

# **Social Security Disability Hearing Case Study: 42 Year old Claimant with a Failed Back**

**Client profile:** At age 42 my client was working as a roof repairman when he grabbed a falling ladder and herniated 3 discs in his lower back. After delays and subpart treatment from a workers' compensation doctor, my client underwent surgery almost 18 months after his accident. The surgery was not successful in resolving his pain level or restoring function. Approximately one year later he underwent a multilevel lumbar fusion which also did not help. Following the second surgery, my client was referred to long term pain management where he remains to this day. As a result of chronic back pain my client cannot sit or stand for more than 10 to 15 minutes at a time, he requires daily use of narcotic pain medications and he experiences depression due to his physical condition.

**Education:** high school education + trade school in auto body work

**Past work:** long work history as a printer pressman, and for one year prior to his accident a roof repair technician.

**Claim background:** my client filed for SSDI benefits in February, 2014 alleging an onset date in 2008 (the year of his accident). A hearing was held in an Atlanta area hearing office in March, 2016.

**Medical background:** my client underwent 2 back surgeries, neither of which relieved his pain. Because of delays in treatment associated with his workers' compensation claim my client has nerve damage and is not a candidate for further surgery. He has a "failed back." Since 2009 he has been on long term pain management.

## **Factors in our favor:**

- the judge assigned to our case is very reasonable and tends to approve a higher than average number of claims
- my client has a long, continuous work history
- my client's impairment has objective proof (MRI) and extensive records
- we have a very supportive functional capacity evaluation from the long time pain management physician

## **Factors not in our favor:**

- some of the workers' compensation records are not entirely supportive
- my client is a younger individual
- My strategy: I felt that this was a very strong case and this fact pattern - one or two unsuccessful back surgeries followed by a referral to long term pain management usually results in an approval. I prepared and submitted a pre-hearing brief that spelled out my

argument and I prepared my client to testify specifically about his limitations performing physical tasks like sitting, standing, lifting, carrying, walking, sitting and standing.

**My pre-hearing brief** - <http://goo.gl/P8EaV2>

**Hearing Report:** this was a very brief hearing! After entering the hearing room and dispensing with preliminary matters, the judge asked my client several background questions about his living arrangements, marital status, etc. Next, the judge turned to me and said that he thought this was a good time to talk to the vocational expert and did I have any objections (I did not). The judge then swore in the VE and asked two hypothetical questions:

1. Assume a hypothetical person who is the same age as the claimant with the same education and work experience.

This person is limited to light work

- limited to occasional climbing of stairs
- no use of ladders, ropes or scaffolds
- frequent exposure to temperatures below 32 degrees ok
- occasional exposure to hazardous equipment
- off task 5% of the time due to pain and medication side effects
- occasional interaction with co-workers, supervisors or the general public

Could this person return to the claimant's past work?

A: No

Are there other jobs in the regional or national economy this person could do?

A: Yes

The judge did not ask for any elaboration and moved to hypothetical #2:

2. Same as hypothetical number 1 but add:

- off task 15% of the day, or likely to miss 3 or more days per month due to his symptoms

A: Such a person could not perform past work or any other jobs

The judge then asked me if I had any questions. I did not. The judge then turned to my client and said "in case you are wondering, I am going to use the second hypothetical as the basis for my decision."

The judge then adjourned the hearing and we left the hearing room.

**Conclusion:** the judge is going to approve this case. My paralegal did an excellent job in obtaining the medical evidence in this case and my client helped by taking his pain doctor the functional capacity form I had prepared. These are my favorite types of hearings - where the

work is done ahead of time and I don't need to say anything except "thank you, your Honor!"