

II. Refereed Papers

Disability at Work and the Performance Paradox

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Abstract

Accommodation and performance of disabled employees is of increasing concern to employers. Most research suggests that performance ratings for disabled and non-disabled employees are similar, yet employers still cling to concerns about function. These employer beliefs are often attributed to stereotyping. While stereotyping explains some of the concern, it may be that difficult experiences or actual performance differences also play a role. This research looks specifically at difficult accommodation cases, asking: what performance problems arise in disability cases, and how do they affect accommodation and the treatment of disabled employees? Qualitative, field research, triangulating data from 72 arbitration cases, 23 interviews and other documentation reveals problems in four areas: absenteeism, disciplinary history, peer conflict and task function.

Introduction

Accommodating disabled employees is of increasing concern to employers as they attempt to implement the evolving interpretation of human rights legislation (for example, the Canadian Charter of Rights and Freedoms and the Americans with Disabilities Act). The duty to accommodate to the point of undue hardship means that illness and injury not only impact the workplace

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while employees are off work for recovery but also affect operations when they return.

An area of particular concern to employers is productivity once the employee is back in the workplace. Do disabled employees function as well as nondisabled employees? Field studies that have assessed return to work (RTW) function have generally indicated that disabled employees compare favorably to nondisabled employees in the areas of productivity and overall performance (Adams-Shollenberger and Mitchell 1996; Colella 1994; Greenwood and Johnson 1987; Lee and Newman 1995). Experimental studies that rely on simulated performances also show few significant differences between ratings for disabled and nondisabled employees (Colella and Varma 1999, 2001; Colella, DeNisi, and Varma 1998; Czajka and DeNisi 1988).

Yet employers still cling to concerns about disabled employee performance (Braddock and Bachelder 1994; Greenwood, Schriener, and Johnson 1991). Research attempting to understand this phenomenon has focused on the idea that performance concerns are based on disability stereotypes. Stereotypes influence performance expectations for an employee, as well as how that individual is treated in the workplace (Colella and Varma 1999).

While disability stereotyping explains some of the persistence in employer beliefs, it is also possible that difficult experiences or performance differences also play a role. It may be that performance differences exist in spite of research indicating otherwise because managers are reluctant to give negative feedback to disabled employees (Colella 1994). Another possibility is that studies evaluating performance ratings capture new hires or reintegrations that have worked well, at least well enough for employment to continue for the evaluation period (see, for example, Adams-Schollenberger and Mitchell 1996). A third possibility is that the types of disabilities studied may limit results. For example, research has indicated that certain psychiatric conditions have unique negative effects on workplace performance (Adler, McLaughlin, and Rogers et al. 2006; Banks, Charleston, Grossi, and Mank 2001).

We know that there are many occasions when integration of disabled employees does not work (Butler, Johnson, and Baldwin 1995). So perhaps we can learn something new about the persistence of employer belief systems and about the way performance and disability interact by carefully examining difficult cases. This approach may also reveal underlying issues that experimental research is not designed to accommodate, such as the impact of prior workplace interaction. Finally, a qualitative, exploratory approach may capture the impact of unstable conditions such as depression or chronic pain, which can vary an employee's abilities over time.

The objective of this research, then, is to gain a broader understanding of the interaction between performance and disability. What performance

problems arise from disability? How do these performance problems affect accommodation and the treatment of disabled employees? The following pages describe a field study that uses grounded theory to analyze arbitration cases, in-depth interviews, and other supporting documentation. The results are presented in four sections reflecting the major themes that emerged: absenteeism, disciplinary record, peer conflict, and task function. The paper concludes by suggesting some revisions to the dominant model of disability and performance (Stone and Colella 1996).

Method

Arbitration cases were specifically chosen as the source of historical and observational data for this study because they provide substantial detail regarding difficult or failed accommodations. They are also accurate and unobtrusive, having been vetted by a neutral arbitrator after extensive hearings. Performance records as well as testimony from the grievor, employer, physicians, occupational health practitioners, and other relevant parties are recorded in the cases. (See Appendix A for a complete list of cases studied.)

The cases were selected from Quicklaw databases for three Canadian jurisdictions (Alberta, Ontario, and British Columbia). Only cases where disability accommodation was a principle cause of the grievance were included. The Alberta sample encompassed all 31 cases reported between January 1996 and June 2002. Ten of a possible 44 cases from the Ontario jurisdiction, reported between January 2001 and June 2002, were then randomly selected and analyzed by two independent researchers. Another 9 Ontario cases were then purposefully selected for rich descriptive content. A fourth sample of 22 British Columbia cases (from a possible 189 cases reported between 1993 and 2002) was randomly selected to confirm category saturation.¹

Grounded theory techniques of memo-writing, coding, and constant comparison were used to develop preliminary categories. A detailed coding guide was crafted, and the 72 cases were recoded by three auxiliary raters (each rater coding one third of the cases). Just over 1,500 single-spaced pages of documentation were analyzed for 67 grievors.

Twenty-three in-depth interviews were also conducted between January 2002 and September 2003 with managers, union representatives, occupational health workers, and disabled employees who had previously experienced or were currently undertaking a return to work. A semistructured interview protocol was developed using the categories distilled from the arbitration cases as a guide. Participants were asked to identify performance issues that significantly contributed to the outcomes of accommodations. Recalled fact situations and perceptions were recorded and later transcribed. Interviews were completed in person, and lasted from 60 to 180 minutes. Grounded theory methods

were also used to analyze the interview data. The specific objectives were: (a) to seek confirming or disconfirming incidents, (b) to compare researcher perceptions with perceptions of those involved in disability scenarios, and (c) to help develop explanations for consistently observed phenomena.

Results

Four performance issues emerged from analysis of the case and interview data; *absenteeism*, *disciplinary record*, *peer conflict*, and *task performance*. A detailed exploration of each performance problem follows, with case circumstances and interview quotes used to illustrate the findings. Where detail in the cases allowed for coding, simple quantitative techniques provide additional support to the qualitative analysis.

Absenteeism

Absenteeism is the first factor that emerged from the research as (a) a part of the performance picture and (b) of particular concern in disability scenarios. Absenteeism impacted work life for disabled employees in the short term by decreasing the opportunity for a successful RTW and increasing the probability of conflict. The long term impact was an increased likelihood of dismissal. Managers who participated in the interview process perceived absenteeism as a root cause for many of the difficulties associated with disability in the workplace. As one manager explained, when discussing employees who were most likely to have successful accommodation outcomes, “Generally, I mean I hate to be stereotypical, but for the better part it is the better workers, the ones that don’t have an attendance problem, it’s the ones that perform well at work.”

Support for the significance of the absenteeism variable can be found in an examination of frequencies in the arbitration cases. Absenteeism that occurred prior to time off for recovery, and was believed to be *disability related* occurred for 32 of the 76 grievors (42 percent). Absenteeism prior to time off for recovery that was believed to be *unrelated* to the disability occurred for 7 grievors. Once the employee had returned to work, absenteeism continued to occur 57 percent of the time. Finally, absenteeism was the cause cited in 25 of the cases (33 percent) where the disabled employee was ultimately dismissed.² About half of these grievances were denied, meaning that the arbitrator agreed that absenteeism was substantial enough to merit dismissal (see Table 1).

A deeper analysis of the cases and interview data showed that absenteeism surrounding disability impacts the workplace and treatment of the disabled worker in many ways. First, the very nature of a chronic disability such as a back injury or alcoholism means that there are recurring episodes. This in turn implies time off will be required for relapse, recovery, and visits to physicians

TABLE 1

Absenteeism Grievance Resolution	Noted and Upheld	Noted and Denied	Total Grievors	% Noted
Pre-return				
Disability Related	13	19	76	51
Other	4	3	76	9
Post-return				
Disability Related	9	9	44 ^a	41
Other	3	4	44	16
Dismissed for Absenteeism	13	12	76	33

^a 44 of the 76 grievors were returned to work.

or other treatment specialists. This can increase the workload of peers and create scheduling challenges for managers, thereby provoking resentment (see, for example, *Weyerhaeuser Canada Ltd. v. Industrial Wood and Allied Workers of Canada, Local 1-423*, 1999).

An illuminating example of the challenges resulting from recurring absenteeism can be found in *United Nurses of Alberta v. Alberta Children's Hospital* (1997). The grievor, a nurse who was on a permanent part-time shift with modified duties, was told in her performance evaluation that "her limited availability impaired her effectiveness and compromised her contribution to the quality of care and work life on the cluster" (12).

Although her competence as a nurse was recognized, her manager expressed concern about the impact that her RTW was having on staff morale and patient care. It was explained that her part-time schedule limited relationship development with other disciplines and with nursing colleagues. In addition, the grievor frequently requested changes to her assigned shifts for appointments related to her treatment and recovery. This was considered disruptive to patients and staff because of the number of relief people who had to be called in. Scheduling time off and vacations for other staff also became difficult. In the opinion of supervisors, these factors led to erosion of team cohesiveness and harmony (16).

Disruption created by disability-related absenteeism is compounded when the employer initially believes the absenteeism is of a culpable nature (unrelated to the disability) and is later forced to revise that assessment when evidence of disability becomes undeniable (see, for example, *Westmin Resources Ltd. v. National Automobile, Aerospace, Transportation and General Workers Union of Canada, Local 3019*, 1998). As one occupational health manager noted, "It is difficult to draw the line between health and performance issues because they are sometimes intertwined."

Disciplinary Record

The second category that emerged as a significant contributor to evaluations of performance was the disabled employee's disciplinary history. As with absenteeism, the behaviors that prompted the discipline were sometimes a function of the disabling condition itself, and the legitimacy of the grievor's disability status was often questioned. Past discipline influenced the degree of effort put into the search for appropriate accommodation.

A history of discipline occurred in 16 cases or 21 percent of the time. A brief portrait of the cases where a history of discipline was present shows that the employee is more likely to be male (11 cases out of the sixteen) and suffer from a condition that is invisible (15 cases). These employees are also likely to be held responsible in some way for the onset of their disabilities (10 cases). Absenteeism was frequently the primary cause of dismissal (9 cases), although there were also a number of cases where the employee was believed to be scamming (5). "Scamming" describes employees who are suspected of using duty to accommodate legislation to continue to receive disability payments and remain off work, or to override seniority limitations that would otherwise prevent them from moving into preferential job classifications.

As the above portrait suggests, employers do not always believe an employee is truly disabled, and there does appear to be some connection between that disbelief and a history of discipline for these employees. This may be because these managers feel they have been duped in the past by this particular employee and therefore believe it is quite likely the employee is lying about the existence or magnitude of the condition. The disbelief may be compounded by the fact that the disability is not visible or the cause is not easily observed or considered legitimate (such as fibromyalgia, repetitive strain, etc.). It may also occur because the employee is bringing the disability to light at a "convenient time" in order to gain a specific benefit.

Regardless of the legitimacy issue, certain behaviors that are normally the subject of disciplinary action clearly occurred in the cases. Examples of disruptive or discipline-worthy behaviors included absenteeism (*Mill and Timber Products Ltd. v. Industrial Wood and Allied Workers of Canada, Local 1-3567*, 1995), falling asleep on the job (*Slater Steels v. United Steelworkers of America, Local 4752*, 2001), impairment from drugs or alcohol (*Health Employers' Association of British Columbia v. British Columbia Nurses' Union*, 2000; *Nestle Canada Inc. v. United Steelworkers of America*, 2001), and erratic or inappropriate conduct (*London (City) v. Canadian Union of Public Employees, Local 101*, 2001; *Shuswap Lake General Hospital v. British Columbia Nurses' Union*, 2002). These types of behavior were difficult to deal with in the workplace and also created concern for the safety of the public or peers.

As noted above, the behaviors that occurred in these cases were often determined to be a result of the disabling conditions themselves. The behaviors were believed to be caused by the disability in eleven of the sixteen cases. The following quote illustrates this common theme and highlights the difficulty employers have distinguishing between disability-based behaviors and choice-based behaviors: “Although the employee knew what he was doing was wrong, he was not able to control his behavior, without help” (*Employers Health Association of British Columbia v. British Columbia Nurses’ Union*, 2000, 10).

It should also be noted that even if the employer accepts the legitimacy of the disability, and does not blame the employee for onset, there may be blame assigned for a disruptive behavior that the employer believes could have been avoided if the employee just tried a little harder (see, for example, *Niagara Structural Steel v. United Steelworkers of America, Local 7012*, 2001). Employees in the disciplinary cases were assumed to have a choice about most disability-based behaviors, and they were expected to control the impact of those behaviors on the workplace. If they were unable to, blame or culpability was assigned, resulting in disciplinary action.

Peer Conflict

The third performance-related concept that was prominent in both the interviews and the arbitration cases was the existence of conflict between the disabled employee and co-workers or managers. The data suggests first, that disability may be the trigger for conflict in some circumstances; second, that conflict may be a contributing factor to development of secondary psychological disabilities; and third, the disabled employee’s response to the conflict may influence the employer’s actions. If the employee’s behaviors breach organizational norms, the employer may claim they are unable to accommodate (that is, they have passed the legal threshold of “undue hardship”) and the disability is then used as an excuse to discharge a “difficult” employee.

Variables in the arbitration cases that were used to assess the quality of workplace relationships included poor co-worker relations prior to disability (considered a major or minor factor for 10.5 percent of the seventy-six grievors), poor co-worker relations after returning to work (occurring for 16 percent of all grievors, or 27 percent of the forty-four who actually returned to work), and a history of grievor complaints against others within the organization or about working conditions (8 percent of the grievors). Positive co-worker perceptions of the disabled employees were also evaluated. Positive comments were made in only three cases and in all were considered a minor factor in the outcome of the arbitration.

In the interview process few managers remarked on the quality of the peer relationships for disabled employees. However, the disabled employees

themselves, union representatives, and occupational health workers were more willing to comment on the impact of workplace interaction. The following quotes provide support for the thesis that poor workplace relationships may contribute to unsuccessful reintegrations:

The ones we've had a lot of difficulty with, it is quite often people who caused a lot of trouble. There has already been a problem where they were before; interpersonal problems, problems with their managers or whatever. [Union Representative]

If you always got along with the staff and worked as a team then it's easier than if you are outspoken or if you've been maybe a slacker or, you know—some people have an abrasive nature. [Accommodated Employee]

The *Sault Area Hospitals v. Ontario Public Service Employees Union, Local 620* (2001) case illustrates the connection between disabled employee behaviors and employer responses. It is particularly instructive because it allows comparisons to be made between the two disabled employees who are at the center of the dispute. In the case, a personal conflict had existed between two lab employees for almost twenty years. The hostility reached a peak when the employees filed harassment complaints against one another. Both employees took disability leave at various points during the dispute. The employer made a number of attempts to adjust scheduling and offer counseling, but no resolution was reached and one of the employees was eventually terminated.

Why was one employee retained while the other was not? Both employees were considered capable of performing job tasks well. Co-workers testified that they felt both were equally responsible for the conflict. Both workers had illnesses leading to absence from work. Both were in the same occupation and had relatively equal seniority.

Six factors appear to contribute to the disparate treatment. First, the discharged employee's (the grievor's) leave was for stress and depression, while her co-worker's leave was due to a stroke. The legitimacy of the grievor's disability was questioned because her physician made any return-to-work program conditional upon not seeing her problematic co-worker. Managers thus felt the grievor's absence was based on resolution of the conflict rather than on a legitimate illness. Second, the grievor filed a harassment claim against a manager in her department (in addition to the co-worker with whom she had the primary dispute). Third, the grievor would not provide a time frame within which she would return to work. Fourth, the grievor requested an offer of severance be made and then refused it when it was supplied. Fifth, the grievor filed a griev-

ance claiming she was being unjustly disciplined because she would have to work additional nights in one of the schedules that had been devised to limit contact between the two employees. Finally, it was noted by the arbitrator as well as a number of witnesses that the grievor “held to the belief that she had been victimized and never accepted any responsibility for the conflict,” while her co-worker was willing to admit she had played a role (*Sault Area Hospitals v. Ontario Public Service Employees Union, Local 620*, 2001, para. 79).

Two specific insights arise from this analysis. First, the case illustrates that conflict itself may be a contributor to the onset of disability. Although managers in the Sault Area Hospitals case questioned the legitimacy of the grievor’s illness, it was accepted that she had experienced significant stress that impacted her well-being. This is further supported in additional case analysis, which showed that in 12 percent of the arbitration cases (with testimony regarding the grievor’s emotional well-being), there was an indication that conflict arising from the reintegration process itself contributed to the development of secondary stress or depression.

The second insight is the importance of the disabled employee’s response to conflict. Filing multiple grievances and being uncooperative in accommodation attempts may elicit organizational retribution.³ In addition, failing to accept responsibility may alienate co-workers as well as managers. The chilling effect of this attitude on the accommodation atmosphere was echoed by a union representative in the interview portion of the study: “The most difficult ones are the people who don’t see themselves as the problem, they don’t see that their attitude is a problem . . . They can’t see anything, it’s always somebody else’s fault.”

Task Function

The final performance problem—task function—yielded some of the most interesting results. In difficult accommodations one of the key reasons employers dismiss disabled employees is because they are not able to perform tasks assigned. However, close analysis of the cases suggests that unreasonable expectations may be contributing to the problem and may result in ongoing discrimination. A perhaps more surprising finding is that there is as much concern with high performers as low performers. Managers, union representatives, and medical practitioners suggested that overly motivated employees are more likely to become disabled and also more likely to suffer re-injury.

In 29 of the 40 (73 percent) arbitration cases where the employee returned to work (and information was available), the employee was unable to perform the tasks assigned, and multiple attempts at accommodating the employee were made. Twenty-seven percent of returning employees required more than four different attempts to accommodate. Multiple attempts were most often required

because (a) the tasks assigned were too difficult for the employee to perform (45 percent), (b) the employee was re-injured after returning to work (20 percent), or (c) there was onset of a secondary illness (8 percent). Workplace factors that contributed to multiple accommodation attempts included challenges in reorganizing workflow on a longer term basis (23 percent) or delays in accessing/constructing necessary equipment (5 percent). Table 2 contains cross-tabulations of accommodation attempts and the rationale for multiple attempts.

It appears that a discrepancy exists between the work the employee is actually capable of performing and the work assigned on modified returns. Yet, in almost all of the cases efforts had been made to determine work capacity for the disabled employee. In 64.3 percent of the cases, work restrictions for the grievor were identified by an expert, and formal functional capacity exams were completed in approximately 37 percent of the cases.

One explanation for the discrepancies may be that functional capacity evaluations are not as accurate as medical practitioners and managers would like to believe. A second reason, which emerged from the data, was that employers and co-workers often expected disabled employees to be fully functional shortly after their return. Because of this belief, modified duties were sometimes shortened or bypassed altogether in order to push employees back into *full* duties:

Some of the walls that get thrown up are by managers. You know, if you can't come to work and give me 100 percent I don't want you. [Manager]

You can't really put people in a position where they can just do part of their work and take their time and be comfortable doing it. They are still, for the most part, required to perform as though they were 100 percent able-bodied. [Union Representative]

TABLE 2
Task Performance

Reasons for Accommodation Attempt	Accommodation Attempts				% of Cases Requiring Multiple Attempts
	1-3 Attempts	4-6 Attempts	6 or More Attempts	Total	
Tasks Too Difficult	10	3	5	18	45
Re-injury	4	1	3	8	20
New Illness/Injury	1	0	2	3	8
Reorganization Problems	4	1	4	9	23
Equipment Access	1	0	1	2	5

Note: 44 employees returned to work, but only 40 cases provided sufficient detail regarding accommodation efforts to allow coding.

A third reason revealed in the interview and arbitration evidence suggested that the disabled employees themselves often made decisions to exceed restrictions. As one employee explained: "I was told not to, but when you have a certain code of work . . ."

The pattern of task performance that persistently emerged during the interview process was a continuum between two groups of employees who were characterized as either the "woe is me's" or the "gung-ho's." Participants were consistent in their descriptions, as one manager stated: "We know it's the old bell curve right? You've got some who put in 200 percent, there is that big bunch in the middle, and there are some over here that just probably aren't quite as motivated." The task performance of employees who were characterized as "woe is me's" was described as exceedingly cautious and a source of frustration for many participants. These were employees who appeared unenthusiastic about returning to work, were uncommunicative, or resisted involvement in the return-to-work plan.

The task performance of employees characterized as overachievers, or "gung-ho," while garnering greater admiration, was not without problems. It was believed that because these employees drive themselves to unusually high levels of performance, they are more likely to become disabled. They were also less likely to recognize their own limitations and, therefore, were more frequently re-injured, turned minor, short-term problems into long term disabilities, or stressed themselves to the point at which they would begin to make poor decisions. Over time, these employees came to be viewed with the same level of frustration as the "woe is me" group, as one manager noted: "There's others that come back on modified return to work and oh god, it's like be careful don't do too much. And that's another dangerous group because they don't want their team members to be doing the work for them."

The *AT Plastics* case provides one example of the long-term impact that self-imposed work standards can have on disability. The grievor was dismissed for engaging in acts of "horseplay" after he had already received a disciplinary warning. It was believed that the grievor was in fact suffering from depression and exhaustion as a result of the extensive overtime he had accepted and that these conditions impaired his judgment and escalated a previously existing impulse control problem (*AT Plastics Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 777*, 1995, 25).

Discussion and Conclusion

Qualitative field research and grounded theory methods of analysis are intended to paint a portrait of a particular phenomenon and allow researchers to build or modify models that can later be used for deductive studies. With

this in mind, the following discussion recommends some modifications to the dominant model of factors affecting treatment of disabled employees (Stone and Colella 1996).

Stone and Colella's (1996) model suggests that peers and managers will categorize individuals according to the type of disability they have (mental, physical, addiction, etc.). Negative stereotypes associated with the disability category are then used to make inferences about the disabled employee's abilities and traits. Peers and managers thus develop a set of primarily negative beliefs (expectancies) regarding a disabled employee's ability to perform. These expectancies may be moderated by positive past experiences with other disabled persons because contact allows information gathering. Stone and Colella (1996) predict that treatment of the disabled employee will be based on the negative expectancies, so that when a disabled employee is perceived as incapable of performing the job they will be less likely to (a) get the job, (b) be included in work activities, (c) be mentored, or (d) be recommended for career opportunities.

Most of the research on disability and performance has been designed based on assumptions implicit in the Stone and Colella model. Researchers have sought to distinguish performance based on stereotyping. Disabled and nondisabled are portrayed as exhibiting equal ability, and evaluations are often limited to task function. Studies also rarely allow for a priori knowledge of the disabled individual. Finally, most studies approach disability as a static state where the disability has existed for a long enough period of time that there is a good understanding of abilities and limitations. Utilizing the results of this research, some adjustments to Stone and Colella's (1996) model can be proposed for RTW scenarios.

First, the model should reflect that disability may have a direct effect on an employee's actual performance. Employees who are newly disabled, or have long-term conditions with variable symptoms, may have increased *absenteeism*, *peer conflict*, and problems with *task function*. They may also have a history of *discipline*, particularly if the disability was undiagnosed for a significant period of time. Thus, the variables of attendance, discipline, and peer relations should be added to task performance as antecedents to actual or perceived performance.

Second, when a disabled worker is known to the organization, it may be that expectancies regarding future performance are as likely to be based on the variables outlined above (positive or negative), as they are to be based on stereotypes associated with the disability type. Third, a disabled employee's *effort* is questioned very quickly when the employee is unable to complete assigned tasks; this occurs for both good past performers and poor past performers. In some cases it is the disabled employee questioning his or her own

effort. In other cases managers and peers are quick to blame the disabled employee for exaggerating symptoms. Disabled employees in the cases used for this study were held responsible for any impact their conditions had on the workplace. It was believed they were simply not trying hard enough to control their conditions. This was even more prevalent if the disability was perceived as self-induced (for example, alcoholism); therefore, so culpability for disability onset or symptom control moderates perceived effort.

Performance expectancies could thus be separated into beliefs about abilities and beliefs about effort (where perceived ability + perceived effort = expected performance). Beliefs about ability may be most impacted by stereotyping or by actual functional decline, whereas beliefs about effort may be linked to work history or responsibility for disability onset/control. If either factor is low, then expectations of performance are correspondingly low.

Finally, the model should reflect that task failure, absenteeism, and disability-related behavior problems have a reflexive effect on actual and expected performance. This feedback loop would explain the paradox that both high and low performers experience poor outcomes. High performers may continue to believe they have the same abilities that existed prior to the onset of disability. Rather than adjusting to reflect the new situation, they believe they simply need to put forth more effort and thus exceed medical restrictions to achieve previous performance levels. Managers and peers also expect success, so physical and psychological support is initially high. When the high performer pushes too far and re-injures, beliefs about abilities and effort are negatively impacted. Eventually, expectations of success decrease and support dwindles. High performers become “accidents waiting to happen.”

Low performers are similarly expected to have the same level of ability that existed prior to diagnosis. However, this group is not expected to perform well because they are not expected to put forth the necessary effort to overcome their disabling conditions. Expectations of failure are met with increased pressure to perform, little support, and disciplinary action. A danger here is that the problematic performance may have been caused by an undiagnosed disability in the first place.

The research presented in this paper is important because it addresses a legal issue that substantially influences the operations of many organizations. It also highlights concerns with some assumptions implicit in the dominant approach to studying workplace disability. The qualitative methods allowed identification of disability and performance factors that are particularly salient in the workplace. Important practical implications were revealed that have not been identified previously, including the challenge of distinguishing between performance and disability issues, the problem of assigning culpability for disability-based behaviors, and risks associated with overachievers. This study

encourages researchers to consider the revised assumptions presented and to conduct further research, both in the field and experimental.

Appendix A

Table of Arbitration Cases

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- Alberta v. Alberta Union of Provincial Employees*, No. 75 (A.G.A.A. 2001).
- AT Plastics Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 777*, No. 135 (A.G.A.A. 1995).
- Bilrite Rubber (1984) Inc. v. United Steelworkers of America, Local 526*, No. 34 (O.L.A.A. 2002).
- British Columbia Public School Employers Assn. v. British Columbia Teachers' Federation*, No. 168 (B.C.C.A.A.A. 2002).
- British Columbia Teachers' Federation v. Union of Teachers' Federation Employees*, No. 115 (B.C.C.A.A.A. 1997).
- Calgary Board of Education v. Canadian Union of Public Employees Local 40*, No. 13 (A.G.A.A. 2001).
- Calgary Herald v. Calgary Printing and Trades Union, Local 1*, No. 123 (A.G.A.A. 1995).
- Calgary Regional Health Authority v. United Nurses of Alberta, Local 112*, No. 24 (A.G.A.A. 2001).
- Canada Post Corporation v. Canadian Union of Postal Workers*, No. 134 (A.G.A.A. 1995).
- Canada Post Corporation v. Canadian Union of Postal Workers*, No. 064 (A.G.A.A. 1997).
- Canada Safeway Ltd. v. United Food and Commercial Workers Union, Local 1518*, No. 100 (B.C.C.A.A.A. 1998).
- Canada Safeway Ltd. v. United Food and Commercial Workers, Local 373A*, No. 100 (A.G.A.A. 1998).
- Canada Safeway Ltd. v. United Food and Commercial Workers, Local 401*, No. 1 (A.G.A.A. 2000).
- Canada Safeway Ltd. v. United Food and Commercial Workers, Local 401*, No. 43 (A.G.A.A. 2000).
- Canada Safeway Ltd. v. United Food and Commercial Workers, Local 401*, No. 75 (A.G.A.A. 2000).
- Canadian Health Care Guild v. Medicine Hat Regional Hospital*, No. 2 (A.G.A.A. 1998).
- Canadian Union of Public Employees (Airline Division) v. Canadian Regional Airlines Ltd.*, 99-056 (A.G.A.A.1999).
- Capital Health Authority v. United Nurses of Alberta, Local 33*, No. 42 (A.G.A.A. 2000).
- Cariboo Memorial Hospital v. British Columbia Nurses' Union*, No. 69 (B.C.C.A.A.A. 1997).
- Communication, Energy and Paperworkers Union, Local 909 v. Chevron Canada Resources*, No. 87 (A.G.A.A. 2000).
- Crossroads Regional Health Authority v. Alberta Union of Provincial Employees*, No. 11 (A.G.A.A. 2002)
- Finning Ltd. v. International Association of Machinists and Aerospace Workers Local, Lodge 99*, 103 (A.G.A.A. 1995).
- Fording Coal Ltd. v. United Steelworkers of America, Local 7884*, No. 94 (B.C.C.A.A.A. 1996).
- Gibraltar Mines Ltd. v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 3018*, No. 291 (B.C.C.A.A.A. 2001).
- Goodyear Canada Inc. v. United Steelworkers of America, Local 628*, No. 59 (A.G.A.A. 1998).
- Government of the Province of Alberta v. The Alberta Union of Provincial Employees*, No. 075 (A.G.A.A. 1996).

- Greater Victoria Hospital Society v. Hospital Employees' Union*, No. 333 (B.C.C.A.A.A. 1998).
- Health Employers' Association of British Columbia on Behalf of Castlegar and District Hospital Society v. British Columbia Nurses' Union*, No. 9 (B.C.C.A.A.A. 1996).
- Health Employers' Association of British Columbia on Behalf of Castlegar and District Hospital Society v. British Columbia Nurses' Union*, No. 9 (B.C.C.A.A.A. 2000).
- Health Employers' Association of British Columbia v. Hospital Employees' Union*, No. 728 (B.C.C.A.A.A. 1997).
- IKO Industries Ltd. v. Communications, Energy and Paperworkers Union of Canada, Local 773*, No. 63 (A.G.A.A. 1999).
- Imperial Oil Ltd. v. Communications, Energy and Paperworkers Union of Canada, Local 777*, No. 102 (A.G.A.A. 2001).
- Loeb Inc. (c.o.b. Loeb Fairwest) v. United Food and Commercial Workers' Union, Local 175*, No. 696 (O.L.A.A. 2001).
- London (City) v. Canadian Union of Public Employees, Local 101*, No. 685 (O.L.A.A. 2001).
- Mackie Automotive v. C.A.W., Local 222*, No. 329 (O.L.A.A. 2001).
- Mainland Sawmills v. Industrial Wood and Allied Workers of Canada, Local 2171*, No. 69 (B.C.C.A.A.A. 2002).
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- Providence Health Care v. Hospital Employee's Union*, No. 135 (B.C.C.A.A.A. 2001).
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- Quintette Operating Corp. and United Steelworkers of America Local 9113*, No. 601 (B.C.C.A.A.A. 1997).
- Red Deer College v. Canadian Union of Public Employees, Local 1445*, No. 4 (A.G.A.A. 2000).
- Royal Alexandra Hospital v. United Nurses of Alberta, Local 33*, No. 44 (A.G.A.A. 1999).
- Sault Area Hospitals v. Ontario Public Service Employees Union, Local 620*, No. 887 (O.L.A.A. 2001).
- Sault Area Hospitals v. Service Employees International Union, Local 268*, No. 225 (O.L.A.A. 1999).
- Shuswap Lake General Hospital v. British Columbia Nurses' Union*, No. 21 (B.C.C.A.A.A. 2002).
- Slater Steels, a Division of Slater Steel Inc. v. United Steelworkers of America, Local 4752*, No. 489 (O.L.A.A. 2001).

- Smoky River Coal Ltd. v. United Steelworkers of America, Local 7621*, No. 68 (A.G.A.A. 1998).
- St. Catharines (City) v. Canadian Union of Public Employees, Local 150*, No. 744 (O.L.A.A. 2001).
- Superior Propane Inc. v. Teamsters International Union, Local 213*, No. 33 (B.C.C.A.A.A. 2001).
- Toronto (City) v. Canadian Union of Public Employees, Local 79*, No. 668 (O.L.A.A. 2001).
- Transalta Utilities Corp. v. Transalta Employees' Association*, No. 84 (A.G.A.A. 1998).
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- United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 488 v. O.J. Pipelines Corp.*, No. 4 (A.G.A.A. 2002).
- United Food and Commercial Workers, Local 401 v. MacDonald's Consolidated Limited*, No. 041 (A.G.A.A. 1995).
- United Nurses of Alberta, Local 95 v. The Alberta Children's Hospital*, No. 034 (A.G.A.A. 1997).
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- VSA Highway Maintenance Ltd. v. British Columbia Government and Service Employees' Union*, No. 115 (B.C.C.A.A.A. 2002).
- Westmin Resources Ltd. v. National Automobile, Aerospace, Transportation and General Workers Union of Canada, Local 3019*, No. 345 (B.C.C.A.A.A. 1998).
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- Woodland Windows Ltd. v. IWA-Canada*, No. 628 (B.C.C.A.A.A. 1997).
- Zochem, a Division of Hudson Bay Mining and Smelting Co. v. Communications Energy and Paperworkers Union of Canada, Local 819*, No. 4 (O.L.A.A. 2001).
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Notes

1. For a table of the arbitration cases used in this analysis, please contact the author.
2. In Canada employers have the right to discharge employees for nonculpable or "innocent" absenteeism. Where attendance at the workplace is a bona fide occupational requirement, the employer is not expected to continue to pay a worker who is incapable of performing that essential element of the job. (*Alcan Smelters and Chemicals Ltd. v. C.A.W. Loc. 2301*, 1996).
3. For further evidence of employer retribution for grievance filing see *O.J. Pipelines* (2002) and Lewin and Peterson (1999).

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