

Sington v. Stokes: Where are we now?

by **Guy Hostetler**

For any professional in the Workers Compensation field and especially those who practice in the Workers Compensation /Vocational Rehabilitation field know; Sington has had a major effect on the practice of Vocational Rehabilitation in Michigan. Frequently cases are disputed and some require a Vocational expert to perform an evaluation and put forth an opinion regarding a claimant's employability and wage earning capacity.

Many, if not all the Magistrates, universally dislike Sington. Michigan Magistrates found interpreting the decision difficult, if not impossible. There were few, if any, real victories here. If a Magistrate did not come right out and say that they disliked the ruling, they would find other ways to beat it. Two of our Magistrates, specifically stated that they would not accept the opinion of a Vocational Rehabilitation Counselor. There are various reasons for this, but foremost, because they feel this is an opinion that is not based on a scientific fact.

Just a quick side bar on this issue; Daubert was a decision handed down by the US Supreme Court indicating that an experts opinion "may be called in to question, if said opinion is not based on scientific fact or to the standards of their profession". There is no scientific way to present an opinion. An opinion is based on information and observation. How many times have two doctors looked at the same patient (even with same diagnostic testing) and had two very different diagnoses.

Sington was then followed by Stokes. Stokes on the surface overturned Sington. Many people try to narrow the scope of this one hundred plus page opinion, to just discuss "discovery". Discovery is a legal term, which attorneys use for gathering information about a case prior to going to court. The Sington Evaluation was deemed part of discovery and thus not allowable. Effectively, that put an end to Sington Evaluations. Stokes also put forth The Appellate Commission's opinion that transferable skills were limited to only the jobs that, that person has done previously. Using this definition would mean that an attorney who has not previously been an Appellate Commissioner, could not do that job. Furthermore, it also means that a person who has done sales of one product could not use those skills to sell a different product.

Recently the Supreme Court has put a stay on Stokes and has asked that an opinion rendered by the Appeals Court, be completed by October of 2006. What does that mean? To be blunt, nobody really knows. It appears that the Supreme Court has struck down the Stokes decision (through The Appeals Court) and that Sington would be back. However, that still leaves us the Magistrates who have significant problems with this decision. Obviously, no one on the Plaintiffs bar liked the Sington decision.

There is still significant confusion in regards to Sington at this time. This is partially reflected in the lower number of Workers Compensation Claim filings in the year 2006. There may be a reduction as much as 40%. What is plain to this counselor; is that nothing will replace Vocational Rehabilitation and Job Placement services.

Vocational Rehabilitation and Job Placement reflect the spirit of the act. Furthermore, while there are always ways to dispute almost any opinion; providing good faith Rehabilitation/Job Placement efforts net you positives in a number of areas. Those areas include possible placement (in the last three months this organization has placed 9 individuals in new jobs. These include placements in Saginaw, Jackson and the Detroit Metropolitan Area.)

If the person isn't cooperative with Vocational Rehabilitation, you have a much firmer base to rest your opinion/case on in regards to the person's employability and ability to earn wages, and/or their cooperation with Vocational Rehabilitation, or, as some may term it, Work Avoidance. It is apparently, the Bureau's policy (possibly unwritten) that if you provide a claimant service, then you must file under 319 not under 301. If and/or how to file a dispute is a decision best left up to the Insurance carrier and/or there attorney.

It has been my overall experience, Mediators and Magistrates are far more likely to listen to a Vocational Rehabilitation Counselor who has actually tried to provide Rehabilitative services, over just a Sington Evaluation.

** Commentary is editorial and not intended or should be used for legal advice.*

