

Work Ability Evaluation in Civil Cases - Particular Aspects

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Abstract: We followed the cases regarding work ability in the IML Timisoara area of competence, these being included in civil cases, respectively in divorce cases and lawsuits against the employer when the employee was not satisfied with the change of work place. The forensic expertise was done exclusively at the request of the courthouses and represented 1/7 of the total of work capacity related investigations. 80% of the cases came from the cities and 90% referred to women. Cardiopathic ischemia, arterial hypertension, neurological diseases, psychiatric diseases, diabetes mellitus and TBC were diagnosed. The appreciation of the degree of adaptive ability, respectively the framing of the degree of disability were mostly in the IInd degree, then the III degree, then no deficiency and finally I degree. In some cases we observed that the judges did not respect the terms of revision recommended by the medical experts. We present 2 cases in which the expertise was requested during lawsuits in which people were dissatisfied with the change of work place or the diminishing of their income, respectively when a person accused the working environment of producing somatic disease, aspects which could not be confirmed by the expertise. Conclusions: Establishing the quantum of adaptive capacity in civil cases requires the rigor specific to this type of expertise. In some cases, occupational medicine experts joined the expertise team.

Key words: civil litigation, disability

Thus, the Labor Code stipulates that where the employee has suffered an injury by fault of the employer unit, while fulfilling his duties or in connection with his service, the unit is obliged under the law, to compensate him. The unit that paid the compensation has the obligation to recover the amount paid to the injured employee from the person guilty of the production of the damage respecting the rules on such material liability of employees (art. 111, art. 102 and the next, the Labor Code). Thus, when the employed person has suffered an injury related to her work, he or she can address the demand for establishing compensation only against their employer and not directly against the person guilty, even if this person can be established.

The employer has the obligation to consider and resolve employee requests to be transferred from one job full time at one with a part-time or vice versa (Article labor code 104, paragraph 1).

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The employer is also obliged to inform employees in advance about the occurrence of jobs with part-time to facilitate transfers from a part-time to a full time job (art work. 104, para. 2).

Article 41 of the Family Code provides that until the dissolution of marriage, by irrevocable decision, the spouses are due to their upkeep.

The divorced spouse is entitled to maintenance if they are in need because of a work disability occurred before marriage or during marriage. The husband has the right to upkeep even when the inability appears within a year from the date of dissolution of marriage, but only if the disability is due to circumstances in relation to marriage.

Introduction

In the situation of patrimonial damage, the victim is entitled to claim damages from the author of the crime. For this person to be forced to repair the damage it is necessary that this damage be both certain and unredeemable. [1]

In the case of injury to health or physical integrity of the persons, different situations may arise.

If the injury had no lasting health consequences, in the determination of injury one should take into account the expenses made for the restoration of health, those caused by medical care and recovery and the difference between income and allowance during medical leave.

If the person injured has regained, in whole or in part, the work capacity, it is possible to review the person in relation to the evolution of disease until the end of the state of need. During a state of need, that person should benefit from the difference between the revenues previous to injury and unemployment aid, if the diminished work capacity, due to the injury, has prevented employment in another job.

If the injured person is a minor, one can not apply the criteria for adults because there are no proper medical criteria to assess the adaptive capacity, but the will be given feedback / recommendations on vocational guidance [2]. The damage rate appreciation will take account of several factors, including medical care and further efforts to be made by the minor for the acquisition of qualifications appropriate to the state of health.

Material and method

During the last five years at IML Timisoara, 59 new medico-legal investigations were conducted in order to establish the degree of disability; 34 men and 25 women being examined.

Results and Discussion

From the analysis of the medico-legal reports, it can be observed that 16 persons were victims of aggression, 36 victims of road accidents, and 7 have brought civil action (Fig. 1). Interestingly the civil actions are brought mainly by women.

In the cases of a 12 year old child and a man of 68 years we could not fully answer the questions of the court. The minor benefits from vocational guidance (he suffered a car accident), with established diagnosis. Clinical: sequelae post cranio-cerebral trauma with left parietal fracture, focal epileptic seizure. A reexamination was recommended to evaluate the sequelae. In the case of the 68 year old man, the adaptative capacity assessment is invalid; because he is already retired of old age [3].

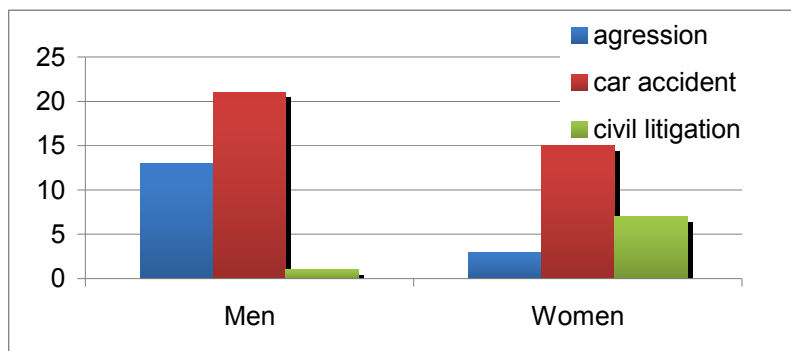


Fig. 1

The appreciation of the adaptive capacity percentage and the framing in degrees of disability is presented in Fig. 2. Note that even if some people have presented diseases, they haven't had significant functional deficiencies and were not covered by the degree of disability.

[4]. Most cases have shown medium and emphasized deficiencies corresponding respectively to the II and III degrees of disability. [5].

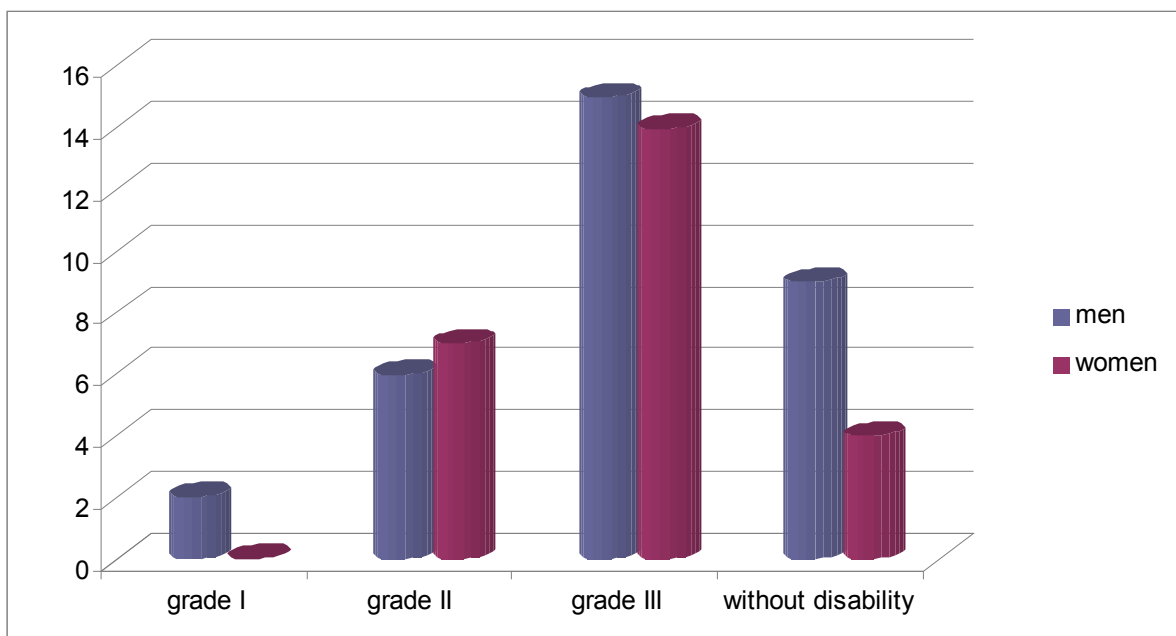


Fig. 2

Among civil cases, 5 women have claimed financial upkeep from the husband according to art. 41 of the Family Code, another 2 persons required making a medico-legal expertise to establish that their conditions are related to the profession, specifically related to work and the duration of the program, and implicitly to claim compensation from the company where they work.

We present the most relevant aspects of two medico-legal investigations that have been made at the request of administrative courts.

Case 1

The objectives of the investigation: to determine the extent to which breach the rules of conduct of business involved in the position of the plaintiff (with reference to the duration of labor in particular) can generate conditions presented by the review, and to establish the degree of disability.

The dossier includes the case file of the Territorial Labor Inspectorate Timis, which has carried out a specialty examination and did not find violations of art. 34 of Law no. 90/1996 and no serious offenses against the art. 18 points c, d, e, Law no. 90/1996.

The documents on the case file show that person presented between June 1997 and February 2000, 26 certificates of temporary incapacity for work for the following conditions: spasmophilia (repeated), fibromatous uterus, uterine fibromatosis, renal colic (repeated), dissociating disorder with elements of anxiety, renal colic (repeated), urinary infection, venous thrombosis, osteoporosis, angina, ischemic cardiac disease, angina of effort. In 1997 she was hospitalized for the diagnosis: uterine fibromatosis with metropathia bleeding that lead to a total hysterectomy with bilateral anexectomy. In another hospitalization the diagnosis was established: painful ischemic cardiopathy. Stable Angina of effort. Cervical spondylosis back injury. Left Coxarthrosis. Menopause osteoporosis. Dyspeptic syndrome type cankerous. Abdominal post-op eventration. Hydrostatic varix of the lower limbs. She is rehospitaled for the same diagnosis.

Work capacity assessment concluded on the II degree of disability with CIGD diagnosis. Stable angina of effort. Left coxarthrosis. Menopause osteoporosis. Abdominal post-op eventration. (hysterectomy for uterine fibroma). The functional deficit was initially considered medium to stressed, but after the review, the diagnosis, the established deficit, was average circulatory deficiency by disorders in irrigation of heart.

Therefore the work capacity is reduced to at least half, with employment in grade III (three) invalidity. It was considered that the diseases presented by the patient are evolutive chronic diseases with a causation which is multifactor (painful ischemic cardiopathy, spasmophilia, uterine fibromatosis with bleeding metropathy, surgery, left coxarthrosis, menopause osteoporosis) without being able to establish an objective link between these and the professional activity of the patient. [6].

From the documents on file it did not result that there was an objective violation of the safety rules. On the procedural aspects, it is noted that the term review was not respected, and the person has not returned to review.

Case 2

The objective of the investigation: to clarify whether exposure to unionized low frequency electromagnetic radiation can cause blood disease, a nervous syndrome, abnormal behavior, endocrine syndrome, cardiovascular syndrome, with the possibility of EKG and EEG changes; if there are any causal links between the diseases suffered by the plaintiff and exposure to electromagnetic radiation at work.

Samplings were carried out field of low frequency electromagnetic medical specialists from the Institute of Public Health Professor Iuliu Moldovan Cluj Napoca with the following results: at the distance of 95-100 cm from the gate and to a height of about 110 cm, where the librarian stayed before, to the gate with the installation of anti-theft protection in hall 1, the density of flux measured magnetic B is 78 microT, frequency magnetic field measuring 366 Hz, the full body is exposed, the reference levels for magnetic flux density is B 68 microT.

According to MSF Order no. 933 of 25.11.2002 and MMSS Order no. 508 of 20.11.2002 on the general rules of safety, Title VI, Chapter X (unionized radiation), Section 5 Annex 75 and 76, jobs that have levels of exposure to magnetic radiation of low frequency magnetic flux density B (microT) higher than those in the table contained in Section 6 (nn 68 microT) containing reference levels for occupational exposure to electromagnetic fields, present a risk to the health of those exposed. So continuous professional exposure during a day of work should be limited to a density of rms magnetic flux density of a maximum of 68

microT. Exposure to unionized electromagnetic radiation of low frequency can cause the blood disease, a nervous syndrome, and abnormal behavior, endocrine syndrome, cardiovascular with the possibility of EKG and EEG changes. [7].

The Public Health Direction Timis - Monitoring the Health, Labor Bureau of Medicine and Environmental Hygiene in consultation with the Institute of Public Health Iasi and the Institute of Public Health Timisoara, on the professional character of the hypertension presented by the patient, occupational exposure to electromagnetic radiation has led to negative conclusions, high blood pressure is rarely an illness. They recommended addressing the Professional Diseases Clinic of the Hospital Center Bucharest as the national unit of reference. She was hospitalized in this unit, but was not diagnosed with a professional illness. Note that the patient has not been exposed at work to electric and magnetic fields, or electromagnetic unionized radiation from the band of microwave and radio frequency since April 2005, the date on which changed workplace.

In conclusion, we see that medico-legal investigations required in civil litigation to determine adaptive capacity are carried out with several objectives in mind. The main issue is to establish the degree of disability, but also to establish causal relationship between conditions presented by the harmed person and the workplace.

The methodology for making this kind of expertise is through the procedural stages, and known processes. The complexity of these types of investigation is primarily a consequence of jobs, whose diversity is obvious.

Also, difficulties arise from the need to conduct examinations in superspecialised areas and from the need to co-opt in the committee competent specialists in the field of occupational medicine and interdisciplinary cooperation.

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