



# Determining Impairment and Causation in Disability Retirements

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A Guide for Police and Fire Board  
Members



# Medical Consultant Answers 2 Questions

- Incapacity- Are there objective measures of incapacity and if yes what are the work restrictions?
- If there are no work restrictions, then there is no disability retirement
- If Yes:
- Consider Causation  
Are the injuries or illnesses listed by the employee on the Retirement Application work-related according to the San Jose Municipal Code?

# What Materials Does the Medical Consultant Receive to Determine Work Causation and Impairment

- Accident Reports
- Workers' Compensation Claim forms
- Workers' Compensation documents including treating physician reports, AME, and QME Reports
- IME Report from a consulting physician at the request of Retirement Services

# Some Challenges

- Records are not always complete
- IME usually writes worker's compensation reports that follow different rules
- Difficult for the IME to shift gears because Retirement Reports are done substantially less frequently than Workers' Compensation Reports
- The Medical Records are often reviewed by a Medical Assistant who writes the Medical Review Portion of the Report. The IME may miss discrepancies in the medical history.

# INCAPACITY

- Marked loss or deviation in physiologic function, psychological function, or anatomic structure of the body.
- Used to determine work restrictions
- INCAPACITY consists of three factors:
  - Risk
  - Capacity
  - Tolerance

# Definition: Risk

- Chance of harm to the patient, coworkers, or general public
- Something a person should not attempt because of greater odds of injury.

# Definition: Capacity

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Patient's current ability

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Includes strength, flexibility, and endurance

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The board must agree that the employee has reached maximum medical improvement before approve disability job restrictions

# Maximum Medical Improvement

Maximum Medical Improvement (MMI) occurs when an injured employee reaches a state where his or her condition cannot be improved any further or when a treatment plateau in a person's healing process is reached.

Once MMI is reached, the treating physician is saying no other reasonable treatment can be done to help the patient/client improve

Therefore, the work restrictions stated are now permanent



Did the consultant answer the questions of need for, and type of work restrictions based on objective findings?

Was there a risk of substantial harm with work activity not only employee's self report of pain and ability?

Was the patient able to do the essential functions of the job based on ability NOT only on what the employee states that he/she can do?

If there is substantial harm and there is objective evidence of loss of function, then there is impairment and work restrictions are indicated

If the answer to above is NO, the medical consultant must look at employee Tolerance

# Tolerance- Subjective complaints on the ability to do the job in question.

- Employee states unable to perform the job despite the lack of objective evidence of loss of function.
- Employee states he can not do the job because of subjective complaints as fatigue and pain.

FATIGUE AND PAIN ARE REAL BUT NOT MEASUREABLE

- If the medical reports and IME give work restrictions based only on subjective complaints without meaningful objective findings to corroborate, the medical restrictions are based solely employee's report of impairment.
- If the medical consultant believes there still may be valid work restrictions

THEN

- The consulting physician must explain the reasoning behind the need for work restrictions based on tolerance.
- Consultant's pure medical opinion or years of experience is NOT a real and measurable reason to accept work restrictions.
- Board or disability committee should ask questions until they understand the reasoning

## Question 2

### Work-Related Service Connection Causation

Cause Effect

Was this Injury work related?

Did the applicant's employment with the City contribute in a real and measurable way to the incapacity?

# Background Information for Board

Accidents Easy

Employee falls and breaks arm

Illness or Cumulative Trauma Hard

Must determine if there is a real and measurable risk if the disease is characteristic of and peculiar to a particular occupation


Coal Miners Silicosis

Cumulative Trauma Injuries Harder to ascertain

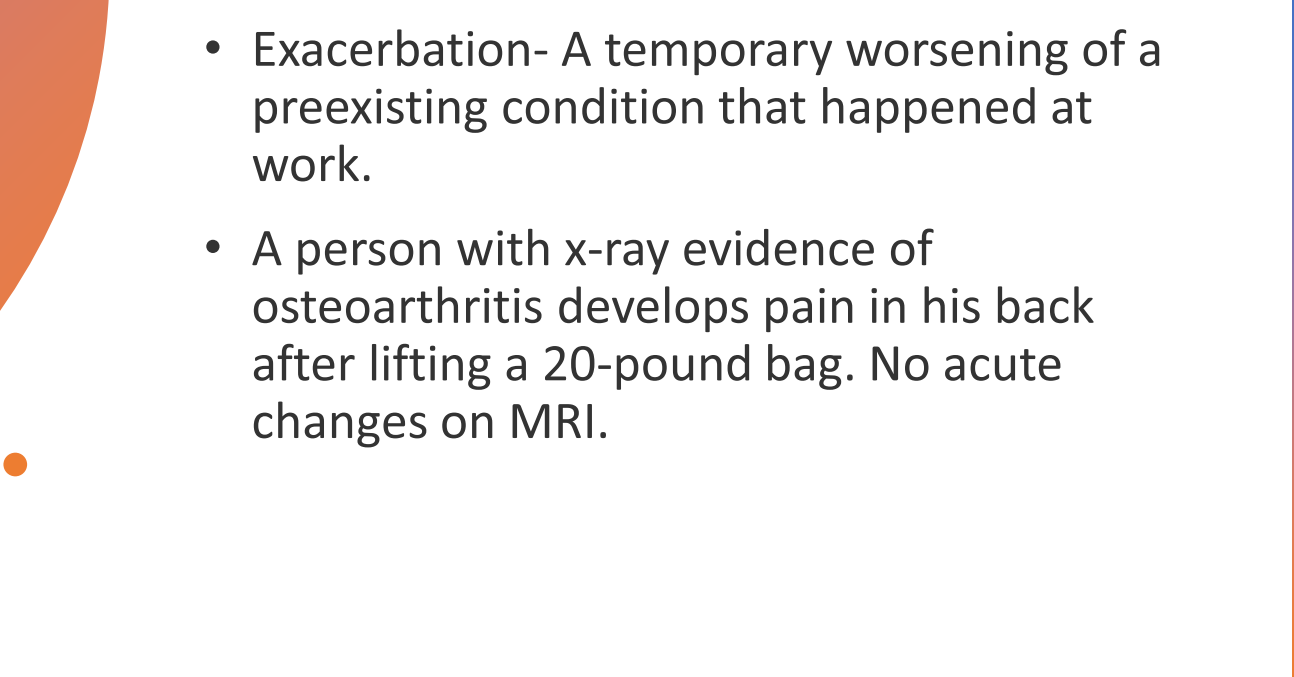
Is carpal tunnel syndrome related to work or other well known risk factors, pregnancy, obesity, diabetes

# Did the Medical Consultant Make a True Assessment of Work Relatedness

- Did the doctor make the correct diagnosis?
- If you don't have the right diagnosis, you can't determine work-relatedness.
- Did the doctor review and cite the available epidemiological evidence for a causal relationship?
- Did the doctor attempt to assess the evidence of exposure or did the doctor totally rely on the patient's assessment or those of other consulting physicians?
- Did the doctor consider factors outside of work and the prevalence of the diagnosis in the general population?



# Other factors to consider

- Did the doctor try to differentiate between aggravation and exacerbation
  - Aggravation= Permanent worsening of a preexisting medical condition or impairment
  - Example: Employee with osteoarthritis acutely herniates a lumbar disc lifting at work.
  - Exacerbation- A temporary worsening of a preexisting condition that happened at work.
  - A person with x-ray evidence of osteoarthritis develops pain in his back after lifting a 20-pound bag. No acute changes on MRI.
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Sometimes  
patient is  
confused why  
something is  
not service-  
connected if  
pain began at  
work

I did not hurt this before

This never hurt before

Does not necessarily mean objective  
aggravation

Can mean that a causal relationship has been  
erroneously assumed from a merely sequential  
one

# Problems with Temporality

Woman walking up stairs and felt pain in right knee

Stated she never had this pain before

No injury

X-ray shows knee osteoarthritis

IS WALKING UPSTAIRS THE ROOT CAUSE OF HER PAIN  
OR IS IT THE UNDERLYING OSTEOARTHRITIS??????

Pain happened at work, but work did not cause the knee pain



# Other Considerations

Nearly 100% of the medical records are from claims that have been accepted by the Workers' Compensation System

Workers' Compensation laws and regulations are quite different from the requirements of the San Jose Municipal Code

Incidents that happen at work are almost universally declared work related in the Workers' Compensation system.

When the first episode of \_\_\_\_ (back pain, shoulder pain, knee pain, etc.) occurs with normal activity at work or minimal trauma at work:

Doctors assume this was intended to be "work compensable" even if they understood it was not actually CAUSED by the work exposure

Did doctor  
consider  
progression  
of  
underlying  
disease

- Osteoarthritis can be present on x-ray or MRI scan for 15 years or more before pain begins.
- Progression = someone has an underlying condition that is below pain threshold and over time becomes painful
- If the pain begins at work, an employee may believe the action caused the disease.

## Another Example

My hands go numb when I type on a keyboard therefore the keyboard is the cause for my carpal tunnel syndrome.

Studies show insufficient evidence between typing and carpal tunnel syndrome.

DO WE GRANT service connection?

What if she is obese, knits, and gardens at home?



# Mental Illness Causation



- Claimant believes some work event or experience caused his/her depression, pain disorder, substance abuse
- Important to have an Independent Evaluation in all mental illness cases
- Professional Standards and Ethics Codes prevent treating clinicians to deal with forensic issues such as causation:

American Psychiatric Association

American Psychological Association



# Steps Similar to Physical Trauma or Illness

However

- More difficult to establish a definitive diagnosis as no scientifically validated method for diagnosing specific mental illnesses
- Epidemiological evidence is lacking in the literature that links mental illness to a definitive cause
- Claim must be grounded in credible and reliable scientific findings that the specific claim caused and is a significant risk factor for the diagnosis and is a reason for impairment

# Components of a Credible Mental Health Examination Causation

- Modern standards for mental illness diagnosis and comply with standards of APA
- Evaluator should not deviate from the DSM-5 (Diagnostic and Statistical Manual of Mental Disorders)
- Evaluations should include:
  - General medical records
  - Mental health history and records
  - Employment records
  - The past records are critical!!

## Additional Caveats

- No credible report should rely solely on reports of examinee
- Need an evaluation for personality disorders personality disorder
- (A pervasive form of mental illness that reliably leads to stress or disability regardless of whether an occupational illness occurs)
- When evaluating for impairment Should use established analysis and should not use an evaluator's impressions or clinical experience

# The Medical Consultant has the Responsibility to:

- Review each case in detail taking in account:

The accident reports

The treating physicians reports

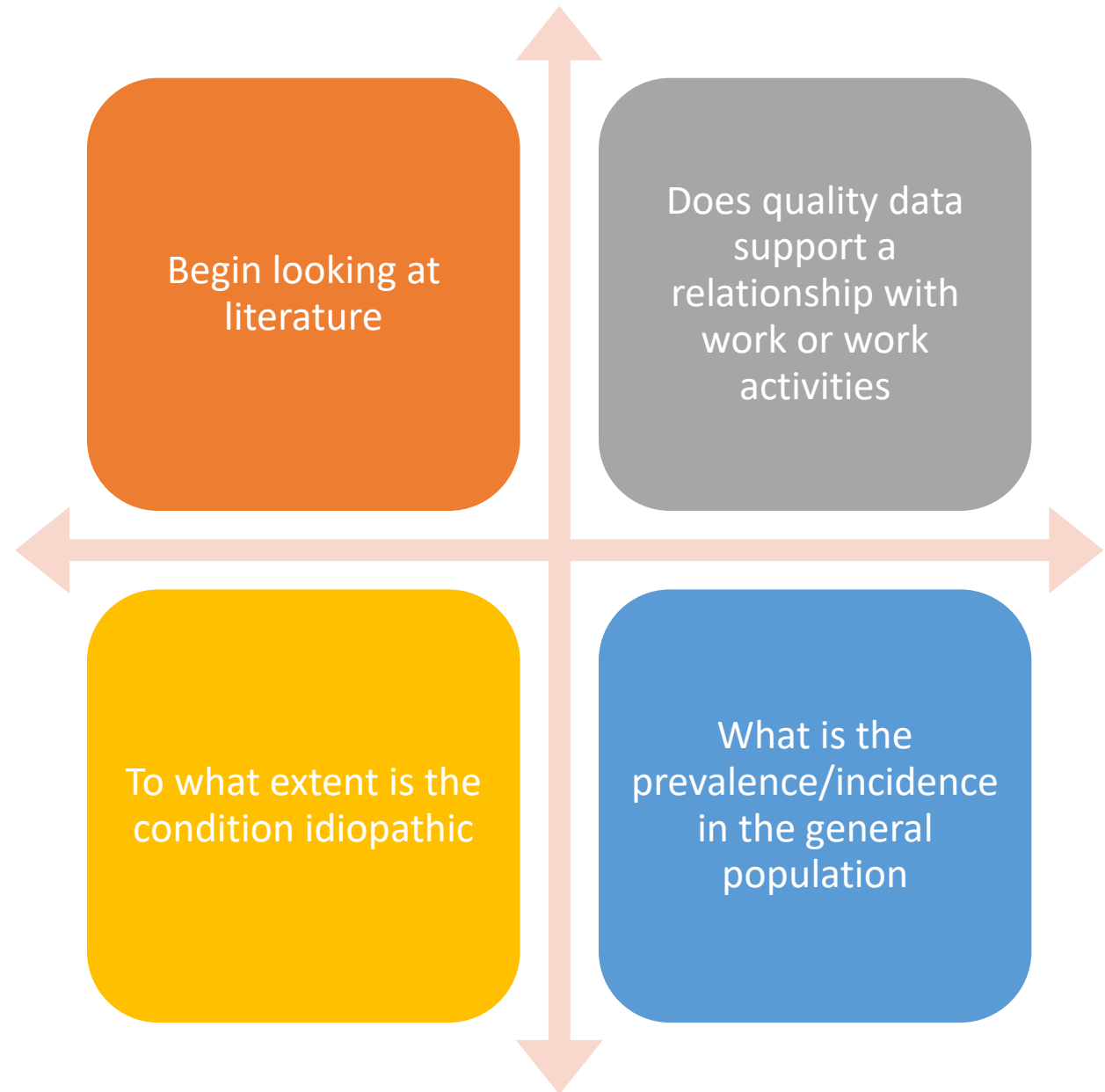
The evaluating physician reports including Retirement IME

Knowledge of the job

Use medical based evidence including the medical literature to give reasoned opinions on impairment and causation



# Review and Assess Available Epidemiologic Evidence



# Quality of Medical Literature

- Medical literature is not created equal
- Quality and reliability of study is based on proper study design
- Most medical literature on work related causation based on epidemiological studies

# Pitfalls of Epidemiological Studies

Epidemiology is the study of how often diseases occur in different groups of people and why.

Rarely can prove cause merely association

Problems include:

Bias- how subjects were selected, response rate, how accurately was exposure and outcome measured

Chance-especially with small sample size

Confounding vs causality-depends on biology of association dose response, latency

# Conclusions

- Need to rely on medical consultant to give you the best reasoned conclusion
- The answer to service connection and work restrictions is not always black and white.
- Work capacity can be measured but fluctuates depending on many factors
- Medical causation can be difficult to determine especially in chronic diseases such as osteoarthritis, cancers, and repetitive motion diagnoses that are common in the US population



Questions?