



Occupational Medicine and a Criminal Court Case - Report of a Case

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Abstract

This paper seeks to emphasize the importance of occupational medicine, whose specialist forensic experts can practically save the accused person from lifelong damages. Here is presented the case of a security guard who physically injured an employee of the company by which he was hired and caused him severe physical injuries. Due to these injuries the employee of the company retired. The Croatian Institute for Pension Insurance with which the injured party is insured requires that the security guard who caused him damages pays him a lifelong monthly pension instead of them. The expert witness demonstrated that the consequences of the injured party's injury had never been proven to be a serious injury to the extent that he could no longer work, and that instead he could have been retrained for easier jobs.

Keywords: Court; Experts witness; Injuries; Invalid pension; Occupational medicine

Introduction

Expert witnessing is a great challenge for specialist doctors because from the health system they have to enter into the legal system, which has completely different professional and scientific roots [1]. Occupational medicine expert witnesses have the main task to assess the work capacity of participants in legal processes [2]. Frequent changes in work tasks often lead to stress, which in addition to discomfort can turn into illness and inability to work [3]. Among the leading consequences of stress is the organic psycho syndrome, which occurs after serious injuries and often leads to retirement [4]. Such retirements are very common at a too early an age and should be assessed on a case-by-case basis [5].

This paper presents the case of a chef who did not do the job in his own profession, but the job of organizing a masquerade party instead, where he was physically attacked and severely injured by a security guard, so that he ended up in disability pension. From the security guard is required to every month pay to the injured party their pension, instead of the State Pension Fund.

Case Presentation

The qualified chef worked at a masquerade party as a host - organizer in a restaurant near Rijeka, Croatia. The security guard that had been hired to maintain order at the restaurant at one point sat at the bar and consumed several alcoholic drinks. The chef warned him that this was forbidden and not to drink at work to which the guard punched him in the head. The chef fell on the floor and the guard continued to kick chef's head with his feet.

The chef suffered head fracture, cheekbones fracture, and lesions of left facial nerve. He was transported to the Clinical Hospital Centre Rijeka to the Neurosurgical Department.

After the physical wounds healed the patient was also diagnosed with organic psycho syndrome. He was directed to the Invalid Commission and had received invalid pension due to professional incapacity to work. He was no longer able to work independently in his own profession as a chef, where he needed the sense of smell and taste and capability for dynamic work, especially in a larger establishment. No one ever referred him or asked the opinion of the Centre for Professional Rehabilitation.

The injured chef never returned to work and at the age of 48 he received the invalid pension. The security guard had received one year prison sentence which he duly served. After the release from prison, he received a claim from the Croatian Institute for Health Insurance for a lifelong monthly invalid pension payment to the injured chef. The Institute wanted to transfer their pension payment obligation to the security guard.

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Discussion

One year after getting injured and retired with invalid pension, the chef was 48 years old. This means that due to his still young age, he was supposed to be directed to the Professional Rehabilitation Centre where he would have been retrained and enabled for an easier task job within his education and profession. According to the Rule about Pension Insurance, Article 39 point 2 – “Remaining work capacity exists when at the insured person occurred diminished work capacity from the item 1 of this article, but due to the health condition, age, and capacity can be enabled by professional rehabilitation to work on the other jobs full time” [6]. The same is told in the Regulation on medical expertise [7].

As a matter of fact, the main diagnosis of the organic psycho syndrome at the injured chef was never confirmed. The Institute psychologist has found that psycho tests may refer to organic psychical dysfunction. Nowadays, it is well known in medical practice that diagnosis of the organic psycho syndrome must be proved by Magnetic Resonance (MR) where atrophic brain change should be expected and specific psycho- test should be implemented – Mini Mental State Examination (MMSE). None before mentioned had been ever done. In many countries in the world, specific guidelines for working incapacity were never established to full extent [8]. Western – Europe psychologists are educated for conducting tests to assess functional psychic capacity [9]. Namely, with different professionals, from occupational therapists, medical specialists and lawyers it is necessary to develop credibility and working strategies in combined medico-legal processes [10].

Croatian Institute for Pension Insurance after receiving the psychologist's expert report, together with other experts' witnesses from the Institute Team, assessed the chef as a person professionally disabled for work. Professional incapacity does not mean general work incapacity, and in this case the professional incapacity had been proclaimed on the basis of insufficient medical proofs. In the case of this chef, due to his partial loss of smell and taste, his professional incapacity had been treated as general work incapacity.

However, the essence of this case is not the injured chef who (if we use the legal terminology) had been awarded by the Pension Institute experts the “acquired right” to the invalid pension that he has been receiving for several years. The main point in this case is that the Institutional expert bodies were wrong and have sent in retirement the person who was capable of employment at least in lighter jobs than his own and that now they demand from the security guard to pay monthly pension to the injured chef.

Occupational medicine does not protect offenders, but in this case the offender has to be protected because he has served his one-year prison sentence. He cannot be sentenced for lifelong payment, due to

the fact that the Institution was not sufficiently careful and wrongly proclaimed the injured chef fully incapable of work and awarded him the invalid pension. The fact is that he was capable to work in other, lighter jobs after being assaulted and healed 13 years ago.

Now it is too late for MR and specific tests, the patient's state should have been to be properly assessed immediately after the injury.

Conclusion

The chef has his “acquired right” to invalid retirement and the security guard is not obliged to pay invalid pension to the injured party, the pension should continue to be paid by the Institute whose expert witnesses had awarded it with insufficient attention. This case demonstrates how the right assessment done by OM specialist expert witness can “save” what is left of a person's life, even as in this case, of an offender. He already duly served his penalty and lifelong payment to the injured chef would threaten the ex-safe guard's existence.

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