

## FORM 12: Sample Scoring of Videotape

### Example 1

I, PARALEGAL, being duly sworn, depose and state as follows:

1. I am a paralegal working at LAW FIRM.
2. On February 15, 20\_\_\_, at the direction of ATTORNEY. I reviewed the CDs received from INSURER that contained the surveillance of CLIENT.
3. During the viewing of each segment of surveillance, I noted the exact times that Plaintiff was seen on the tape, as well as noting the range of time she was placed under surveillance.
4. On March 15, 20\_\_\_, SURVEILLANCE COMPANY placed CLIENT under surveillance from 5:47 a.m. to 2:00 p.m. for a total of 8 hours and 11 minutes.
5. Based upon my review of the video CD for March 15, 20\_\_\_, CLIENT was filmed for a total of 19 seconds out of the 8 hours and 11 minutes she was placed under surveillance, or .0006 % of the time (translated into seconds: xxx seconds seen divided by 29,460 seconds under surveillance).
6. On March 16, 20\_\_\_, SURVEILLANCE COMPANY placed CLIENT under surveillance from 5:58 a.m. to 5:00 p.m. for a total of 11 hours and 2 minutes.
7. Based upon my review of the video CD for March 16, 20\_\_\_, CLIENT was filmed for a total of 25 minutes and 16 seconds out of the 11 hours and 2 minutes she was placed under surveillance, or .064 % of the time (translated into seconds: 1,860 seconds seen divided by 28,800 seconds under surveillance).
8. On March 17, 20\_\_\_, SURVEILLANCE COMPANY placed CLIENT under surveillance from 6:50 a.m. to 2:50 p.m. for a total of 8 hours.
9. Based upon my review of the video CD for March 17, 20\_\_\_, CLIENT was filmed for a total of 31 minutes out of the 8 hours she was placed under surveillance, or .064 % of the time (translated into seconds: 1,860 seconds seen divided by 28,800 seconds under surveillance).
10. On May 5, 20\_\_\_, SURVEILLANCE COMPANY placed CLIENT under surveillance from 6:44 a.m. to 2:44 p.m. for a total of 8 hours. (AR826-834).
11. Based upon my review of the video CD for May 5, 20\_\_\_, CLIENT was filmed for a total of 1 minute and 13 seconds out of the 8 hours she was placed under surveillance, or .027 % of the time (translated into seconds: 780 seconds seen divided by 28,800 seconds under surveillance).
12. On May 6, 20\_\_\_, SURVEILLANCE COMPANY placed CLIENT under surveillance from 6:54 a.m. to 2:54 p.m. for a total of 8 hours.
13. Based upon my review of the video CD for May 6, 20\_\_\_, CLIENT was not observed.
14. On May 7, 20\_\_\_, SURVEILLANCE COMPANY placed CLIENT under surveillance from 6:13 a.m. to 2:13 p.m. for a total of 8 hours.
15. Based upon my review of the video CD for May 7, 20\_\_\_, CLIENT was filmed for a total of 7 minutes and 14 seconds out of the 8 hours she was placed under surveillance, or .015 % of the time (translated into

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seconds: 434 seconds seen divided by 28,800 seconds under surveillance).

16. On May 8, 20\_\_, SURVEILLANCE COMPANY placed CLIENT under surveillance from 5:57 a.m. to 11:39 a.m.. for a total of 5 hours and 42 minutes.
17. Based upon my review of the video CD for May 8, 20\_\_ , CLIENT was filmed for a total of 13 seconds out of the 5 hours and 42 minutes she was placed under surveillance, or .0006 % of the time (translated into seconds: 13 seconds seen divided by 20,520 seconds under surveillance).
18. On June 8, 20\_\_, SURVEILLANCE COMPANY placed CLIENT under surveillance from 8:45 a.m. to 9:08 p.m. for a total of 12 hours and 23 minutes.
19. Based upon my review of the video CD for June 8, 20\_\_, CLIENT was filmed for a total of 5 minutes and 53 seconds out of the 12 hours and 23 minutes she was placed under surveillance, or .007 % of the time (translated into seconds: 353 seconds seen divided by 44,580 seconds under surveillance).
20. On June 9, 20\_\_, SURVEILLANCE COMPANY placed CLIENT under surveillance from 9:09 a.m. to 9:09 p.m. for a total of 12 hours.
21. Based upon my review of the video CD for June 9, 20\_\_, CLIENT was not observed.
22. On December 18, 20\_\_, SURVEILLANCE COMPANY placed CLIENT under surveillance from 9:00 a.m. to 2:30 p.m. for a total of 5 hours and 30 minutes. (AR807-811)
23. Based upon my review of the video CD for December 18, 20\_\_, CLIENT was filmed for a total of 6 seconds out of the 5 hours and 30 minutes she was placed under surveillance, or .0002 % of the time (translated into seconds: 6 seconds seen divided by 28,800 seconds under surveillance).
24. On March 14, 20\_\_, SURVEILLANCE COMPANY placed CLIENT under surveillance from 8:31a.m. to 6:31 p.m. for a total of 10 hours and 2 minutes.
25. Based upon my review of the video CD for March 14, 20\_\_, CLIENT was filmed for a total of 1 minute and 46 seconds out of the 10 hours and 2 minutes she was placed under surveillance, or .016 % of the time (translated into seconds: 100 seconds seen divided by 6,060 seconds under surveillance).
26. On March 15, 20\_\_, SURVEILLANCE COMPANY placed CLIENT under surveillance from 7:25 a.m. to 3:53 p.m. for a total of 8 hours and 28 minutes.
27. Based upon my review of the video CD for March 15, 20\_\_, CLIENT was filmed for a total of 3 minutes and 2 seconds out of the 8 hours and 28 minutes she was placed under surveillance, or .001% of the time (translated into seconds: 182 seconds seen divided by 30,480 seconds under surveillance).

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PARALEGAL

Sworn to me this \_\_\_\_\_ day of \_\_\_\_\_

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Notary  
Public

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## Example 2

Date of Surveillance	Total Time of Surveillance	Time Recorded on Camera	Time Recorded with CLIENT Visible on Camera
November 9, 20__	9 hours, 35 minutes	5 minutes, 17 seconds	60 seconds
November 10, 20__	9 hours, 41 minutes	7 minutes, 26 seconds	2 minutes, 49 seconds
November 11, 20__	9 hours, 37 minutes	5 minutes, 46 seconds	37 seconds
November 12, 20__	9 hours, 50 minutes	1 hour, 40 minutes, 50 seconds	1 hour, 36 minutes, 3 seconds
Total over 4 days	38 hours, 43 minutes (=139,380 seconds)	1 hour, 59 minutes, 19 seconds (=7,159 seconds)	1 hour, 40 minutes, 29 seconds (= 6029 seconds)

Activity	Time Recorded with CLIENT Performing Activity	Percent of Time Recorded on Camera	Percent of Total Time of Surveillance
Standing/Walking	1 hour, 36 minutes, 3 seconds (=5,763 seconds)	80.500%	4.135%
Sitting*	20 seconds	0.279%	0.014%
Bending	5 seconds	0.070%	0.004%
Catching Football	1 second	0.014%	0.001%
Tossing Football	1 second	0.014%	0.001%

\*sitting can be inferred from CLIENT's entering a car and remaining in the driver's seat for 20 seconds, but he is never directly seen sitting

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## Scoring Used in an Appeal Letter

INSURER hired a private investigation company, SURVEILLANCE COMPANY, Inc., to spy on CLIENT for a total of eight days in March 20\_\_ and November 20\_\_\_. INSURER relied heavily on the SURVEILLANCE COMPANY surveillance in its decision to discontinue CLIENT's disability benefits. However, the surveillance reports and video footage provided by SURVEILLANCE COMPANY did not demonstrate any ability to work and in fact supported CLIENT's claim for long-term disability benefits.

### 1. INSURER Concedes that the March 20\_\_ Surveillance Supports Disability

SURVEILLANCE COMPANY monitored CLIENT's activities for four consecutive days from March 1 through March 4, 20\_\_\_, for a total of 42 hours and 40 minutes. Although INSURER did not make the March 20\_\_\_ video footage available for our review, the written report prepared by SURVEILLANCE COMPANY documented that this surveillance supports CLIENT's disability.

According to the surveillance report, CLIENT "remained inactive" and "was not observed engaging in any activity outside of his residence" during the first three days of surveillance. On the fourth day, SURVEILLANCE COMPANY videotaped CLIENT meeting a school bus and "obtained three minutes of the claimant pacing back and forth and greeting children."

INSURER took no action based on the March 20\_\_\_ surveillance, tacitly conceding that 3 minutes of "pacing"—or 0.117% of the total time of surveillance—does not constitute evidence that CLIENT can work. The 42 hours and 37 minutes of surveillance in which CLIENT was inactive, on the other hand, support disability.

### 2. November 20\_\_ Surveillance Report Exaggerates Recorded Activity

The written report of the November 20\_\_\_ surveillance prepared by INVESTIGATOR, SURVEILLANCE COMPANY agent, consistently exaggerated the level of activity actually recorded in the video footage. INSURER relied heavily on this report in its decision to discontinue benefits, thereby relying on distorted information.

Mr. INVESTIGATOR reported that on November 9, 20\_\_\_, CLIENT "was filmed as he assisted three small children as they entered a school bus." Review of the video footage, however, reveals that CLIENT never provided physical assistance to any children. He lightly touched one child's shoulder; the contact lasted less than one second. However, the actual surveillance video shows the only physical contact between CLIENT and the children, the placing of a hand on one child's shoulder. Mr. INVESTIGATOR's characterization of this momentary light touch as "assistance"—implying substantial physical exertion to aid another person's movements—grossly distorted the evidence.

Mr. INVESTIGATOR reported that on November 10, 20\_\_\_, CLIENT "was filmed as he stood on the corner ... and assisted a small child as they entered the school bus." Once again, the actual video footage reveals that CLIENT never assisted anyone and, in fact, never initiated physical contact of any kind. One child lightly leaned his head against CLIENT in an apparent affectionate gesture; the contact lasted approximately two seconds. Therefore, INVESTIGATOR's description of this contact, which was initiated by the child, as CLIENT's "assisting" the child was another distortion of the evidence.

The most egregious exaggeration in INVESTIGATOR's report was his statement that CLIENT "was filmed as he ... threw around a football" and that the film captured CLIENT "playing catch with the football." In reality, the video footage reveals that CLIENT's game of catch consisted of a single catch and toss lasting less than two seconds in total.

The following still captures from the surveillance video show CLIENT's only catch, which lasted less than one second. He caught a ball tossed lightly by a child from a distance of one or two yards.

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CLIENT then tossed the ball once to an off-camera receiver.



This still capture shows CLIENT’s only toss, which lasted less than one second. CLIENT’s actual recorded activity, which consisted in its entirety of catching and tossing a ball once, over a distance of one or two yards and a time span of less than two seconds total, is a far cry from Mr. INVESTIGATOR’s assertion that he was “playing catch” and “throwing around a football,” a greatly exaggerated description that implies prolonged and rigorous athletic activity.

Comparison of INVESTIGATOR’s written report and the video footage demonstrates that Mr. INVESTIGATOR repeatedly exaggerated and distorted the surveillance evidence in order to imply a much higher level of activity than was actually observed.

3. November 20 Surveillance Video Shows Minimal Activity

Surveillance videos that depict minimal activity or that last for a short period of time are not substantial evidence. *See Bregman v. Hartford Life and Acc. Ins. Co.*, 2008 U.S. Dist. LEXIS 72500, \*23-24 (D.Conn. Sept. 23, 2008) (finding that “seconds- or minutes-long” recordings of plaintiff’s activity is not conclusive evidence that he is not disabled);

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*Winter v. Hartford Life and Accident Ins. Co.*, 2004 U.S. Dist. LEXIS 4550 \*15 (E.D.N.Y. Mar. 22, 2004) (finding that the surveillance video alone, which was approximately twenty minutes in duration and purports to represent two full days of activity, does not constitute substantial evidence supporting the denial of long term disability benefits).

Despite INVESTIGATOR’s monitoring and filming CLIENT’s activities for 38 hours over four consecutive days, the amount of activity actually recorded on video was minimal. In fact, CLIENT appeared in the video footage for a small fraction of the total time recorded, and the recorded video constituted a small fraction of the total time of surveillance.

The following chart provides a detailed breakdown of the surveillance, including total time, time recorded on camera, and time recorded with CLIENT visible on camera. Although Mr. INVESTIGATOR monitored CLIENT’s activities for nearly the equivalent of a full 40-hour workweek, he obtained only 100 minutes and 29 seconds of footage actually showing CLIENT. To put this time span in context, CLIENT was observed outside his home for 4.326% of the total surveillance time during which Mr. INVESTIGATOR monitored his activities.<sup>1</sup>

Date of Surveillance	Total Time of Surveillance	Time Recorded on Camera	Time Recorded with CLIENT Visible on Camera
November 9, 20__	9 hours, 35 minutes	5 minutes, 17 seconds	60 seconds
November 10, 20__	9 hours, 41 minutes	7 minutes, 26 seconds	2 minutes, 49 seconds
November 11, 20__	9 hours, 37 minutes	5 minutes, 46 seconds	37 seconds
November 12, 20__	9 hours, 50 minutes	1 hour, 40 minutes, 50 seconds	1 hour, 36 minutes, 3 seconds
<b>Total over 4 days</b>	<b>38 hours, 43 minutes</b>	<b>1 hour, 59 minutes, 19 seconds</b>	<b>1 hour, 40 minutes, 29 seconds</b>

Furthermore, the footage obtained of CLIENT confirmed that he is inactive. The following chart provides a detailed analysis of CLIENT’s activities captured in the surveillance video. The longest cumulative activity shown in the video was standing and walking, which CLIENT was seen performing for 96 minutes and 3 seconds, or 4.135% of the total time of surveillance. He also was seen bending for 5 seconds, or 0.004% of the time of surveillance; catching a football for 1 second, or 0.001% of the total time of surveillance; and tossing a football for 1 second, or 0.001% of the total time of surveillance. CLIENT was not seen sitting at any time during the four days of surveillance.

Activity	Time Recorded with CLIENT Performing Activity	Percent of Time Recorded on a Camera <sup>2</sup>	Percent of Total Time of Surveillance <sup>3</sup>
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<sup>1</sup> CLIENT was filmed for one hour, 40 minutes, 29 seconds, which equals 6,029 seconds. Total surveillance time of 38 hours, 43 minutes equals 139,380 seconds.  $(6,029/139,380)*100 = 4.326\%$ .

<sup>2</sup> Time recorded on camera was 1 hour, 59 minutes, 19 seconds, equal to 7,159 seconds. Time recorded standing/walking was 1 hour, 36 minutes, 3 seconds, equal to 5,763 seconds.  $(5,763/7,159)*100 = 80.500\%$ .  $(1/7,159)*100 = 0.014\%$ .

<sup>3</sup>  $(5,763/139,380)*100 = 4.135\%$ .  $(5/139,380)*100 = 0.004\%$ .  $(1/139,380)*100 = 0.004\%$ .

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Standing/Walking	1 hour, 36 minutes, 3 seconds (=5,763 seconds)	80.500%	4.135%
B	5 seconds	0.070%	0.004
C	1 second	0.014%	0.001
T	1 second	0.014%	0.001
S	0 seconds	0.000%	0.000

Even the minimal amount of activity recorded during the surveillance represented the upper limit of CLIENT’s physical capabilities. In his affidavit, CLIENT notes, “Just to be on my feet for only 90 minutes without pain, I had to take Flexeril (a muscle relaxer) like I always do when I watch my kids’ activities.” Even with the aid of prescription medication, the brief outing was so taxing for CLIENT that he spent the rest of the day recovering:

After watching my son’s game that day, I was exhausted and zonked out at home from being out for 2 hours and taking the Flexeril. This is why the surveillance agent found no other activity for the rest of the day, or about 5 more hours of surveillance.

Averaged over the four days of surveillance, CLIENT’s recorded activity amounted to less than 24 minutes of standing and walking and 0 minutes of sitting per day – entirely inadequate to perform any full-time occupation eight hours a day, 40 hours a week. *See Solomon v. Metro. Life Ins. Co.*, 628 F. Supp. 2d 519, 530 (S.D.N.Y. 2009) (finding that courts have rejected surveillance tapes recording daily activities unrelated to the claimant’s work); *Chan v. Hartford Life Ins. Co.*, 2004 U.S. Dist. LEXIS 17962 \*28 (S.D.N.Y. Sep. 8, 2004) (finding that video footage depicting a claimant “walking, riding in a car, and even briefly shuffling papers, do not substantially address her ability to perform her prior occupation”); *Clausen v. Standard Ins. Co.*, 961 F. Supp. 1446, 1457 (D. Colo. 1997) (finding that the videotape “bears little, if any, relevance to how the Plan at issue defines disability”).

4. November 20 Surveillance Report Makes False Statements

Mr. INVESTIGATOR of SURVEILLANCE COMPANY made at least two false statements in his report. CLIENT, in his affidavit, identifies these factual errors:

96. The report stated that on Day 1 I entered a residence on LOCATION. But in reality I only dropped a check in the mailbox and never actually entered the house. Even though the report claimed that I went inside, there is no actual video of me entering the house because I never did.

97. The report then stated that I left Avenue at 11:50 a.m.. and arrived at a Subway in Plaza 5 minutes later. But LOCATION is 15 to 20 minutes by car from LOCATION. So it can’t be possible that I would have traveled from LOCATION to LOCATION in only 5 minutes. Again, even though the report claimed that I arrived at the Subway in LOCATION, there is no actual video showing me there because that would be impossible.

Whether Mr. INVESTIGATOR intentionally misrepresented CLIENT’s activities or merely failed to accurately observe them due to carelessness or other errors on his part, the inclusion of false information in his report calls its credibility into question.

5. INVESTIGATOR Is Not Medically Qualified to Evaluate Physical Functional Ability

In his surveillance report, Mr. INVESTIGATOR repeatedly evaluated CLIENT’s movements and purported to observe

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healthy, unrestricted functioning. In his summary, INVESTIGATOR stated, “The claimant appeared to perform these activities in a fluid manner without any signs of restriction.” Throughout the report, he repeats the phrase in reference to every action observed or claimed to be observed during the surveillance: “[CLIENT] appeared to perform this activity in a fluid manner without any signs of restriction.”

However, Mr. INVESTIGATOR has no medical training or qualification to evaluate physical functional ability. According to SURVEILLANCE COMPANY, “All SURVEILLANCE COMPANY agents have at least a bachelor’s degree in criminal justice or extensive military training.” Mr. INVESTIGATOR’s training in criminal justice does not qualify him to evaluate CLIENT’s physical functioning. Moreover, even a fully qualified physician cannot appropriately evaluate a patient’s health and functioning based only on visual observation from a distance, which was the only basis for Mr. INVESTIGATOR’s lay opinion of CLIENT’s functional ability.

6. SURVEILLANCE COMPANY Is Not an Independent or Impartial Agent

INSURER paid SURVEILLANCE COMPANY a total of \$\_\_\_\_\_ for its work on behalf of INSURER in CLIENT’s case: \$\_\_\_ for a background investigation, \$\_\_\_\_\_ for four days of surveillance in March 20\_\_\_, and \$\_\_\_\_\_ for four additional days of surveillance in November 20\_\_\_.

SURVEILLANCE COMPANY specializes in serving the insurance industry – “Over ninety-five percent of our clients are insurance carriers,” according to its company website – and markets its services as a way for insurance carriers such as INSURER to avoid paying benefits and to increase their profits. SURVEILLANCE COMPANY boasts that its services are “a formidable first line of defense in ... Long Term Disability claims” and that these services “save our clients MILLIONS of dollars each year.”