

PA Federation of Injured Workers Vocational Rehabilitation



It is important to understand that receiving worker's compensation does not mean that you have the right to get your job back. Receiving workers compensation also does not mean that the workers compensation insurance company has to re-train you or that you have a right to be given an equivalent job in terms of salary, benefits, hours, shift or fringe benefits.

The courts in Pennsylvania have created important rules that you must follow. If you do not follow these rules you risk losing all or part of your worker's compensation benefits.

You may have other rights created by a collective bargaining agreement, a contract of employment or other contract.

The rules for employment under Pennsylvania's worker's compensation are summarized as follows:

If the workers compensation insurer/self-insured employer offers you a job within your medical restrictions, you must apply for this job in good faith. It does not matter what type of work it is, what hours/shift, pay or fringe benefits. You must interview for the job!

The court cases which interpret this general rule are constantly changing and an injured worker needs expert legal advice in such cases. The workers compensation insurer/self-insured employer or adjusting company has no legal obligation to give you accurate advice regarding your rights and obligations.

Tips for Vocational Rehabilitation

Note: There is a provision in the Pennsylvania worker's compensation act that states that if an injured worker applies for and gets vocational rehabilitation through the Pennsylvania Vocational Rehabilitation Office, OVR, the worker's compensation insurer/self-insured employer can not do a vocational evaluation to generate an earning capacity for the injured worker.

Meet with the vocational rehabilitation counselor or other designated representative in the office of your attorney.

- This will ensure that your rights are protected and you are advised by your attorney during the interview.
- During this interview make sure that a copy of your medical records and a copy of a PCE (Physical Capability Evaluation) from your treating physician are given to the interviewer and get documentation showing proof that they received those reports.
- Check to see if the interview can be videotaped or if a court reporter can attend to document everything that goes on during the interview.

Request that each job referral be in writing.

- The referral should include a detailed description of the job and what you will be expected to perform the job. If not, request it.

Keep a detailed journal for all the job referrals.

- Record the date you received the job referral, the date you applied/interviewed for the job, what happened during the interview and what happened after the interview.

Send a copy of the job referral to your treating physician.

- Explain in detail what you are expected to do for the job and what the environment you will work in

will be. Example: *If you have a bad back you don't want a job working where the floors are slippery such as a fast food restaurant.*

- Ask for an opinion as to whether or not you can perform that job. *Do this after the job interview, that way your physicians opinion will not influence you in any way for the job interview.*

Apply for every job, no matter how ridiculous or whether or not you like the job. Failure to apply for any job within your medical restrictions can result in the loss of your worker's compensation benefits.

- Dressed appropriately for each job interview.
- Be civil during the interview no matter how ridiculous it gets. This is what the law means by applying in "good faith". *This is one requirement that is scrutinize very heavily by worker's compensation judges.*
- Don't talk about any medical restrictions other than those directly related to your work injury.
- Don't act inappropriately during the interview or write something inappropriate on an application. For example, if the job pays \$6.00 an hour don't say that you will only take a job paying \$10.00 an hour, the salary you were earning before you got injured.

Questions & Answers

Question: My treating physician and the company physician disagree as to my medical restrictions in terms of what I can lift, bend, push, pull, stand, etc. What should I do?

Answer: If there is a substantial disagreement, the matter will eventually be decided by a worker's compensation judge who could believe either your physician or the company physician. You should apply for each job in good faith and if there is a question about restrictions take a copy of each set of restrictions with you to show the interviewer. *Note: It would help you if your treating physician reviewed the job referral and recommended whether or not you should try the job.*

Question: What do I do if I am offered the job?

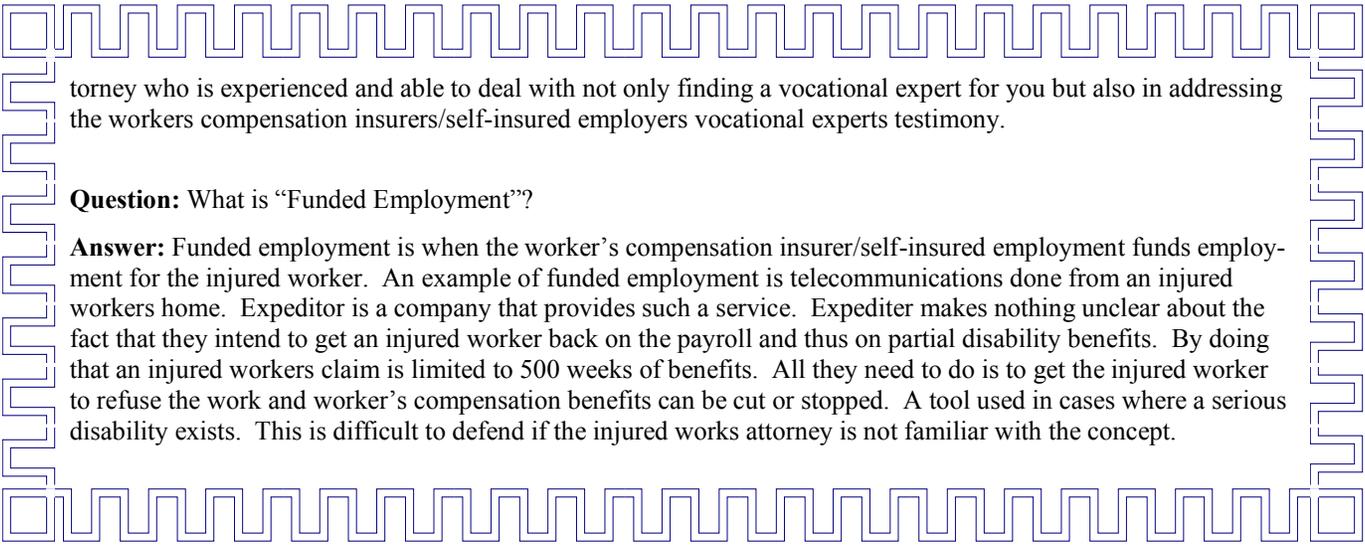
Answer: If it is within your treating physicians restrictions you should try it. When in doubt discuss the job with your treating physician and your attorney. *Note: Remember that if you fail to take a job which is later found to be within your restrictions you could lose your worker's compensation benefits.*

Question: How far am I required to travel to apply for jobs found for me by the worker's compensation insurer/self-insured employer?

Answer: The courts have held that you are required to travel the distance that persons in your community normally travel to go to work. This may vary. *Note: Ask your treating physician how much driving you can do if you are on drugs that may effect your ability to drive. Your treating physician will set restrictions on your driving id necessary.*

Question: What are the "Labor Market Surveys"?

Answer: Vocational rehabilitation has always been a contentious issue in the Pennsylvania worker's compensation setting. The workers compensation insurers/self-insured employers are now using the Labor Market Surveys brought into the system, through the last reform in 1996 when act 57 was passed, on a regular basis. The most common reason cited by worker's compensation insurers/self-insured employers is that they are an effective tool for getting a case settled. The Labor Market Surveys demonstrate what the potential earning capacity is for an injured worker and provide a basis for calculating a lump sum settlement. Additionally, if the Labor Market Survey is done right it is very difficult for an injured workers attorney to defend. These cases tend to be expensive for the injured workers attorneys and finding a solid vocational expert to combat the worker's compensation insurers/self-insured employers vocational expert has also proven difficult. Unfortunately, there is not much that an injured worker can do in this situation. This type of case is driven by expert testimony. It is essential that you find an at-



torney who is experienced and able to deal with not only finding a vocational expert for you but also in addressing the workers compensation insurers/self-insured employers vocational experts testimony.

Question: What is “Funded Employment”?

Answer: Funded employment is when the worker’s compensation insurer/self-insured employment funds employment for the injured worker. An example of funded employment is telecommunications done from an injured workers home. Expeditor is a company that provides such a service. Expediter makes nothing unclear about the fact that they intend to get an injured worker back on the payroll and thus on partial disability benefits. By doing that an injured workers claim is limited to 500 weeks of benefits. All they need to do is to get the injured worker to refuse the work and worker’s compensation benefits can be cut or stopped. A tool used in cases where a serious disability exists. This is difficult to defend if the injured works attorney is not familiar with the concept.