

Psychological Assessment of Disability

Antonio E. Puente, Ph.D.

Introduction

Of the approximately 270,000,000 legal residents of the United States, about 122,000,000 were gainfully employed in 1987 (U.S. Census Bureau, 1990). Nevertheless, an increasing percentage of workers are becoming disabled. By 1990, 2,830,000 (2%) of the working population were considered to be at least partially disabled. Most had previously been employed in skilled positions such as construction and an alarming rate (35%) were minorities, namely Blacks and Hispanics. Of particular interest to psychologists is the growing and unexpected number of individuals who are applying for disability with mental impairments.

Historically, about 10% of all applicants for disability are considered mentally impaired (U.S. Census Bureau, 1990). This figure has risen to closer to 12% for "private" insurance programs (Owens, 1991). For Social Security, the number of applicants with mental impairments increased to approximately 25% (Dapper, 1987). This figure is continuing to rise, as close to 50% of all new applications for Social Security Disability are mentally impaired.

As early as 1979, Dorken had suggested that similar opportunities were becoming available in workers' compensation cases. Hence, assessment for disability represents a large and still expanding area of service for the psychologist. Unfortunately, little is available to provide guidelines as to how to perform the evaluation. What is available is outdated (Volle, 1975) and not applicable to North Carolina (Puente, 1976). This chapter will attempt to ameliorate this paucity of information.

Defining Disability and Impairment

When workers become disabled they become eligible for available assistance. However, they must meet established criteria for disability. Unfortunately, the criteria vary from program to program and even between agencies or companies within a program. For example, UNUM's criteria for disability in a workers' compensation case will vary considerably from USF & G's. Each definition contains specific strengths and limitations. For the purpose of this chapter the definition of disability is obtained from the World Health Organization's (WHO) International Classification of Impairment, Disabilities, and Handicaps as found in Social Security Disability Programs (Duncan & Woods, 1987):

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There are several commonalities to all disability programs. The search for facts in determining impairments is fairly constant across programs. According to Duncan, et al., (1987), the following three points are always addressed:

1. The medical or psychological condition and impairment (e.g., organic brain syndrome).
2. The residual functional capacity (e.g., what ability is left after the alleged disabling condition occurs).
3. Evaluation of the disability (e.g., failure to perform a vocational role).

Numerous problems exist that make reviewing disability benefits particularly difficult. These include:

1. Ambiguity of definitions and tests.
2. Decrease in overall expenditures to disability programs contrasted with increasing number of mentally impaired claimants.
3. The pervasive feeling harbored by mentally impaired disability applicants that they are viewed as malingerers.

These three points make the disability application process an adversarial, difficult, and emotionally trying experience. It is not surprising to see an increase in symptom frequency and severity during the application process (Derebery & Tullis, 1983). This increase must be anticipated and controlled for in determining the true impairment level.

Social Security Disability

The Social Security Administration (SSA) of the United States government administers the only national LTD program (Social Security Administration, 1986). The major portion of this program, as it applies to psychologists, is Title II of the Social Security disability insurance program, which provides income assistance to workers deemed disabled. Another program, Title XVI, provides financial assistance for the "needy, aged, blind, and disabled."

SSA Definition of Disability

According to SSA's definition of disability one must be unable "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months" (page 1, 1986). This definition is in sharp contrast to most other STD and LTD programs in that disability is defined as complete (not partial) disability. Hence, this program often serves as a last resort or "safety net" for the disabled worker. It is important to note, however,

importance. History and observations provided by significant others are also considered by SSA to be very useful in addressing Part B of the listings.

Qualifications of Psychologists

In 1985, SSA published the criteria for a qualified psychologist. These include the following: 1) Be licensed or certified as a psychologist at the independent practice level of psychology by the state in which he or she practices; and 2) a. Possess a doctorate degree in psychology from a program in clinical psychology of an educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation; or b. Be listed in a National Register of Health Service Providers in psychology which the Secretary of Health and Human Services deems appropriate; and 3) Possess two years of supervised clinical experience as a psychologist in health service, at least one year of which is post-master's degree. Qualified psychologists can assist in consultative examinations, as SSA staff (to complete Residual Functional Capacity Questionnaires), or as Medical Advisors (to assist Administrative Law Judges in court situations).

Reports

Meaningful reports are critical to SSA to make decisions regarding disability eligibility. According to the Consultative Examination Guide published by SSA (1985), a report should contain three major sections: general observations, history, and psychometric testing. Observations should focus on such issues as appearance, attitude, posture, and movements. History should address personal, family, educational, social, marital, and occupational information. The present illness should be documented including date of onset, complaints, treatments/therapy, and hospitalizations. Activities of daily living should be included along with test names, numerical scores, and testing behavior. More specific information is also required according to specific listings. For example for organic brain syndromes, descriptions of affect, intellect, judgment, orientation and memory are also required. More specific guidelines to SSA reporting in North Carolina are found in Appendix C.

Workers' Compensation

Whereas the procedures for obtaining Social Security disability are fairly well outlined, Workers' Compensation guidelines vary from state to state making simple generalizations relatively difficult. In order to receive Social Security benefits one must prove complete inability to be gainfully employed. In contrast, the Workers' Compensation system focuses on an inability to perform their previously assigned duties.

one or more of the following reasons; 1) belief in "compensation neurosis," 2) higher financial stakes for both parties involved, 3) the issue of premorbid confounding factors, 4) better representation and knowledge on the part of insurance carriers, and 5) the burden of proof is on the claimant.

Referrals

Since the burden of proof is on the claimant, most referrals will be from attorneys representing the claimants. Such referral will focus on the question of deficits. In contrast, if the referral is generated by the insurance carrier, the questions will be focused on strengths of the claimant and on pre-existing conditions. It is not unusual for referrals to come from other health providers. For example, a neurologist may seek more behavioral information regarding her patient's neurological status. These health-based referrals tend to be less adversarial in nature since the question of liability is replaced by clinical concern. Regardless of the referral, the psychologist should focus on completing a comprehensive evaluation that satisfies all potential questions involved.

Records

Since issues of premorbid functioning are very critical, extensive record review is required. This should include the following: complete educational transcripts, armed services records, inpatient and outpatient medical records, job descriptions and annual evaluations, and additional pertinent records (e.g., prison records). Records should be carefully reviewed after categorizing them chronologically by type of record, etc. These records should be summarized in the first portions of the report.

Evaluation

Whereas the standard evaluation usually requires one hour for an interview, multiple interviews with clients and significant others may be necessary. Again the question of premorbid functioning must be addressed. Reliability and validity of reports and complaints must be established. Further, interviews with co-workers and/or supervisors are advisable.

With regard to testing, the same principle applies. Special emphasis should be placed both on comprehensive testing and careful attention to potential malingering. The North Carolina Industrial Commission appears to favor well normed and standardized tests as well as tests that are commonly used. Unless specific reasons arise that suggest otherwise, fixed batteries (e.g., Halstead-Reitan or Luria-Nebraska Neuropsychological Battery) are preferred over more individual, experimental approaches or tests.

competency to testify, the Court of Appeals for the District of Columbia noted that "The general rule is that anyone who is shown to have special knowledge and skill in diagnosing and treating human ailments is qualified to testify as an expert, if his learning and training show that he is qualified to give an opinion on a particular question and issue." (Jenkins vs. United States, 307 F.2d 637, 643 (D.C. Cir. 1962).

This implies that anyone who is "better qualified than the jury to draw appropriate inferences from a factual situation based upon skill, education, background, training or simple observational capacity" can and should be accepted as an expert (Puente & Gillespie, pg.27). The expert witness' testimony then must be considered relevant and credible. Testimony is relevant if it bears a logical relationship to an issue in the case. Credibility reflects the validity of the data and/or the believability of the psychologist.

In North Carolina a psychologist's testimony in a Workers' Compensation case was excluded as "incompetent," i.e., the psychologist was not considered qualified to give an expert opinion, because he was not an M.D. The North Carolina Court of Appeals later reversed this decision and held that the psychologist's testimony could not be declared incompetent simply because he was not a physician, and the court ordered the psychologist's testimony to be considered, Horne v. Goodson Logging Co., 349 S.E. 2d 293, 83 N.C.App. 96 (1986).

Other Disability Programs

The two major disability programs are Social Security and Workers' Compensation. Many workers have additional private coverage which focuses on disability relative to a particular job. Since these programs are privately-based, definitions of disability and the rules and regulations determining benefits are idiosyncratic. Many of the leaders in disability insurance (e.g., UNUM) and processing of these applications (e.g., Thomas L. Jacobs, Inc.) do relatively little business in North Carolina. Therefore, there is no one company which would be used as exemplary in this capacity. The psychologist must become familiar with the particular policy in question before addressing a claimant's mental status.

The State of North Carolina has historically preferred physician mental health professionals over psychologists. Specifically, the Medical Board (an all-physician board in the State's Retirement Systems Division which makes all determinations regarding mental disability for state employees, pursuant to N.C. Gen. Statute sections 135-6 and 135-106) has allowed psychologists to do the evaluation for short-term mental disability determinations but has required an M.D. for long-term mental disability determinations. Recently, however, through intense lobbying efforts by the Legislative Committee of the North Carolina Psychological Association, the Medical Board agreed to allow Ph.D. licensed practicing psychologists to make determinations