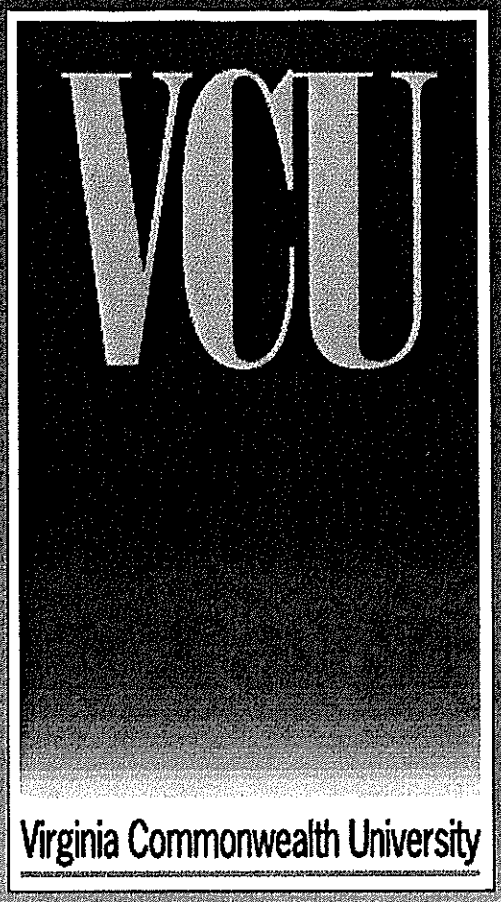


Functional Capacity Evaluation Course

Williamsburg, Virginia
September 14, 2000

ARCON
VerNova FCE

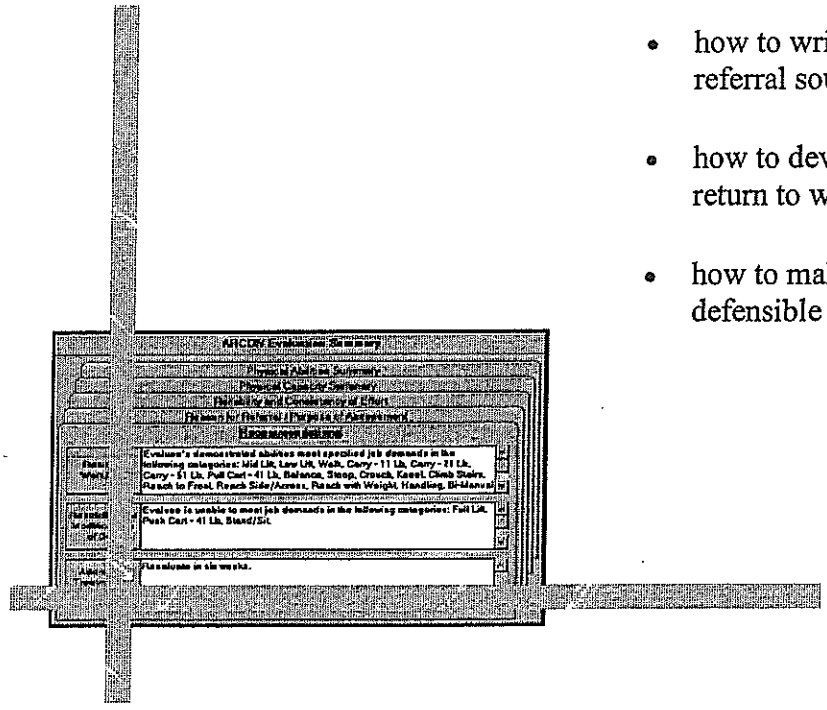
Part 7
Report, Interpretation
& Legal Foundations

report and interpretation

I. Reviewing the Data
II. Reason For Referral
III. Evaluee Consistency
IV. Return to Work Recommendations
V. Clinical Opinion

WHAT YOU NEED TO KNOW

- how to write a report to meet referral source needs
- how to develop a realistic return to work plan
- how to make report legally defensible



I. REVIEWING THE DATA

INTRODUCTION

After collecting all the data the evaluator has to provide the most valuable component of the FCE, the report. This is a process of synthesizing evaluation data, medical history, behavioral observations, knowledge of the job demands and opportunity for accommodations in order to comprehensively give realistic, defensible return to work guidelines.

Referral sources prefer a brief opinion and summary cover page outlining significant findings and conclusions of the evaluation, followed by the data in the body of the report. The summary should outline the reason for referral, relevant medical history, synopsis of evaluation reliability and return to work recommendations.

DEFINITIONS:

Causality is the reasonable degree of medical probability between an accident or exposure and the impairment. Causality can be classified as medically probable, medically possible and aggravation.

Apportionment is an estimate of the degree to which each of the various medically probable factors contributed to a particular impairment.

Maximal Medical Improvement indicates that further medical recovery and restoration of function can no longer be anticipated to a reasonable degree of medical probability.

II. REASON FOR REFERRAL

ANSWER THE REFERRAL QUESTION

It is beneficial to review the most common referral reasons for an FCE. In most cases the evaluee will have been on disability compensation and one of the stakeholders in the disability management process (employer, insurance company, case manager, union, attorney) will have requested the FCE to define the evaluee's abilities for a return to their own job, their own occupation or any occupation. The compensation system may give award for permanent disability or loss of earning capacity, and those losses will have to be calculated. In some cases causality or apportionment will be an issue. In other cases appropriateness of care and/or treatment planning will be at the forefront. The evaluator needs to be clear on the referral question in order to provide valuable services to their referral source.

report and interpretation

PURPOSE OF ASSESSMENT

Mr. Jones is a 48 year old male with left side lumbar strain radicular symptoms, onset 7/24/98. On July 24, 1998 Mr. Jones slipped off of the lift of his truck. He states that as he fell he could feel pain in his low back. Mr. Jones was referred to ARCON Evaluation Center for assessment of his ability to return to work as a Furniture Mover at Goodwill Industries, or alternate employment.

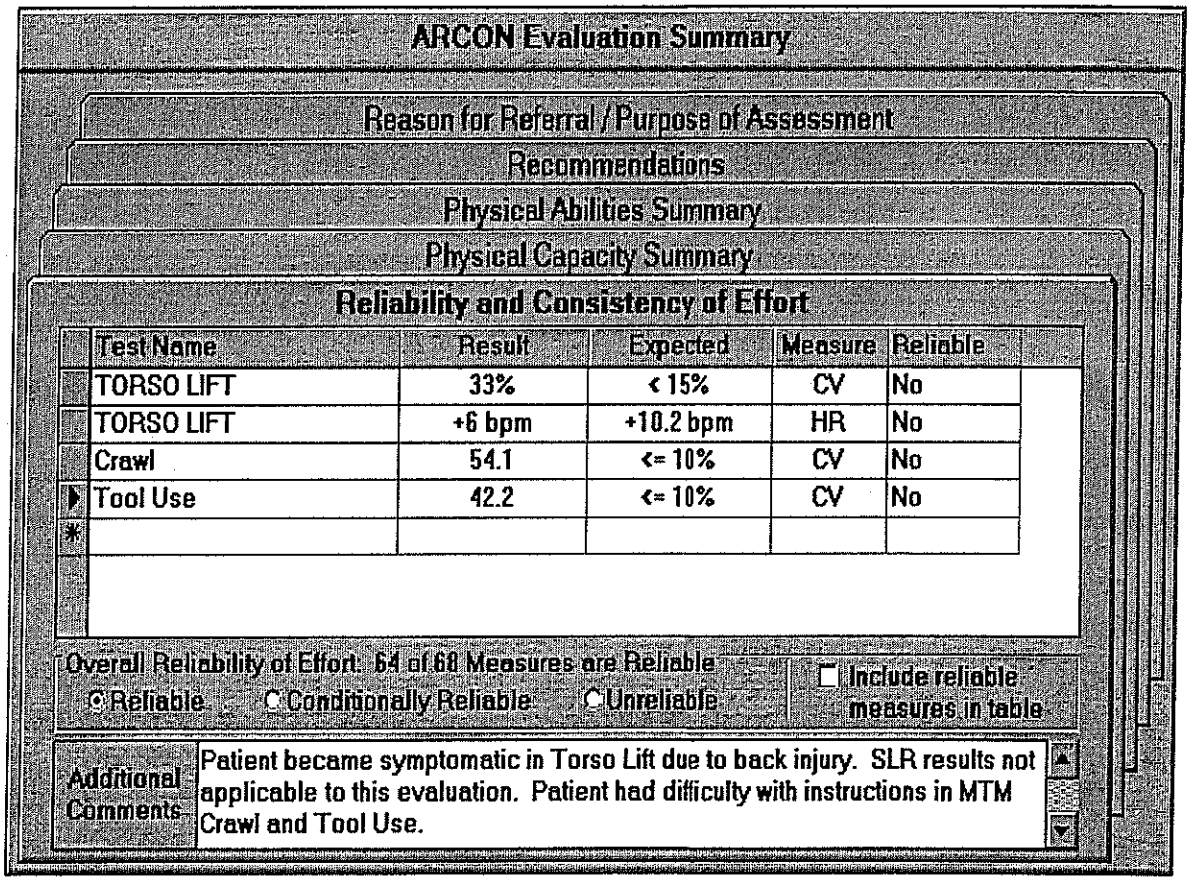
POST OFFER OF EMPLOYMENT

The FCE is also used in pre-placement/post-offer evaluation and periodic screening. However, these evaluations typically focus on only a small set of functional demands that have been demonstrated to be *bona fide* requirements of the job. Report and interpretation requirements are usually limited to the data and a pass/fail criterion only. Subsequent personnel decisions are a Human Resource function.

EVALUEE CONSISTENCY AND EFFORT

The data relevant to evaluee consistency needs to be reviewed as a composite. There is no algorithm or benchmark to establish conclusively whether the evaluee gave best effort in the evaluation. The evaluator has to collect all the consistency indicators, discard the indicators that are not reliable and valid for the evaluee, and synthesize an overall opinion.

report and interpretation



The evaluee performed 22 out of 30 consistency indicators within reliability limits. It appears that the evaluee applied consistent effort overall.

IV. RETURN TO WORK RECOMMENDATIONS

ABILITY TO MEET JOB DEMANDS

The validity of return to work recommendations is predicated on the reliability and validity of the job demands analysis available to the evaluator. It is beneficial to have employer job descriptions and job analyses, cohort information and ultimately a job demands analysis performed by a trained analyst. However, self-report data collected from the evaluee is the source of job analysis more often than not. The report should state some limitations of the validity of the recommendations and/or need for a job demands analysis when that data is lacking.

It is important to define the job demands in the same terminology that the FCE defines functions. Minimally these descriptions need to follow the DOT/CCDO PDC categories.

report and interpretation

JOB DEMANDS ANALYSIS

Help for Activity Demands | Help for Strength Demands

From Dictionary of Occupational Titles - Volume II, Fourth Edition, Revised 1991

Physical Demand Level	OCCASIONAL 0-33% of the workday	FREQUENT 34-66% of the workday	CONSTANT 67-100% of the workday
Sedentary (S)	1 - 10 lbs.	Negligible	Negligible
Light (L)	11 - 20 lbs.	1 - 10 lbs.	Negligible
Medium (M)	21 - 50 lbs.	11 - 25 lbs.	1 - 10 lbs.
Heavy (H)	51 - 100 lbs.	26 - 50 lbs.	11 - 20 lbs.
Very Heavy (VH)	Over 100 lbs.	Over 50 lbs.	Over 20 lbs.

DIAGNOSIS | INTAKE | Empl/Phys/Ins/Atty | HISTORY

Mechanism & History of Injury | Therapies | Medications | Employment | Education | Job Demands

Activity	C	F	O	N	n/a
Walk	X				
Climb					X
Balance		X			
Stoop					X
Kneel			X		
Crouch			X		
Crawl				X	

Strength	S	L	M	H	VH	n/a
Lift Hi						X
Lift Md					X	
Lift Lo						X
Lift Full			X			
Carry				X		
Push			X			
Pull		X				

The results suggest Mr. Jones is capable of ***medium*** work. This patient should be able to perform walking, reaching, fingering and feeling tasks with no limitations.

Mr. Jones can perform sitting, standing, bending, crouching, climbing, and handling activities frequently.

He can perform kneeling activities occasionally.

V. CLINICAL OPINION

CLINICAL JUDGMENT

Final conclusions regarding the evaluee's functional capacity are based on the evaluator's *clinical skills to adjust the FCE data to match the evaluee's clinical profile (*to the degree the clinician's licensing allows). The clinician has to review the medical history and make a final decision about each functional capacity. For example an evaluee with multiple knee surgeries may perform the walking tests at a Constant rate on repeated measures. However, if the clinical profile contraindicates Constant walking, then the evaluator needs to downgrade the recommendation to the appropriate Frequent or Occasional category.

report and interpretation

FURTHER TREATMENT REQUIREMENTS

The evaluator should consider the impact that further medical management, therapy, psychosocial and pain interventions may have on the evaluee's recovery. Conflict of interest on potential self referrals are prohibited in some jurisdictions, or require alternate authorization approvals and these guidelines need to be followed.

OTHER EVALUATION REQUIREMENTS

Screening or evaluation tests may have uncovered areas of concern or impairment that need further evaluation outside the scope of the FCE. The evaluator should state the results that are of concern and make appropriate recommendations.

MAXIMAL MEDICAL IMPROVEMENT

Maximal Medical Improvement indicates that further medical recovery and restoration of function can no longer be anticipated to a reasonable degree of medical probability.

RECOMMENDATIONS
It is felt that this patient has met his maximum rehabilitation potential and can be released to full duties with the restrictions as noted above.

SUMMARY

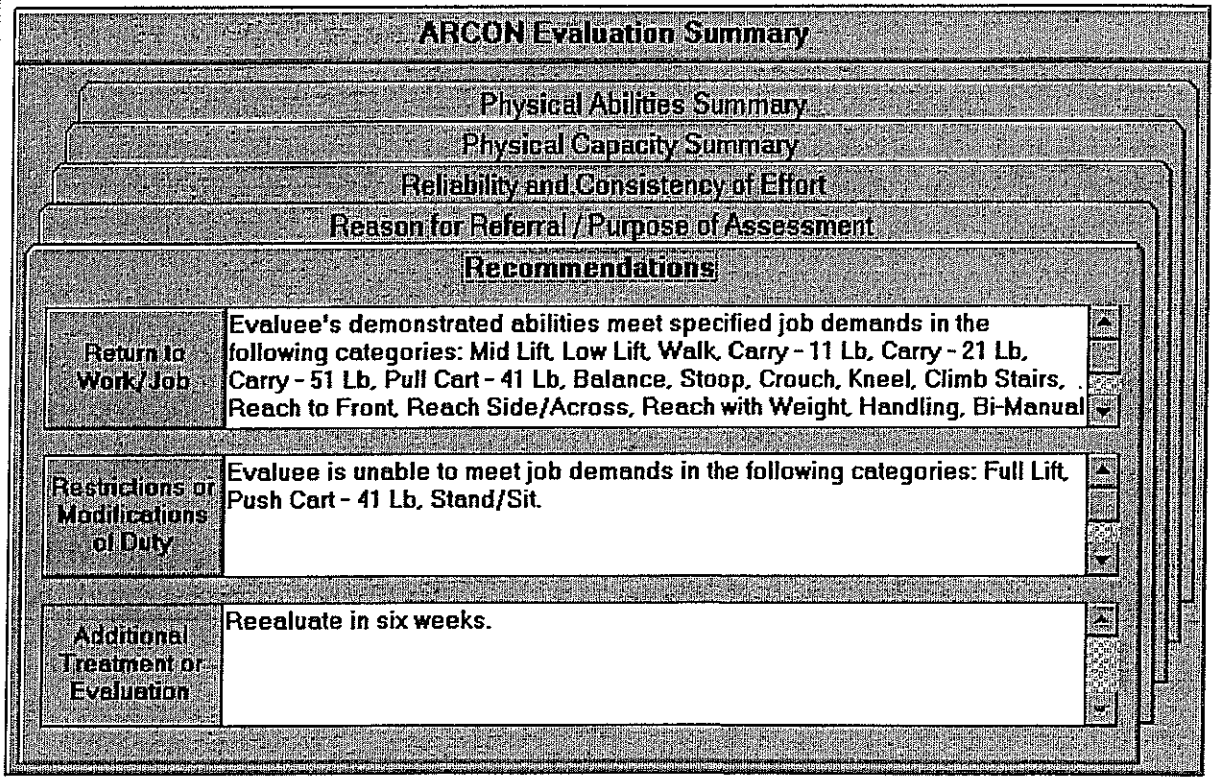
The learning objective of this section was to:

- ✓ Review the data analysis
- ✓ Acquaint the evaluator with interpretation guidelines
- ✓ Make the report legally defensible

report and interpretation

LEARNING EXERCISE:

The ARCON Evaluation Summary will be demonstrated.



REFERENCES

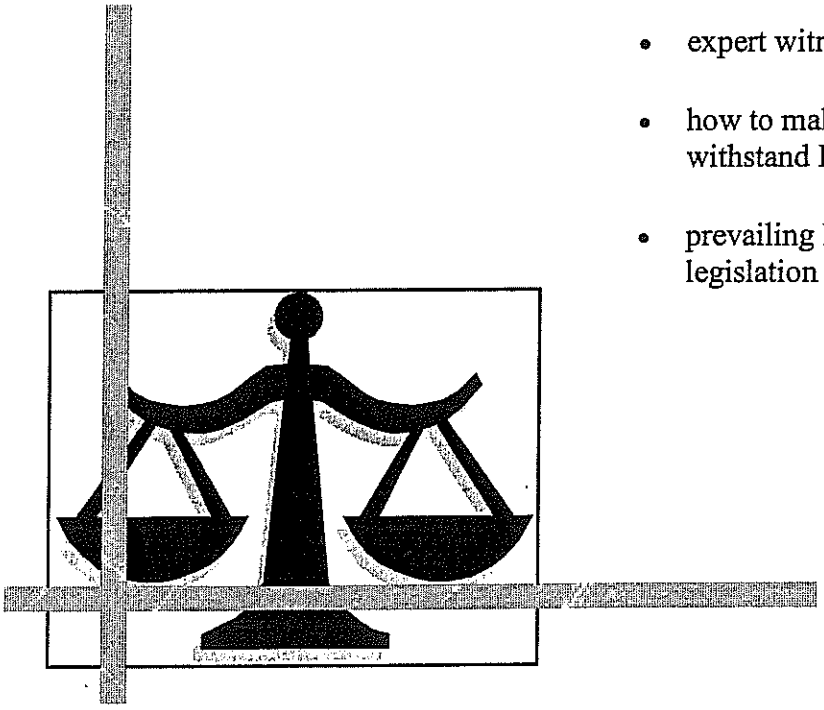
1. Thomas, S.W. (1986) "Report Writing in Assessment and Evaluation". Materials Development Center, University of Wisconsin-Stout, Menomonie, WN

legal foundations

I. General Principles
II. Areas of Concern
III. Case Precedence
IV. ADA

WHAT YOU NEED TO KNOW

- expert witness issues
- how to make the evaluation withstand Daubert challenge
- prevailing laws and legislation



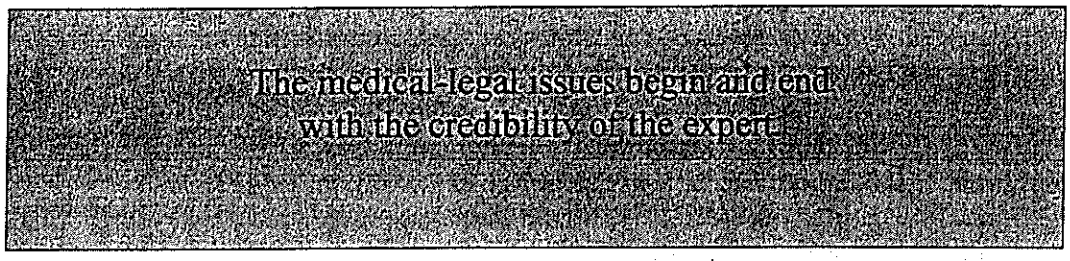
PREPARE FOR CROSS EXAMINATION

The evaluator must be prepared to be challenged on any and all points of methodology and interpretation in the evaluation. The attorney will often have significant experience in the general issues of measurement and testing, even if they are not familiar with FCE methodology specifically.

CHALLENGES

The areas in which the evaluator should be prepared for challenges are:

- ☑ Credentials (expert capacity);
- ☑ Validity of the information the evaluation relied upon: self-report data, other medicals;
- ☑ Standardization (reliability);
- ☑ Maintenance of calibration protocols and logs (reliability);
- ☑ Credibility of the evaluation methodology (reliability and validity);
- ☑ The accuracy to which a short evaluation is able to predict evaluee performance over an 8 hour day (validity);
- ☑ Lack of valid job demands analysis (validity);
- ☑ Effort given by the evaluee (reliability and validity);
- ☑ Interpretation of the data to opinion and conclusions (expert capacity).



CASE LAW

This list of cases have been compiled by John-Allen Waldrop, JD, Counsel for VerNova/ARCON. This is not meant to be an exhaustive list, but is comprised of relevant cases that have come to his attention.

Allstate Ins. Co. v. Orthopedic Evaluations, Inc., 300 N.J. Super. 510, 693 A2d 500 (N.J. SuperA.D. 1997).
Richard v. Dollar General Store, 606 So.2d 831 (La.App. 2 Cir. 1992).
Allen v. City of Shreveport, 595 So. 2d 340 (La.App. 2 Cir. 1992).
Bernard v. O'Leary Bros. Signs, Inc., 606 So.2d 1331 (La.App. 3 Cir. 1992).
Britton v. Morton Thiokol Inc., 604 So.2d 130 (La.App. 2 Cir. 1992).
Prudhomme v. DeSoto Pro Home Health, 579 So.2d 1167 (La.App. 2 Cir. 1991).
Burr v. Huthnance Drilling Co., No. 87-1757 (W.D. La. 1988).
Chevalier v. L.H. Bossier Inc., No. 92-888. (La.).
Manson v. City of Shreveport, No. 22221CA (La.).
Willis v. Solida Construction, No. 20341CA (La.).
Jones v. Kentucky Fried Chicken, No. 17482CA (La.).
Morgan v. General Motors Corp., No. 16521CA (La.).
Hudges v. Webster Parish Police Jury, No. 14878 (La.).
Molman v. Reliance Ins. Co., No. 14808 (La.).
Scott v. Sears, Roebuck, & Co., No. 14700 (La.).
Reliford v. Fitzerald Contractors, Inc., No 14554 (La.).
Thomas v. McInnis Bros. Construction, No. 14572 (La.).
Henderson v. Union Pacific RR, No. 890301816 (Multnomah County, OR 1989).
Allen v. Tri-County Multnomah Transportation, No. C890137CV (Anacelto Montes, OR 1989).
Kohrman v. Transport Asset Mgt Corp, No. 84462016 (Id. Work Comp).
Blackwood v. S.A.I.F Corp of Oregon, No. 89-21907 (Or. Work Comp).
Kay v., Freightliner Corp, (Or. Work Comp).
Ray v. IML Freight, No. 87-07878 and 86-12747 (Or. Work Comp).
Flores v. Coastal Hydro Service, Inc., No. 14-96464, (Dept of Labor)

PROTECTIONS FOR THE DISABLED

The Americans With Disabilities Act is a federal statute in the United States that requires employers to focus on the ABILITIES of applicants rather than on their DISABILITIES. The ADA protects persons who have a disability, who have a record of disability, who are perceived as having a disability (whether they do or not), or have a relationship or association with persons who have a disability. Under the ADA, a person is considered a qualified individual with a disability if he/she can perform the essential functions of the job *with or without* reasonable accommodation.

USE OF TESTS WITHIN THE ADA

Tests cannot be used to exclude an individual with a disability unless:

1. The tested skill is necessary to perform an essential function of the position and
2. There is no reasonable accommodation that can be made available to enable the individual to perform that essential function or
3. Providing the necessary accommodation would cause undue hardship.

The ADA requires tests which screen out persons with disabilities be job related and consistent with business necessity. Tests that measure aptitude, physical agility, intelligence, and specific skills may be used. These kinds of tests are not considered to be "medical examinations" under the ADA and are not subject to the special rules that govern medical examinations.

Employers have an obligation to provide persons with disabilities reasonable accommodation to enable them to take the test. The place where the tests are held must be accessible.

Applicants should not be disqualified from a job they have the ability to perform because a disability prevents them from taking the test as it is presented. When the employer's failure to make reasonable accommodation negatively affects test results, persons who really are qualified can be excluded. This is what the ADA was designed to prohibit.

Requiring employees to continue to meet the physical criteria established for the job will help to validate the physical requirements that may screen out persons with disabilities.

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The ADA does not compel an employer to hire a person who would be a direct threat to his or her own health or safety, or to the health and safety of others at the work site. Before a decision not to hire someone because they pose a direct threat, it must first be determined that the evaluee poses a significant risk of substantial harm to the health and safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. This determination must be based on an individualized assessment of the evaluee's present ability to safely perform the essential functions of the job. The specific risk posed by the evaluee should be identified.

The determination of whether an evaluee poses a direct threat should be based on the following factors:

1. duration of the risk;
2. nature and severity of the potential harm;
3. likelihood that the potential harm will occur; and
4. imminence of the potential harm.

SUMMARY

The learning objective of this section was to:

- ✓ Acquaint the evaluator with the appropriate laws
- ✓ Make the report legally defensible

REFERENCES

1. Employment Screening, Medical Examinations, Health Insurance and the ADA, Marjorie E. Karowe, Schenectady, New York (199?).
2. ADA Regional Disability and Business Technical Assistance Center Hotline, (800) 949-4232 (voice/TTY).
3. Equal Employment Opportunity Commission, 1801 L Street, NW, Washington, DC 20507, (800) 669-4000 (Voice) to reach EEOC field offices; for publications call (800) 800-3302 or (800) 669-EEOC (voice/TTY).
4. Isernhagen S. "Workers Compensation Issues: The Functional Evaluator's Role as an Expert (Witness)." Occutra 6 (1995).
5. Nassau, DW; "The Effects of Prework Functional Screening on Lowering an Employer's Injury Rate, Medical Costs, and Lost Work Days". WorkSmart, Sparks, Maryland, USA.
6. Rockey P, Fantal J, Omenn G. "Discriminatory aspects of pre-employment screening. Low back x-ray examination in the railroad industry." American Journal Law medicine 1 (1979): 197-2; 24.

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