

February 24, 2012

■■■ ■■■, Esq.

■■■■■ & ■■■■■, LLP

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RE: ■■■■ ■■■■

WCB: ■■■■■■

Employer: ■■■■■■■■■■■■

DOA: 2/12/7

Dear Attorney ■■■■:

This report is being furnished per your request, as outlined in your letter of 2/16/12, concerning the workers compensation claim of Mr. ■■■■ ■■■■.

In compiling this report, I reviewed the multiple medical records which you furnished with your letter of 2/16/12, as well as the functional capacity report which you subsequently obtained and which you furnished at the date of my vocational interview with Mr. ■■■■ on 2/20/12, at your office.

I will not list all the medical records reviewed, but rather, only those which I cite/ reference in this report, as I do not believe that a review of every document, is necessary to formulate a vocational assessment of Mr. ■■■■'s capacity to hold a job in the competitive labor market.

Medical records being referenced for this vocational analysis are:

1. 2/9/11: Dr. ■■■■, Neuro-Surgeon who performed a spinal fusion on 3/27/09, following about 2 years of a combination of conservative treatment for low back pain, with pain radiating down both extremities, but more so on the l. side. Dr. ■■■■ indicates Mr. ■■■■ has "persistent low back pain, going down the l. leg," with the patient having returned to work in an office position, using a laptop. Mr. ■■■■ had been approved to return to work in a "routing coordinator", position, with his pre-injury employer, ■■■■■■■■■■.

Dr. ■■■■ noted that sitting/ standing for prolonged periods of time "cause severe pain symptoms", with the patient needing to sit in a recliner or lay in bed afterwards, not being able

to participate in activities with his children. Also, that Mr. [REDACTED] gained 40 lbs. since his work injury, as his level of physical activity was significantly lessened due to his work injury.

Mr. [REDACTED] was previously employed by [REDACTED] as a CDL driver, in which he was required to unload truck contents at various customer sites, such as restaurants. Lifting was up to 100lbs. with long distance driving also required. He also worked for [REDACTED] previously as a warehouse worker, with lifting up to 100lbs. as well and as documented in a job description of this position with the insured, which is attached to this report.

2. IME, dated 2/12/9, of Dr. [REDACTED] [REDACTED], Neuro-Surgeon, who noted that Mr. [REDACTED] was "mildly overweight and appeared very credible", with Dr. [REDACTED] agreeing that the proposed surgery for disc herniation at L2-3 appeared appropriate after conservative measures failed to produce pain relief.
3. IME, of Dr. [REDACTED], indicating that "the only real improvement" post 3/27/9 spinal fusion was "that it was easier to lay in bed", otherwise "marked back pain, with radicular symptoms of legs". Dr. [REDACTED] indicated that "amazingly ", Mr. [REDACTED] returned to work 3 weeks post-surgery, with the IME Examiner noting that "it generally takes 12 to 18 months to do so".
4. Report of 5/3/11, from treating physician, Dr. [REDACTED] [REDACTED], indicating diagnosis of "lumbar syndrome with bilateral radiculopathy", l. leg pain worse than right. Dr. [REDACTED] reports that Mr. [REDACTED]'s "ability to sit is progressively becoming less", with the claimant coming home from work, and needing to lay down and take pain medication, and unable to participate in activities with his children. Dr. [REDACTED] indicates that Mr. [REDACTED] was not capable of returning to work in the sedentary job as a routing coordinator and would be applying for SSD.
5. A 3<sup>rd</sup> IME report compiled by Dr. [REDACTED] [REDACTED], Neuro-Surgeon, indicating a diagnosis of "lumbar radiculopathy; lumbar degeneration; spine disease". Chief complaint was described as "low back pain, 24/7, with l. leg pain & numbness to ankle". Pain was described as "worse when active" with activity", with a disability rating as "marked, 75% disabled".
6. Report of 6/17/11, of Dr. [REDACTED], indicating Mr. [REDACTED] being "unable to work indefinitely, being totally disabled".
7. Report of 9/22/11, of Dr. [REDACTED] [REDACTED] [REDACTED], Orthopedist, advising of diagnosis of "S/P contusion of r. shoulder and upper r. arm, with tendonitis & bursitis".
8. Report of 12/16/11 of Dr. [REDACTED], advising that Mr. [REDACTED] is to "avoid reaching, pushing, pulling and no lifting over 10 lbs." Also, that narcotic medication is for severe pain". Also, that the claimant has difficulty sleeping, due to difficulty finding a comfortable position and has "burning pain of l. leg and now has pain at the base of the neck" and is recommended to be furnished with an adjustable bed, which has yet to be authorized by the carrier.
9. A functional capacity report, dated 3/17/10 from [REDACTED]. This assessment indicates that Mr. [REDACTED] is capable of medium work and "is a good candidate to return to his previous position as a truck driver." It is also noted that the claimant would be able to lift up to 30 lbs. Medium level demand as defined by the Dictionary of Occupational Titles involves lifting up to 50 lbs., thus the FCE writer doesn't depict medium work as it is actually defined. Further, Mr. [REDACTED] advised that he lifted up to 100lbs. in actually performing unloading

of the truck at customer sites as part of his responsibility. This would be reflective of work designated as Heavy in demand, per the DOT.

The FCE also indicates that Mr. [REDACTED] needs to also “change static position every 45-60 minutes”. This opportunity was not available as a driver with [REDACTED] as well. Thus the FCE writer’s assessment is not accurate with regard to the claimant’s capacity to return to his pre-injury position, even based upon his own evaluation of strength and capacity, which is far different of treating physicians Dr. [REDACTED] or Dr. [REDACTED], of whom assessed the claimant’s capacity as sedentary at most and have had a treating relationship over an extended period of time, nor the IME Examiner, Dr. [REDACTED]’s assessment of the claimant’s capacity.

The FCE also indicates that Mr. [REDACTED]’s position as a truck driver for [REDACTED] involved working “14-16 hour days”. The FCE writer states that Mr. [REDACTED]’s “symptoms increase with driving, walking, standing, getting up from a chair, bending at the waist and lifting”.

This acknowledgement would clearly be incongruent with the claimant’s ability to perform his position as a truck driver with [REDACTED].

In the vocational interview with Mr. [REDACTED], I learned that the claimant lost an income of about \$1,450/ week, by not be able to continue to perform the sedentary position as a routing coordinator, which [REDACTED] offered the claimant after his work injury, in light of his inability to perform his pre-injury position as a truck driver. Mr. [REDACTED] noted that he enjoyed the position and was commended by his employer regarding the quality of his work, both as a driver and as a routing coordinator.

Although the routing coordinator position was sedentary in demand, but it should be clearly noted that the employer required individuals in this position to work more than an eight hour day, should work circumstances require such. Mr. [REDACTED] noted that he frequently worked 10 or more hours per day, due to employer needs. He also occasionally received calls at home, when he would need to use his laptop for logistics purposes. When he did work over 8 hours, he would find his symptoms to require more pain medication and lying down, when he returned home. These circumstances lead to his treating physician Dr. [REDACTED] deeming him no longer able to perform the sedentary position with [REDACTED].

I also learned that the claimant was awarded Social Security Disability benefits as of the recent past, even though classified as a “younger individual”, i.e. under 50 years of age, and without being required to appear at a SSD hearing. Given my 13 years of experience as a VE in thousands of SSD hearings, I find such a determination rarely made without a hearing. Thus, SSA concluded that even as a younger individual, with past rele[REDACTED]t work of a sedentary nature, that a disability determination was made that the claimant was able to perform even a sedentary position on a full time basis in the competitive labor market.

Another vocational factor in this case relates to Mr. [REDACTED]'s language ability in English, his second language. He spent a substantial portion of his youth in Puerto Rico and his parents spoke Spanish in their home. When Mr. [REDACTED] was recently contacted about the possibility of serving for court duty, he was excused on the basis of limited English language skills. I needed to ask him to repeat several statements in the vocational interview in order to confirm my understanding of his speech.

When asked what factors prevent him from being able to perform a sedentary job, Mr. [REDACTED] noted that:

1. He noted that it was not uncommon for his work day as a routing coordinator to be in excess of 10 hours/ day, with his pain becoming very severe at such times.
2. He noted that when he does not take the pain medication, that he needs to lay down every two hours in order to reduce pain in his low back & pain radiating down the l. leg in particular. He described the pain as "burning".
3. He noted that even with a sit/ stand option at work at [REDACTED], Mr. [REDACTED] noted that this was not possible for him to retain the position eventually, due to his pain symptoms, with Dr. [REDACTED] finally deeming Mr. [REDACTED] as unable to perform the sedentary position with [REDACTED].
4. Mr. [REDACTED] noted that headaches were also a factor when he was working 40 and more hours per week for [REDACTED], as his pain would contribute to this factor.
5. Mr. [REDACTED] noted that his current pain medication is Hydrocodone, which causes side effects of drowsiness and difficulty maintaining concentration, persistence and pace required by the sedentary job with [REDACTED].

Following my record review, vocational interview with Mr. [REDACTED], who appeared to be very credible, as IME Examiner, Dr. [REDACTED] opined, review of job descriptions, I believe within a reasonable degree of vocational certainty that Mr. [REDACTED] is not capable of performing the routing coordinator position at [REDACTED], nor any other position in the competitive labor market.

Should there be any questions concerning this report, do not hesitate to contact me at [REDACTED].

Sincerely,

[REDACTED],  
CRC, LPC, LSW  
Vocational Expert