



Industrial rehab settings often demand that occupational therapists evaluate an individual's capacity for work after an injury. OTs usually perform this task through functional capacity evaluations (FCEs).

Recently, however, FCEs and the means by which they are performed have come under considerable scrutiny thanks in part to a controversial court decision in the state of Oregon.

An injured mill worker sued Georgia Pacific Corporation on the basis of her own FCE. The test, conducted by a licensed occupational therapist, included physical evaluations intended to measure the employee's functional capacity to complete her job following a major knee surgery. After the test, the OT recommended keeping the employee off the job. Georgia-Pacific terminated the employee under its company policy because she had been off the job for more than two years.

In the ensuing court case, the Oregon federal appeals court ruled that any tests administered by health care professionals qualify as "medical tests." The court was relying on a determination that had been published earlier by the Equal Employment Opportunity Commission, which regulates the Americans with Disabilities Act. As such, the FCE performed on the plaintiff was prohibited under the ADA unless the exam was "job-related and consistent with business necessity."

Among other findings, the court ruled that the FCE, which measured such factors as plaintiff's heart rate and breathing patterns after a treadmill test, went beyond the collection of information necessary to determine whether she could perform her job duties suitably.

The case itself is currently under appeal and will be ongoing for some time. Meanwhile, what does the ruling mean for the future of therapists in performing FCEs?

What is an 'FCE'?

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COVERING All the Bases

What an Oregon court case means for the future of FCEs **By Rob Senior**

eral times on the subject of FCEs—often discussing the unpredictable nature and countless variables of the process.

"Measurements used in the [FCE] battery can be grouped under four main categories," Moty told *ADVANCE*: physical, physiological, functional and work-related. "Within each of these categories relevant measures can be included in order to obtain a comprehensive profile describing human abilities."

Each measure plays a role in the ultimate conclusion of an evaluation. Moty also explained that personal issues such as behavior and motivation impact the evaluation.

Given these numerous and diverse factors, it's easy to see how the manner in which any particular examination is conducted could differ greatly. Thus, Moty emphasized the importance of establishing an agreed-upon protocol for conducting such tests in the future.

Jim Mecham, MS, OTR/L, AEP, is director of continuing education and developer of online assessment applications for Occu-care Systems and Solutions in Kenosha, WI. Mecham has followed the Oregon case and feels that people may be overstating the case's potential to affect the OT profession at large.

"I think things with this case have become muddled, and there is a lot that remains to be seen," he admitted. "But that doesn't change the fact that it is just one

court case, and I don't really see a greater effect beyond that."

Mecham allowed, however, that there were a number of things to be learned from the case, its conditions and the ultimate decision of the appeals court. First and foremost was the definition of a FCE (known as a physical capacity evaluation, or PCE, in the state of Oregon).

"Georgia-Pacific requested that this service (a PCE) be performed. As part of that, they requested a job-demands analysis," he said.

A job-demands analysis entails a therapist coming out to the job site to determine the necessary requirements of a particular position. So the question becomes whether this was truly a PCE or whether it would have been better labeled a "fit-for-duty" evaluation, Mecham said.

Fit-for-duty evaluations cover details and work conditions comparable to a PCE, but are also different in some very important ways. In fact, the two examinations are so different that "if everyone involved had called this a 'fit-for-duty' examination, and performed it as such, we wouldn't be having this conversation today," said Mecham. "However, the rehab professionals called this a PCE, and Georgia-Pacific called it a PCE. Therefore, the question of whether it is a medical test became relevant."

Could it really be that simple? Would the whole problem be solved by simply identifying the factors that differentiate an

FCE from a fit-for-duty evaluation? "Fit-for-duty evaluations are completely legal under the American with Disabilities Act when appropriately set up and administered," Mecham pointed out. "It really looks like that's what this was, and what it should have been called in the first place."

However, that was only the start of the case. The therapist gathered a list of job demands from Georgia-Pacific upon which the plaintiff would be tested. In court, however, the plaintiff argued—to at least some degree of success—that those demands were inaccurate. For example, the therapist in question observed that the job required the ability to lift 65-75 pounds.

"The question in my mind—and I haven't seen it answered anywhere—is whether those physical demands were actually *measured*, and what influence did Georgia-Pacific have in providing the therapist with those demands?" summarized Mecham.

Obviously, the parties disagree on the accuracy and the necessity of the physical demands as evaluated by the therapist. With the court case ongoing it may be premature to judge what anyone—the physical therapist, the plaintiff, Georgia-Pacific—could have done or should have done differently. The focus of the case will now turn to determining whether the test was truly job-related and therefore a business necessity. But the appeals court ruling seems to create a gray area in terms of answering that question. ➤

Learning and Adjusting

Mecham said he feels that the court will ultimately rule that the test is *not* job-related. He was quick to stress that his opinion relates to only this particular case. There are some glaring points from the court summary that support Mecham's opinion.

For example, during the test the occupational therapist asked the plaintiff to pour sand from a bucket into another container. "How does that relate to the job of a napkin adjuster [the plaintiff's official title]?" Mecham asked. "Why was cardio-respiratory testing done, and how was it quantified to justify a treadmill test for a napkin adjuster? There are things that make it seem as if those tests don't correlate to what this napkin adjuster has to do on a daily basis."

Mecham believes that one of the risks to FCE accuracy lies in using simulated tasks.

"When a medical professional is performing a test—medical or non-medical—they must do everything possible to perform

that test in a *job-replicated* fashion," he said. "That is their responsibility in our industry—doing everything possible to replicate, 'not simulate, the actual job to which that person needs to return.'"

'What it boils down to is a disagreement between what the company is saying this job requires, and what the patient's experience indicates that it requires.'

In some cases, that may be as simple as having the necessary space, tools or equipment in the clinic. But when that is not possible, it may mean the therapist has to go out to the actual job site to perform the test. The small amount of extra legwork could make all the difference as far as successful completion of the exam.

"At this point, the entire [Georgia Pacific] case is about legal strategy," said Mecham.

"Future court proceedings will determine whether the evaluation was job-related and was a business necessity. What it boils down to is a disagreement between what the company is saying this job requires, and

—Jim Mecham, MS, OTR/L, AEP

what the patient's experience indicates that it requires," Mecham summarized. "That's what the courts will now decide. But as long as occupational therapists understand the importance of making these tests as job-related as possible, the outcome will not affect the ability of OTs to continue performing these tests." ■

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