

# 5 Costly Misconceptions About Denied Disability Claims

by

BARD BRIAN

Western Kentucky's Disability Lawyer

(Bard, this was directed at long-term disability insurance. Will you handle long-term disability insurance claims from private insurance carriers? Or do you limit yourself to Social Security disability?)

## **Misconception #1: The insurance company must be right. After all they wrote the policy.**

Not true. It's not a matter of right or wrong. Insurance companies have one goal: to keep your money in their bank account. When you file a claim, they ask you to believe every conceivable reason why they won't pay you benefits. They know that in many cases, you will believe whatever they tell you. This is a mistake. Any time an insurance company denies a disability claim, make sure you consult a lawyer for a second opinion. After all, the only time insurance companies are put to the test is in front of a jury. And the number of multi-million dollar verdicts against insurance companies proves that juries don't always agree with the insurance company's opinion. Bottom Line: Don't accept what an insurance company says. If they deny your disability claim, make sure you speak with a lawyer skilled in overturning disability claims that insurance companies have denied.

## **Misconception #2: You can't appeal a denial. The insurance company has the last word.**

Not true. You can hire a lawyer to build a case and approach the insurance company on your behalf. And if the insurance company doesn't listen to reason, then your lawyer can sue them on your behalf and take them to trial. Insurance companies have a lot of money, but they never have the last word. That belongs to the jury.

## **Misconception #3: Fighting back will be too stressful on you.**

Not necessarily true. Your lawyer and his staff should build your case and do nearly all of the work. Still, no one will say you won't feel stress because you probably will. But consider which situation is more stressful: When the insurance company has your money and won't pay you. Or when you go to trial and recover money that should be yours. Regardless of whether the insurance company settles your case before trial -- or whether you win your case at trial -- a big check from an insurance company can go a long way to

reducing your stress.

**Misconception #4: You can't win even when you do fight back. The insurance company is just too big.**

Not true. Skilled plaintiffs' lawyers know how to get money from insurance companies. Policy-holders and their lawyers win cases against insurance companies every day of the week. Whether you win depends on the facts in your case and the contents of your disability insurance policy. Not surprisingly, insurance companies always interpret the facts in their favor. Your lawyer interprets the facts in your favor. You can fight back. And, after reviewing your policy, a skilled disability lawyer can help you evaluate your likelihood of success.

**Misconception #5: It's just not worth it.**

Maybe, maybe not. Until you know what your claim is worth, you'll never know whether it's "worth it." Do yourself a favor: Don't make any decisions about your insurance policy or insurance claim until you ask a disability lawyer to review your claim. Once you know the potential value of your claim, then your lawyer can give you an informed opinion about the outcome. From that, you can decide whether you think the claim is worth pursuing. But don't jump to conclusions too soon. After you talk with a skilled disability attorney, you may be amazed what your claim is really worth.

## 12 Secrets for Winning a Disability Claim

by

**BARD BRIAN**

Western Kentucky's Disability Lawyer

**Secret #1: Recognize the problem (disability) when it arises.** You don't have to be catastrophically injured or terminally ill to collect. Many policies provide money for partial disability. Look for such things as loss of productivity, loss of income or the inability to perform the material and substantial duties of your occupation.

**Secret #2: Give the insurance company notice of your claim as early as possible.**  
Late notice could result in a substantial loss of monthly benefits.

**Secret #3: Use several witnesses to identify the material and substantial duties of**

**your occupation** such as a colleague, a vocational evaluation expert and yourself. Before you can get disability benefits, the insurance company or jury must clearly understand the important duties of your occupation. Don't leave this to chance or only your testimony. Make sure you offer witnesses that identify and verify the duties of your position.

**Secret #4: Identify and focus on the material and substantial duties of your occupation that you cannot perform due to physical or mental limitations.** Once the insurance company or jury understands what your occupation entails, then they must understand what you are no longer able to do based on your disability.

**Secret #5: Document your loss of productivity with business records or even appointment calendars.** The court looks for you to prove your disability. Since memories often fade, you present a stronger case when you rely on something more than your memory. Written records, such as an appointment calendar -- and even a daily journal -- greatly increase your credibility and give the jury the support they need to decide in your favor.

**Secret #6: Use business records and income tax returns to document your loss of earnings based on your loss of production.** The more money you can prove you lost, the more likely the jury is to recognize your problem as a disability.

**Secret #7: Use past medical records to demonstrate onset and progression of the disability.** Your doctor's medical records provide accurate snapshots of your symptoms and condition. The more your doctor documents your condition, the more likely the jury is to believe your claim.

**Secret #8: Maintain a regular schedule for medical treatment.** Make sure you do not allow lapses in treatment to occur. When they see lapses, insurance companies always suggest that you aren't very sick or disabled since you haven't gone to your doctor. In fact, the carrier could cut off your benefits if you don't maintain an ongoing course of medical treatment.

**Secret #9: Identify and focus upon the physical limitations giving rise to the disability and get your treating doctor to understand and support your claim.** Your most important advocate is your doctor. The jury relies heavily on your doctor's evaluation and assessment of your disability. Make sure you have a good relationship with your doctor and make sure your doctor will support your claim for benefits. If your doctor does not believe in your condition, find another doctor who does.

**Secret #10: If you don't get the decision you want, see if you have grounds for appeal.** Simply getting a bad result at trial is not grounds for an appeal. But if

your lawyer can find reversible error -- (an error so significant that the judgment must be reversed by the appellate court) -- then you can appeal.

**Secret #11: If you lose at trial, you can file a new claim.** Disability is a month by month con-tractual benefit. You are not forever precluded from collecting. As your medical condition changes, you can file a new claim. You cannot re-litigate past claims, but you can litigate a claim for a new period.

**Secret #12: Do not overlook the issue of “Bad Faith.”** Has your insurance company acted in bad faith in denying your claim? If so, you may have rights to additional money damages.

### ***You’re Invited to Call or E-mail.***

“If your Social Security Disability claim has been denied -- if you want help filing your claim -- or if you have questions about your claim -- please don’t hesitate to call me at **270-443-3131**. I’ll be happy to help you in every way!” -- *Bard*

**BARD BRIAN, ESQ.**

**BARD BRIAN LAW OFFICES**  
West Kentucky’s Disability Lawyer

222 Kentucky Avenue, Suite 10 ❖ Paducah, Kentucky 42003  
bardbrian99@msn.com ❖ www.bardbrianlawyer.com

**Please Call Today: 270-443-3131**