

# Why Do Claimants Lie? Because They Can, and Swift Prosecution Is the Only Way to Deter It

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The courtroom was impassioned, to say the least, and downright angry at what they were hearing. In our post-COVID-19 reality, the claimant in a workers' compensation case was presenting lengthy testimony by video. The judge sat calmly as the claimant spoke about a seemingly horrific injury. He claimed that he lost vision in his right eye for all practical intents and purposes after a slip-and-fall accident on concrete during the course and scope of his employment.

The testimony as to the mechanism of injury, subsequent medical treatment, and his in-ability to work was compelling. The surgical records exchanged in discovery detailed the rupture of the claimant's eyeball, and the repair procedure was equally spellbinding. The case then entered the realm of the oddly curious. In discovery, the parties exchanged the claimant's past medical treatment records. Those records definitively detailed that the claimant was legally blind before the alleged work injury and that his injured eye did not materially contribute to his overall vision loss. What the heck?

In the area of workers' compensation, a skilled adjudicator rarely lets the facts get in the way of an award (or defense thereof). This case involved an allegation of "specific loss" of vision, which carried the

potential for a large scheduled award. Anticipation mounted on direct examination as to how the veteran plaintiff's attorney would circumvent the obvious defense created by the prior medical records concerning the vision loss. The claimant's responsive testimony (despite great lawyering) was less than credible. He testified twice on direct examination that the vision in his injured eye before the injury was fine. On cross-examination, despite being presented with references to his prior medical treatment records, he nonetheless continued to maintain the testimony that his vision in his injured eye was unimpaired prior to the work incident. In fact, the claimant noted on cross-examination that he had never been treated for or had problems with the injured eye at any time in the past (contradicting his own medical record exhibit).

Our journey into the facts of this case ends here as the matter is still pending before the appellate court. The claimant did not collect an award of benefits since a writ of supersedeas was granted on appeal. Suffice it to say, this case is but one of a myriad of claims in my personal experience where, inexplicably, claimants will double down on the stand even in the face of contradictory evidence exposing the falsity of their testimony.

The question here is not whether fraud exists in the workers' compensation system, but rather why a witness would lie under oath about a topic that is so easily disproved with evidence that has already been exchanged? Is this fact scenario not worthy of a new chapter in Geoffrey Chaucer's "The Canterbury Tales" or subject to the scrutiny of Thomas Aquinas' philosophy in "Summa Theologica"? Regardless, the underpinnings for lying under oath must be exposed in order to be eradicated.

### **The Psychology of Lying**

If psychology and sociology have proven anything, it is that everybody lies. In fact, some psychological schools of thought treat lying as an early developmental achievement among the young since the ability to manipulate others demonstrates knowledge of perspective (self versus others).

As we age, a sense of morality normally allows us to manage or balance the behavior. One can presuppose that the egregious liar—in this case, the witness who lies under oath despite the mountain of evidence dismantling the testimony—has found a way to overcome this morality control. In many psychosocial circles, the answer to this is "rationalization." If one can rationalize the lie, then all moral regulation disappears.

Additionally, it has been shown that the more one lies, the easier it gets. Further, if there is no punishment, the rationalization becomes a blueprint for life. Unfortunately, the history of our workers' compensation system and its present-day application means that lying under oath is now another tool in the claimant's litigation

toolbox—and it's one that needs to be redacted.

### **Why Claimants Lie**

All workers' compensation laws in the U.S. share a history of formation through what is known as the "grand bargain." Claimants gave up the right to traditional civil remedies, such as jury trials, where they could argue for potential huge verdicts not only economic in nature, but also for pain, mental suffering, and loss of consortium. In exchange, they gained speedier justice and expedited awards. Employers, meanwhile, gave up the right to defend claims based on claimants' negligence/comparative fault in exchange for limits on awards (like nuclear verdicts) arising out of injuries sustained during the course and scope of employment. The problem for claimants in this system is how they are educated about this "bargain."

Whether it be through television commercials, billboards, or zealous advocates, claimants are taught that their right to receive workers' compensation benefits is unalienable and subject to no scrutiny. Employers and insurance companies are vilified, and the underlying, incessant beat of the drum is that, no matter how farcical a loss, it is a claimant's "entitlement" to receive benefits.

In that way, the meaning of the "bargain" has changed. Claimants are taught to expect an award if they are filing workers' compensation claims in much the same way they expect unemployment compensation when they are laid off from work. Lying, even under oath, is simply a means to an end—an award that one is entitled to anyway. Much worse, not all claimants who lie get caught, and those who do

rarely get prosecuted (and they may still be awarded benefits). We do not have to spell out the rationalization here—claimants lie because they can.

### **The Solution**

Many states have incorporated fraud provisions into their workers' compensation laws, and those provisions must be acted upon. Many insurers fail to go the extra step to make sure fraud is prosecuted. Employers and insurance companies cannot rely on a workers' compensation determination to act as a deterrent to fraud. Swift prosecution is the only way to deter future acts.

Providing education about workers' compensation laws should be a paramount practice for employers. If an employee is educated about workers' compensation laws active in their jurisdiction, they will be less inclined to believe that every claim represents an entitlement to a payout.

I leave you with the most recent result of the current state of the practice. A claimant who did not wish to attend a required vocational evaluation alleged to the court that he was infected with COVID-19, dis-qualifying his attendance. When asked to present proof of a positive test result, he delivered (and entered into evidence) a home test that showed a positive result overshadowed by a pornographic image. Clearly the test result was fake, but the claimant had no hesitation about using it as evidence.

The sociology behind that case fits within the parameters of the rationalization theory outlined here. I can think of no other scenario that better illustrates why employee education is crucial, and why the prosecution of workers' compensation fraud is necessary.



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