
**VOCATIONAL
ECONOMICS,
INC.**

This document was downloaded from Vocational Economics Inc. (www.vocecon.com). For more information on this document, visit: www.vocecon.com/articles/artdisab.htm

**VOCATIONAL
ECONOMICS,
INC.**

**BACK TO WORK
WITH A
WORK DISABILITY:
WHERE'S THE LOSS?**

***Worklife expectancy reduction
and its impact when a person with a
permanent work disability returns to work***

It is often assumed that a personal injury client who has returned to work, perhaps receiving the same or even better compensation, has suffered no lifetime loss of earning capacity.

That perception can be true or false, depending on the nature and extent, if any, of permanent work difficulties sustained by that person. The issue before the courts, loss of earning capacity, addresses compensation and worklife expectancy.

What is actually being measured is the potential reduction of human capital. What is human capital? It is the ability to produce cash flows as a worker by using intellectual and physical attributes associated with performing work. If you're a laborer, your human capital may be mainly physical. If you're an attorney, your human capital may be your education, intellect and experience.

Normally, a person's human capital has been reduced when an injured person meets the U.S. Bureau of Census definition of work disability. That definition is a person:

limited in the *amount* or *kind* of work he or she is able to perform.

Thus, two facts are clear in government data about persons meeting that definition of work disability:

- ✓ When working year-round, full-time, such persons earn less, on average, than their counterparts without a work disability,
and
- ✓ They typically work a shorter amount of time over their life expectancy than their counterparts without a work disability.

Hence, their worklife expectancy is reduced, regardless of immediate or future return to work issues.

In This Issue

Work disability defined

Worklife expectancy reduction and its impact

Case summaries and verdicts

How does reduced worklife expectancy translate into loss of earning capacity?

EXAMPLE

A 40-year-old male sustains a soft tissue injury with permanent restrictions indicated by his treating physicians and therapists prohibiting medium to heavy lifting. He returns to his job after six months, earning the same money.

This person meets the definition of work disability. The pre-injury worklife expectancy for this person, a high school graduate, is 21 years. Based on his condition, he is statistically most like a 40-year-old not severely disabled male high school graduate with a worklife expectancy of 15 years.

Because of his reduced worklife expectancy, it is probable that he will sustain a lifetime loss of earning capacity of \$210,000, based on pre- and post-injury annual compensation of \$35,000. That's because he is limited in the kind and amount of work he can perform—the definition of work disability.

What follows are several actual cases in which juries in the Midwestern region recently returned verdicts for loss of earning capacity based on an expert's finding of worklife reduction.

Each case is a motor vehicle accident with similar injuries—neck, back, head or hip injuries. In each case, the plaintiff returned to work with documented permanent work restrictions.

Carter - Case Summary

Vicki Carter and her three daughters were driving south on I-465 in Indianapolis when traffic slowed and stopped in front of them. Between 20 and 60 seconds after they stopped, their car was rear-ended by a partially loaded semi. Although the truck driver later testified that he thought he had hit the Carters “hard enough to kill someone,” each of the four Carters went home that evening after a check-up at a local ER.

Rachel and Sarah recovered from their aches and pains, but it turned out that Vicki and daughter Jessica had more serious injuries. Vicki had worsening back pain, eventually diagnosed by family doctors and orthopedic surgeons as a permanent instability of her right sacroiliac joint. The injury caused significant daily pain, severely limited her mobility and ended her career as an ER nurse, although other occupations remained open for possible future employment, including nursing but in a different capacity.

At trial, the Carters offered evidence of impaired earning capacity, including expert testimony that Vicki's lifetime earning loss was \$667,000. That figure represented reduced worklife expectancy or the probable length of time Vicki would be likely to be employed. Her lifetime medical expense was projected to exceed \$150,000.

At the conclusion of a four-day trial in May 1998, the jury awarded Vicki \$1,728,795. Daughter Jessica received \$110,470. Sarah and Rachel, who suffered aches and pains and nightmares and who, according to the truck driver were looking up at him “in panic,” received \$95,199 each. Vicki's husband received \$285,000 in loss of consortium.

Bowling - Case Summary

Bill Bowling was a 35-year-old Air Force information technical specialist with three years post-secondary education when he was hit in a car accident in August 1994. After the accident and a back injury, Bill suffered constant pain, had problems with prolonged sitting or standing, repetitive bending, fatigue, and problems driving distances.

Bill went back to work in early 1995 as a computer consultant creating a computerized accounting system. But by August, he was unable to perform the physical requirements related to the job including bending and lifting computer equipment. He also had to stop work early due to fatigue.

In calculating worklife reduction, pre-injury earnings were based on nondisabled computer operators in the Cincinnati labor market and a pre-injury worklife expectancy of 25 years. Post-injury worklife was projected to be 12 years for the same job using an average disabled statistical probability resulting in an earnings loss of \$561,263, if he could continue to work through the pain. If the pain and related problems led Bill to a state of total work disability, his damages were projected to be \$953,212. A jury awarded Bill \$1,500,000.

Bergen - Case Summary

Jan Bergen was a nurse with nursing instruction experience when she suffered head, neck and hip injuries in a car accident. The 48-year-old had a BS in nursing plus 16 hours post-grad education.

After the accident, she had problems with frequent pain increasing with exertion, sitting/standing, balance, lifting over 20 pounds, heavy household chores. ER records show sustained multiple traumas with cerebral concussion leading to headaches, and an inability to concentrate. Her treating physician recommended she not work fulltime but held open that potential at a later time. She left her nursing job to work from home as an independent distributor of home accessories.

Jan's pre-injury worklife expectancy was 12.8 years but post-injury was projected to be 5.8 years. That reduction in worklife expectancy translated into an earnings loss of \$346,442.

A jury awarded Jan \$300,000 in future wage loss; \$35,394 in future medicals; \$122,550 in past wage loss; \$37,267.08 in past medicals; \$70,000 in pain and suffering; \$103,000 in interest and her husband a \$10,000 consortium claim.

Purvis - Case Summary

Roger Purvis, age 40, was a police lieutenant with previous related job experience along with one year of college. After a car accident, he experienced constant pain, arthritis in his lower back caused by the trauma, problems sitting, standing, bending and lifting, according to medical records.

Roger was estimated to have a pre-injury worklife expectancy of 20.9 years. If the combination of pain and functional limitations reduced his worklife expectancy to zero, his earnings loss would be \$1,028,121. However, if Roger successfully completed pain management and physical rehab programs and returned to work, his earnings loss would be \$707,306 based on a worklife expectancy of 9.4 years and the ability to perform unskilled to semiskilled work of a sedentary nature.

The jury awarded \$700,000 in future wage loss, \$75,000 in future medicals, \$50,000 in past wage loss and \$230 in pain & suffering.

VOCATIONAL ECONOMICS, INC.

For more information
call
800-227-0198
or visit VEI @
www.vocecon.com

National Headquarters
1 Riverfront Plaza, Suite 2100
Louisville, KY 40202

VE Insight

Send **your** question or issue via fax: 502/589-5428 or submit to: Deea@vocecon.com

VE Insight – Quarterly Question: My personal injury client has returned to work despite a permanent work disability. Is there a future earnings loss?

It depends on the permanency of the injuries and whether or not they will limit the kind or amount of work your client can perform.

If he does not have a work disability (a disability that limits the kind and/or amount of work he can perform over his lifetime), there is no worklife reduction, regardless of the permanency of the disability. However, **if he has a permanent work disability**, he is likely to have a reduction in worklife expectancy even if he has found employment compatible with his work restrictions.

Surveys that follow persons with a work disability over time show that they are less likely to maintain employment relative to counterparts without a work disability. Once out of work, persons with a work disability are also less likely to be successful in securing new employment relative to counterparts without a work disability. Therefore, **persons with a work disability can be expected to work fewer years over their lifetime.** The reduction in worklife expectancy is often an extremely important element of damages when assessing reduced earning capacity for persons with a permanent partial work disability.