

In *your* CORNER

The Disability Law Adviser

CASE CLOSED:

Making the Impossible POSSIBLE

Cory loved his job and wanted to keep doing it. But his elusive medical condition made it impossible to continue working as an automotive mechanic. "Impossible" is a good description because having a medical diagnosis like Cory's that isn't supported with specific medical tests – only mostly through personal complaints – is a recipe for denial of disability benefits and filing a lawsuit. Cory experienced both and luckily for him, he came to our office.

I met Cory – a real client though not his real name – after he had been denied his disability benefits and was referred to me by another attorney.

Cory was relatively healthy until a medical procedure in 2015 left him with "burning in the brain," dizziness, imbalance, cognitive impairment and fatigue. He was diagnosed with autoimmune encephalitis and treated with bimonthly IV infusions leaving him exhausted and eventually unable to continue working.

Cory filed claims for short-term and long-term disability benefits under his employer's disability plans with MetLife, which were approved, as well as an approved claim for Social Security Disability benefits.

After nine months on disability, Cory began to experience mild symptoms improvement and tried going back to the job he loved, ending his disability benefit payments. However, back at work, a series of actions left Cory out in the cold. First, Cory's medical symptoms worsened which led to his physician restricting him from driving. Driving was an integral part of Cory's job, and this restriction caused his employer to classify him as a "safety risk" ultimately leading to the loss of his job.

Unable to work, Cory notified Social Security and his disability benefits were reinstated. He also filed for long-term disability benefits with his employer's new disability group insurance carrier, CIGNA, anticipating the claim would be approved.

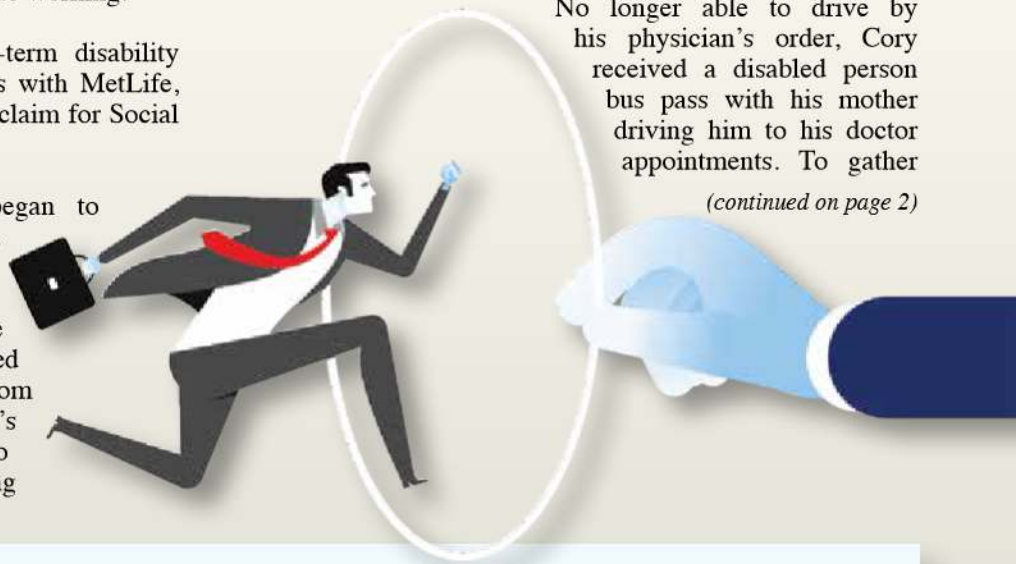
New Carrier - New Eyes on Claim

Surprise! CIGNA's reviewing physician determined that the medical documentation in Cory's file didn't prove a functional impairment that would keep him from doing his job and Cory's long-term disability claim with CIGNA was denied.

Our review of Cory's medical records found that as Cory's condition progressed, new symptoms were noted, including "horrible" difficulties with sleep causing him to feel tired and easily exhausted throughout the day, along with feeling "periods of anger and rage" since his diagnosis.

No longer able to drive by his physician's order, Cory received a disabled person bus pass with his mother driving him to his doctor appointments. To gather

(continued on page 2)



Claudeth Henry, Esq.

In Your CORNER

by Claudeth Henry, Esq.

June means vacation time, so pack up the kids and roll down the road to the 'liquid heart' of Florida, the Everglades, featured in 'Claudeth's World.'

Our 'Spotlight' recognizes Cathy Ranges, whose long-time career is devoted to educating Ocalans on the latest options for better vision.

In 'Case Closed' you'll read about a mysterious illness and how our client won his deserved disability benefits. And we share how employers can avoid costly errors in the 'Danger Zone.'

If you, your patients, or clients are applying for or have been denied disability benefits from an employer-sponsored disability insurance program contact me for a free evaluation. Why? Because I am 'In Your Corner.' ■

SPOTLIGHT Cathy Clues Us In



Before you schedule your cataract surgery, Cathy Ranges is the go-to expert who can share the benefits of replacing your old, worn-out, natural lenses with the IOLs – or intraocular lenses – for renewed vision before or after a cataract develops.

Cathy is a refractive coordinator with Dr. Thomas Croley’s Central Florida Eye Institute right here in Ocala. With over four decades of experience in the industry, Cathy’s job as the lead vision tech ranges from surgery to educating our community through various seminars throughout the year.



(top) Cathy at the office.
(bottom) Cathy enjoying a summer day with her family.

She explained one of the latest ophthalmology options that she finds heart stoppingly fascinating.

“IOLs were originally designed for cataract surgery, but since we are a more demanding population now, we also do refractive lens exchange for vision correction. So, before your natural lens develops into a cataract, we take the natural lens out and replace it with the multifocal IOL which corrects all ranges of

vision, near or far. We are finding an uptick in people who want to do multifocal IOLs for cosmetic reasons.”

Potential patients for IOLs are thoroughly screened prior to any procedures. According to Cathy, “If caught and treated early, glaucoma does not have to lead to vision loss anymore. In fact, more people lose their vision due to hypertension, high cholesterol, or diabetes. Any inflammatory disease can affect vision. You have to stay healthy to keep good vision.”

A daughter to her spry 90-year-old father, a wife, mother of two adult daughters, and a grandmother to her grandson, Cathy loves spending time with family and taking in the cultural fare including the Ocala Civic Theater and the Appleton Museum. Of course, she enjoys her sweets too, especially when sharing her favorite dish of chocolate ice cream and cake with her father during their weekly Saturday lunches.

Not even COVID precautions stopped this determined daughter

from her weekly visits with her father: living in an Assisted Living Facility, a “Hug Day” was planned, taking every precaution to protect the residents. But Cathy now knows who to credit for her problem-solving ability: “after this photo was taken Dad escaped to come outside and give me a REAL hug!”



(Cathy giving her Dad a hug during COVID)

Her guilty pleasure? “Reading, which is a lifelong passion inherited from my teacher-parents. My current favorite is *Word of Honor* by Nelson DeMille.”

Thank you, Cathy, for your decades of caring. You and others like you are what make Ocala and Marion County the special place that it is.

Cathy Ranges, Refractive Coordinator, Central Florida Eye Institute, 3133 SW 34th Avenue Ocala, FL 34474, 352/237-8400, centralfloridaeye.com. ■

CASE CLOSED:

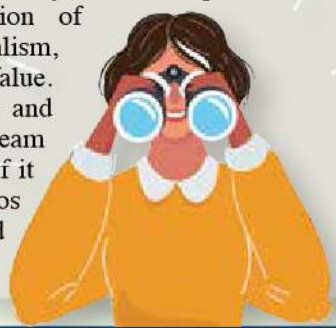
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objective evidence that supported Cory’s subjective complaints, we arranged for a neuropsychological exam, which Cory couldn’t complete due to reported pain and burning in his head.

We submitted this appeal documentation to CIGNA. When our appeal was unsuccessful, we filed suit on Cory’s behalf, which was settled at mediation.

What did Cory think of our help in his claim?

“I’ve never had a lawsuit before, but this was a seamless type of operation, one in which my needs were paramount as well as the compassion of the firm. Professionalism, Quality, Responsiveness, Value. Exceptional service, quality and caring. It definitely was a team experience, and I was part of it every step of the way. Kudos to CJ Henry Law Firm,” said Cory. **CASE CLOSED.** ■





Looking Out for Our Employees



As business owners, we routinely withhold money from our employees' pay to make premium payments for the benefits we provide, like health and life insurance benefits. I think we can all agree that our employees should be able to trust us to handle their benefit coverage properly, and they should have a remedy under ERISA when we employers fail to do so. Let's take a look at a case that should serve as a warning to us as employers that we may be held liable if our employees lose coverage under their benefit plans if we mishandle premium payments.

In *Chelf v. Prudential Ins. Co. of Am., No. 20-6097, ___ F.4th ___, 2022 WL 1090168 (6th Cir. Apr. 12, 2022)* Elmer Chelf, a Wal-Mart employee, passed away while on disability leave. His wife, Ruth, filed a death benefit claim under Wal-Mart's basic and optional life insurance employee benefit plans. The plan's insurer, Prudential Insurance Company of America, *approved* Ruth's claim for basic life insurance benefits but *denied* her claim for optional life insurance benefits on the grounds that Elmer's optional life insurance coverage had *terminated* before his death.

Ruth appealed the denial, and when it was unsuccessful, she sued Wal-Mart and Prudential. Prudential settled with Ruth, leaving only Wal-Mart in the lawsuit. Ruth alleged that Wal-Mart breached its fiduciary duty to look out for Elmer's best interests by not letting him know of his right to convert his optional life insurance coverage by using his unpaid time off to cover the premiums while he was out on disability, which would have kept his coverage in force.

Wal-Mart's response was that they acted in an *administrative* capacity rather than a *fiduciary* capacity regarding premium payments and had no obligation under ERISA to give Elmer notice of conversion rights outside of the plan documents. They filed a motion to dismiss based on Ruth's allegations, which the district court granted.

On appeal the Sixth Circuit court found that the ERISA regulation cited by Wal-Mart explains that certain "person[s] who perform purely ministerial functions" for an employee benefit plan are not fiduciaries, *didn't* apply to Wal-Mart because Wal-Mart "indisputably exercised control over the Plan's assets when it handled Elmer's premiums, exercised control over the disposition of the Plan's assets, and had discretionary authority over the administration of the Plan." As a result, the Sixth Circuit found that Wal-Mart was "acting in a *fiduciary* capacity" and not a "purely *ministerial*" capacity by mishandling Elmer's premium payments, and agreed that Ruth's allegations "suffice to state a claim for breach of fiduciary duty[.]"

If you as an employer want to avoid the risk of mishandling any legal aspect of your employer-provided benefits under ERISA, give me a call for a free review. We're all in the same corner when it comes to staying out of the *Danger Zone*. ■

Earth & Environmental Science

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| ATOM | GLOBAL CLIMATE | OZONE LAYER | DRAINAGE BASIN |
| AIR MASS | RUNOFF | ATMOSPHERE | THERMOSPHERE |
| GYRE | UPWELLING | WATERSHED | MESOSPHERE |

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

Havin' a LAUGH!!



"Your Honor, my client was wondering if he could serve his sentence in dog years?"



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Claudeth's WORLD



(above) The amazing Everglades at Sunset.
(left) Adventures abound for Cecil and me

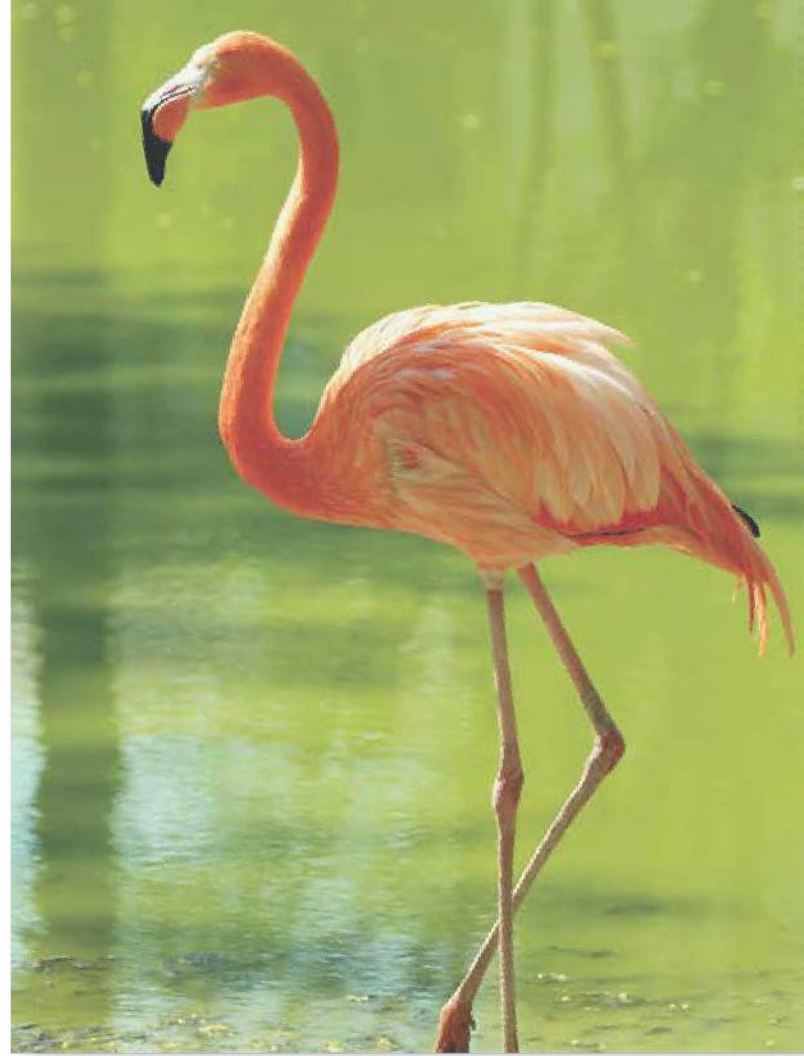
Natural Florida Anyone?

As a Florida transplant for over 30 years, I have visited many of its attractions that draw millions of visitors each year. However, one that my family and I have yet to explore is the Florida Everglades – the largest subtropical wetlands in the United States. Starting near Orlando and

winding its way south to Florida Bay, the Everglades covers 733.59 square miles and is an important habitat for several rare and endangered species including manatee, crocodile, and the mysterious Florida panther. I bet you didn't know that the Florida Everglades is the **only** place in the world where both alligators and crocodiles live together!

While there are countless ways to discover the Florida Everglades, one of the most exhilarating is by airboat. A friend of mine shared with me teenage memories of her terrifying yet awe inspiring dawn private airboat ride above the bellowing crocodiles and alligators just beneath her vessel gliding along the murky marshes and cattails in concert with songs of the awakening fowl of the air. She was petrified, but now, over 40 years later, still recalls the sense of awe she felt that misty morning. No thanks! Not for me! For those of us who want to explore the Everglades, there are many safer entry points in the Everglades National Park. Here are just a few.

You can capture that same sense of awe with a guided airboat ride at **Sawgrass Recreation Park** in Weston, flying through



(above) The best place to see Flamingos is in the Florida Everglades.

the sawgrass and cattails and surrendering your imagination as you hear stories of this only-in Florida environment. Back at the visitor center you can touch a baby alligator and see a Florida Panther in the animal exhibit areas, with more than 100 rescued mammals and reptiles.

Want to stay on dry land for your Everglades adventure? The tram on the 15-mile **Shark Valley Loop** in the Everglades might be for you if you want to get close – but not TOO close – to a LOT of alligators. 25 miles west of Miami and 70 miles east of Naples, this route is available exclusively to tram tours.

If you are more of a tree hugger, **Corkscrew Swamp Sanctuary** near Naples introduces you to the largest stand of old-growth cypress trees on the planet, some as much as 135 feet high and 40 feet around!

Exotic produce can be found at **Robert Is Here**, a large produce market that began with a roadside stand in 1957 when the proprietor was only 7 years old! Located just east of the Everglades National Park and west of Florida City, Robert Moehler – a big friendly man who will talk your ear off – grows most of what he sells: dragonfruit, lychee, sapodilla, as well as more familiar items like tomatoes, cucumbers, bananas, mangoes and more. And he can make any of his fruit into a smoothie. Yum!

I'm ready for a different type of Florida adventure! How about you? ■