



Court Rules Physical Capacity Evaluation Improper Medical Exam

Performing physical capacity evaluations on returning injured workers is paramount to insure the worker is ready to come back to work without the risk of re-injury.

However, as you will read below, based on a court case in OR, the courts ruled that an evaluation seeking other information not specific to the injury is illegal. This case recently appeared in BusinessInsurance.com on September 28, 2009.

Physical capacity test grounds for ADA suit: Court

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PORTLAND, Ore.-Georgia-Pacific Corp. can be sued for violating the Americans with Disabilities Act by applying a physical capacity evaluation to an injured employee returning to work, the U.S. 9th Circuit Court of Appeals ruled Monday.

The ruling in Kris Indergard vs. Georgia-Pacific Corp. overturns a trial court ruling that the employer's physical capacity evaluation was not a medical exam under the ADA. Under the ADA, an employer may not require an employee to undergo a medical exam unless the exam "is shown to be job-related and consistent with business necessity," according to the opinion.

Ms. Indergard took a medical leave from her Georgia-Pacific mill job in 2003 to undergo knee surgery for injuries that were both work-related and non-work-related, court documents show. In 2005, her doctor authorized her return to work. But Georgia-Pacific required employees to participate in a physical capacity evaluation before returning to work from medical leave. The evaluation showed Ms. Indergard could not meet the physical demands of her previous position. No other positions were available, so she was terminated under the terms of a collective bargaining agreement.

Ms. Indergard sued, alleging the physical capacity evaluation was an improper medical exam, but the trial court granted summary judgment in favor of Georgia-Pacific.

The appeals court overturned, finding that while the purpose of the exam may have been to determine whether Ms. Indergard was capable of returning to work, "the

substance of the (exam), however, clearly sought information about (her) physical or mental impairments or health and involved tests and inquiries capable of revealing to Georgia-Pacific whether she suffered from a disability."

Therefore, the physical capacity evaluation was a medical exam under the law, the appeals court said. The court remanded the case to the trial court for further proceedings.

The physical capacity test in question in this court case was not specific to the injury (knee).

The IPCS Physical Capability Evaluation (PCE) is specific to a knee or shoulder injury. No other medical information is collected that is not specific to the injury. It is the "other" information that resulted in the courts ruling in favor of the plaintiff in the appeal of this case.

A functional capacity evaluation (FCE) is not specific to a joint and, therefore, gathers information not specific to the injury. The IPCS knee test would have been shown to be critical to completing the essential functions of the job such as climbing, bending, stooping (all involving the knee) and thus related to the job.

As you review your physical capability testing process based on this court case, keep in mind that the IPCS PCE is the only test on the market that specifically assesses the capability of specific injured joint.

