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## 10th Circuit: Jury Verdict of \$2 Million in Punitive Damages Ruled Too High

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By Douglas H. Duerr

Although there was sufficient evidence that the United Parcel Service (UPS) retaliated against an employee for submitting a claim for workers' compensation benefits, the jury's award of \$2 million in punitive damages was excessive, according to the 10th U.S. Circuit Court of Appeals.

Keith Jones began working for UPS in 1985, eventually becoming a package car driver, a position that requires employees to be able to lift up to 70 pounds. Throughout his employment, he suffered a number of injuries, culminating in a shoulder injury in October 2003.

UPS' doctor, Dr. Legler, imposed a 20-pound lifting restriction and referred him to Dr. Stechshulte, an orthopedic specialist. Dr. Stechshulte conducted an examination, including a functional capacity exam (FCE), imposing a 20-pound overhead lifting limitation and a 45-pound waist-to-shoulder limitation. Because UPS determined that this limitation prevented Jones from working in his position as a driver, Jones obtained an opinion from another doctor, who determined that no lifting limitation was warranted. Although now cleared to work, the union contract required a re-examination by Dr. Legler, who released Jones to work.

After Monica Sloan, an occupational health manager for UPS, received the medical release from Dr. Legler, she contacted him and instructed him either to change his diagnosis to match the limitations imposed by Dr. Stechshulte or to review that diagnosis. Dr. Legler then changed his diagnosis to impose the lifting limitations set by Dr. Stechshulte.

Because Jones' doctor and Dr. Legler had differing recommendations, Jones filed a union grievance, and the grievance committee, in accordance with the union contract, required UPS and Jones to select a third doctor, whose opinion would be final. After Jones and UPS selected Dr. Buck, Jones went to him for an examination. Dr. Buck observed Jones perform some lifting exercises and then contacted Sloan to request permission to conduct a FCE. In response, Sloan incorrectly told Dr. Buck that he was not to conduct a physical examination but should instead rely on the records provided. She also improperly denied Dr. Buck's request to perform a new FCE. Consequently, Dr. Buck concurred with the limitations.

When Jones subsequently complained that the examination was unfair, the grievance committee ordered that Jones return to Dr. Buck. Even though UPS knew about Sloan's prior improper instructions to Dr. Buck, no steps were taken to correct them, and Dr. Buck, who did not know why Jones had come back to him, simply confirmed his prior determination. When Jones was not permitted to return to work, he filed suit.

The district court tried Jones' claim that he had been wrongfully terminated from his position in retaliation for having sought workers' compensation benefits. The jury found that he had been wrongfully terminated, awarding him \$630,307 in actual damages and \$2 million in punitive damages. On appeal, the court of appeals rejected UPS' legal arguments, including UPS' argument that the evidence did not warrant punitive damages. In doing so, the circuit court specifically pointed to the multiple occasions when Sloan intentionally interfered with the doctors' medical evaluations and the steps she took to prevent an evaluation of Jones' then-current medical condition. However, the circuit court determined that \$2 million in punitive damages was excessive in light of the circumstances, the large award of actual damages, and as compared to similar cases. The court sent the case back to the lower court for a new determination of punitive damages.

*Jones v. United Parcel Serv.*, No. 09-3275 10th Cir. (Oct. 24, 2011).

**Professional Pointer:** Punitive damages were awarded in large part because a nonphysician interfered with the medical evaluation process and effectively prevented an evaluation of the employee's medical condition at the time he sought to return to work.

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**Editor's Note:** This article should not be construed as legal advice.

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