

Reply to the attention of:

APR 23 2008

COPY



Mr. David Bridges
Nucor-Yamato Steel Company
Post Office Box 1228
Blytheville, Arkansas 72316

Dear Mr. Bridges:

Thank you for your January 10, 2008 letter to the Occupational Safety and Health Administration (OSHA) regarding the recordkeeping regulation contained in 29 CFR Part 1904 – Recording and Reporting Occupational Injuries and Illnesses. In an effort to provide you with prompt and accurate responses, we developed and continue to refine, a set of Frequently Asked Questions (FAQ), in addition to maintaining a log of Letters of Interpretation (LOI) on the OSHA Recordkeeping website.

Your letter requests guidance on several issues related to the definition of “medical treatment” as used in OSHA’s recordkeeping regulation. For purposes of Part 1904, medical treatment means “the management and care of a patient to combat disease or disorder.” This section of the recordkeeping regulation also states that first aid, as defined by Part 1904(b)(5)(ii), does not fall within the definition of medical treatment. OSHA also explained in the January 19, 2001, preamble to the final rule revising the Part 1904 regulation that the list of first aid treatments included in Section 1904.7(b)(5)(ii) is comprehensive. This means that any treatment not included on the list is not considered first aid for purposes of Part 1904. See, 66 Fed. Reg. 5984.

Please keep in mind that if a treatment is administered as a purely precautionary measure to an employee who does not exhibit any signs or symptoms of an injury or illness, the case is not recordable. For a case to be recordable, an injury or illness must exist. OSHA’s regulation at 29 CFR Part 1904.46 defines an injury or illness as an abnormal condition or disorder. If an employee exhibits signs or symptoms of an injury or illness, and that injury or illness is considered work-related as defined by 29 CFR 1904.5, the administration of medical treatment makes the case recordable.

Question 1

Is a case recordable if an employee voluntarily visits the company physical therapist with a complaint of muscular-related soreness or pain, and the physical therapist only engages in observation and diagnosis?

Response 1

No. For purposes of Part 1904, medical treatment does not include visits to a physician or other licensed health care professional for observation or counseling. See, Section 1904.7(b)(5)(i)(A). Likewise, Section 1904.7(b)(5)(i)(B) states that medical treatment does not include the conduct of "diagnostic procedures," such as x-rays or blood tests, including the administration of prescription medications used solely for diagnostic purposes.

Question 2

After the company physical therapist conducts the observation or diagnosis, are the following considered first aid or medical treatment for OSHA recordkeeping purposes: hot and cold therapy; a wrap; massage; electrical stimulation; or therapeutic exercise/technique by instruction or demonstration?

Response 2

Section 1904.7(b)(5)(ii)(E) states that hot and cold therapy is first aid. Examples of hot and cold therapy include compresses, soaking, whirlpools, and non prescription skin creams/lotions for local relief. See 66 Fed. Reg. 5989. Section 1904.7(b)(5)(ii)(F) provides that "using any non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc." is considered first aid. However, Section 1904.7(b)(5)(ii)(F) also states that the use of devices with rigid stays or other systems designed to immobilize parts of the body (e.g., splints or casts) are considered medical treatment for OSHA recordkeeping purposes. Section 1904.7(b)(5)(ii)(M) states that the administering of "massage" to treat an injury or illness is first aid and not recordable. However, Section 1904.7(b)(5)(ii)(M) also states that "physical therapy" or "chiropractic treatment" is considered medical treatment.

"Electrical stimulation" is not on the first aid list and is therefore considered medical treatment for purposes of OSHA recordkeeping. Similarly, "exercise" is not on the first aid list. During the 2001 revision to the injury and illness recordkeeping regulation, OSHA considered and expressly rejected adding "exercise, performed either at home or at work," to the first aid list. See, 66 Fed. Reg. 5992.

Question 3

Is a case recordable if a physician writes a prescription for an employee's physical therapy, consisting of exercise and functional training in self-care and the employee requests guidance from the company's physical therapist in fulfilling the prescription?

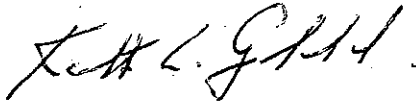
Response 3

Physical therapy is not on the first aid list, and is considered medical treatment for purposes of OSHA recordkeeping. In the situation described in your letter, once the prescription has been written, medical treatment has been provided and the case must be recorded. See 66 Fed. Reg. 5987. You should also know that Section 1904.7(b)(5)(vi) provides that a case is

recordable even if the injured or ill employee does not follow the recommendation for medical treatment from the physician or other licensed health care professional. This means that when a physician or other licensed health care professional recommends a treatment that is not on the first aid list, the case is recordable.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statute, standards, and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep appraised of such developments, you can consult OSHA's website at <http://www.osha.gov>.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith L. Goddard". The signature is fluid and cursive, with a large initial "K" and "G".

Keith Goddard, Director
Directorate of Evaluation and Analysis