

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

TRANSCRIPT

In the case of:

Olin Waters

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.)

208-54-9959

Social Security Number

Hearing Held at:

Lake Alexanderbury, Utah

(City, State)

November 5, 2021

(Month, Day, Year)

by:

Evie McCullough

(Administrative Law Judge)

APPEARANCES:

Olin Waters, Claimant

Garry Moen-Simonis, Attorney for Claimant

Dena Legros, MD, Medical Expert

Bernita Kutch, Vocational Expert

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(The following is a transcript of the hearing held before Evie McCullough, Administrative Law Judge, Office of Disability Adjudication and Review, Social Security Administration, on November 5, 2021, at Lake Alexanderbury, Utah, in the case of Olin Waters, Social Security number 208-54-9959. The claimant appeared by video and was represented by their attorney, Garry Moen-Simonis. Also present were Dena Legros, MD, Medical Expert, Bernita Kutch, Vocational Expert, and Reymundo Boyle, Hearing Reporter.)

(The hearing commenced at 06:34 AM, on November 5, 2021.)

OPENING STATEMENT BY ADMINISTRATIVE LAW JUDGE:

ALJ: Good morning, everyone, and welcome to this hearing at 8:00 AM Eastern Standard Time. I am Administrative Law Judge Evie McCullough. We are gathered here today to consider the case of Mr. Olin Waters, claimant, who is appearing by video conference from his location, accompanied by his attorney, Mr. Garry Moen-Simonis. I'd like to remind the claimant that he is entitled to an in-person hearing if he so chooses. Now, as we proceed with this case, we have a medical expert, Dr. Dena Legros, who has a Ph.D. in physical therapy and has worked extensively with patients recovering from orthopedic injuries. We also have a vocational expert, Bernita Kutch, who has over 20 years of experience in rehabilitation counseling. Mr. Moen-Simonis, may I ask you if your client's video conferencing equipment is functioning properly?

ATTY: Yes, my equipment is functioning properly.

ALJ: Alright then, Mr. Moen-Simonis's video conferencing equipment is functioning properly. Just to confirm that for the record, my understanding is that you've indicated, yes, everything

is working as it should from your end in terms of technology and setup. Now, I'd like to take a moment to remind Mr. Waters that if he prefers an in-person hearing, we can certainly accommodate that request. We could then reschedule this entire proceeding, or if he's comfortable with continuing on in this format via video conference, we can proceed as planned. So, Mr. Waters, may I ask which preference you have for the continuation of our hearing today?

CLMT: I'm comfortable proceeding via video conference as planned.

ALJ: Thank you, Mr. Waters, for confirming that you're comfortable proceeding with our hearing today via video conference as planned. I'd like to reiterate that if at any point during this proceeding you feel uncomfortable or prefer a change in format, please don't hesitate to let us know and we'll accommodate your request accordingly. Now, in preparation for the case, I'd like to review some documents with you both. We have the resumes of Dr. Dena Legros, our medical expert, who holds a Ph.D. in physical therapy and has worked extensively with patients recovering from orthopedic injuries. Additionally, we have the resume of Bernita Kutch, our vocational expert, who brings over 20 years of experience in rehabilitation counseling to the table. I'd like to ask Mr. Moen-Simonis, is there anything else you or your client would like to collect or review prior to the March 15th submission deadline for post-hearing briefs?

ATTY: Yes, I believe our record is now fully developed, Your Honor. We've had an opportunity to review all the evidence and medical records submitted by Dr. Legros and Ms. Kutch. In fact, my client has thoroughly reviewed everything that's been provided to us so far. So, we're ready to proceed with the hearing at this time.

ALJ: I acknowledge that the record is now fully developed, and Mr. Moen-Simonis's client has thoroughly reviewed all the evidence and medical records submitted by Dr. Legros and Ms. Kutch. I'd like to admit Exhibits 1A through 2E, inclusive of any attachments or addendums thereto.

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

ALJ: As I've been reviewing the documents submitted by Dr. Legros and Ms. Kutch, it appears that there's an inconsistency in the record regarding Mr. Waters' treatment history at St. Mary's Rehabilitation Center. Specifically, Exhibit 1D, the discharge summary from Dr. Legros, indicates that Mr. Waters underwent physical therapy on Tuesdays and Thursdays, whereas Exhibit 2B, the daily log maintained by Ms. Kutch, suggests that his physical therapy sessions occurred on Mondays and Fridays instead. So, I'm wondering if perhaps there's been some kind of mistake or miscommunication somewhere along the line regarding Mr. Waters' actual treatment schedule at St. Mary's Rehabilitation Center. If that's correct, then we may need to amend the record accordingly and clarify exactly what did happen with regard to his therapy

sessions at this particular facility.

ATTY: Yes, Your Honor, I agree with your observation regarding the inconsistency in the record. It's clear that there was a mistake in documenting Mr. Waters' treatment schedule at St. Mary's Rehabilitation Center. The correct information should reflect physical therapy sessions occurring on Mondays and Fridays, as noted in Exhibit 2B. Therefore, we propose amending Exhibit 1D, the discharge summary from Dr. Legros, to accurately reflect the actual dates of his therapy sessions, which were on Mondays and Fridays, not Tuesdays and Thursdays as previously stated.

ALJ: I understand that Mr. Moen-Simonis and his client agree to amend Exhibit 1D, the discharge summary from Dr. Legros, to accurately reflect the actual dates of Mr. Waters' physical therapy sessions at St. Mary's Rehabilitation Center, which were on Mondays and Fridays, not Tuesdays and Thursdays as previously stated. Now, I'd like to direct my attention to you, Mr. Waters. Are you aware that amending this record may have some consequences for your case, even if the decision is ultimately favorable? Do you understand that by correcting this inconsistency, it could potentially impact the weight given to certain pieces of evidence or the overall analysis of your claim?

CLMT: Yes, I'm aware that amending this record may have some consequences for my case.

ALJ: I acknowledge that Mr. Waters understands the

potential consequences of amending this record. I will now direct the hearing reporter's attention to the amendment. Reymundo Boyle, please note the amendment to Exhibit 1D, the discharge summary from Dr. Legros, correcting the dates of Mr. Waters' physical therapy sessions at St. Mary's Rehabilitation Center to Mondays and Fridays, as indicated in Exhibit 2B. I would now like to proceed with questioning Mr. Waters. Mr. Waters, please respond accordingly.

(The claimant, OLIN WATERS, having been first duly sworn, testified as follows:)

EXAMINATION OF CLAIMANT BY ADMINISTRATIVE LAW JUDGE:

Q Mr. Waters, can you please confirm your full name?

A Olin Addison Waters

Q Mr. Waters, what is your current mailing address?

A 211 Bahringer Village Suite 113, Whiteshire, Idaho
96346-5993

Q When were you last insured under Social Security?

A I was last insured under Social Security on December 31st, 2020.

Q Mr. Waters, what is the highest grade of school you completed?

A I completed a high school general equivalency diploma through the Idaho Virtual Academy.

Q What was your last job, Mr. Waters, and when did you leave that position?

A My last job was as a school bus driver for Whiteshire Public Schools. I worked in that position from August 2018 until my resignation on February 14th, 2022, due to my injury and subsequent medical treatment.

Q As a school bus driver for Whiteshire Public Schools, can you describe your specific duties and responsibilities?

A As a school bus driver for Whiteshire Public Schools, my specific duties and responsibilities included safely transporting students to and from school, adhering to assigned routes and schedules, monitoring student behavior onboard the bus, handling minor discipline issues as necessary, communicating with parents and school officials regarding any concerns or incidents, performing routine maintenance checks on the bus to ensure safe operation, and attending required safety training sessions.

Q Were you ever involved with the Social Security Administration, Mr. Waters?

A Prior to my claim, I had no prior involvement or applications with the Social Security Administration regarding disability benefits.

Q You're affirming that prior to this claim, you had no prior involvement or applications with the Social Security Administration regarding disability benefits. Is that correct, Mr. Waters?

A Yes, that's correct. Prior to this claim, I had no prior involvement or applications with the Social Security

Administration regarding disability benefits. And, if I may clarify, I'd like to add that I've been experiencing symptoms consistent with Diabetes with Complications, specifically high blood sugar levels which my treating physician has documented in my medical records. One reason why I believe I'm disabled is because of my ongoing neuropathy, characterized by persistent numbness and pain in my feet, which significantly limits my ability to perform even basic daily activities, let alone return to my previous work as a school bus driver.

Q Thank you for clarifying that, Mr. Waters. I'd like to make sure I understand what you're saying regarding your condition and its impact on your ability to work. You mentioned experiencing symptoms consistent with Diabetes with Complications, specifically high blood sugar levels, which have been documented by your treating physician. You also stated that one of the reasons you believe you're disabled is because of ongoing neuropathy characterized by persistent numbness and pain in your feet, which significantly limits your ability to perform even basic daily activities, let alone return to your previous work as a school bus driver. Can you elaborate on what specific activities or tasks are difficult for you to perform due to this neuropathy?

A Well, like I said before, my neuropathy is pretty bad, and it's been documented by my doctor, Dr. Legros, who's been treating me for this condition. And, uh, what I mean to say is that it's really hard for me to walk around or even stand for long

periods of time because of the pain in my feet. It feels like I've got pins and needles all the time, which makes it difficult to do even simple things like taking a shower or getting dressed in the morning. And, you know, my treating physician has also mentioned that I need to be careful about my blood sugar levels, so I have to check them regularly and take my medication as prescribed. It's just really hard for me to manage all of this on my own, and it affects my daily activities in a big way. Like, for instance, I used to love playing basketball with the guys from church, but now I can barely even make it around the court without feeling like my feet are going to fall off. And it's not just that, either - it's hard for me to concentrate on anything for more than a few minutes at a time because of the pain and numbness in my feet. It's really affecting my quality of life, if you know what I mean.

ALJ: I understand, Mr. Waters, that you're experiencing significant difficulties with neuropathy due to your Diabetes with Complications, which affects your daily activities and quality of life. You've mentioned pain and numbness in your feet, making it hard for you to walk or stand for long periods, perform simple tasks like taking a shower, and even concentrate on things for more than a few minutes at a time. I also note that you've been prescribed medication and are monitoring your blood sugar levels regularly. Based on this, I believe that your condition significantly impacts your ability to perform basic work-related activities and daily living skills. However, in order to fully

evaluate the severity of your symptoms and their impact on your disability claim, I need to request some additional documentation from your treating physician, Dr. Legros. Specifically, I'd like him to provide a detailed medical report outlining your current treatment plan, including any medication you're taking, as well as a statement explaining how your neuropathy affects your ability to perform even basic daily activities. Can the attorney confirm that this documentation will be provided?

ATTY: Yes, we will obtain and submit Dr. Legros' detailed medical report outlining Mr. Waters' current treatment plan, including medication, as well as a statement explaining how his neuropathy affects his ability to perform even basic daily activities.

ALJ: Thank you, Mr. Moen-Simonis. Now, Mr. Waters, I'd like to ask you to elaborate on another symptom that's been reported by Dr. Legros. You've mentioned experiencing 'pins and needles' sensations in your feet due to the neuropathy. Can you describe what that feels like for you, specifically?

BY ADMINISTRATIVE LAW JUDGE:

A It's like my feet are on fire or burning all the time, even when they're not. It's hard to explain, but it feels like tiny needles poking me constantly.

Q I understand that to be a vivid description of what it's like for you to experience neuropathy in your feet. Mr. Waters, have you ever sought medical attention specifically for these

'pins and needles' sensations or burning feelings in your feet?

A [INAUDIBLE]

Q How [INAUDIBLE] these 'pins and needles' sensations or burning feelings in your feet occur, Mr. Waters? Is it a constant presence or is it more episodic?

A These sensations occur almost constantly, but I'd say they're most pronounced when I'm sitting for long periods or standing still. I'd estimate it's around a 70 to 80% of my waking hours that I experience some level of discomfort or numbness in my feet.

Q You experience discomfort or numbness in your feet about 70-80% of your waking hours, Mr. Waters.

A Yes, like I said before, it's constant pain and numbness, but sometimes it gets a lot worse than that. There are times when my feet feel like they're on fire, and the pain is so intense that I'm woken up at night from sleep because of it. It's not just the physical sensation, either - it affects my mental health too. I get anxious about being able to take care of myself, especially with things like walking or standing, which are basic tasks for most people but feel impossible to me right now.

Q I've taken note of your testimony regarding the constant pain and numbness in your feet, as well as its impact on your mental health. I'll review Dr. Legros' report to further assess the severity of your symptoms.

A It got to the point where I couldn't even take care of

myself anymore. Simple tasks like walking to the kitchen or showering became a chore that left me exhausted and demoralized. One particularly bad episode lasted for weeks, where my feet felt like they were on fire from the moment I woke up until I went to bed at night. Even taking off my shoes was a painful experience, as the slightest pressure would send shooting pains through my toes and feet. It got so bad that I had to hire someone to do chores around the house because I just couldn't manage anymore.

Q It sounds like this episode had a significant impact on your daily functioning and ability to take care of yourself. I've taken note of that.

A I'm no longer able to take my children to school on weekdays because even sitting in the driver's seat for an extended period causes severe discomfort and numbness in my feet.

Q You're no longer able to take your children to school due to discomfort and numbness caused by sitting in the driver's seat.

A I'm also no longer able to walk my dog or go on short walks around the neighborhood with my family because even a short distance causes severe pain and numbness in my feet.

Q Mr. Waters, does this relate to a statement made by Dr. Legros on April 12th, 2022?

A Yes.

Q You were prescribed Telprex on April 12th, 2022. Were you still taking it on May 1st of that year?

A Yes, I was still taking Telprex on May 1st of that year.

Q You were also prescribed Metformin on April 12th, 2022. Did Dr. Legros indicate it was for your neuropathy?

A Yes, Dr. Legros told me Metformin was prescribed [INAUDIBLE] help manage my neuropathy symptoms and also to control my blood sugar levels.

Q According to Dr. Legros' report, on April 12th, 2022, you were prescribed both Telprex and Metformin for managing neuropathy symptoms and controlling blood sugar levels. However, I've noticed that in your previous testimony, you mentioned experiencing severe discomfort and numbness in your feet after starting Telprex on March 15th, 2022, but then later stated that Dr. Legros told you to stop taking it because it wasn't effective. Meanwhile, Metformin was prescribed as a substitute for Amaryl, which suggests its purpose might be solely for controlling blood sugar levels rather than neuropathy management. Can you clarify this discrepancy in medication use and purpose?

A I misunderstood what Dr. Legros said about Metformin. He told me it was also for neuropathy, not just blood sugar control.

ATTY: I'd like to clarify that while Metformin was indeed prescribed for blood sugar control, Dr. Legros' note from April 12th does indicate that it can also help alleviate neuropathy symptoms. However, I'd like to offer an explanation from Dr. Legros himself regarding the discrepancy in medication use and purpose. He has stated that while Telprex was discontinued due to its ineffectiveness for Mr. Waters' specific case, Metformin's

role in managing blood sugar levels indirectly contributes to reducing neuropathy symptoms. This nuanced understanding resolves any discrepancies previously mentioned.

ALJ: I appreciate the clarification provided by your attorney regarding Dr. Legros' note and the role of Metformin in managing both blood sugar levels and neuropathy symptoms. It appears that there was a misunderstanding regarding the purpose of Metformin, but it's clear now that it can have an indirect effect on reducing neuropathy symptoms through its impact on blood sugar control.

BY ADMINISTRATIVE LAW JUDGE:

A I'd like to ask Dr. Legros about this discrepancy at our next appointment.

Q I've taken note of Mr. Waters' request to discuss this with Dr. Legros at their next appointment. Meanwhile, I'd like to bring up another matter that may have a bearing on his overall situation. On reviewing the medical records, I've found a notation from Dr. Patel dated March 10th, 2022, indicating a referral for an electromyogram test due to concerns of potential nerve damage in Mr. Waters' legs. The results of this test are not included in the current record. Would you like me to request these results be added or would you prefer to proceed with other aspects of the case?

A Please obtain the results of the electromyogram test.

Q I will instruct the court's medical records clerk to

obtain the electromyogram test results from Dr. Patel's office and attach them to Mr. Waters' file for review. Upon reviewing his file further, I've also noticed a notation from Dr. Sanchez dated February 27th, 2022, indicating that Mr. Waters has been experiencing episodes of 'cramping or twitching in the muscles of the lower legs', which he reports are becoming more frequent and intense over time.

CLMT: Those episodes were very painful and made it hard for me to stand or walk.

BY ADMINISTRATIVE LAW JUDGE:

A Those episodes of cramping or twitching in the muscles of your lower legs sound quite distressing, Mr. Waters. Were these episodes ever treated for by Dr. Sanchez or any other healthcare provider?

Q Dr. Sanchez said they were likely related to my neuropathy and suggested adjusting my medication.

A I'll review Dr. Sanchez's medication adjustment notes.

Q The medication adjustments didn't seem to make much of a difference with my main symptoms.

A I've taken note of your testimony regarding the medication adjustments not providing sufficient relief for your main symptoms. Mr. Waters, I'd like to revisit the issue you mentioned earlier about experiencing severe discomfort and numbness in your feet after taking Telprex on March 15th, 2022. It seems that despite discontinuing Telprex due to its

ineffectiveness, these symptoms persist. Can you tell me more about how your condition has progressed since then?

Q Since discontinuing Telprex on March 15th, 2022, my symptoms of severe discomfort and numbness in my feet have persisted and continued to worsen over time. The sensation of pins and needles, along with sharp pains and burning sensations, has become a constant presence in both legs. This makes it extremely difficult for me to engage in daily activities that most people take for granted, such as walking or even standing for extended periods. I've found myself having to rely on my wheelchair more frequently due to the unbearable pain in my feet, which has severely impacted my quality of life and independence.

A Your symptoms have worsened since discontinuing Telprex, and you've become increasingly reliant on a wheelchair due to severe foot pain.

Q It's hard to take care of myself, cook meals, or even use the bathroom without extreme pain.

A It's clear that your condition has significantly impacted your daily functioning and ability to care for yourself.

Q I'm at a point where I need assistance with daily activities due to my condition.

A You require assistance with daily activities due to your condition.

Q I need help with everything.

A You've indicated that assistance is needed for daily

activities due to your condition. Have you applied for and been denied disability benefits?

Q Yes.

A Your prior disability application was denied. Were you informed of any potential grounds for denial?

Q Yes, they mentioned I had a residual functional capacity.

ALJ: Residual functional capacity assessment was cited as a reason for denial.

ATTY: I acknowledge my previous responses and will use concise language going forward to get straight to the point without unnecessary elaboration.

ALJ: What is your client's current work status?

EXAMINATION OF MEDICAL EXPERT BY ATTORNEY:

Q My client has been unable to work since May 1st, 2022, due to his worsening neuropathy symptoms and inability to perform daily activities without extreme pain.

A I'm not working due to my condition.

Q Has my client been able to return to his job as an HVAC technician, considering his current condition and inability to perform physical tasks?

A No.

Q It's clear that my client's neuropathy has significantly impacted his ability to perform physical tasks required as an HVAC technician, such as climbing ladders and working with heavy equipment. Additionally, he has not been able to return to work

since May 1st, 2022, due to his worsening symptoms and need for assistance with daily activities. One critical detail that I believe the court should consider is my client's electromyogram test results, which show evidence of severe nerve damage in both legs. Given this information, do you believe my client's condition renders him unable to perform any other jobs that don't require manual labor?

A I'm not sure if I can do other jobs because of my nerves being damaged.

Q Can my client perform sedentary work given his severe nerve damage and inability to stand or walk for extended periods?

A [phonetic]

Q Given my client's severe nerve damage, inability to stand or walk for extended periods, and electromyogram test results showing evidence of nerve damage, I believe it is crucial to clarify whether his condition would still render him ineligible for disability benefits under the Social Security Administration's 'Mental Residual Functional Capacity' assessment, specifically considering the lack of vocational testimony from an expert witness. Does the court not consider my client's physical limitations and test results as substantial evidence supporting his claim for disability benefits?

A I believe my condition is severe enough to prevent me from working any job, regardless of physical demands.

Q Dr. Patel's electromyogram results show severe nerve

damage; can this condition alone support a finding of disability?

A [INAUDIBLE]

Q Is Dr. Patel's electromyogram confirming severe nerve damage sufficient to establish Mr. Waters' disability?

A Yes, Dr. Patel's electromyogram confirms severe nerve damage, which is sufficient to establish my disability.

Q Dr. Patel's electromyogram confirming severe nerve damage establishes Mr. Waters' disability, yet his vocational history remains a crucial detail; does his extensive experience as an HVAC technician diminish his eligibility for sedentary work?

A My job as an HVAC technician is a physically demanding one.

ATTY: We've established Mr. Waters' disability through Dr. Patel's electromyogram and his inability to perform physically demanding work as an HVAC technician. I'm done asking questions.

ALJ: Let's summarize some key points before proceeding. Can I get confirmation from the attorney that Mr. Waters' vocational history as an HVAC technician is indeed physically demanding and does not align with sedentary work requirements?

ATTY: Yes, physically demanding.

ALJ: You stated earlier that Dr. Patel's electromyogram confirming severe nerve damage establishes Mr. Waters' disability. Can you clarify what specific job or occupation would still be available to him given his condition and test results?

ATTY: None, considering his electromyogram results and

inability to stand or walk for extended periods.

ALJ: Is Mr. Waters' disability considered total based on his inability to perform any job due to severe nerve damage?

ATTY: Yes, Mr. Waters' disability is considered total due to his severe nerve damage and inability to perform any job as a result.

ALJ: You stated Mr. Waters' disability is considered total. What jobs would he still be capable of performing if his ability to stand and walk for extended periods were temporarily alleviated?

ATTY: With temporary alleviation of his standing and walking limitations, Mr. Waters may still be capable of performing desk jobs that require minimal physical exertion, such as data entry or bookkeeping, but this is speculative given the unpredictable nature of his condition.

BY ADMINISTRATIVE LAW JUDGE:

Q I appreciate your candid assessment of Mr. Waters' capabilities given his condition. Based on Dr. Patel's electromyogram results and Mr. Waters' testimony about his daily life, I find that he is under a disability as defined by the Social Security Act. Moving forward, Mr. Waters, can you confirm for me what specific treatments or interventions have been implemented to manage your symptoms and slow the progression of nerve damage?

A I'm taking pain management medications and seeing a

specialist.

Q Have these treatments provided significant relief from your symptoms?

A [phonetic]

Q Have these treatments slowed the progression of nerve damage?

A No.

Q Have you considered alternative treatments or therapies?

A [INAUDIBLE]

Q What alternative treatments or therapies have you considered?

A Platelet-rich [INAUDIBLE] injections.

Q Have platelet-rich plasma injections shown promise in slowing nerve damage progression?

A [INAUDIBLE]

Q Have platelet-rich plasma injections been scheduled or attempted?

A Scheduled.

Q Scheduled for platelet-rich plasma injections.

A Not yet.

Q Still waiting for appointment.

A Still waiting.

Q Will these injections improve condition?

A [INAUDIBLE]

Q Unlikely given current symptoms.

A No.

ALJ: I'd like to thank you, Mr. Waters, for being open and honest about your condition. Considering all the information presented today, I must reiterate that it's clear your severe nerve damage has significantly impacted your ability to perform any job. I've taken into account Dr. Patel's electromyogram results and your testimony about your daily life. Now, regarding the platelet-rich plasma injections, I'd like to confirm if you're still awaiting an appointment with a specialist, perhaps one who's familiar with this treatment method. You see, I've had the pleasure of reviewing the resume of Dr. Dena Legros, our medical expert in this case, and it's quite impressive. His extensive experience in pain management and neurology is truly remarkable. If you'd like to view his resume for yourself, it can be accessed through the court's website under 'Expert Witness Profiles.' Now, Counselor, I must ask if there are any objections to Dr. Legros serving as our medical expert in this case?

ATTY: No objection.

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

EXAMINATION OF MEDICAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q Dr. Dena Legros, please state your full name for the record.

A Dena Riley Legros

Q Dr. Legros, can you briefly outline your background and

qualifications as a medical expert in pain management and neurology?

A Well, as I mentioned briefly earlier, my name is Dena Riley Legros, and I'm a medical doctor with extensive experience in pain management and neurology. I've been practicing for over two decades now, and I've had the privilege of working with numerous patients suffering from various neurological conditions, including chronic pain, neuropathic pain, and other related disorders. My background is quite diverse, really - I've worked in both academic and clinical settings, and I've even held positions as a researcher and a consultant for several pharmaceutical companies. But, you know, it's not just about the credentials or the experience; it's about the passion and the dedication that drives me to help my patients find relief from their suffering. And, of course, I'm board certified in pain management and neurology, which is, you know, a requirement for someone like me to be considered an expert in these areas. So, yeah, that's me in a nutshell - Dr. Dena Riley Legros, pain management and neurology specialist with a long history of providing compassionate care and expertise to my patients.

Q Dr. Legros, are you an expert in treating nerve damage and related chronic pain conditions?

A Yes.

Q Have you reviewed this case?

A Yes.

Q Is there anything you'd like to bring to my attention that might contradict the claimant's assertion of disability?

A Well, if I may say so, after reviewing this case, I did notice that the claimant's assertion of disability due to severe nerve damage seems a bit...hm...inconsistent with their reported daily activities. I mean, they mentioned being unable to perform any job, but then they also said they're still awaiting an appointment for platelet-rich plasma injections, which suggests that there may be some ongoing treatment and management efforts in place. And, if I recall correctly, the claimant did mention experiencing some...ah...improvement with this treatment method? So, it does seem a bit puzzling to me how they would still assert complete disability given these ongoing treatment efforts.

Q You're suggesting there's a discrepancy between the claimant's assertions and their ongoing treatment efforts.

A Yes, I think it's safe to say that there's a bit of an incongruity here. I mean, if the claimant is truly unable to perform any job due to severe nerve damage, as they've asserted, then one would expect to see some more...let's call it, 'robust' treatment efforts in place, rather than just waiting for an appointment for platelet-rich plasma injections. And even then, it seems like a pretty...modest approach to addressing such a debilitating condition, if you ask me. I mean, couldn't they have, say, tried some other therapies or interventions that might be more...aggressive in their approach? Or, I don't know, maybe even

gotten themselves on some sort of pain management program or something? But no, it seems like we're just kind of...stuck here.

Q I acknowledge Dr. Legros' expert opinion that the claimant's assertion of disability due to severe nerve damage appears inconsistent with their reported daily activities and ongoing treatment efforts.

ATTY: I'd like to address Dr. Legros' expert opinion that there seems to be an incongruity between the claimant's assertions of disability and their ongoing treatment efforts. While it's true that the claimant is awaiting an appointment for platelet-rich plasma injections, I believe this is a reasonable approach given the complexity of their condition and the need for ongoing management. Furthermore, I'd like to point out that the claimant has been experiencing some improvement with this treatment method, which suggests that they are indeed actively seeking relief from their symptoms.

ALJ: I acknowledge Counselor's argument that awaiting platelet-rich plasma injections is a reasonable approach given the complexity of the claimant's condition and ongoing management.

ATTY: Dr. Legros, I'm Garry Moen-Simonis, attorney representing the claimant. I'd like to clarify that the claimant's assertion of disability is not inconsistent with their ongoing treatment efforts.

ME: I acknowledge Counselor's clarification that the claimant's assertion of disability is not inconsistent with their

ongoing treatment efforts.

ATTY: But, Dr. Legros, if I may respectfully point out that you mentioned earlier that it seemed a bit puzzling to you how the claimant could still assert complete disability given these ongoing treatment efforts...don't you think that's a rather harsh assessment, considering the complexity of the claimant's condition and their genuine need for relief from debilitating symptoms? And isn't it possible that the claimant is simply being cautious in their approach, rather than somehow faking or exaggerating their condition?

ME: I understand Counselor's concerns about my previous statement, and I appreciate his thoughtful clarification. While I did express some puzzlement regarding the claimant's assertion of disability given their ongoing treatment efforts, I acknowledge that it's entirely possible that they are being cautious in their approach and genuinely need relief from debilitating symptoms.

ATTY: I'm glad we could clear up that point, Dr. Legros. But I must say, I do find it intriguing that you mentioned earlier that the claimant's treatment approach seems 'modest' and not very aggressive in addressing their condition. Can you elaborate on what you meant by that, and whether you think this approach is sufficient to alleviate the claimant's debilitating symptoms?

ME: When I referred to the claimant's treatment approach as 'modest', I meant that it appears to involve a relatively conservative and cautious approach, which may not be sufficient to

alleviate their debilitating symptoms. In my experience, severe nerve damage often requires more comprehensive and aggressive management strategies, such as multidisciplinary care teams, advanced pain management therapies, and potentially even surgical interventions. While platelet-rich plasma injections are certainly a useful treatment option, I worry that relying solely on this approach may not be enough to adequately address the claimant's complex condition.

ATTY: Dr. Legros, if a more comprehensive and aggressive approach is warranted for the claimant's condition, why did you not recommend such an approach in your evaluation?

ME: I can see how my evaluation might suggest that I should have recommended a more comprehensive approach for the claimant's condition. However, as an expert medical witness, it's not necessarily within my scope to dictate specific treatment plans or recommend interventions without having access to the claimant's entire medical history and current treatment regimen. My role is more focused on providing context and expertise on the claimant's condition, rather than developing a comprehensive treatment plan. I do believe, however, that further evaluation by a multidisciplinary team may be warranted in this case.

ATTY: I understand that as an expert medical witness, your role is to provide context and expertise on the claimant's condition. However, I'd like to clarify something you mentioned earlier regarding the complexity of the claimant's condition and

their need for a multidisciplinary approach. Can you explain why you feel that platelet-rich plasma injections alone may not be sufficient to adequately address the claimant's symptoms, given the fact that they've reported some improvement with this treatment method? Is it possible that we're simply seeing a placebo effect here, rather than any actual therapeutic benefit?

ME: While it's true that platelet-rich plasma injections may have provided some improvement for the claimant, I believe that this treatment alone may not be sufficient to adequately address their symptoms due to the complex nature of their condition. As you mentioned, it's possible that we're seeing a placebo effect, but based on my expertise and review of the medical literature, I'm concerned that platelet-rich plasma injections may only provide temporary relief or masking of symptoms without addressing the underlying pathology. Furthermore, without further evaluation and treatment planning by a multidisciplinary team, I worry that the claimant's condition may continue to deteriorate or worsen over time.

ATTY: Dr. Legros, I'm troubled by your suggestion that platelet-rich plasma injections may only provide temporary relief or masking of symptoms without addressing the underlying pathology. Can you explain why you believe this treatment modality is not effective in addressing the root causes of the claimant's condition, and what specific evidence from the medical literature leads you to this conclusion?

ME: I've reviewed multiple studies indicating that platelet-rich plasma injections often fail to provide sustained relief from neuropathic pain and may not address underlying nerve damage.

ATTY: Dr. Legros, if platelet-rich plasma injections are not addressing the underlying nerve damage and may only provide temporary relief, then how can we explain the claimant's reported improvement with this treatment method?

ME: While I understand that the claimant has reported improvement with platelet-rich plasma injections, I would caution against attributing this solely to the efficacy of the treatment modality itself. There are many potential confounding factors at play here, including placebo effect, changes in medication regimen, or even spontaneous remission, which could all contribute to an apparent improvement in symptoms. Without further investigation and a more comprehensive understanding of the claimant's condition, it's difficult to say for certain whether this reported improvement is indicative of true therapeutic benefit.

ATTY: Dr. Legros, I appreciate your cautionary approach to attributing the claimant's reported improvement solely to the efficacy of platelet-rich plasma injections. However, don't you think it's a bit disingenuous to suggest that we're dealing with a complex interplay of confounding factors and spontaneous remission here? After all, isn't it more likely that this treatment has

genuinely provided some benefit for the claimant, which is simply being masked by these other factors? Can you help me understand why you're so hesitant to give this treatment modality the credit it deserves?

ME: I understand Counselor's point that it's reasonable to consider the possibility of genuine benefit from platelet-rich plasma injections being masked by confounding factors. However, as a medical expert, I must remain cautious and not attribute the claimant's reported improvement solely to this treatment modality without further evidence. While it's possible that this treatment has provided some benefit, my expertise suggests that its efficacy in addressing underlying nerve damage is still uncertain.

ATTY: Dr. Legros, I understand your caution and willingness to remain uncertain about the efficacy of platelet-rich plasma injections. However, don't you think it's your professional duty as an expert medical witness to provide a more definitive assessment of this treatment modality? After all, aren't you being overly cautious in suggesting that its efficacy is still uncertain when we've seen some reported improvement from the claimant? Can you explain why you're not willing to take a firmer stance on this issue?

ME: As an expert medical witness, my duty is to provide objective and evidence-based assessments. While I acknowledge some reported improvement from platelet-rich plasma injections, I must remain cautious due to limitations in the existing literature and

uncertainty regarding its efficacy for severe nerve damage.

ATTY: Dr. Legros, I understand your commitment to providing objective and evidence-based assessments. However, don't you think that you're being overly influenced by the limitations of the existing literature when making your assessment? Doesn't it seem reasonable to consider the possibility that platelet-rich plasma injections may have a therapeutic effect on severe nerve damage, even if the current studies are limited in their scope and design?

ME: Yes, I will consider that possibility.

ATTY: Dr. Legros, I'm glad we're making progress on this issue. But let's get back to the claimant's condition and the role of platelet-rich plasma injections in treating severe nerve damage. You've indicated that you'll consider the possibility that these injections may have a therapeutic effect, but can you clarify what specific studies or data you'd need to see in order to confidently recommend this treatment modality for patients with similar conditions? And I must say, given the severity of the claimant's symptoms and the potential benefits of this treatment, it's imperative that we get to the bottom of this issue quickly.

ME: To confidently recommend platelet-rich plasma injections for patients with severe nerve damage, I would need to see more rigorous and well-designed clinical trials that demonstrate a significant improvement in symptoms and outcomes compared to established treatments. Specifically, I would look for studies that have a large sample size, a control group for

comparison, and objective measures of pain and function as primary outcome metrics. Furthermore, I would want to see data on the injection technique, dosing, and frequency used, as well as any potential adverse effects or complications associated with this treatment modality.

ATTY: I believe that's all the questions I had for you, Dr. Legros. Thank you for your thoughtful and expert testimony.

BY ADMINISTRATIVE LAW JUDGE:

Q Dr. Legros, may I take a look at the medical records for claimant number 2022-00123? Specifically, I'd like to review the notes from their initial consultation with Dr. Smith on January 10, 2022. Can you tell me how the claimant's condition was assessed and treated during that visit?

A Yes, I can provide that information. According to the medical records, during their initial consultation with Dr. Smith on January 10, 2022, the claimant presented with severe nerve damage and pain in their right leg. Dr. Smith conducted a thorough examination, including imaging studies and diagnostic tests, which revealed significant damage to the peripheral nerves. Following this evaluation, Dr. Smith prescribed a course of physical therapy and medication to manage the patient's symptoms, including pain management through a combination of oral medications and topical creams.

Q I'd like to review the platelet-rich plasma injection treatment notes from Dr. Smith's office on February 20, 2022.

Specifically, I'm interested in how this treatment modality was utilized in conjunction with the physical therapy and medication prescribed earlier, as well as any changes or adjustments made to the patient's treatment plan following this injection. Can you walk me through the treatment notes from that visit?

A According to the medical records from Dr. Smith's office on February 20, 2022, during the platelet-rich plasma injection treatment, the claimant received a total of three injections into affected areas around their right leg. The injections were administered in combination with ongoing physical therapy and medication prescribed earlier to manage pain and inflammation. Post-injection, the patient reported some improvement in symptoms, but continued to experience significant pain and discomfort. Following this visit, Dr. Smith adjusted the patient's treatment plan by increasing the dosage of oral medications and adding an additional topical cream to manage pain and inflammation.

Q Can you explain how the platelet-rich plasma injection treatment aligns with the American Society of Interventional Pain Physicians' guidelines for the use of this modality in treating peripheral nerve damage?

A According to the American Society of Interventional Pain Physicians' guidelines, platelet-rich plasma injections are considered a treatment option for peripheral nerve damage when other modalities have failed to provide adequate relief. The guidelines recommend that these injections be used in conjunction

with a comprehensive pain management plan that includes medication, physical therapy, and lifestyle modifications. In this case, Dr. Smith's use of platelet-rich plasma injections aligns with the guidelines by being part of a multimodal treatment approach. However, I would note that further research is needed to fully understand the efficacy of this modality for peripheral nerve damage.

Q I'd like to review a study published in the Journal of Pain Research, which found that platelet-rich plasma injections provided significant pain relief and improved function in patients with peripheral nerve damage. Can you tell me how this study's findings relate to the claimant's case, particularly considering their treatment outcomes after receiving platelet-rich plasma injections?

A While the study published in the Journal of Pain Research found promising results regarding the use of platelet-rich plasma injections for peripheral nerve damage, I must consider the specifics of the claimant's case. The study's findings suggest that platelet-rich plasma injections may be an effective treatment option for patients who have not responded to other therapies. In the claimant's case, they did experience some improvement in symptoms after receiving the injections, but their overall response was not as robust as might be expected based on the study's results. I would note that each patient's response to this treatment modality can vary significantly, and further research is

needed to fully understand its efficacy in treating peripheral nerve damage.

Q I'd like to review a letter from Dr. Lee's office dated March 15, 2022, which states that the claimant had previously undergone a course of platelet-rich plasma injections at their clinic and had experienced significant improvement in symptoms. The letter also notes that the claimant's response to this treatment modality was more pronounced than what they experienced after receiving the injections from Dr. Smith. Can you tell me how this information interacts with our earlier discussion regarding the use of platelet-rich plasma injections for peripheral nerve damage?

A The letter from Dr. Lee's office dated March 15, 2022, presents an interesting development in the claimant's treatment history. It appears that the claimant had previously undergone a course of platelet-rich plasma injections at their clinic and experienced significant improvement in symptoms. Furthermore, it is noted that the claimant's response to this treatment modality was more pronounced than what they experienced after receiving the injections from Dr. Smith. This information adds another layer of complexity to our earlier discussion regarding the use of platelet-rich plasma injections for peripheral nerve damage. While the study published in the Journal of Pain Research suggests promise for this treatment option, it is clear that individual responses can vary significantly, and further research is needed

to fully understand its efficacy.

ATTY: I'd like to reiterate that the claimant's treatment history is quite complex, and it's difficult to pinpoint exactly how platelet-rich plasma injections were utilized in conjunction with other therapies. However, it does seem clear that the claimant experienced some improvement in symptoms after receiving these injections from Dr. Smith, although not as pronounced as they had been previously at Dr. Lee's clinic. I'd like to request further clarification on whether Dr. Smith was aware of the claimant's prior treatment history and how this may have impacted their decision-making regarding the use of platelet-rich plasma injections in this case.

(The vocational expert, BERNITA KUTCH, having been first duly sworn, testified as follows:)

EXAMINATION OF VOCATIONAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q What was the claimant's physical demand level as a bus driver, and what were their typical work hours and shifts?

A Well, as a vocational expert, I've had the opportunity to review various occupations and their corresponding physical demands. Bus driving, specifically, requires individuals to possess a moderate level of physical exertion. The job involves operating a vehicle that can transport multiple passengers, which necessitates standing for extended periods, frequent bending, and occasional lifting of light objects, such as luggage or cargo. It's not typically considered a sedentary position, as the driver

must be able to move about the bus to monitor passengers, navigate through tight spaces, and respond to emergencies. In terms of SVP numbers, I would rate bus driving as an occupation requiring semi-skilled physical abilities, specifically a 6 or 7 on the Department of Labor's SVP scale. The typical work hours for a bus driver can vary depending on the employer and the specific route, but they often involve early morning shifts, working long hours, including evenings, weekends, and holidays. Bus drivers may also be required to work rotating shifts, which can impact their overall physical and mental well-being.

Q Okay, thank you for that information, Ms. Kutch. Let me review some specific work profiles that might be relevant to this case. Profile 1 would be a bus driver with a large city transit system, requiring them to drive a standard-sized bus and handle an average number of passengers per day. The job would involve working variable shifts, including evenings, weekends, and holidays. Profile 2 would be a school bus driver for a suburban district, driving smaller buses and handling fewer passengers per day. This role might have more regular hours and less variability in terms of shifts and workload. Profile 3 would be an administrative position within the same transit agency, such as a dispatcher or scheduler, with limited interaction with the public and a relatively static work environment. Could we consider these profiles in determining what jobs are available to someone with the claimant's physical limitations? Specifically, is Profile 1

consistent with their abilities? Could they realistically perform this job given their medical conditions?

A No, Profile 1 is not consistent with the claimant's physical limitations, given their severe nerve damage and pain in their right leg.

Q Profile 2 involves driving smaller school buses for a suburban district, handling fewer passengers per day, and having more regular hours compared to Profile 1. Would this job be consistent with the claimant's physical limitations?

A [INAUDIBLE]

Q Is the claimant's chronic pain and limited mobility in their right leg causing them to experience difficulty navigating stairs or walking long distances on uneven surfaces, as previously mentioned, and would this impact their ability to safely operate a school bus?

A No.

ALJ: It appears that we have established that Profile 2, driving a smaller school bus for a suburban district, is a job that the claimant could perform with their physical limitations. However, I do want to note that even if they can physically navigate the stairs and uneven surfaces, other factors such as the claimant's chronic pain and limited mobility may still impact their ability to safely operate a school bus in certain situations. Nevertheless, for now, let us consider this job as an option for the claimant. Counsel, do you have any questions about

this?

ATTY: No, I don't have any questions about that, but I would like to clarify one thing - is Profile 3, the administrative position as a dispatcher or scheduler, also consistent with the claimant's physical limitations?

EXAMINATION OF VOCATIONAL EXPERT BY ATTORNEY:

Q How might the claimant's reported improvement in symptoms from Dr. Lee's previous platelet-rich plasma injections affect their employability as a school bus driver?

A Regarding Profile 3, yes, the administrative position as a dispatcher or scheduler would likely be consistent with the claimant's physical limitations, as it involves minimal to no interaction with the public and a relatively static work environment. This job would allow them to avoid any situations that might exacerbate their chronic pain and limited mobility.

Q That makes sense. I'd also like to discuss how the claimant's chronic pain and limited mobility might affect their ability to perform the duties of a dispatcher or scheduler, particularly when it comes to working rotating shifts or irregular schedules. Additionally, would their previous work history as a bus driver have any impact on their employability for this type of job?

A Well, as a vocational expert, I think it's worth noting that working rotating shifts or irregular schedules can indeed be challenging for individuals with chronic pain and limited

mobility. However, many people with these conditions are able to adapt and manage their work schedules accordingly. In the claimant's case, their previous experience as a bus driver could potentially impact their employability as a dispatcher or scheduler, but it also suggests that they have developed certain skills and abilities that might be transferable to this type of job. I suppose what I'm trying to say is that while there may be some limitations, the claimant's previous work history could actually be seen as an asset in terms of their ability to adapt to and manage a dynamic schedule. But, uh, yes, that's about it.

Q I'd like to explore this idea further. How might the claimant's experience working variable shifts as a bus driver impact their ability to work as a dispatcher or scheduler in terms of their potential for overtime and willingness to adapt to changing schedules?

A Based on my analysis, it's likely that the claimant's experience working variable shifts as a bus driver would translate well to the role of a dispatcher or scheduler, where adapting to changing schedules and being available for overtime is crucial. As a bus driver, they were accustomed to handling unexpected situations, such as delays or cancellations, which requires flexibility and problem-solving skills. These traits are also essential for dispatchers and schedulers who need to manage multiple priorities, respond to emergencies, and adjust schedules on short notice. While the claimant's chronic pain and limited

mobility may impact their ability to perform certain tasks, it's unlikely to affect their adaptability or willingness to work overtime in a role like this.

Q I'd like to get back to this point where we discussed the claimant's previous experience working variable shifts as a bus driver and how it might impact their ability to work as a dispatcher or scheduler. I'm trying to understand if there was anything else that wasn't explicitly mentioned earlier about how their chronic pain and limited mobility would affect their job availability for these types of positions, specifically in terms of being able to physically sit at a desk for extended periods of time. For instance, could they possibly be accommodated with some sort of ergonomic workstation or... um, yes.

A Yes, accommodations could potentially be made to help the claimant perform their duties as a dispatcher or scheduler, such as providing an ergonomic workstation with adjustable seating and desk height, or even allowing them to work from home some days to reduce commuting time and alleviate exacerbation of their chronic pain. However, it's worth noting that even with these accommodations in place, the claimant may still face challenges due to their limited mobility and chronic pain.

Q I'd like to inquire further about how the claimant's chronic pain and limited mobility might impact their ability to interact with coworkers and supervisors as a dispatcher or scheduler, given that this role would require regular

communication and collaboration. Specifically, I'm concerned about whether their condition would make it difficult for them to attend meetings, participate in team discussions, or respond to work-related phone calls or emails in a timely manner.

A As I was saying earlier, it's possible that the claimant's chronic pain and limited mobility could impact their ability to interact with coworkers and supervisors as a dispatcher or scheduler. However, this is contingent upon various factors, such as the severity of their condition, the availability of accommodations, and their own personal management strategies. In addition to what I previously mentioned about potential accommodations for an ergonomic workstation, it's also possible that the claimant could be given modified duties or responsibilities to help mitigate any potential challenges they may face in terms of communication and collaboration. For instance, they might be assigned tasks that don't require as much physical presence or interaction with colleagues, such as working on projects independently or coordinating with team members through email rather than attending meetings in person. Nevertheless, it's essential to consider the claimant's individual circumstances and needs when evaluating their potential for success in this role.

ALJ: Thank you, Ms. Kutch, for your thorough analysis and insights into the claimant's employability as a dispatcher or scheduler. I'd like to summarize our discussion by saying that

while the claimant's chronic pain and limited mobility may pose some challenges in this role, their previous experience working variable shifts as a bus driver could actually be an asset in terms of adaptability and problem-solving skills. Additionally, potential accommodations such as ergonomic workstations or modified duties could help mitigate any difficulties they may face. Now, I'd like to give the claimant an opportunity to make any final remarks before we conclude this hearing.

CLMT: Ladies and gentlemen of this esteemed panel, I stand before you today as a testament to the human spirit's unyielding capacity for resilience. Despite being beset on all sides by the merciless onslaught of chronic pain and limited mobility, I have emerged, phoenix-like, from the ashes of adversity. My right leg may be battered and bruised, my nerves frayed like worn-out guitar strings, but my indomitable will shall not be vanquished. For I am a warrior, armed with an unyielding determination to shatter the shackles of disability and forge a new path, one paved with the unbroken spirit of a thousand thousand broken dreams. My experience as a bus driver has taught me that even in the midst of chaos, there lies a hidden beauty, a symmetry waiting to be revealed like the intricate patterns on a butterfly's wings. I have learned to navigate the treacherous waters of variable shifts and unpredictable schedules with an ease born of desperation, my adaptability honed to a razor's edge by the merciless winds of adversity. And so, I stand before you today, not as a supplicant

begging for pity or special treatment, but as a champion, a beacon of hope illuminating the dark recesses of a world often cruelly indifferent to our struggles. For I know that even in the face of overwhelming odds, it is not the strong who shall inherit the earth, but those who dare to defy its limitations, who refuse to be bound by the chains of conventional wisdom. My right leg may tremble with each step, my heart may ache with every passing moment, but my voice shall never falter, for I speak not just for myself, but for all those whose voices are often silenced, whose struggles overlooked and underappreciated. Let this hearing be a testament to our collective strength, to the unbreakable bonds that tie us together in our shared humanity. For we are not merely individuals, fragmented and isolated, but a tapestry woven from the threads of our diverse experiences, a kaleidoscope of stories waiting to be told, a symphony of voices yearning to be heard. And so, I stand before you today, my voice raised like a clarion call, proclaiming to the world that we shall not be silenced, that we shall not be defeated, for in our collective strength lies the power to create a new reality, one where disability is not an obstacle but an opportunity, where adversity becomes a catalyst for growth and transformation. Thank you.

ALJ: Thank you, Claimant, for a passionate and poignant statement. I appreciate your candor and resilience in the face of adversity. To Ms. Kutch and all experts who testified today, thank you for your thorough analysis and expert opinions. This concludes

our hearing.

VE: Thank you, Your Honor.

CLMT: Thank you.

ATTY: No further questions at this time.

(The hearing closed at 07:34 AM, on November 5, 2021.)

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 Olin Waters, held before Administrative Law Judge Evie McCullough.

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