Fitness For Duty For Employers: A Legal and Medical Perspective

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Fitness For Duty

- Post-Offer Physical Examinations
- Return To Work
  - Work Related
  - Non-Work Related
- Job Transfer
- Job Performance

Case #1

- A Trucking Firm Hires Drivers
- Dock Work and Deliveries
- Maximum Lifting to 75 Pounds
- POP with Incidental Finding of Large Inguinal Hernia
- No Symptoms
What are the Restrictions on the Employer Right to Require Medical Exams?

What Can I do if I Think the Employee is Likely to be Injured or Re-injured?

What About the Employee who Refuses the FFD Exam or Refuses to Provide Medical Records?
ADA
What's New in Accommodation?

Definitions of Disability

• ADAAA expands some of the ADA’s definitions.
  • Definition of “Major Life Activity.”
    • Old Standard (defined by EEOC).
      - “Caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.”
      - Sutton v. United Airlines, Inc. Inability to work due to a disability will only be found if the employee is unable to perform a broad class of jobs. 527 U.S. 471, 491 (1999).
      - Toyota Motor Manufacturing, Kentucky, Inc. v. Williams. Major life activities are those which are of central importance to daily life. 534 U.S. 184, 197 (2002). Thus, the inability to perform a manual task would only be disabling if that manual task was of central importance to daily life.

(continues)
Rules of Construction: “Disability”

- The ADAAA requires anyone construing the definition of “disability” to utilize the following principles:
  1. The definition of disability is to be construed in favor of broad coverage.
  2. A substantial limitation of at least one major life activity is sufficient to be considered disabled.
  3. Episodic impairments and impairments in remission are disabilities if they would substantially limit a major life activity when active.
  4. The effect of mitigating measures (other than glasses) must be ignored.

Effect Upon Reasonable Accommodation

- A reasonable accommodation includes
  - making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
  - job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications or examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

What is the Employer Obligation to Adjust Work Schedule?
What is Enough Light Duty?

Who Gets Light Duty?

What is the Employer Obligation to Tolerate Poor Attendance?
Fitness For Duty

• Post-Offer Physical Examinations
• DOT
• Return To Work
  – Work Related
  – Non-Work Related
• Job Transfer
• Job Performance

FFDE Basics

• Employer is Empowered
• Information, Information, Information
• Cover Letter
• History and Physical Examination
• Medical Records
• Job Description
• Each Case is Individual

FFDE Guidelines

• Can the Employee Perform the Essential Functions of the Job?
• Does the Employee’s Medical Condition Create a Direct Threat to Their Safety & Health or to Others?
• Are Reasonable Accommodations Indicated/Available?
Post-Offer Physical

- Written Questionnaire
  - Every Sheet Reviewed with Applicant
  - Signed Off
- Complete Physical Examination
  - General Physical Exam
  - MSK Exam
- Written Job Description
  - Essential Functions
  - Physical Requirements

POP Case #1

- 48 Year Old Male, Crane Operator in Large Industrial Environment
- Suffers Seizure at Work
- 2 Year Employee, POP at Sensia
- Reviewed POP Form
- Did NOT Divulge Medical History
- Terminated

DOT Examination

- Shorter Form
- CDL and Fed Med Card
- Federal Medical Requirements
- Leeway Extended to Medical Examiner
- Public Safety
- “Your Name on the Card”
DOT Case #1

- 54 Year Old Male
- Recent 5 Vessel CABG
- Did Not Complete Cardiac Rehab
- Smoker, Diabetic, HTN, Cholesterol
- Post-Op Testing WNL
- Released to RTW with No Restrictions
- Not Cleared to RTW

DOT Case #2

- 52 Year Old Male
- Massive Heart Attack 2007
- Significant Heart Failure
- Ejection Fraction 15%
- Ventricular Assist Device
- Heart Transplant 2009

DOT Case #2 cont.

- Excellent Recovery Post Surgery
- Ejection Fraction 45%
- Multiple Biopsies with No Evidence of Rejection
- DOT Allows RTW Post-Transplant
- Medical Records, Cardiologist
- Cleared to RTW
Return To Work

• Work and Non-Work Related
• Most MD’s with No Occ Med Experience
• Medical Records
• The Devil is in the Details

RTW Case #1

• 43 Year Old Female, School Teacher
• Type I Diabetes
• Multiple Foot Surgeries for Recurrent Ulcerations
• Recent Partial Amputation
• Recurrent and Extended Time Off Work
• Allowed to RTW Fall 2011

RTW Case #1, cont.

• Physical Exam Healing Ulcers
• One Small Blister
• Reviewed Medical Records
• Spoke with Surgeon, Employer
• Agreed to “Last Chance” RTW
• Reasonable Accommodations
• Released to RTW
RTW Case #2

- 48 Year Old Male Firefighter
- Routine Examination Reveals New Heart Murmur, Bicuspid Aortic Valve
- Aortic Valve Replacement
- Post-Op Fatigue and SOB
- Medical Records
- Not Cleared to RTW

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Job Performance

- Long Term Employees
- Permanent Modified Duties
- Empathy or Legal Concerns
- Employee is Unwilling to Admit Physical Limitations

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Job Perf. Case #1

- 47 Year Old Female, Assembler
- Bilateral Knee Replacements
- RSD, Chronic Narcotic Medications
- Frequent Absences from Work
- Poor Work Performance
- Difficulty with ADL’s
- Poor Sleep
- Recommended Retirement
FFDE Summary

- Employer is Empowered
- Information
- Cover Letter
- Job Description
- Medical Records
- Each Case is Individual

Fitness For Duty Examinations
Case Studies

Case #1 Revisited

- Trucking Firm, Driver/Dock Worker
- Inguinal Hernia on Exam, Hold
- Job Description with Lifting 75 Pounds
- Cleared by PCP with No Restrictions
- Discussed with Employer
- RTW with Temporary Light Duty Restrictions
- Pending Hernia Repair
Case #2

- 18 Year Old Male, Seasonal Work as Groundskeeper
- Walking With Noticeable Limp
- Reports “Mild Case” of Cerebral Palsy
- Prior Surgery to Achilles Tendon
- Primary Symptom – Fatigue
- Did Not Have a Doctor

Case #2 cont.

- PCE, Was Unable to Squat
- Job Description
- All Weather Conditions, Landscaping
- Heavy Duty Work
- Recommended Against Hire
- Essential Functions, Safety Threat

Case #3

- 45 Year Old Male Alcoholic
- Seizure at Work
- Hospitalized for 6 Days
- Evaluation by Neurologist
- PCP Allowed RTW with No Restrictions
- No Medications
- No Further Scheduled Treatment
Case #3 cont.
- Large Foundry, Very Heavy Parts
- Uses High Pressure Hose to Remove Flashing
- Could Amputate Body Part
- Spoke with Neurologist
- Risk of Recurrent Seizure 50%
- Allowed RTW as Janitor

Case #4
- 60 Year Old Male, Making Mistakes at Work
- 35 Year Employee
- Cuts 5000 Parts to Wrong Length
- Several Other Episodes
- No Medical Records
- No Doctor

Case #4 cont.
- "Prediabetes", No Meds for 7 Years
- Speech Slightly Slurred, No Other Symptoms
- BP 220/120, Glucose 515
- Significant Leg Swelling
- Off Work Pending Eval and Treatment
- Evaluated by MD next Day
- Started on Meds and Allowed To RTW
- BP 140/90, Glucose 550
- Off Work Pending Work Up for Stroke
Case #5

• 52 Year Old Male
• New Hire for Manufacturing Co.
• “Labor Pool”
• DJD Knees Bilateral
• Prior Knee Surgery
• Recent Synvisc Injections
• Released to RTW No Restrictions

Case #5, cont.

• Denied any Symptoms
• Medical Records Indicated Persistent Symptoms and Instability
• Future Need For Knee Replacements
• Denied Placement
• Filed EEOC Complaint
• In House Legal Council Settled

Case #6

• 45 Year Old Male Brewery Worker
• Chronic Lower Back Pain
• Permanent Restriction of No Overtime
• No Other Restrictions
POINT - COUNTERPOINT

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