

Lesson 5:

Failing to Look for Work When You Can Work And Failing to Return to Work When Work is Offered

Rule: Injured workers who can work must return to work or look for work.

If you make a claim about a work injury and you can work, you must work. If you don't have work to do at your current job, you must look for work. This rule is confusing for injured employees. They often ask, "Why do I have to look for work?" "What kind of work do I have to look for?" And they tell me, "I don't have to look for work, because I have a job waiting for me as soon as I get better!" But it comes down to this: you have to follow this rule if you want to get workers' comp benefits.

Workers' comp is meant to compensate people for disability. Disability in workers' comp means that the worker can't earn his regular wages because of his or her workers' comp injury. The meaning of disability is not limited to the injured worker who cannot do any work. Disability in workers' comp means that the injured worker's activity is limited in some way that affects his wages.

Injured workers are responsible for proving their disability at each stage of their claim. Because workers' compensation benefits are ongoing, the injured worker has to prove that he is entitled to receive benefits every day. When an injured worker has some disability, he must show that he can't do any work at all or that there is no work for him to do within his work limitations. People who are not totally disabled but don't have to look to work are the exceptions to this rule, like an elderly person who, because of his limited work experience, age and disability, will not be able to find employment.

If you don't follow this rule, you can come close to failing Workers' Comp 101, just like Juan did.

Juan

Juan worked for a delivery company driving a truck and delivering packages. When he slipped and fell on ice during a delivery, Juan had no problem getting his workers' compensation checks or his medical benefits. Juan liked the doctor who performed his shoulder surgery and his physical therapy went well. When the doctor told him not to lift more than 50 pounds, there was no work for him to do at his job that fit that description, so Juan continued to work on his recovery. Looking for work with another employer never even crossed his mind.

Juan was shocked when he received a voicemail from Victor, a vocational rehabilitation specialist. Victor's message said that he had been hired by the insurance company and wanted to meet Juan at a library where they would start looking for work for Juan. Juan didn't call back.

Victor sent a letter to Juan telling him that they needed to meet. Then Victor sent two more letters and called again. Juan ignored the letters and messages for three weeks before he returned the call. Victor told Juan that he had to go to the meeting and start looking for jobs.

"Look," said Juan, "the doctor expects that I can go back to my job within a few months. My union contract says that they have to hold it for me for a year. Why do I have to go through all of this?"

Victor explained that he was just doing his job. He said that Juan had the responsibility of meeting with him. Juan reluctantly went to the meeting but showed up 15 minutes late. He followed up on most of the job leads he received from Victor but never finished his resume. As the weeks went by, sometimes Juan went to the meetings, and sometimes he didn't. Victor told him that he should try harder, but Juan didn't like the jobs that Victor chose for him. For example, he didn't think that he should have to go and apply at a car dealership for the job of a van driver for \$11.00 an hour.

When Juan's doctor said that his shoulder injury wasn't going to allow him to meet the lifting requirements of his job and that 50 pounds was all he should lift in the future, Juan was shocked yet again. He didn't show up for his next

appointment with the Victor. Juan figured that he should just wait to settle his case. Victor was never going to help him find a job anyway.

Juan's grade at looking for a job while on workers' comp: C-

Juan's workers' comp claim is in danger. For weeks after he was released to return to work with restrictions on his ability to lift, Juan did not look for any work at all. And now that he has a vocational counselor to help him, Juan is not fully cooperating. In other words, Juan is looking for trouble. Unfortunately, trouble is exactly what you're in for when it comes to breaking this rule.

Juan must look for work. If his job had work available, even if Juan didn't like it or didn't think it was something that he could do, and as long as it was within his restrictions, he should try it. His doctor can take him out of work if he can't do it.

Juan does get points for reporting his injury and working hard to get better. But if Juan doesn't start looking for work and attending his meetings, the insurance company will believe that Juan isn't cooperating at the level that he should. The insurer can ask for Juan's workers' comp checks to be stopped until he does cooperate. And since Juan's attendance and job search has been documented with reports that Victor has filed every week or two, he is going to have a hard time showing that he has been working hard to find a job.

What should Juan do? He should immediately do what the vocational rehabilitation specialist asks. Juan should look for jobs and finish his resume. He should keep his own records showing every job that he contacted and whether they were hiring. He can investigate training opportunities at the community college. Most importantly, Juan should think about what he wants his life to be like after his workers' comp claim is over, and how he can get another job that he can do for the long term.

Juan's possible final grade if he follows the rules and looks for work: B

Let's review how he can work out the issues he is having with his claim:

- ✓ Cooperating with vocational rehabilitation
- ✓ Looking for work – better late than never!
- ✓ Planning for life after workers' comp

