



A Monthly Publication of BENGlassLaw

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How Job Descriptions Can Help *(or Hurt)* Your Disability Claim

By Ellen Bresnahan, BGL Insurance Appeals Department Head

In long-term disability claims, there are two common “definitions of disability” you must be prepared to address. For both definitions, it is essential the insurance company has detailed information about your current and past jobs.

Important note: Each policy is different! Make sure you know what YOUR policy says.

The Definition of Disability during the “Own Occupation” Period

In most policies, the “own occupation” phase is first and most commonly lasts for 24 months. The “own occupation” period allows a claimant to receive disability insurance benefits if he or she is unable to perform their own occupation as it typically performed in the general economy. This means the insurance company will review the job duties of the claimant and select an occupation from the Dictionary of Occupational Titles (DOT) which best represents that job.

The disability insurance company will then assess the physical, psychiatric and cognitive abilities required by the job and match those to the restrictions and limitations that a claimant has (which have been “approved” by the insurance company and which may or may not be the same as what your doctor says your restrictions and limitations are). If the restrictions and limitations don’t conflict with the job requirements, the insurance company will say that you can perform that DOT occupation (which may or may not closely match the actual job you have with your employer).



Beware: There is significant potential for error in the identification of the proper DOT occupation. *The insurer may use an outdated or generic job description which is not truly representative of the work you performed.* The insurer may use a job title which also may not be

truly representative of the duties performed.

—continued on page 2

In this issue...

- **Page 3** Sportsmanship Challenge Coin Giveaway!
- **Page 3** BGL’s Best Bites: Lynch Family Picnic Pasta Salad
- **Page 4** BenGlassLaw Hosts State Farm Local Agents

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How Job Descriptions Can Help (or Hurt) Your Disability Claim

For example, an employee may have the job title of “Secretary,” considered a sedentary job. Someone with a knee or back issue restricting standing and walking would probably not be considered eligible for disability benefits if they have a sedentary job. However, if that “Secretary” actually performed filing, office supply distribution and copying, he or she may actually be an “Office Clerk.” This is light physical demand work and that same individual likely would be considered eligible for benefits.



The Definition of Disability during the “Any Occupation” Period

The “any occupation” phase begins at the end of the “own occupation” phase. This definition of disability typically allows a claimant to receive benefits if he or she cannot perform any work and earn a wage equal to or exceeding the required wage. The “required wage” is different for each policy, but most are between 50% to 80% of the wage you were earning when you became disabled. Instead of reviewing your restrictions and limitations against a specific DOT occupation that matches your job, the insurer will have a vocational consultant review your educational history as well as 15 years of past work history to determine what job skills you would have or could reasonably be expected to acquire.

The consultant would then determine what occupations would be appropriate based on the skills and your medical restrictions and limitations. The vocational consultant would determine the likely wage you would earn in these identified occupations. If the insurance company finds a job that matches your skill set, is not ruled out by your

restrictions and limitations, and meets your required wage, you can expect a denial letter.



Why Your Work History Form Is Important

When the insurance company gives you a Work History form to fill out, it is very important to be as detailed and accurate as possible. If the documented work history is vague, the potential for error in the vocational assessment is high.

We have a vocational consultant working for our clients who recently completed an assessment in which the insurer indicated the claimant was no longer eligible for benefits at “any occupation” based on her ability to work as an Office Manager.

The claimant was a Corrections Officer most of her career, but was now restricted to desk work. In her work history, she indicated that 10 years ago she had been an “Office Manager.” In the DOT, this is a skilled, supervisory occupation in which the person supervises office workers, establishes procedures, monitors production, and makes staffing and personnel decisions.

The claim was terminated based on our client’s supposed ability to perform this one occupation. However, upon interviewing the claimant, our consultant found her job as an “Office Manager” was actually a clerk job in which she supervised no one and performed general office duties. She actually did not have the skills to qualify for the more demanding DOT “Office Manager” occupation and, thus, would not be able to earn the required wage.

THE TAKEAWAY? If you are receiving disability benefits, you must:

- 1** Know your policy!
 - A** What are the definitions of Disability and Disabled?
 - B** When do they change?
 - C** What is your wage requirement?
- 2** Know what’s in your claim file!
 - A** Is the Job Description from your employer accurate?
 - B** Have you filled out a Training, Education and Experience form?
- 3** Work with your doctor!
 - A** Does your doctor understand when and how the definition of Disability changes? You might have to educate him or her.
 - B** Did your doctor take the time to fully explain your restrictions and limitations in your office visit notes?
 - C** Does your doctor understand that their notes can be used to determine your eligibility for benefits? If your doctor says you can sit for 8 hours, the insurance company will assume that means “sit at a desk and work for 8 hours” unless your doctor explains why that’s not the case.

If you’ve received a denial letter, or just want to talk to someone about your disability case, give BenGlassLaw a call! We’re happy to help. ■

BGL's Best Bites



LYNCH FAMILY PICNIC PASTA SALAD

Cook 1 lb. fusilli pasta, then blanch (*Pour into strainer and run cold water over it, throw ice on top. This stops it from cooking further.*)

Ingredients

- 1 whole pepperoni (about 12 ounces), skinned, cut into bite-sized cubes
- 3 cups steamed broccoli florets, cut into bite-sized pieces
- 6 ounces mozzarella, cut into bite-sized pieces
- ½ cup brine-cured black olives or sliced ripe black olives
- Optional: Peas, capers, Spanish olives
- ½ medium carrot, chopped
- ¼ cup Parmesan
- ¼ cup Romano

Add to pasta and mix, then refrigerate.

Sauce Ingredients

- ¾ cup vegetable oil
- ¼ cup lemon juice
- 2 tablespoons red wine vinegar
- 1 teaspoon salt (to taste)
- 1 teaspoon dried oregano
- ¼ teaspoon coarsely ground black pepper

Directions:

- 1 Whisk sauce and drizzle over pasta salad a bit before serving (so it doesn't get too soggy)
- 2 Toss and serve! Prep: 35 mins.

Serves 6



SPORTSMANSHIP CHALLENGE

Coin Giveaway!



We're giving away commemorative coins for this year's BenGlassLaw Varsity Soccer Sportsmanship Challenge.

All you have to do is email info@benglasslaw.com with the subject line "Challenge Coin" and we will happily mail you one free.

The Sportsmanship Challenge rewards local soccer programs for making it through the entire season with no yellow cards or red cards for dissent, profanity, or unsportsmanlike conduct. Slowly, but surely, we're changing the culture of youth sports! To read more about the program and see this year's list of participating schools, visit www.SportsmanshipChallenge.com

Reminder About Our Firm's Communication Policy

Our promise to you is that while we are working on your case, we don't take inbound phone calls, faxes or emails. Ben Glass takes no inbound unscheduled phone calls whatsoever. It makes him much more productive and helps get your case resolved faster. You can always call the office at 703-544-7876, and schedule an in-person or phone appointment, usually within 24-48 hours. This is a lot better than the endless game of "phone tag" played by most businesses today. Remember, too, that email is "quick," but is checked no more than twice a day. Replies are then scheduled into the calendar. So if it's really important, don't email—call the office instead.

This publication is intended to educate the general public about personal injury, medical malpractice, and small business issues. It is not intended to be legal advice. Every case is different. The information in this newsletter may be freely copied and distributed as long as the newsletter is copied in its entirety.

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IMPORTANT! **We've Moved** **into a Brand New** **Office Space!**

We're excited and proud
to announce that we have
officially moved into our new
offices! Our phone numbers
remain the same. Our new
address: **3998 Fair Ridge Drive,**
Suite 250, Fairfax, VA 22033

Inside This Issue...

- » How Job Descriptions Can Help (or Hurt) Your Disability Claim
- » Sportsmanship Challenge Coin Giveaway!
- » BGL's Best Bites:
Lynch Family Picnic Pasta Salad
- » And more...

BENGLASSLAW Hosts State Farm Local Agents

The BenGlassLaw training center continues to get a lot of use. Last month, we hosted local State Farm agents for a "lunch and learn" session about how they could serve their customers better and grow their agencies. Attorney Brian Glass did a presentation that answered a lot of questions that insurance customers often ask their agents, including:

- 1** Why they should purchase as much underinsured motorist insurance as they can;
- 2** How "MedPay" really works;
- 3** Why some health insurance companies will require customer reimbursement of medical expenses.

Brian also told some "horror stories" about accident victims who did not have enough insurance and answered the attendees' questions about "under what circumstances might an insurance agent be sued for failing to recommend the correct amount of insurance?"

We ended with a discussion of "how agents can differentiate themselves in a very crowded and competitive market" before we toured the brand new BenGlassLaw podcast studio.

Have a group you'd like to bring in to discuss small business growth? Contact us! ■



Brian Glass helped local State Farm agents become heroes to their clients



WHAT WOULD BEN SAY

■ **Congratulations. You are smarter than the uber-rich elite.**

The college entrance bribery scandal has exposed how stupid some people are, especially people with more money than brains. So intent were some parents on making sure their kiddos got into a “good” school (remember, there are NO good schools, see last month’s BenGlassLaw newsletter) that they paid hundreds of thousands of dollars in bribes to assure acceptance. Now what? Their kids are Internet pariahs. Most are finding they can’t get hired. Mom and Dad may be headed off to prison. Don’t overspend for college.

- **Opportunities Abound in America.** Did you see the story of 17-year-old Corbin Broner, an Idaho resident who is on track to sell \$100,000 of custom fishing rods that he personally makes? He’ll keep about \$50,000 as profit. He was featured on **Fox Business**. What about Justin and Kristen Herbert? According to a **Washington Post** article, they will generate about \$150,000 buying stuff from brick and mortar stores at closeout and then reselling it on **Amazon**. Their goal is to save \$50,000 for an adoption. Sure, they had to *figure out Amazon*, and you can’t just decide “I’m going to make \$50k on Amazon” without devoting some time to learning how, but this isn’t rocket science. *Here’s the teaching point:* In order to make your life better, you don’t necessarily have to come up with something entirely new. There is a model for almost any business venture you can think of. Find and study the models!

- **Is Capitalism Flawed?** You will be hearing a lot about this as the country ramps up for the 2020 presidential election. Most politicians who claim skepticism of capitalism either don’t understand what capitalism actually is or they **do understand**

but are just lying to you. Properly understood, **capitalism** is the economic system that says **you are free to make any decision to act that you believe to be in**

your rational self-interest as long as you don’t violate the rights of others. To say one has a **right** is to say that you are **free to act**, nothing more, nothing less. Thus, there can be no legitimate **right** to health care, for example, because to enforce that “right” you would necessarily have to **force** someone else to act. An attack on capitalism is an attack on liberty, plain and simple. By the way, notice that most of the “anti-capitalism” politicians are broadcasting on Twitter, Instagram, Facebook, etc., and hailing cars on Uber and Lyft, all products of American capitalism. Yes, America is **exceptional**. Disagree? The podcast studio is waiting for you! Come on in and let’s have a chat. It will be fun and interesting.

- **Want to make an impression on someone? Send them a handwritten note, in an envelope, with a stamp.** I can’t believe how few people send real cards and letters anymore. We sometimes get emailed “thank you’s” after interviewing someone for a job. Are you kidding me? You have a chance to really stand out when you use “real mail” to say “thanks.” CVS and Walmart are reportedly reducing the in-store space they devote to greeting cards and notepaper. This means even more opportunity for you! Trust me on this, you will be noticed! ■



SMALL BUSINESS MASTERMIND (MIGHT BE) FORMING

Are you a smart small business owner here in Northern Virginia who would like to get together with other smart business owners to discuss ways to make your business better? I run two very good businesses and have worked with lots of different business owners both locally and around the country. Given sufficient interest, I am willing to set up a monthly “lunch and learn” right here in the **BenGlassLaw Training Center**. I’m looking for business owners, not hobbyists, for this group. I like meeting and working with interesting people. No charge, but I can’t be wasting my time, either. You can express interest by sending an email to ben@benglasslaw.com. ■

FREE AUTO INSURANCE CHECKUP

Got another one of “those” calls last month. A man was hit head on by a college student who fell asleep at the



wheel when driving home for spring break. This resulted in multiple surgeries and an extended hospital stay. Of course, the sleeping driver is at fault. This is a sure “winner” of a case. The bad news is that the at-fault driver had minimal insurance and the young man who was hit did, too. This means financial devastation for the injured person.

Folks, you can protect yourself by purchasing at least \$500,000 in uninsured motorist coverage. It will probably cost you an additional \$200 per year! It’s the best insurance money can buy, but many insurance agents don’t tell you about it because it may mean that the insurance company they work for will have to pay out more in claims. Profits over people! If you would like this explained, I will personally get on the phone with you and walk you through it. ■

STUPID LAWSUIT OF THE MONTH

Told you so. In February, I reported on the *Stupid Lawsuit of the Month* about the class action lawsuit against a cookie manufacturer for “mislabeling” the amount of protein in the cookie. Now, the U.S. government is asking the court to throw out the \$5 million settlement. The government argues that the settlement, which provided \$1.85 million in cash payments, out of which the attorneys suing the cookie maker would get a whopping \$1.1 million in fees plus an additional sum in court costs, wasn’t a great deal for consumers who would be left splitting up a mere \$350,000. We agree.



Case we are monitoring: Some idiot is suing Welch’s Fruit Snacks claiming they didn’t actually use real fruit in the snacks. Really? You thought that gummy squishy thing was real fruit? I have a nutrition plan for you: buy your kid an apple. ■

SPECIAL ALERT for Employees of Nationwide Insurance Company

If you work for Nationwide and have not already purchased individual long-term disability insurance, you might want to do so this week.

I recently looked at the policy Nationwide provided its employees and my opinion is no, “Nationwide is NOT on your side.” If this is you, call me and I’ll explain.

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