Lexis® Context Report

Harold Bialsky D.C.,M.A.,C.R.C.,C.L.C.P.,C.B.I.S.

Vocational Counseling, Life Care Planning, Chiropractic Medicine, Brain Injuries

User Name:

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DEPOSITION TRANSCRIPT - HAROLD BIALSKY

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THOMAS BODKIN, Plaintiff, -against- INSIGHT TECHNOLOGY INCORPORATED, GLOCK, INC. and GLOCK GES M.B.H., Defendants. INSIGHT TECHNOLOGY INCORPORATED, Third Party Plaintiff, -against- THE City OF YONKERS, THE CITY OF YONKERS POLICE DEPARTMENT AND JOSEPH BARCA, Third Party Defendants.

Expert Name: Dr. BIALSKY, D.C., M.A., C.R.C., C.L.C.P., C.B.I.S.

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Proceedings

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[2]no.

[3]Q He uses a cane; is that correct?

[4]A He uses a cane.

[5]Q Is that a straight cane or quad

[6]cane?

[7]A I don't know.

[8]Q Did you ask him to walk for you

[9]when you met with him?

[10]A No.

[11]Q Did you ask him to show you his

[12]lower leg?

[13]A I don't recall if I asked him or

[14]if he volunteered it, but I did see it.

[15]Q Regardless of what happened, you

[16]did see the lower leg?

[17]A Yes.

[18]Q Did you compare the lower left

[19]leg to the lower right leg?

[20]A No.

[21]Q The tests that you told us

[22]about, aptitude test, math ability test,

[23]reading ability test, interest inventories,

[24]fine motor dexterity, and broader functional

[25]capacity test, have you ever performed those

[1]81

[2]tests on anybody that you've seen throughout

[3]your career?

[4]A I've utilized those tests many a

[5]time in my career, yes.

[6]Q Is the reason **[*2]** why those tests

[7]are used is because somebody may not be able to

[8]return to their chosen profession, but there

[9]are other professions out there to which they

[10]can return?

[11]A I can tell you exactly what I

used to tell the individuals that I
administered the test to when I was working
with people to try and assist them in returning
to work. I would tell them these paper and
pencil tests are nothing more than a foundation
from which to proceed. They may be helpful and
they may not. They may give us information
that lends itself to asking additional
questions, but they are not the cure-all
end-all to make a determination as to whether
or not a person is capable of employment or
not.
Q Is there a cost to take those
tests?
82
A There's a cost to me to purchase
the tests.
Q When you purchased the tests, do
they have to be purchased each time they're
utilized, or how does that work?
A No, you usually buy a kit, a
starter kit. It comes with all the testing
equipment, booklet, scoring materials, then
there's generally scoring sheets that the
[*3] individual needs to utilize. Those things need
to be replenished obviously as you're using
them.
Q Are you familiar with the cost
of purchasing one of these kits, let's say of
these various tests, the most expensive of
those kits?
A Well, it depends on what you're
purchasing. You can spend hundreds of dollars
in purchasing something up front, and obviously
I should replenish it, it's not going to be as
expensive because you're not re-purchasing all
of the necessary components.
Q Did you own or did your business
own any such kits prior to seeing Mr. Bodkin?
83
A Yes.
Q Which kits did you own?
I used for the most part when I
was in Arizona the kit called C.O.P.S., that's
an acronym, C-O-P-S, and the full title escapes
me at the moment. It was a combination of
interest inventory, values inventory, and eight
areas of aptitude.
Q Did you give the C.O.P.S. test
to Mr. Bodkin?
A No.
Q Did you give any other test to
Mr. Bodkin?
A No.
Q Would giving these tests have
hindered your ability to assess Mr. Bodkin's
[*4] re-employability?
MR BAKER: I'm sorry, you said
hinder?
MR. COLAVECCHIO: Hinder.

[22]A Can you repeat the question?
[23]Q Would giving any one of these
[24]tests to Mr. Bodkin, would that have hindered
[25]your ability to assess him?
[1]84
[2]A Would not have hindered, no,
[3]Q What is it about his pain that
[4]you reference that makes him unemployable in
[5]any job?
[6]A Frequency, duration, intensity.
[7]Q You did not test his answers in
[8]any way such as comparing them to medical
[9]records, correct?
[10]A There's no reason for me to test
[11]his answers. Like I stated on more than one
[12]occasion, this is the information he gave me.
[13]This is the information I believe to be
[14]accurate. This is the information I utilized
[15]to render my opinion.
[16]Q What is it that you understood
[17]about the frequency of his pain?
[18]A Well, it is documented in the
[19]report, he said it's constant, on a scale of
[20]zero to ten, the pain is a constant seven. The
[21]pain is frequently debilitating. He
[22]experiences debilitating pain on a daily basis,
[23]the durations vary. He reported the
[24]debilitating **[*5]** pain can last 15 minutes to hours
[25]at a time.
[1]85
[2]He reported he has to lie down
[3]and elevate his leg, use ice to alleviate his
[4]pain, He reported he experiences multiple
[5]episodes of debilitating pain throughout the
[6]course of a day, and he reported the longest
[7]duration of his debilitating pain can be two
[8]days. He reported that pain, when it's
[9]disabling, diminishes his ability to
[10]concentrate and causes him to fatigue easily.
[11]Q Would you agree with me that he
[12]said that when he has the pain, it lasts from
[13]15 minutes to an hour?
[14]A To hours, multiple hours, to
[15]hours at a time.
[16]Q Was he more specific than that
[17]in terms of hours?
[18]A He may -- I don't believe he was
[19]any more specific. He answered my questions,
[20]and that's how I documented it.
[21]Q Are your questions listed
[22]somewhere?
[23]A No.
[24]Q You just do it off the top of
[25]your head?
[1]86
[2]A Yes.
[3]Q Now you're familiar with the
[4]Americans with Disabilities Act?
[5]A Yes, I am.
[6]Q What is the Americans with

[7]Disabilities Act?

[8]A It's essentially civil **[*6]** rights

[9]legislation for people with disabilities.

[10]Q Without referring to your

[11]report, what activities, if any, is Mr. Bodkin

[12]involved in?

[13]A What do you mean by activities?

[14]Q Well --

[15]A Activities of daily living? He

[16]bathes and dresses himself.

[17]Q What recreational activities is

[18]he involved in?

[19]A The only thing he stated to me

[20]is that he goes to a gym on an intermittent

[21]basis and attempts some upper body exercise.

[22]Q It is also indicated he watches

[23]television, correct?

[24]A Yes.

[25]Q It is also indicated he plays

[1]87

[2]video games, correct?

[3]A Correct.

[4]Q Now, with respect to the

[5]Americans with Disabilities Act, would you

[6]agree with me that, first of all, that's a

[7]federal act, correct?

[8]A Correct.

[9]Q And would you agree with me that

[10]Mr. Bodkin, under your analysis, would qualify

[11]as a disabled person under that act?

[12]A Clearly.

[13]Q Would you also agree with me

[14]that under the act, employers have to make

[15]existing facilities used by employees readily

[16]accessible and usable by individuals with

[17] **[*7]** disabilities?

[18]MR. BAKER: Object to the form

[19]of the question.

[20]You can answer it.

[21]A Can you repeat the question?

[22]Q Would you agree with me that

[23]under the act, employers have to make existing

[24]facilities used by employees readily accessible

[25]and usable by individuals with disabilities?

[1]88

[2]A Accessible, yes, ramps for

[3]people in wheelchairs, things of that nature,

[4]that's an accessibility issue, yes.

[5]Q Would you also agree with me

[6]that employers have a legal obligation to make

[7]reasonable accommodations for employees with

[8]disabilities?

[9]A As long as it doesn't create an

[10]undue hardship, that would be correct.

[11]Q Reasonable accommodations under

[12]the law would include allowing a worker to work

[13]part-time?

[14]A Correct.

[15]Q Would also require an employer

[16]to allow a worker to work a modified work

schedule, assuming it didn't cause some undue hardship?

A Correct.

Q Now, in your report you state that, "It is my professional opinion that no reasonable accommodations exist that would allow Mr. Bodkin to perform at his necessary productivity level, as well as prevents him from injuring himself and/or his co-workers;"

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is that correct?

A Correct.

Q What is his necessary productivity level that you reference?

A Well, I don't believe that he can be productive at any job, so what I'm saying there, I don't believe there's any occupation that he can participate in where he would be considered productive.

Q I don't intend to minimize Mr. Bodkin's injuries when I ask you this question, but is it your testimony that a man who can go to the gym at least three days per week and do exercise for his upper body is incapable of doing any work at all in any job?

A Yes.

Q Are you familiar with VESID?

A Yes.

Q What's VESID?

A It's the state vocational rehabilitation agency.

Q What is the charge of VESID?

A To assess people with disabilities to return to work.

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Q Do you know whether Mr. Bodkin has ever gone to VESID?

A I don't recall,

Q Did you recommend that Mr, Bodkin go to VESID?

A No.

Q There are millions of disabled people in the United States working; are there not?

A I don't know exactly, but that's a possibility, and conversely the same exists, meaning that there are substantial numbers of people with disabilities that are not working.

Q I will accept that. You're aware, are you not, of returning veterans who have lost legs as a result of a war and come back and lead productive work lives?

A That they've had their legs amputated, they now have a prosthetic, and they return to some type of occupation.

Q You're familiar with that, correct?

A Yes.

Q And you're aware of other people

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