

VOCATIONAL REHABILITATION IN WORKERS' COMPENSATION

National Tea vs. Illinois Industrial Commission 97 ILL 2d 424, 73 ILL Dec. 575

- 1. “. . . *sustained an injury which caused a reduction in earning power and there is evidence Rehabilitation will increase his earning capacity . . .*”
 - ✓ Certified Rehabilitation Counselors do not evaluate cases unless there are diminished physical capacities
 - ✓ The diminished capacities almost always result in “*loss of trade*” or inability to return to work at full former job functions
 - ✓ Evidence rehabilitation will increase earnings is a multifaceted issue to establish

National Tea

2nd Component

- *“Related factors concern a claimant’s potential loss of job security due to a compensable injury”*
- ✓ Given our world in 2018, some would say *“what is job security”*. With the breaking of unions, corporate takeovers, and technology eliminating human labor – what is job security?

National Tea

3rd Component

- *“... and the likelihood he will obtain employment upon completion of his training”*
- ✓ Labor Market Surveys and Bureau of Labor Market Statistics can help establish this variable

National Tea

4th Component

- “. . .the relative cost and benefit to be derived from the programs”
- ✓ After establishing a training goal, identifying the actual cost of training programs is easily calculated by the Rehabilitation Counselor
- ✓ The possibility of approximating former wages as the “*benefit*” can be done through the Labor Market Survey and Bureau of Labor Market Statistics information, but cannot be guaranteed

National Tea

5th Component

- *“... the employee’s work life expectancy and his ability and motivation to undertake the program”*
 - ✓ Work life expectancy is statistically established
 - ✓ Motivation is a critical unverifiable variable
- One can appear to qualify, yet cannot know if they will have the wherewithal to complete the training program
- This is also true for the participation in a self-directed job search program

National Tea

6th Component

- “. . . prospects for recovering work capacity through medical Rehabilitation or other means”
- We see a pattern of medical procedures recommended, but not actualized prior to referral for vocational services
- As the self-directed job search program is introduced and people start the return to work process, individuals make the decision to have the recommended treatment
 - ✓ Anecdotally, approximately 15 to 20 % of the cases we see, after voc starts, people decide to have the surgical procedure they have not previously pursued
 - ✓ Rarely do Certified Rehabilitation Counselors encounter cases where actualization of a procedure facilitates return to work at full former employment

National Tea

7th Component

- *“Rehabilitation awards have been deemed inappropriate where the claimant successfully underwent similar treatment in the past”*
- ✓ As a Certified Rehabilitation Counselor with over three decades of experience assisting individuals with disabilities with services for them to secure employment on their own behalf, I have never seen or heard of this variable impacting a rehabilitation plan

National Tea

8th Component

- “. . . where he received training under a prior Rehabilitation program which enabled him to resume employment”
- ✓ Seems to be the same as above, 7th component

National Tea

9th Component

- *“... where he is not trainable due to age, education, training and occupation”*
 - ✓ This is one of the more common rejections by payers
 - ✓ It is highly advisable to do the National Tea Evaluation as vocational placement services are initiated to address this variable
 - ✓ Doing so can maximize the outcome if training is determined to be viable and mitigate exposure as well

National Tea

10th Component

- *“... and where claimant has sufficient skills to obtain employment without further training or education”*
- ✓ This is the whole point of National Tea Evaluations, to determine which, upskilling through training or vocational placement services, is an appropriate rehabilitation plan in relationship to the National Tea variables

CRITTENDEN VS. ILLINOIS WORKERS' COMPENSATION COMMISSION 2017

IL App (1st) 160002WC

- *“...the Court held that in cases of diminished earning capacity, the Commission must identify an occupation that claimant is able and qualified to perform, and using functional and vocational evidence, determine an average wage for that occupation for purposes of establishing a wage differential calculation”*
- If not, vocational placement services and evaluation of training potential in relationship to National Tea vs. Illinois Industrial Commission 97 ILL 2d 424, 73 ILL Dec. 575
- Labor Market Surveys will be appropriate and necessary to identify a reasonable projection of earnings capacity
- Determining a wage utilizing the Bureau of Labor Market Statistics or *“split the difference”* of the Labor Market Survey findings
- Open jobs vs. the availability of jobs

Labor Market Survey Call Sheet

- DATE
- COMPANY
- ADDRESS
- PHONE
- CONTACT
- TITLE
- POSITION
- WAGE
- EXPERIENCE
- EDUCATION
- PHYSICAL REQUIREMENTS
- REASONABLE ACCOMMODATIONS
- SKILLS
- BENEFITS
- FULL/PART TIME
- TOTAL EMPLOYEES
- JOB OPENINGS
- PAST 6 MONTHS
- FUTURE 6 MONTHS
- TOTAL TARGETED POSITIONS

Labor Market Surveys

- Purpose and Process
- What does a nurse do?
- Can a Labor Market Survey establish:
 - ✓ Pre-requisite skills, knowledge, education, experience, and training
 - ✓ The physical demands of the job
 - ✓ Are accommodations possible?
 - ✓ Remuneration and benefits

The Veracity of Labor Market Surveys

- What is enough or too little information to be included
- How are job titles and potential employers chosen?
- Which information *“makes the cut”*
- Utilizing Bureau of Labor Market Statistics for remuneration and job availability

William GROSS, Appellant, v. ILLINOIS WORKERS'
COMPENSATION COMMISSION et al. (Freeman United Coal
Mining Company, Appellees).
No. 4–10–0615 WC.

- *“Expert opinions must be supported by facts and are only as valid as the facts underlying them”*
- All of you should objectively forward all available pertinent records; funneling only records supporting your theory is counter productive
- You should direct your expert to address all presenting rehabilitation variables

Employability vs. Placeability

- As lawyers who graduated law school and passed the bar, you are employable
- The law school you graduated from, your grades, and how many times it took you to pass the bar define your placeability
- For our purposes, how one dresses, physical presentation, age, gender, available physical capacities, and skills, knowledge, education, experience, and training define placeability
- Motivation is the most important factor in placeability

Diligent Job Search

- How does the job seeker's activities meet a loosely defined and interpreted, applicable "to us" standards of good faith
- Focused on jobs the seeker can perform
- Quality vs. Quantity
 - ✓ Documenting 500-700 unsophisticated irrelevant contacts, no interviews or job offers, or the wrong offers prove nothing
- Diligent vs. valid

Section 8a

Who Picks Vocational Rehabilitation

- W.B. Olson, Inc. v. Illinois Workers' Compensation Comm'n, 2012 IL App (1st) 113129WC
 - ✓ Youngblood v. Addus Health Care & Rate Adjustment Fund
 - ✓ Scoville vs. D.C. Electric
 - ✓ Nauyalis vs. Area Erectors
- There is a growing body of findings that confirm 8a language

Credentials

- The Vocational Counselor **should** be a Certified Rehabilitation Counselor (CRC) and a Licensed Professional Counselor (LPC) or Licensed Clinical Professional Counselor (LCPC)

Certified Rehabilitation Counselors' Responsibilities

- Certified Rehabilitation Counselors' responsibility to perform a good faith effort to actually facilitate safe and optimal return to work
- Certified Rehabilitation Counselors' code of ethics states the client is the worker with diminished capacities, not any of the other parties
- Programs that require an individual to go to the employers site or rehabilitation vendors' office for 15 minutes to drop off their Job Seeker Forms and pick up job leads provided by the rehabilitation person are not a valid vocational program or plan

Telephonic vs. Direct Contact Vocational Services

- Personal contact to teach an individual the self-directed job search program, job seeking skills, the protections afforded through the Americans with Disabilities Act, and the other skills in a vocational placement program is essential
- Unlike Wyoming or Utah, in Illinois, there are Certified Rehabilitation Counselors throughout the state that can meet with the job seeker

Opioids and the Industrial Disabled

- The most insidious change in my life's work is pharmaceutical companies marketing and doctors prescribing protracted long-term use of opioids
- Aside from the horrendous loss of life and productivity, from dependence and addiction, is the negative labor force impact of opioids
- Just one example, there are over 1 million job openings in America for truck drivers
- Dr. Ronald Pawl foresaw this problem in the late 1980's as one of the forefathers of pain management treatment
- Dr. Pawl would only prescribe opioids for trauma or post surgery for mere weeks
- Post-acute pain, it was recommended patients have physical therapy, biofeedback, and adjustment counseling to address chronic pain

OPIOID ALTERNATIVES

- Methadone (opioid medication) and Suboxone (combination of buprenorphine and naloxone), in combination with Buprenorphine (narcotic analgesic) and Naltrexone (opioid antagonist) helps craving and withdrawals
- Cannabidiol (CBD) is a non-psychoactive derivative of marijuana with no tetrahydrocannabinol (THC)
- A 2 ounce bottle is approximately \$70.00 and can last about two weeks
- Electronic stimulators, such as H-Wave
- Biofeedback

Medical Marijuana and Return to Work

- This evolving issue has trouble written all over it
- To date, Illinois legislation, nor the Department of Labor, have addressed *“discrimination in hiring”*
- Zero tolerance may be redefined
- Like English speaking ability, this will limit access to employment beyond the effect of diminished physical capacities

ETIOLOGY OF A NON-STATUARY PERM TOTAL DECISION

- Anecdotally, I am sure the claims management process creates a significantly high number of these negative outcomes
- The delay, deny, question claims management philosophy facilitates odd lot and permanent total outcomes
- Objective, proactive problem solving medical and vocational claims management and rehabilitation services are essential to limiting this human loss

Questions

Additional information is provided in the printed material you are receiving today.

Thank you!

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