

Rumors, Myths, and a Little Truth

By
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When something is as complicated as disability benefits—both Social Security and private insurance—there are bound to be misunderstandings, incorrect interpretations, and downright dangerous statements floating around. They are only spread further and louder and faster with the introduction of the internet. There are many statements making the rounds through emails, news groups, and bulletin boards that are inaccurate and should not be relied upon.

The basic rule is that you should not trust anything you hear (or read) until you have double checked it, especially with an authority such as www.ssa.gov and the various state insurance department websites.

For example, there are multiple sites on the web where you can ask questions about disability and receive answers from readers. When reading these it is important to remember that many who reply on these sites have only gone through the system once, with their own claim, yet they speak with the authority of an expert when they only have their one personal claim as a basis for their opinions.

Also, if you read many of these sites, you begin to believe that the groups that pay benefits are spending all their time trying to avoid approving your claim. Please keep in mind that these sites only attract the people who have had problems with their own claims. People whose claims sailed through to approval have no need to go to those sites so claims without problems are not represented there.

Some of the common tales I have heard in my years in the business include:

"Social Security Disability turns down everyone the first time."
(Sometimes, it's: "You have to be on your deathbed to get Social Security disability.")

While it is true that 60% of all applications for Social Security Disability are denied the first time, this also means that 40% are approved. I personally believe attorneys don't discourage this rumor because their fee is a portion of your retrospective benefits and is far higher if you have had to wait 18 to 24 months to get before an Administrative Law Judge.

While Social Security rules do require that there be sufficient symptoms to prevent claimants from working, the high initial denial is

more likely due to persons who don't understand the process and are not prepared for the amount of paperwork and medical records necessary to process an approved claim. Don't let this rumor discourage you from applying; instead, let it encourage you to learn the process before starting the process.

"I can't get Social Security Disability because I have savings...or own my own home."

This rumor confuses Social Security Disability with Supplemental Security Income (SSI). SSI does require you to show you need the money because yours is mostly gone.

Social Security Disability, however, does not. Social Security Disability is simply a method of starting your Social Security retirement early without the benefits being reduced because you are no longer able to work and pay into Social Security. You can be immensely wealthy, but you are still eligible for Social Security Disability provided you paid into Social Security while working and you become disabled.

"Your employer can't fire you as long as you're out on disability."

Oh, if only....but not true. If you are no longer able to perform your job, there are no requirements that your employer keep you indefinitely. There are some laws and policies that will continue your employment for a period of time such as the federal Family & Medical Leave Act (12 week extension), similar state laws, and employer provided medical leaves of absence (usually 6 to 12 months). However, once any of those extensions are past, your employer can and usually will terminate your employment.

"If I'm laid off, it's too late to file for my employer's long term disability plan."

The insurance company wants claims filed soon, and your long term disability coverage usually ends when you walk out the door. However, you can file a claim and backdate the date of disability to a time when you were working if your medical records support the earlier disability date. If you claim you were disabled the day you left, your claim will be approved if your records show you were disabled then.

"I won't have a problem getting disability from Social Security or my employer because my doctor says I am disabled and agreed to tell them that."

I really wish more doctors would realize this is NOT true. Social Security, and each disability insurance contract, has their own definition of what it takes to be determined Totally Disabled, and they virtually ignore such statements of disability from treating doctors, because they know the doctor probably doesn't know the definition they are using. What they want are the medical records and they want to be able find in them documentation of your disability from the office notes, treatment plans, and results of laboratory tests. While it is important that your doctor support your claim for disability, much more than your doctor's opinion will be needed.

“After you file for disability, be careful as they will videotape you to prove you aren't disabled.”

This one is a little harder to dispel because it does occasionally happen. However, I have never seen it occur when someone is first applying for disability and I have NEVER seen it from Social Security. Social Security is too understaffed and underfunded to spend that much time and money on one claimant. Only in the rarest of cases would they go to that trouble and only if they already had a strong suspicion the claimant was earning income that was not being reported to the IRS. The IRS helps Social Security by reporting to them the reported work earnings of those on Social Security Disability or SSI.

Insurance companies, however, will occasionally use this method, not during the initial claim, but when they are reviewing an existing claim with the goal of terminating benefits. It does not happen often, primarily because of the expense but also because just filming the act of you walking from the store to your car with a bag of groceries doesn't demonstrate that you can work 8 hours a day, 5 days a week. Conversely, just in case, it is not recommended you participate in a marathon or an iron man contest.

"If you threaten to sue your insurance company they'll treat you better and approve your claim faster."

First, even if you can sue, they've heard that threat too many times to be very concerned. Now for the really disappointing news, if you get your benefits through your employment, it comes under a federal law called ERISA (Employee Retirement Income Security Act) which almost makes it not worthwhile to sue.

Under ERISA, the worst punishment an insurance company can get is being required to pay the benefit they should have paid in the first place, plus some (relatively small) attorney's fees. No increased damages for pain, suffering, punitive, etc. Because of this, even finding an attorney to take ERISA cases can be difficult, especially if you are looking for an attorney that works on contingency and doesn't charge up front.

“Why don’t members of Congress have to do what we do? They get 100% health coverage and after one term, they get a lifetime pension of 100% of their salary. They don’t even pay into Social Security like we have to.”

I’m adding this because I just got another email asking me to pass it on to twenty people. It claims that a 28th amendment will force Congressional members to participate in all programs passed on the rest of the country. In this era of polarization in Washington, this email goes around fairly frequently complaining that we have to rein in those elite Congresspersons.

I do not intend to defend the members of Congress but the arguments for that “proposed amendment” are totally false. Since 1984 all members of Congress pay into Social Security just as all workers do.

Members of Congress do NOT have a special health plan. They are allowed to choose a plan from the group of plans in the Federal Employee Health Benefit Plan, the same as all federal workers do.

Finally, they are NOT eligible for a lifetime pension of 100% of their salary after one term in Congress. Depending on their length of service, they pay into either the Civil Service Retirement System or the newer Federal Employees Retirement System (FERS). With long service they can accumulate a generous pension, but not 100% of their income while in office, and they must pay into the program to receive benefits. You can learn more on Congressional Pensions at <http://usgovinfo.about.com/od/uscongress/a/congresspay.htm> or do a general internet search for “Congressional Pensions.”

Before you act on “what others have heard,” check it out, especially if it affects your own financial situation. Also check it out before passing it on an email.