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Analysis of appeals against the ruling of occupational physicians lodged with the Prevention and Occupational Epidemiology Operative Unit, ASP Palermo (Palermo Health Authority), from 2008-2010

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Fitness for work judgment; occupational physician; Palermo

Parole chiave
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Summary
Introduction: *The responsibility of the Department for Prevention and Safety at the workplace of the Palermo Health Authority (ASP) is to monitor and coordinate the activity of occupational physicians operating in Palermo and its province. One of its obligations is to examine appeals "against the judgment of occupational physicians", "...and, after carrying out further investigation, confirm, modify or reverse the ruling itself" (art. 41, par. 6, legislative Decree 81/08).* **Objectives:** *The purpose of this study was to analyze the appeals lodged against a "judgment of fitness for work" submitted to the "Health Prevention and Occupational Epidemiology Operative Unit" of the Department of Prevention and Safety at the Workplace of the ASP Palermo, from 2008 to 2010.* **Methods:** *The total number of appeals lodged during the three-year period was 211, 174 of which were finalized.* **Results:** *The most frequent job category among the appellants was that of blue-collar workers, in various sectors, covering 44.5% of the subjects under study (93 cases). In 64.2% of the processed appeals (131 cases), the judgment of the physician was modified, while in the remaining 36.8% (73 cases) it was confirmed. The work fitness judgment with restrictions was the category against which most appeals were lodged, and the diseases in question mostly concerned the osteoarticular and cardiovascular systems.* **Conclusion:** *In a context of continuous change in the labour field and the related risks to the health and safety of workers, the occupational physician must approach the worker in a comprehensive manner, through an assessment of the possible health problems and the working environment in which he/she operates.*

Riassunto
«Analisi dei ricorsi "avverso giudizio del medico competente" inoltrati all'U.O.S. "Prevenzione sanitaria e epidemiologia occupazionale" dell'ASP di Palermo nel periodo 2008-2010». **Introduzione:** *Il Servizio di Prevenzione e Sicurezza negli Ambienti di Lavoro" dell'ASP di Palermo ha il compito di controllare e coordinare l'attività*

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dei medici competenti che operano sul territorio di Palermo e Provincia. Tra gli adempimenti istituzionali del servizio è contemplato anche quello di esaminare i ricorsi "avverso giudizio del medico competente" "…disponendo dopo eventuali ulteriori accertamenti, la conferma, la modifica o la revoca del giudizio stesso"(art 41, comma 6 D.Lgs.81/08). **Obiettivi:** *Lo scopo dell'analisi è l'esame dei ricorsi "avverso giudizio di idoneità" pervenuti all'UOS "Prevenzione Sanitaria e Epidemiologia Occupazionale" del Servizio di Prevenzione e Sicurezza negli Ambienti di Lavoro" del dipartimento di prevenzione dell'ASP di Palermo dal 2008 al 2010.* ***Metodi:*** *Il numero totale dei ricorsi pervenuti nel triennio è di 211, di cui ne sono stati espletati 174.* ***Risultati:*** *La qualifica dei ricorrenti in assoluto più numerosa è quella di operaio impegnato in diversi settori lavorativi, rappresentando il 44.5% (n. 93)del campione totale. Nel 64.2% (n. 131) dei ricorsi esitati è stato modificato il giudizio del medico, mentre nel 36.8% (n. 73) dei casi il giudizio è stato confermato. Il giudizio di idoneità con limitazioni è quello per cui viene più frequentemente presentato il ricorso e le patologie da cui sono affetti i lavoratori in esame riguardano principalmente l'apparato osteoarticolare e le malattie cardiovascolari.* ***Conclusioni:*** *In un contesto di cambiamento continuo del mondo del lavoro e dei relativi rischi per la salute e la sicurezza dei lavoratori, il medico competente deve approcciarsi al lavoratore in maniera globale, mediante una valutazione delle eventuali problematiche di salute e del contesto lavorativo in cui opera.*

Introduction

The judgment of fitness for work as expressed by the occupational physician pertains to the fitness of a particular employee to withstand a specific risk associated with his/her job, that is, assessing whether the subject's mental and physical condition are compatible with the risks inherent in carrying out a specific task (2). This obligation which occupational physicians must fulfill was first introduced into medical prevention legislation by Presidential Decree 185/1964, regarding employees exposed to ionizing radiation, and was then incorporated in Legislative Decree 277/91 (art. 7), referred to in Legislative Decree 77/92 (art. 5) and again in Legislative. Decree 626/94 (art. 17, par. c), to be finally confirmed in Legislative Decree 81/08 (art. 41, par. 6) and subsequent amendments. Among the many aspects of an occupational physician's activity, ruling on matters of fitness may be the one that draws most attention, although arguably not the most important: the ruling itself is but the final step in the physician's activity and is, as such, heavily dependent on all the previous actions taken by the physician with the purpose of disease prevention and health promotion at the workplace. The occupational physician has an obligation to submit a written statement on his ruling to the employee and to the employer (art. 41, par. 8, Legislative Decree 81/08), both of whom have the right to lodge an appeal within 30 days of the date the communication on the ruling was issued, by submitting it to the competent Supervisory Board (art. 41, par. 9, Legislative Decree 81/08). The latter then arranges for another medical examination for the employee in question and, when deemed necessary, requests additional tests at the appellant's expense (8). At the end of the verification process, the Supervisory Board can reverse, modify or confirm the occupational physician's judgment.

The aim of this study was to analyse the appeals against a "judgment of fitness for work" submitted to the "Health Prevention and Occupational Epidemiology Operative Unit" (UOS) of the Department of Prevention and Safety at the Workplace of the ASP Palermo, from 2008 to 2010.

Methods

A cross-sectional study was carried out on a selection of employees who lodged an appeal against the fitness for work assessment of an occupational physician with the Health Prevention and Occupational Epidemiology Operative Unit of the ASP 6 Palermo (Palermo Health Authority 6) in the period from January 2008 to December 2010. From each file, we collected the following relevant data:

Table 1 - Clinical problems of employees in the sample

Clinical problems	Frequency	Percentage
Cardiovascular diseases	67	19.0%
Respiratory diseases	24	6.8%
Gastrointestinal diseases	16	4.5%
Musculoskeletal disorders	124	35.2%
Endocrinal diseases	21	5.9%
Psychiatric diseases	32	9.1%
Neurological diseases	19	5.4%
Ophtalmological diseases	20	5.6%
Otorhinolaryngological diseases	8	2.2%
Kidney diseases	4	1.1%
Skin diseases	1	0.2%
Autoimmune diseases	6	1.7%
Cancer	8	2.2%
Pregnancy	2	0.5%
Total	352	100%

age and gender of the appellant, the employer, the worker's job title, the physician's assessment, any pathological condition of the employee, their restrictions and prescriptions, the result of the appeal and any additional medical checks requested by the Health Prevention and Occupational Epidemiology Operative Unit. The disorders subject to assessment were divided into fourteen homogenous groups of chronic-trend disorders/diseases that may significantly affect employees' performance in the tasks assigned (table 1). Data were filed on a password-protected Microsoft Excel database, in compliance with privacy regulations, and processed with Epi Info version 3.5.1. As this was an observational study, the absolute frequency and percentage of the various parameters involved were calculated.

Results

The total number of appeals examined for the three-year period was 211, and the initial data emerging from the analysis is their distribution over time, which displayed a slightly increasing trend in this period. In fact, from 2008 to 2010 the number of appeals increased from 60 to 81: 60 appeals in 2008 (28.4%), 70 in 2009 (33.2%) and 81 in 2010 (38.4%). The appellants were 73% male and 27% female, with a mean age of 50.4 (range 28 to 68). Of these, the mean age of the males was 50.4 (range 30 to 68) and the mean age of the females was 50.4 (range 28 to 68). Out of all the claims received by UOS over the three years, 82% (174) were finalized, with 31 cases dismissed: 39% (12 cases) were rejected because they were submitted past the deadlines specified in art. 41, par. 9 of Legislative Decree 81/08; 26% (8 cases) were dismissed after a waiver on the part of the employees themselves, 13% (4 cases) were submitted for medical assessment to the committee integrated medical, and the remaining 6% (2 cases) were submitted to the competent supervisory body for further investigations on possible shortcomings on the part of the company by whom the occupational physician was employed. Among the rest of the dismissed appeals, classified under the category "other", a case worth mentioning is that of a person working as a "driver", who was deemed unfit because of cardiovascular disease and whose appeal was transferred to the motor vehicles authority as the occupational physician cannot issue a ruling on matters of fitness that are under the legal jurisdiction of an agency of the National Health Service. In another case, the appeal was dismissed following the appellant's death. Since the data collected on these dismissed cases were incomplete and non-processable, they were excluded from the study.

Among all the appeals that were finalized (174), in 11 cases (9 males and 2 females) the employee appealed against the occupational physician's judgment twice during the time frame considered in our study, but for the sake of calculation, it was counted only once.

All the subjects of our study were employed in a variety of jobs in the city of Palermo or in the surrounding province. Nine occupational sectors were identified, with industry covering the majority of employees examined (25%) (table 2). It was possible to identify the single most representative job qualification for each of these sectors, but when analyzing the sample in its entirety, 44.5% (93) of the subjects were blue-collar workers in various fields.

Table 2 - Occupational sectors of employees under study

Employment sector (Ateco Codes)	Frequency	Percentage	Males	Females	Mean age
Construction (COD 41-43)	9	4%	9	0	50.5
Defence and public administration (COD 84)	20	10%	12	8	50.4
Small and large enterprise (COD 45-47)	10	5%	9	1	50.4
Education (COD85)	5	2%	3	2	50.4
Health and social work (COD86-88)	48	23%	16	32	50.4
Information and communication services (COD 58-63)	13	6%	11	2	50.3
Water provision, sewage networks, refuse and regeneration activities (COD 36-39)	38	18%	36	2	50.4
Manufacturing activities (COD 10-33)	51	24%	49	2	50.3
Other service activities (COD 94-96)	17	8%	10	7	50.4
Total	211	100%	155	56	50.4

When analyzing the medical fitness judgment for a specific duty, as originally expressed by the occupational physician, 45% (93) of the appeals concerned fitness with restrictions, 30% (64) temporary or permanent unfitness, 11% (22) fitness with prescription and 12% (25) fitness (figure 1).

The ruling of the occupational physician was changed in 64.2% of the cases (131), and confirmed in 36.8% of the cases (73).

The confirmed rulings concerned various types of fitness: out of 115 rulings of fitness with restrictions/prescriptions, only 41% (47 out of 115) of the cases were confirmed by the Health Prevention and Occupational Epidemiology Operative Unit medical board; 34% (22 out of 64 cases) were confirmed as temporary or permanent unfitness for a specific duty, and 16% (4 out of 25) confirmed rulings of unconditional fitness (figure 1). When confirming or modifying the rulings, in almost all cases the physicians at the Department of Prevention and Safety at the Workplace based their judgment solely on the medical examination carried out at the time of the appeal and on documents already included in the file. In 10 cases only, additional diagnostic procedures were requested to investigate further on the employee's disorders, including blood chemistry analysis (4 cases), electromyograms and x-rays (6 cases). In 6 cases, additional examination by a specialist was required, particularly in matters of neurological/mental disorders (1 case) and orthopedics (5 cases).

As for fitness with restrictions (93 cases), the most frequent recommendations by the occupational physicians about reduction of heavy work and exposure to risk were:

- "Take more breaks, in addition to those already scheduled for the work shift" (29 cases);

-"Avoid manual handling of loads" (28); for these cases, the occupational physician set a maximum weight threshold (in kilogrammes) that the employee could handle in relation to his/her disorder.

-"Assign to light work", explaining that the employee should avoid standing for long periods and/or flexing the spine (20).

Such restrictions on fitness, as judged by the occupational physician, were justified by the fact that the employees in question mostly suffered from osteoarticular diseases (35% of cases) and cardiovascular diseases (19% of cases) (table 1). Such diseases were also observed frequently in employees who were originally judged fit with prescriptions or temporarily/permanently unfit by an occupational physician. Taking a closer look at the osteoarticular diseases, the most frequent were especially those concerning the dorsal-lumbar spine and the lower limbs; whereas for cardiovascular diseases, the most frequent was ischaemic cardiac disease, followed by

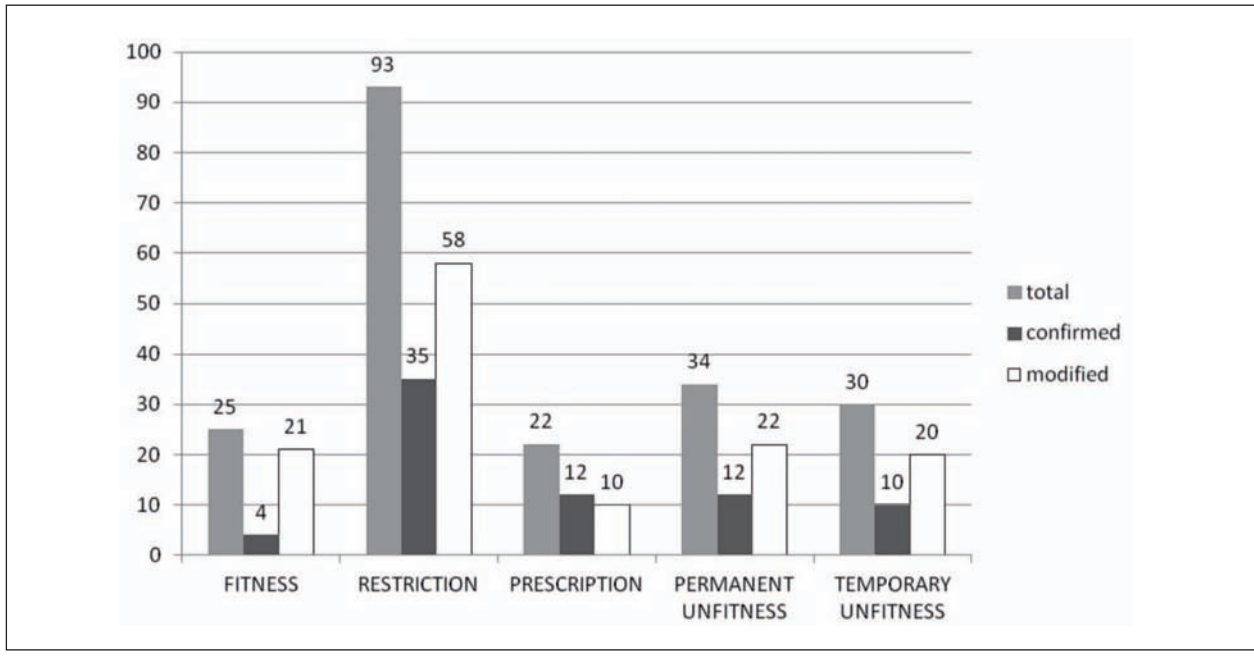

Figure 1 - Medical fitness for work as originally expressed by the occupational physician and subsequently confirmed or modified by the Health Prevention and Occupational Epidemiology Operative Unit medical board

arterial hypertension and arrhythmia. It should be pointed out that 47% of the examined subjects suffered from 2 or more morbid conditions affecting various organs or systems, with many different combinations: this is the reason why the number of diseases shown in table 1 is greater than the number of employees in the sample. Analyzing the association between the diseases and the type of tasks performed, a striking majority of psychological disorders for employees in the healthcare sector can be observed. Out of 48 employees in this sector, 14 reported anxiety disorders, stress and panic attacks, and were found to be either unfit or fit with restrictions by an occupational physician, with restrictions pertaining mostly to not working night shifts. As nightwork is undeniably one of the main risk factors for health, it is implicit that individual and collective prevention measures must take into account the actual, current situation of night- and shift-workers, especially in those companies with a small number of employees, as stated in Directive 93/104/CE (3). This is the reason why occupational physicians tend to issue restrictions on night shifts to healthcare operators who show signs of psycho-physical stress. However, the Operative Unit in the Palermo province Health Authority modified the occupational physician's advice for all appeals against fitness judgments with restrictions, by requiring additional or more severe restrictions not only on night shifts, but also on holiday shifts and interdepartmental on-call duty. Such decisions arise from the fact that holiday shifts, interdepartmental on-call duty and work in hospital wards or units that must provide urgent care and emergency services should all be considered in the same manner as night shifts, as they involve an additional mental and physical burden on the existing stress factor.

Our study reports 4 cases of appeals against a full "fit for work" ruling being rejected after a medical examination was carried out by physicians at the Department of Prevention and Safety at the Workplace, showing that the request for restrictions was most likely based on non-existent symptoms. Our study also reports 12 cases where, on the contrary, employees had been confirmed "unfit for work", as previously reported by the occupational physician, adding strength to the hypothesis that they were quite possibly willing to hide a pathological condition in order to keep their jobs and tasks.

Discussion

Analysis of the modified medical judgments revealed that 78 cases (59.54%) were modified by physicians of the Department of Prevention and Safety at the Workplace by adding more severe restrictions or prescriptions, while they changed some cases from a judgment of fitness for a specific duty to permanent unfitness after the appeal; only in 53 cases did physicians of the Department of Prevention and Safety at the Workplace change a negative judgment to a positive one.

It follows that the task of occupational physicians is difficult, burdensome, involves a great deal of ethical responsibilities inherent with dealing with employees' mental and physical well-being and, by and large, with prevention and early diagnosis of occupational health issues. A precise identification of this key role (as defined by Legislative Decree 81/08 and earlier regulations concerning safety at work) serves the purpose of guaranteeing high-level, consistent professional services, including health surveillance. This very important task is defined in Legislative Decree 81/08, art. 2, par. 1-M, as the combination of all medical actions aimed at protecting the health and safety of employees with regard to the working environment, occupational hazards and the ways in which the job is carried out: the "fitness judgment" ruling as expressed by an occupational physician according to health surveillance assessments takes into account the exposure to risks inherent with the job, but also the compatibility of the employee's mental and physical conditions with that particular task. In this light, a ruling of "fitness with restrictions" or "prescriptions" should be interpreted as yet another way for the occupational physician to demonstrate interest and care for the employee's health and safety (4). However, there are many reports of complaints of poor, superficial or altogether wrong assessments, a fact that can also be detected via analysis of the appeals in our study (1, 5, 6, 7). In fact, one of the most critical aspects in the occupational physician's task is the relationship with the worker (1, 5, 6, 7).Among the subjects of health surveillance, there are two categories that are very hard to approach: those who ask for restrictions based on false/simulated medical conditions and those who, on the contrary, are keen to obtain full approval in order to keep certain benefits or avoid losing their jobs. The first category is by far the more difficult to pin down with absolute certainty, both because of the impossibility of making the employee undergo level 2 medical tests that may confirm the actual presence of symptoms, and because of the fear that due to diagnostic uncertainty the symptoms may be real, even if not manifesting any clinical sign. In both cases, the occupational physician must not be influenced by the situation, and must formulate his/her judgment based exclusively on the medical examination and tests, disregarding any fictitious, groundless dissimulation that may have negative repercussions on the employee's health.

In the context of continuous changes in the working environment and changing hazards for the employees' health and safety, the occupational physician's knowledge must be constantly updated on a wide range of matters. In order to make it easier for the physician to deal with various, complex and rapidly evolving issues, a large number of audits, meta-analysis, literature reviews and guidelines have been produced, especially over recent years: guidelines, particularly, are meant to be considered as a series of recommendations, as best practices to fulfill duties as a occupational physician, regarding certain contexts or issues. In other terms, having unambiguous, constantly revised guidelines would result in a notable improvement in the quality of occupational physicians' services and, therefore, of the role itself (1, 5, 6, 7). The occupational physician should, for example, to be precise in issuing a judgment of fitness, taking into account not only the health status of the worker but also the environment and organization of work. The involvement of the entire class of medical authorities would be desirable to identify and share common criteria for making fitness judgments. Without disregard for the validity of these guidelines, the physician should still rely on his/her own skills and expertise when deciding, case by case, to what extent these guidelines can apply, while remaining fully aware that medical science is not about "certainty", but about "possibility".

No potential conflict of interest relevant to this article was reported

References

1. Campurra G: Le visite mediche e il giudizio di idoneità. In Medicina del Lavoro in Azienda. Dossier Ambiente 64, 2003G. Ital Med Lav Erg 2004; *26* (Suppl): 248
2. Decreto Legislativo 9 aprile 2008, n. 81 "Testo Unico sulla Salute e Sicurezza sul Lavoro" e successive modifiche e integrazioni
3. Direttiva 93/104/CE del Consiglio, del 23 novembre 1993, modificata dalla Direttiva 2000/34/CE, del 22 giugno 2000, del Parlamento europeo e del Consiglio.
4. D'Orsi F, Narda R, Scarlini F, Valenti E: La Sorveglianza sanitaria dei lavoratori. III Edizione. EPC Libri, 2010
5. Gigli M, Sicilia L: Il giudizio di idoneità alla mansione specifica espresso dal medico competente: riflessione critica attraverso l'analisi storica dei ricorsi pervenuti ad una ASL. Giornale Italiano di Medicina del Lavoro ed Ergonomia 2004; *26*: (Suppl): 248-249
6. Magelli L: Considerazioni e proposte su un problema delicato: il ricorso avverso il giudizio del medico competente ex art. 17 D.Lgsl 626/94. Bollettino Prevenzione 1998; *4*: 34-37 Manuale
7. Sallese D, Rossi M: Le procedure per l'esame del ricorso avverso il giudizio del medico competente (Art.17, C. 4 D.Lgs. 626/94) Giornale Italiano di Medicina del Lavoro ed Ergonomia 2006; *28* (Suppl): 97-98
8. Sicurezza 2010-Manuali Professionali, Edizione IPSOA, 2010

Conflitto di interesse / Conflict of interest

Pleural mesothelioma: epidemiological and public health issues. Report from the second Italian consensus conference on pleural mesothelioma. Med Lav 2013; *104 (3)*: 191-202

The authors specify their involvement in past and recent trials on asbestos related diseases.

Gli autori specificano il loro coinvolgimento in processi trascorsi e recenti sulle malattie asbesto-correlate.

The authors did not report economical or financial conflicts of interest. Twelve of them have been asked to provide scientific information in criminal or civil court cases related to asbestos related diseases: in the last 5 years five of them served as expert or expert witness for the court, twelve for the public prosecutor, five acted as expert for the plaintiff(s), and two for the defendant(s). Three were never involved in court cases. One was never involved in court cases but his duties include the evaluation of the adequacy of preventive measures. A detailed report was provided to the Editor of *La Medicina del Lavoro* and it is added at the Italian version of the "Consensus Conference" report available (open access) on the journal web site.