

Impairment versus Disability

Over the past 25+ years I have written numerous newsletters on the topic of Impairment Rating. These newsletters date back to the 3rd edition of the AMA Guides. Along the way I have had feedback from attorneys that has directed the course and content of my newsletters. The newsletters had evolved to the point that I was reviewing impairment topics in relatively great detail. Recently, I was approached to explain the significance of an impairment rating by an attorney that I had testified for on several occasions. His request was somewhat of a surprise since my experience was that his knowledge of impairment rating was comprehensive and consistent with his many years of experience.

This attorney explained that the concept of impairment rating had somehow lost meaningful significance. He suggested that the impairment percentage was a number without substance or relationship to his client's injuries. In fact, he went so far as to say that he felt that the process of quantifying the impairment percentage interfered with his ability to negotiate with adjusters and defense attorneys. Even worse, he felt that jurors were diminishing awards suggesting that 5% to 10% impairments seemed to be very small to jurors when in fact they represented dramatic limitations to his client's lives. He requested that unless specifically asked to assign impairment he would prefer that we left that issue open. Instead, he asked that my doctors and I spend more time discussing the functional losses and how they related to the persons ability to meet social or occupational demands today and in the future.

This was not the first time I received this request. Over the years, more and more attorneys have been moving away from the "rating" number and looking for the functional losses that an impairment would represent. With this in mind, I will review the definitions of impairment and disability along with the functional associations which may be considered by the physicians.

Impairment is defined as ***"a loss, loss of use, or derangement of any body part, organ system or organ function"***. This is fundamental to the definition of a disability which is an ***"alteration of an individual's capacity to meet personal, social or occupational demands or statutory or regulatory requirements because on an impairment"***. With these two definitions in place we can see why the impairment itself, without the relationship to disability, tells us very little with regard to the patient's future ability to meet their reasonable functional goals.

For many years I have demonstrated this concept using the same impairment on two differently employed people. A professional soccer player with a 50% impairment to his 5th digit would essentially have no loss of capacity to meet his occupational goals, resulting in a 0% disability. The same 50% impairment to a concert pianist would likely mean the end of his career or a 100% disability. This demonstrates why a person's impairment must be related to the ability to meet desired or necessary functional goals.

Functional considerations begin with **Activities of Daily Living (ADL)**. These include self care,



A MEDICAL-LEGAL NEWSLETTER FOR PERSONAL INJURY ATTORNEYS BY DR. STEVEN W. SHAW

communication, physical activity, sensory function, non-specified hand activities, travel, sexual function and sleep. These generally relate to non-occupational activities. That being said, child care responsibilities, work responsibilities and social activities are equally important and need to be considered.

Upon determining that maximum medical improvement has been achieved you should ask the doctor to opine on the impact on the patient's future functional demands and the related capacity to meet those demands. If the patient can no longer play golf, that might be significant. Lifting activities for a warehouseman are fundamental to their employability. A woman of child bearing age might have difficulties attending to an infant's needs. Comments about the need for vocational rehabilitation might be considered. In summary, the doctor should be asked to comment based upon his clinical opinion and perception of the patients functional losses.

Hartford • New Britain • East Hartford

Personal Injury • Workers Compensation • Expert Opinions • Biomechanical Analysis • Second Opinions

800-232-6824