

# Winning Your Disability Case in Three Words... Frequency, Severity, and Duration

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In a disability case, almost any symptom or limitation can be disabling; but to determine whether they preclude work, the relevant questions are how frequent, how severe, and how long do they last?

A critical point I make to people who contact me everyday is that their disability case is won or lost based on symptoms/limitations and not on their diagnosis! Clearly, under federal law, a disability claimant has to have a legitimately diagnosed physical and/or psychological disorder to even allege disability, but this is only the beginning of the analysis.

Disability cases are almost always won or lost based on the quality (documentation) of your medical records and the subsequent opinions rendered by your treating physicians regarding your ability to sustain full-time employment. The documentation of symptoms and limitations in your medical records is critical as it provides tremendous credibility to and an understanding as to why your doctors' have concluded you are unable to work.

Once a diagnosis is established, the disability inquiry immediately shifts to why you are unable to work due to the symptoms and limitations that result from the diagnosis. I tell my clients that of the total time spent in a disability hearing before a federal judge, 5% is spent on the diagnosis and 95% is spent determining the frequency, severity and duration of symptoms and limitations, and whether they prevent all work. Ignoring this fact places the success of your claim in great peril...don't ever forget this!

A common problem disability claimants frequently make is having "tunnel vision" and focusing solely on their diagnosis, as if the fact they have been diagnosed with a disorder automatically confirms they are disabled and entitled to benefits. This is especially true of people suffering from chronic pain and fatigue disorders such as fibromyalgia and chronic fatigue syndrome. I believe this is true because these folks have almost universally been sent on an "odyssey" by the medical community, simply to obtain a diagnosis.

Never forget that obtaining a physical and/or psychological diagnosis is the very beginning, and not the end of your disability case.

Thus, the question becomes, "How do I document the frequency, severity and duration of my symptoms and limitations?"

**Tip #1: What should I be Documenting?** Simply put, whatever it is that prevents you from working. For example, let's use chronic pain and fatigue. It is critical you distinguish why the pain and fatigue is different from what an average person may experience. If I say "I am in pain and fatigued," that does not tell you much. Why? From time to time we all experience some degree of pain and/or fatigue. But if you tell your doctor "I am unable to function as I experience severe daily pain and exhausting fatigue lasting most of the day without relief," or "I am unable to function 2 days per week due to migraine headaches that last all day even with medication," now you've given the doctor and a judge an idea of why your symptoms are so debilitating.

**Tip #2: Obtain a Copy of your Medical Records from your Treating Physicians**

After you have followed Tip #1, the next question becomes, "Did the doctor write down what I just told him/her?"

I am often surprised at how many people applying for disability benefits have never seen their medical records. Obtaining a copy of your current treating physician's records is important because it will give you an idea of whether your symptoms and limitations are being recorded. You may be surprised to find that your complaints do not appear in the records or if they do, the doctor's notes are totally illegible! Illegible handwriting is a real problem, because judges who decide your claim are just like you and I, they don't (and generally won't) try too hard to decipher what the notes say.

If you are not satisfied with the documentation, address the issue tactfully with your doctor and explain the importance of documentation to your disability case. If they are receptive, I suggest you give them a copy of this article for reference.

**Tip #3: Keep A Short Diary of Your Symptoms and Limitations before your next Visit to the Doctor**

Whether you know it or not, your daily lives tell a compelling story about your inability to work. But how do you remember the frequency, severity and duration of your symptoms especially if you can't spell your name at times!

I advise clients to keep a short and simple diary one week before their next visit with their doctor. For simplicity sake, the entries should short and not detailed (otherwise you will not do it). On a day when you were unable to get out of bed due to pain or fatigue, document it. Or document when you slept for only three hours the night before and then took a couple of naps the next day. Or document the migraine headache that lasted for two days in spite of medication.

Then, on your next doctor visit, when he/she asks "How are you doing?" you will have a laundry list of symptoms and limitations rather than giving them a blank stare!

Of course, winning your disability case is more complicated than this article has the time for; however, following these tips will significantly increase your odds of winning. Scott E. Davis is a social security disability attorney in Phoenix, Arizona. Mr. Davis represents clients throughout the United States. Although Mr. Davis has experience representing clients with a broad spectrum of physical and/or psychological disorders, the majority of his disability practice is devoted to representing individuals with chronic pain and chronic fatigue disorders. In almost every case, a fee is charged only if his client obtains benefits. Mr. Davis invites your questions and inquiries regarding representation via telephone (602) 482-4300, or email: [info@scottdavispc.com](mailto:info@scottdavispc.com)