

In

your

CORNER

The Disability Law Adviser

CASE CLOSED:

THE FIGHT FOR RIGHTS WINS!

Tim Davis – not his real name, but a real client – was involved in a major auto accident that left him a T-8 paraplegic no longer able to use his legs and impacting his nervous system controlling the lower half of his body, making him dependent on a wheelchair for mobility.

For years before and after his accident, Tim worked as a Mechanical Design Engineer for a leading company in health technology, requiring high cognitive abilities and extensive computer work – for the most part, a sedentary job.

However, the longstanding use of Tim's arms to propel his wheelchair, along with repetitive use of his arms to do his job, led to permanent nerve injuries of his bilateral upper extremities. With a lucrative career that he loved, Tim pushed himself to continue working as long as he could, until chronic pain affecting his cognitive abilities and physical symptoms of bilateral carpal tunnel syndrome affecting his wrists; bilateral cubital tunnel syndrome affecting his elbows; peripheral neuropathy causing weakness, numbness and pain; decubitus ulcers caused by pressure sores from sitting too long; and pain from lumbar degenerative disc disease made it impossible for him to continue.

When Tim finally listened to his physicians' recommendations, he reluctantly filed a claim for long-term disability benefits with his employer-sponsored disability insurance carrier, Cigna.

Cigna initially approved his benefits, but since Tim was a high wage earner, Cigna – as most disability insurance companies do – looked for a reason to stop paying him. Cigna interpreted Tim's condition in his updated medical records as showing improvement when in fact Tim's symptoms had worsened. Cigna also didn't consider the factor chronic pain played on Tim's ability to do his cognitively demanding job.

Tim was paid the benefits he deserved after we appealed Cigna's termination of his claim.

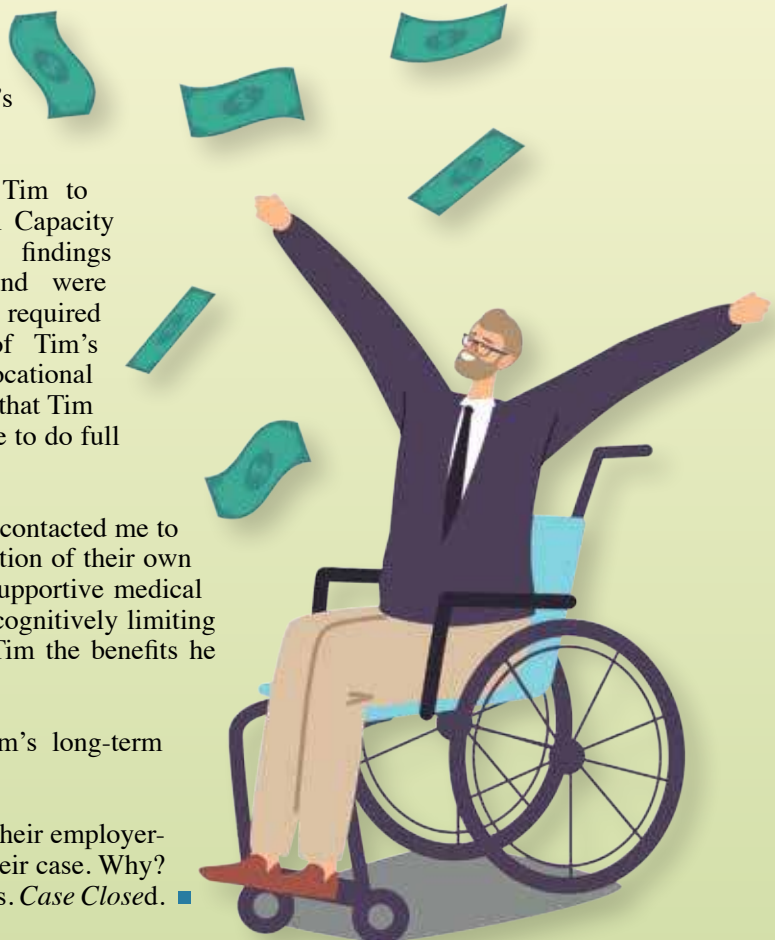
Cigna arranged for Tim to undergo a Functional Capacity Evaluation, the findings of which they found were consistent with the required physical demands of Tim's job. However, the vocational evaluator determined that Tim

could do LESS than sedentary work and likely wouldn't be able to do full time work.

When Tim received notice of Cigna's disability termination, he contacted me to appeal the decision. Drawing attention to Cigna's misinterpretation of their own vocational evaluator's report, and with well-documented and supportive medical reports from several physicians addressing Tim's medical and cognitively limiting conditions, on appeal, Cigna reversed their decision, paying Tim the benefits he deserved.

Thanks to our experienced ERISA disability legal team, Tim's long-term disability benefits were restored.

If your patients or clients find themselves denied benefits from their employer-sponsored disability program, contact me for a free review of their case. Why? Because I have your back when it comes to fighting for your rights. *Case Closed.* ■



FULL & FAIR ... NOT NECESSARILY SO



If a doctor, lawyer, or a construction worker told you what they did, you would understand, right? Some jobs, like working as a Clinical Specialist, may not be as clear.

However, in an ERISA case, it's crucial to have all the relevant facts to determine your eligibility for long-term disability benefits or appeal a termination to confirm you received a "full and fair review."

In *Kay v. Hartford Life & Accident Ins. Co.*, No. 21-55463 (9th Cir. Sep. 21, 2022) Hartford tacked on a new reason to terminate a claim in their final decision by altering the job duties, and not informing Anne Kay of their new rationale before their final denial, depriving her right to respond before filing suit when she would be precluded from adding to the record and in effect, placing her – and anyone in her position – in the dreaded *Danger Zone*.

The Hartford occupational analyst combined two generic DOT job descriptions which did NOT accurately reflect Anne's specific job duties. This evidence was not provided to Anne before the denial of her appeal, depriving her of a "full and fair review."

Anne Kay worked as a Clinical Specialist for Candela Corporation, a dermatology practice in San Diego, California. When Anne was forced to stop working in August 2015 due to increasing back pain, she filed a claim for long-term disability benefits under her employer-sponsored plan with Hartford. Hartford initially approved her claim for long-term disability benefits, but less than a year later terminated her benefits and upheld its decision by deciding that the medical evidence no longer supported Anne's inability to perform the essential duties of her job "in the general workplace."

After reviewing its occupational analyst's report, Hartford defined Anne's duties to include sales support and travel,

requiring her to sit or stand for up to 8 hours, push or pull up to 270 pounds, lift 25 pounds, and carry 20 pounds. However, this did not reflect reality. Anne's actual job required traveling up to 80% of the time, working over 40 hours per week, and moving equipment that weighed upwards of 270 pounds.

In the report, the Hartford occupational analyst combined two generic Department of Labor's Dictionary of Occupational Titles ("DOT") job descriptions which did NOT accurately reflect Anne's specific job duties. Also, an independent doctor who reviewed the Hartford report determined that Anne was not disabled from performing those duties. This evidence was not provided to Anne before the denial of her appeal.

In an ERISA case, a court may exercise its discretion to consider evidence outside of the record presented "only when circumstances clearly establish that additional evidence is necessary to conduct an adequate *de novo* review of the benefit decision." When it denied Anne's motion to add to the record with evidence to refute Hartford's new rationale, the District Court isolated Hartford's decision from "full and fair review." Citing the District Court's error, the 9th Circuit Court of Appeals reversed the decision and Anne's right to add information to her disability case was restored.

If you – or anyone you know – has been denied disability benefits from your employer-sponsored disability insurance program, give me a call for a free consultation to help keep you out of the *Danger Zone*. ■

THANKSGIVING

S	R	G	S	I	Y	N	M	U	T	U	A	G	E
G	P	B	E	P	I	L	G	R	I	M	S	N	F
A	S	L	O	M	U	M	F	E	F	R	E	I	A
S	T	A	T	G	H	A	R	V	E	S	T	V	M
M	U	C	A	C	O	R	N	Y	P	R	I	I	I
P	F	K	T	Y	V	C	P	E	U	E	N	G	L
Y	F	F	O	K	I	E	L	K	M	T	N	S	Y
V	I	R	P	E	E	L	Y	R	P	T	O	K	L
A	N	I	D	Y	P	E	M	U	K	F	V	N	L
R	G	D	E	H	I	B	O	T	I	E	E	A	A
G	S	A	H	Y	A	R	U	A	N	A	M	H	F
G	M	Y	S	T	O	A	T	A	P	S	B	T	C
A	S	A	A	G	H	T	H	A	I	T	E	R	N
F	A	M	M	S	A	E	P	N	E	E	R	G	K

- | | | | |
|--------------|-------------|-----------------|--------------|
| Black Friday | Stuffing | Pilgrims | Corn |
| Family | Harvest | Mashed Potatoes | Green Peas |
| Turkey | Celebrate | November | Thanksgiving |
| Gravy | Pumpkin Pie | Feast | Fall |

Play this puzzle online at: <https://the wordsearch.com/puzzle/88161>

SPOTLIGHT LEGAL AID FOR ALL



Over the years, I've met many individuals who needed legal help outside my area of expertise as a disability lawyer. If so, I often refer them

to Community Legal Services of Mid-Florida, providing no-cost legal services to the most vulnerable in Central Florida to help them protect their families, health, and livelihood.

Community Legal Services offers its legal help for thousands in 12 counties in Florida who would otherwise be unrepresented. When clients seek their help, they have already lost many resources, security, home, job, and more. Some examples of the types of services Community Legal Services offers are:

- Protecting the elderly and families from unlawful evictions;
- Making sure women and children are protected from violence in their homes;
- Helping Veterans who need vital medicines and receive financial benefits they have earned and need;
- Assisting with children's rights and special education needs;
- Assisting consumers with their legal issues;
- Assisting the public with identifying available benefits.

"Lately we've mostly been handling housing law, seeking emergency home assistance. Most of our clients need help with family law and housing," says Michelle Wargo, Director of Communications for Community Legal Services.

To qualify, most of those receiving services can't have incomes above 125% of poverty level. There are some programs such as for victims of domestic violence with eligibility above the poverty level though many who qualify for legal aid services don't know what resources are available to them until they contact Community Legal Services.

Calling their 'Help Line' at **800/405-1417** or completing their

online intake form at www.clsmf.org are essential 'first steps' to find out more about the legal assistance offered by Community Legal Services, as well as browsing their extensive "self-help" library on their website which may help with the issues they may be facing.

The major funder for Community Legal Services is Legal Services Corporation, a federal government program for civil legal aid. They provide about 60% of their funding along with other grants and donors. There are also attorneys who have left a legacy donation for pro bono work.



Michelle Wargo

Sometimes there are situations Community Legal Services can't handle because of their funding or lack of lawyers willing to donate time. With six million who may qualify for legal assistance, Community Legal Services could close the 'gap' if every attorney in the 12 Florida counties would give 3 hours of their time it would help provide legal help to qualified individuals. Their website has an entire section devoted to learning more about this aspect of their services. www.clsmf.org/pro-bono-and-volunteer/

As a former newscaster and marketer, Michelle says, "Working with Community Legal Services is a way to fully use my skills *and* make a difference in the community." When she's not spreading the word about Community Legal Services, Michelle dabbles in her love of drawing and painting, reading, or spending time with her 10-pound toy multi-poo, Cocoa.

Community Legal Services of Mid-Florida, 1610 SE 36th Avenue, Ocala, FL 34471, 352/629-0105. Toll free help line: 800/405-1417. ■

Havin' a LAUGH!!



CartoonStock.com



CJ HENRY LAW FIRM, PLLC

YOUR DISABILITY LAW PARTNER

2303 E Fort King Street
Ocala, Florida 34471
Phone 352.304.5300
www.cjhenrylaw.com
email: info@cjhenrylaw.com

Claudeth's WORLD

Much to be Thankful For

The Holiday season each year causes us to reflect on our many blessings: our health, family, friends, occupations – the list is endless. Considering the catastrophic damage recently caused by Hurricane Ian, this reflection is even more prominent in our minds.

Before the storm's approach, my sister and I helped not just our Mom but her elderly neighbors by sandbagging their homes, in anticipation of the torrential rainfall which had been forecast. I'm sure many of you made similar preparations. We were truly blessed to have been spared from Ian's wrath.

But for far too many, September 28, 2022, will linger for many years to come in the minds of those in the path of Hurricane Ian.

As we prepare for Thanksgiving let us remember those who are not as fortunate. Not out of guilt but gratitude for what we have: family, shelter, food, clothing, and a job. To remind myself and keep me humble each year, my staff and I donate a day of service to our community, by volunteering to prepare and serve a meal at Brother's Keeper, helping Salvation Army in whatever way is most needed, or collecting can goods for those in need.

While you might not be able to participate in volunteer activities, you can help your fellow Floridians who may be less fortunate by donating to one or more of these organizations:

- The American Red Cross: always among the first to respond to the needs of victims of natural disasters like Hurricane Ian. www.redcross.org.
- The Florida Disaster Fund: the state's private fund for responding to emergencies and natural disasters. www.volunteerflorida.org.
- Salvation Army: providing meals and shelter to those in need. give.help.salvationarmy.org.
- United Way: created an emergency relief fund to help area nonprofits deliver aid to community members impacted by Hurricane Ian. www.unitedway.org.

The ability to reach out to help others is in itself a blessing and always makes us truly thankful for what we have been given. At this time of year, my staff and I wish you and yours a happy and joyous Holiday season. ■



(above) My wonderful sister Jennifer, helping to fill sandbags before Ian arrived.



*(top) My daughter Cortnei and I helping with Holiday preparations for Salvation Army.
(Bottom) Our Firm donation to a recent Community Food Drive.*