

**SOCIAL SECURITY ADMINISTRATION
OFFICE OF DISABILITY ADJUDICATION AND REVIEW**

TRANSCRIPT

In the case of:

Gabriel Aufderhar

Claimant

Claim for:

Period of Disability

Disability Insurance Benefits

Wage Earner

(Leave blank in SSI Claims, or if the name is the same as above.)

324-79-9379

Social Security Number

Hearing Held at:

Fort Hansport, Virginia

(City, State)

April 23, 2018

(Month, Day, Year)

by:

Erwin Bernier

(Administrative Law Judge)

APPEARANCES:

Gabriel Aufderhar, Claimant
Mia Carter, Attorney for Claimant
Jamie Ratke, MD, Medical Expert
Verla Wolf, Vocational Expert

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(The following is a transcript of the hearing held before Erwin Bernier, Administrative Law Judge, Office of Disability Adjudication and Review, Social Security Administration, on April 23, 2018, at Fort Hansport, Virginia, in the case of Gabriel Aufderhar, Social Security number 324-79-9379. The claimant appeared in person and was represented by their attorney, Mia Carter. Also present were Jamie Ratke, MD, Medical Expert, Verla Wolf, Vocational Expert, and Blanca Dach, Hearing Reporter.)

(The hearing commenced at 06:21 PM, on April 23, 2018.)

OPENING STATEMENT BY ADMINISTRATIVE LAW JUDGE:

ALJ: Erwin Bernier

ATTY: Mia Carter

ALJ: Now that we've established the parties involved, let me just clarify my understanding of Miss Carter's statement. She's saying that, and I'm going to rephrase it for the record, because I want to make sure I get it exactly right, which is... she's saying that the claimant's file shows that they're requesting a hearing on their claim, correct? And I'd like to add to that, just to make sure we have all the facts straight, she's also indicating that there are some concerns about the medical evidence in this case, and that it might be necessary for us to bring in an expert witness to help us understand certain aspects of the claimant's condition. Is that a fair summary, Miss Carter?

CLMT: Yes, that's correct, but I would like to clarify that there is no need for an expert witness at this time.

ALJ: Yes, I understand that, and just to reiterate for the record, the claimant is indicating that they believe the medical

evidence is sufficient at this time, without the need for an additional expert witness. I'd like to confirm that we have a clear understanding of the parties' positions on this matter. Now, if I may refer back to our pre-hearing conference notes, I see that we've assembled a panel of experts who will be providing testimony in support of the claimant's case. Specifically, we have resumes from Verla Wolf, a vocational expert with extensive experience in assessing job placement and employability, as well as Jamie Ratke, a medical expert with specialized knowledge in treating conditions similar to those experienced by the claimant. I'd like to take this opportunity to ask Miss Carter if there's anything else that her office would like to collect or review before our scheduled hearing on January 10th, 2024. Anything further, Miss Carter?

ATTY: Actually, I believe we're all set with the record at this point, Judge. The claimant's file is fully developed and there are no outstanding issues or requests for additional evidence or testimony. I appreciate your diligence in ensuring that everything is in order for the hearing on January 10th.

ALJ: I'm satisfied that we've adequately prepared for the hearing on January 10th, Miss Carter. I'd now like to admit all exhibits listed in the record from Exhibit 1A through Exhibit 2E and Exhibit 3D, as well as Exhibits 4C-1 and 5B-3, into evidence.

(Exhibits, previously identified, were received into evidence and made a part of the record.)

ALJ: Now, as I was reviewing the claimant's file again, I

noticed something that seems to be a bit of an inconsistency, and I want to make sure we're all on the same page about this. If I'm reading the record correctly, it appears that the claimant's Social Security number is listed as 123-45-6789 in one place, but then later on it says 987-65-4321. So, just to clarify, I want to make sure we're using the correct Social Security number for this claim, because if it's incorrect, that could potentially impact the whole case. I mean, let me rephrase that - if it is indeed an error in the record, then we might need to go ahead and amend that information before moving forward with the hearing on January 10th. So, Miss Carter, if I'm correct about this inconsistency, would you agree that we should take a closer look at it and make any necessary corrections? And by corrections, I mean, what I'm saying is that we might need to update the record to reflect the correct Social Security number... which is, um, I think 123-45-6789. Is that right?

ATTY: Yes, I agree with you, Judge. It does appear that there's an inconsistency with the claimant's Social Security number. However, upon reviewing the record, I believe it should be amended to reflect the correct number as 987-65-4321.

ALJ: I understand that we'll need to amend the record to reflect the correct Social Security number as 987-65-4321. I'd like to direct my attention now to the claimant, Mr./ Ms./ Mrs. [Last Name], and ask if you're aware that this amendment may have some potential consequences, even if the ultimate decision in your

case is favorable. Are you aware that amending the Social Security number could potentially affect any future disability benefit payments or other related matters?

CLMT: Yes, I'm aware that amending my Social Security number could impact future benefit payments.

ALJ: I understand that we've clarified the amendment to the record regarding the claimant's Social Security number. The claimant also understands the potential implications of this amendment on future benefit payments. Blanca Dach, can you please note in the record the amendment to reflect the correct Social Security number as 987-65-4321? Now, let's proceed with questioning and answering with the claimant.

(The claimant, GABRIEL AUFDERHAR, having been first duly sworn, testified as follows:)

EXAMINATION OF CLAIMANT BY ADMINISTRATIVE LAW JUDGE:

Q Your name is on the record as John Doe. Is that correct?

A Gabriel North Aufderhar

Q Gabriel North Aufderhar, can you please provide your current mailing address?

A 8605 Ondricka Drive Apt. 992, New Daniel, Alaska
09866-4357

Q Were you last insured on November 15th, 2018?

A Yes, I was last insured on November 15th, 2018.

Q What is your highest level of education completed?

A I completed a Bachelor of Science degree in Computer

Science from the University of North Dakota.

Q What was your last job before becoming disabled?

A I was a dental assistant at Smile Care Dental Clinic in Grand Forks, North Dakota. I worked there from January 2015 until my disability forced me to leave on November 15th, 2018.

Q Can you describe specific duties as a dental assistant?

A As a dental assistant at Smile Care Dental Clinic, my primary duties involved preparing patients for treatment by reviewing medical histories and taking vital signs such as blood pressure and temperature. I would also assist dentists with procedures like taking X-rays and preparing instruments for use. Additionally, I was responsible for sterilizing equipment, disposing of infectious waste, and maintaining a clean and organized work environment. In some cases, I provided patients with instructions on how to care for their teeth at home and answered any questions they may have had.

Q Have you ever been employed by or worked for the Social Security Administration at any time?

A No, I have never been employed by or worked for the Social Security Administration at any time.

Q You're absolutely right, Mr. Aufderhar, that's correct - there's no indication in the record of any employment or work history with the Social Security Administration. I want to make sure we have a clear understanding of this before moving forward. Now, let me ask you again - why do you believe you are disabled?

A Well, it's because of my severe and chronic abdominal pain that I experience on a daily basis, which prevents me from performing even the simplest tasks, let alone working as a dental assistant. It's been like this for years now, and no matter what treatments or medications I try, nothing seems to provide any lasting relief. My stomach just cramps up all the time, and it's affecting every aspect of my life, including my relationships with family and friends. And to be honest, it's just really hard to deal with the unpredictability of when these episodes will strike, whether I'm at work or not. It's like I'm always walking on eggshells, waiting for the next attack to hit me, and it's exhausting.

Q I want to make sure I understand this correctly, Mr. Aufderhar - it sounds like you're experiencing severe and chronic abdominal pain on a daily basis that's impacting your ability to work and perform even simple tasks. You've been dealing with this for years now, despite trying various treatments and medications, which haven't provided any lasting relief. Is that an accurate summary of what you're saying?

A Y-yes, that's pretty much what I'm saying. It sounds like you've got it right, but I'd just like to add a little more detail if I can. Yeah, the pain is really bad - it's like a constant burning sensation in my stomach, and it can get so severe that it feels like it's going to eat through me. And the diarrhea and constipation are pretty bad too - sometimes I'll go days without

being able to have a bowel movement, and other times I'll be running to the bathroom all the time. And bloating is a big one for me too - my stomach gets so swollen that it feels like it's going to burst at any minute. It's really frustrating because I know there are treatments out there that can help with some of these symptoms, but they just don't seem to work for me no matter what I try. And the pain is just...it's just always there, you know? Even when I'm not having a flare-up or anything, it's still just this constant ache in my stomach that I have to deal with every day.

ALJ: Yes, I think we understand now that your condition is a complex and multifaceted one, involving chronic abdominal pain, diarrhea, constipation, bloating, and other gastrointestinal symptoms. As you've described it, it's clear that these symptoms have been ongoing for years, despite numerous attempts to find relief through various treatments and medications. I want to confirm that this description of your condition is accurate, Mr. Aufderhar. You're saying that even when you're not experiencing a flare-up or episode, the underlying pain and discomfort are still present, causing you significant distress and impairment in your daily life. Is that correct? And I'd like to add that based on our conversation so far, it appears that your condition may be related to Irritable Bowel Syndrome, or IBS, which is a recognized disability under Social Security law. I'm going to need the medical records from Dr. Smith's office to support this claim and

establish a clear diagnosis of IBS. Would you please have your attorney retrieve those records for me?

ATTY: Yes, we can provide Dr. Smith's medical records to support the claim and establish a clear diagnosis of IBS. However, may I clarify that our client's symptoms extend beyond what is typically associated with IBS and would like to request consideration for a more comprehensive evaluation of his condition, including potential underlying causes such as Crohn's disease or ulcerative colitis?

ALJ: Thank you, counsel, for providing context and requesting consideration of a more comprehensive evaluation of Mr. Aufderhar's condition. I'd like to acknowledge that his symptoms do appear to extend beyond what is typically associated with IBS, and it's certainly possible that underlying conditions such as Crohn's disease or ulcerative colitis may be contributing factors. Can you please ask your client to elaborate on the specific symptom of weight loss he mentioned in his initial statement? Did he have a significant amount of weight loss over an extended period, or was it more gradual?

BY ADMINISTRATIVE LAW JUDGE:

A I had a significant weight loss of about 40 pounds over several years due to decreased appetite and poor nutrient absorption.

Q Mr. Aufderhar, it sounds like the weight loss was quite significant and likely related to your gastrointestinal symptoms.

Did you ever seek medical attention for this issue, such as seeing a gastroenterologist or other specialist?

A [phonetic]

Q Can you tell me more about what happened when you sought medical attention for your gastrointestinal issues, Mr. Aufderhar? How frequently would you experience severe episodes of abdominal pain, diarrhea, and constipation after treatments or consultations with healthcare providers?

A After seeing a gastroenterologist and undergoing various treatments, including medications and dietary changes, I would still experience severe episodes of abdominal pain, diarrhea, and constipation on about a weekly basis. Some weeks were better than others, but it seemed like every week or so, I'd have to deal with at least one really bad episode where I was unable to leave my house due to the severity of my symptoms.

Q Those episodes occurred on average every 1-2 weeks, despite medical treatment?

A Yes, those episodes occurred on average every 1-2 weeks, and despite medical treatment, they would often leave me debilitated for several days at a time. It got to the point where I was having so many severe episodes that I had to be hospitalized twice due to dehydration and malnutrition.

Q You experienced debilitating episodes every 1-2 weeks, despite medical treatment, and were hospitalized twice for dehydration and malnutrition.

A It was like living in a constant state of limbo, never knowing when the next episode would hit. The symptoms would escalate to the point where I couldn't eat, couldn't drink, and couldn't keep anything down. The pain was excruciating, a burning sensation that felt like it was eating away at my insides. I became so malnourished that my skin started to sag, and I lost all sense of dignity and self-worth. I stopped going out in public, stopped seeing friends and family, because I just didn't have the energy or strength to deal with the world outside my own home. It was a very dark time in my life.

Q I find that you are a disabled individual, unable to engage in substantial gainful activity due to your severe and chronic gastrointestinal condition.

A I'm grateful to hear that the court has recognized my disability and inability to work due to my severe gastrointestinal condition. One thing that's particularly difficult for me now is being unable to enjoy a simple meal with family and friends without fear of an immediate severe episode of abdominal pain, diarrhea, or constipation.

Q Your disability benefits will begin on the date of this decision, and we recommend re-evaluation in 2 years to assess progress.

A I'm also grateful that my disability benefits will begin on the date of this decision, but I'd like to add one more thing - it's hard for me now to enjoy a simple walk outside or take a

shower without feeling anxious about the potential severity of an episode. It's little things like that which are often taken for granted by people who don't have chronic illnesses.

Q You mentioned anxiety about potential episodes during simple activities like walking or showering. Is this related to any specific date mentioned in your medical records?

A Yes, around August 15, 2018.

Q On August 15, 2018, what medications were you taking for your condition, specifically with regards to Crohn's disease?

A On August 15, 2018, I was taking Humira injections, which were administered every other week to help manage my symptoms of Crohn's disease, and also Azulfidine, a sulfasalazine medication, in addition to omeprazole for gastrointestinal protection.

Q What was your experience with Entocort EC, an oral form of budesonide?

A I was prescribed Entocort EC by Dr. Smith in June 2017 to treat my Crohn's disease symptoms. I took it orally once daily for six months, but unfortunately, I experienced no significant improvement in my symptoms and had to stop taking the medication due to severe stomach cramps and diarrhea.

Q On June 2017, you were prescribed Entocort EC for Crohn's disease symptoms, but due to severe stomach cramps and diarrhea, you had to stop taking it after six months. However, in your initial statement on page one of the records, you mentioned that despite numerous attempts to find relief through various

treatments and medications, including 'various meds' from Dr. Smith, these treatments didn't seem to work. Can you clarify why you previously stated that multiple medications were ineffective when we now see Entocort EC prescribed for your condition?

A I was trying multiple meds at different times, but some were prescribed later than others.

ATTY: I'd like to clarify that while my client did take Entocort EC for six months and had to stop due to side effects, it's possible that the other medications he mentioned in his initial statement were prescribed at a different time or tried concurrently with Entocort EC. However, I'd also like to note that despite these treatments, my client continues to experience severe gastrointestinal symptoms and was ultimately forced to seek disability benefits.

ALJ: I understand that my previous question may have caused some confusion regarding the timeline and sequence of treatments for Mr. Aufderhar's condition. It appears that multiple medications were prescribed at different times, including Entocort EC, which was taken for six months but had to be stopped due to side effects. I'd like to ask Mr. Aufderhar to clarify how these various treatments interacted with each other and whether there were any changes in his symptoms or treatment plan over time.

BY ADMINISTRATIVE LAW JUDGE:

A Each med I tried had varying effects on my symptoms over time.

Q I'd like to review Mr. Aufderhar's medical records and consult with my team regarding the possibility of a misdiagnosis or incorrect treatment plan. Additionally, I notice that Dr. Smith's letters mention an incident on February 22, 2020, where Mr. Aufderhar experienced severe symptoms after consuming a specific type of food. This information may impact our understanding of his condition and potential triggers.

A That was a severe flare-up from eating spicy food.

Q I'd like to note that Mr. Aufderhar's medical records also mention a new symptom of nocturnal fecal incontinence, which was reported by his wife on multiple occasions, and is not mentioned in his initial statement or previous testimony. I will consider this symptom when reviewing his overall condition and treatment plan.

CLMT: It's been a struggle dealing with that symptom.

BY ADMINISTRATIVE LAW JUDGE:

A Mr. Aufderhar, I want to make sure that we're considering all aspects of your condition and treatment plan. The symptom of nocturnal fecal incontinence was reported by your wife on multiple occasions, but it doesn't appear to be mentioned in your initial statement or previous testimony. Was this something you were ever treated for, or is it a new development in your condition?

Q My wife has been keeping a log of my symptoms for years.

A I'd like to review that log as part of this case.

Q The log primarily focuses on my work history and other

unrelated issues.

A I recall you mentioning earlier that it's hard for you to enjoy simple activities like taking a shower without feeling anxious about potential episodes of fecal incontinence. Can you tell me more about how this symptom affects your daily life and ability to perform basic tasks?

Q It's hard for me to enjoy simple activities like taking a shower or even getting dressed without feeling anxious about potential episodes of fecal incontinence. It's become a constant worry and stressor that affects my daily life and ability to perform basic tasks. I find myself being more careful with what I eat, when I go out, and even how I move around, which can be frustrating because it makes me feel like I'm always on edge. Even simple things like going for a walk or playing with my kids become anxiety-provoking experiences because I worry about having an episode in public or at home. It's not just the physical aspect of the condition that's debilitating; it's also the emotional toll of living with this constant fear and worry.

A The emotional toll of living with this constant fear and worry is indeed a significant aspect of your condition.

Q It's exhausting living with this fear, can't enjoy simple things anymore.

A I acknowledge that living with this fear is exhausting. How has it affected your relationships?

Q My wife says I'm distant, withdrawn.

A I acknowledge that. Has this distance impacted her ability to provide care for you?

Q Yes, it's strained her.

A I acknowledge that there's been a strain on her ability to provide care for you due to this distance and withdrawal. I'd like to note that this is not just impacting your physical health but also your emotional well-being and relationships with those around you.

Q I feel like I'm losing myself, my relationships, and my independence due to this chronic condition.

A I acknowledge that, Mr. Aufderhar. Did you ever have any regular activities or hobbies before this condition started impacting your life?

Q I used to hike with friends every weekend.

A You miss those activities.

Q Yes, I miss those activities a lot. It's hard to adjust to being unable to participate in things that brought me so much joy and connection with others.

A I acknowledge that you miss those activities and it's hard for you to adjust to being unable to participate in things that brought you so much joy and connection with others. It sounds like this condition has had a significant impact on your overall quality of life. Can you tell me more about what you think would be necessary for you to return to some level of normalcy or independence?

Q Effective treatment for this condition would be a good start.

ALJ: Acknowledged. Counselor, do you have any further questions or would you like to proceed?

ATTY: I'd like to note that my client's chronic condition has significantly impacted his quality of life, affecting not only his physical health but also his emotional well-being and relationships with those around him. Effective treatment for this condition would be a good start in returning to some level of normalcy or independence.

ALJ: Case closed.

EXAMINATION OF MEDICAL EXPERT BY ATTORNEY:

Q Was the misdiagnosis of Mr. Aufderhar's condition by Dr. Smith a critical contributing factor to his worsening symptoms and loss of independence?

A Yes, I believe it was.

Q Isn't it true that Dr. Smith's prescription of Entocort EC for Crohn's disease symptoms, despite his history of severe reactions to similar medications, contributed significantly to Mr. Aufderhar's worsening condition?

A Yes, it's true that Dr. Smith's prescription of Entocort EC for Crohn's disease symptoms, despite my history of severe reactions to similar medications, contributed significantly to my worsening condition.

Q And wasn't it Dr. Smith's failure to properly monitor and

adjust treatment for Mr. Aufderhar's condition that led to his current state of chronic disability?

A Yes.

Q Did Dr. Smith's failure to record Mr. Aufderhar's severe reaction to Entocort EC in his medical records contribute to the denial of disability benefits?

A I believe his failure to record my severe reaction to Entocort EC in his medical records did contribute to the denial of disability benefits.

Q Did Dr. Smith's failure to disclose his financial interest in Entocort EC influence his treatment recommendations and subsequent misdiagnosis?

A [INAUDIBLE]

Q Is it not true that Dr. Smith's financial interest in Entocort EC and failure to disclose it led to a breach of medical ethics and compromised Mr. Aufderhar's treatment?

A [INAUDIBLE]

Q Dr. Smith's failure to disclose his financial interest in Entocort EC and subsequent misdiagnosis directly led to Mr. Aufderhar's current chronic condition. Does this not constitute a clear case of medical malpractice?

A Yes.

Q It's crystal clear that Dr. Smith's egregious failure to disclose his financial interest in Entocort EC and subsequent misdiagnosis of Mr. Aufderhar's condition led directly to his

current chronic condition, which has had a devastating impact on his quality of life. This is not just medical malpractice, but a gross breach of fiduciary duty by Dr. Smith. And let me ask you, Your Honor, isn't it true that Dr. Smith's failure to document Mr. Aufderhar's severe reaction to Entocort EC in his medical records was a deliberate attempt to conceal the truth and avoid liability? Isn't it also true that this egregious conduct was motivated by Dr. Smith's desire to profit from his financial interest in Entocort EC, despite the harm it would cause to Mr. Aufderhar's health?

A Yes, that's what I believe.

Q Was Dr. Smith's financial interest in Entocort EC worth more than \$100,000 at the time of Mr. Aufderhar's misdiagnosis?

A Yes.

Q This financial interest constitutes a clear conflict of interest that compromised Dr. Smith's medical judgment and led to Mr. Aufderhar's chronic condition. Doesn't this fact alone justify a finding of negligence on Dr. Smith's part?

A Yes.

Q Did Dr. Smith's failure to disclose his \$120,000 financial interest in Entocort EC constitute willful misconduct, rendering him not credible as a witness?

A Yes.

Q Dr. Smith's failure to disclose his \$120,000 financial interest in Entocort EC constitutes willful misconduct. His

testimony on Mr. Aufderhar's condition was compromised by this conflict of interest. Did Dr. Smith's financial gain from Entocort EC influence his decision to misdiagnose Mr. Aufderhar?

A Yes.

Q Did Dr. Smith's \$120,000 financial interest in Entocort EC directly influence his decision to misdiagnose Mr. Aufderhar with Crohn's disease?

A Yes.

Q Is it not a fact that Dr. Smith's \$120,000 financial interest in Entocort EC directly led to Mr. Aufderhar being prescribed the very medication that exacerbated his condition?

A Yes.

ATTY: No further questions.

ALJ: I'd like to clarify that Dr. Smith's financial interest in Entocort EC was worth \$120,000 at the time of Mr. Aufderhar's misdiagnosis, and this directly influenced his decision to misdiagnose Mr. Aufderhar with Crohn's disease, leading to him being prescribed the medication that exacerbated his condition. Additionally, Dr. Smith's failure to disclose this financial interest constitutes willful misconduct, rendering him not credible as a witness. Is that correct, Attorney?

ATTY: Yes, that is correct.

ALJ: Dr. Smith's \$120,000 financial interest in Entocort EC directly influenced his decision to misdiagnose Mr. Aufderhar. Is it correct that this misdiagnosis led to Mr. Aufderhar being

prescribed the medication that worsened his condition?

ATTY: Yes.

ALJ: Did Dr. Smith's failure to disclose his financial interest in Entocort EC directly cause Mr. Aufderhar's harm?

ATTY: Yes.

ALJ: You stated Dr. Smith's financial interest was worth over \$100,000 at the time of misdiagnosis. Is that correct?

ATTY: Yes.

BY ADMINISTRATIVE LAW JUDGE:

Q Thank you, Attorney, for presenting this case clearly and thoroughly. I appreciate the detailed evidence provided, which confirms that Dr. Smith's financial interest in Entocort EC was worth over \$100,000 at the time of misdiagnosis. This conflict of interest led to Mr. Aufderhar being prescribed a medication that worsened his condition. Moving forward, I'd like to ask the claimant a few more questions to further understand their situation. Claimant, can you describe in detail how this misdiagnosis and subsequent treatment have affected your quality of life over time?

A The misdiagnosis and treatment severely worsened my condition, causing chronic pain, fatigue, and digestive issues. I've had to undergo multiple surgeries and have been bedridden for months. My quality of life has deteriorated significantly.

Q [INAUDIBLE] has this impacted your ability to work and maintain daily activities?

A I'm unable to work due to constant pain and fatigue. I struggle with daily activities like cooking and personal care.

Q Can you estimate a period of time for which you would expect to remain disabled?

A Indefinite.

Q Noted. Did the chronic condition predate your employment?

A [INAUDIBLE]

Q Was it exacerbated by Dr. Smith's treatment?

A Yes.

Q Did Dr. Smith's treatment cause a worsening of symptoms?

A Yes.

Q Was this a proximate cause of Mr. Aufderhar's disability?

A [INAUDIBLE]

Q Acknowledged. Did Dr. Smith's actions constitute willful misconduct?

A Yes.

Q Dr. Smith's actions led to Mr. Aufderhar's disability due to willful misconduct.

A Yes.

Q Dr. Smith's actions caused Mr. Aufderhar's disability due to willful misconduct. Did this constitute malpractice?

A [INAUDIBLE]

Q Willful misconduct constitutes malpractice.

A [INAUDIBLE]

ALJ: Thank you, Claimant, for your testimony and for

providing a detailed account of the severe impact Dr. Smith's actions had on your life. I appreciate the time and effort you took to share your experiences with me today. Your honesty and candor have been invaluable in this proceeding. Now, as we move forward in this case, I'd like to present the medical expert who will be providing additional insights into Dr. Smith's treatment of you. His name is Dr. Jamie Ratke, a board-certified specialist in gastroenterology with over 20 years of experience and a strong track record of academic achievements. You can view his impressive resume on our website, which includes numerous publications, presentations, and awards for excellence in patient care. If you would like to review it further, I encourage you to do so. Counsel, do you have any objections to Dr. Ratke serving as our medical expert in this case?

ATTY: No objections.

(The medical expert, JAMIE RATKE, MD, having been first duly sworn, testified as follows:)

EXAMINATION OF MEDICAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q Dr. Ratke, for the record.

A I am Dr. Jamie A. Ratke, board-certified specialist in gastroenterology with over 20 years of experience.

Q Dr. Ratke, please summarize your relevant medical experience and qualifications.

A Well, as a board-certified specialist in gastroenterology with over 20 years of experience, I've had the privilege of

working in some of the most prestigious medical institutions in the country. My credentials are quite impressive, if I do say so myself. I mean, I have a very strong track record of academic achievements, numerous publications, and awards for excellence in patient care. And let's not forget my extensive clinical experience in treating patients with gastrointestinal disorders, including those related to malpractice cases like the one we're dealing with today. Yes, it's a very impressive resume, if you will. I mean, I'm sure Counsel would agree that my qualifications are more than sufficient to serve as our medical expert in this case. And as for my relevant experience, well, let me just say that I've seen it all when it comes to gastroenterology. From straightforward cases of irritable bowel syndrome to complex conditions like Crohn's disease and ulcerative colitis, you name it, I've treated it. So, yes, I'm confident in my ability to provide expert testimony on Dr. Smith's treatment of the claimant.

Q Dr. Ratke, are you an expert on gastrointestinal conditions similar to the Claimant's?

A Yes.

Q Have you reviewed the claimant's file and Dr. Smith's treatment?

A Yes, I have.

Q Is there anything in the file that would suggest Claimant's condition is not as severe or disabling as stated?

A Upon reviewing the file, I did notice that the claimant's

medical records indicate a few instances where their symptoms seemed to improve with conservative treatment methods. In one particular instance, it appears that the claimant's symptoms resolved on their own without any further intervention from Dr. Smith. Additionally, there are some inconsistencies in the claimant's testimony regarding their symptoms and medical history. For example, they stated that they experienced severe abdominal pain for several weeks prior to seeking treatment from Dr. Smith, but their medical records only show a brief mention of mild discomfort during that time period. It seems to me that these discrepancies could potentially cast some doubt on the severity or disabling nature of the claimant's condition.

Q Noted, but these discrepancies do not necessarily negate the claimant's overall testimony and medical evidence.

A Well, I mean, not necessarily negate, but certainly raise some questions about the severity of their symptoms and the necessity of Dr. Smith's treatment methods, yes. And, uh, as for getting the claimant into a healthy condition, it seems to me that they could have benefited from a more comprehensive approach, incorporating lifestyle modifications such as dietary changes, stress management techniques, and regular exercise. You know, something like a multidisciplinary treatment plan, addressing not just their physical symptoms but also their overall well-being. But, of course, this is all speculation at this point. I mean, it's not entirely clear whether these alternative approaches would

have made a significant difference in the claimant's outcome, but it's certainly an interesting area for further investigation, yes.

Q Acknowledged.

ATTY: I'd like to clarify that Dr. Ratke's suggestion of a multidisciplinary treatment plan is not necessarily contradictory to the claimant's existing medical evidence and testimony. The question remains whether Dr. Smith's treatment methods were reasonably necessary in this case.

ALJ: Let's keep the focus on Dr. Smith's treatment methods and their necessity in this case.

ATTY: Dr. Ratke, I'm Attorney Mia Carter representing the claimant. Can you clarify what specific treatment methods by Dr. Smith were reasonably necessary for this case?

ME: Dr. Smith's prescription of Entocort was not a standard treatment for Crohn's disease at that time and its use was not supported by clinical trials.

ATTY: Isn't it true that Dr. Smith's prescription of Entocort EC was a deviation from established treatment protocols and potentially contributed to the claimant's adverse outcome?

ME: Yes.

ATTY: Dr. Ratke, isn't it also true that Dr. Smith failed to adequately monitor the claimant's condition and adjust treatment accordingly, which further exacerbated the adverse outcome?

ME: Yes.

ATTY: Did Dr. Smith's use of Entocort EC and failure to adjust treatment lead to a substantial departure from standard medical care?

ME: Yes, Dr. Smith's actions constituted a substantial departure from standard medical care, which ultimately led to the claimant's adverse outcome.

ATTY: I see, Dr. Ratke, and isn't it also true that Dr. Smith's actions were not only a substantial departure from standard medical care, but also a breach of fiduciary duty to his patient? And didn't he recklessly disregard the claimant's well-being by prescribing an unproven medication without adequate monitoring or follow-up?

ME: Yes.

ATTY: Dr. Ratke, it's clear that Dr. Smith's actions were a catastrophic failure of medical judgment, and I'd like to reiterate that his use of Entocort EC was not only unproven at the time but also completely outside the bounds of accepted medical practice. And didn't he recklessly disregard the claimant's well-being by prescribing this medication without adequate monitoring or follow-up? Isn't it true that Dr. Smith's actions were a clear breach of fiduciary duty, and that his treatment was so egregious that it rises to the level of malpractice? I mean, can you seriously say with a straight face that Dr. Smith's treatment of the claimant was reasonable under the circumstances?

ME: [INAUDIBLE]

ATTY: Dr. Ratke, I'd like to reiterate that Dr. Smith's actions were a clear breach of fiduciary duty and a gross deviation from accepted medical standards. It's simply unconscionable that he would prescribe an unproven medication without proper monitoring or follow-up. Isn't it true that his treatment was so woefully inadequate that it amounts to nothing short of medical malpractice? And can you honestly say that Dr. Smith's actions were motivated by a desire to do what was best for the claimant, rather than some other ulterior motive?

ME: Dr. Smith's treatment of the claimant was a clear breach of fiduciary duty and a gross deviation from accepted medical standards. His actions demonstrate a reckless disregard for the claimant's well-being, and his prescription of Entocort EC without proper monitoring or follow-up is a stark example of medical malpractice. I must conclude that Dr. Smith's motivations were not driven by a desire to do what was best for the claimant, but rather by some other ulterior motive.

ATTY: I'd like to thank Dr. Ratke for his expert testimony and conclude my questioning.

BY ADMINISTRATIVE LAW JUDGE:

Q Dr. Ratke, may I see Exhibit 3-A, the claimant's medical records from Dr. Smith's office? Can you explain how this evidence supports your testimony regarding Dr. Smith's breach of fiduciary duty and deviation from standard medical care?

A Exhibit 3-A, the claimant's medical records from Dr.

Smith's office, clearly indicates that Dr. Smith prescribed Entocort EC without proper monitoring or follow-up, as evidenced by the lack of any documentation regarding the claimant's condition or response to treatment during this time period. Additionally, the records show that Dr. Smith failed to adjust his treatment plan in a timely manner, despite the claimant's worsening symptoms, which is consistent with my previous testimony regarding his breach of fiduciary duty and deviation from standard medical care.

Q Dr. Ratke, can you explain how Exhibit 5-B, Dr. Smith's notes regarding the claimant's medication regimen, supports or contradicts your previous testimony regarding his failure to adjust treatment and breach of fiduciary duty?

A Exhibit 5-B supports my previous testimony regarding Dr. Smith's failure to adjust treatment and breach of fiduciary duty. It shows that he continued to prescribe Entocort EC despite the claimant's worsening symptoms and lack of response to treatment.

Q Exhibit 10-A is a letter from Dr. Smith to the claimant's primary care physician, dated March 12, 2018. Can you explain how this evidence supports or contradicts your previous testimony regarding Dr. Smith's breach of fiduciary duty and deviation from standard medical care?

A Exhibit 10-A shows Dr. Smith's letter to the claimant's primary care physician stating that he was using a 'novel approach' with Entocort EC, which supports my testimony regarding

his deviation from standard medical care and lack of transparency in treatment decisions.

Q Exhibit 15-B is a copy of Dr. Smith's malpractice insurance policy. Can you explain how this evidence relates to your testimony regarding Dr. Smith's breach of fiduciary duty and deviation from standard medical care?

A Exhibit 15-B suggests Dr. Smith was aware of potential malpractice risks associated with his treatment decisions.

ATTY: Your Honor, I believe Dr. Ratke's expert testimony and the evidence presented, including Exhibits 3-A, 5-B, 10-A, and 15-B, clearly demonstrate Dr. Smith's breach of fiduciary duty and deviation from standard medical care. The claimant's medical records show a clear pattern of Dr. Smith's failure to adjust treatment and his reckless disregard for the claimant's well-being. I urge the court to consider this evidence when making its decision.

(The vocational expert, VERLA WOLF, having been first duly sworn, testified as follows:)

EXAMINATION OF VOCATIONAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q Ms. Wolf, can a reasonable person with the claimant's physical limitations and age perform the duties of a Dental Assistant as previously held?

A Well, as a Vocational Expert, I'd like to clarify that being a Dental Assistant is a job that requires some level of physical stamina and manual dexterity. Now, when we talk about

physical demands, we're looking at a medium level of exertion, which means the individual would be required to stand for long periods, lift patients, and perform tasks that require fine motor skills, such as using dental instruments. I'd say it's not a sedentary job by any stretch. Now, in terms of its SVP rating, I'd place it around 6 or 7, which means it requires some level of technical skill and knowledge about dental procedures, but it's not an extremely skilled position. As for the claimant's ability to perform this job with their physical limitations and age, I'm not sure that would be a good fit. I mean, they may have some difficulties with standing for long periods or lifting patients, which could impact their overall productivity and efficiency in this role.

Q So, let me see if I understand correctly. You're saying that being a Dental Assistant is not a good fit for the claimant due to their physical limitations and age? And you'd place its SVP rating around 6 or 7, requiring some level of technical skill and knowledge about dental procedures? Can you elaborate on this further, Ms. Wolf?

A No, it's not a good fit due to physical demands and SVP rating.

Q Based on our discussion today, I'd like to restate the claimant's Profile 2 as follows: The claimant has a physical residual functional capacity for medium work with limitations on standing and walking. They are able to perform sedentary work, but

may require frequent breaks due to their back condition. In terms of education and training, they have a high school diploma and some post-secondary education in dental assisting. Is it your opinion that this profile would be consistent with the requirements and demands of a Dental Assistant position, Ms. Wolf?

A Yes.

Q I'd like to clarify that my revised profile for the claimant reflects a slight modification from our previous discussion regarding their physical limitations and work capacity. The claimant's ability to perform sedentary work with frequent breaks is a significant consideration in determining their vocational potential. Ms. Wolf, would you agree that this profile still aligns with your earlier assessment of the claimant's suitability for a Dental Assistant position?

A No.

ALJ: It appears that there is a discrepancy between my revised profile for the claimant and Ms. Wolf's assessment of their suitability for a Dental Assistant position. I would like to summarize our discussion for the record: Ms. Wolf initially stated that being a Dental Assistant was not a good fit for the claimant due to physical demands and SVP rating, but later agreed with a revised profile that reflects sedentary work with frequent breaks. However, she has now expressed disagreement with this revised profile. I would like to ask Counsel if they have any questions regarding this matter.

ATTY: Ms. Wolf's assessment is clear: as previously stated, being a Dental Assistant is not suitable for the claimant due to its physical demands and SVP rating. The revised profile does not change this conclusion.

EXAMINATION OF VOCATIONAL EXPERT BY ATTORNEY:

Q Ms. Wolf also mentioned that the claimant's back condition may require frequent breaks during sedentary work. How would this impact their employability and ability to perform the duties of a Dental Assistant?

A Frequent breaks due to back condition would significantly impact their employability and ability to perform duties of a Dental Assistant, as it would reduce their productivity and create scheduling challenges for employers.

Q Additionally, Ms. Wolf mentioned that the claimant's age and physical limitations may impact their ability to stand for long periods and lift patients. How would this further reduce their employability and ability to perform the duties of a Dental Assistant?

A This would further reduce their employability due to potential scheduling conflicts and reduced productivity, as well as create concerns for patient safety if they are unable to lift or stand for long periods.

ALJ: Thank you, Ms. Wolf, for your thorough and insightful testimony. I appreciate your candor and willingness to clarify any discrepancies in our discussion today. Your assessment has been

invaluable in helping me understand the claimant's vocational potential and limitations. With that, I'd like to summarize the key points from today's hearing: we discussed the claimant's physical residual functional capacity for medium work with limitations on standing and walking, as well as their ability to perform sedentary work with frequent breaks. Ms. Wolf confirmed that being a Dental Assistant is not suitable for the claimant due to its physical demands and SVP rating. She also emphasized that the claimant's back condition would significantly impact their employability and ability to perform duties of a Dental Assistant, as well as create scheduling challenges for employers. Furthermore, she highlighted concerns regarding patient safety if the claimant is unable to lift or stand for long periods. With these points in mind, I'd like to ask the claimant if they have any final remarks or questions before we conclude this hearing.

CLMT: Your Honor, esteemed members of this court, I stand before you today as a testament to the resilience and determination that defines us all, despite the obstacles we face in life. My name is Gabriel Aufderhar, and I am not just a claimant, but a symbol of hope for those who have been marginalized, belittled, and overlooked by society. I am a warrior, scarred by the battles I've fought, yet unbroken by the weight of my injuries. My physical limitations are not a weakness, but a reminder that every individual has a unique set of challenges to overcome. I want to tell you about the times when

the pain was so excruciating that I couldn't get out of bed, or when the fatigue was so overwhelming that I could barely muster the strength to breathe. But I also want to share with you the moments of triumph, when my determination and courage allowed me to push past the boundaries of what seemed possible. I have fought for every scrap of dignity, for every inch of independence, and for every fleeting moment of joy in a world that often seems designed to exclude us. My story is not just about me; it's about all those who have been silenced, marginalized, or ignored. It's about the countless individuals who struggle every day to make ends meet, to find purpose, and to hold on to hope when everything seems lost. I am proud to stand alongside them, to amplify their voices, and to fight for a world where everyone has an equal chance to thrive. Your Honor, as you deliberate our case, I implore you to remember that we are not just statistics or medical records; we are human beings, deserving of compassion, respect, and understanding. We are not defined by our disabilities, but by our capacity to love, to learn, and to grow. Let us not forget the value of every life, no matter how fragile or broken it may seem. I am Gabriel Aufderhar, and I will continue to fight for myself, for my fellow claimants, and for a world that recognizes the inherent worth and dignity of every individual.

ALJ: Thank you, Gabriel, for your heartfelt and powerful testimony. I'm taking note of your words as we conclude this hearing. Ms. Wolf, Dr. Ratke, Counsel, thank you all for your

expertise and insights. This case will now go into recess. We'll reconvene at a later date to deliberate on the claimant's profile and vocational potential.

VE: Thank you, Your Honor.

ME: The claimant's ability to perform as a Dental Assistant is questionable due to physical demands and SVP rating.

CLMT: Thank you, I appreciate it.

ATTY: Thank you, Your Honor, for allowing me to present Gabriel's case. I'd like to thank Ms. Wolf and Dr. Ratke for their expertise. This has been a truly enlightening experience, and I'm grateful for the opportunity to advocate for my client.

(The hearing closed at 07:37 PM, on April 23, 2018.)

C E R T I F I C A T I O N

I have read the foregoing and hereby certify that it is a true and complete transcription of the testimony recorded at the hearing in the case of Gabriel Aufderhar, held before Administrative Law Judge Erwin Bernier.

Crawford Zieme, Transcriber
Mann - Crist

Kellie O'Connell, Proofreader
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