

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

TRANSCRIPT

In the case of:

Olin Waters

Claim for:

Period of Disability

Disability Insurance Benefits

Claimant

208-54-9959

Wage Earner

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

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

INDEX OF TRANSCRIPT

In the case of:

Olin Waters

Account number

208-54-9959

(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, this is Judge Evie McCullough presiding over the matter of claimant Olin Waters' disability benefits appeal, currently scheduled to begin at 8:00 AM, Eastern Standard Time. However, due to some unforeseen delays, we've actually reached that mark already, as it's now 12:00 PM, April 14th, two thousand and twenty-three. Claimant Olin Waters, bearing social security number 208-54-9959, is appearing before me via video conference from his location today, accompanied by his attorney, Garry Moen-Simonis. As per our usual procedures, I want to inform the claimant that he has a right to a hearing in person if he so desires. Before we proceed, I'd like to introduce our panel of experts: medical expert Dr. Dena Legros, who I'm told is an avid fan of historical fiction novels and can often be found reading about 19th-century European monarchies during her spare time; and vocational expert Bernita Kutch, who has extensive experience in evaluating workplace accommodations for individuals with various impairments. Mr. Moen-Simonis, are you prepared to proceed?

ATTY: Yes, your Honor.

ALJ: I must admit I did indeed hear the attorney's affirmative response, Mr. Moen-Simonis, and I want to ensure that it was a clear and unambiguous confirmation, as we're about to dive into the meat of this hearing, so could you perhaps reiterate your readiness to proceed with the current format, or would you like to take just a moment to clarify anything at all, because I'd be remiss in my duties if I didn't ensure that everyone's on the same page before moving forward, so please, do tell me how you see things at this juncture.

CLMT: We're ready to proceed as is.

ALJ: Alright then, Mr. Waters, it appears we're all in agreement that we can proceed with the current setup, so I'll take note of that and confirm our understanding, to ensure we're on the same wavelength moving forward. As such, I'd like to reiterate that we have a clear understanding about the format of today's hearing, which is via video conference, and we've made it through this initial step without any issues. Now, before we get into the substance of the matter at hand, I'd like to take a moment to introduce some important individuals who will be contributing their expertise during our deliberations. We have the resumes for Dr. Dena Legros, one of our medical experts, as well as Bernita Kutch, our vocational expert, both of whom possess extensive knowledge and experience in their respective fields, which they've graciously shared with us prior to today's hearing. Now, Mr. Moen-

Simonis, is there anything else that you'd like to collect or gather before we move forward with the next phase of this hearing, perhaps some additional information or documentation that might be pertinent to your client's case, and if so, would you care to share what those items are, as I believe it's only fair to give you an opportunity to bring any such matters to our attention now rather than later on down the line?

ATTY: Your Honor, I believe we're in a good place with the record being fully developed at this point, and I've had an opportunity to review everything that's been submitted. As such, I don't think there are any outstanding issues or additional documentation that needs to be collected prior to proceeding with today's hearing. Dr. Legros' and Ms. Kutch's resumes have indeed provided valuable context for their areas of expertise, and I'm confident that we can move forward with the substance of Mr. Waters' appeal without any further additions at this time.

ALJ: I concur with Mr. Moen-Simonis' assessment that the record is sufficiently developed at this point and that there are no outstanding issues or additional documentation required prior to proceeding with today's hearing. With that settled, I'd like to note that we have a considerable number of exhibits admitted into evidence as part of this appeal. To confirm, I will admit all exhibits from 1A through 27F, including but not limited to: all medical records, witness statements, vocational reports, and other supporting documentation submitted by both the claimant and the

Commissioner.

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

ALJ: Now, as I was saying, or perhaps not, let me clarify this point further by stating it yet again, we've made significant progress thus far and have reached a juncture where we can proceed with the substance of Mr. Waters' appeal, but, uh, wait a minute, hold on just one moment, I think there may be an inconsistency in the record that requires our attention, yes indeed, an inconsistency, it seems to me at least, that might necessitate some amendment or perhaps clarification, and so I'm wondering if we could take a brief recess to address this matter further before moving forward, or maybe we can just pause for a moment right here and revisit how we've documented this particular aspect of the case, but, uh, I think it's only fair that we address this discrepancy now rather than later, don't you agree?

ATTY: Yes, I agree with your assessment, your Honor, that there is indeed an inconsistency in the record regarding Exhibit 14B. After reviewing the documentation, it appears that there was an error made by our office when submitting the medical records of Dr. Chen, which included duplicate pages and a missing page from the original report. To correct this discrepancy, I would recommend that we strike the duplicate pages and insert the missing page from the original report, ensuring that Exhibit 14B accurately reflects the complete medical record submitted by Mr. Waters.

ALJ: Thank you, Mr. Moen-Simonis, for bringing this to my attention and suggesting a clear path forward to rectify the issue with Exhibit 14B. I understand your recommendation to strike the duplicate pages and insert the missing page from the original report, which aligns with our goal of ensuring an accurate and complete record is presented in this matter. Mr. Waters, are you aware that if we proceed with amending Exhibit 14B as proposed, it may have some bearing on the potential outcomes of your appeal, regardless of whether the decision ultimately favors or rejects your claim?

CLMT: I understand, but I'd like to clarify that striking the duplicate pages and inserting the missing page is acceptable, as it reflects the actual medical record submitted by Dr. Chen.

ALJ: I understand, Mr. Waters, that striking the duplicate pages and inserting the missing page from Exhibit 14B is acceptable to you as it accurately reflects Dr. Chen's medical record submitted in this matter. Similarly, I acknowledge your understanding of this amendment's implications on the potential outcomes of your appeal. Hearing Reporter Reymundo Boyle, please note that we will be amending Exhibit 14B by striking the duplicate pages and inserting the missing page from the original report, as proposed by Mr. Moen-Simonis. Now, let us proceed with the next phase of this hearing, where I will begin questioning you directly, Mr. Waters.

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

EXAMINATION OF CLAIMANT BY ADMINISTRATIVE LAW JUDGE:

Q Now that we've sworn in both of you, let's move on to some basic information, Mr. Waters. Can you please state your full name for the record?

A Olin Addison Waters

Q Your mailing address, Mr. Waters?

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

Q Last date of insured status, Mr. Waters?

A December 31st, 2018

Q Level of education completed, Mr. Waters?

A I've completed a Bachelor of Arts degree from Eastern Illinois University.

Q Prior to becoming disabled, what was your last job?

A Prior to becoming disabled, my last job as a bus driver involved driving a 50-passenger route for the local transportation company, Tri-County Transit, where I operated a bus on a daily basis, transporting students and commuters between schools, town centers, and other designated stops. My work schedule was from 7:00 AM to 3:30 PM, Monday through Friday, with occasional overtime during peak hours or special events.

Q Can you describe a typical day as a bus driver for Tri-County Transit?

A A typical day as a bus driver for Tri-County Transit involved arriving at the depot by 6:00 AM to begin preparing for

my route. I would review the daily schedule, check the bus's maintenance status, and perform a pre-trip inspection of the vehicle to ensure it was in good working condition. After completing these tasks, I would board the bus and start the engine to begin my route. The first stop on my morning run would typically be at the downtown transit center, where I would pick up passengers heading to various destinations throughout the county. Throughout the day, I would make multiple stops at designated transfer points, schools, and town centers, allowing passengers to board or exit the bus as needed. At each stop, I was responsible for opening and closing the doors safely, collecting fares, and providing assistance to passengers with disabilities if necessary. I also had to keep track of time and ensure that I arrived at each scheduled stop within a reasonable timeframe. During peak hours, such as during rush hour or special events like festivals or parades, my route would become busier, requiring me to exercise caution and patience when navigating through congested areas. At the end of my shift, which was typically around 3:30 PM, I would return the bus to the depot, complete any necessary paperwork, and turn in my reports to management.

Q Were you ever employed by or had any involvement with the Social Security Administration, Mr. Waters?

A No, I was never employed by or had any involvement with the Social Security Administration, Mr. Waters.

Q I acknowledge and affirm that you, Mr. Waters, were never

employed by or had any involvement with the Social Security Administration. You are free to proceed, Mr. Moen-Simonis, as we've clarified this matter. Now, let's move on to your reason for disability claim, Mr. Waters: can you please tell me why you believe you are disabled and unable to continue working in any capacity?

A Well, I'm not sure where to start, but I guess what I mean is that due to my diabetes and complications, I've been experiencing these symptoms for quite some time now. You see, high blood sugar levels have become a regular issue for me, which makes it difficult to manage my daily activities, let alone focus on work-related tasks. My neuropathy has gotten to the point where I'm losing sensation in my hands and feet, making it hard for me to even perform simple tasks, like tying my shoes or cooking meals. And with my retinopathy, I've had to deal with vision problems, which have affected my ability to drive a bus safely, and that's when I was still working. And then there's the kidney disease, which has required me to undergo regular dialysis treatments, taking up a significant amount of my time. So, all these issues combined, I believe, make it impossible for me to continue doing any kind of work.

Q I acknowledge and affirm that you, Mr. Waters, are experiencing a multitude of health issues related to your diabetes, including neuropathy, retinopathy, and kidney disease, which have significantly impacted your daily life and ability to

perform even the simplest tasks, let alone continue working as a bus driver or in any other capacity. You've described these symptoms as being persistent and debilitating, making it extremely challenging for you to manage your daily activities, much less focus on work-related tasks. I understand that you're attributing all of these issues combined as the reason why you believe you are disabled and unable to continue working in any way. Can you, however, elaborate on what you mean by 'regular issue with high blood sugar levels becoming a regular problem for me'? How often do you experience high blood sugar levels, and how does this impact your daily life?

A Well, like I said before, I've got this diabetes and complications, and with high blood sugar levels, it's just become a part of my daily life, you know? It's not that it happens every single day or anything, but... um... let me see if I can explain it better. Sometimes, when I wake up in the morning, my blood sugar is all out of whack, and I've got to take some insulin to get it back under control. Other times, I might be eating a meal, and then later that day, I'll check my levels, and they're just way too high. It's like my body is having trouble regulating everything, you know? And it's not just about the numbers on the meter, either - when my blood sugar is off, I can feel it in my hands and feet, because of this neuropathy. My fingers tingle, or sometimes they hurt so bad, I just want to shake 'em loose. And with the retinopathy, like I mentioned before, I'm worried about

losing my sight completely. It's scary stuff, let me tell you. And don't even get me started on the kidney disease - it's just one more thing that makes it hard for me to do anything at all.

ALJ: I acknowledge and affirm that you're experiencing daily struggles with managing your diabetes-related complications, including high blood sugar levels, neuropathy, retinopathy, and kidney disease. You've described these issues as being persistent and debilitating, making it extremely challenging for you to manage your daily activities, much less focus on work-related tasks. I understand that you believe these conditions combined are the reason why you're disabled and unable to continue working in any way. To confirm my understanding, diabetes-related complications can cause a range of symptoms, including numbness, tingling, pain, and vision problems. These symptoms can make it difficult for individuals with diabetes to perform even simple tasks, let alone more complex work-related activities. I also want to note that you mentioned the kidney disease requiring regular dialysis treatments, which takes up a significant amount of your time. To further assess this claim, I need some medical documentation from you or your treating physician regarding your ongoing treatment plan for diabetes and its related complications. Specifically, I require records detailing your current medications, dosage, and any changes made to your treatment regimen within the past six months. Can your attorney provide me with these medical records by the end of the day?

ATTY: Your Honor, I'd like to confirm that my client, Mr. Waters, is experiencing significant difficulties with managing his diabetes-related complications, including high blood sugar levels, neuropathy, retinopathy, and kidney disease. These symptoms are causing him persistent pain, numbness, tingling, and vision problems, making it extremely challenging for him to perform even simple tasks, let alone work-related activities. I understand the request for medical documentation from my client or his treating physician regarding his ongoing treatment plan for diabetes and its related complications, specifically records detailing current medications, dosage, and any changes made within the past six months. I'll ensure that these documents are provided by the end of the day.

ALJ: I acknowledge and affirm that Mr. Waters' attorney has confirmed his client's experiences with diabetes-related complications, including high blood sugar levels, neuropathy, retinopathy, and kidney disease. I also acknowledge receipt of the agreement to provide medical documentation by the end of the day. Now, Mr. Waters, can you elaborate on what it feels like when your fingers 'tingle' due to the neuropathy? Is this a sensation that comes and goes, or is it persistent throughout the day?

BY ADMINISTRATIVE LAW JUDGE:

A It's like pins and needles, but worse. It doesn't go away. Sometimes it's just a numbness, other times it's sharp pains or burning sensations.

Q I've taken note of your description of the tingling sensation in your fingers due to neuropathy. It sounds like a persistent and distressing condition. Mr. Waters, have you ever sought medical attention specifically for this issue, or is it something that's been brought up during routine check-ups with your primary care physician?

A I've seen a neurologist who specializes in peripheral neuropathy, and I'm currently undergoing treatment for it.

Q I've taken note that you're currently undergoing treatment for peripheral neuropathy with a specialist, which is commendable. Can you tell me how frequently this tingling sensation occurs, and do you experience it during specific activities or at any particular time of day?

A The tingling sensation occurs several times a day, usually when I'm performing everyday activities like cooking or using my hands for work. It's most prominent in my fingers and toes, and it can last anywhere from a few minutes to an hour or more.

Q I acknowledge that the tingling sensation due to peripheral neuropathy occurs several times a day, primarily when performing everyday activities, lasting from a few minutes to an hour or more.

A To be honest, it's gotten to the point where I'm unable to use my hands for extended periods of time without feeling this intense tingling sensation. It's like a constant buzzing in the

background, making it hard to focus on anything else. Sometimes, it gets so bad that I have to stop what I'm doing and just sit there until it subsides.

Q You're indicating that the tingling sensation due to peripheral neuropathy has become severe enough to impair your ability to perform daily activities for extended periods.

A Yes, that's right. It's gotten to the point where I'm having trouble even holding onto objects or typing on my computer because of the pain and numbness in my hands. There have been times when I've dropped things multiple times because I couldn't feel what I was doing with my fingers. And it's not just my hands, either - my feet are also affected, so walking or standing for any length of time becomes incredibly uncomfortable and exhausting.

Q I've taken note that your hands and feet are severely affected by peripheral neuropathy, causing pain, numbness, and difficulty with daily activities. I'll consider this when assessing your claim.

A I'm still getting used to the fact that I can no longer cook a simple meal on my own. The pain and numbness in my hands make it impossible for me to hold onto pots and pans, or even turn knobs and handles. It's something that most people take for granted, but for me now, it's just not possible.

Q I've taken note that even simple tasks like cooking are now beyond your capabilities due to hand pain and numbness.

A I also used to love playing guitar and singing with my

family, but now even holding a guitar pick or pressing the strings against the fretboard is just too much pain for me.

Q Is this inability to play guitar related to the April 10th visit with Dr. Patel, where it's noted that you were experiencing worsening neuropathic symptoms?

A Yes, that visit was around the time when I first started having real trouble with guitar playing.

Q On what medication were you taking at the time of that April 10th visit with Dr. Patel, specifically regarding your diabetes management and neuropathic symptoms?

A At the time of my April 10th visit with Dr. Patel, I was taking Metformin and Glipizide for diabetes management, as well as Gabapentin for neuropathic pain.

Q Were you taking Lyrica for neuropathic pain at any point between April 10th and the current date?

A Yes, I started taking Lyrica on May 20th of last year, as an additional treatment for my neuropathic pain, and it's been part of my medication regimen ever since.

Q I've taken note that you started taking Lyrica on May 20th of last year as an additional treatment for neuropathic pain, which seems to be a departure from your earlier statement regarding Gabapentin. Can you clarify why you initially mentioned Gabapentin in place of Lyrica during our discussion?

A I was trying to remember specifics about my medication regimen and made an error.

ATTY: Your Honor, I'd like to clarify that my client did indeed start taking Lyrica on May 20th of last year as an additional treatment for neuropathic pain, which is a departure from his earlier statement regarding Gabapentin. I believe he was trying to recall specifics about his medication regimen and made an error in his previous response. To correct this, I'd like to note that my client has been taking Lyrica since May 20th of last year as part of his ongoing treatment plan for neuropathic pain, in addition to the Metformin and Glipizide for diabetes management.

ALJ: I acknowledge and affirm that Mr. Waters made an error in his previous statement regarding his medication regimen for neuropathic pain, which was corrected by his attorney to note that he started taking Lyrica on May 20th of last year as part of his ongoing treatment plan.

BY ADMINISTRATIVE LAW JUDGE:

A Yes, I've been taking Lyrica since May 20th of last year for my neuropathic pain.

Q I've taken note that Mr. Waters has consistently stated that he is unable to perform daily activities due to his diabetes-related complications and neuropathic pain. However, I'd like to clarify a discrepancy regarding your claim form, which lists 'light-duty' work as an option for potential employment. Can you explain why you indicated this as a viable option when speaking with me today?

A I was trying to hold onto hope that something might still work out at my previous job, but it's just not possible for me.

Q I've taken note of your explanation regarding your claim form and previous job. However, I'd like to bring up another matter that was noted by Dr. Patel during the April 10th visit - you mentioned experiencing urinary incontinence and urgency, which hasn't been discussed previously. Can you explain the nature and severity of these symptoms?

CLMT: It's like my bladder can't hold anything, and I get a constant feeling of needing to urinate. Sometimes I leak a little or have accidents.

BY ADMINISTRATIVE LAW JUDGE:

A I've taken note of your description of urinary incontinence and urgency due to diabetes-related complications. Mr. Waters, were these symptoms ever treated by Dr. Patel or any other healthcare provider?

Q Dr. Patel prescribed some medication for it, but I haven't seen much improvement.

A Medication prescribed by Dr. Patel for urinary incontinence has not provided adequate relief.

Q It's not affecting my daily activities as much as the neuropathy and pain.

A You previously mentioned that your neuropathic pain had reached the point where even holding onto objects or typing on your computer became difficult due to the pain and numbness in

your hands. Does this current situation with urinary incontinence affect your ability to continue working or performing daily tasks differently than the neuropathy?

Q Yes, the urinary incontinence has made it even harder for me to do simple tasks like going out in public or being around people because I'm always worried about accidents and leaks. It's not just physical pain anymore, but also embarrassment and anxiety.

A I acknowledge that urinary incontinence has added emotional distress and increased anxiety about performing daily tasks.

Q It's hard to leave the house, always worried about leaks and accidents. Can't do things I used to enjoy.

A I acknowledge that urinary incontinence has significantly impacted your quality of life, limiting your ability to engage in activities outside the home.

Q Will I need ongoing medical care for my condition?

A It's likely that ongoing medical care will be necessary to manage and treat your diabetes-related complications.

Q That's just what I'm used to at this point.

A That's an adjustment many people with diabetes must make.

Q Yes.

A Ongoing medical management will be required.

Q I understand that ongoing medical management will be required.

ALJ: The record is closed.

ATTY: Garry Moen-Simonis, acknowledging the clarification on Mr. Waters' medication regimen and noting his current situation with urinary incontinence impacting daily activities and quality of life.

ALJ: Acknowledged.

EXAMINATION OF MEDICAL EXPERT BY ATTORNEY:

Q What specific date was noted by Dr. Patel as the first instance of Mr. Waters' neuropathic pain?

A August 2021

Q What specific medication prescribed by Dr. Patel for urinary incontinence has Mr. Waters been consistently non-responsive to?

A [INAUDIBLE]

Q It appears that Mr. Waters has been taking Flomax for urinary incontinence since Dr. Patel prescribed it, yet he continues to experience significant symptoms. Is there any further medical evaluation or testing recommended by Dr. Patel to determine if another course of treatment is warranted?

A Well, as I recall from our previous conversations with Dr. Patel, there wasn't really any further medical evaluation or testing recommended for Mr. Waters' urinary incontinence symptoms, per se, but I think it's worth noting that he did mention possibly exploring other options, like... uh, yeah, and maybe getting some more tests done to see if there's anything else going on.

Q Dr. Patel mentioned possibly exploring other options for Mr. Waters' urinary incontinence symptoms, specifically mentioning an urodynamic study to rule out bladder dysfunction.

A Yes, an urodynamic study was discussed with Dr. Patel.

Q It appears that Mr. Waters' urinary incontinence symptoms are significant enough to warrant further medical evaluation, specifically an urodynamic study to rule out bladder dysfunction, which was discussed with Dr. Patel. However, I would like to clarify whether this study has been scheduled or rescheduled due to the ongoing COVID-19 pandemic and any resulting delays in non-emergency procedures.

A To my knowledge, the urodynamic study was scheduled to take place several months ago, but due to COVID-19 and related office closures, it has been delayed multiple times and I'm not sure if a new date has been set.

Q Is it fair to say that Mr. Waters' urinary incontinence symptoms have significantly worsened since the COVID-19 pandemic-related delays in his scheduled urodynamic study?

A Yes.

Q Is it not true that Mr. Waters' urinary incontinence symptoms are severe enough to require emergency medical attention if he leaves the house?

A Yes, it's true that my urinary incontinence symptoms are severe enough to require emergency medical attention if I leave the house unattended.

Q Was Mr. Waters' decision to leave for jury duty without an escort based on his severe urinary incontinence symptoms?

A [INAUDIBLE]

ATTY: I'm done with my line of questioning.

ALJ: Can you clarify what you mean by 'unattended' when referring to Mr. Waters leaving the house?

ATTY: I meant that he requires constant supervision due to his severe urinary incontinence symptoms and would need to be accompanied by someone who can assist him if needed.

ALJ: So Mr. Waters requires constant supervision due to his urinary incontinence symptoms?

ATTY: Yes

ALJ: Does this constant supervision affect his ability to perform daily activities independently?

ATTY: Yes, Mr. Waters' constant supervision requirement significantly impairs his ability to perform daily activities independently due to his urinary incontinence symptoms.

ALJ: You stated Mr. Waters requires constant supervision due to urinary incontinence symptoms. Does this mean he's not capable of using a restroom independently?

ATTY: Yes, Mr. Waters is currently unable to use a restroom independently due to his urinary incontinence symptoms.

BY ADMINISTRATIVE LAW JUDGE:

Q Thank you, Counselor. Based on our discussion today, it appears that Mr. Waters' urinary incontinence symptoms

significantly impact his daily activities and independence. I'd like to explore this further with Mr. Waters. Mr. Waters, can you tell me more about how your urinary incontinence symptoms affect your daily routine and sleep patterns?

A It affects everything, I'm constantly worried about accidents and leaks, can't sleep through night.

Q Sleep deprivation is impacting his daily functioning.

A [INAUDIBLE]

Q Does this impact his ability to work?

A Yes

Q Can he continue working?

A No

Q The claimant cannot continue working.

A Due to severe urinary incontinence symptoms, neuropathy, and sleep deprivation, I am unable to continue working.

Q Acknowledged. Is vocational rehabilitation a viable option for Mr. Waters?

A No

Q Vocational rehabilitation not an option.

A No vocational training available for someone with significant cognitive impairments.

Q Acknowledged. Will Mr. Waters require ongoing care for his urinary incontinence symptoms?

A Yes

Q Ongoing medical care required.

A Yes

Q Will Mr. Waters' condition improve with current treatment?

A No

Q Condition is not expected to improve with current treatment.

A Unlikely.

ALJ: I appreciate the Claimant's testimony, thank you for sharing your experiences with us today.

ATTY: Garry is unable to return to work due to severe urinary incontinence symptoms and neuropathy.

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

EXAMINATION OF MEDICAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q Dr. Legros, is that consistent with your testimony?

A [phonetic]

Q Dr. Legros, can you please state your credentials and medical specialties?

A I'm Dr. Dena Legros, a board-certified medical expert with over 20 years of experience in internal medicine and urology. I've completed my residency at Johns Hopkins University School of Medicine and have been in private practice for the past 15 years. My specialties include, but are not limited to, treating urinary tract infections, kidney stones, and other urological conditions. I'm also an expert in managing patients with chronic diseases such

as diabetes and hypertension, which often co-exist with urinary incontinence. In my previous testimony, I mentioned that Mr. Waters' condition is consistent with severe urinary incontinence symptoms, which would indeed prevent him from working independently. I'd like to reiterate that his constant supervision requirement significantly impairs his ability to perform daily activities independently due to his urinary incontinence symptoms.

Q Dr. Legros, are you an expert on Mr. Waters' specific conditions?

A Yes

Q Had you a chance to review Mr. Waters' file?

A Yes.

Q Anything that might contradict Mr. [phonetic] disability status?

A Well, upon reviewing Mr. Waters' file, I did notice that there's a notation from Dr. Patel indicating that Mr. Waters had some improvement with his urinary incontinence symptoms after trying a different medication, but I'm not sure if this is relevant to the current situation, and also, I want to emphasize again that his constant supervision requirement significantly impairs his ability to perform daily activities independently due to his urinary incontinence symptoms, which I think is quite clear from my previous testimony... and, uh, I suppose it's worth noting that Mr. Waters did mention in his medical history that he had some occasional periods of improvement with pelvic floor

exercises, but this doesn't necessarily mean that he can work independently, and I'm still convinced that his condition is quite severe.

Q Noted, but what about the medication change?

A Ah, yes, well, the medication change... I suppose it's worth mentioning that Dr. Patel did note some improvement with Mr. Waters' urinary incontinence symptoms after switching to a different medication, but, of course, this is not necessarily indicative of anything conclusive about his current condition or ability to work independently. I mean, we have to consider the entire picture here, and while it's true that he did experience some periods of improvement with pelvic floor exercises, as well as the occasional benefit from certain medications, we must also acknowledge that these are just a few isolated instances amidst a much broader pattern of chronic urinary incontinence symptoms. And, if I might add, one thing that could have potentially helped Mr. Waters get into a healthier condition is regular physical therapy to strengthen his pelvic floor muscles... but, uh, that's not really relevant to the current discussion, I suppose.

Q The medication change has no bearing on his current condition.

ATTY: Dr. Legros' testimony supports the conclusion that Mr. Waters is unable to work independently due to his severe urinary incontinence symptoms and constant supervision requirement.

ALJ: [INAUDIBLE]

ATTY: Garry Moen-Simonis, representing Claimant.

ME: Agreed.

ATTY: I'd like to clarify that Dr. Legros' previous testimony stated that Mr. Waters' urinary incontinence symptoms are severe enough to prevent him from working independently, and constant supervision is required due to the severity of his condition... which, if I may ask, would you say is more accurate: 'severe', or perhaps even 'extremely severe'? And, might I add, does this not imply that Mr. Waters' condition is, in fact, so debilitating as to render him unable to perform even the most basic tasks without assistance? And, I'd like to press a bit further, wouldn't it be fair to say that, given Dr. Legros' own words, Mr. Waters' urinary incontinence symptoms are nothing short of 'chronic and intractable', and thus, completely beyond his control?

ME: Yes, I would say that Mr. Waters' urinary incontinence symptoms are extremely severe, given his constant supervision requirement and the significant impairment it causes to his daily activities. And, yes, I believe that accurately describes his condition as chronic and intractable, indicating a complete lack of control over his symptoms.

ATTY: Thank you, Dr. Legros. Given that Mr. Waters' urinary incontinence symptoms are 'extremely severe', 'chronic', and 'intractable', wouldn't it be reasonable to infer that his

condition is, in fact, a permanent disability? And don't you think that such a debilitating condition would preclude him from even the most rudimentary forms of employment?

ME: Yes, I believe it's reasonable to infer that Mr. Waters' condition is a permanent disability, given its extremely severe and chronic nature, as well as his complete lack of control over his symptoms. Furthermore, considering the significant impairment this condition causes to his daily activities and the constant supervision requirement, it's clear that even the most rudimentary forms of employment would be precluded by his condition.

ATTY: Does this mean Mr. Waters will require full-time assistance for the remainder of his life?

ME: Based on Mr. Waters' medical history and my expert opinion, it is likely that he will require full-time assistance for the remainder of his life to manage his urinary incontinence symptoms and daily activities.

ATTY: Dr. Legros, I'd like to press the issue further and ask if it's not true that Mr. Waters' urinary incontinence symptoms are so debilitating as to render him unable to even care for himself, much less perform any meaningful work or contribute to society in a significant way? And wouldn't you agree that this is essentially a life-long sentence of dependence on others for even the most basic needs, a fate that's surely more than a mere inconvenience, but rather a crushing burden on both Mr. Waters and

those who would be forced to care for him?

ME: Yes, unfortunately, it appears that Mr. Waters' urinary incontinence symptoms have reached a level of severity where he will indeed require significant assistance for even the most basic needs, effectively rendering him unable to care for himself and limiting his ability to contribute to society in any meaningful way. I must emphasize that this outcome is not only unfortunate but also places a considerable burden on those who would be responsible for his care.

ATTY: Dr. Legros, can you clarify whether Mr. Waters' condition would indeed render him a permanent and total burden on society, a drain on resources without any hope of recovery or respite?

ME: Yes.

ATTY: Given his permanent and total reliance on others for all basic needs, is it safe to say Mr. Waters' condition has reached a level where he poses a significant risk to himself and those around him?

ME: Yes, based on Mr. Waters' condition, it is reasonable to conclude that he poses a significant risk to himself and those around him due to his permanent and total reliance on others for all basic needs.

ATTY: Dr. Legros, given this extraordinary level of dependency and risk, is it not also true that Mr. Waters' condition would be considered a catastrophic failure of the human

body's ability to function even at its most basic level?

ME: Yes, it can be considered a catastrophic failure of the human body's ability to function even at its most basic level.

ATTY: Dr. Legros, considering the severity and permanence of Mr. Waters' condition, do you not believe that he has crossed a threshold into a realm where even basic human dignity is no longer possible?

ME: Yes

ATTY: Dr. Legros, I'd like to ask you this: Given Mr. Waters' complete loss of autonomy and dignity due to his urinary incontinence symptoms, do you think it's fair to say that he's been reduced to a mere shell of his former self, stripped of all hope for a meaningful existence?

ME: Yes.

ATTY: Dr. Legros, I'd like to ask you this: If Mr. Waters' condition is indeed a catastrophic failure of the human body's ability to function even at its most basic level, doesn't that imply that he's been ravaged by some unseen force, leaving him a mere specter of his former self, barely clinging to existence?

ME: Yes, it does imply that Mr. Waters has been ravaged by his condition, leaving him a mere specter of his former self.

ATTY: Dr. Legros, I believe we've thoroughly examined Mr. Waters' condition. I thank you for your expert opinion.

BY ADMINISTRATIVE LAW JUDGE:

Q Let's review Dr. Legros' medical evaluation from page 234

of Mr. Waters' file.

A Upon reviewing Dr. Legros' medical evaluation from page 234 of Mr. Waters' file, I confirm that it accurately reflects my previous testimony regarding his urinary incontinence symptoms, which are extremely severe and chronic, rendering him permanently and totally disabled with significant impairment to his daily activities and inability to work independently or care for himself without constant supervision.

Q Dr. Legros, I'd like to bring up exhibit C-12 from Mr. Waters' medical file, which is a graph showing his urinary incontinence episodes per week over the past year. Can you explain how this data relates to your previous testimony regarding his condition?

A Upon reviewing exhibit C-12 from Mr. Waters' medical file, I can confirm that it shows a consistent and significant increase in urinary incontinence episodes per week over the past year, which aligns with my previous testimony regarding his extremely severe and chronic condition. This data supports my assertion that he is experiencing permanent and total disability due to his inability to control bladder function, resulting in frequent and debilitating episodes that significantly impair his daily activities and quality of life.

Q Exhibit B-9 shows a medication regimen for Mr. Waters' urinary incontinence. How does this relate to his current condition?

A Exhibit B-9 shows a medication regimen that was attempted to manage Mr. Waters' urinary incontinence symptoms. However, as I previously testified, this condition is extremely severe and chronic, and despite the medication, he continues to experience debilitating episodes of urinary incontinence. The medication has not alleviated his symptoms, and he remains permanently and totally disabled due to his inability to control bladder function.

Q Exhibit A-17 is a letter from Mr. Waters' primary care physician stating that he has reached maximum medical improvement and will require long-term assistance for daily living activities due to his urinary incontinence symptoms. How does this relate to your previous testimony regarding his condition?

A Exhibit A-17 from Mr. Waters' primary care physician confirms that he has reached maximum medical improvement and will require long-term assistance for daily living activities due to his urinary incontinence symptoms. This aligns with my previous testimony regarding his permanent and total disability, as even aggressive treatment and management have not alleviated his debilitating episodes of urinary incontinence.

Q Let's review exhibit B-5, a detailed list of Mr. Waters' medical appointments and treatments over the past three years. Dr. Legros, can you explain how this relates to your previous testimony regarding his condition? And can you specifically address how his urinary incontinence symptoms have progressed over time, despite aggressive treatment and management?

A Upon reviewing exhibit B-5, I can confirm that Mr. Waters' medical history over the past three years shows a consistent pattern of severe and chronic urinary incontinence symptoms, with frequent episodes and significant impairment to his daily activities despite aggressive treatment and management. His primary care physician has documented progressive worsening of his condition, with no notable improvements or stabilization of symptoms in response to various interventions. Specifically, I note that he has required ongoing prescription medications, catheterization, and other supportive measures to manage his urinary incontinence, yet these interventions have not alleviated the frequency, severity, or impact of his episodes on his daily functioning.

ATTY: I'd like to thank Dr. Legros for their comprehensive review of Mr. Waters' medical file and testimony. Given the overwhelming evidence presented, I firmly believe that we have established a clear case for permanent and total disability due to his urinary incontinence symptoms.

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

EXAMINATION OF VOCATIONAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q VE Kutch, what effect would Mr. Waters' permanent and total disability due to urinary incontinence have on his previous job as a Bus Driver?

A Well, as a Vocational Expert, I must take into

consideration the physical and mental demands of Mr. Waters' previous job as a Bus Driver, which is a medium- to- heavy duty occupation with an SVP rating of around 6-7, as it requires a significant amount of walking, standing, and lifting, especially when handling passengers or heavy equipment, such as luggage racks and wheelchair lifts, which would be extremely difficult for someone with Mr. Waters' condition, I mean, urinary incontinence is just not something that you can really overcome with, uh, accommodations, no matter how you slice it, and, I think, Bus Driving requires a lot of focus and attention to detail, which could also be compromised by, ah, the need to constantly be thinking about, you know, bladder control, and, um, yeah, so, in my expert opinion, Mr. Waters would not be able to perform the essential functions of this job, no way, not with his current condition.

Q VE Kutch, let's consider some alternative occupations that might be a good fit for Mr. Waters' skills and abilities. We'll call them Profile 1, Profile 2, and Profile 3. Profile 1 is a Light Stock Clerk, which requires sitting for long periods of time, lifting up to 10 pounds occasionally, and no heavy equipment operation. Could Mr. Waters perform the essential functions of this job with accommodations? I mean, could he, you know, deal with the urinary incontinence while scanning groceries or stockroom inventory all day? Profile 2 is a Customer Service Representative, which requires sitting for long periods of time,

answering phones, and talking to customers, but it's a pretty sedentary job overall. Could Mr. Waters handle this kind of work with some, uh, bathroom breaks as needed? And then there's Profile 3, which is a Data Entry Clerk, a very simple job that requires just sitting at a computer all day and typing away. I mean, could Mr. Waters do that kind of thing without, you know, worrying about his bladder all the time? So, VE Kutch, what do you think? Could Mr. Waters perform the essential functions of these jobs with accommodations?

A No, no, and no.

Q VE Kutch, as I mentioned earlier, Profile 2 is a Customer Service Representative job that requires sitting for long periods of time, answering phones, and talking to customers, but it's a pretty sedentary job overall. Could Mr. Waters handle this kind of work with some bathroom breaks as needed?

A Yes.

Q VE Kutch, I'd like to clarify a question from earlier regarding urinary incontinence episodes that are debilitating and significantly impair Mr. Waters' daily functioning. In your previous testimony, you stated that these symptoms would make it difficult for him to perform the essential functions of various jobs. Considering Profile 2 as a Customer Service Representative, with some bathroom breaks as needed, is this still applicable? Would Mr. Waters' urinary incontinence episodes pose a problem for his ability to work in this job?

A Yes

ALJ: VE Kutch, it appears that despite some accommodations for bathroom breaks as needed, Mr. Waters' urinary incontinence episodes would still pose a significant problem for his ability to work in Profile 2, a Customer Service Representative job. I'd like to note this conflicting opinion from our previous conversation regarding the same occupation. Considering VE Kutch's testimony on both occasions, I find it reasonable to conclude that Mr. Waters' urinary incontinence symptoms would indeed significantly impair his ability to perform even modified or sedentary tasks. Counsel, do you have any questions for VE Kutch or myself before we proceed?

ATTY: VE Kutch's testimony has raised concerns about Mr. Waters' ability to perform even modified or sedentary tasks due to his urinary incontinence symptoms. I'd like to request that we reconsider the availability of jobs within the national economy that a person with these limitations could reasonably be expected to find and perform, given their transferable skills and abilities.

EXAMINATION OF VOCATIONAL EXPERT BY ATTORNEY:

Q Would Mr. Waters' frequent need for catheterization impact his ability to find and perform a job that requires long periods of standing or walking?

A Well, yes, I would say that Mr. Waters' frequent need for catheterization could indeed make it difficult for him to find and

perform a job that requires long periods of standing or walking, especially if he's got a portable catheter bag, which could be a bit of a... um, challenge, I suppose, when it comes to, you know, getting around the workplace or, uh, interacting with customers, yeah, it would definitely be a concern, and, ah, yes, that would likely impact his ability to find and perform such a job.

Q VE Kutch, I'd like to follow up on the impact of Mr. Waters' urinary incontinence symptoms on his employability. In addition to the frequent need for catheterization, would the constant need for bathroom breaks also limit his ability to find and perform a job?

A Yes, yes, absolutely, without a doubt, I mean, it's not just about the catheterization, it's also about, you know, having to get up and go to the bathroom all the time, which could be really inconvenient, especially if you're in the middle of something important or if your job requires, you know, being at a desk for long periods of time, I mean, imagine being a customer service representative and you have to constantly get up and leave your desk to use the restroom, it would be really difficult, yeah, that's definitely a concern, and, ah, yes, it could limit his ability to find and perform a job, especially if it's a job that requires, you know, being in one place for long periods of time, like a data entry clerk or something like that, yeah, it would be really tough.

Q VE Kutch, considering Mr. Waters' frequent need for

catheterization and constant bathroom breaks, I'd like to know how his urinary incontinence episodes would affect his ability to find and perform a job that requires interacting with the public, such as a retail sales associate or a bank teller.

A Mr. Waters' urinary incontinence episodes would significantly affect his ability to find and perform a job that requires interacting with the public, such as a retail sales associate or a bank teller. His frequent need for catheterization and constant bathroom breaks would likely cause him to be absent from work frequently, which could impact his job performance and relationships with customers. Additionally, the urgency of his bathroom needs might require him to leave his workstation quickly, potentially disrupting business operations or causing inconvenience to customers. Overall, I believe that Mr. Waters' urinary incontinence episodes would pose significant challenges for him to perform jobs requiring public interaction.

Q VE Kutch, I'd like to revisit the issue of Mr. Waters' urinary incontinence episodes and how they would affect his ability to find and perform a job that requires interacting with the public, such as a retail sales associate or a bank teller. You mentioned earlier that his frequent need for catheterization and constant bathroom breaks could cause him to be absent from work frequently, which could impact his job performance and relationships with customers. I'd like to know if you think this would also affect his ability to form close working relationships

with coworkers, such as building trust or receiving feedback, because of the potential disruptions caused by his bathroom needs. Additionally, I'd like to clarify whether you believe that Mr. Waters' urinary incontinence episodes would make it more difficult for him to advance in his career or take on leadership roles, due to the potential stigma associated with his condition and the accommodations he may need. And, just one more thing, do you think that his frequent use of a catheter would affect his ability to participate in team-building activities or company-sponsored events, such as going out for lunch or attending holiday parties?

A Yes, I believe Mr. Waters' urinary incontinence episodes would affect his ability to form close working relationships with coworkers due to the potential disruptions caused by his bathroom needs. The frequency of his catheterization and need for bathroom breaks could lead to feelings of frustration or anxiety among coworkers, potentially straining relationships. Additionally, the stigma associated with his condition may deter others from forming close relationships with him or providing feedback, which is essential for career advancement. As for career advancement, I do think that Mr. Waters' urinary incontinence episodes would make it more difficult for him to take on leadership roles, due to the accommodations he may need and potential stigma associated with his condition. Finally, yes, I believe that his frequent use of a catheter would affect his ability to participate in team-building activities or company-sponsored events, such as going out for

lunch or attending holiday parties, which are often social occasions that require being able to move freely and engage with others.

Q VE Kutch, I'd like to follow up on our previous discussion regarding Mr. Waters' ability to participate in team-building activities or company-sponsored events, such as going out for lunch or attending holiday parties. You mentioned that his frequent use of a catheter would affect his ability to engage with others freely and move around without needing to leave quickly for the bathroom. I'd like to know if you think this would also impact his ability to participate in regular office meetings or training sessions, where it's often difficult to leave quietly or excuse himself frequently.

A Yes, absolutely, I mean, it would definitely impact his ability to participate in regular office meetings or training sessions, because, you know, those are situations where you're supposed to pay attention and take notes and stuff, but if he's gotta get up and go to the bathroom every five minutes, that's just gonna be really distracting for everyone else, I mean, can you imagine trying to have a meeting and Mr. Waters is constantly getting up and leaving because he needs to use the restroom? It would be really hard to focus on what's being discussed, yeah, it would definitely make it difficult for him to participate in regular office meetings or training sessions, and not just that, but also, uh, it could potentially lead to some awkward

situations, like if he needs to excuse himself suddenly in the middle of a meeting, people might start to get uncomfortable or even laugh, which wouldn't be good, I mean, who wants to be known as the guy who can't control his bladder in meetings? Not Mr. Waters, that's for sure.

ALJ: Thank you, VE Kutch, for your thorough and thoughtful testimony on Mr. Waters' ability to perform various jobs despite his urinary incontinence episodes. It's clear that his condition would pose significant challenges to his job performance, relationships with coworkers, and career advancement. I'd like to summarize some key points from our discussion: Mr. Waters' frequent use of a catheter and need for bathroom breaks would likely cause him to be absent from work frequently, impacting his job performance and relationships with customers. His condition would also make it difficult for him to form close working relationships with coworkers, advance in his career, or take on leadership roles due to the stigma associated with his condition. Additionally, his frequent use of a catheter would affect his ability to participate in team-building activities, company-sponsored events, regular office meetings, and training sessions. VE Kutch, thank you again for your insights. Mr. Waters, do you have any final remarks or questions before we conclude this hearing?

CLMT: I'd like to take a moment to reflect on everything that's been discussed today. I want to thank VE Kutch for their

thorough and thoughtful testimony, it really highlighted just how much my urinary incontinence episodes would impact my ability to find and perform a job. It's not just about being absent from work frequently or needing to leave the office for bathroom breaks, it's about the way that people will treat me and perceive me because of my condition. They'll see me as someone who can't control their bladder, who needs constant accommodations, who's a burden on the workplace. But I want to tell you all today, that's not true. I'm more than just my disability. I'm a person with goals and aspirations, with skills and qualifications, with dreams and ambitions. And I want to inspire all of you out there who are living with disabilities, don't let anyone diminish your worth or capabilities. You are strong, capable, and deserving of respect and understanding. We need to break down these stigmas and stereotypes that surround disability, and instead focus on the potential and contributions that we can bring to the table. So I urge you all today, let's rise up and be the change we want to see in the world. Let's make our workplaces inclusive and accepting of all individuals, regardless of their abilities or disabilities.

Thank you.

ALJ: Thank you, VE Kutch and Mr. Waters, for your thoughtful testimony and insights today. I'd like to adjourn this hearing, but not before acknowledging the importance of breaking down stigmas surrounding disabilities in the workplace. We need to promote inclusivity and understanding, recognizing that

individuals with disabilities have much to offer. Thank you again to VE Kutch for their expertise and Mr. Waters for your courage and inspiration. This hearing is adjourned.

VE: Yes, I believe that's a summary of our discussion, Your Honor.

CLMT: Thank you for today's hearing, I appreciate it.

ATTY: Thank you, VE Kutch, for your thorough testimony. I appreciate the opportunity to represent Mr. Waters.

(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.

Gilbert Rogahn, Transcriber
Abernathy LLC

Carlo Bernier, Proofreader
Abernathy LLC