

WHAT DO YOU REALLY NEED TO KNOW ABOUT TESTIFYING IN WORKERS' COMPENSATION CASES?

ALAN BOUDREAU, JD
CHRISANN SCHIRO-GIEST, PhD, D-ABVE
STEVE SEDLACEK, MS, RPT

NUANCES OF TESTIMONY IN WORKER'S COMP CASES

- HOW TO PREPARE FOR COURT:
- You are an expert – Your opinion counts.
- Preparing for Court = Preparing to defend your opinions.
- Providing VR services for injured worker – Understand your State's Workers' Comp Law.
- Know the elements necessary to establish the need for VR – Let the law be a guide for interviewing, formulating a plan, and preparing your report.
- Understand the details of the accident, the course of medical care, discharge diagnosis, and physical limitations.
- Recommended you review the treating physicians' medical records.
- Review the Physical Therapy records, length of therapy, the progress, and condition at discharge.
- Following physical therapy, a functional capacity evaluation is often performed.
- Compare the FCE findings and opinions with the attending physician's. Physician may add further restrictions.
- Review and understand the occupational therapists' opinion regarding the workers' ability to return to his job.
- Review the DOT job description with client. Don't rely simply on the DOT, analysis should come from a vocational expert.

ASSESSMENT ISSUES IN WORKERS' COMP PRACTICE

- The measurement of a persons function is paramount to determine return to work status, what accommodations are needed or what other forms of employment might the injured worker be able to obtain.
- Functional Capacity Evaluations (FCE) were designed for this purpose.
- Maximal Medical Improvement (MMI) should be reached before the FCE is administered. One criteria for MMI is that there is no more objective improvements being made in PT.
- All too often, an IME or UR, determines MMI too early.
- Does the FCE measure up? Many current FCE's that are used are 4 hour test performed in one day by a therapist, or athletic trainer who went to a weekend course. The therapist takes measurements/observations and enters it into a computer. The FCE software then spits out a report. Does the therapist understand and agrees with the research and methodology behind the software generated report? If no, then who is actually the author? Would the therapist meet the standards of being a professional witness? Some FCE companies actually tell the therapist at their courses to contact them if they are ever deposed. Worse yet, does the physician understand and agree with it?
- EX: Reliability of pain using heart rate or the Ransford Pain Drawing
- Did you get the right answer but to the wrong question?
- Many FCE's rely on the DOT. The DOT give generic strength classifications. It does not tell you exactly how many times, what type of object or what position the person is in when having to lift.
- A very detailed job description is needed for the therapist to get you a good FCE.
- Should be done over several days.
- The Missouri Rule: If I did not see it, how do I know the injured worker can do it?
- Compare return to sport for the athlete as compared to return to work for the injured worker.

NUANCES OF TESTIMONY IN WORKER'S COMP CASES

- DOES THE FCE HAVE SHORT-COMINGS?
- Be sure to note other physical conditions or psychological problems.
- Age, education, work history, transferable skills should be noted. Also any military service.
- Other vocational variables: childcare, drivers' license, car, etc.
- Report should contain your summary of interviews, meetings, file materials, and your opinions. A reasoned opinion is persuasive.

ASSESSMENT ISSUES IN WORKERS' COMP PRACTICE

- INTEGRATION:
- Before you testify, go through the questions with the attorney who call you to the stand.
- When you testify, know your opinions. Know the basis for them. Follow the lead of your attorney.
- If an objection is made during your statement, stop. The judge will rule on the objection. The attorney will repeat the question. You then can answer the question.
- When both attorneys have asked you questions you will be discharged. Leave quietly.
- Preparation, Preparation, Preparation!

ASSESSMENT ISSUES IN WORKERS' COMP PRACTICE

- Why is the picture of the injured workers' ability to return to work so fuzzy?
- Attorney's not getting specific information to properly settle claims.
- VR Specialist is maybe giving all she's got, but is it it not accurate.
- The FCE: not answering the correct questions.
- Are the current FCE's giving proven job specific validity for the needed tasks?

INTEGRATION OF MEDICAL AND VOCATIONAL ISSUES

- SOLUTION:
- VR Specialist gets a specific job description.
- If worker passes the physical testing, then a more in-depth FCE is given (including how the pain response alter function).
- If not a job match:
 - What accommodations are identified, can the job make those accommodations?
 - If not, then back to the VR Specialist to find a different job match
- Attorney's settle the case.

SIMILARITIES & DIFFERENCES ACROSS STATES

- Recent Changes in Illinois Law
- How to Know what is changing in your State

HOW TO PREPARE REPORTS AND TESTIMONY

- If you are the VR counselor providing services, understand the legal elements necessary to establish the need for Voc. Rehab. in your State. Understanding the law that will be applied to your case study, will aid you in your interview, case handling and assist you with writing a report. Do not mix the criteria for federal benefits such as Social Security with the eligibility criteria for your State's workers' compensation law or State or Federal labor laws. They likely differ.
- When you interview the client ask permission to take his photograph and attach it to your file. If he is represented by legal counsel, then you must seek permission from his attorney first. This photo will assist your memory of your client and recall of the case. Explain to his attorney the photo is not necessary but just a self-help tool for you to help recall the case study at a later date.
- Being jobless is one of the greatest fears anyone will have. Often the person becomes overwhelmed. I often hear, "this is all I know." "I work hard and now I'm going to be set afloat?" "No, no, I'm a _____ mechanic, that's all I know. I can't go work at the grocery store." Panic sets in. He is proud, he doesn't want to be with you. Is he being uncooperative?
- Being prepared to express your opinion is key.

***CASE STUDY**

- ALAN
- CHRIS
- STEVE

• Q U E S T I O N S ??
