer offered that specific job or that Claimant agreed to accept light duty. Nor has NTPRC presented any evidence of compliance with Subpart (b) of the work hardening criteria, on-the-job training. Because NTPRC attempted to utilize and to be reimbursed for work hardening without meeting the ODG requirements, Carrier should not be required to reimburse NTPRC for that program.

III. FINDINGS OF FACT

1. Claimant, , a , suffered compensable injuries to his right shoulder while performing repetitive lifting of heavy objects on .
2. Before being seen by Petitioner, North Texas Pain Recovery Center (NTPRC), Claimant received conservative treatment and then surgical repair of the rotator cuff in his right shoulder.
3. NTPRC performed a Functional Capacity Evaluation (FCE) on Claimant on April 1, 2004.
4. NTPRC's FCE recommended Claimant participate in a work hardening program.
5. NTPRC provided the work hardening program for Claimant from April 19 through May 7, 2004.
6. Claimant's workers' compensation carrier, Old Republic Insurance Company (Carrier), denied reimbursement based on a lack of medical necessity under the rules and guidelines of the Texas Department of Insurance, Division of Workers' Compensation (DWC).
7. After NTPRC submitted the matter to the DWC, it was reviewed by an Independent Review Organization (IRO), which ruled in favor of Carrier.
8. NTPRC appealed the IRO decision and requested a hearing before the State Office of Administrative Hearings (SOAH).
9. Notice of the SOAH hearing was sent to the parties May 27, 2008.

10. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
11. The SOAH hearing was conducted June 11, 2008, with representatives of both NTPRC and Carrier participating. The hearing was adjourned and the record closed that same day.
12. The position to which Claimant wanted to return with his employer was as a in the heavy physical demand category.
13. Claimant's employer offered him light duty of an unspecified nature.
14. The Official Disability Guidelines require an agreed-upon job to be available before a work hardening program is begun or that the work hardening program include documented on-the-job training.
15. When NTPRC entered Claimant into its work hardening program, it did not have a specific job for which it was training Claimant that Claimant and his employer had agreed he could perform and was available to him.
16. Claimant did not receive on-the-job training.
17. Claimant did not meet the Official Disability Guidelines requirements for admission to work hardening.
18. The work hardening program provided by NTPRC for Claimant was not medically necessary.

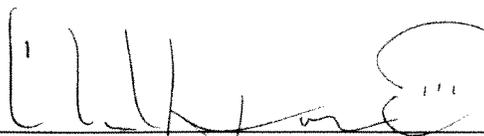
IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with Tex. Gov't 2001.051 and 2001.052.
3. Old Republic Insurance Company should not be required to reimburse NTPRC for the work hardening program pursuant to Tex. Lab. Code Ann. § 413.031.

ORDER

It is, therefore, ordered that Old Republic Insurance Company is not required to reimburse North Texas Pain Recovery Center for the work hardening program provided Claimant on the disputed dates of service.

SIGNED August 20, 2008.

A handwritten signature in black ink, appearing to read 'C. Homer III', written over a horizontal line.

**CHARLES HOMER III
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**