

THE WETC PSYCHOLOGY NEWSLETTER

Dr. Bruce Leckart

Westwood Evaluation & Treatment Center
11340 Olympic Blvd., Suite 303, Los Angeles, CA 90064
310-444-3154, DrLeckartWETC@gmail.com, www.DrLeckartWETC.com

September, 2012
Volume 1, Issue 44

Psychological Causation and Psychological Apportionment

A few months ago, I wrote a newsletter about apportionment and received a number of email commentaries from attorneys and adjusters, which I always love to read. In a follow-up conversation I had with an attorney, I was very surprised to hear that they were having difficulty understanding the difference between psychological causation and apportionment. In particular, they said that they couldn't understand how it was possible to apportion 50% of an applicant's permanent psychiatric disability to a prior injury at employer Number 1 and yet conclude that the predominant cause of their most recent injury was an actual event that occurred at employer Number 2. They appeared to believe that since 50% of the applicant's permanent psychiatric disability was attributable to a prior injury that that predominant cause of their current disability could not be the second injury. Hence, this newsletter is an attempt to clear up any confusion about these topics that might exist.

I decided that the best way to approach the issues is with an example of a real case. Of course, the names and situations of the patient have been changed. Let's say the patient's name is John King. John was a successful mortgage broker in the early 2000's. He worked for a company and made a good deal of money in salary and bonuses. In the mid 2000's his best year saw him earn a little more than \$400,000. Married with two children and

Browse Dr. Leckart's Book at
www.DrLeckartWETC.com

"Clearly, what causes an injury can be very different than the percentage of permanent psychiatric disability produced by that injury."

a big house on the Westside of Los Angeles, he proudly bought his wife Linda a new Mercedes SUV to ferry their two children to and from their private schools while he drove a sporty Audi convertible. The family took frequent vacations to Hawaii and all was well.

Then the housing meltdown and lending freeze hit in early 2008 and John's boss, one of the first casualties, was forced to close the doors. Within a few months John and Linda's savings were gone and well, you know the rest of the story including the part where John couldn't replace his job and got severely depressed. In fact, he developed an Adjustment Disorder With Depressed Mood and wound up seeing a psychiatrist for medication and a psychologist for therapy. It took the better part of a year for John to put most of the depression behind him and for John and Linda to straighten out their finances, find new housing, get new jobs and put their lives back in some semblance of order. However, as alluded to above, John never completely got over his depression. Although it was unlikely that his private therapist or psychiatrist ever thought about it, from a Global Assessment of Functioning (GAF) point of view, his GAF score, which was initially about a 55 at the depth of his depression, stabilized at a 65 with depressive

reactions to even minor setbacks and problems and some difficulties in functioning at his new job. To put things in a workers' compensation framework, though this was obviously not a compensable case, the cause of John's depression and 100% of his symptoms and disability was the loss of his job and lifestyle.

Getting back to John's recovery, a large part of it was due to his finding a position at a major bank working on a federally mandated loan restructuring project, while only at a small percentage of his previous income and with almost none of his former job's prestige. It was at this job in the early part of 2011 that John bent over to pick up a file box of loan documents and felt and heard a pop in his back. One thing led to another and John was placed on temporary disability by his orthopedist and eventually had back surgery. As you might suspect, John got more severely depressed and by the time I saw him in my capacity as an AME in January, 2012, he had recovered from a Major Depressive Episode, which had seen him receive both psychotherapy and the appropriate medication. In fact, the results of my examination led me to conclude that he had reached Maximum Medical Improvement and that there was no doubt that, although John was vulnerable to developing a second depression as a result of his first episode, that the predominant cause of his Major Depressive Disorder, or more than 50% of the cause of his second episode of depression, was his back injury. As such, I concluded that he had suffered a psychiatric injury as a result of his work at the bank as Labor Code section 3208.3 defines that concept.

Now in order to understand how a psychologist or a psychiatrist arrives at an apportionment figure, it is

necessary to appreciate the difference between pathology and disability and the cause of each. In this case, there is absolutely no doubt that the predominant or main cause of John's Major Depressive Disorder was his back injury. While there was some residual depression from having lost his job as a mortgage broker, there is no doubt that he would not have developed the symptoms of the more serious Major Depressive Disorder were it not for the back injury. Now the crucial question for apportionment is: "How much of the final amount of permanent disability is a result of the first injury and how much is a result of the second injury?"

Permanent disability in psychological cases is determined by the GAF score. The GAF score is determined by the smaller of two values, (1) the GAF as defined by the patient's signs and symptoms, or, (2) the GAF as determined by the patient's occupational difficulty and any social or educational impairment that might be present.

Unfortunately, regardless of what anyone may tell you, a psychologist or a psychiatrist will decide on the proportion of the disability (GAF) due to non-industrial causes and the proportion due to industrial causes using their "professional judgment" or what some in an earlier time might have called "flying by the seat of your pants," or more derisively, "pulling it out of one's ear." Sadly, at the beginning of the 21st century, there is no legally sanctioned arithmetic formula for arriving at a numerical assignment of the proportion of the GAF due to various factors. As far as I know, the closest formula that has been proposed was what I discussed in my May, 2009 newsletter on apportionment. In that newsletter, I suggested the following formula for calculating the percentage of disability due to an industrial injury:

**FREE pre-deposition consults
involving reports of a**

·QME ·PQME ·AME ·AQME

(e-mail us at DrLeckartWETC@gmail.com
for more information)

Industrial Injury Disability =

$$\frac{[(70\text{-Current GAF}) - (70\text{-Pre-Injury GAF})]}{(70\text{-Current GAF})}$$

While there are some problems with the GAF scale of measurement that will offend some statistical theorists, such a model could work, although as far as I know, no one has used it. However, getting back to Mr. King, let's assume that for the sake of this newsletter his GAF after reaching Maximum Medical Improvement following the loss of his job in 2008 was 65. Let's also assume that his GAF after reaching Maximum Medical Improvement following his back injury of 2011 was 60. Applying the above formula to Mr. King gives the following result: $[(70-60)-(70-65)]/(70-60) = 5/10 = .50$ or 50%. However, that's just not how it's done!

Here is what we are used to seeing and here is how it's done. Clearly, although there were no other disabling factors involved, and the difference between the two is a GAF of 5 points, "in my clinical judgment" it is my conclusion that 50% of the permanent psychiatric disability present in January, 2012 is due to the back injury and 50% is due to the pre-existing psychiatric disability due to the loss of his job in 2008. Thus, while Mr. King has clearly had an injury caused by work events, 50% of Mr. King's permanent psychiatric disability is due to the loss of his job in 2008 and 50% is apportioned to his back injury of 2011.

In short, in Mr. King's case, there is no doubt that he has had two psychiatric injuries. The first was not industrially caused in that it resulted from the loss of his job. The second was industrially caused in that it occurred as a result of his undisputed back injury that occurred at work. Additionally, while Mr. King was still depressed at the time he hurt his back, the predominant cause of the Major Depressive Disorder that occurred in response to the back injury was the work. However, when looking back over time, it is relatively clear that when his condition reached Maximum Medical Improvement following his back injury that 50% of his permanent psychiatric disability was caused by that back injury and 50% was caused by the non-industrial loss of his job in 2008. Thus, causation and apportionment are quite different, even when apportionment to both injuries is 50%.

In short, causation and apportionment are different concepts and although they are discussed in terms of percentages that is where the similarity ends. Causation obviously applies to what produced the injury, i.e. was the industrial cause equal to, more, or less than 50%? Apportionment applies to the cause of the permanent psychiatric disability. Clearly, what causes an injury can be very different than the percentage of permanent psychiatric disability produced by that injury.

This is the forty-fourth of a series of monthly newsletters aimed at providing information about psychological evaluations and treatment that may be of interest to attorneys and insurance adjusters working in the areas of workers' compensation and personal injury. If you have not received some or all of our past newsletters listed on the next page, and would like copies, send us an email requesting the newsletter(s) that you would like forwarded to you.