

Loss of Earning Capacity After a Brain Injury Panel Discussion

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Abstract: This interactive presentation will focus on the impact of brain damage on a plaintiff's life time earning capacity, regardless of whether the plaintiff is currently employed. In understanding the full extent of loss of lifetime earnings it is important to perceive not only the current diminution in earnings, but the shortening of worklife expectancy. But in order to fully perceive both issues, it is key to understand that brain damage is not just a cognitive disorder, but a behavior, mood and physical disorder as well. It is the intersection of cognition with mood and behavior which ultimately results in the greatest disability.

- **Understanding the Impact of Frontal Lobe Deficits**
- **Processing. Attentional and Emotional Challenges; and**
- **Synergism of Brain Damage Deficits in Causing Disability**

Brain Damage Impacts Four Principle Domains:

- **Cognition**
- **Behavior**
- **Mood**
- **Nervous System and Muscular Disorders**

I. The Disabling Aspect of Cognition Focus on Frontal Lobe Issues, Where Cognition, Behavior and Mood crisscross:

- **Absentmindedness**
- **Indecisiveness**
- **Non-Spontaneity**
- **Low Motivation**
- **Disorganization**
- **Inflexibility**
- **Poor Planning and Anticipation**
- **Failure to Learn from Experience**
- **Poor Judgment**
- **Non-reinforcing Behavior**
- **Risk Seeking**
- **Disinhibition**

- **Impulsivity**
- **Stimulous Bound Behavior**
- **Impolitic Speech**
- **Immature Behavior**
- **Neutral Effect**
- **Poor Insight**
- **Poor Empathy**
- **Self Centerness**

II. Dealing with Distractions, Divided Attention and MultiTasking.

III. Emotional Challenges and the Synergism of these Deficits Causing Disability.

A. Mental Abilities Needed For Any Job:

<https://secure.ssa.gov/apps10/poms.nsf/lnx/0425020010!opendocument>

POMS s. 25020.010B3:

2. Mental Abilities Needed For Any Job

a. Understanding, carrying out, and remembering simple instructions

- The ability to remember locations and worklike procedures.
- The ability to understand and remember very short and simple instructions.
- The ability to carry out very short and simple instructions.
- The ability to maintain concentration and attention for extended periods (the approximately 2-hour segments between arrival and first break, lunch, second break, and departure).
- The ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances.
- The ability to sustain an ordinary routine without special supervision.
- The ability to work in coordination with or proximity to others without being (unduly) distracted by them.
- The ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.

b. Use of judgment

- The ability to make simple work-related decisions.
- The ability to be aware of normal hazards and take appropriate precautions.

c. Responding appropriately to supervision, coworkers, and usual work situations

- The ability to ask simple questions or request assistance.
- The ability to accept instructions and respond appropriately to criticism from supervisors.
- The ability to get along with coworkers or peers without (unduly) distracting them or exhibiting behavioral extremes.

d. Dealing with changes in a routine work setting; the ability to respond appropriately to changes in (a routine) work setting.

3. Mental Abilities Critical For Performing Unskilled Work

The claimant/beneficiary must show the ability to:

- a. remember work-like procedures (locations are not critical).
- b. understand and remember very short and simple instructions.
- c. carry out very short and simple instructions.
- d. maintain attention for extended periods of 2-hour segments (concentration is not critical).
- e. maintain regular attendance and be punctual within customary tolerances. (These tolerances are usually strict.) Maintaining a schedule is not critical.
- f. sustain an ordinary routine without special supervision.
- g. work in coordination with or proximity to others without being (unduly) distracted by them.
- h. make simple work-related decisions.
- i. complete a normal workday and workweek without interruptions from psychologically based symptoms and perform at a consistent pace without an unreasonable number and length of rest periods. (These requirements are usually strict.)
- j. ask simple questions or request assistance.
- k. accept instructions and respond appropriately to criticism from supervisors.
- l. get along with coworkers or peers without (unduly) distracting them or exhibiting behavioral extremes.
- m. respond appropriately to changes in a (routine) work setting.
- n. be aware of normal hazards and take appropriate precautions.

IV. Understanding Worklife Expectancy and the Impact of a Brain Damage Related Disability on Lifetime Earnings.