

The Essential Guide for Disabled Workers

DISABLED FROM WORK

Seven Things You Must Know About
Social Security Disability to Get the Money
You Need and Benefits You Deserve



THE
DISABILITY GUYS™

BRIAN MITTMAN, ESQ.



EXCLUSIVE READER RESOURCES

Even if you are not ready to hire an attorney, you must properly file your claim for Social Security Disability Insurance Benefits with the Social Security Administration!

*Do you even know how to
fill out the claim form?*

Don't worry, you can download your free copy of The Disability Guys™ cheat sheet. You'll get everything you need to know about how to file a Social Security Disability Insurance claim.

This useful "cheat sheet" explains each section of the online application for Disability Insurance benefits and provides a link to the online form, a video on how to fill it out, and more.

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Disabled Workers*

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BRIAN MITTMAN, ESQ.

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DISCLAIMER: THIS BOOK IS NOT LEGAL ADVICE

This book contains the opinions and ideas of the author. The purpose of this book is to provide you with helpful information about the process of obtaining benefits for work-related injuries when hurt on the job. This book should not be construed as legal advice for your specific claim since each individual claim is unique. Any suggestions in this book should be followed with the advice of appropriate legal counsel.

The information provided has been based on the overall experience of the author and does not guarantee any specific outcome, good or bad, for your individual situation. It is strongly recommended that you seek the direct advice of legal counsel.

New York State and many other State Bars require us to tell you upfront that this book is not legal advice. We are not your lawyer until and unless we enter into a written agreement for us to represent you. Past results do not guarantee future results.

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DEDICATION

I dedicate this book to all workers—everyone that wakes up in the morning, goes to work, and puts in an honest day's work for an honest day's wage. Since I was 14 years old, I have worked, and I personally appreciate what each and every employee means to all types of businesses. This book is designed to help you when you need it since you are there for people like me when I need something!

PART 1

WELCOME

“Thank you Brian Mittman and your staff for their excellent service and professionalism. Our family really appreciates the law firm of Markhoff & Mittman P.C. for the service we received. I highly recommend this law firm to anybody for their social security disability needs. Thank you again!”

—**Benny L.**

WHO SHOULD READ THIS BOOK?

Disability doesn't discriminate! Each year thousands of individuals (neighbors, friends, family, strangers) become too ill or too injured to continue to work. What can they do? They can, and do, apply for Social Security Disability Insurance Benefits. But often, applying is all they do, since the government turns down over 85% of all applications!

While thousands of well-deserving, hard-working Americans successfully navigate through this bureaucratic legal maze each year, many, many more get turned away and give up.

Please don't give up!

I wrote this book with a desire to help you (or the person you're reading this book for) become one of the success stories.

No one thinks that they will wake up one day and no longer have a career, a job, or a way to earn a living, but it happens. Your doctor comes into the room with a gut-wrenching diagnosis, you have a horrific work-related accident, or your medical or mental conditions just overwhelm you. It doesn't matter why, but it happens, and it happens every day.

This book was written for you because when you are lost in the wilderness, having a map to help you find your way is good, but having a knowledgeable local guide is invaluable. The Social Security Disability jungle can be vicious, but it can also be lifesaving if you can find your way through the jungle.

The information in this short book is the exact information I would share with my family or a good friend, so please take some time to read it and learn how to stop wandering in the wilderness of Social Security Disability.

MY PROMISE TO YOU

My promise to you is simple. By reading this short book, you will be better prepared to navigate the world of Social Security Disability Insurance benefits and get the money you deserve and even the medical care you need through Medicare so that you can focus on living your best life.

You will not only know the answers to frequently asked questions but also the “should have asked questions” people don’t tell you about. You will understand the basics of the process, and you will have enough knowledge to make decisions (such as hiring an attorney) in a meaningful way.

I promise you some clear vision on a cloudy day!

“I would like to take this time to thank you for your representation in obtaining my Social Security Benefits. I feel at all times I was treated in a very professional manner and also I was comfortable while at the hearing and confident in the way you presented my case.”

—**James S.**

INTRODUCTION

When the magic words “Social Security” are uttered, people immediately think of a grey-haired senior citizen living in a warm locale, playing cards, golfing, and going to dinner a little too early in the day. People may also think about the annual political infighting to fund Social Security. But no one really understands that the Security part of Social Security means far more than just “retirement” benefits.

Social Security Disability Insurance is a specific program that serves an important role in society by protecting hard-working people from often sudden and unexpected injuries or illnesses that force them to stop working and literally stop making a living.

Unfortunately, most people do not plan for such possibilities. (You can actually buy insurance to

protect against long-term disability and unexpected accidents, but most people don't do that.) And by not planning or understanding what you may need during a time of need, like an unexpected disability, you set yourself up for even more stress and pressure. And that is why I wrote this short book to help you prepare for the reality of dealing with a disability that will impact every aspect of your life.

This sounds pretty heavy, but the reality is that I have been handling these types of legal matters my entire career. In fact, my family has been at the forefront of this type of law since Markhoff & Mittman, PC, The Disability Guys was founded in 1933! And we have literally seen the suddenness of what disability does to individuals and families.

Things got really personal for me on September 11, 2001. Our firm's offices at the time were within blocks of the Twin Towers, and everyone in our office walked out of the "dust cloud" that day. Even years later, as I write this, I work with individuals and first responders suffering health issues to guide them through the types of benefits they deserve.

But the awful impact of disability does not have to come from a one-time horrible event. It literally happens every day. I see heart-wrenching situations where a family's breadwinner is diagnosed with incurable cancer. I see construction workers fall from ladders and unable to get back to work this time—

ending their career. I see a simple “tick bite” turn into debilitating and life-altering fibromyalgia. I have seen a lot and see it every single day!

Disability doesn’t discriminate. It changes your life and your loved ones.

And that is why this book exists today, to help you understand, even just a little, that there is hope. There is a way to get back to a life that you deserve, even if it is not the one you expected.

This book is not a substitute for real legal advice from an attorney who can assess and review the specific facts of your claim. But it is a great place to start. In the following chapters, you will learn about things like:

- The five steps Social Security uses to tell if you are disabled.
- The legal process in Social Security Disability Claims.
- The truth about attorney fees.
- And so much more.

This is knowledge and information that everyone should easily have access to so that they can make better decisions, because the decisions you make will impact your life well into the future.

This short book certainly does not answer all of your questions and may even lead you to asking more questions. But that is the very reason why reading

this book is so important. It will help you begin to ask the right questions, think about your situation, and provide you hope, hope that things can and will work out.

Thank you for taking the time to read this short book, and congratulations on your learning journey. I am sorry you have to learn some of these lessons, but I am grateful you are trusting me with helping you learn.

—**Brian Mittman, Esq.**

“They really care about their clients and listen and answer all your questions. The staff are very knowledgeable about the social security process and guide you every step in the sometimes confusing and cumbersome process. Your calls are answered and returned right away.”

—**Sarah K.**

PART 2

SEVEN THINGS YOU MUST
KNOW TO GET THE MONEY
YOU NEED AND BENEFITS
YOU DESERVE

“Very professional office. I highly recommend this firm for all your professional needs. I just went to a hearing with my mother for her SSD case and their paralegal was very professional and has been in touch with us prior the hearing and answered every question we had with no exception. We felt very comfortable as if we were meeting a family/friend. Thank you to the firm for all you have done for my mother in this time of need when my mother needed assistance in an unfortunate situation.”

—**Edina M.**

FIVE IMPORTANT TRUTHS ABOUT GETTING SOCIAL SECURITY DISABILITY

If you are like most people, this is probably the very first time you have had to deal with a disability that is preventing you from working. One minute, you are living your life, working, and supporting your family, and now, you have to stop working due to your disability. And to make matters worse, you must suddenly reveal your most personal information to some faceless bureaucrats in order to try to receive benefits that you thought you were entitled to. This is beyond stressful. But remember, if you have worked and paid your taxes, you are entitled to receive benefits. This is not a handout, and there are some other truths you must know about.

TRUTH #1

Deciding to file for Social Security Disability is the right thing and a brave thing to do to secure your future. After all, you will receive a monthly money payment and Medicare health insurance. But it also means, unfortunately, spending hours filling out paperwork. It means potentially spending months waiting and filling out more and more forms while you do so, even if they seem to be the same forms over and over. *Truth: Applying for and receiving Social Security Disability Insurance takes time and effort!*

TRUTH #2

It means putting your trust in a Social Security representative who may be very nice and helpful but could still very easily do the wrong thing and mess up your claim. In fact, if you are like most people and go through a series of review levels (more explanation later in this book), then you may get different representatives throughout the process with very different personalities and opinions on whether you are disabled or not. Social Security representatives are human and make mistakes. Murphy's Law says that they will probably make it on your case, so there will be months more of wait time. *Truth: Someone other than you and your doctor will decide if you are disabled!*

TRUTH #3

You are not stupid. The system is incredibly, insanely complicated. You may believe that just because you contact Social Security and do what you are supposed to do that you will get what you are supposed to get. After all, you cannot work, and your doctor says so. Unfortunately, this is not true. Approximately 85% of all the initial claims made for Social Security Disability are denied at the initial level. *Truth: You will likely be denied, but don't be discouraged!*

TRUTH #4

You can handle a claim on your own. In fact, the Social Security Administration has a rather easy-to-navigate application process on its website. Although it is easy to fill out the information (even if it takes a long time), there are many risks to handling the claim on your own. Hiring an attorney who focuses on Social Security Disability can often be a very cost-effective decision in the long run and will help you avoid the pitfalls of not knowing the legal ins and outs of the disability world. *Truth: You can do it on your own, but hiring a professional is always better.*

TRUTH #5

Your claim is only as good as the medical documentation that you provide. Even if it is abundantly clear that you have certain medical illnesses (both mental

and physical) that impair your ability to work, it is often not very clear to the decision-maker that you are disabled. Just because your doctor says the magic word “disabled” does not make you so. The truth is, you must make sure you have the proper medical evidence, that your medical conditions are “worked up,” and that you present the right evidence to prove you are disabled. *Truth: You need good medical proof to win your claim!*

These are just some of the basic truths that we have seen day in and day out and would like to make sure that you understand so that you can make the decision that is best for you.

13 MAJOR MYTHS ABOUT SOCIAL SECURITY DISABILITY

I chose to present 13 major myths because I grew up watching the Friday the 13th horror movies, and the number 13 has stuck in my mind. I would like to make sure that these myths stick in your mind as well. Understanding these myths will help make the decisions that will help you and your family in the future. Chances are, you have a friend, neighbor, or relative who claims to “know something” about Social Security Disability. Of course, now that you are disabled, they want to share that helpful information with you.

There is just one problem. Most of these “stories” are wrong. And what happens when you believe stories that are wrong? You make poor decisions that will cost you money and even your health. That is why right here, right now, we are going to pull back

the covers and dispel the 13 major myths about Social Security Disability. If you hear any of these so-called facts from anyone, you will know just how much consideration to give them (not much).

Social Security Disability Myth #1

Everyone is entitled to Social Security Disability benefits.

Not true.

Social Security is a very complex system with a long list of requirements you will have to meet before you can receive benefits. Do not expect to be entitled to anything until you have checked these requirements and know whether you meet them.

Social Security Disability Myth #2

My neighbor got Social Security Disability, and my condition is worse than hers, so I should get the benefits just as quickly.

Not true.

Unfortunately, every Social Security Disability case is different. Just because your condition seems to be more severe does not mean that you can expect a similar outcome. How quickly cases are dealt with depends on many factors, including your caseworker, their caseload, how well you fill out your paperwork, how good your medical reports are, and so much more.

Social Security Disability Myth #3

Not having an attorney will be more favorable to my case and let me get to a hearing faster since I am doing this by myself.

Not true.

You could win on your own, but having an attorney who understands the Social Security Disability system will help you navigate through the bureaucratic maze faster, avoid costly mistakes, and hopefully have an easier more beneficial experience. Imagine going on an African safari by yourself without a guide. What are your chances of becoming a tiger's dinner?

Social Security Disability Myth #4

I cannot get Social Security Disability benefits because I have a history of drug or alcohol abuse.

Not true.

Again, every case is different. Substance abuse may prevent you from receiving benefits under certain conditions but only if it is a "material factor" and actually causes your disability. Many people may develop addiction-related issues because of their disabilities, not as a cause of their disabilities. A qualified attorney may be able to help you determine whether you will be eligible.

Social Security Disability Myth #5

My doctor says I cannot work, so I should automatically be granted benefits based on what my doctor says.

Not true.

Nothing in the complex Social Security Disability world is “automatic.” You still need to apply, present your case, and go through the system just like everyone else no matter what your doctor says. Your doctor’s opinion will make or break your claim, but it is not the only factor that Social Security Disability looks at when determining whether or not you are disabled.

Social Security Disability Myth #6

I am receiving Workers' Compensation or long-term disability, so I cannot receive Social Security Disability.

Absolutely not true.

You may well be entitled to Social Security Disability as well as other types of benefits based on your inability to work. Even though there are rules about how much someone can get and how different types of programs impact Social Security, you can apply for Social Security Disability if you meet its specific eligibility requirements.

Social Security Disability Myth #7

Since I became disabled, I have tried to return to work, and this will disqualify me from benefits.

Not true.

Whether or not you qualify as having been “out of work” will depend on several factors, including the number of hours you worked, the amount of money you made, and other important factors that are explained later in the book.

Social Security Disability Myth #8

Social Security denies everyone the first time they apply for benefits.

Not true.

While Social Security does deny the super majority of applicants (approximately 85%), denial is by no means automatic and should not be expected. Things like your age, type of work, specific conditions, and other factors can lead to approval. (After all, 15% do get approved!)

Social Security Disability Myth #9

Social Security will deny me a specific number of times before they approve my case.

Not true.

It may seem like there is a method to the Social Security Administrative madness, but there really is

not. They will approve your request for benefits when they are satisfied that you have sufficiently proven your case. There are no quotas as to how many times you need to be denied. Just remember that being denied at one level means you can appeal to the next level until you run out of appeals, which can take a very long time.

Social Security Disability Myth #10

Social Security will never approve your claim based only on your medical condition.

Not true.

Social Security recognizes there are certain medical conditions that are so debilitating that you should be approved based only on the medical. In fact, Social Security has issued a “Blue Book” that lists over 14 body systems and diseases and conditions that will allow you to automatically win your case. (But it is really hard to prove!) In the alternative, Social Security has also set up a “fast-track” type of system for other conditions that they recognize as severe (may lead to death), and therefore, they speed up the process for you. (But it is not automatic!) As of this writing, there are over 200 “compassionate allowance” types of conditions that allow for fast-track processing.

Social Security Disability Myth #11

The best way to appeal a denial is to file a new claim and not wait for a hearing.

Not true.

As mentioned, you can almost always expect to be denied at the initial application phase. An appeal of that denial is the way to go. A second application will not only force you to go through this difficult process again but also actually cause you to lose benefits. The new application will start on the date of the denied application, so all those months before that date will no longer be owed to you!

Social Security Disability Myth #12

If you are approved, you automatically get back pay (past due benefits).

Not true.

We have said it before and will say it again, nothing in the world of Social Security is automatic. Every case is different and will be evaluated on an individual basis, so it is probably best not to take anything for granted before you start. Not everyone will be entitled to retroactive back pay. It all depends on when your disability started, when you filed your claim, when you stopped working, and other factors.

Social Security Disability Myth #13

You can win your disability claim even if you have not been seeing a doctor or you were discharged from treatment.

Not true.

If you are disabled, the Social Security Administration is not going to just take your word for it based on one letter from a doctor. You need to be under the care of a doctor to prove your claim and to prove your inability to work. We often see doctors tell somebody that they are disabled and do not need to come back to see them. That is not going to help your case. You need some type of active, ongoing monitoring or treatment in order to succeed.

These 13 myths are super important for you to understand so that you can make the right decisions for yourself. The “cardinal rule” to know is that EVERY claim is different, and each claim is a unique person with their own challenges and issues. And that is the ultimate story you must be able to tell the Social Security Administration to get the benefits you deserve. Read on for more useful knowledge to make better decisions.

A BRIEF HISTORY OF SOCIAL SECURITY DISABILITY INSURANCE

Most people think that Social Security is just for retired “old” people, those monthly payments for the over-65 set. But “Old Age and Retirement Benefits” represent only one part of the entire program that the Social Security Administration is responsible for running.

The Social Security Act (the actual legal statute) has a range of different programs to help people in different circumstances. Yes, the most common is the monthly payments known as Old Age or Retirement Benefits. These have been around since the very beginning of Social Security when it was passed under President Franklin D. Roosevelt’s administration during the Great Depression as part of the New Deal. In fact, the whole point of the Act, at the time, was to get people who had reached

retirement age the security of a regular income to live on. Hence, the name, Social Security.

Many years after the Old Age Program was implemented, Congress passed the Social Security Disability Benefits Act (Title II) and the Supplemental Security Income Act (Title XVI). These programs were designed to provide similar “Social Security” for people who have become disabled and unable to continue to work in a gainful capacity. The Social Security Disability Insurance (SSDI) program, which we are talking about in this book, is based on an individual worker paying into the system, just like in the Old Age Benefits program.

The difference, however, is that instead of waiting until retirement age, the individual worker has become disabled due to injury or illness and cannot continue working until their normal retirement age. Hence, the need for some type of income security! (Note: Supplemental Security Income (SSI) and Title XVI are payments for individuals based upon disability plus an assessment of their financial need. It is a welfare-style disability benefit.)

Where does the money come from? The same place your retirement payment will come from, which is payroll taxes that you and your employer have paid. One of the most common comments we hear from people is that they do not want to take a government handout. I cannot emphasize enough that Social

Security Disability Benefits are not a government handout. As mentioned, to receive either Old Age Benefits or Social Security Disability Insurance Benefits, you must have had to pay into the system. It is similar to paying a monthly premium for an insurance policy, and it is now time for you to cash in on that policy because of some condition or incident.

When you look at your paycheck and groan that such a large portion of your income is going to FICA (which stands for the Federal Insurance Contributions Act), now you will know that the money is actually going to fund Social Security in general and your future payments when you are ready or in need. The initial point of having workers pay into Social Security when they were young and working was so that money would be there decades later, when they retired, to provide them with a guaranteed minimum income. But, 20 years later in 1956, the U.S. Congress decided that retired people were not the only U.S. citizens who needed a guarantee of financial security. So, they passed the Social Security Disability Insurance law.

So why is it so hard to qualify for Social Security Disability Insurance Benefits?

Since its inception, the numbers and types of people who have become eligible for the program have only grown as the population has grown and often aged. However, the original intention of Social

Security Disability Insurance remains the same, to provide cash benefits to those primarily unable to continue to work due to disabilities. This should seem simple enough.

However, the definition of what constitutes a disability is very strict because the agency is making sure that only people who should truly be entitled to the benefits are receiving them. This has resulted in a very real need for individuals who are applying for benefits to make sure that they cross their t's and dot their i's.

While this has only been a quick review of the history and purpose behind the program, it is necessary so that you can better understand what we will be discussing in the following pages, such as “why the system is so complicated” and “what you need to do in order to present your case and obtain the benefits that you deserve.” If you take anything away from this history lesson, remember, this is a program that you have paid for, and it is not a free ride.

THE FIVE STEPS THAT SOCIAL SECURITY USES EVERY TIME TO TELL IF YOU ARE DISABLED

How exactly does the Social Security Administration (SSA) determine that you are disabled, and therefore, entitled to benefits?

Just because you and your doctor tell them you are disabled does not mean they will believe you. In fact, 85% of first-time applicants get denied! Social Security is a giant agency that is responsible, in one way or another, for every single working person or former working person in the U.S.A. So, as you might imagine, they just don't give money to anybody who asks for it.

To receive Social Security Disability Benefits, you will need to prove your claim that you are, in fact, "disabled," and therefore, entitled to the benefits. In any legal proceeding, you must make sure you understand the words in the actual law. The word

“disability” in the Social Security law has a very specific meaning.

The Oxford English Dictionary (OED) defines the everyday use of the word **disability** as:

A physical or mental condition that limits a person’s movements, senses or activities.

(<https://languages.oup.com/google-dictionary-en/>)

But the Social Security Act (the law) defines **disability** as:

The inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

(§404.1505 https://www.ssa.gov/OP_Home/cfr20/404/404-1505.htm)

You should be able to now understand that what you think something means in everyday language can, and does, mean something much different when there is a specific legal definition.

It is this legal definition that must be proven in court. So even if you are disabled in the everyday sense, are you disabled for Social Security purposes? How will the Social Security Administration make this decision?

The good news is that the SSA has created a “simple” five-step sequential evaluation. This just means that there are five questions they will ask at every level, and if answered correctly, you win. The trier of fact needs to go through five specific steps to determine if you are eligible for benefits. Finding the answer to each of the five questions before determining whether to move on to the next one is the only way to win your claim. (Note: There is a special exception at Step 3 that is very helpful to all applicants.) And the five-step process is applied at every level of appeal (initial application, reconsideration, and hearing levels).

STEP #1

Are you substantially and gainfully employed?

Substantially and gainfully employed is a legal term, and it is just a way of asking whether you have a job or can do some type of work. You are considered “gainfully employed” if you earn over \$1,350.00 per month as of 2022. (Note: This changes every year.) So, based on earnings alone, you may not be eligible.

However, “gainful” work activity may also include work performed for pay or profit, work of a nature generally performed for pay or profit, and work intended for profit whether or not there is a profit realized.

“Substantial” has also been defined as involving doing significant physical or mental activities or a combination of both. So, at Step #1 of the evaluation, the trier of facts will need to determine if you are **substantially and gainfully employed**. If you are found to not be substantially and gainfully employed, then you move on to Step #2.

STEP #2

Is your medical impairment severe? Just what is “severe?” Any impairment or injury that is serious enough to interfere with your basic work-related activities (and even activities of daily living) is considered “severe” in the eyes of the Social Security Administrative. For example, if after an injury you are unable to continue to do the same things at work that you had done before you were injured, this could be considered severe. This is probably one of the easier steps. After all, if you have to seek medical care for a condition that is impacting your life, it is severe! Once this determination is made, you will then be able to move to Step #3.

STEP #3

Does your impairment meet or equal the Listing of Impairments? While nothing in Social Security Disability is automatic, some ailments and

disabilities will make it easier to win than others, at least from a Social Security standpoint.

The Social Security Administrative has issued a Disability Handbook that lists all of what they call Medically Recognizable Disabilities. If your injury or impairment meets the specific criteria listed for those medical conditions, the good news is that you may be found automatically disabled at this step of the evaluation, and you will not have to do anything further.

For a list of conditions, go to:

<https://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm>

The bad news, these listings are very specific, and most people do not have the different pieces of the impairment listing to “meet or equal” the listing. (You usually have to have A plus B and C or D or some combination of what is listed.) I have seen cases where a person has two of the three, and we still have to fight the case.

But do not worry. All is not lost. If you do not meet one of these listings in the Disability Handbook, you are still able to move on to Steps #4.

STEP #4

Can you perform your past relevant work? If you have worked within the past 15 years, Social

Security Disability wants to know about what you did—everything!

This is what they refer to as your past relevant work, and it includes any jobs that you may have worked over the last 15 years before you became disabled. If you are going to be found disabled, your physical and mental impairments must be severe enough that you are not able to perform any of those jobs now. In fact, if Social Security decides that you can perform any of your past relevant work, they will deny your benefits. On the other hand, if they find that you are unable to perform any of your past jobs today, then you can move on to Step #5.

It is extremely important to note not just the job you did but also how you did that particular job. For example, we once had a “secretary” testify to all the normal secretarial types of work, such as answering the phone, filing, computer entry, and other sedentary types of work. Based on that alone, she would have lost her case. But it also turned out that she was required each week to move dozens of boxes (weighing over thirty pounds) that were delivered into a special storage room once they were delivered. This changed her job from merely sedentary to a medium level of work, and we won the case all because she testified about that very important “how” she did as a regular part of her work routine.

STEP #5

Can you perform any other kind of work? The fifth and final step in the Social Security Administration's evaluation process to determine whether or not you are disabled is to find out whether you are able to perform any other type of work in the national economy.

Even though you may not be able to do any of the jobs that you had previously done, Social Security does want to know what things you can still do. This is known as your residual functional capacity (RFC) and tells the SSA what things you could do. (After all, most people are not bedridden and can do some things.) The SSA takes your RFC and also looks at your age, your education, whether you have any transferable skills (skills that you might be able to use in other jobs), and other relevant factors to determine what, if anything, you can or cannot do.

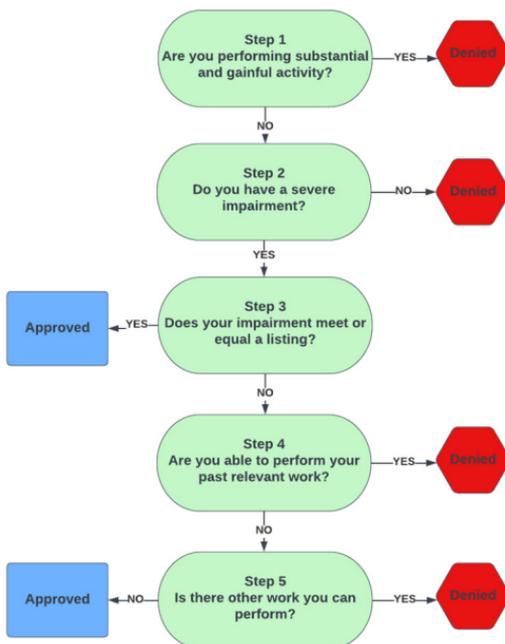
At this point, if it is determined that you are unable to do any kind of job because of your impairments, then you will be found disabled and awarded benefits.

At this step, the SSA often utilizes a vocational expert. This is a person who supposedly is trained in job assessment and job placement. This expert will have reviewed your file, listened to the medical, and then will provide the administrative law judge (ALJ)

an opinion on what, if any, jobs they think you can do.

In conclusion, even if you know you are physically or mentally disabled, proving you are disabled from a Social Security perspective can be difficult. Staying persistent and seeking information, such as what's in this book or speaking with an attorney, can be an important factor in your success or failure. Each step in the Five-Step Sequential Evaluation has specific legal questions and concepts to deal with, which will make or break your claim.

**Social Security Disability
The Five-Step Sequential Evaluation Process**



THE LEGAL PROCESS IN A SOCIAL SECURITY DISABILITY CLAIM

If you have been trying to file a Social Security Disability claim on your own, it might feel like a confusing, endless maze of bureaucracy. You may have no idea what to expect, and more importantly, when to expect it. What you can expect is a long, drawn-out process that very well might not go your way. As the title of this chapter indicates, applying for and attempting to receive Social Security Disability Benefits is a legal process. There are steps that have to be taken, timelines that have to be met, and a normal course to dealing with the Social Security Administration.

We believe that when it comes to dealing with the Social Security system, knowledge is power. In the prior chapter, we discussed the definition of disability and what you must prove. But knowing when to

prove it is just as important. Here are the basic stages of the process that you can expect:

STAGE #1 THE INITIAL APPLICATION STAGE

HOW TO: Visit <https://secure.ssa.gov/iClaim/dib> or call 1-800-772-1213.

As this stage implies, it is the initial application, your first step in the process of applying for benefits. This is the level where 85% of applications are denied. But it is where you must start.

Social Security Disability Insurance is a Federal program. However, where you live can determine how long the application process can take, who makes the first decision, and if you will be successful at this stage.

You can apply online (which is preferred by SSA) or make an appointment on the phone or in-person depending on whether the office is open. Although you are applying for a Federal program, once your application is filed and submitted, the Federal government then transfers your case to a network of local SSA field offices and State agencies (usually known as the Department of Disability Services (DDS) who are then responsible for:

- Obtaining applications and related forms.
- Verifying non-medical eligibility requirements.

- Making determinations of disability.
- Obtaining evidence of a claimant's medical records and arranging SSA Consultative Exams. (CEs are medical reviews paid for by the SSA.)

The DDS is supposed to follow the basic rules of the SSA (like the Five-Step Sequential Evaluation) and uses a specific set of regulations, called POMS, to make the first decision. <https://secure.ssa.gov/apps10/>

Be advised, even though you may get a disability analyst who is courteous and friendly, they are often overworked and very limited in their resources. The more medical evidence you can gather and supply either at the time of filing or after the process has started will be that much more helpful.

The only time you will be required to actually appear in person at the initial application level is if the SSA schedules a consultative medical examination. This is an exam that the SSA will use to determine if you are disabled, but it is not always done in cases. Warning: The CE medical examiner is NOT your doctor, and the written opinion they file could adversely impact your claim.

Unfortunately, you will likely be denied. Why? Well, a few reasons. State-level Social Security case-workers are there to expedite the process for the

government. If your claim is a very clear, open-and-shut case, then they may save the Federal government the trouble of further investigations or hearings by approving you immediately. However, on the other hand, if they can find a reason to deny you immediately, they probably will.

As mentioned, statistics have shown upwards of 85% of all initial applications are denied, and there are all kinds of reasons. Think about it. People filling out long, complicated, bureaucratic forms tend to make mistakes. A Social Security Disability analyst is trained to find those mistakes so that he or she can kick your application back to you and not grant benefits.

This probably sounds a little discouraging. We promise it has almost no effect on the odds of you winning your case later in the process. Remember, you probably (but not necessarily) are going to be turned down. And yet 20%, 30%, or even 40% of people who get turned down fail to appeal their denial, which is a mistake. They give up on a chance to receive the benefits they not only need but also deserve, benefits they paid for through their tax contributions.

What happens if you are denied at the initial level?

STAGE #2 THE RECONSIDERATION LEVEL

IMPORTANT NOTE: Once denied, you have a strict time limit (60 days) to appeal by filing an Application for Reconsideration.

HOW TO: You can apply online or use Form SSA-3441.

<https://www.ssa.gov/apply/appeal-decision-we-made>

As the stage implies, you are asking the SSA through the DDS to reconsider your application to approve it. (Interestingly, sometimes if you are approved, the DDS may internally reconsider your application just to make sure the analyst got it right!) This step used to apply only in a handful of States, but the reconsideration level is now part of every application throughout the United States.

If your initial level application is denied, you have 60 days to file for reconsideration. That application will be returned to the State agency, along with the reasoning and information if you have provided additional information to the State agency, for a determination as to whether the initial decision was incorrect. A small percentage of cases at this level are approved within three to six months. However, as with the initial level, the supermajority of these cases are denied.

But as with the initial stage denial, you still have a chance and should appeal by requesting a hearing in front of a Social Security Administrative law judge.

STAGE #3 THE HEARING LEVEL

IMPORTANT NOTE: Once denied, you have a strict time limit (60 days) to appeal by filing a Request for Hearing.

HOW TO: You can apply online.

<https://www.ssa.gov/apply/appeal-decision-we-made>

Once your reconsideration application is turned down, you then have another 60 days to file an appeal and request an administrative hearing before a Social Security Administrative Law Judge (ALJ). This will literally be your day in court. The Request for Hearing (RFH) is the formal request to have a Social Security ALJ hear your claim. The Federal Administrative Law Judge will also follow the five steps of consequential evaluation spoken about earlier in this book but will not be bound by the decision at the initial or reconsideration levels.

In legal terms, this is known as a “de novo” review or a brand-new review, and the ALJ will be the individual who will make the determination as to whether you are disabled. The ALJ has full access to the file from the initial level and reconsideration level but

can and will request additional evidence, such as medical reports, consultative exams, and testimony from you, medical experts, and vocational experts.

The hearing level can take anywhere from 12 to 20 months to get a hearing depending on where you are located. Prior to the COVID pandemic, hearings were running 18 months and more before you got in front of a ALJ. Since the pandemic, things have changed, but you will need to understand that this is the longest waiting period of all the different steps in the process. You can actually sign in and check the status of your hearing if you create an account at <https://www.SSA.gov>.

The good news is that you will eventually get a hearing (your day in court) before an Administrative Law Judge. You will be able to present additional evidence, and there may also be witnesses from the Social Security Administration, such as a vocational expert or a medical examiner, that will help the ALJ make a determination about what type of work you may be able to do and whether you can perform “substantial and gainful activity.”

If you are approved (a favorable decision), then you will start receiving benefits shortly after the decision. However, if your claim is denied (unfavorable decision) or only partially approved, then you can appeal this decision to the Appeals Council.

STAGE #4 THE APPEALS COUNCIL LEVEL

IMPORTANT NOTE: Once denied or if you received a partially favorable decision, you want to appeal. You have a strict time limit (60 days) to appeal by filing a Request Appeals Council Review.

HOW TO: You can apply online.

<https://www.ssa.gov/apply/appeal-decision-we-made>

If the Administrative Law Judge rules against you at your hearing, you will then have 60 days again to appeal that decision to the Appeals Council. You can submit additional evidence as well as a legal brief pointing out any mistakes made by the ALJ at your hearing. A panel of judges will review your appeal and decide without you ever appearing before them.

The panel will decide in one of three ways.

They can reverse the ALJ's decision and award your disability benefits. This rarely happens at this level.

They can send the case back to the hearing level for another hearing, complete with a court order that lists the specific mistakes made during your first hearing and the issues that must be decided at the new hearing. Your case may or may not go back in front of the same ALJ. Also, the fact that your case

has been sent does not guarantee that you will win at your next hearing.

They can affirm the Administrative Law Judge's ruling. If this happens, it means that the Appeals Council has upheld the judge's denial of benefits. About 60% to 70% of the time, the decision is usually affirmed by the Appeals Council.

Timewise, it takes a long time for decisions. In fact, it is somewhat of a mystery, even to practitioners, as to how the Appeals Council operates and how long decisions can take.

But do not lose hope yet if you lose at this level. There is one more potential action that could still win you the benefits you need and deserve.

STAGE #5 THE FEDERAL APPEAL APPEALING THE APPEALS COUNCIL'S DECISION

IMPORTANT NOTE: Once denied at the Appeals Council level, you have a strict time limit (60 days) to appeal to the Federal Court.

HOW TO: You cannot apply online. You must follow the process.

<https://www.ssa.gov/apply/appeal-decision-we-made>

Interesting fact: From October 2019 to September 2020, the Federal Court System received 19,454

appeals of denials by the Social Security Disability Appeals Council in that time period alone.

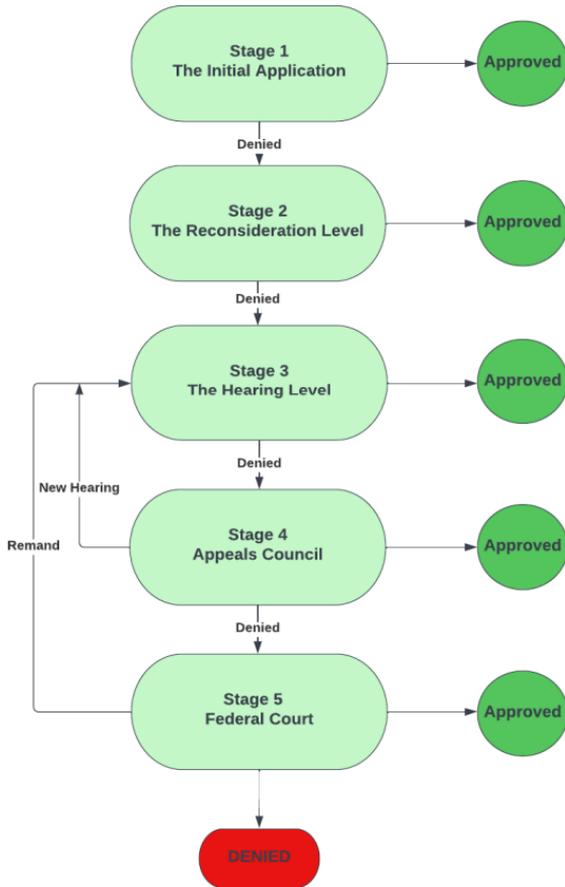
You can file a civil action against the Commissioner of Social Security in Federal District Court. They will decide based on the mistakes made by the ALJ, mistakes made by the Appeals Council, and the overall process your case has been through. As you might have noticed, the help of an attorney becomes more and more valuable as the process moves on. There are special fee arrangements so that there will be equal access to justice for those individuals who do hire an attorney to proceed at the Federal Court level or specific guidance on how somebody can do this on their own (*pro se*).

As with the appeals level, the Federal Court could uphold the decision of the Appeals Council, and therefore, you lose. They could remand the case back to the Social Security Administration to answer specific legal questions or (in rare circumstances) can reverse the Social Security Administration and award benefits to the disabled worker.

These are the various legal stages that you will have to follow in order to obtain the benefits that you deserve through the Social Security Disability process. It is a linear process, where you go from one step to the next in a time-bound fashion by providing evidence along the way. There are no shortcuts other

than winning at the earliest stage possible based on your medical conditions and what you can do.

Social Security Disability The Legal Process in a Social Security Disability Claim



“I like the way my case is being handled. My emails and phone calls are promptly returned and they take the time to explain the answers to my questions. Overall, I like the responsiveness to my questions and concerns over the past two years and I would definitely recommend Markhoff & Mittman to others.”

—George G.

THE TRUTH ABOUT ATTORNEY FEES

Chances are you have probably heard this joke before.

Question: *What do you call one hundred lawyers at the bottom of the ocean?*

Answer: *A good start.*

I am not offended if you laughed. Seriously, lawyers like us have been getting a bad rap for years, from politicians, the media, and even in the occasional joke book. People like to think that lawyers profit from the suffering of other people. The reality is that our job is to help guide you through the process so that you can suffer as little as possible when dealing with the various issues of your physical and mental well-being and figuring out how you are going to pay your rent, what type of benefits you deserve, and the

complex and often time-consuming, dehumanizing process of Social Security Disability Insurance.

The fact is attorney fees in a Social Security Disability case are actually an incredibly good value for the money. First things first, an attorney in a Social Security Disability claim must follow a specific set of rules in regard to a preset fee formula. If an attorney is charging you and making you pay for your claim, then that is improper and illegal.

1. First things first, fees are mandated by the Federal Social Security Disability statute. That means, they are set by the government.
2. There are no fees unless you win your case because an attorney can only receive money for a fee out of the benefits (past due money) that he or she obtains for you. This is known as a contingency fee.
3. The maximum benefit of 25% of your retro-active (back pay) or \$7,200.00, whichever is less, is set by the statute. That is it. The fee is 25% of past-due benefits, capped at \$7,200.00. What do you get in return? You will get an ongoing monthly benefit for as long as you need it until you become a recipient of regular Social Security Retirement Benefits as well as become Medicare-eligible. That can be a significant benefit to you for having paid your attorney one-time

the equivalent of perhaps a few months of benefits, depending on the amount you receive.

The difference between fees and expenses: There is a difference between fees and expenses. Fees are the monies charged for the attorney providing you legal service related to the claim and are set by the statute as noted above. However, there are times when you may have to hire your own experts or pay for certain medical records, and these expenses must be paid for by the individual client and not by the attorney.

Some attorneys will pay these expenses upfront and ask you to pay them back later. Other attorneys will have you pay them as you go, and you can make a decision as to whether you really want to pay for a specific type of evidence. It has been our experience that there are often some expenses involved in your disability claim, but it is usually very low (a few hundred dollars). This is far different than in a personal injury lawsuit when expenses can go into the tens of thousands of dollars, but that is not the case with disability.

Bottom line, attorney fees are strictly regulated, and overall, attorney fees in Social Security Disability cases are just a fraction of the total benefits you will receive. And every fee must be approved by the Social Security Administration. This means that while it is

okay to laugh at jokes like the one at the beginning of this chapter, you should not take them seriously because attorneys in the world of disability can help guide you through this process and guarantee you a lifetime of benefits!

FIVE REASONS THE SOCIAL SECURITY ADMINISTRATION WILL DENY YOUR CLAIM AND WHAT YOU CAN DO ABOUT THEM

You have probably come to the realization by now that dealing with the Social Security Administration for your Social Security Disability Insurance application is no joke. If you want to receive the benefits you deserve, you need to play by the rules because the Social Security Administration is likely looking for any excuse to get out of having to pay your claim.

Over the years, we have seen many reasons why a claim will be denied and would like to present the big five reasons why Social Security will deny your claim. If you steer clear of these situations, then you will have a better chance of having a successful outcome for your case.

REASON #1 YOU DID NOT PROVIDE THE PROPER MEDICAL EVIDENCE

Not providing the proper medical evidence is deadly for a disability claim. A disability analyst or an Administrative Law Judge cannot grant a favorable decision without the pertinent medical documents that prove your inability to function in the workplace. A note from a doctor that says you are disabled is not sufficient.

Physical injuries need objective medical reports, such as surgical records, physical therapy records, MRI reports, and other types of reports, to show what the medical condition is that impairs your ability to work. It is also helpful to have your treating doctor describe the various ways your conditions limit your ability to do activities of daily living, like sitting, walking, standing, lifting, grasping, concentrating and so on.

On the psychological impairment side (such as depression, etc.), a detailed narrative report is often required from a psychiatrist or psychologist documenting your diagnosis and the progress over time and how it impacts your ability to work and live.

Simply put, a medical impairment needs to be documented. Alleging an impairment without providing support in the form of written medical records is

simply not enough and will result in a denial. It is difficult enough even when you have a clear medical report to win a claim. Not having a medical report is an easy reason to deny your case.

REASON #2 YOU MISSED YOUR CONSULTATIVE MEDICAL EXAM

While the Social Security Administration and ALJs are directed to give great weight to your doctors' medical reports, oftentimes the Social Security Administration will require a claimant to attend a consultative medical exam administered by an "impartial" doctor who has never seen you before.

These doctors, however, are paid by the Social Security Administration, so there is already an appearance of impropriety on the part of the medical examination. In fact, many of the doctors that they use often appear in Personal Injury and Workers' Compensation cases, where they are hired by insurance companies to fight claims, and that can spell bad news in the Social Security world. While these appointments are often very quick exams, it is crucial that you attend the examination. Ignoring this appointment gives the government an opportunity to deny your claim since you failed to comply with the Administration's request during the process.

Just remember, the consultative examiner is not your doctor, but you should provide that doctor with appropriate information about what your problems and conditions are so that he or she can make a proper examination and provide a written report that will help the ALJ, along with your own medical records.

REASON #3

YOU DID NOT KNOW HOW TO HANDLE THE VOCATIONAL OR MEDICAL EXPERT AT YOUR HEARING

At your disability hearing, the Social Security Administrative Law Judge (ALJ) will often call upon the assistance of a medical or vocational expert to help them in determining whether or not you are disabled and unable to perform work in the workplace. The expert is supposed to be unbiased, but they are paid for by the Social Security Administration to testify at the hearing.

If an expert is called to testify in your hearing, you will be notified when you receive your notice of hearing. The expert will either be a medical doctor or a professional vocational counselor. The medical doctor will have performed a consultative exam in most cases and will be testifying to his or her examination of you. If not, the doctor will testify about

reviewing the records and what the doctor believes to be your condition and limitations.

On the other hand, the vocational expert is an individual who by training allegedly has experience in determining the types of work individuals can do, placing people in work situations, and understanding the various types of work and legal references needed to determine work that can be done.

The role of the vocational expert is to answer questions about your ability based on the medical record and the testimony at the hearing as well as your work history. Typically, the ALJ will ask the expert a few questions and even propose hypothetical scenarios based on your work history and current physical and mental conditions based on the documents in your file. Following the ALJ's inquiry, you, the claimant, or your attorney if you have one, can then cross-examine the expert and ask more questions about your ability to work or not work.

It is important to remember that while these experts are supposed to provide neutral opinions, they are paid for by the Social Security Administration and often work with the same ALJs over and over and know what the ALJs like to hear or not hear. This is the step in many hearings where hiring an attorney becomes very important. Unless you were an attorney prior to your disability, it is very unlikely

you will know how to cross-examine an expert witness or even the questions that should be asked.

While common sense seems to say that it is easy to figure out if you can or cannot work, the details in the legal process can be very complicated, and there is often art to the skilled cross-examination of a witness. Overall, you need not fear an expert witness if you are prepared to question them should they testify in a negative light. However, will you know what the negative light is?

REASON #4 YOUR ELIGIBILITY WAS LIMITED TO A SPECIFIC TIME PERIOD

You are only eligible for disability benefits for a certain amount of time after you have stopped working. Typically, you are insured for disability benefits for up to five years after the date that you stopped working.

It is crucial that you can prove that you were disabled before that eligibility period ends. For example, if you stopped working on January 1, 2015, and your eligibility period was for five years, you would have to provide medical evidence and proof that sometime before January 1, 2015, up until January 1, 2020, you were disabled. If you have a really supportive medical report on January 1, 2022,

showing that you were disabled, it would not be enough since you had to show you were disabled prior to January 1, 2020!

In every Social Security Disability case, the claimant must allege a specific date that they became officially disabled. This date can also be the date the claimant became unable to work. Also known as the claimant's "alleged onset date," this is the date that Social Security looks to in determining whether they can grant benefits.

If a claimant suffered an automobile accident or a violent work accident and that same claimant was unable to work because of this accident, then the claimant's onset date would be the date of the accident. In these situations, the alleged onset date is easy to figure out because the disability was immediately triggered by a specific incident. For most people, however, the disability is not the result of a horrific accident or a traumatic experience. Instead, the disability might result over the course of time, possibly due to normal aging or repetitive physical activity. In these situations, the alleged onset date is typically the date that you stopped working due to your medical condition.

REASON #5 THERE IS WORK YOU CAN DO EVEN THOUGH THERE IS NO WORK YOU CAN DO

Steps #4 and #5 of the Sequential Evaluation (see Chapter 4) discusses how the Administrative Law Judge figures out what your past relevant work is and then determines what your residual functional capacity is to actually do work. What does this mean in plain English?

The Social Security Administration will look at the type of work you did in the 15 years prior to your date of disablement. If you had one job, then it generally is very clear as to the type of work you did, what the physical restrictions, mental restrictions, and other factors were of that job, and whether you can or cannot do that job. If the ALJ in Step #4 determines you cannot do your past relevant work, then the ALJ will have to determine what your residual, or leftover, ability is to perform work. This is really where it gets very complicated from the legal sense.

While it may seem that there is no work that you could do on a sustained basis, your medical evidence as well as the testimony from a vocational expert might say otherwise. Therefore, it is very important in preparing your case from the beginning all the way to a hearing to really determine:

1. What your work used to be and how you performed that work.
2. What your limitations are and if there really are any jobs in the national economy that you could perform based on your limitations.

The best way to illustrate this is to give an example:

The ALJ reviews your past work history and discovers that as a retail floor supervisor, you used to perform a light-duty level of work. That is, you would periodically have to lift over 20 pounds, stand on your feet for up to 6 to 8 hours, often not sit, and have other physical demands upon you as well as having to know how to use the computer system for checking out, timekeeping, and HR-related services. Due to a severe back problem as well as a bad knee, you have significant limitations, and the ALJ determines that you can no longer do light-duty work.

However, due to your age, if it can be proven that you could do “sedentary work,” then you will not be entitled to benefits. What you will need to prove is that you can do some sedentary work, but really, you can only do “less than sedentary work.” What does that really mean? Your doctor provides a Residual Functional Capacity Exam that indicates, due to the serious nature of your back injury, you will need to miss at least four days a month to rest your body, and

you will also need to change position from sitting to standing on a very frequent basis.

Based on this evidence, it is generally accepted that most employers would not employ somebody who is missing at least four days a month, where missing one day a month is considered normal. Based on this, you should be approved. This is a very simplified example. There are other detailed factors that will be considered in each and every case.

Bottom line, an application for Social Security Disability Insurance is complex and can change your life for good or bad depending on how you handle the process.

“I love this law office! They were respectful, resourceful and responsive. I was notified of every detail regarding my case and there was always someone to answer any questions I had. When you call you actually speak to your lawyer and not some representative. I would use this law office 10 times over they handled my case with great care and consideration. Thank you Markoff & Mittman!”

—**Kassim W.**

PART 3

THE PATH FORWARD

“This law office is great for workers compensation and social security disability. Thanks to the team from the social security disability department, also a thank you to the workers compensation department. I would highly recommend this law firm.”

—**Saddie R.**

WHO RELIES ON US?

When you have been forced to stop working due to a serious mental or physical injury or illness, choosing the right lawyer to help guide you through the Social Security Disability Insurance process can add significant stress to an already stressful situation.

Your focus should really be on how to regain as much health as possible, obtain the monetary benefits you need to pay the rent, put food on the table, and live—not worry about some faceless bureaucrat out to deny you benefits.

And you must find an attorney because you have been denied and the paperwork and legal-speak is mind-boggling!

The Bottom Line: Working with an attorney should give you peace of mind so that you can focus

on regaining your health and moving on with your life! You need to have an attorney on your team who knows the ins and outs and focuses on the legal work while you focus on yourself and your family.

Here is an overview of some of the workers (and their conditions) who rely on us to be their guide during these trying times:



CONSTRUCTION WORKERS & LABORERS

Why?

Physically demanding jobs take a toll on a person's body over the years. If you suffer an injury at work, then that impacts your ability to work. Developing painful physical conditions that limit your mobility, flexibility and general ability to walk, stand, bend, lift, stoop, climb and so on is very common for workers in the trades and other heavy labor.

We know that you put in an honest day's work for an honest day's wage, but now you cannot even do that. Hopefully, you have saved, but if not, you need to find a way to secure your future. Focus on regaining your health, and we will focus on the legal details.



THOSE SUFFERING FROM CANCERS, IMMUNE DISEASES, AND OTHER ISSUES

Why?

Illnesses, like cancer, auto-immune diseases and more, are insidious. Even if they are not that “bad,” they can and often do worsen over time and impact your ability to gainfully work.

No matter WHAT type of work you do—heavy work, light work and even sedentary office work—receiving a diagnosis of a cancer, an auto-immune disease or other debilitating diseases is a shock.

You need to focus on getting healthy and coping with all different facets of your condition, and let us focus on the other stuff.



HEALTH CARE WORKERS

Why?

Whether you are a doctor, nurse, physician assistant, technician, home care aide, or other, you are exposed to so many potential issues that could cause you to become disabled.

Slip and falls at work, overuse lifting injuries, diseases contracted from others, and more can affect your ability to work.

We would much rather you get healthy and help all of us than have to be the one getting help, but that is what we are here to do for you.

A FEW OF OUR CASES AND RESULTS

To show you that it can be done, here is a sample list of some real-world cases we have handled. Obviously, this is NOT a representation of how YOUR case will turn out. Remember, each case is different. And as lawyers have to say, prior results don't guarantee a similar outcome. But it is nice to know that it can be done. Here are some examples:

We helped a plumber who had been working for over 30 years, taking care of his family, paying his taxes and living as an exemplary citizen until the day when he was carrying a heavy pipe, fell backward and severely hurt his back. Suddenly, he was unable to work. He tried to go back a month later, but the pain was too great. As a man over 55, who has never worked as anything but a plumber, his only real hope of survival was Social Security. The Disability Guys took his case and were happy to help him get approved for disability benefits.

We helped a man in his mid-20s who was electrocuted on the job and lost his arm as a result. He was married, with a young family, cut down in the prime of his life. With our vast experience with Social Security, Worker's Compensation and other programs designed to compensate people like our client, we were able to navigate through the many different avenues available to him and help steer him toward

recovery. Our compensation on this case was minimal, but his injury was so devastating that we really wanted to help to make him whole.

We helped 9/11 families as well as the recovery workers who are now suffering the long-term effects of exposure to the site, to make sure they have the security and support they need, both now and in the future.

We helped a 52-year-old woman with a strong work history who was a substitute teacher up to 2006. Our client was only eligible for the benefits through 2008, which meant we had to prove her case prior to 2008. We were successful in showing her impairments debilitated her way before 2008 and secured our client approximately \$40,000 in retroactive benefits as well as monthly monetary benefits.

We helped a 51-year-old Army veteran suffering from depression, post-traumatic stress disorder and anxiety. A hearing was held, and we received a fully favorable decision, which produced \$25,000 in retroactive benefits for our client as well as monthly benefits.

We helped a 52-year-old Greek cook who was denied benefits dating back to 1997. After securing a remand from the Appeals Council, our office successfully introduced key evidence proving our client was disabled in the 90's. We received a fully favorable

decision and secured our client approximately \$15,000 in retroactive benefits.

We helped a 12-year-old child vying for Supplemental Security Income based on a history of seizure disorder and a diagnosis of epilepsy. We successfully were able to prove that her diagnosis has limited her functional abilities at home as well as in the classroom.

We helped a 38-year-old former home health aide. Our client underwent numerous surgeries to knees and shoulders. While the Administrative Law Judge presiding over her case wanted to grant our client benefits from the date of the hearing, we successfully advocated that our client should be entitled to benefits for at least 12 months prior to the hearing. We were able to win \$10,000 in retroactive benefits for our client.

We helped a 52-year-old former stagehand who was diagnosed with a seizure disorder. He received a fully favorable decision based on the theory that his diagnosis would preclude him from working in any industry because of the dangers his diagnosis presented to himself and others.

We helped a 48-year-old home health aide who was out of work for 24 months. She returned to work before her hearing, but we were able to successfully win our client a “closed period” of disability and

secured approximately \$18,000 in retroactive benefits.

We helped a 29-year-old Spanish-speaking woman suffering from depression, anxiety, agoraphobia and suicidal ideation. We were able to elicit favorable testimony from the medical expert at the hearing and received a fully favorable decision for our client.

We helped a 61-year-old war veteran suffering from severe lower back pain, arthritis and diabetes. Our client worked as a consultant for 20 years before being forced to stop as a result of his impairments. Our client's age, education level and past work history precluded him from being transferred into any other job, so we received a fully favorable decision for our client and secured approximately \$30,000 in retroactive benefits for our client.

“I'm very happy I decided to hire the law firm of Markhoff and Mittman to represent me in my social security appeals hearing. I had been worked up with anxiety for almost the whole 3 years awaiting my turn for court and when the day finally came I barely had to say a word my case was well prepared by Markoff and Mittman the judge only needed a couple documents outside of what we had and the case was over within 15 to 20 mins I could not believe it. These guys are known by the name the disability specialists for a reason and I would highly recommend this firm to anyone who is looking for a firm they can trust with their case. These people are Great even the office staff who answers the phones. Markhoff and Mittman are truly a great resource for anyone fighting for their social security benefits what are you waiting for call them now!”

—**Deshawn B.**

THE UNEXPECTED LEGAL EXPERIENCE™

Here at Markhoff & Mittman, PC, The Disability Guys, we have taken our decades of real-world experience and boiled it down to a simple, unique value that we provide our clients—the Unexpected Legal Experience™.

In fact, this book is the result of our need to help bring our message to the community of workers and their families impacted by the inability to continue to work after a disease or accident sidelines them. After all, what is the point if we cannot provide you something unexpected.

First and foremost, **our promises** to you:

- We simplify the process for you (starting with communicating in a way for you to understand, not all that legal garbage attorneys use).

- We say what we will do and do what we say.
- Finally, we provide peace of mind by providing a worry-free experience.

The Disability Guys *Unexpected Legal Experience* is just that. You see, most people have an idea of what it is like to work with an attorney, and it is not a pretty idea.

Your experience with us will be different. Not only will we fulfill our promises, but we will also be there for you every step of the way. We will explain things and explain them again until you are comfortable and understand what you need to.

We will provide you with your own individualized success plan. We will obtain the best possible outcome given the circumstances of your claim. We will fight all the way through the system if that is necessary. And we will do it willingly and happily. After all, your success is our success.

Some other benefits of our *Unexpected Legal Experience*:

- Our **simple fee structure** provides you a real value based on what we recover for you (see Chapter #6). And if we do not recover benefits for you, there is no fee!
- **You can pick your favorite way to communicate.** We can text you, email you, call you and even go old-fashioned and meet with you in person!

- You will get **quick updates** on your claim through your own customized **The Disability Guys Claim Portal**, not that complicated medical portal stuff but a quick and useful way to see what stage your case is at. And you can even message your team!
- You get access to our very own local and nationwide network of attorneys we have worked with over the decades to help you with ALL types of matters, from injuries to divorce, landlord-tenant, immigration, and anything you need an attorney for! Let us be your “Google.”

And by being part of our community, we know you will be in a safe place, and you will see that we have your best interests in mind. A lot of other attorneys say they care, say they will work hard, and promise you the world. The Unexpected Legal Experience is all of that and so much more.

“I use Markhoff and Mittman for both my workers compensation case and social security claim. When their team is on the job, you don’t have to worry about all the potential problems and pitfalls. They will navigate you to the desired goals of getting healed and getting the compensation you deserve.”

—Chris H.

THE NEXT STEP

If you are reading this chapter, thank you and congratulations! You have done yourself a great favor in educating yourself about the world of Social Security Disability benefits. The journey you or a family member finds yourselves in is not an easy journey. I know that you are likely on an emotional (if not physical) roller coaster at this moment and not sure where to start or even what you should do next. So here is my best advice to you.

Contact my office and speak with one of our Ability Advocates who will help you figure out the next steps and what you need to do. This conversation is completely free, and we will answer all your questions (and ask a few ourselves!).

There are a few ways to get in touch with us and get started on your journey:

BRIAN MITTMAN

Call us:

844-644-0689

Email us:

info@thedisabilityguys.com

No matter how long your journey has been or will be, your journey starts with your first step, and please, reach out and take that step with us!

ABOUT BRIAN MITTMAN, ESQ.

Brian Mittman. Managing Partner and Owner at Markhoff & Mittman, P.C., takes the cause of injured and disabled workers very seriously. An *Unexpected Legal Experience* represents the essence of how he lives his life. Every day Brian works hard to support the rights of injured and disabled New Yorkers.

Since 1995, he has represented individuals before the New York State Workers' Compensation Board, the Social Security Administration and in New York's Supreme Court.

Under Brian's careful direction, Markhoff & Mittman | The Disability Guys has achieved growth and success by representing thousands of injured and disabled workers and expanding to six offices across

the State of New York in White Plains, Long Island, New York City, Brooklyn, Goshen, and Newburgh.

Over the years, Brian has received several awards and distinctions. He was recently recognized as one of the nation's "Top Injured Workers' Attorney" by the Workers' Injury Law & Advocacy Group®, a non-profit membership organization dedicated to representing injured workers and their families.

He was also awarded "Attorney of the Year" by the Institute for Jewish Humanities in 2006.

Brian is currently on the Board of Directors of the New York Workers' Compensation Alliance® and the nationwide Workers Injury Law & Advocacy Group (WILG).

He is also a member of multiple Bar Associations, including Westchester County Bar Association (WCBA); New York County Lawyers Association (NYCLA); Bronx County Bar Association (BCBA); Brooklyn Bar Association (BBA); Nassau County Bar Association (NCBA); and the National Organization of Social Security Claimants' Representatives (NOSSCR).

Additionally, Brian is a past executive member of the Injured Workers' Bar Association (IWBA), White Plains Bar Association (WPBA), and co-founder of the Social Security Disability Practice Institute.

Brian is passionate about giving back to the community and actively participates in multiple

charities, including serving as the president of the Triangle Shirtwaist Factory Fire Scholarship Memorial (providing scholarships to children whose parents have been killed or permanently injured on the job); Board of Directors of the NY Hudson Valley Tourette Association; Pediatric Cancer Foundation and Lifting Up Westchester where he closes the office one summer workday every year to run a children's carnival for less fortunate and homeless neighbors.

Brian adopted New York as his home State after attending the University of Rochester (political science, cum laude) and Brooklyn Law School. He married his college sweetheart, Stefanie, and is the very proud dad of four wonderful children (Noah, Zoe, Sophie and Josh) and two happy dogs (Stella and Sadie). When not representing injured and disabled workers, Brian enjoys working out, reading, walking his dogs and playing ice hockey.



EXCLUSIVE READER RESOURCES

Even if you are not ready to hire an attorney, you must properly file your claim for Social Security Disability Insurance Benefits with the Social Security Administration!

*Do you even know how to
fill out the claim form?*

Don't worry, you can download your free copy of The Disability Guys™ cheat sheet. You'll get everything you need to know about how to file a Social Security Disability Insurance claim.

This useful "cheat sheet" explains each section of the online application for Disability Insurance benefits and provides a link to the online form, a video on how to fill it out, and more.

VISIT OR CALL:

www.SSDBResource.com

844-644-0689



“Disability doesn’t discriminate.”

Disabled From Work was created for anyone who must make the unfortunate decision to stop working because of an injury or illness and is concerned about:

- How they will pay their bills and live their lives,
- What happens if they are permanently unable to work,
- Wondering if they are eligible for Social Security Disability Insurance,
- Scared about how to deal with the Federal bureaucracy.

Inside you will find tips and insights that will help you navigate the complex, confusing, and often demeaning system known as Social Security Disability Insurance.



Brian M. Mittman, Esq. has been helping injured and disabled people since 1995. He created *The Disability Guys*™ with a simple premise: to provide an *Unexpected Legal Experience*™ to individuals and their families who are dealing with injury and disabilities that are no fault of their own. Brian married his college sweetheart, Stefanie, and is the proud dad of four children (Noah, Zoe, Sophie and Josh) and two dogs (Stella and Sadie). When not representing injured and disabled workers, Brian enjoys working out, reading, and walking.

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