



Identifying Examiner-Related Threats to Validity in the Forensic Assessment of Disability



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ABSTRACT

As the number of disability claims increases, so does the demand for forensic disability evaluations. However, an examiner's lack of knowledge and understanding of the nature and nuances of disability evaluations can threaten the validity of these evaluations. Although many threats to validity are outside the control of the examiner, this article identifies eight examiner-related threats to validity in terms of conceptual errors, errors in data collection, and inferential errors. Following this, six suggestions for reducing such threats are presented.

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In the past decade, there has been a sharp increase in claims for disability benefits (Ohlemacher, 2013). This may be due to a number of factors including the aging of the baby boomer generation, economic downturns, and large numbers of military and civilian personnel returning from service in Iraq and Afghanistan. With this upsurge in claims has come an increasing demand for independent evaluations in disputed claims for benefits. Many psychologists who have not previously performed forensic disability evaluations are being approached about conducting these evaluations. Despite being trained and experienced in conducting other types of evaluations, not all psychologists are familiar with the specific demands and nuances of forensic disability evaluations. Misconceptions about the nature and purpose of these evaluations, errors in data collection, and the use of flawed reasoning in interpretation can result in evaluation outcomes that are questionably valid.

Validity has been defined as an “overall evaluative judgment of the degree to which empirical evidence and theoretical rationales support the adequacy and appropriateness of interpretations and actions on the basis of test scores or other modes of assessment” (Messick, 1995, p. 741). The extent to which a disability evaluation yields a result that accurately depicts the examinee's condition relative to his work capacity is the benchmark of its validity. Many aspects of validity are outside of the control of the examiner. For example, the examinee may intentionally misrepresent her condition, give false information about his history, or put in less than a full effort during testing. However, other factors affecting validity are directly related to the examiner. Many of these threats to validity do not come from carelessness, but from a lack of understanding of the unique nature of forensic disability evaluations. This article will identify eight examiner-related threats to validity categorized in terms of conceptual errors, data collection errors, and

inferential errors, and then offer suggestions for overcoming these challenges.

Conceptual Errors

Approaching the evaluation as a clinical rather than a forensic evaluation.

Some examiners, unfamiliar with disability evaluations, incorrectly assume that such evaluations do not differ substantially from typical clinical evaluations. The examiner conducts a standard clinical assessment, uses testing in the form of clinical self-report measures, notes the patient's complaints, compares these complaints to standard diagnostic criteria, reports a diagnostic impression, and concludes that by virtue of this, the patient is “disabled”. Unfortunately, this approach is fraught with problems.

Disability evaluations involving disputed benefits are forensic rather than clinical in nature and differ from clinical evaluations in some important ways, including the relative emphasis on functional capacity versus diagnosis, the role of context, and the attribution of causality. Forensic disability evaluations require comparing the examinee's presentation and circumstances to a legal standard defined by contract, statute, or administrative rulings. Heilbrun (2001) listed ten differences between forensic and therapeutic assessment, many of which are directly applicable to disability assessments. Forensic disability evaluations require an objective stance, the rejection of the presumption that the examinee's self-report is reliable, the inclusion of multiple sources of data, and an understanding of the relevant legal standard. In addition, disability evaluations emphasize functional capacity over diagnosis, and an understanding of the examinee's functional capacity in relation to a specific context (Piechowski, 2013). In contrast, the purpose of a clinical evaluation is to obtain data relevant to the examinee's diagnosis and

treatment. Clinical evaluations put more emphasis on the examinee's self-report and the assumed veracity of the examinee's statements. Corroborating data from other sources is seldom sought. There is no attempt to tie the findings of the evaluation to a legal standard, which is typically irrelevant to the purpose of the clinical evaluation. When this approach is applied to a disability evaluation the resulting data, no matter how interesting from a clinical perspective, is usually insufficient to address the relevant psycho-legal issues.

The assessment of disability requires establishing the existence of a condition and identifying the associated symptoms and manifestations that are present in the examinee. The examinee's specific job duties must be determined and translated into measurable functional capacities, so that the examiner can assess the relationship between the examinee's psychological condition and symptoms, and his or her capacity to perform the relevant occupational duties. These links between condition, symptoms, functional capacity, and occupational duties must be clearly established and logically connected.

Failing to understand disability as a legal construct

The term *disability* is used in a number of different contexts. In some cases, disability is used in a generic clinical sense, indicating some compromise in functioning has resulted from an individual's mental health condition. There is no universally agreed-upon criterion for the degree of compromise necessary for this designation. For example, a clinician might describe a patient as having "disabling depression"—which could mean anything from the patient having some decrement in the performance of life activities to total incapacitation.

However, "disability" used in the context of a forensic evaluation has a specific legal definition. The relevant legal definition is determined by the specific policy, contract, or program under which the claimant has applied for benefits, such as private disability insurance, public and private sector employee benefits, federal entitlement programs, or worker's compensation. Each source of benefits is controlled by a different set of laws, statutes, and regulations. To be eligible for benefits the claimant must meet the specific definition of disability as determined by the policy or program under which benefits are sought. For example, individual disability insurance is purchased by an individual to provide monetary benefits if an illness or injury prevents him or her from being able to work or to work at full capacity. Although individual policies differ, most define disability as involving a claimant's inability to perform the substantial and material duties of his or her occupation due to sickness or injury (Piechowski, 2011). In contrast, Social Security Disability Insurance (SSDI) requires that the claimant must have a severe disability (or combination of disabilities) that has lasted, or is expected to last, at least 12 months or result in death, and which prevents the claimant from working at a "substantial gainful activity" level (Social Security Act).

Failure to appreciate these distinctions, either by using the term "disability" in a generic sense, or by applying an incorrect legal definition to a case (e.g. assuming that the SSDI definition is applicable to an individual disability examination) compromises the validity of the evaluation. The examiner's conclusions, especially if they involve labeling the examinee as "disabled" or "not disabled", will be faulty if such conclusions are based on comparison to an incorrect standard or to no recognized standard at all. It should also be understood that the determination of disability (i.e. the legal determination of the claimant's eligibility for disability benefits) is an ultimate issue question and not based solely on a clinical assessment of the examinee's condition. Because of this, an examiner should exercise caution when using the term "disability" in a report, as it conveys a legal determination rather than a description of the examinee's condition.

Overemphasis on diagnostic issues rather than functional capacity

Some examiners incorrectly assume that a disability evaluation rests entirely on establishing or debunking the existence of a particular

diagnosis. Although the presence of a condition is a required element of disability, diagnosis alone is insufficient. It is important to understand that "disability" is conceptualized in relation to a specific context, an interaction of "person" variables and "situation" variables. These variables include the individual's clinical condition and his or her functional capacity in a given situation in light of this condition. Functional capacity is distinct from diagnosis and refers to what an individual can do or accomplish (Grisso, 2003). Thus, the fact that the examinee meets the diagnostic criteria of a mental disorder does not necessarily mean he or she meets the legal definition of disability, since functional capacity cannot be inferred from the diagnosis itself. As noted by Gold and Shuman (2009), the presence of a disorder does not necessarily imply significant or specific functional impairment. There are two reasons for this. First, there are very few mental disorders that preclude all types of functioning. Second, because there is considerable variability with respect to symptom presentation, premorbid capacity, and situational demands, two individuals with the same diagnosis might function quite differently. Regardless of the examinee's condition, greater attention should be paid to describing functioning than to assigning diagnostic labels. It is essential that the examiner directly observe and assess the examinee's functional abilities and not make assumptions about work capacity based solely on diagnosis or symptoms (Piechowski, 2013).

It is important to identify the key functional abilities related to the examinee's occupation. This can be accomplished by inspecting the examinee's job description and related information to determine the functional abilities necessary to perform the core duties of the examinee's job. In terms of disabilities related to mental health issues, functional abilities can be divided into three broad domains: the *cognitive domain* which includes functions such as concentration, memory, comprehension, expression, processing, and problem solving; the *interpersonal domain* which involves the ability to engage in appropriate interactions with co-workers, supervisors, and the public; and the *emotional domain* which focuses on functions such as stress tolerance, emotional control, mood stability, and judgment (Piechowski, 2013).

Lack of understanding of specific job demands

In the case of a disability evaluation, the examinee's functional capacity must be considered in light of the demands of his or her job. It is possible for two individuals to manifest the same clinical condition and the same functional impairments, but have differing outcomes in terms of a determination of disability due to the fact that not all functional impairments are relevant to all occupations. For example, a person with very limited vision might be able to work as a writer but unable to work as an airline pilot because the functional impairment related to vision would not interfere significantly with the work of a writer while it would interfere substantially with the work of an airline pilot.

Every job has a distinctive set of core and peripheral occupational duties. *Core duties*, typically listed in an employee's job description, are so vital to the performance of the job that, if they are not performed, the very nature of the job would significantly change. *Peripheral duties*, in contrast, are duties that may be performed in the course of job, but are not essential. Peripheral duties could be changed or eliminated without altering the meaning of the job itself.

Identifying and assessing the relevant functional abilities is a central component of a disability evaluation. By examining the job description and related information, the examiner can determine the functional abilities required to perform the core job duties in question. Without a clear understanding of the examinee's job duties, no valid conclusions about the examinee's work capacity can be reached. The examiner should be provided with the examinee's official job description or, if none is available, an unambiguous and detailed listing of the examinee's job duties and responsibilities. At least one court has construed the failure to provide an examiner with this information as an instance of bad faith dealings on the part of an insurance company (Hangarter v. Paul Revere Life Ins. Co., 2002).

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