

Impairment vs Disability Mini-Workshop

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Work Related Injuries Workshop 2018

*Work Related Injuries Workshop
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Back to the Basics. What is Disability? What is Impairment?

Start from the beginning: Ideal trajectory for injured worker

Worker
gets
injured

Worker gets
treated AND
accommodated

Worker
sees
healthcare
provider

Worker
improves;
reaches
MMI



Start from the beginning: More complicated injury, impairment rating and award made

Worker
sustains
fracture

Successful
course;
reaches
MMI; rated

Worker sees
surgeon;
needs
operation

Employer provides
Reasonable
Accommodation



Start from the beginning: When things go awry for injured worker

Worker gets injured

Worker not properly diagnosed; NOT accommodated

Worker doesn't see healthcare provider in timely manner

Worker does not improve; not working



Concept of Work Disability

Social Security Administration (SSA)

- Inability of an individual to take part in “substantial gainful activity due to any medically determinable physical or mental impairment that can be expected to result in death or to last for a continuous period of not less than 12 months.”

WHO's International Classification of Functioning, Disability, and Health

- Looking beyond medical diagnosis and impairment: focused on assessing the relationships between a person's functioning and the demands of work and the immediate working environment.

Americans with Disabilities Act (ADA)

- A civil rights law which prohibits employers from discriminating on the basis of disability.
- Limits employers' access to medical information, and imposes confidentiality requirements.
- Provides people with disabilities the right to reasonable accommodations at work.

Concept of Work Disability

American Medical Association (AMA)

- Activity limitations and/or participation restrictions in an individual with a health condition, disorder, or disease.

American College of Occupational and Environmental Medicine (ACOEM)/ MD Guidelines

- **Discretionary disability**
-Associated with diagnosable medical conditions that may have created some functional impairment but left other functional abilities still intact.
- **Unnecessary disability**
-Results from delayed medical care, inadequate medical care, or failure to address non-medical issues due to medicalization or reluctance on the part of stakeholders.

Concept of Impairment

Social Security Administration (SSA)

- Physical or mental impairment "must be established by medical evidence consisting of signs, symptoms, and laboratory findings—not only by the individual's statement of symptoms."

WHO's International Classification of Functioning, Disability, and Health

- "Any loss or abnormality of psychological, physiological or anatomical structure or function."

American Medical Association (AMA)

- From the 6th edition of the *Guides to the Evaluation of Permanent Impairment*: "A significant deviation, loss, or loss of use of any body structure or body function in an individual with a health condition, disorder, or disease."

Work Comp Definitions of Disability and Impairment

- Disability: the degree to which an injury affects a person's ability to perform any task for which the worker is reasonably suited by training, education and experience.
 - Partial Disability
 - Total Disability
- Impairment: refers to the effect of the injury upon a person's ability to perform basic life functions.

Work Comp and Impairment

- Once MMI reached: health care provider determines if there is any permanent physical damage to your body as a result of your injury or illness.
- Depending on the state (using AMA guidelines or other guidance document), an impairment rating will be given.
- The impairment rating describes the degree of permanent damage to your body as a whole.
- In State of MA: Guidelines for calculating benefits (under MGL c. 152§36 for loss of function, scarring and, disfigurement)

Where does the ADA fit in with Work Comp?

- An employer is generally required to provide a reasonable accommodation for a qualified employee with a disability so that the employee can safely perform his or her essential job functions (unless doing so would cause undue hardship for the employer in the form of a significant difficulty or expense).
- When employers/claims organizations postpone the reasonable accommodation interactive process until an injured worker's medical condition has reached MMI, it may be violating the ADA.



Where does the ADA fit in with Work Comp?

- Only injured workers who meet the ADA's definition of an "individual with a disability" will be considered disabled under the ADA, regardless of whether they satisfy criteria for receiving benefits under workers' compensation or other disability laws.
- A worker also must be "qualified, " with or without reasonable accommodation, in order to be protected by the ADA.
- A worker should be able to perform essential job functions (that is, not exempted from essential job functions).

Consider ADA at these timepoints:

1. Before the person is injured.
2. When person is injured.
3. While recovering out of work due to injury.
4. When the individual has exhausted his or her leave and workers' compensation benefits, and is still unable to return to the original position (even with an on-the-job reasonable accommodation).
5. Is an injured person a disabled person under the ADA?

Modified Work

- Light Duty
- Limited Duty
- Modified Duty

Can be a Temporary Position

Can be a Permanent Position

Can be Full or Part-Time Work



Transitional Work

- Is Temporary In Nature
- Can Be Available for a Specified Period of Time
- Is Designed for the Employee Expected to Return to Work at Full Duties
- Can be Full Time or Part Time



Transitional Work and the ADA (from EEOC)

- Workers who were previously fully functional but become injured or ill for any reason while employed may have acquired a (temporary or long-lasting) disability per the ADA
- If so, the injured worker does have a right to a temporary or permanent reasonable accommodation by the employer (to allow them to perform the essential job duties).
- The employer can voluntarily go BEYOND what the ADA requires (e.g., exempting the employee from essential job duties or providing temporary alternative duty of limited duration). If so, it should be made clear to all parties that this temporary transitional work is time-limited and provided for therapeutic purposes

Case

(courtesy of Dr. Christian)

Case : “Charlie”

- 35 year old right hand dominant male
- Occupation: driver of front end loader
- Employer: national trash hauling company, multiple facilities
- Mechanism of injury: He was cranking on a bolt with his right arm in a flexed position when he felt a pop in the anterior part of his right shoulder.

Case : “Charlie” – Time Course

- Day 0 Date of injury – 8/23/2013. Charlie does not seek care and continues to work.
- Day 30 1st medical visit and beginning of modified duty period. Occ doc diagnoses rotator cuff sprain/rupture and orders X-rays and MRI/arthrogram. Work status: Release to modified duty; no overhead work, no use of right arm or hand. – 9/23/2013 (Note: cannot perform essential job duties).
- Day 59 Continuing conservative care by occ doc. PT underway. First prescription for opioid pain relief –work status: “use of R arm, no safety sensitive job duties, and no driving/ operating machines.” – 10/21/2013

Case : “Charlie” – Time Course

- Day 74 Occ doc requests orthopedic consult due to failure of conservative therapy including 6 visits of PT which caused increased pain – 11/05/2013
- Day 89 Continuing conservative care by Occ doc. No longer working because employer only allows 6 weeks of modified duty – 11/20/2013 +
- Day 146 Initial evaluation by orthopedist. Clinically, he has a rupture of long head of biceps tendon with signs and symptoms of a subscapularis tear and impingement. ++

Case : “Charlie” – Time Course

- Day 173 12 weeks of work absence = FMLA is no longer protecting Charlie's job – 2/12/2014 +++
- Day 185 Charlie tells case manager: “My mobility is minimal, my pain is constant and my dosage is as follows: 6 hydrocodone/day plus Naprosyn. Case manager writes: employer unable to accommodate. – 2/24/2014
- Day 186 Surgery – Rotator cuff surgery with repair of subscapularis and biceps tendon – 2/25/2014 *
- Day 224 4 weeks post op. Surgeon writes: “Unable to work for about 3 mos” –4/4/2014

Case : “Charlie” – Time Course

- Day 349 23 weeks post op. Surgeon writes: Estimate release to modified work in 6-8 weeks – 8/7/2014
- Day 368 26 weeks post op. In a peer to peer call, physician case manager and surgeon agree that Charlie will be released to transitional work. Adjuster contacts employer and is told again that no light duty is available. – 8/26/2014.
- Day 409 31 weeks post op. Surgeon declares him at MMI and released him to full duty. – 10/6/2014 **

Case : “Charlie” – Time Course

- Day 412 Charlie’s note to his case manager (day 3 of full duty): I’m having a hard time but I am managing. I should've waited to go back. I've been having a lot of pain. Not excruciating, but enough that lets me know I wasn't quite ready. Hoping that my strength will come back ASAP as my job is very physical.
- Day 425 Charlies says to his supervisor: I am having trouble. I don’t think I can keep lifting this tray of (heavy, expensive) parts onto the belt. I am afraid I’ll drop it. My pain makes me weak.

Case : “Charlie” – Discussion Questions

1. When did the clock of work disruption actually start? DOL preceded 1st “official” day of modified duty by 30 days.
2. Can the employer’s policy allow extensions for clear medical reasons? Can it start over after surgery?
3. What can be done when a lower level supervisor says no, but the policy might allow exceptions?
4. The worker’s belief he can do his job appears to have trumped documented evidence of inability to meet essential job demands. Is this permissible?
5. How do you think this case turned out?
6. Could the events of day 368, 409, 412, and 425 been handled more appropriately?

Thank you!