

# Nevada

## Workers' Compensation Law Blog

NEWS & UPDATES ON WORKERS' COMPENSATION LAWS & HELPFUL INFORMATION ON THE CLAIMS PROCESS

## Help! My FCE Is Invalid

*Posted at 10:34 AM on July 29, 2010 by Virginia Hunt*

The FCE (functional capacity evaluation) often serves to let the physician off the hook on trying to please both his patient and the insurer on the issue of work release restrictions. The insurer may be pressuring the doctor to give a full duty work release, while the patient keeps telling his doctor that he does not think he will be able to go back to his pre-injury occupation or employer. When the doctor order a FCE before giving final work restrictions, then his job is easier because he can simply adopt the findings of the independent physical therapist who gives the FCE.

The FCE is a 2-3 hour test given at a physical therapy facility. Generally, the tests consist of lifting, walking on a treadmill, bending, carrying, and doing other physical movements that may or may not have anything to do with the physical activity you actually do at work. The FCE has validity criteria built into the various tests that can supposedly detect when the patient is not giving a full effort.

If you fail enough of the validity criteria and the test comes back invalid, then you run the considerable risk of your doctor no longer believing that you are incapable of returning to your old job. Or, your doctor may tell you that his only option is to return you to work full duty when a FCE is invalid. That is not true, however. Your doctor may instead disregard the FCE results, and based on his own exams of you, may decide that you do have permanent work restrictions. Few doctors are unwilling to override an invalid FCE.

If your doctor gives you a full duty work release following your invalid FCE, then you can expect your benefit checks to stop

immediately. Moreover, if you don't try to go back to work full duty, your employer may terminate you.

The best way to handle this situation is to file an appeal when the insurer stops your benefit checks. Secondly, assuming you have some money left, you will want to pay a different physical therapist to redo your FCE. Expect to pay at least \$600 up front for a repeat FCE. While this is a lot of money for an injured worker, it is essential to obtain a valid FCE showing that you should have work restrictions. Otherwise, you will not be able to convince a hearing officer that your benefits should be reinstated and that your doctor should review the results of the second FCE. Some attorneys will advance the cost of a second FCE if the attorney agrees to take you as a client.

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