

May 3, 2006

Latonya Puckett

Dear Ms. Puckett:

I have been recently sent a letter dated May 2, 2006 from [redacted] Group Insurance canceling [redacted] disability insurance. Strangely enough, and adding to the inappropriateness of the situation, the letter is dated May 2, 2006 and you canceled [redacted] disability May 1st. Clearly, this is an issue for your company and [redacted] that seems fairly inappropriate. I find it extremely embarrassing that you have chosen to pick and chose, and more or less cherry pick, out of letters to support, pause and ignore other statements clearly by physicians. Please note my letter of April 13, 2006 thus confirming the hypothetical possibility of [redacted] doing an extremely atypical form of sedentary work with marked conditions. While this is possible, it is not imply at all that [redacted] has the capacity to do these things from a medical point of view or vocational point of view or psychological point of view. They were strictly orthopedic issues. Even more outstanding is the fact that you have chosen completely to ignore the closing sentence of the letter which states "Please also note that [redacted] remains on chronic opioid treatments (chronic OxyContin) which may impair his judgment relating to work and travel." This is an extremely severe issue and needs to be taken into account for any type of job activity using mental skills. You have noted in your letter dated May 2nd that [redacted] could do jobs such as customer complaint clerk, customer order work and telemarketer. Not even getting into the orthopedic issues at hand, which have been previously noted, clearly you have chosen to ignore the last sentence which states that [redacted] is on chronic opioids which may clearly impair his judgment. Yet, you chose to try to assign job that require high levels of judgment. I would encourage you, certainly in this regard; to perform proper vocational analysis which I am sure would involve the psychological analysis, vocational testing, etc., to determine the relevance of a chronic opioid dependence related to his chronic pain issues and any type of hypothetical job issues that would require mental activity at a high functional rate. Please note that I am an

orthopedic surgeon and am quite capable of addressing the orthopedic concerns, but these other issues are beyond the scope of an orthopedic surgeon otherwise noting the severe impairment possibilities related to these chronic narcotics.

I have also become aware of another major fault in this whole system. Please note, I was given the original IME report which was dated April 12th and received in my office on April 14th mail which subsequently was first seen by me on April 17th which demanded a return request by April 28th. I was threatened at this time that you did not receive response by the date that you would assume I would be in agreement with the attached reports. Under the pressures of a very busy medical practice, ie. approximately 10-15 surgeries a week and approximately 100 patients being seen each week and, of course, the dictations. I realize the urgency to dictate a response in an extremely timely fashion, ie. That the dictation would have to go out and return and be proofread in less than a week. During my initial review of the independent medical exam, it is not obvious that one clear component of the IME was tremendously lacking. That is, under Dr. [redacted] review of medical records, he states on page 2 in Review of Medical Records that there was an FCE performed by [redacted]. At no time have I performed any type of legally binding standardized functional capacity evaluation. I know of no legally bound functional capacity evaluations that are commonly used in work injury in this region ever having performed recently on [redacted] and I am in possession of no such exam. Of additional note, functional capacity evaluation is a standardized testing situation which is normally performed by specialized physical therapy entities which requires motion analysis, lifting analysis, cognitive analysis, job relation analysis and volitional compliance issues, as well as often videotaping and force evaluations of numerous portions of the body. Such FCE's are common place in the workforce. I do not have the capacity as a practicing orthopedic surgeon nor the ability to perform such a test, although I do have reviewed many such exams and know of none being done on [redacted].

I do not know what Dr. [redacted] is referring to, that an FCE was performed by me, as we do not perform such functional capacity evaluations. Any such conclusions based upon this part of his exam much thus be considered erroneous. I am also astounded on page 2 of your letter in discussion that despite clear and severe work restrictions from an orthopedic point of view, being placed on a hypothetical job response, you chose to ignore these issues claiming that it is not your responsibility. The same correlation could be given to the concept where an injured worker who still has one functional arm could theoretically do the sedentary work of a company, provided the person had the educational and vocational experiences, master support staff, a limousine driver to pick him up and a complete attendant staff to meet all physical needs throughout the day. To ignore these restrictions and say they are not responsible and then say that there is a hypothetical job, to me misses the entire point of the orthopedic evaluation. [redacted] is severe limited in his ability to travel and this adds to his primary disability.

Sincerely,