

**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 Administrative Law Judge Evie McCullough presiding over the matter of claimant Olin Waters. It's currently 8 o'clock AM sharp here at our office. However, I'm informed that we've actually been in session for a bit longer than that - about four hours later, to be exact. Claimant's Social Security number is 208-54-9959 on record. We're conducting this hearing via video conference, and the claimant is accompanied by their attorney Garry Moen-Simonis today. As you are aware, claimant, you are entitled to appear in person at any time during these proceedings. We've also assembled a panel of expert witnesses for your case, including medical expert Dr. Dena Legros - who I understand has a fascinating hobby of competitive sailing on her downtime - and vocational expert Bernita Kutch. Now, with that said, Mr. Moen-Simonis, would you like to proceed immediately or take some time to review the claimant's file?

ATTY: We'll proceed now.

ALJ: Very well then, Mr. Moen-Simonis indicates that he's

ready to proceed with the hearing at this time. As we move forward, I just want to reaffirm that the claimant is aware they have an option to switch from video conference to an in-person hearing if desired. This would necessitate a complete reset of our proceedings and likely some delay, but it's an available choice nonetheless. Claimant Waters, I'd like to ask you directly - are you comfortable proceeding as we've been doing so far with the video conference setup, or would you rather have us reconvene in-person at a later date?

CLMT: I'm comfortable proceeding via video conference as we've been doing.

ALJ: Okay then, I'd just like to confirm that the claimant is indeed comfortable proceeding with the video conference setup as we've been doing so far today. So, to reiterate, it's confirmed then that we'll be continuing on this course of action for now. Yes, just to make it clear again - we're good with where we are currently in terms of format. Alright, moving right along here... We do have the resumes and background information for our expert witnesses available if needed at any point during the proceedings. Specifically, I'd like to mention that Dr. Dena Legros, who's a medical expert in her field, has an impressive resume, as does Bernita Kutch, our vocational expert - both of whom bring considerable experience and expertise to their respective areas of specialization. Mr. Moen-Simonis, before we proceed any further, is there anything else that you'd like to collect or review from

the claimant's file or otherwise prior to, say, next Wednesday at 9 o'clock AM?

ATTY: Your Honor, with respect to the matter of expert witness resumes, we've reviewed them thoroughly and I believe they're complete and accurate. As for any additional documentation from the claimant's file, I'd like to confirm that our record is fully developed at this point in time, without need for further supplementation or revision prior to next Wednesday's scheduled hearing time.

ALJ: Thank you, Mr. Moen-Simonis, for confirming that the expert witness resumes are complete and accurate. I also accept your assertion that our record is fully developed at this point in time, without need for further supplementation or revision prior to next Wednesday's scheduled hearing time. With that settled, I'd like to proceed with admitting all exhibits from 1A down to exhibit number 27-C into the record as part of these proceedings.

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

ALJ: Now, let's take a moment to discuss the matter of exhibits, specifically those related to the claimant's medical history and treatment plan - I believe we've reviewed them thoroughly, but there does appear to be some inconsistency in regards to dates, as listed on page 12 versus page 27-C, if you could just confirm that for me, Mr. Moen-Simonis... I mean, it seems quite possible that there might need to be an amendment made here, or perhaps clarification added to the record - I'm not

entirely certain how this discrepancy arose in the first place, but I'd like to get a clearer understanding of what's going on, so if I could just ask you directly, Mr. Moen-Simonis... do we indeed have any information that would suggest an amendment or correction is necessary at this time? And if so, which page, exactly, should we focus our attention on?

ATTY: Yes, I believe there is an inconsistency regarding dates between page 12 and page 27-C. Specifically, it appears that the date of a certain treatment session on page 12 lists the month as 'June,' whereas page 27-C indicates the correct month should be 'July.' We concur with your observation, Your Honor, and we suggest that the amendment be made to reflect the corrected date on page 27-C, which accurately reflects the claimant's treatment plan.

ALJ: I understand that there's an inconsistency regarding dates between page 12 and page 27-C, specifically concerning a treatment session date listed as 'June' on page 12 versus 'July' on page 27-C. Mr. Moen-Simonis, I accept your suggestion to amend the record to reflect the corrected date on page 27-C, which accurately reflects the claimant's treatment plan. Claimant Waters, are you aware that even if we do decide in your favor on this matter, there may be future implications or consequences associated with the amendment of our record, specifically regarding potential discrepancies or inaccuracies in other areas?

CLMT: Yes, I'm aware of that possibility.

ALJ: I've confirmed with the claimant that they're aware of potential implications or consequences associated with the amendment of our record. Now, Reymundo Boyle, I'm directing you to update the official record with the corrected date on page 27-C, which accurately reflects the claimant's treatment plan. And so, we'll proceed with questioning and answering directly with the claimant from this point forward.

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

EXAMINATION OF CLAIMANT BY ADMINISTRATIVE LAW JUDGE:

Q Now that we've established the record, can you please state your full name for the record, Claimant Waters?

A Olin Addison Waters

Q Claimant Waters, what is your current mailing address?

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

Q When were you last insured, Claimant Waters?

A According to my records, I was last insured under Social Security through my employer on December 31st, 2018.

Q What is your highest level of education completed, Claimant Waters?

A I completed a Bachelor of Science degree in Mechanical Engineering from Northwest Technical College in August 2012.

Q What was your last job and when did you stop working at that position?

A My last job as a Bus Driver was at Tri-County Transit System, where I worked from March 15th, 2015, to August 24th, 2020. I stopped working due to a work-related injury that left me with limited mobility in my right leg.

Q As a Bus Driver for Tri-County Transit System, can you specifically describe your job duties and responsibilities?

A As a Bus Driver for Tri-County Transit System, my primary job duties and responsibilities included operating a transit bus safely and efficiently on designated routes, transporting passengers to their desired destinations within a timely manner. I was responsible for monitoring passenger behavior, managing fare collection, and reporting any issues or incidents to dispatch. Additionally, I performed routine vehicle checks to ensure that all necessary equipment such as the wheelchair lift, stop request buttons, and audio announcements were functioning properly. My duties also included responding to emergencies, providing assistance to passengers with disabilities, and adhering to company policies and procedures regarding safety, customer service, and timekeeping.

Q Were you ever employed by or in any way affiliated with the Social Security Administration?

A No, I was never employed by or affiliated with the Social Security Administration. My professional experience and background are in education as a high school instructor and later as a mechanical engineer, prior to becoming a bus driver for Tri-County

Transit System.

Q Okay then, I understand that you were never employed by or affiliated with the Social Security Administration. You've had a diverse range of professional experience and backgrounds, including education as a high school instructor and mechanical engineering prior to becoming a bus driver for Tri-County Transit System. I appreciate your clarification on this matter. Now, let's focus on your disability claim. Claimant Waters, you previously stated that you stopped working due to a work-related injury that left you with limited mobility in your right leg. Can you tell me why you believe you are disabled and unable to perform any substantial gainful activity?

A Well, as I mentioned earlier, I've been experiencing a lot of problems with my right leg, and it's mainly due to the neuropathy that's associated with my diabetes. You see, the high blood sugar levels have caused damage to my nerves, which has resulted in numbness, tingling, and pain in my legs, particularly my right one. This condition makes it really difficult for me to walk or stand for long periods of time, and I'm afraid that if I were to go back to work as a bus driver, I'd be putting myself at risk of falling or getting into an accident because of my impaired mobility. Plus, the pain is just unbearable sometimes, and it affects not only my physical ability but also my mental health. It's like, every step I take feels like I'm walking on pins and needles, and it's exhausting. So, to be honest, I don't think I

could perform any substantial gainful activity right now because of this condition.

Q I appreciate your detailed explanation of your condition and its impact on your daily life, Claimant Waters. You've shared with me that you're experiencing neuropathy symptoms due to your diabetes, which affects your mobility, balance, and overall quality of life. I understand how this condition can be debilitating, making it challenging for you to perform even simple tasks without feeling like you're walking on pins and needles. Your description paints a vivid picture of the struggles you face on a daily basis. I want to acknowledge that it takes a lot of courage to share your personal experiences with me, and I appreciate your willingness to be open about your condition. Now, I'd like to ask you to elaborate on something you mentioned earlier - when you said 'the pain is unbearable sometimes.' Can you tell me more about what happens during those moments? What triggers the intense pain, and how do you cope with it?

A Well, it's like... sometimes when I'm walking or standing for a while, I start to feel this burning sensation in my legs and feet, especially in my right leg, where the pain is just unbearable. It's hard to describe, but it's like someone's pouring hot water all over my skin, you know? And then there are these sharp pains that shoot through my legs, like electric shocks or something. It's really intense, and I try to move around a lot, try to stretch, you know, to get some relief, but sometimes it

just doesn't work. And when it gets bad, I have to sit down, lay down even, because it's just too much to bear. And then there are the numbness and tingling sensations, which can be really scary because it feels like my legs are falling asleep or something. I've tried to explain this to my doctor before, but they always seem to focus on my blood sugar levels and how I need to manage those better, but I'm telling you, it's not just about that. There's something more going on here, some underlying issue with my nerves and my circulation, and nobody seems to be taking it seriously. And the pain, oh man, it's like... it's like a constant companion, always lurking in the background, waiting to pounce. Sometimes I feel like I'm walking on eggs, you know? One wrong move and I'll crack under the pressure. Sorry, I'm just really frustrated with this whole situation.

ALJ: I want to commend you, Claimant Waters, for sharing such a vivid and detailed account of your experiences with neuropathy and its impact on your daily life. I must say that I'm struck by the intensity of the pain you've described, as well as the numbing and tingling sensations in your legs. It's clear that this condition is not just a minor inconvenience, but rather a debilitating and chronic issue that affects nearly every aspect of your being. I understand now that it's not just about managing your blood sugar levels, but rather an underlying problem with your nerves and circulation that requires specialized treatment and attention. And I must say, I'm struck by the emotional toll

this has taken on you - the frustration, the fear, the sense of walking on eggshells, never knowing when the pain will strike next. Your words have painted a picture that I won't soon forget. Now, I'd like to request something from your attorney, please. Can they provide documentation or expert testimony regarding the specific ways in which your neuropathy and diabetes diagnosis intersect? Specifically, I'm looking for evidence of whether there are any clinical findings that demonstrate nerve damage or deterioration related to your blood sugar levels and how this condition renders you unable to perform substantial gainful activity.

ATTY: I'd like to clarify that the medical records provided by Claimant Waters' treating physician do indicate clinical findings of nerve damage and deterioration related to his blood sugar levels. Furthermore, our vocational expert has prepared a report outlining the substantial limitations imposed on Claimant Waters' ability to perform any substantial gainful activity due to his neuropathy and diabetes diagnosis. We'd like to request permission to enter these documents into the record.

ALJ: Thank you, Attorney. It appears that we do have medical records indicating nerve damage and deterioration related to Claimant Waters' blood sugar levels. I'd like to request that he elaborate on one specific symptom he mentioned earlier - the feeling of 'walking on pins and needles.' Can you tell me more about what you experience when your legs feel this way, Claimant

Waters?

BY ADMINISTRATIVE LAW JUDGE:

A It's like my legs are full of ants crawling around, or pins and needles stabbing me constantly. I feel like I'm losing sensation in my feet, but it's hard to describe, it's just this weird numbness that makes it hard to walk or stand for long.

Q I'd like to ask you directly, Claimant Waters, whether you've sought medical attention specifically for these symptoms of numbness and tingling in your legs, as opposed to just managing your overall diabetes diagnosis. Have you ever visited a doctor or specialist solely focused on addressing this particular issue?

A Yes, I've seen a neurologist who specializes in peripheral neuropathy.

Q How often do you experience these symptoms of numbness and tingling in your legs, particularly when walking or standing? Would this occur daily, several times a week, or only occasionally?

A To be honest, I'd say these symptoms occur almost daily, especially after prolonged periods of walking or standing. I'd estimate about 80% to 90% of the time when I'm on my feet for an extended period, I experience some degree of numbness and tingling in my legs.

Q Claimant Waters, based on your testimony and medical records, it appears that your neuropathy and diabetes diagnosis render you unable to perform substantial gainful activity due to

the debilitating symptoms of numbness, tingling, and pain in your legs. I find you disabled under the Social Security Act.

A Thank you, I'm just relieved that my struggles are finally recognized and acknowledged. It's been a long and difficult road to get to this point, but knowing that I'll receive the support and benefits I need is a huge weight off my shoulders. To be honest, it got so bad at times that I'd have to crawl up the stairs in my house because I couldn't walk on them due to the pain and numbness. I even had to get special shoes with built-in arch supports just to try and alleviate some of the discomfort. It was a hard time, but I'm grateful that it's behind me now.

Q I'm going to render a decision today that you are disabled and entitled to benefits due to your neuropathy and diabetes diagnosis.

A Thank you, I'm relieved that my struggles are finally recognized and acknowledged. It's been a long and difficult road to get to this point, but knowing that I'll receive the support and benefits I need is a huge weight off my shoulders. To be honest, it got so bad at times that I'd have to crawl up the stairs in my house because I couldn't walk on them due to the pain and numbness. I even had to get special shoes with built-in arch supports just to try and alleviate some of the discomfort. Simple activities like cooking or cleaning became extremely challenging, as standing for more than a few minutes would cause me debilitating pain and weakness in my legs. Some days were so bad

that I couldn't even leave my bed, unable to bear the thought of facing another day with this level of suffering. It was a hard time, but I'm grateful that it's behind me now.

Q Decision is rendered that Claimant Waters is disabled due to his neuropathy and diabetes diagnosis. Benefits will be awarded accordingly.

A I'm relieved to know I'll receive benefits, but one thing that's still hard for me to accept is that I can no longer enjoy a simple walk around my neighborhood on a nice day. Even short distances now leave me exhausted and in pain, making it difficult to even do something most people take for granted.

Q I acknowledge your testimony about the impact of your condition on your daily activities and quality of life.

A It's also hard for me to accept that I can no longer enjoy a simple dinner with my family or friends, as sitting through a meal is often too uncomfortable due to the pressure on my legs and feet.

Q Is this also reflected in the September 2022 records from Dr. Smith's office?

A Yes.

Q On what date did you start taking Neuraxin for your neuropathy symptoms?

A I started taking Neuraxin in March of this year, after my neurologist recommended it as an additional treatment for my neuropathy symptoms.

Q And did taking Lyrica also help manage your symptoms?

A Yes, taking Lyrica was helpful in managing my neuropathy symptoms to some extent, but it didn't completely alleviate them.

Q You stated that you started taking Neuraxin in March of this year, but in a previous statement, you mentioned taking Lyrica as well. Can you clarify which medication was prescribed first and how your treatment plan changed over time?

A Lyrica was prescribed first, then Neuraxin was added to my treatment plan in March.

ATTY: I'd like to clarify that while Lyrica was indeed prescribed first, it's my understanding that Neuraxin was actually started in January of this year, not March, as a complementary treatment to help manage the residual neuropathy symptoms. Additionally, our medical records indicate that Claimant Waters' treating physician also added gabapentin to his regimen in April to further address his pain management needs. I'd like to request that we clarify and correct this record to ensure an accurate account of Claimant Waters' treatment plan.

ALJ: I will take note of the correction and clarification regarding Claimant Waters' treatment plan, including the addition of gabapentin to his regimen in April this year. I'd like you now to elaborate on how these medications have affected your neuropathy symptoms, specifically any changes or improvements you've noticed since starting Neuraxin and the addition of gabapentin.

BY ADMINISTRATIVE LAW JUDGE:

A Neuraxin helped a bit with pain, but gabapentin was more effective in managing my neuropathy symptoms.

Q I'd like to review the report from our vocational expert to determine how Claimant Waters' specific work limitations would impact his ability to perform any substantial gainful activity. I notice that one of the listings considered in this case involves a residual functional capacity assessment, which may be relevant in determining the extent of Claimant Waters' physical and mental capabilities.

A As my treating physician indicated in her RFC assessment, I'm unable to perform any occupation requiring standing or walking for more than two hours at a time, and have significant difficulty with tasks involving fine motor skills and coordination.

Q I've reviewed the RFC assessment from your treating physician, and it appears that Claimant Waters' neuropathy has also resulted in significant numbness and tingling in his hands, particularly in his fingers. He's unable to perform any occupation requiring fine motor skills or coordination due to these symptoms.

CLMT: Yes, my hands are also affected with numbness and tingling.

BY ADMINISTRATIVE LAW JUDGE:

A I'd like to ask, Claimant Waters, whether your numbness and tingling in your hands were ever treated or managed by any of the medications you've been prescribed for your neuropathy, such as Neuraxin, Lyrica, or gabapentin?

Q No.

A Note taken.

Q Those symptoms are secondary and don't affect my primary issue of mobility.

A I'd like to revisit your earlier statement about having to crawl up the stairs in your house due to pain and numbness. Have you made any adjustments or modifications to your home environment to accommodate your mobility limitations?

Q Yes, I've had to make some modifications to my home environment, such as installing a grab bar on the wall near the stairs and using a special non-slip mat on the steps. However, even with these adjustments, it's still quite challenging for me to navigate the stairs without feeling significant pain and discomfort in my lower back and legs. It's not just about getting up the stairs, but also doing everyday things like loading the dishwasher or reaching high shelves in the kitchen that become incredibly difficult tasks because of my mobility limitations. Simple activities like taking a shower or getting dressed are now major struggles for me, and it's frustrating to feel like I'm losing independence and autonomy over these basic aspects of life.

A I acknowledge your difficulties with mobility and daily activities.

Q It's hard to explain just how much everyday tasks hurt now. Even simple things like taking a shower or getting dressed are painful and exhausting because I have to compensate for my

numbness and weakness.

A I acknowledge the impact on daily activities. Can you describe how your symptoms affect your ability to stand for periods?

Q Standing for more than a few minutes causes severe pain and weakness in my legs.

A That's consistent with the records.

Q Yes.

A Based on our discussion, I find it more likely than not that Claimant Waters has severe impairments to his lower extremities and significant limitations in standing and walking.

Q I'm glad my struggles are being acknowledged.

A Decision rendered for future review

Q What about my Social Security tax contributions? Will they be offset against these benefits?

ALJ: Benefits are not offset by past tax contributions.

ATTY: I acknowledge the clarification regarding Claimant Waters' tax contributions, and I appreciate the ALJ's consideration of the nuances surrounding his neuropathy symptoms and treatment plan. Decision rendered today confirms that Claimant Waters is entitled to benefits due to his severe impairments.

ALJ: Case closed.

EXAMINATION OF MEDICAL EXPERT BY ATTORNEY:

Q Will the award of benefits take into account Claimant Waters' past earnings and offset his prior overpayments?

A Yes, I believe it should, so that my benefits are not reduced.

Q Will the award of benefits take into account Claimant Waters' past earnings and offset his prior overpayments, specifically the \$23,000 in excess contributions from January 2018?

A Yes, it should.

Q I'd like to clarify that the prior overpayments of \$23,000 are directly tied to Claimant Waters' past earnings from his employment as a carpenter, which included periods of self-employment and income exceeding the substantial gainful activity threshold. Can we confirm that these excess contributions will indeed be offset against any future benefits awarded, thereby ensuring an accurate calculation of Claimant Waters' entitlement?

A Yes, it should take into account my past earnings and prior overpayments from January 2018, specifically the \$23,000 in excess contributions, to ensure that my benefits are accurately calculated. I'm not sure why we're going over this again, but I just want to make sure that my Social Security benefits aren't reduced due to those previous overpayments. It seems like common sense that past earnings and prior overpayments should be taken into account when calculating future benefits, but maybe there's some nuance here that I'm missing. Anyway, yes, please confirm that those \$23,000 will be offset against my future benefits.

Q Will the \$23,000 excess contributions from January 2018

be recalculated and deducted from Claimant Waters' initial award amount to avoid any overpayment penalties?

A Yes.

Q Given that Claimant Waters' past earnings and prior overpayments of \$23,000 from January 2018 will be offset against his initial award amount to avoid any overpayment penalties, it's critical to note that these excess contributions were directly tied to his periods of self-employment as a carpenter. However, the ALJ has confirmed that this offset will indeed be applied to Claimant Waters' benefits. To ensure accuracy in the calculation and avoid any future discrepancies, can we confirm that the Social Security Administration will also take into account the specific tax quarters during which these excess contributions were made?

A The Social Security Administration will take into account the tax quarters from January 2018, specifically when I was self-employed as a carpenter and exceeded the substantial gainful activity threshold, to accurately calculate my benefits and avoid any overpayment penalties.

Q Will the SSA recalculate Claimant Waters' benefits using the correct tax quarters for his self-employment as a carpenter from Q1 and Q2 of 2018?

A Yes.

Q Will the SSA account for Q1 and Q2 2018 tax quarters when recalculating Claimant Waters' benefits to avoid overpayment penalties?

A The SSA will take into account Q1 and Q2 of 2018 tax quarters for my self-employment as a carpenter to recalculate my benefits accurately and avoid any overpayment penalties.

Q Will Q4 2018 tax quarter also be considered for Claimant Waters' benefits recalculations?

A Yes.

ATTY: The SSA will consider all relevant tax quarters for Claimant Waters' self-employment as a carpenter, including Q1, Q2, and Q4 of 2018.

ALJ: Yes, all relevant tax quarters for Claimant Waters' self-employment as a carpenter will be considered, including Q1, Q2, and Q4 of 2018. The SSA will recalculate his benefits using the correct tax quarters to avoid overpayment penalties.

ATTY: Benefits recalculated with correct tax quarters, avoiding overpayment penalties.

ALJ: What are the correct tax quarters for Claimant Waters' self-employment as a carpenter?

ATTY: Q1 and Q2 of 2018, as previously discussed.

ALJ: Will Q3 of 2018 also be included in the recalculated benefits?

ATTY: Yes, Q3 of 2018 will also be included in the recalculated benefits to accurately reflect Claimant Waters' self-employment earnings as a carpenter.

ALJ: Just Q1, Q2, and Q3 of 2018?

ATTY: The correct tax quarters for Claimant Waters' self-

employment as a carpenter are Q1, Q2, and Q3 of 2018.

BY ADMINISTRATIVE LAW JUDGE:

Q I'd like to thank you, Attorney, for clarifying the tax quarters for Claimant Waters' self- employment earnings as a carpenter. Now, I have one more question for Claimant Waters: Can you confirm that these recalculated benefits accurately reflect your actual earnings and deductions from January 2018 to September 2018?

A Yes.

Q Will Claimant Waters' initial award amount be adjusted to reflect the corrected tax quarters?

A Yes, adjust my initial award amount.

Q Adjustments made.

A Benefits adjusted accurately.

Q Noted.

A Benefits recalculated accurately.

Q Acknowledged.

A Case [INAUDIBLE]

Q Decision finalized.

A Decision is final.

Q Benefits disbursed.

A Received check.

Q Benefits confirmed received.

A Benefits deposited.

Q Acknowledged.

A Case closed.

Q Case officially closed.

A Agreed.

Q Noted. Next step: Review of claimant's post-disbursement survey?

A Schedule survey for next week.

ALJ: Thank you, Claimant, for your cooperation throughout this process. I'd like to thank Dr. Dena Legros for their expertise and extensive background in orthopedic medicine, as seen on their impressive resume, which can be viewed online at our website under 'Expert Witness Profiles.' Dr. Legros has over 15 years of experience and a proven track record of providing accurate assessments and opinions in complex medical cases like this one. I'd now like to ask Counsel if you have any objections to the medical expert's participation in this case.

ATTY: [INAUDIBLE] objections.

(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, you are now under oath.

A I will provide an unbiased medical opinion.

Q Please state your education, medical specialty, and relevant experience.

A Ah, yes, my education, medical specialty, and relevant experience. Well, I received my Doctor of Medicine degree from a

reputable institution, you know, one that's highly accredited, and I've been practicing medicine for over 15 years now, with a focus on orthopedic medicine, which is my area of expertise, really my passion, and I've had the privilege of working with numerous patients with various musculoskeletal conditions, from simple sprains to more complex fractures, and I've also had the opportunity to collaborate with other medical professionals, like physical therapists and surgeons, to provide comprehensive care for my patients. And, of course, I'm certified by the relevant boards in my field, which is essential for any medical professional, don't you think? Anyway, that's me in a nutshell, I guess.

Q Dr. Legros, are you an expert in musculoskeletal conditions related to carpentry work?

A Yes, I am.

Q Have you reviewed Claimant Waters' case?

A Yes, I have.

Q Is there anything you'd like to bring to my attention regarding Claimant Waters' condition?

A Well, as I was going through Claimant Waters' file, I noticed that it seems like he mentioned having back problems due to his carpentry work, but there's no documentation from a treating physician or any medical records to support this claim. I mean, it's possible that the claimant did experience some discomfort or pain while working as a carpenter, but without any

concrete evidence, it's hard for me to say whether this is directly related to his job or not. And then there's the issue of the length of time he worked as a carpenter - only a few years, if I recall correctly - which might not be enough to establish a clear connection between his work and his condition. I'm just pointing out that it seems like there might be some gaps in the evidence here.

Q Noted.

A Well, as I was going through Claimant Waters' file again, I noticed that it seems like he mentioned having back problems due to his carpentry work, and, you know, it's possible that the claimant did experience some discomfort or pain while working as a carpenter, but without any concrete evidence, it's hard for me to say whether this is directly related to his job or not, and I think what would have been really helpful here is if there were some documentation from a treating physician or any medical records that actually support this claim, you know, something to show a clear progression of symptoms over time, rather than just, you know, a few statements in an interview, and then there's the issue of the length of time he worked as a carpenter - only a few years, if I recall correctly - which might not be enough to establish a clear connection between his work and his condition, and it would have been really useful if there were some records from a physical therapy or occupational therapy evaluation that could have helped us understand what the claimant's capabilities

are now, you know, after he stopped working as a carpenter.

Q Understood.

ATTY: I'd like to clarify that Dr. Legros has indeed reviewed Claimant Waters' case and is an expert in musculoskeletal conditions related to carpentry work. However, she noted that there's a lack of concrete evidence supporting the claimant's assertion that his back problems are directly related to his job as a carpenter. Specifically, she mentioned that there's no documentation from a treating physician or medical records showing a clear progression of symptoms over time.

ALJ: Acknowledged lack of concrete evidence supporting claimant's assertion.

ATTY: I'm Garry Moen-Simonis, Attorney for Claimant Waters.

ME: I concur with my previous statements regarding the lack of concrete evidence supporting Claimant Waters' assertion.

ATTY: Dr. Legros, I'd like to clarify that when you mentioned a lack of concrete evidence supporting Claimant Waters' assertion regarding his back problems being directly related to his job as a carpenter, are you implying that perhaps his condition could be more accurately described as an exacerbation or manifestation of a pre-existing condition rather than a direct result of his work?

ME: That's a reasonable interpretation, Mr. Moen-Simonis, although I must clarify that my statement was not intended to suggest a specific cause-and-effect relationship or to imply that

the claimant's condition is entirely pre-existing. Rather, it highlights the need for more concrete evidence to support his assertion regarding the direct connection between his work as a carpenter and his current back problems.

ATTY: I see. So, Dr. Legros, you're saying that the lack of concrete evidence makes it difficult to determine whether Claimant Waters' back problems are directly related to his work as a carpenter or if they may be an exacerbation or manifestation of a pre-existing condition. Can you elaborate on what specific types of documentation or medical records would be necessary to clarify this issue and support or refute the claimant's assertion?

ME: To clarify this issue, I would need to see documentation from a treating physician or medical records that show a clear progression of symptoms over time, including diagnostic tests and treatment plans related to the claimant's back problems. Specifically, I would look for records that detail the claimant's work history as a carpenter and any changes in his job duties or work environment that may have contributed to his condition. Additionally, it would be helpful to see medical records from before the claimant started working as a carpenter to establish a baseline of his overall health and identify any pre-existing conditions that may have been exacerbated by his work. Furthermore, documentation of physical therapy or occupational therapy evaluations could provide valuable information on the claimant's current capabilities and limitations.

ATTY: Dr. Legros, if such documentation is lacking, can we infer that the claimant's work as a carpenter may not be a significant contributing factor to his current condition?

ME: While it would be premature to make a definitive conclusion without further evidence, it is reasonable to infer that the claimant's work as a carpenter may not be a significant contributing factor to his current condition, given the lack of concrete evidence supporting this assertion.

ATTY: Dr. Legros, you're saying that without more evidence, it's hard to say for certain whether the claimant's work as a carpenter is a significant contributing factor to his current condition. But, if I'm hearing you correctly, you're leaning towards the idea that maybe, possibly, probably not, but we can't be entirely sure because there just isn't enough evidence to support this assertion. Am I right in saying that it's a bit of a gray area here, and we'd need more concrete proof to make any kind of definitive statement?

ME: That's a fair summary, Mr. Moen-Simonis. The evidence we have suggests that there is an uncertainty regarding the claimant's work as a carpenter being a significant contributing factor to his current condition. I would concur with your assessment that it's a bit of a gray area and that further evidence would be necessary to make any definitive statement.

ATTY: Dr. Legros, I'd like to clarify something else regarding the claimant's work history as a carpenter. You

mentioned earlier that it would be helpful to see documentation of physical therapy or occupational therapy evaluations to understand the claimant's current capabilities and limitations. However, you didn't comment on whether such evaluations would also help us determine if the claimant's condition was exacerbated by his work duties or changes in job environment over time. Can you speak to that point?

ME: Yes, physical therapy or occupational therapy evaluations could also provide information on whether the claimant's condition was exacerbated by his work duties or changes in job environment over time.

ATTY: Dr. Legros, if physical therapy or occupational therapy evaluations showed that the claimant's condition was likely exacerbated by his work duties, wouldn't that directly contradict his assertion that his job as a carpenter caused his current back problems?

ME: Yes, that's correct. If physical therapy or occupational therapy evaluations showed that the claimant's condition was likely exacerbated by his work duties, it would indeed contradict his assertion that his job as a carpenter caused his current back problems.

ATTY: So, Dr. Legros, it seems we've reached a bit of an impasse here. On one hand, Claimant Waters asserts that his job as a carpenter caused his current back problems, but on the other hand, your expert opinion suggests that there's simply not enough

evidence to support this assertion. And if physical therapy or occupational therapy evaluations were to show that his condition was actually exacerbated by his work duties, wouldn't that essentially render his claim null and void? Doesn't it seem like we're dealing with a rather convenient and unsubstantiated claim here?

ME: I would agree that it seems like there's a discrepancy between the claimant's assertion and the evidence supporting it. However, I want to emphasize that my expert opinion is based solely on the available data, and I'm not trying to imply any intent or motives behind the claimant's assertions. It's possible that the claimant genuinely believes his job as a carpenter caused his current back problems, even if the evidence doesn't fully support this assertion.

ATTY: I understand that you're trying to remain impartial and objective, Dr. Legros. However, I must press on here because it's my duty as the claimant's attorney to ensure that his rights are being fairly represented. You mentioned that the claimant may genuinely believe his job caused his back problems despite the lack of evidence. But don't you think it's curious that this condition only manifests itself after years of work as a carpenter, and not before or during other periods of his life? Doesn't that suggest to you that there might be other factors at play here?

ME: Yes, that's a valid observation.

ATTY: Dr. Legros, I'd like to explore this further. Given that the claimant's condition appears to only manifest itself after years of work as a carpenter, and not before or during other periods of his life, doesn't it seem plausible that perhaps there are other factors at play here? Such as, for instance, a pre-existing condition that was exacerbated by his work duties? Or maybe even a change in job environment or work habits that could have contributed to this condition?

ME: Yes, it is plausible that other factors may be at play.

ATTY: Dr. Legros, it seems to me that we're dealing with a complex situation here, and it's imperative that we get to the bottom of this. Given your expert opinion that the claimant's assertion is unsubstantiated, and considering the potential for pre-existing conditions or changes in job environment to be contributing factors, I'd like to ask: Do you believe that further investigation into the claimant's medical history, including any potential pre-existing conditions, would be a prudent step in determining the validity of his claim?

ME: Yes, I believe that further investigation into the claimant's medical history, including any potential pre-existing conditions, would be a prudent step in determining the validity of his claim.

ATTY: I'm satisfied that we've explored all avenues of discussion regarding the claimant's assertion and potential contributing factors to his condition. I'd like to thank you, Dr.

Legros, for your expert opinion and thorough analysis.

BY ADMINISTRATIVE LAW JUDGE:

Q Let's take a look at page 37 of the claimant's medical records. Can you explain how this MRI report interacts with our discussion about potential pre-existing conditions?

A Thank you, Honorable ALJ. The MRI report on page 37 of the claimant's medical records shows a disc herniation at L4-L5, which is consistent with previous reports and diagnoses. However, it also mentions degenerative changes in the lumbar spine, which could be indicative of a pre-existing condition that may have been exacerbated by the claimant's work duties or other factors.

Q Can you explain how the degenerative changes in the lumbar spine mentioned in this MRI report interact with our discussion about potential pre-existing conditions and their impact on the claimant's current condition?

A The degenerative changes mentioned in this MRI report are consistent with the claimant's age and work history as a carpenter, which involves heavy lifting and bending. While it's possible that these pre-existing conditions may have contributed to his current back problems, the report also notes that there is no significant acute injury or trauma present, which could suggest that other factors, such as prolonged wear and tear on the lumbar spine, may be more relevant to his condition. However, further investigation would be necessary to determine the exact extent of these pre-existing conditions and their impact on his current

condition.

Q Can you explain how the medication history on page 45 of the claimant's medical records relates to his current condition and potential pre-existing conditions?

A The medication history on page 45 of the claimant's medical records shows a long-standing prescription for ibuprofen for chronic back pain, which is consistent with his reported symptoms and work-related activities as a carpenter. However, it also notes that he has been taking increasing doses of the medication over time, which could suggest an escalation of symptoms or potentially an underlying condition not previously addressed in the medical records.

Q Can you explain how the physical therapy notes [INAUDIBLE] page 25 of the claimant's medical records relate to his current condition and potential pre-existing conditions?

A The physical therapy notes on page 25 of the claimant's medical records indicate that he underwent a comprehensive evaluation and treatment plan for chronic lower back pain, which is consistent with his work-related activities as a carpenter. The notes also mention that he had a history of lumbar strain and degenerative disc disease, but no significant improvement was seen in his symptoms despite physical therapy interventions. This information is relevant to the claimant's current condition and potential pre-existing conditions, suggesting that chronic lower back pain may be a long-standing issue that has been exacerbated

by his work duties.

Q Let's take a look at page 17 of the claimant's medical records. Can you explain how this X-ray report from 2018 interacts with our discussion about potential pre-existing conditions and their impact on the claimant's current condition? I'd like to know if it shows any degenerative changes or signs of wear and tear that could be relevant to his chronic lower back pain.

A The X-ray report from 2018 on page 17 of the claimant's medical records shows degenerative changes in the lumbar spine, specifically at the L4- L5 level, consistent with disc space narrowing and facet joint arthropathy. These findings are consistent with a long-standing condition that may have been present prior to his current symptoms, and could potentially be contributing to his chronic lower back pain. The report also notes that there is no acute fracture or dislocation present, which suggests that the claimant's current symptoms may not be related to a sudden traumatic event.

ATTY: Thank you for explaining the X-ray report from 2018, Doctor. However, I'd like to clarify that this information doesn't necessarily preclude the possibility of a work-related injury contributing to the claimant's current condition. In fact, it seems to me that the degenerative changes in the lumbar spine could be exacerbated by the claimant's prolonged exposure to heavy lifting and bending as a carpenter. I'd like to request further clarification on this point.

(The vocational expert, BERNITA KUTCH, having been first

duly sworn, testified as follows:)

EXAMINATION OF VOCATIONAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q What impact would your conclusion have on the claimant's ability to perform his previous job as a Bus Driver?

A Well, considering my previous explanation about the claimant's job as a carpenter and how it likely exacerbated his pre-existing degenerative changes in his lumbar spine, contributing to his chronic lower back pain, I believe this would have a significant impact on his ability to perform his previous job as a bus driver. You see, bus driving is a medium-duty occupation that requires frequent heavy lifting of up to 50 pounds and occasional lifting of over 75 pounds, which is not feasible for someone with chronic lower back pain due to degenerative disc disease. In fact, it's listed in the Dictionary of Occupational Titles as an SVP level of 5-6, indicating a skilled occupation that requires manual dexterity, good coordination, and the ability to operate complex machinery safely. Now, I know what you're thinking, 'What about accommodations?' Well, I've considered those too, but unfortunately, even with reasonable accommodations, it's unlikely that the claimant would be able to perform this job without putting himself at risk for further injury or exacerbating his existing condition. It's just not feasible, if you ask me.

Q Okay, I think we've got a good understanding of how the claimant's condition affects his ability to perform his previous

job as a bus driver. Let me just review some work profiles here... Profile 1 is a skilled occupation that requires manual dexterity and coordination, similar to bus driving. However, in Profile 2, the worker is only required to lift up to 25 pounds occasionally, which might be feasible for someone with chronic lower back pain. And then there's Profile 3, where the job requires no heavy lifting at all, just occasional standing and sitting. Now, my question is, if we consider these work profiles, would it be possible for the claimant to perform a job like... say, an office cleaner, which falls under Profile 2? Could he do a job that involves lifting up to 25 pounds occasionally?

A No.

Q Profile 2 involves jobs that require lifting up to 25 pounds occasionally and may involve prolonged sitting or standing, but does not require manual dexterity or coordination similar to bus driving. Would it be consistent with the claimant's residual functional capacity to perform a job like an office cleaner, which falls under Profile 2?

A Yes

Q Is it consistent with the claimant's residual functional capacity to perform a job that requires occasional standing and sitting but does not require manual dexterity or coordination similar to bus driving?

A [INAUDIBLE]

ALJ: Based on the testimony from both Doctor and the

Vocational Expert, it appears that the claimant's chronic lower back pain due to degenerative disc disease limits his ability to perform medium-duty occupations like bus driving. However, jobs with lighter lifting requirements, such as office cleaning, may be feasible for him. Is there any evidence or medical opinion to contradict this assessment?

ATTY: I'd like to clarify that while the vocational expert testified that office cleaning may be feasible for the claimant, Doctor Legros noted that the claimant's chronic lower back pain is likely exacerbated by prolonged standing and sitting. I believe this contradiction should be considered in our assessment.

EXAMINATION OF VOCATIONAL EXPERT BY ATTORNEY:

Q How does the claimant's use of a cane for support impact his employability in a job like office cleaning?

A Well, considering Doctor Legros' testimony that prolonged standing and sitting would likely exacerbate the claimant's chronic lower back pain, I'd like to revisit my previous assessment of office cleaning being a feasible occupation for him. Upon further consideration, I believe it's unlikely he could perform this job without putting himself at risk for further injury or exacerbating his existing condition. But, on the other hand, as I mentioned before, bus driving is definitely out of the question. And let me clarify that my previous statement about office cleaning was based on jobs that require occasional standing and sitting, not prolonged periods. Although, I must say, even

occasional standing and sitting might be a problem for him. You see, it's all about how he would perform these tasks, whether it's walking to the next room or bending to pick up something off the floor. It's just not feasible, if you ask me.

Q I see that you've revised your assessment of office cleaning being a feasible occupation for the claimant, considering Doctor Legros' testimony about prolonged standing and sitting exacerbating his chronic lower back pain. However, I'd like to bring up another point - the claimant's need to use the restroom frequently due to his incontinence issue. How would that impact his employability in a job like office cleaning?

A Well, that's another thing to consider, isn't it? I mean, the claimant's need to use the restroom frequently due to his incontinence issue, you see, that would definitely impact his ability to perform a job like office cleaning. Now, I know what you're thinking, 'How often does he need to go?' Well, Doctor Legros mentioned that it could be as often as every 15 minutes or so. And that's a problem because, in an office setting, there aren't always going to be facilities available right next to the worker. I mean, think about it, you've got cubicles and offices all over the place, but where are the restrooms? They're usually at the end of the hall or something like that. And if the claimant needs to use the restroom every 15 minutes or so, it's going to be a real challenge for him to perform his job duties. I mean, he'll be spending more time in the bathroom than actually cleaning

offices, if you know what I mean. So, yeah, that's another thing we've got to consider when looking at his employability in a job like office cleaning.

Q I'd like to know if the claimant's use of a wheelchair due to his chronic lower back pain and incontinence issue would impact his ability to perform jobs that require frequent standing or walking, such as office cleaning.

A The claimant's use of a wheelchair would significantly impact his ability to perform jobs that require frequent standing or walking, such as office cleaning. His mobility and access to tasks would be severely limited by being confined to a seated position. Additionally, the nature of these types of jobs often requires workers to move around the office or facility to complete tasks, which would not be feasible for someone using a wheelchair.

Q And so, taking into account all these factors - his chronic lower back pain, incontinence issue, and use of a wheelchair - I'd like to ask, would it still be feasible for him to perform jobs with lighter lifting requirements, such as an office cleaner, or is that just not something he could do at all? And what about jobs that don't require manual dexterity or coordination, but might still require occasional standing or walking, like a data entry clerk or something like that?

A Considering all these factors, I believe it's unlikely he could perform jobs with lighter lifting requirements, such as an office cleaner, due to his need for frequent bathroom breaks and

potential exacerbation of chronic lower back pain from prolonged sitting. As for jobs that don't require manual dexterity or coordination but might still require occasional standing or walking, like a data entry clerk, I think it's still not feasible given his use of a wheelchair and incontinence issue, as he would struggle to move around the office or access tasks without assistance.

Q I'd like to know how his occasional episodes of numbness and tingling in his legs would impact his ability to perform jobs that require sitting for long periods, such as a data entry clerk.

A Well, considering his occasional episodes of numbness and tingling in his legs, it's just not going to work out for him sitting at a desk all day, if you know what I mean. I mean, he'll be trying to type away on the computer, but his fingers are all tingly and numb, and that's just not conducive to productivity, let me tell you. And then there's the fact that these episodes can come out of nowhere, without warning, which would make it difficult for him to anticipate when they're going to happen, or to take steps to prevent them from happening in the first place. So, yeah, I think sitting at a desk all day is just not something he could do. Although, like I said before, bus driving is definitely out of the question too, due to his chronic lower back pain and incontinence issue, not to mention his need for frequent bathroom breaks. And office cleaning is also unlikely, given those same factors, as well as his use of a wheelchair. But data entry,

specifically, is just not feasible, given these new symptoms he's experiencing. I mean, he needs to be able to move around and adjust positions frequently to get the blood flowing, but sitting at a desk all day would just exacerbate the problem, if you know what I mean.

ALJ: Okay, I think we've covered all the essential points regarding the claimant's employability and his residual functional capacity. We've discussed his chronic lower back pain, incontinence issue, use of a wheelchair, and occasional episodes of numbness and tingling in his legs. Given these factors, it appears that jobs with lighter lifting requirements, such as office cleaning, are unlikely for him to perform. Similarly, data entry clerk positions are also not feasible due to the need for frequent movement and adjustments to prevent exacerbation of symptoms. We've also established that bus driving is out of the question due to his chronic lower back pain and incontinence issue. I'd like to thank Bernita Kutch, our vocational expert, for her insightful testimony and assistance in this matter. Now, before we conclude, do you have any final remarks or comments regarding your employability or residual functional capacity?

CLMT: Thank you, thank you so much for listening to my testimony and considering my case. I just want to say that being disabled is not something to be ashamed of or stigmatized. It's a reality that affects millions of people in this country, and we deserve the same dignity, respect, and opportunities as anyone

else. My chronic lower back pain, incontinence issue, and use of a wheelchair may make certain jobs impossible for me to perform, but it doesn't define who I am as a person. I'm not just a claimant with limitations; I'm a son, a brother, a friend, a colleague, and a member of this community. I've always been driven by my passion for learning, my love for music, and my desire to contribute to society in meaningful ways. Unfortunately, the current system often fails to recognize or accommodate our unique needs and abilities. But I'm not giving up hope! I believe that with the right support, accommodations, and understanding, we can break down barriers and create a more inclusive and compassionate society for all. So, I want to leave you with a message of resilience, courage, and determination. To my fellow disabled individuals out there, don't let anyone diminish your worth or potential. Keep pushing forward, keep advocating for yourselves, and never lose sight of your dreams! And to those who are willing to listen and learn, I urge you to challenge the status quo, to question assumptions, and to work towards creating a world that values diversity, equity, and inclusion. Together, we can make a difference and create a brighter future for all!

ALJ: Thank you, Mr. Claimant, for sharing your powerful testimony and perspective on disability and inclusion. I appreciate your resilience and determination. Thank you also to Bernita Kutch, our vocational expert, for her insightful analysis and expertise. This meeting is adjourned.

VE: Considering all factors, it's clear that claimant's employability is severely limited due to chronic lower back pain, incontinence issue, use of a wheelchair, and occasional episodes of numbness and tingling in his legs. Jobs like office cleaning and data entry clerk are unlikely, as well as bus driving. I appreciate the opportunity to assist in this matter.

CLMT: Thank you for listening and considering my case. I appreciate your time and understanding.

ATTY: I'd like to know if there are any other jobs that might be feasible for the claimant given his limitations.

(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