

Column: *Walkup Talks Disability*

Applying for Disability Benefits for MCS: Workers Compensation

- *Michael Walkup, Attorney at Law*



Michael Walkup is an experienced disability practitioner with over 25 years of experience in the disability law field. In 2001 he became disabled due to MCS, CFS, and FM. He is now providing a service to advise clients with potential disability claims who have MCS, CFS, and/or FM. As these programs and law are usually Federal, he is able to practice in all 50 states, so your location does not matter.

Michael is a long time Sustaining Member of the National Organization for Social Security Claimants' Representatives (NOSSCR), the only national body for disability representatives. He is also certified as a Federal Trial Lawyer and is admitted to the U.S. Court of Appeals for Veteran's Claims.

Michael would welcome the opportunity to try to help you with your legal claims. His web site may be found at www.MCSLegalHelp.com, or he may be contacted at MJWalkup@Amertech.net, or at 866-880-HURT (4878).

In my last article I discussed the pitfalls of going after disability insurance benefits for people who have become unable to work due to MCS/EI. Here, I will discuss workers compensation benefits.

Workers compensation benefits involve state, rather than federal law, and therefore may differ somewhat from state to state. You should consult with a workers' compensation lawyer in your state if you are seriously contemplating pursuing a workers compensation claim.

Having said that, most workers compensation laws are broadly similar and tend to be patterned on the earlier states to enact them, which includes my state. I used to practice extensively in workers compensation claims in my state before I developed MCS.

In general, workers compensation claims are intended to provide an alternative to lawsuits where an individual becomes injured as a result of the conditions of their employment. Benefits are limited to weekly payments usually of 2/3rds of pre-injury earnings, payment of medical expenses related to the injury, and, in some cases, lump sum payments. They are handled outside of the court system in special administrative agencies in each state which generally have a relatively in-

formal arbitration system in place to resolve disputes. Appeals may then be taken to court. Appellate review is typically limited to determining if the decision of the agency is "against the manifest weight of the evidence."

In order to obtain workers compensation benefits you have to be able to show that the work place "caused, aggravated, or accelerated" your impairment. Additionally, you must show that the employment "increased the risk" of the injury or impairment beyond that which would be experienced by the public at large outside of the employment.

In MCS/EI cases, work related connections tend to fall in one of two broad categories: (1) exposure to noxious chemicals; and (2) "sick building syndrome".

Chemical Exposure Cases

What I am calling "chemical exposure cases" refers here to exposures in the workplace to chemicals that are generally regarded as dangerous and toxic, and which are not usually found outside of the workplace. As an example, one of my clients worked as a custodian for a school district which had an indoor pool. There were two lines that fed chlorine on the one hand and an acid on the other which ran through the area in which she worked. One night the lines had

both sprung leaks and the liquid from both had combined on the floor to produce a pool of hydrochloric acid. When she arrived in the morning she was greeted by a cloud of hydrochloric acid fumes and developed lung problems.

This is clear enough. The problem came next. After this exposure, not only did she become sensitive to hydrochloric acid and other strong chemical fumes, but to perfumes and other normally occurring chemicals. Although she was moved out of the maintenance department and given a job working in a classroom, she continued to experience symptoms from fragrances, cleaning products, etc. and sought total disability from the school district.

Unfortunately, I was advised by the workers compensation attorney, in her state to whom I had referred her, that the state Industrial Board would only recognize her as having limitations to the type of chemical to which she was exposed, and was unlikely to be willing to expand that to a recognition that she could develop a sensitivity to chemicals to which other people do not react. We had a similar case in my state which involved my own EI doctor as the expert witness. This is probably common in many states and you should check with a local attorney who is knowledgeable in workers compensation in your state for further advice.

“Sick Building” cases

The second broad area in which these claims can arise is the so called “sick building syndrome” in which people who are confined in newly constructed or newly remodeled buildings where the windows don’t open develop symptoms. We had a well known case in our state where one of the large suburban counties built a new complex for their court system and moved everyone out there from the older turn of the century buildings that had been used up to that time.

Shortly after everyone had moved in, a number of

people started complaining about symptoms. Over the next few weeks the number of complaints grew to the point where they had to completely close down the new complex and move everyone back into the old buildings. It took over a year of retrofitting of the new building before they could move back in, and many of them filed workers compensation claims. I practiced there at the time and can tell you it was very inconvenient to keep shuttling back and forth.

Ironically, I happened to run into the architect for the building at a party shortly afterwards and listened to him complain at length that there was nothing wrong with the building and it had all been a case of “mass hysteria”. I explained to him that it wasn’t so much his design of the building as the fact that it was filled with new carpeting, synthetic fabrics, new computers, etc. and the windows didn’t open.

My own allergist has been on the local high school board for 25 years and insisted that the new high school, which my daughter attended right after it was finished, be hypo-allergenic and chemically safe. The building is constructed of cinder block, has no carpeting on the floors, and has windows in every room that can be opened. The computers in the computer lab are vented to the outside. No one has had any complaints since it opened.

If you do elect to pursue a workers compensation claim, you need to check out the case history in your state to see what they will recognize. Any such case will probably cost you several thousand dollars in expert witness fees and may or may not be successful. Again, some states are much more enlightened than others on this issue.

Be aware that any benefits you receive under workers compensation may cause a reduction or “offset” on any disability benefits you may receive from Social Security, as well as on any disability benefits under an insurance policy. See my website for information on how this may be avoided in some cases.