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FRANK'S COLUMN:

Still Struggling With New Year's Resolutions?

Now that January is behind us, we can forget about all of those New Year Resolutions, losing weight, working out, drinking less, blah, blah, blah...but I did hear a pretty cool thing I'd like to share with you. This is from Tim Ferris, author of The 4 Hour Workweek.



Instead of New Year resolutions, Tim does a look back, or a prior year review. Going through his calendars, he goes through every week and writes down people or activities that had a positive or negative effect. He schedules out more of the positives and puts the top negatives on a Do Not Do list. It's a cool way to make sure you do more of what you love and less of what you hate - the podcast number is 559 (December 27, 2021) and it's only 5-10 minutes long. Of course, the alternative is my friend who makes New Year's resolutions that include gaining weight, spending more money, drinking more, and a few other things - and he's one of the happiest people I know!



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All you need to do is open your phone camera, hold your device over the code to the left, and tap the notification to open the link.

Surviving The Snow In The DMV

Ever since I was a kid, I loved snow days. Every time it snowed and school was closed, my gang of friends would spend all day building massive snow forts and having snowball fights. The main sledding hill in our neighborhood was right behind my house - and our favorite sledding activity was "hijacking". It worked like this - when you were trudging up the hill pulling your sled after a glorious run, another kid would come flying down the hill, flat on his sled, laying down.

If you timed it just right, you yelled "Hijacker!" and dove on top of him - riding his sled all the way down, or often, both just wiping out because you knocked him off the sled. Going down the hill, you either wanted to out maneuver hijackers or aim right for them and try to scare them. And sometimes they would dive and completely miss you - to the laughs and jeers of all the sledders and the indignity of having to get up after the miss and go back down the hill to get your sled (not that that ever happened to me of course).

If you got hijacked you tried to shake him off, steering sharply left and right and leaning into it - usually just causing a massive wipe out but at least you got the hijacker off.

And one of my greatest snow day memories is when I was in 4th or 5th grade and hit the principal's car with a snowball (that was the other thing we did when it snowed - pegged cars with snowballs). We had gotten out of school early and poor Mr. Sandt was probably driving some kid home who missed the bus. We were all poised in our snow fort as his car, an old red Volvo we saw parked in front of the school every day, slowly rolled by. We had never seen that car anywhere but the school parking lot and couldn't believe the opportunity. We waited until he passed and then launched our snowballs - only mine connected, hitting his rear driver's side window with a loud thwack.

He stopped the car and got out - a tall, thin gray haired gentleman in a gray coat with glasses, who looked exactly like a principal. He looked around for the offender.

I honestly don't know what happened next, because I was running so fast, and was so terrified, that it was all just a blur. We scattered, spread out over the block in hiding, until the coast was clear.

I don't throw snowballs at cars any more but I still love snow days. I even like shoveling snow. Even though I know it will be gone in a day or two, I have some deeply ingrained DNA that requires a clean driveway and sidewalk. Although this past snow was a lot of work - I spent more time clearing snow off of trees and bushes and cleaning up tree limbs. As you can see from the picture, it wasn't what you'd call a "professional job" - I just used whatever I had to prop up the cypress trees that got totally bent over by the snow.

I live near a sledding hill now and occasionally I'll go over there. I've never seen a hijacking, which would probably be deemed inappropriate behavior by the ever present parents, or called something like "equal time sled sharing on the way down as long as you help pull the sled back up, but only with your mother's permission" and by the time you yelled that, you'd have missed the hijack...



SUCCESSFUL APPEAL OF DISABILITY DENIAL LEADS TO AWARD BY LINCOLN FINANCIAL

A Chief of Staff for a CEO of a defense contractor in DC, who had a distinguished career working on the hill for several members of Congress, developed excruciating pain in her left hip when she was working in the private sector. Her company had an employee disability benefits plan through Lincoln Financial and like most people she believed applying for short-term and long-term disability benefits would be an easy process.

Unfortunately, Lincoln did not see it that way.

After initially providing benefits based upon osteoarthritis in her hip, Lincoln terminated the benefits, using the typical excuses we see in almost every disability case. The reality is, like most disability insurance companies, they did not believe she was disabled despite the medical evidence from her treating physicians.

She was being treated by a well respected, board-certified orthopedic surgeon who indicated that she could not return to work and would eventually need a hip replacement. However, Lincoln used its own nurse disability evaluators to say that the orthopedic surgeon had not provided evidence of any limitations or restrictions that would prevent her from fulfilling the duties of her occupation as Chief of Staff.

We filed an appeal of Lincoln's denial of benefits on our client's behalf. In any short or long term disability case, the handling and filing of a denial appeal is complex. This appeal focused on several aspects of the medical evidence

and ERISA disability law.

When filing an appeal for disability benefits, it is important to work with your doctors to provide them with the definitions, terms and conditions, and other information critical to your claim for long-term disability benefits. Not only did we review all of her medical records, but we summarized these and provided a format to her treating doctor so they could write a report outlining her limitations and how her condition prevented her from fulfilling her job duties.

Vocational evidence was critical for a successful appeal. Her position was sedentary and she was limited primarily by pain. So it was important to talk to other people who had observed her working in pain or knew about her significant pain so that we could present statements to the insurance company that documented the restrictions and pain beyond the medical records.

Lincoln's benefits denial letter stated "the medical evidence fails to demonstrate significant pain, decreased strength, altered sensation, or loss of range of motion to support restrictions and limitations. There is no indication of you requiring assistive devices for ambulation or any other activities".

This is a great example of what you have to look for in the insurance company's denial of your claim.

The fact that she did not require an assistive device (a cane or a walker) had absolutely nothing to do with her job duties. It's simply a "red herring" that the disability insurance company sometimes gives you to make you think



you have not complied with the terms and conditions of the policy.

While having a sedentary occupation, her position required hours of sitting everyday. After researching the DOT occupational titles and several other government agency definitions of sedentary positions, we were able to show the insurance company that her job required sitting for 6 to 8 hours during the day, which was unsustainable due to the osteoarthritis in her hip.

By including the vocational and medical evidence in her appeal, we were able to win our client \$97,844.45 in past due benefits as well as on-going monthly benefits.

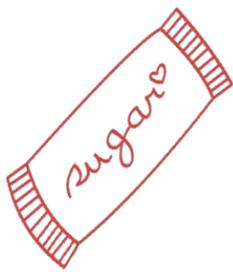
If you received a letter denying or terminating benefits, call us today at 202-393-3320.

But don't wait, under ERISA and most long term disability benefit insurance policies, you only have 180 days to appeal - not a lot of time for the amount of work you need to do if you want to do it right.

A Galentine's Day Cocktail Leslie Knope Would Definitely Approve Of

INGREDIENTS:

- 3/4 cup dry ginger ale
- 1/2 cup fresh raspberries
- 1/2 packet of Sweet'N Low
- 1 cup pink Moscato chilled



INSTRUCTIONS:

1. Before you do anything, make sure your Moscato is chilled and you have heart-shaped ice cubes in the freezer. If you don't have a heart-shaped ice tray, any ice cubes will do.
2. In a blender combine the ginger ale, raspberries, and Sweet'N Low. This will make just over a cup, which you will divide in half for two glasses.
3. Place a few ice cubes into the glass, add the raspberry mixture (half per glass), and then top with the pink Moscato.
4. Add a raspberry garnish to the top by threading a few onto a fun drink stirrer.
5. Now drop a few heart-shaped ice cubes carefully on top.



In The Market For Love (Or A Lawyer) *Valentine's Day Cautionary Tales*

A forgetful boyfriend led to a violent Valentine's Day attack in Ohio after he failed to buy a present for his knife-wielding girlfriend. The boyfriend was so frightened he barricaded himself in a room to hide. Unperturbed, the woman then got a knife and "began cutting the door in an attempt to get to the victim." Police arrived before she had the chance to succeed.

Another man in Boise, Iowa was not so lucky. He filed a lawsuit after efforts to "patch up a relationship" escalated and his girlfriend called a friend to beat him up. Instead, the friend called the police—who mistakenly tasered him upon arrival. The man sued and won on grounds of excessive force and violation of his Fourth Amendment rights.

So listen up - avoid the cost of a lawyer and the danger of an angry partner by planning ahead this year. Make that reservation at the candle-lit restaurant that your significant other keeps hinting at or buy that giant teddy bear and box of chocolates.

Valentine's Day is the time for love and romantic gestures - but as we lawyers know it can quickly turn sour. Let these stories serve as a cautionary tale to all those out there celebrating this year.

Happy Valentine's Day from Donahoe Kearney!

