

VOCATIONAL EXPERTS

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Regulatory Framework 20 C.F.R. § 416.960

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Vocational Considerations

§ 416.960. When we will consider your vocational background.

(a) *General.* If you are age 18 or older and applying for supplemental security income benefits based on disability, and we cannot decide whether you are disabled at one of the first three steps of the sequential evaluation process (see § 416.920), we will consider your residual functional capacity together with your vocational background, as discussed in paragraphs (b) and (c) of this section.

(b) *Past relevant work.* We will first compare our assessment of your residual functional capacity with the physical and mental demands of your past relevant work. See § 416.920(h) for an exception to this rule.

(1) *Definition of past relevant work.* Past relevant work is work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it. (See § 416.965(a).)

(2) *Determining whether you can do your past relevant work.* We will ask you for information about work you have done in the past. We may also ask other people who know about your work. (See § 416.965(b).) We may use the services of vocational experts or vocational specialists, or other resources, such as the "Dictionary of Occupational Titles" and its companion volumes and supplements, published by the Department of Labor, to obtain evidence we need to help us determine whether you can do your past relevant work, given your residual functional capacity. A vocational expert or specialist may offer relevant evidence within his or her expertise or knowledge concerning the physical and mental demands of a claimant's past relevant work, either as the claimant actually performed it or as generally performed in the national economy. Such evidence may be helpful in supplementing or evaluating the accuracy of the claimant's description of his past work. In addition, a vocational expert or specialist may offer expert opinion testimony in response to a hypothetical question about whether a person with the physical and mental limitations imposed by the claimant's medical impairment(s) can meet the demands of the claimant's previous work, either as the claimant actually performed it or as generally performed in the national economy.

(3) *If you can do your past relevant work.* If we find that you have the residual functional capacity to do your past relevant work, we will determine that you can still do your past work and are not disabled. We will not consider your vocational factors of age, education, and work experience or whether your past relevant work exists in significant numbers in the national economy.

(c) *Other work.* (1) If we find that your residual functional capacity does not enable you to do any of your past relevant work or if we use the procedures in § 416.920(h), we will use the same residual functional capacity assessment when we decide if you can adjust to any other work. We will look at your ability to adjust to other work by considering your residual functional capacity and the vocational factors of age, education, and work experience, as appropriate in your case. (See § 416.920(h) for an exception to this rule.) Any other work

(jobs) that you can adjust to must exist in significant numbers in the national economy (either in the region where you live or in several regions in the country).

(2) In order to support a finding that you are not disabled at this fifth step of the sequential evaluation process, we are responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that you can do, given your residual functional capacity and vocational factors. We are not responsible for providing additional evidence about your residual functional capacity because we will use the same residual functional capacity assessment that we used to determine if you can do your past relevant work.

[68 FR 51166, Aug. 26, 2003, as amended at 77 FR 43495, July 25, 2012]

§ 416.962. Medical-vocational profiles showing an inability to make an adjustment to other work.

(a) *If you have done only arduous unskilled physical labor.* If you have no more than a marginal education (see § 416.964) and work experience of 35 years or more during which you did only arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s) (see §§ 416.920(c), 416.921, and 416.923), we will consider you unable to do lighter work, and therefore, disabled.

Example to paragraph (a): B is a 58-year-old miner's helper with a fourth grade education who has a lifelong history of unskilled arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a "severe" combination of impairments that prevents B from performing his past relevant work. Under these circumstances, we will find that B is disabled.

(b) *If you are at least 55 years old, have no more than a limited education, and have no past relevant work experience.* If you have a severe, medically determinable impairment(s) (see §§ 416.920(c), 416.921, and 416.923), are of advanced age (age 55 or older, see § 416.963), have a limited education or less (see § 416.964), and have no past relevant work experience (see § 416.965), we will find you disabled. If the evidence shows that you meet this profile, we will not need to assess your residual functional capacity or consider the rules in appendix 2 to subpart P of part 404 of this chapter.

[68 FR 51166, Aug. 26, 2003]

§ 416.963. Your age as a vocational factor.

(a) *General.* "Age" means your chronological age. When we decide whether you are disabled under § 416.920(g)(1), we will consider your chronological age in combination with your residual functional capacity, education, and work experience. We will not consider your ability to adjust to other work on the basis of your age alone. In determining the extent to which age affects a person's ability to adjust to other work, we consider advancing age to be an increasingly limiting factor in the person's ability to make such an adjustment, as we explain in paragraphs (c) through (e) of this section. If you are unemployed but you still have the ability to adjust to other work, we will find that you are not disabled. In paragraphs (b) through (e) of this section and in appendix 2 of subpart P of part 404 of this chapter, we explain in more detail how we consider your age as a vocational factor.

(b) *How we apply the age categories.* When we make a finding about your ability to do other work under § 416.920(f)(1), we will use the age categories in paragraphs (c) through (e) of this section. We will use each of the age categories that applies to you during the period for which we must determine if you are disabled. We will not apply the age categories mechanically in a borderline situation. If you are within a few days to a few months of reaching an older age category, and using the older age category would result in a determination or decision that you are disabled, we will consider whether to use the older age category after evaluating the overall impact of all the factors of your case.

(c) *Younger person.* If you are a younger person (under age 50), we generally do not consider that your age will seriously affect your ability to adjust to other work. However, in some circumstances, we consider that persons age 45-49 are more limited in their ability to adjust to other work than persons who have not attained age 45. See Rule 201.17 in appendix 2 of subpart P of part 404 of this chapter.

(d) *Person closely approaching advanced age.* If you are closely approaching advanced age (age 50-54), we will consider that your age along with a severe impairment(s) and limited work experience may seriously affect your ability to adjust to other work.

(e) *Person of advanced age.* We consider that at advanced age (age 55 or older), age significantly affects a person's ability to adjust to other work. We have special rules for persons of advanced age and for persons in this category who are closely approaching retirement age (age 60 or older). See § 416.968(d)(4).

(f) *Information about your age.* We will usually not ask you to prove your age. However, if we need to know your exact age to determine whether you get disability benefits, we will ask you for evidence of your age.

[45 FR 55621, Aug. 20, 1980, as amended at 65 FR 18001, Apr. 6, 2000; 68 FR 51166, Aug. 26, 2003; 73 FR 64197; Oct. 29, 2008]

§ 416.964. Your education as a vocational factor.

(a) *General. Education* is primarily used to mean formal schooling or other training which contributes to your ability to meet vocational requirements, for example, reasoning ability, communication skills, and arithmetical ability. However, if you do not have formal schooling, this does not necessarily mean that you are uneducated or lack these abilities. Past work experience and the kinds of responsibilities you had when you were working may show that you have intellectual abilities, although you may have little formal education. Your daily activities, hobbies, or the results of testing may also show that you have significant intellectual ability that can be used to work.

(b) *How we evaluate your education.* The importance of your educational background may depend upon how much time has passed between the completion of your formal education and the beginning of your physical or mental impairment(s) and by what you have done with your education in a work or other setting. Formal education that you completed many years before your impairment began, or unused skills and knowledge that were a part of your formal education, may no longer be useful or meaningful in terms of your ability to work. Therefore, the numerical grade level that you completed in school may not represent your actual educational abilities. These may be higher or lower. However, if there is no other evidence to contradict it, we will use your numerical grade level to determine your educational abilities. The term *education* also includes how well you are able to communicate in English since this ability is often acquired or improved by education. In evaluating your educational level, we use the following categories:

(1) *Illiteracy.* Illiteracy means the inability to read or write. We consider someone illiterate if the person cannot read or write a simple message such as instructions or inventory lists even though the person can sign his or her name. Generally, an illiterate person has had little or no formal schooling.

(2) *Marginal education.* Marginal education means ability in reasoning, arithmetic, and language skills which are needed to do simple, unskilled types of jobs. We generally consider that formal schooling at a 6th grade level or less is a marginal education.

(3) *Limited education.* Limited education means ability in reasoning, arithmetic, and language skills, but not enough to allow a person with these educational qualifications to do most of the more complex job duties needed in semi-skilled or skilled jobs. We generally consider that a 7th grade through the 11th grade level of formal education is a limited education.

(4) *High school education and above.* High school education and above means abilities in reasoning, arithmetic, and language skills acquired through formal schooling at a 12th grade level or above. We generally consider that someone with these educational abilities can do semi-skilled through skilled work.

(5) *Inability to communicate in English.* Since the ability to speak, read and understand English is generally learned or increased at school, we may consider this an educational factor. Because English is the dominant language of the country, it may be difficult for someone who doesn't speak and understand English to do a job, regardless of the amount of

education the person may have in another language. Therefore, we consider a person's ability to communicate in English when we evaluate what work, if any, he or she can do. It generally doesn't matter what other language a person may be fluent in.

(6) *Information about your education.* We will ask you how long you attended school and whether you are able to speak, understand, read and write in English and do at least simple calculations in arithmetic. We will also consider other information about how much formal or informal education you may have had through your previous work, community projects, hobbies, and any other activities which might help you to work.

§ 416.965. Your work experience as a vocational factor.

(a) *General. Work experience* means skills and abilities you have acquired through work you have done which show the type of work you may be expected to do. Work you have already been able to do shows the kind of work that you may be expected to do. We consider that your work experience applies when it was done within the last 15 years, lasted long enough for you to learn to do it, and was substantial gainful activity. We do not usually consider that work you did 15 years or more before the time we are deciding whether you are disabled applies. A gradual change occurs in most jobs so that after 15 years it is no longer realistic to expect that skills and abilities acquired in a job done then continue to apply. The 15-year guide is intended to insure that remote work experience is not currently applied. If you have no work experience or worked only *off-and-on* or for brief periods of time during the 15-year period, we generally consider that these do not apply. If you have acquired skills through your past work, we consider you to have these work skills unless you cannot use them in other skilled or semi-skilled work that you can now do. If you cannot use your skills in other skilled or semi-skilled work, we will consider your work background the same as unskilled. However, even if you have no work experience, we may consider that you are able to do unskilled work because it requires little or no judgment and can be learned in a short period of time.

(b) *Information about your work.* Under certain circumstances, we will ask you about the work you have done in the past. If you cannot give us all of the information we need, we may try, with your permission, to get it from your employer or other person who knows about your work, such as a member of your family or a co-worker. When we need to consider your work experience to decide whether you are able to do work that is different from what you have done in the past, we will ask you to tell us about all of the jobs you have had in the last 15 years. You must tell us the dates you worked, all of the duties you did, and any tools, machinery, and equipment you used. We will need to know about the amount of walking, standing, sitting, lifting and carrying you did during the work day, as well as any other physical or mental duties of your job. If all of your work in the past 15 years has been arduous and unskilled, and you have very little education, we will ask you to tell us about all of your work from the time you first began working. This information could help you to get disability benefits.

[45 FR 55584, Aug. 20, 1980, as amended at 77 FR 43495, July 25, 2012]

§ 416.966. Work which exists in the national economy.

(a) *General.* We consider that work exists in the national economy when it exists in significant numbers either in the region where you live or in several other regions of the country. It does not matter whether—

- (1) Work exists in the immediate area in which you live;
- (2) A specific job vacancy exists for you; or
- (3) You would be hired if you applied for work.

(b) *How we determine the existence of work.* Work exists in the national economy when there is a significant number of jobs (in one or more occupations) having requirements which you are able to meet with your physical or mental abilities and vocational qualifications. Isolated jobs that exist only in very limited numbers in relatively few locations outside of the region where you live are not considered *work which exists in the national economy*. We will not deny you disability benefits on the basis of the existence of these kinds of jobs. If work that you can do does not exist in the national economy, we will determine that you are disabled. However, if work that you can do does exist in the national economy, we will determine that you are not disabled.

(c) *Inability to obtain work.* We will determine that you are not disabled if your residual functional capacity and vocational abilities make it possible for you to do work which exists in the national economy, but you remain unemployed because of—

- (1) Your inability to get work;
- (2) Lack of work in your local area;
- (3) The hiring practices of employers;
- (4) Technological changes in the industry in which you have worked;
- (5) Cyclical economic conditions;
- (6) No job openings for you;
- (7) You would not actually be hired to do work you could otherwise do, or;
- (8) You do not wish to do a particular type of work.

(d) *Administrative notice of job data.* When we determine that unskilled, sedentary, light, and medium jobs exist in the national economy (in significant numbers either in the region where you live or in several regions of the country), we will take administrative notice of reliable job information available from various governmental and other publications. For example, we will take notice of—

- (1) *Dictionary of Occupational Titles*, published by the Department of Labor;
 - (2) *County Business Patterns*, published by the Bureau of the Census;
 - (3) *Census Reports*, also published by the Bureau of the Census;
 - (4) *Occupational Analyses* prepared for the Social Security Administration by various State employment agencies; and
 - (5) *Occupational Outlook Handbook*, published by the Bureau of Labor Statistics.
- (e) *Use of vocational experts and other specialists.* If the issue in determining whether you are disabled is whether your work skills can be used in other work and the specific occupations in which they can be used, or there is a similarly complex issue, we may use the services of a vocational expert or other specialist. We will decide whether to use a vocational expert or other specialist.

§ 416.967. Physical exertion requirements.

To determine the physical exertion requirements of work in the national economy, we classify jobs as *sedentary*, *light*, *medium*, *heavy*, and *very heavy*. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. In making disability determinations under this subpart, we use the following definitions:

- (a) *Sedentary work*. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.
- (b) *Light work*. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.
- (c) *Medium work*. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work.
- (d) *Heavy work*. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work.
- (e) *Very heavy work*. Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, we determine that he or she can also do heavy, medium, light, and sedentary work.

§ 416.968. Skill requirements.

In order to evaluate your skills and to help determine the existence in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. In classifying these occupations, we use materials published by the Department of Labor. When we make disability determinations under this subpart, we use the following definitions:

(a) *Unskilled work.* Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs.

(b) *Semi-skilled work.* Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.

(c) *Skilled work.* Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustments to control or regulate the work. Other skilled jobs may require dealing with people, facts, or figures or abstract ideas at a high level of complexity.

(d) *Skills that can be used in other work (transferability)*—(1) *What we mean by transferable skills.* We consider you to have skills that can be used in other jobs, when the skilled or semi-skilled work activities you did in past work can be used to meet the requirements of skilled or semi-skilled work activities of other jobs or kinds of work. This depends largely on the similarity of occupationally significant work activities among different jobs.

(2) *How we determine skills that can be transferred to other jobs.* Transferability is most probable and meaningful among jobs in which—

- (i) The same or a lesser degree of skill is required;
- (ii) The same or similar tools and machines are used; and
- (iii) The same or similar raw materials, products, processes, or services are involved.

(3) *Degrees of transferability.* There are degrees of transferability of skills ranging from very close similarities to remote and incidental similarities among jobs. A complete similarity of all

three factors is not necessary for transferability. However, when skills are so specialized or have been acquired in such an isolated vocational setting (like many jobs in mining, agriculture, or fishing) that they are not readily usable in other industries, jobs, and work settings, we consider that they are not transferable.

(4) *Transferability of skills for persons of advanced age.* If you are of *advanced age* (age 55 or older), and you have a severe impairment(s) that limits you to *sedentary* or *light* work, we will find that you cannot make an adjustment to other work unless you have skills that you can transfer to other skilled or semiskilled work (or you have recently completed education which provides for direct entry into skilled work) that you can do despite your impairment(s). We will decide if you have transferable skills as follows. If you are of advanced age and you have a severe impairment(s) that limits you to no more than *sedentary* work, we will find that you have skills that are transferable to skilled or semiskilled sedentary work only if the sedentary work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. (See § 416.967(a) and Rule 201.00(f) of appendix 2 of subpart P of part 404 of this chapter.) If you are of advanced age but have not attained age 60, and you have a severe impairment(s) that limits you to no more than *light* work, we will apply the rules in paragraphs (d)(1) through (d)(3) of this section to decide if you have skills that are transferable to skilled or semiskilled light work (see § 416.967(b)). If you are *closely approaching retirement age* (age 60 or older) and you have a severe impairment(s) that limits you to no more than *light* work, we will find that you have skills that are transferable to skilled or semiskilled light work only if the light work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. (See § 416.967(b) and Rule 202.00(f) of appendix 2 of subpart P of part 404 of this chapter.)

[45 FR 55621, Aug. 20, 1980, as amended at 65 FR 18001, Apr. 6, 2000; 73 FR 64197, Oct. 29, 2008]

§ 416.969. Listing of Medical-Vocational Guidelines in appendix 2 of subpart P of part 404 of this chapter.

The *Dictionary of Occupational Titles* includes information about jobs (classified by their exertional and skill requirements) that exist in the national economy. Appendix 2 provides rules using this data reflecting major functional and vocational patterns. We apply these rules in cases where a person is not doing substantial gainful activity and is prevented by a severe medically determinable impairment from doing vocationally relevant past work. (See § 416.920(h) for an exception to this rule.) The rules in appendix 2 do not cover all possible variations of factors. Also, as we explain in § 200.00 of appendix 2, we do not apply these rules if one of the findings of fact about the person's vocational factors and residual functional capacity is not the same as the corresponding criterion of a rule. In these instances, we give full consideration to all relevant facts in accordance with the definitions and discussions under vocational considerations. However, if the findings of fact made about all factors are the same as the rule, we use that rule to decide whether a person is disabled.

[45 FR 55584, Aug. 20, 1980, as amended at 77 FR 43495, July 25, 2012]

§ 416.969a. Exertional and nonexertional limitations.

(a) *General.* Your impairment(s) and related symptoms, such as pain, may cause limitations of function or restrictions which limit your ability to meet certain demands of jobs. These limitations may be exertional, nonexertional, or a combination of both. Limitations are classified as exertional if they affect your ability to meet the strength demands of jobs. The classification of a limitation as exertional is related to the United States Department of Labor's classification of jobs by various exertional levels (sedentary, light, medium, heavy, and very heavy) in terms of the strength demands for sitting, standing, walking, lifting, carrying, pushing, and pulling. Sections 416.967 and 416.969 explain how we use the classification of jobs by exertional levels (strength demands) which is contained in the Dictionary of Occupational Titles published by the Department of Labor, to determine the exertional requirements of work which exists in the national economy. Limitations or restrictions which affect your ability to meet the demands of jobs other than the strength demands, that is, demands other than sitting, standing, walking, lifting, carrying, pushing or pulling, are considered nonexertional. When we decide whether you can do your past relevant work (see §§ 416.920(f) and 416.994(b)(5)(vi)), we will compare our assessment of your residual functional capacity with the demands of your past relevant work. If you cannot do your past relevant work, we will use the same residual functional capacity assessment along with your age, education, and work experience to decide if you can adjust to any other work which exists in the national economy. (See §§ 416.920(g) and 416.994(b)(5)(vii).) Paragraphs (b), (c), and (d) of this section explain how we apply the medical-vocational guidelines in appendix 2 of subpart P of part 404 of this chapter in making this determination, depending on whether the limitations or restrictions imposed by your impairment(s) and related symptoms, such as pain, are exertional, nonexertional, or a combination of both.

(b) *Exertional limitations.* When the limitations and restrictions imposed by your impairment(s) and related symptoms, such as pain, affect only your ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling), we consider that you have only exertional limitations. When your impairment(s) and related symptoms only impose exertional limitations and your specific vocational profile is listed in a rule contained in appendix 2, we will directly apply that rule to decide whether you are disabled.

(c) *Nonexertional limitations.* (1) When the limitations and restrictions imposed by your impairment(s) and related symptoms, such as pain, affect only your ability to meet the demands of jobs other than the strength demands, we consider that you have only nonexertional limitations or restrictions. Some examples of nonexertional limitations or restrictions include the following:

- (i) You have difficulty functioning because you are nervous, anxious, or depressed;
- (ii) You have difficulty maintaining attention or concentrating;
- (iii) You have difficulty understanding or remembering detailed instructions;
- (iv) You have difficulty in seeing or hearing;

(v) You have difficulty tolerating some physical feature(s) of certain work settings, e.g., you cannot tolerate dust or fumes; or

(vi) You have difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching.

(2) If your impairment(s) and related symptoms, such as pain, only affect your ability to perform the nonexertional aspects of work-related activities, the rules in appendix 2 do not direct factual conclusions of disabled or not disabled. The determination as to whether disability exists will be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in appendix 2.

(d) *Combined exertional and nonexertional limitations.* When the limitations and restrictions imposed by your impairment(s) and related symptoms, such as pain, affect your ability to meet both the strength and demands of jobs other than the strength demands, we consider that you have a combination of exertional and nonexertional limitations or restrictions. If your impairment(s) and related symptoms, such as pain, affect your ability to meet both the strength and demands of jobs other than the strength demands, we will not directly apply the rules in appendix 2 unless there is a rule that directs a conclusion that you are disabled based upon your strength limitations; otherwise the rules provide a framework to guide our decision.

[56 FR 57947, Nov. 14, 1991, as amended at 68 FR 51166, Aug. 26, 2003]

Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines

Sec.

200.00 Introduction.

201.00 Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).

202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).

203.00 Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).

204.00 Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).

200.00 *Introduction.* (a) The following rules reflect the major functional and vocational patterns which are encountered in cases which cannot be evaluated on medical considerations alone, where an individual with a severe medically determinable physical or mental impairment(s) is not engaging in substantial gainful activity and the individual's impairment(s) prevents the performance of his or her vocationally relevant past work. They also reflect the analysis of the various vocational factors (*i.e.*, age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. However, each of these findings of fact is subject to rebuttal and the individual may present evidence to refute such findings. Where any one of the findings of fact does not coincide with the corresponding criterion of a rule, the rule does not apply in that particular case and, accordingly, does not direct a conclusion of disabled or not disabled. In any instance where a rule does not apply, full consideration must be given to all of the relevant facts of the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations.

(b) The existence of jobs in the national economy is reflected in the "Decisions" shown in the rules; *i.e.*, in promulgating the rules, administrative notice has been taken of the numbers of unskilled jobs that exist throughout the national economy at the various functional levels (sedentary, light, medium, heavy, and very heavy) as supported by the "Dictionary of Occupational Titles" and the "Occupational Outlook Handbook," published by the Department of Labor; the "County Business Patterns" and "Census Surveys" published by the Bureau of the Census; and occupational surveys of light and sedentary jobs prepared for the Social Security Administration by various State employment agencies. Thus, when all factors coincide with the criteria of a rule, the existence of such jobs is established. However, the

existence of such jobs for individuals whose remaining functional capacity or other factors do not coincide with the criteria of a rule must be further considered in terms of what kinds of jobs or types of work may be either additionally indicated or precluded.

(c) In the application of the rules, the individual's residual functional capacity (*i.e.*, the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs), age, education, and work experience must first be determined. When assessing the person's residual functional capacity, we consider his or her symptoms (such as pain), signs, and laboratory findings together with other evidence we obtain.

(d) The correct disability decision (*i.e.*, on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. If an individual's specific profile is not listed within this appendix 2, a conclusion of disabled or not disabled is not directed. Thus, for example, an individual's ability to engage in substantial gainful work where his or her residual functional capacity falls between the ranges of work indicated in the rules (e.g., the individual who can perform more than light but less than medium work), is decided on the basis of the principles and definitions in the regulations, giving consideration to the rules for specific case situations in this appendix 2. These rules represent various combinations of exertional capabilities, age, education and work experience and also provide an overall structure for evaluation of those cases in which the judgments as to each factor do not coincide with those of any specific rule. Thus, when the necessary judgments have been made as to each factor and it is found that no specific rule applies, the rules still provide guidance for decisionmaking, such as in cases involving combinations of impairments. For example, if strength limitations resulting from an individual's impairment(s) considered with the judgments made as to the individual's age, education and work experience correspond to (or closely approximate) the factors of a particular rule, the adjudicator then has a frame of reference for considering the jobs or types of work precluded by other, nonexertional impairments in terms of numbers of jobs remaining for a particular individual.

(e) Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. In addition, some impairments may result solely in postural and manipulative limitations or environmental restrictions. Environmental restrictions are those restrictions which result in inability to tolerate some physical feature(s) of work settings that occur in certain industries or types of work, e.g., an inability to tolerate dust or fumes.

(1) In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in this appendix 2. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments.

(2) However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules in this subpart are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone and, if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Also, in these combinations of nonexertional and exertional limitations which cannot be wholly

determined under the rules in this appendix 2, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

201.00 Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s). (a) Most sedentary occupations fall within the skilled, semi-skilled, professional, administrative, technical, clerical, and benchwork classifications. Approximately 200 separate unskilled sedentary occupations can be identified, each representing numerous jobs in the national economy. Approximately 85 percent of these jobs are in the machine trades and benchwork occupational categories. These jobs (unskilled sedentary occupations) may be performed after a short demonstration or within 30 days.

(b) These unskilled sedentary occupations are standard within the industries in which they exist. While sedentary work represents a significantly restricted range of work, this range in itself is not so prohibitively restricted as to negate work capability for substantial gainful activity.

(c) Vocational adjustment to sedentary work may be expected where the individual has special skills or experience relevant to sedentary work or where age and basic educational competences provide sufficient occupational mobility to adapt to the major segment of unskilled sedentary work. Inability to engage in substantial gainful activity would be indicated where an individual who is restricted to sedentary work because of a severe medically determinable impairment lacks special skills or experience relevant to sedentary work, lacks educational qualifications relevant to most sedentary work (e.g., has a limited education or less) and the individual's age, though not necessarily advanced, is a factor which significantly limits vocational adaptability.

(d) The adversity of functional restrictions to sedentary work at advanced age (55 and over) for individuals with no relevant past work or who can no longer perform vocationally relevant past work and have no transferable skills, warrants a finding of disabled in the absence of the rare situation where the individual has recently completed education which provides a basis for direct entry into skilled sedentary work. Advanced age and a history of unskilled work or no work experience would ordinarily offset any vocational advantages that might accrue by reason of any remote past education, whether it is more or less than limited education.

(e) The presence of acquired skills that are readily transferable to a significant range of skilled work within an individual's residual functional capacity would ordinarily warrant a finding of ability to engage in substantial gainful activity regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) In order to find transferability of skills to skilled sedentary work for individuals who are of advanced age (55 and over), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) Individuals approaching advanced age (age 50-54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. When such individuals have no past work experience or can no longer perform vocationally relevant past work and have no transferable skills, a finding of disabled ordinarily obtains. However, recently completed education which provides for direct entry into sedentary work will preclude such a finding. For

this age group, even a high school education or more (ordinarily completed in the remote past) would have little impact for effecting a vocational adjustment unless relevant work experience reflects use of such education.

(h)(1) The term *younger individual* is used to denote an individual age 18 through 49. For individuals who are age 45-49, age is a less advantageous factor for making an adjustment to other work than for those who are age 18-44. Accordingly, a finding of "disabled" is warranted for individuals age 45-49 who:

(i) Are restricted to sedentary work,

(ii) Are unskilled or have no transferable skills,

(iii) Have no past relevant work or can no longer perform past relevant work, and

(iv) Are unable to communicate in English, or are able to speak and understand English but are unable to read or write in English.

(2) For individuals who are under age 45, age is a more advantageous factor for making an adjustment to other work. It is usually not a significant factor in limiting such individuals' ability to make an adjustment to other work, including an adjustment to unskilled sedentary work, even when the individuals are unable to communicate in English or are illiterate in English.

(3) Nevertheless, a decision of "disabled" may be appropriate for some individuals under age 45 (or individuals age 45-49 for whom rule 201.17 does not direct a decision of disabled) who do not have the ability to perform a full range of sedentary work. However, the inability to perform a full range of sedentary work does not necessarily equate with a finding of "disabled." Whether an individual will be able to make an adjustment to other work requires an adjudicative assessment of factors such as the type and extent of the individual's limitations or restrictions and the extent of the erosion of the occupational base. It requires an individualized determination that considers the impact of the limitations or restrictions on the number of sedentary, unskilled occupations or the total number of jobs to which the individual may be able to adjust, considering his or her age, education and work experience, including any transferable skills or education providing for direct entry into skilled work.

(4) "Sedentary work" represents a significantly restricted range of work, and individuals with a maximum sustained work capability limited to sedentary work have very serious functional limitations. Therefore, as with any case, a finding that an individual is limited to less than the full range of sedentary work will be based on careful consideration of the evidence of the individual's medical impairment(s) and the limitations and restrictions attributable to it. Such evidence must support the finding that the individual's residual functional capacity is limited to less than the full range of sedentary work.

(i) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. Thus, the functional capability for a full range of sedentary work represents sufficient numbers of jobs to indicate substantial vocational scope for those individuals age 18-44 even if they are illiterate or unable to communicate in English.

Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s)

Rule	Age	Education	Previous work experience	Decision
201.01	Advanced age	Limited or less	Unskilled or none	Disabled
201.02	.....do	.....do	Skilled or semiskilled —skills not transferable ¹	Do.
201.03	.....do	.....do	Skilled or semiskilled —skills transferable ¹	Not disabled
201.04	.....do	High school graduate or more—does not provide for direct entry into skilled work ²	Unskilled or none	Disabled
201.05	.....do	High school graduate or more—provides for direct entry into skilled work ²	.....do	Not disabled
201.06	.....do	High school graduate or more—does not provide for direct entry into skilled work ²	Skilled or semiskilled —skills not transferable ¹	Disabled
201.07	.....do	.....do	Skilled or semiskilled —skills transferable ¹	Not disabled
201.08	.....do	High school graduate or more—provides for direct entry into skilled work ²	Skilled or semiskilled —skills not transferable ¹	Do.
201.09	Closely approaching advanced age	Limited or less	Unskilled or none	Disabled
201.10	.....do	.....do	Skilled or semiskilled —skills not transferable	Do.
201.11	.....do	.....do	Skilled or semiskilled —skills transferable	Not disabled
201.12	.....do	High school graduate or more—does not provide for direct entry into skilled work ³	Unskilled or none	Disabled
201.13	.....do	High school graduate or more—provides for direct entry into skilled work ³	.....do	Not disabled
201.14	.....do	High school graduate or more—does not provide for direct entry into skilled work ³	Skilled or semiskilled —skills not transferable	Disabled
201.15	.....do	.....do	Skilled or semiskilled —skills transferable	Not disabled
201.16	.....do	High school graduate or more—provides for direct entry into skilled work ³	Skilled or semiskilled —skills not transferable	Do.
201.17	Younger individual age 45-49	Illiterate or unable to communicate in English	Unskilled or none	Disabled
201.18	.....do	Limited or less—at least literate and able to communicate in English	.....do	Not disabled
201.19	.....do	Limited or less	Skilled or semiskilled —skills not transferable	Do.
201.20	.....do	.....do	Skilled or semiskilled —skills transferable	Do.
201.21	.....do	High school graduate or more	Skilled or semiskilled —skills not transferable	Do.
201.22	.....do	.....do	Skilled or semiskilled —skills transferable	Do.

Rule	Age	Education	Previous work experience	Decision
201.23	Younger individual age 18-44	Illiterate or unable to communicate in English	Unskilled or none	Do. ⁴
201.24	.....do	Limited or less—at least literate and able to communicate in English	.....do	Do. ⁴
201.25	.....do	Limited or less	Skilled or semiskilled—skills not transferable	Do. ⁴
201.26	.....do	.....do	Skilled or semiskilled—skills transferable	Do. ⁴
201.27	.....do	High school graduate or more	Unskilled or none	Do. ⁴
201.28	.....do	.....do	Skilled or semiskilled—skills not transferable	Do. ⁴
201.29	.....do	.....do	Skilled or semiskilled—skills transferable	Do. ⁴

202.00 *Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).* (a) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (*i.e.*, closely approaching advanced age, 50-54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

(e) The presence of acquired skills that are readily transferable to a significant range of semi-skilled or skilled work within an individual's residual functional capacity would ordinarily warrant a finding of not disabled regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) For a finding of transferability of skills to light work for persons of advanced age who are closely approaching retirement age (age 60 or older), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly, the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. The capability for light work, which includes the ability to do sedentary work, represents the capability for substantial numbers of such jobs. This, in turn, represents substantial vocational scope for younger individuals (age 18-49) even if illiterate or unable to communicate in English.

Table No. 2—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Light Work as a Result of Severe Medically Determinable Impairment(s)

Rule	Age	Education	Previous work experience	Decision
202.01	Advanced age	Limited or less	Unskilled or none	Disabled.
202.02	.....do	.....do	Skilled or semiskilled —skills not transferable	Do.
202.03	.....do	.....do	Skilled or semiskilled —skills transferable ¹	Not disabled.
202.04	.....do	High school graduate or more—does not provide for direct entry into skilled work ²	Unskilled or none	Disabled.
202.05	.....do	High school graduate or more—provides for direct entry into skilled work ²	.....do	Not disabled.
202.06	.....do	High school graduate or more—does not provide for direct entry into skilled work ²	Skilled or semiskilled —skills not transferable	Disabled.
202.07	.....do	.....do	Skilled or semiskilled —skills transferable ²	Not disabled.
202.08	.....do	High school graduate or more—provides for direct entry into skilled work ²	Skilled or semiskilled —skills not transferable	Do.
202.09	Closely approaching advanced age	Illiterate or unable to communicate in English	Unskilled or none	Disabled.
202.10	.....do	Limited or less—at least literate and able to communicate in English	.....do	Not disabled.
202.11	.....do	Limited or less	Skilled or semiskilled —skills not transferable	Do.
202.12	.....do	.....do	Skilled or semiskilled —skills transferable	Do.
202.13	.....do	High school graduate or more	Unskilled or none	Do.
202.14	.....do	.....do	Skilled or semiskilled —skills not transferable	Do.
202.15	.....do	.....do	Skilled or semiskilled —skills transferable	Do.
202.16	Younger individual	Illiterate or unable to communicate in English	Unskilled or none	Do.

Rule	Age	Education	Previous work experience	Decision
202.17	.....do	Limited or less—at least literate and able to communicate in English	.....do	Do.
202.18	.....do	Limited or less	Skilled or semiskilled —skills not transferable	Do.
202.19	.....do	.....do	Skilled or semiskilled —skills transferable	Do.
202.20	.....do	High school graduate or more	Unskilled or none	Do.
202.21	.....do	.....do	Skilled or semiskilled —skills not transferable	Do.
202.22	.....do	.....do	Skilled or semiskilled —skills transferable	Do.

203.00 *Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).* (a) The functional capacity to perform medium work includes the functional capacity to perform sedentary, light, and medium work. Approximately 2,500 separate sedentary, light, and medium occupations can be identified, each occupation representing numerous jobs in the national economy which do not require skills or previous experience and which can be performed after a short demonstration or within 30 days.

(b) The functional capacity to perform medium work represents such substantial work capability at even the unskilled level that a finding of disabled is ordinarily not warranted in cases where a severely impaired person retains the functional capacity to perform medium work. Even the adversity of advanced age (55 or over) and a work history of unskilled work may be offset by the substantial work capability represented by the functional capacity to perform medium work. However, we will find that a person who (1) has a marginal education, (2) has work experience of 35 years or more doing only arduous unskilled physical labor, (3) is not working, and (4) is no longer able to do this kind of work because of a severe impairment(s) is disabled, even though the person is able to do medium work. (See § 404.1562(a) in this subpart and § 416.962(a) in subpart I of part 416.)

(c) However, the absence of any relevant work experience becomes a more significant adversity for persons of advanced age (55 and over). Accordingly, this factor, in combination with a limited education or less, militates against making a vocational adjustment to even this substantial range of work and a finding of disabled is appropriate. Further, for persons closely approaching retirement age (60 or older) with a work history of unskilled work and with marginal education or less, a finding of disabled is appropriate.

Table No. 3—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Medium Work as a Result of Severe Medically Determinable Impairment(s)

Rule	Age	Education	Previous work experience	Decision
203.01	Closely approaching retirement age	Marginal or none	Unskilled or none	Disabled.
203.02	.....do	Limited or less	None	Do.
203.03	.....do	Limited	Unskilled	Not disabled.
203.04	.....do	Limited or less	Skilled or semiskilled —skills not transferable	Do.

Rule	Age	Education	Previous work experience	Decision
203.05	.....do	.....do	Skilled or semiskilled —skills transferable	Do.
203.06	.....do	High school graduate or more	Unskilled or none	Do.
203.07	.....do	High school graduate or more—does not provide for direct entry into skilled work	Skilled or semiskilled —skills not transferable	Do.
203.08	.....do	.....do	Skilled or semiskilled —skills transferable	Do.
203.09	.....do	High school graduate or more—provides for direct entry into skilled work	Skilled or semiskilled —skills not transferable	Do.
203.10	Advanced age	Limited or less	None	Disabled.
203.11	.....do	.....do	Unskilled	Not disabled.
203.12	.....do	.....do	Skilled or semiskilled —skills not transferable	Do.
203.13	.....do	.....do	Skilled or semiskilled —skills transferable	Do.
203.14	.....do	High school graduate or more	Unskilled or none	Do.
203.15	.....do	High school graduate or more—does not provide for direct entry into skilled work	Skilled or semiskilled —skills not transferable	Do.
203.16	.....do	.....do	Skilled or semiskilled —skills transferable	Do.
203.17	.....do	High school graduate or more—provides for direct entry into skilled work	Skilled or semiskilled —skills not transferable	Do.
203.18	Closely approaching advanced age	Limited or less	Unskilled or none	Do.
203.19	.....do	.....do	Skilled or semiskilled —skills not transferable	Do.
203.20	.....do	.....do	Skilled or semiskilled —skills transferable	Do.
203.21	.....do	High school graduate or more	Unskilled or none	Do.
203.22	.....do	High school graduate or more—does not provide for direct entry into skilled work	Skilled or semiskilled —skills not transferable	Do.
203.23	.....do	.....do	Skilled or semiskilled —skills transferable	Do.
203.24	.....do	High school graduate or more—provides for direct entry into skilled work	Skilled or semiskilled —skills not transferable	Do.
203.25	Younger individual	Limited or less	Unskilled or none	Do.
203.26	.....do	.....do	Skilled or semiskilled —skills not transferable	Do.
203.27	.....do	.....do	Skilled or semiskilled —skills transferable	Do.
203.28	.....do	High school graduate or more	Unskilled or none	Do.
203.29	.....do	High school graduate or more—does not provide for direct entry into skilled work	Skilled or semiskilled —skills not transferable	Do.
203.30	.....do	.....do	Skilled or semiskilled —skills transferable	Do.

Rule	Age	Education	Previous work experience	Decision
203.31	.....do	High school graduate or more—provides for direct entry into skilled work	Skilled or semiskilled—skills not transferable	Do.

204.00 *Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).* The residual functional capacity to perform heavy work or very heavy work includes the functional capability for work at the lesser functional levels as well, and represents substantial work capability for jobs in the national economy at all skill and physical demand levels. Individuals who retain the functional capacity to perform heavy work (or very heavy work) ordinarily will not have a severe impairment or will be able to do their past work—either of which would have already provided a basis for a decision of "not disabled". Environmental restrictions ordinarily would not significantly affect the range of work existing in the national economy for individuals with the physical capability for heavy work (or very heavy work). Thus an impairment which does not preclude heavy work (or very heavy work) would not ordinarily be the primary reason for unemployment, and generally is sufficient for a finding of not disabled, even though age, education, and skill level of prior work experience may be considered adverse.

[45 FR 55584, Aug. 20, 1980, as amended at 56 FR 57944, Nov. 14, 1991; 68 FR 51164, Aug. 26, 2003; 73 FR 64197, Oct. 29, 2008]

POLICY INTERPRETATION RULING

SSR 00-4p: TITLES II AND XVI: USE OF VOCATIONAL EXPERT AND VOCATIONAL SPECIALIST EVIDENCE, AND OTHER RELIABLE OCCUPATIONAL INFORMATION IN DISABILITY DECISIONS

PURPOSE:

This Ruling clarifies our standards for the use of vocational experts (VEs) who provide evidence at hearings before administrative law judges (ALJs), vocational specialists (VSs) who provide evidence to disability determination services (DDS) adjudicators, and other reliable sources of occupational information in the evaluation of disability claims. In particular, this ruling emphasizes that before relying on VE or VS evidence to support a disability determination or decision, our adjudicators must:

- Identify and obtain a reasonable explanation for any conflicts between occupational evidence provided by VEs or VSs and information in the *Dictionary of Occupational Titles* (DOT), including its companion publication, the *Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles* (SCO), published by the Department of Labor, and
- Explain in the determination or decision how any conflict that has been identified was resolved.

CITATIONS (AUTHORITY):

Sections 216(i), 223(d)(2)(A), and 1614(a)(3)(B) of the Social Security Act, as amended; 20 CFR Part 404, sections 404.1566-404.1569, 20 CFR Part 404, subpart P, appendix 2, § 200.00(b), and 20 CFR Part 416, sections 416.966-416.969.

PERTINENT HISTORY:

To determine whether an individual applying for disability benefits (except for a child applying for Supplement Security Income) is disabled, we follow a 5-step sequential evaluation process as follows:

1. Is the individual engaging in substantial gainful activity? If the individual is working and the work is substantial gainful activity, we find that he or she is not disabled.
2. Does the individual have an impairment or combination of impairments that is severe? If the individual does not have an impairment or combination of impairments that is severe, we will find that he or she is not disabled. If the individual has an impairment or combination of impairments that is severe, we proceed to step 3 of the sequence.
3. Does the individual's impairment(s) meet or equal the severity of an impairment listed in appendix 1 of subpart P of part 404 of our regulations? If so, we find that he or she is disabled. If not, we proceed to step 4 of the sequence.
4. Does the individual's impairment(s) prevent him or her from doing his or her past relevant work (PRW), considering his or her residual functional capacity (RFC)? If not, we find that he or she is not disabled. If so, we proceed to step 5 of the sequence.
5. Does the individual's impairment(s) prevent him or her from performing other work that exists in the national economy, considering his or her RFC together with the "vocational factors" of age, education, and work experience? If so, we find that the individual is disabled. If not, we find that he or she is not disabled.

The regulations at 20 CFR 404.1566(d) and 416.966(d) provide that we will take administrative notice of "reliable job information" available from various publications, including the DOT. In addition, as provided in 20 CFR 404.1566(e) and 416.966(e), we use VEs and VSs as sources of occupational evidence in certain cases. Questions have arisen about how we ensure that conflicts between occupational evidence provided by a VE or a VS and information in the DOT (including its companion publication, the SCO) are resolved. Therefore, we are issuing this ruling to clarify our standards for identifying and resolving such conflicts.

POLICY INTERPRETATION:

Using Occupational Information at Steps 4 and 5

In making disability determinations, we rely primarily on the DOT (including its companion publication, the SCO) for information about the requirements of work in the national economy. We use these publications at steps 4 and 5 of the sequential evaluation process. We may also use VEs and VSs at these steps to resolve complex vocational issues.^[1] We most often use VEs to provide evidence at a hearing before an ALJ. At the initial and reconsideration steps of the administrative review process, adjudicators in the DDSs may rely on VSs for additional guidance. See, for example, SSRs 82-41, 83-12, 83-14, and 85-15.

Resolving Conflicts in Occupational Information

Occupational evidence provided by a VE or VS generally should be consistent with the occupational information supplied by the DOT. When there is an apparent unresolved conflict between VE or VS evidence and the DOT, the adjudicator must elicit a reasonable explanation for the conflict before relying on the VE or VS evidence to support a determination or decision about whether the claimant is disabled. At the hearings level, as part of the adjudicator's duty to fully develop the record, the adjudicator will inquire, on the record, as to whether or not there is such consistency.

Neither the DOT nor the VE or VS evidence automatically "trumps" when there is a conflict. The adjudicator must resolve the conflict by determining if the explanation given by the VE or VS is reasonable and provides a basis for relying on the VE or VS testimony rather than on the DOT information.

Reasonable Explanations for Conflicts (or Apparent Conflicts) in Occupational Information

Reasonable explanations for such conflicts, which may provide a basis for relying on the evidence from the VE or VS, rather than the DOT information, include, but are not limited to the following:

- Evidence from VEs or VSs can include information not listed in the DOT. The DOT contains information about most, but not all, occupations. The DOT's occupational definitions are the result of comprehensive studies of how similar jobs are performed in different workplaces. The term "occupation," as used in the DOT, refers to the collective description of those jobs. Each occupation represents numerous jobs. Information about a particular job's requirements or about occupations not listed in the DOT may be available in other reliable publications, information obtained directly from employers, or from a VE's or VS's experience in job placement or career counseling.
- The DOT lists maximum requirements of occupations as generally performed, not the range of requirements of a particular job as it is performed in specific settings. A VE, VS, or other reliable source of occupational information may be able to provide more specific information about jobs or occupations than the DOT.

Evidence That Conflicts With SSA Policy

SSA adjudicators may not rely on evidence provided by a VE, VS, or other reliable source of occupational information if that evidence is based on underlying assumptions or definitions that are inconsistent with our regulatory policies or definitions. For example:

- **Exertional Level**

We classify jobs as sedentary, light, medium, heavy and very heavy (20 CFR 404.1567 and 416.967). These terms have the same meaning as they have in the exertional classifications noted in the DOT.

Although there may be a reason for classifying the exertional demands of an occupation (as generally performed) differently than the DOT (e.g., based on other reliable occupational information), the regulatory definitions of exertional levels are controlling. For example, if all available evidence (including VE testimony) establishes that the exertional demands of an occupation meet the regulatory definition of "medium" work (20 CFR 404.1567 and 416.967), the adjudicator may not rely on VE testimony that the occupation is "light" work.

- **Skill Level**

A skill is knowledge of a work activity that requires the exercise of significant judgment that goes beyond the carrying out of simple job duties and is acquired through performance of an occupation that is above the unskilled level (requires more than 30 days to learn). (See SSR 82-41.) Skills are acquired in PRW and may also be learned in recent education that provides for direct entry into skilled work.

The DOT lists a specific vocational preparation (SVP) time for each described occupation. Using the skill level definitions in 20 CFR 404.1568 and 416.968, unskilled work corresponds to an SVP of 1-2; semi-skilled work corresponds to an SVP of 3-4; and skilled work corresponds to an SVP of 5-9 in the DOT.

Although there may be a reason for classifying an occupation's skill level differently than in the DOT, the regulatory definitions of skill levels are controlling. For example, VE or VS evidence may not be relied upon to establish that unskilled work involves complex duties that take many months to learn, because that is inconsistent with the regulatory definition of unskilled work. See 20 CFR 404.1568 and 416.968.

- **Transferability of Skills**

Evidence from a VE, VS, or other reliable source of occupational information cannot be inconsistent with SSA policy on transferability of skills. For example, an individual does not gain skills that could potentially transfer to other work by performing unskilled work. Likewise, an individual cannot transfer skills to unskilled work or to work involving a greater level of skill than the work from which the individual acquired those skills. See SSR 82-41.

The Responsibility To Ask About Conflicts

When a VE or VS provides evidence about the requirements of a job or occupation, the adjudicator has an affirmative responsibility to ask about any possible conflict between that VE or VS evidence and information provided in the DOT. In these situations, the adjudicator will:

- Ask the VE or VS if the evidence he or she has provided conflicts with information provided in the DOT; and
- If the VE's or VS's evidence appears to conflict with the DOT, the adjudicator will obtain a reasonable explanation for the apparent conflict.

Explaining the Resolution

When vocational evidence provided by a VE or VS is not consistent with information in the DOT, the adjudicator must resolve this conflict before relying on the VE or VS evidence to support a determination or decision that the individual is or is not disabled. The adjudicator will explain in the determination or decision how he or she resolved the conflict. The adjudicator must explain the resolution of the conflict irrespective of how the conflict was identified.

EFFECTIVE DATE:

This Ruling is effective on the date of its publication in the *Federal Register*. The clarified standard stated in this ruling with respect to inquiring about possible conflicts applies on the effective date of the ruling to all claims for disability benefits in which a hearing before an ALJ has not yet been held, or that is pending a hearing before an ALJ on remand. The clarified standard on resolving identified conflicts applies to all claims for disability or blindness benefits on the effective date of the ruling.

CROSS-REFERENCES:

SSR 82-41, "Titles II and XVI: Work Skills and Their Transferability as Intended by the Expanded Vocational Factors Regulations Effective February 26, 1979," SSR 82-61, "Titles II and XVI: Past Relevant Work--The Particular Job or the Occupation as Generally Performed," SSR 82-62, "Titles II and XVI: A Disability Claimant's Capacity to Do Past Relevant Work, In General," SSR 83-10, "Titles II and XVI: Determining Capability to Do Other Work--The Medical-Vocational Rules of Appendix 2," SSR 83-12, "Titles II and XVI: Capability to Do Other Work--The Medical-Vocational Rules as a Framework for Evaluating Exertional Limitations Within a Range of Work or Between Ranges of Work," SSR 83-14, "Titles II and XVI: Capability to do Other Work--The Medical-Vocational Rules as a Framework for Evaluating a Combination of Exertional and Nonexertional Impairments," and SSR 85-15, "Titles II and XVI: Capability to Do Other Work--The Medical-Vocational Rules as a Framework for Evaluating Solely Nonexertional Impairments";
AR 90-3(4), 837 F.2d 635 (4th Cir. 1987)-Use of Vocational Experts or Other Vocational Specialist in Determining Whether a Claimant Can Perform Past Relevant Work-Titles II and XVI of the Social Security Act;
Program Operations Manual System, Part 04, sections DI 25001.001, DI 25005.001, DI 25020.001-DI 25020.015, and DI 25025.001- DI 25025.005.

^[1] In accordance with Acquiescence Ruling 90-3(4), we do not use VEs at step 4 of the sequential evaluation process in the Fourth Circuit.

(PPS-79)

SSR 82-63

SSR 82-63: TITLES II AND XVI: MEDICAL-VOCATIONAL PROFILES SHOWING AN INABILITY TO MAKE AN ADJUSTMENT TO OTHER WORK

PURPOSE: To clarify that there are two "medical-vocational profiles" which show an inability to make a vocational adjustment to other work (or any work) and which must be considered before a disability decision-maker refers to Appendix 2 of Subpart P of Regulations No. 4 to determine whether a claimant can do work which exists in significant numbers in the national economy, considering the interaction of the claimant's residual functional capacity (RFC), age, education, and work experience. The characteristics of these two profiles are: (1) marginal education and long work experience limited to arduous unskilled physical labor and (2) advanced age, limited education and no work experience.

CITATIONS (AUTHORITY): Sections 223(d)(2)(A) and 1614(a)(3)(B) of the Social Security Act, as amended; Regulations No. 4, Subpart P, sections 404.1505(a), 404.1520(f), 404.1521, 404.1545, 404.1560, 404.1561, 404.1562, 404.1563(d), 404.1564, 404.1565, and 404.1568; Appendix 2 of Subpart P, Regulations No. 4, sections 203.00(b) and (c); and Regulations No. 16, Subpart I, sections 416.905(a), 416.920(f), 416.921, 416.945, 416.960, 416.961, 416.962, 416.963(d), 416.964, 416.965 and 416.968.

INTRODUCTION: The law provides that, in order to be found disabled, an individual (except for a title II widow, widower, or surviving divorced spouse or a title XVI child younger than age 18 or a "statutorily blind" individual) must have a medically determinable physical or mental impairment(s) of such severity that he or she is not only unable to do previous work but cannot, considering his or her age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy. Sections 404.1520/416.920 of the regulations provide a sequential evaluation process whereby current work activity, severity and duration of the impairment(s), ability to do past work, and vocational factors are considered in that order. In the fifth and last step of the sequential evaluation process, consideration is given to the impaired individual's capability to perform other work differing from that of his or her past relevant work experience (or, in the case of a person without work experience, his or her capability to begin to work). At this step, we consider what the person can do functionally and the vocational factors of his or her age, education, and work experience.

Work Experience Limited to Arduous Unskilled Physical Labor

Regulations issued in 1957 to implement the title II disability program provided for the consideration of vocational factors in addition to the primary consideration given to the severity of the worker's impairment.

In 1960, section 404.1502(c) was added to the regulations as the first specific directive for a finding of disability based on both medical and vocational factors. That section described an individual whose vocational limitations are so restrictive that the existence of an impairment which prevents the individual from doing his or her usual level of work would ordinarily justify a finding of disability. The provisions of former section 404.1502(c) are now reflected in sections 404.1562/416.962 of the regulations. These sections address the claimant who has only a marginal education and work experience limited to 35 years or more of arduous unskilled physical labor. Rule 203.01 in Table No. 3 of Appendix 2 somewhat approximates the criteria in those sections. However, should rule 203.01 be referred to before sections 404.1562/416.962, an individual younger than age 60 with a background of 35 years or more in unskilled arduous physical labor might be overlooked.

No Work Experience

Under title II, a person must have a significant and recent attachment to the work force to acquire disability insured status.

Disability benefits under title XVI were first payable in 1974. Under the title XVI program, financial need -- low income and resources -- is an eligibility criterion rather than disability insured status. However, the disability evaluation standards are essentially the same for both titles II and XVI. Since a large number of title XVI claimants have little or no work history, the question arose as to how much adjudicative weight should be given to the absence of work experience. The lack of work experience is a vocationally adverse factor in that a person who has not been in the labor market has not developed any basic knowledge of work products or services, the ability to relate and communicate to supervisors and coworkers, the work habits of scheduling time, etc. Recognizing that as a person grows older the ability to compensate for the lack of work experience diminishes, the Social Security Administration (SSA) established a policy in 1975 which provided that, up to a point, all other factors being equal, claimants without work experience and those who have performed only unskilled work would be treated the same. That point is advanced age. The policy decision, in effect, directs a finding of disability where a person has a severe impairment of any nature, is of advanced age, has only the limited educational competence required for unskilled work, and has no work experience at all or no recent and relevant work experience.

Rules 203.02 and 203.10 in Table No. 3 of Appendix 2 reflect the policy decision in July 1975 with respect to persons who have a severe exertional impairment which limits them to the medium level of work exertion. However, should only rules 203.02 and 203.10 be considered, a person with a severe nonexertional impairment who is of advanced age, has a limited education, and has no recent and relevant work experience might not be found to be disabled.

POLICY STATEMENT: When an adjudicator has reached the last step of the sequential evaluation process -- sections 404.1520(f)/416.920(f) of the regulations -- he or she must

consider two medical-vocational profiles which direct decisions of disability before considering the numbered rules in Appendix 2 of the regulations.

1. Work Experience Limited to Arduous Unskilled Physical Labor

Sections 404.1562/416.962 of the regulations describe a set of functional and vocational limitations which present such an unfavorable vocational profile that an inability to make a vocational adjustment to other work may be inferred if the person meets these requirements and is not engaging in substantial gainful activity. To meet the criteria of these sections, the person must have a marginal education and long work experience (i.e., 35 years or more) limited to the performance of arduous unskilled physical labor which can no longer be performed because of a severe impairment(s). Careful examination of the evidence, including a description of all jobs the individual has held (with sufficient details about job content to show any skills involved and the level of physical exertion required) is necessary to establish whether the individual meets each criterion.

The adjudicator must make a complete assessment of all the pertinent elements in the regulations. While there is room for judgment in determining whether the criteria of sections 404.1562/416.962 are met, judgment cannot be used to substitute for basic documentation, to broaden the intent of the regulations, or to disregard specified criteria. Rule 203.01 of Appendix 2 contains criteria which somewhat approximate those in sections 404.1562/416.962. When neither set of criteria is met, a substantive decision regarding disability requires an assessment of the person's capacity for other work on the basis of the principles and definitions in the regulations and rules other than 203.01 in Appendix 2.

Severity of Impairment

For the purpose of evaluation under sections 404.1562/416.962 of the regulations, an impairment must be severe and prevent the performance of arduous physical labor. It is necessary to assess the person's RFC and to relate it to the physical and mental demands of his or her arduous work background.

History of Arduous Unskilled Work

The individual's work history must have the following characteristics:

a. Duration of Work Experience 35 Years or More

This criterion assures that the person has a long-term commitment to work which is arduous and unskilled.

b. Arduous Work

Arduous work is primarily physical work requiring a high level of strength or endurance. No specific physical action or exertional level denotes arduous work. While arduous work will usually entail physical demands that are classified as heavy, the work need not be described as heavy to be considered arduous. For example, work involving lighter objects may be arduous if it demands a great deal of stamina or activity such as repetitive bending and lifting at a very fast pace. Thus, there is room for judgment in deciding whether this criterion is met.

c. Unskilled Work

Unskilled work consists of simple duties which require little or no judgment and may be learned in a short period of time (see sections 404.1568(a)/416.968(a) of the regulations for further discussion). The judgment that work is unskilled must be based on facts which describe fully the nature and extent of vocational competences necessary to the performance of the job duties.

Employment in semiskilled or skilled work generally would rule out the application of sections 404.1562/416.962 of the regulations. Isolated, brief, or remote periods of experience in semiskilled or skilled work, however, would not preclude the applicability of these regulations when such experience did not result in skills which enhance the person's present ability to do lighter work. Also, periods of semiskilled or skilled work may come within the provisions of these regulations if it is clear that the skill acquired is not readily transferable to lighter work and makes no meaningful contribution to the person's ability to do any work within his or her present functional capacity. (See examples in sections 404.1562/416.962.) When the transferability of the skill may be subject to question, the case should be evaluated under the provisions of sections 404.1568(d)/416.968(d).

Marginal education

Marginal education (sections 404.1564(b)(2)/416.964(b)(2) of the regulations) indicates that the person may not have attained a level of development in reasoning, arithmetic, and language which would suggest a vocational potential for more than unskilled work. Generally, an individual is considered to have a marginal education if he or she has no more than a sixth grade elementary school education. However, the level of formal education is not conclusive of a person's vocational competence. The responsibilities and tasks of past employment may demonstrate a higher level of competence than that indicated by his or her formal schooling. Conversely, a person may have attended school beyond the sixth grade, but other evidence may establish capability for reasoning, arithmetic, and language which does not, in fact, exceed the "marginal" criterion. (Where an individual with this profile can perform arduous unskilled physical labor, see SSR 82-62 (PPS-80: A Disability Claimant's Capacity to Do Past Relevant Work, in General).)

2. Special "No Work Experience" Cases

An SSA policy decision of July 7, 1975, provided that, up to the point of advanced age, persons without work experience and those who have performed only unskilled work will be given the same consideration. Recognizing that advanced age (55 or older) is a critical point for a vocational adjustment in that a person would have much difficulty in learning and doing activities not previously performed, SSA decided that a special policy should apply to disability claimants and beneficiaries who are of advanced age and have no recent and relevant work experience.

Generally, individuals are considered as having no recent and relevant work experience when they have either performed no work activity within the 15-year period prior to the point at which the claim is being considered for adjudication, or the work activity performed within this 15-year period does not (on the basis of job content, recency, or duration) enhance present work capability.

All such cases requiring vocational consideration must be decided on the basis of whether the individual's RFC, age, education, and lack of work experience are compatible with an adjustment to competitive remunerative work. Although the absence of relevant work experience represents an adverse vocational consideration, the adjudicative weight to be ascribed to this factor must be viewed in the context of the substantial numbers of unskilled jobs in the national economy which involve only simple job duties that can be learned in a short period of time and require no previous qualifying work experience. Therefore, the absence of work experience can be evaluated only in the context of the range of work the individual can do functionally and of the other vocational factors of age, education and training. The following adjudicative guidelines provide a perspective for evaluating the interaction of the functional and vocational variables in cases involving individuals without work experience:

Generally, the RFC to perform a wide range of light work represents sufficient capacity to engage in substantial work for the individual who is not of advanced age and can communicate, read, and write on a marginal educational level.

Generally, where an individual of advanced age with no relevant work experience has a limited education or less, a finding of an inability to make a vocational adjustment to substantial work will be made, provided his or her impairment(s) is severe, i.e., significantly limits his or her physical or mental capacity to perform basic work-related functions.

In the cases involving individuals of advanced age, the only medical issue is the existence of a severe medically determinable impairment. The only vocational issues are advanced age, limited education or less, and absence of relevant work experience. With affirmative findings of fact, the conclusion would generally follow that the claimant or beneficiary is under a disability. If all the criteria of this medical-vocational profile are not met, the case must be decided on the basis of the principles and definitions in the regulations, giving consideration to the rules for specific case situations in Appendix 2.

EFFECTIVE DATE: The policy explained herein was effective on August 20, 1980, the date the regulations covering the basic policy in the subject area were effective (45 FR 55566).

CROSS-REFERENCES: Program Operations Manual System, Part 4 (Disability Insurance State Manual Procedures) sections DI 2041C, 2381, and 2387B.6.

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Note: The DOT was created by the Employment and Training Administration, and was last updated in 1991. It has been replaced by the O*NET.

DICTIONARY OF OCCUPATIONAL TITLES (4th Ed., Rev. 1991) -- APPENDIX B

APPENDIX B

EXPLANATION OF DATA, PEOPLE, AND THINGS

Much of the information in this publication is based on the premise that every job requires a worker to function, to some degree, in relation to Data, People, and Things. These relationships are identified and explained below. They appear in the form of three listings arranged in each instance from the relatively simple to the complex in such a manner that each successive relationship includes those that are simpler and excludes the more complex. (As each of the relationships to People represents a wide range of complexity, resulting in considerable overlap among occupations, their arrangement is somewhat arbitrary and can be considered a hierarchy only in the most general sense.) The identifications attached to these relationships are referred to as Worker Functions, and provide standard terminology for use in summarizing how a worker functions on the job.

The fourth, fifth, and sixth digits of the occupational code reflect relationships to Data, People, and Things, respectively. These digits express a job's relationship to Data, People, and Things by identifying the highest appropriate function in each listing shown in the following table:

DATA (4th Digit)	PEOPLE (5th Digit)	THINGS (6th Digit)
0 Synthesizing	0 Mentoring	0 Setting Up
1 Coordinating	1 Negotiating	1 Precision Working
2 Analyzing	2 Instructing	2 Operating-Controlling
3 Compiling	3 Supervising	3 Driving-Operating
4 Computing	4 Diverting	4 Manipulating
5 Copying	5 Persuading	5 Tending
6 Comparing	6 Speaking-Signalling	6 Feeding-Offbearing
7 Serving	7 Handling	
	8 Taking Instructions- Helping	

Definitions of Worker Functions

DATA: Information, knowledge, and conceptions, related to data, people, or things, obtained by observation, investigation, interpretation, visualization, and mental creation. Data are intangible and include numbers, words, symbols, ideas, concepts, and oral verbalization.

0 Synthesizing: Integrating analyses of data to discover facts and/or develop knowledge concepts or interpretations.

1 Coordinating: Determining time, place, and sequence of operations or action to be taken on the basis of analysis of data; executing determinations and/or reporting on events.

2 Analyzing: Examining and evaluating data. Presenting alternative actions in relation to the evaluation is frequently involved.

3 Compiling: Gathering, collating, or classifying information about data, people, or things. Reporting and/or carrying out a prescribed action in relation to the information is frequently involved.

4 Computing: Performing arithmetic operations and reporting on and/or carrying out a prescribed action in relation to them. Does not include counting.

5 Copying: Transcribing, entering, or posting data.

6 Comparing: Judging the readily observable functional, structural, or compositional characteristics (whether similar to or divergent from obvious standards) of data, people, or things.

PEOPLE: Human beings; also animals dealt with on an individual basis as if they were human.

0 Mentoring: Dealing with individuals in terms of their total personality in order to advise, counsel, and/or guide them with regard to problems that may be resolved by legal, scientific, clinical, spiritual, and/or other professional principles.

1 Negotiating: Exchanging ideas, information, and opinions with others to formulate policies and programs and/or arrive jointly at decisions, conclusions, or solutions.

2 Instructing: Teaching subject matter to others, or training others (including animals) through explanation, demonstration, and supervised practice; or making recommendations on the basis of technical disciplines.

3 Supervising: Determining or interpreting work procedures for a group of workers, assigning specific duties to them, maintaining harmonious relations among them, and promoting efficiency. A variety of responsibilities is involved in this function.

4 Diverting: Amusing others, usually through the medium of stage, screen, television, or radio.

5 Persuading: Influencing others in favor of a product, service, or point of view.

6 Speaking-Signaling: Talking with and/or signaling people to convey or exchange information. Includes giving assignments and/or directions to helpers or assistants.

7 Serving: Attending to the needs or requests of people or animals or the expressed or implicit wishes of people. Immediate response is involved.

8 Taking Instructions-Helping: Attending to the work assignment instructions or orders of supervisor. (No immediate response required unless clarification of instructions or orders is needed.) Helping applies to "non-learning" helpers.

THINGS: Inanimate objects as distinguished from human beings, substances or materials; and machines, tools, equipment, work aids, and products. A thing is tangible and has shape, form, and other physical characteristics.

0 Setting Up: Preparing machines (or equipment) for operation by planning order of successive machine operations, installing and adjusting tools and other machine components, adjusting the position of workpiece or material, setting controls, and verifying accuracy of machine capabilities, properties of materials, and shop practices. Uses tools, equipment, and work aids, such as precision gauges and measuring instruments. Workers who set up one or a number of machines for other workers or who set up and personally operate a variety of machines are included here.

1 Precision Working: Using body members and/or tools or work aids to work, move, guide, or place objects or materials in situations where ultimate responsibility for the attainment of standards occurs and selection of appropriate tools, objects, or materials, and the adjustment of the tool to the task require exercise of considerable judgment.

2 Operating-Controlling: Starting, stopping, controlling, and adjusting the progress of machines or equipment. Operating machines involves setting up and adjusting the machine or material(s) as the work progresses. Controlling involves observing gauges, dials, etc., and turning valves and other devices to regulate factors such as temperature, pressure, flow of liquids, speed of pumps, and reactions of materials.

3 Driving-Operating: Starting, stopping, and controlling the actions of machines or equipment for which a course must be steered or which must be guided to control the movement of things or people for a variety of purposes. Involves such activities as observing gauges and dials, estimating distances and determining speed and direction of other objects, turning cranks and wheels, and pushing or pulling gear lifts or levers. Includes such machines as cranes, conveyor systems, tractors, furnace-charging machines, paving machines, and hoisting machines. Excludes manually powered machines, such as handtrucks and dollies, and power-assisted machines, such as electric wheelbarrows and handtrucks.

4 Manipulating: Using body members, tools, or special devices to work, move, guide, or place objects or materials. Involves some latitude for judgment with regard to precision attained and selecting appropriate tool, object, or material, although this is readily manifest.

5 Tending: Starting, stopping, and observing the functioning of machines and equipment. Involves adjusting materials or controls of the machine, such as changing guides, adjusting timers and temperature gauges, turning valves to allow flow of materials, and flipping switches in response to lights. Little judgment is involved in making these adjustments.

6 Feeding-Offbearing: Inserting, throwing, dumping, or placing materials in or removing them from machines or equipment which are automatic or tended or operated by other workers.

7 Handling: Using body members, handtools, and/or special devices to work, move, or carry objects or materials. Involves little or no latitude for judgment with regard to attainment of standards or in selecting appropriate tool, object, or materials.

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DICTIONARY OF OCCUPATIONAL TITLES (4th Ed., Rev. 1991) -- APPENDIX C

APPENDIX C

COMPONENTS OF THE DEFINITION TRAILER

The following descriptions of the components of the Definition Trailer are in inverse order to their placement in the trailer.

I. DATE OF LAST UPDATE (DLU)

Listed as the final element in the trailer following the definition, the Date of Last Update indicates the last year in which material was gathered for that occupation. A DLU of "77" would indicate that the occupation has not been studied by an analyst since publication of the fourth edition DOT in 1977.

II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
- e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

III. GENERAL EDUCATIONAL DEVELOPMENT (GED)

General Educational Development embraces those aspects of education (formal and informal) which are required of the worker for satisfactory job performance. This is education of a general nature which does not have a recognized, fairly specific occupational objective. Ordinarily, such education is obtained in elementary school, high school, or college. However, it may be obtained from experience and self-study.

The GED Scale is composed of three divisions: Reasoning Development, Mathematical Development, and Language Development. The description of the various levels of language and mathematical development are based on the curricula taught in schools throughout the United States. An analysis of mathematics courses in school curricula reveals distinct levels of progression in the primary and secondary grades and in college. These levels of progression facilitated the selection and assignment of six levels of GED for the mathematical development scale.

However, though language courses follow a similar pattern of progression in primary and secondary school, particularly in learning and applying the principles of grammar, this pattern changes at the college level. The diversity of language courses offered at the college level precludes the establishment of distinct levels of language progression for these four years. Consequently, language development is limited to five defined levels of GED inasmuch as levels 5 and 6 share a common definition, even though they are distinct levels.

Scale of General Education Development (GED)

06 LEVEL REASONING DEVELOPMENT

Apply principles of logical or scientific thinking to a wide range of intellectual and practical problems. Deal with nonverbal symbolism (formulas, scientific equations, graphs,

musical notes, etc.) in its most difficult phases. Deal with a variety of abstract and concrete variables. Apprehend the most abstruse classes of concepts.

06 MATHEMATICAL DEVELOPMENT

Advanced calculus:

Work with limits, continuity, real number systems, mean value theorems, and implicit functions theorems.

Modern Algebra:

Apply fundamental concepts of theories of groups, rings, and fields. Work with differential equations, linear algebra, infinite series, advanced operations methods, and functions of real and complex variables.

Statistics:

Work with mathematical statistics, mathematical probability and applications, experimental design, statistical inference, and econometrics.

06 LANGUAGE DEVELOPMENT

Same as Level 5.

05 LEVEL REASONING DEVELOPMENT

Apply principles of logical or scientific thinking to define problems, collect data, establish facts, and draw valid conclusions. Interpret an extensive variety of technical instructions in mathematical or diagrammatic form. Deal with several abstract and concrete variables.

05 MATHEMATICAL DEVELOPMENT

Algebra:

Work with exponents and logarithms, linear equations, quadratic equations, mathematical induction and binomial theorem, and permutations.

Calculus:

Apply concepts of analytic geometry, differentiations, and integration of algebraic functions with applications.

Statistics:

Apply mathematical operations to frequency distributions, reliability and validity of tests, normal curve, analysis of variance, correlation techniques, chi-square application and sampling theory, and factor analysis.

05 LANGUAGE DEVELOPMENT

Reading:

Read literature, book and play reviews, scientific and technical journals, abstracts, financial reports, and legal documents.

Writing:

Write novels, plays, editorials, journals, speeches, manuals, critiques, poetry, and songs.

Speaking:

Conversant in the theory, principles, and methods of effective and persuasive speaking, voice and diction, phonetics, and discussion and debate.

04 LEVEL REASONING DEVELOPMENT

Apply principles of rational systems to solve practical problems and deal with a variety of concrete variables in situations where only limited standardization exists. Interpret a variety of instructions furnished in written, oral, diagrammatic, or schedule form. (Examples of rational systems include: bookkeeping, internal combustion engines, electric wiring systems, house building, farm management, and navigation.)

04 MATHEMATICAL DEVELOPMENT

Algebra:

Deal with system of real numbers; linear, quadratic, rational, exponential, logarithmic, angle and circular functions, and inverse functions; related algebraic solution of equations and inequalities; limits and continuity; and probability and statistical inference.

Geometry:

Deductive axiomatic geometry, plane and solid, and rectangular coordinates.

Shop Math:

Practical application of fractions, percentages, ratio and proportion, measurement, logarithms, slide rule, practical algebra, geometric construction, and essentials of trigonometry.

04 LANGUAGE DEVELOPMENT**Reading:**

Read novels, poems, newspapers, periodicals, journals, manuals, dictionaries, thesauruses, and encyclopedias.

Writing:

Prepare business letters, expositions, summaries, and reports, using prescribed format and conforming to all rules of punctuation, grammar, diction, and style.

Speaking:

Participate in panel discussions, dramatizations, and debates. Speak extemporaneously on a variety of subjects.

03 LEVEL REASONING DEVELOPMENT

Apply commonsense understanding to carry out instructions furnished in written, oral, or diagrammatic form. Deal with problems involving several concrete variables in or from standardized situations.

03 MATHEMATICAL DEVELOPMENT

Compute discount, interest, profit and loss; commission, markup, and selling price; ratio and proportion; and percentage. Calculate surfaces, volumes, weights, and measures.

Algebra:

Calculate variables and formulas; monomials and polynomials; ratio and proportion variables; and square roots and radicals.

Geometry:

Calculate plane and solid figures; circumference, area, and volume. Understand kinds of angles and properties of pairs of angles.

03 LANGUAGE DEVELOPMENT**Reading:**

Read a variety of novels, magazines, atlases, and encyclopedias.

Read safety rules, instructions in the use and maintenance of shop tools and equipment, and methods and procedures in mechanical drawing and layout work.

Writing:

Write reports and essays with proper format, punctuation, spelling, and grammar, using all parts of speech.

Speaking:

Speak before an audience with poise, voice control, and confidence, using correct English and well-modulated voice.

02 LEVEL REASONING DEVELOPMENT

Apply commonsense understanding to carry out detailed but uninvolved written or oral instructions. Deal with problems involving a few concrete variables in or from standardized situations.

02 MATHEMATICAL DEVELOPMENT

Add, subtract, multiply, and divide all units of measure. Perform the four operations with like common and decimal fractions. Compute ratio, rate, and percent. Draw and interpret bar graphs. Perform arithmetic operations involving all American monetary units.

02 LANGUAGE DEVELOPMENT**Reading:**

Passive vocabulary of 5,000-6,000 words. Read at rate of 190-215 words per minute. Read adventure stories and comic books, looking up unfamiliar words in dictionary for meaning, spelling, and pronunciation. Read instructions for assembling model cars and airplanes.

Writing:

Write compound and complex sentences, using cursive style, proper end punctuation, and employing adjectives and adverbs.

Speaking:

Speak clearly and distinctly with appropriate pauses and emphasis, correct pronunciation, variations in word order, using present, perfect, and future tenses.

01 LEVEL REASONING DEVELOPMENT

Apply commonsense understanding to carry out simple one- or two-step instructions. Deal with standardized situations with occasional or no variables in or from these situations encountered on the job.

01 MATHEMATICAL DEVELOPMENT

Add and subtract two digit numbers.

Multiply and divide 10's and 100's by 2, 3, 4, 5.

Perform the four basic arithmetic operations with coins as part of a dollar. Perform operations with units such as cup, pint, and quart; inch, foot, and yard; and ounce and pound.

01 LANGUAGE DEVELOPMENT

Reading:

Recognize meaning of 2,500 (two- or three-syllable) words. Read at rate of 95-120 words per minute.

Compare similarities and differences between words and between series of numbers.

Writing:

Print simple sentences containing subject, verb, and object, and series of numbers, names, and addresses.

Speaking:

Speak simple sentences, using normal word order, and present and past tenses.

IV. PHYSICAL DEMANDS - STRENGTH RATING (Strength)

The Physical Demands Strength Rating reflects the estimated overall strength requirement of the job, expressed in terms of the letter corresponding to the particular strength rating. It represents the strength requirements which are considered to be important for average, successful work performance.

The strength rating is expressed by one of five terms: Sedentary, Light, Medium, Heavy, and Very Heavy. In order to determine the overall rating, an evaluation is made of the worker's involvement in the following activities:

a. Standing, Walking, Sitting

Standing - Remaining on one's feet in an upright position at a work station with-out moving about.

Walking - Moving about on foot.

Sitting - Remaining in a seated position.

b. Lifting, Carrying, Pushing, Pulling

Lifting - Raising or lowering an object from one level to another (includes upward pulling).

Carrying - Transporting an object, usually holding it in the hands or arms, or on the shoulder.

Pushing - Exerting force upon an object so that the object moves away from the force (includes slapping, striking, kicking, and treadle actions).

Pulling - Exerting force upon an object so that the object moves toward the force (includes jerking).

Lifting, pushing, and pulling are evaluated in terms of both intensity and duration. Consideration is given to the weight handled, position of the worker's body, and the aid given by helpers or mechanical equipment. Carrying most often is evaluated in terms of duration, weight carried, and distance carried.

Estimating the Strength factor rating for an occupation requires the exercise of care on the part of occupational analysts in evaluating the force and physical effort a worker must exert. For instance, if the worker is in a crouching position, it may be much more difficult to push an object than if pushed at waist height. Also, if the worker is required to lift and carry continuously or push and pull objects over long distances, the worker may exert as much physical effort as is required to similarly move objects twice as heavy, but less frequently and/or over shorter distances.

c. Controls

Controls entail the use of one or both arms or hands (hand/arm) and/or one or both feet or legs (foot/leg) to move controls on machinery or equipment. Controls include but are not limited to buttons, knobs, pedals, levers, and cranks.

Following are descriptions of the five terms in which the Strength Factor is expressed:

S-Sedentary Work - Exerting up to 10 pounds of force occasionally (Occasionally: activity or condition exists up to 1/3 of the time) and/or a negligible amount of force frequently (Frequently: activity or condition exists from 1/3 to 2/3 of the time) to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.

L-Light Work - Exerting up to 20 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly (Constantly: activity or condition exists 2/3 or more of the time) to move objects. Physical demand requirements are in excess of those for Sedentary Work. Even though the weight lifted may be only a negligible amount, a job should be rated Light Work: (1) when it requires walking or standing to a significant degree; or (2) when it requires sitting most of the time but entails pushing and/or pulling of arm or leg controls; and/or (3) when the job requires working at a production rate pace entailing the constant pushing and/or pulling of materials even though the weight of those materials is negligible. NOTE: The constant stress and strain of maintaining a production rate pace, especially in an industrial setting, can be and is physically demanding of a worker even though the amount of force exerted is negligible.

M-Medium Work - Exerting 20 to 50 pounds of force occasionally, and/or 10 to 25 pounds of force frequently, and/or greater than negligible up to 10 pounds of force constantly to move objects. Physical Demand requirements are in excess of those for Light Work.

H-Heavy Work - Exerting 50 to 100 pounds of force occasionally, and/or 25 to 50 pounds of force frequently, and/or 10 to 20 pounds of force constantly to move objects. Physical Demand requirements are in excess of those for Medium Work.

V-Very Heavy Work - Exerting in excess of 100 pounds of force occasionally, and/or in excess of 50 pounds of force frequently, and/or in excess of 20 pounds of force constantly to move objects. Physical Demand requirements are in excess of those for Heavy Work.

V. GUIDE FOR OCCUPATIONAL EXPLORATION (GOE)

Many youths and other jobseekers are unprepared for an effective job search because of a lack of knowledge about the kinds of jobs to look for. They have difficulty relating their interest, skills, and potentials to appropriate occupations. To be effective, vocational counselors must have sufficient information to match an individual's interest, temperaments, potential ability and other personal traits to specific career fields and work requirements.

The *Guide for Occupational Exploration* was designed by the US Employment Service to provide career counselors and other DOT users with additional information about the interests, aptitudes, entry level preparation and other traits required for successful performance in various occupations. The GOE is also useful in self-assessment and counselor-assisted settings to help people understand themselves realistically in regard to their ability to meet job requirements. Descriptive information provided for each work group assists the individual in evaluating his or her own interests and relating them to pertinent fields of work.

The GOE code assigned to a definition provides a link between the occupation defined and the GOE arrangement of occupations with similar interests, aptitudes, adaptability requirements, and other descriptors.

The GOE coding structure classifies jobs at three levels of consideration. The first level divides occupations according to twelve interest areas corresponding to interest factors identified through research conducted by the former Division of Testing in the US Employment Service. The interest factors, identified by a two-digit code, are defined in terms of broad interest requirements of occupations as well as vocational interests of individuals. The twelve interest areas are defined as follows:

01 Artistic	05 Mechanical	09 Accommodating
02 Scientific	06 Industrial	10 Humanitarian
03 Plants-Animals	07 Business Detail	11 Leading-Influencing
04 Protective	08 Selling	12 Physical Performing

The interest areas are then subdivided into work groups (the second set of two digits within the six-digit GOE code). Each work group contains occupations requiring similar worker traits and capabilities in related work settings. The GOE contains descriptive information for each work group and identifies each occupation in the group with a four-digit code and title. In many interest areas, occupations that require the most education, training, and experience are in the first group, while those requiring less formal education or experience are listed in the last group.

Work groups are then subdivided into subgroups (the third two-digit set in the GOE code) of occupations with even more homogeneous interests, aptitudes, and adaptability requirements. Each subgroup is identified by its unique six-digit code and title. Individual occupations are listed alphabetically within subgroups. Some subgroups contain occupations from more than one industry, listed within alphabetized industries.

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Wikipedia | Reuters | New York Times | Casualty Count News | Google News

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Merck Manual | Pub Med | Medline Plus | PDR | Wheelless' Textbook of Orthopaedics

SSA Forms | New 1696 | PRTF Form (pdf) | 2005 Deeming Chart | 2005 Wage Chart | TWP-SGA Chart

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U.S. Courts | Abbreviations | Bench decisions | Evidence and Civil Penalties*

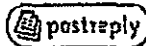
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DOT/VE Conflict sit stand option

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Author

Message

Atty rep

Posted: Mon Apr 04, 2005 12:45 pm Post subject: DOT/VE Conflict sit stand option

Joined: 28 May 2004
Posts: 32

I am trying to argue at the USDC that a sit/stand option is at odds with the definition of sedentary work as defined in the DOT. (the VE cited sed jobs, but did not state why he diverged from the DOT). I see the definitional trailer states that sedentary work requires sitting "most of the time" and walking and standing for "only brief periods". Other than that language, is there any other basis for this claim.

Also, is there any caselaw that says the two concepts are at odds.

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profile 8:03 pm

David F. Traver
Site Admin



Joined: 12 May 2004
Posts: 1003
Location: Milwaukee, WI

Posted: Mon Apr 04, 2005 12:58 pm Post subject:

[quote](#)

It depends a lot on all sorts of things. What exactly are the parameters of the sit/stand option? Step four or five of the sequential evaluation process? Which circuit? How old is the dalmant? How liberal is your court? Is that your only argument?

I used this search string and found this kind of language in about 30 seconds on Lexis (among 1478 cases for all federal cases):

sit w/5 stand w/40 sedentary and social w/1 security

Quote:

The regulations do not mandate the presumption that all sedentary jobs in the United States require the worker to sit without moving for six hours, trapped like a seat-belted passenger in the center seat on a transcontinental flight. No such counterintuitive presumption exists.

Halloran v. Barnhart, 362 F.3d 28, 33 (2d Cir. 2004)

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guestone
Guest

Posted: Mon Apr 04, 2005 01:18 pm Post subject:

[quote](#)

The Agency has acknowledged that most unskilled jobs do not allow for a sit/stand option. See SSR 83-12. On the other hand, the Agency has acknowledged that many jobs do allow for a sit/stand option and that such a restriction significantly erodes the unskilled occupational base. See SSR 96-9p. This Ruling lends support to Mr. Traver's point that details matter: "the RFC must be specific as to the frequency of the individual's need to alternate sitting and standing." Finally, the fact that the DOT does not mention a sit/stand option is why the Agency promulgated SSR 00-4p. There is a good argument that the ALJ was obligated to ask the VE to explain this discrepancy.

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Atty rep

Posted: Mon Apr 04, 2005 01:22 pm Post subject:

 quote

Joined: 28 May 2004
Posts: 32

The ALJ did not get very specific. He found the claimant could perform sedentary work with a sit/stand option. There were absolutely no other RFC findings or further elaboration. The VE said he could do his prw as a sales manager within those limitations. The ALJ did not ask if his testimony conflicted with the DOT. I am attempting to argue that it did, and that therefore, a remand is necessary under 00-4p.

I have other arguments. One is the failure to make a function by function assessment. Another was his discrediting of the claimant on the basis of the lack of obj findings despite the fact that his surgeon said "he has had a crescendo of significant pain with mechanical loss of motion in the neck, right shoulder and severe pain in his arms. This is clearly related to his C5-6 central cervical disk."

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guestone
Guest

Posted: Mon Apr 04, 2005 01:33 pm Post subject:

 quote


Another can of worms. This gets you into the issue of past relevant work as usually performed vs. as actually performed. What was the testimony about how the work was performed? Eric Schnauer has something helpful:

<http://www.schnauer.com/stepfour.htm>

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Atty rep



Posted: Mon Apr 04, 2005 01:48 pm Post subject:

 quote

Joined: 28 May 2004
Posts: 32


The only testimony from the claimant was that there was no lifting. Nothing about sitting or standing. In his vocational report, the claimant stated that sat for 4 hours,, walked for 3 hours, and stood for 1 hour per day. But it isn't clear to me he was describing the same job in that report because it also stated he lifted 50#. Originally he had to lift the paper products he was selling--during the last 5 years he was a supervisor, which is the job the VE was referring to. I think I have a good argument that the sit/stand info in the vocational report did not describe the postural requirements of his supervisory work.

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Guest

Posted: Mon Apr 04, 2005 03:03 pm Post subject:

 quote

It is important to separate out two frivolous or borderline frivolous arguments. I am not stating that these arguments were suggested in this thread. I am just commenting broadly on the issues raised.

Plaintiffs' attorneys routinely make the silly argument that under SSR 83-12 a claimant at step five who needs a sit/stand option, who is restricted to unskilled work, and who is otherwise restricted to sedentary or light work is disabled as a matter of law. Plaintiffs' attorneys also argue without foundation that VE testimony may not conflict with the DOT. (I am not making this up.)

It is quite easy to prove that a sit/stand option job is inconsistent with the DOT.

1. The Agency uses the same definitions as the DOT. 20 CFR 404.1567 (2005).

2. A full range of unskilled sedentary work requires the ability to sit for periods of two hours at one time. SSR 96-9p. Sitting for two hours at one time is not contemplated by a full range of sedentary work. SSR 96-9p. A sit/stand option is inconsistent with the DOT definition of sedentary work.

A full range of unskilled light work requires the ability to sit for prolonged periods. See SSR 83-12. A full range of light work does not include a sit/stand option. SSR 83-12.

(There are about 50 appellate court cases stating more or less 2.)

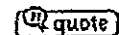
3. Therefore, any VE testimony about unskilled sedentary or light work with a sit/stand option is inconsistent with the DOT.

4. It is wise for a litigant to steal the Commissioner's thunder. When making the argument 1.-3., the litigant should state expressly and clearly that the litigant is not making the argument that VE testimony may not conflict with the DOT. Rest assured that the C may make the false imputation that the plaintiff argues that VE testimony may not depart from the DOT. In a reply brief, the plaintiff can state that the Commissioner's imputation has no basis and that the plaintiff expressly anticipated this false imputation in plaintiff's main brief.

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[Judgmental](#)

Posted: Mon Apr 04, 2005 04:25 pm Post subject:



Joined: 13 May 2004
Posts: 292

OK, take it from the top. The DOT cannot be in "conflict" with testimony on the need to alternate positions because the DOT does not address the availability of such a limitation. The DOT does not address limitations at

all; it describes job requirements and characteristics as performed in the national economy at the time the DOT research was performed.

Guest argued otherwise on the ground that the DOT and this agency use the same definition of sedentary work, but the definition of sedentary work requires the ability to sit "up to" 6 hours per day; there is no floor specified. Guest would like to bootstrap SSRs 83-12 and 96-9p into the DOT, but that is inaccurate. The DOT never incorporated or adopted SSA's rulings. The SSA rulings are correct that the "full range" of sedentary work requires the ability to sit for two hours at a time, while a full range of light requires the ability to sit for prolonged periods, but a sit/stand option is "less than a full range" of sedentary or light work. Hence, a VE is required. It IS error for the judge to omit the time parameters.

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Joe Shull
Guest

Posted: Tue Apr 05, 2005 06:42 pm Post subject:

[quote](#)

I am familiar only with 7th circuit law on the subject which is not in your favor. Please, see Powers v. Apfel, 207 F.3d 431,436-7 (7th Cir. 2000).

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JOA

Posted: Wed Apr 06, 2005 01:17 pm Post subject:

[quote](#)



Joined: 13 May 2004
Posts: 406
Location: Terabithia via
Terebinthia

Judgmental and Guest present what I think are two conceptually distinct approaches to SSR 00-4p about when there is an inconsistency between the DOT and VE testimony. IMHO, one of these approaches explains why VEs so often say "no" when asked whether testimony of jobs for a restricted range of sedentary work conflict with the DOT.

If we think of all sedentary jobs as a pool, then what marks out the margins of the pool is the definition of the full range of sedentary work. Not every job in the pool has duties that stretch out to the margins in all directions. Thus, the pool holds jobs for which lifting never reaches 10 pounds. It also includes jobs for which standing and walking is "very little," meaning less than 2 of 8 hours.

This pool-of-jobs idea illuminates these two different concepts of inconsistency:

1. Every time a VE testifies to jobs that depart from the margin, there's an inconsistency.
2. As long as the VE has dipped the jobs out of the pool, there's no inconsistency.

It's my belief that most VEs think in terms of no. 2. I think this is why the answer is no often "no inconsistency" when an ALJ asks the SSR 00-4p question in connection with a hypo for a restricted range of sedentary work.

This is unofficial. I've posted it in my private capacity either off the clock, on a break, or from home. This might be wrong. Probably, it IS wrong. Please don't infer any SSA approval for what I post.

JOA

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Judgmental

Posted: Wed Apr 06, 2005 02:21 pm Post subject:

quote

Joined: 13 May 2004
Posts: 292

Very well put. The VE is giving testimony in response to a hypothetical that should always reflect something less than the full range of work in any specific exertional category. The VE is, then, asked whether his/her testimony is consistent with the DOT, which it is because the DOT assignment of a job to the sedentary or light categories does not imply that the specific job requires the full range of sedentary or light work, only that the job falls within the ranges applicable to sedentary or light work.

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
Do you know how to spot an ecological fallacy in VE testimony? Read about it in this posting.

Forum

Author

guest1947
Guest

Message


Posted: Thu Jun 09, 2005 08:50 pm Post subject: sedentary jobs allowing for feet elevation 

ALJ found claimant limited to sedentary work with the allowance to have both feet elevated to waist level 50% of workday VE said the following jobs could still be performed:
surveillance system monitor, administrative support clerk, and investigator/adjuster

The last two are listed as light in the DOT and I cannot believe that any employer would allow for an employee to sit around half the day with their feet on their desk . Any comments?

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FairIsFair
Guest

Posted: Thu Jun 09, 2005 09:43 pm Post subject: Expert Basis? 

Did you ask the VE for his/her basis for the conclusion that the claimant can perform these jobs with this limitation?

Has the VE placed anyone with this limitation?

Did the VE understand that jobs requiring an accomodation are NOT available to the claimant?

It's not true just because the VE says it's true.

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Guest

Posted: Fri Jun 10, 2005 11:08 am Post subject: 

I would have a lot of respect for any ALJ who would not accept this kind of testimony from a VE without very hard supporting evidence such as a publication, job survey, etc. It is amazing how some ALJs appear not to notice that from day to day, different VEs describe the same occupations with different skill levels, different job numbers, and different and extreme allowances for sitting and standing at will, leg elevation, etc. which to anyone who has ever actually worked for a living in the real world, seem so extreme. You would think they would be angered and insulted to have that kind of testimony before them.

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SAMPLE VOCATIONAL EXPERT PROBLEM

The claimant is 44 years old. He has a 10th grade education. He has no past relevant work.

Q [by ALJ]: Let's assume that this person can -- he could do simple, routine tasks with very short, simple instructions. He can sustain an ordinary routine, adapt to changes without special supervision and perform simple repetitive work. He can perform a full range of work at the light exertional level, but needs to take asthma precautions. He needs to avoid fumes, noxious odors and dust. Are there any jobs that exist?

A There would be product inspectors, visually inspecting completed products. At the light level these are entry level, simple, unskilled jobs. There's about 1,600 in the region with various DOT numbers. Nationally, I would estimate there's about 100,00 of these types of jobs. There would also be jobs like cashier II and ticket seller jobs, and I would say in the region there's about 13,000 and nationally over 700,000 of these jobs.

Q. [by ALJ] If we assume that a person can lift up to ten pounds, stand and walk for two to four hours, and has limited lifting with his non-dominant right arm. With those additional limitations, could he still perform the jobs you identified.

A. Yes. It does not represent a full range of light work because of lifting and standing. The number of jobs would be reduced by maybe half because of the inability to stand for the full eight hours and the inability to lift more than 10 pounds.

Q. [by Rep] Is that a full range of sedentary work?

A. Yes, I mean it would represent a full range of sedentary work — like the cashiering and ticket selling jobs.

Q. [by Rep.] Isn't ticket selling mostly standing.

A. No, those numbers represent the ones where he could be seated. That's why it's reduced.

Q. [by Rep.] Now, I want you assume the same age, education and past relevant work as previously. Assume that this person has the following limitations. Moderate limitations in the following areas:

Ability to perform activities with a schedule

Maintain regular attendance and be punctual

Complete a normal work week

Respond appropriately to changes in the work setting.

Additionally, the person has marked limitations in the ability to set realistic goals or make plans independently.

A. Well, I think that compromise a person's ability to hold a job, to get a job and hold a job. With all those moderate limitations, he would be a marginal employee. But with that marked impairment of independent planning, that would affect his ability to get to work every day. He would need a good bit of structure. And that would compromise the ability to really get to work and function in the competitive work environment.

~~_____~~

In the
United States Court of Appeals
For the Seventh Circuit

No. 13-3624

MICHELE A. HERRMANN,

Plaintiff-Appellant,

v.

CAROLYN W. COLVIN, Acting Commissioner of Social
Security,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Indiana, Fort Wayne Division.
No. 1:12-cv-00229-JEM— John E. Martin, *Magistrate Judge.*

ARGUED OCTOBER 28, 2014 — DECIDED DECEMBER 4, 2014

Before BAUER, POSNER, and TINDER, *Circuit Judges.*

POSNER, *Circuit Judge.* The plaintiff (we'll call her the applicant) applied for Supplemental Security Income, which is a benefit for which low-income people who are aged, blind, or disabled are eligible. She was turned down by an administrative law judge of the Social Security Administration for the benefit she sought for years before she turned 55. But because of the less demanding showing of disability required

of applicants that age and older, she was deemed to have become disabled when she reached 55. She appealed the partial denial unsuccessfully, first to the appeals council of the Social Security Administration and then to the district court, and she now appeals to us.

The applicant's treating physicians, together with three consultative physicians selected by the Social Security Administration who examined the applicant and studied her medical records, advised the administrative law judge that she suffers from fibromyalgia, spinal disk disease, "photophobia" (abnormal sensitivity to light), and other ailments unnecessary to discuss, and that as a result she walks haltingly, has difficulty gripping objects, experiences difficulty in rising from a sitting position, has trouble concentrating in a bright room or when looking at a computer screen, and as a result of this assemblage of impairments cannot do even light work on a full-time basis. If this is right she was disabled before she turned 55 and is therefore entitled to a back payment of Supplemental Security Income.

"Light work" is defined by the Social Security Administration as work that "involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss

of fine dexterity or inability to sit for long periods of time." 20 C.F.R. § 404.1567. This is a pretty precise description of the type of work that, according to the findings by the doctors regarding the applicant's physical limitations, she *can't* perform.

But the administrative law judge brushed aside the physicians' findings. Typical was his statement that the opinion of Dr. Dauscher, one of the applicant's treating physicians, would be "given no significant weight, because the functional limitations are not supported by Dr. Dauscher's sparse treatment statement notes or by examination findings made by other physicians." The administrative law judge seems to have thought that a physician's evidence can be disregarded unless he has detailed notes to back it up and other physicians provide identical evidence even if they don't contradict him—in other words no credibility without corroboration. These are insufficient grounds for disbelieving the evidence of a qualified professional.

The administrative law judge discussed at greatest length the evidence of Dr. Michael Holton, one of the consultative physicians, saying that Holton had

diagnosed fibromyalgia and lumbar degenerative disk disease. No sensory deficits were noted, and manipulative abilities were normal. Dr. Holton ... opined that the claimant can lift and carry up to 20 pounds occasionally but would be "unlikely" to be able to work eight hours a day. He also indicated that the claimant would be able to do only occasional reaching, handling, and fingering. This opinion is [to be] given little weight, except as to the lifting limitations, because Dr. Holton's examination findings of 5/5 muscle strength, normal sensation and normal manipulative abilities are not consistent with his assessment that the

claimant cannot sustain sitting, standing and walking for eight hours and has limitations regarding reaching, handling and fingering. ... [Another consultative physician, a Dr. Sands] commented that the opinion of consultative examiner Dr. Holton was not [that is, should not be] given weight because the deficits Dr. Holton noted upon examination were not consistent with fibromyalgia. Furthermore, [Dr. Holton] failed to recognize the likelihood of symptom magnification and interpreted subjective findings as objective manifestations of disease [citations to exhibits omitted].

This is garbled. Consider first the criticisms by Dr. Sands. Sands could not have been talking about Dr. Holton, because Sands's report preceded Holton's. The government's lawyer admitted this at the oral argument but speculated that it was a "scrivener's error"—that the administrative law judge had meant Dr. Ksionski when he said Dr. Holton. This is possible, but we can't assume it to be true on the basis of the lawyer's speculation.

Consider next the statement attributed by the administrative law judge to Holton that "manipulative abilities were normal." In fact Holton noted "grip strength" measurements of 31 pounds for the applicant's right hand and 11 pounds for her left, which are well below the normal range for women of the applicant's age. See, e.g., Virgil Mathiowetz et al., "Grip and Pinch Strength: Normative Data for Adults," 66 *Archives of Physical Medicine and Rehabilitation* 69, 71 (1985), www.fcesoftware.com/images/5_Grip_and_Pinch_Norms.pdf (visited Dec. 4, 2014). The applicant in our case may have areas of strength and be able to feel things ("normal sensation") without having the grip strength that she'd need at work. The administrative law judge failed to compare X-ray

and MRI evidence presented by Holton that revealed spinal disease of sufficient gravity to engender the limitations on gait, gripping (an important manipulative ability), and rising (for example, getting up from a chair one is sitting in or straightening up after lifting something) that he found she had.

It's true that Holton reported that the applicant's "fine finger manipulative abilities appear normal." "'Fingering' involves picking, pinching, or otherwise working primarily with the fingers. It is needed to perform most unskilled sedentary jobs and to perform certain skilled and semiskilled jobs at all levels of exertion." Social Security Ruling 85-15:2. But Holton had also opined that the applicant would have trouble "handling," a finding that is consistent with reduced grip strength (indeed, gripping is a form of handling) and is an essential manipulative activity in a great many jobs. The Social Security ruling that we've just been quoting from explains that "handling (seizing, holding, grasping, turning or otherwise working primarily with the whole hand or hands) are activities required in almost all jobs. Significant limitations of reaching or handling, therefore, may eliminate a large number of occupations a person could otherwise do."

The district court's statement that "the ALJ's evaluation of Dr. Holton's opinion may not be perfect" is a considerable understatement. Coupled with the administrative law judge's unreasoned brush off of the evidence offered by the other consulting physicians, his confused rejection of Dr. Holton's evidence should have persuaded the district judge to reverse the denial of relief to the applicant and remand the matter to the Social Security Administration.

There is more that is wrong with the administrative law judge's opinion. The more involves an issue we discussed in *Browning v. Colvin*, 766 F.3d 702, 708–12 (7th Cir. 2014), concerning testimony by vocational experts regarding the number of jobs in the local, state, and national economy that an applicant for social security disability benefits is capable of performing. The Social Security Administration does not try to determine whether an applicant would have any real chance of landing a job, even if physically and mentally capable of performing the work required by it, but it does require a determination of whether work that the applicant is capable of doing “exists in significant numbers” in the economy. 42 U.S.C. § 423(d)(2)(A); 20 C.F.R. § 416.966(a). If the only jobs that the applicant is physically and mentally capable of doing no longer exist in the American economy (such as pin setter, phrenologist, leech collector, milkman, pony express rider, and daguerreotypist), the applicant is disabled from working, and likewise, as a realistic matter, if there is an insignificant number of such jobs.

Asked at oral argument, the government lawyers in both social security disability cases argued before us on October 28 confessed ignorance of the source and accuracy of such statistics, about which we had expressed profound doubt in the *Browning* case. We are not alone in harboring such doubts. See *Brault v. Social Security Administration*, 683 F.3d 443, 446–47 (2d Cir. 2012) (per curiam); *Guiton v. Colvin*, 546 F. App'x 137, 143–45 (4th Cir. 2013) (concurring opinion); Jon C. Dubin, “Overcoming Gridlock: *Campbell* After a Quarter-Century and Bureaucratically Rational Gap-Filling in Mass Justice Adjudication in the Social Security Administration's Disability Programs,” 62 *Administrative L. Rev.* 937, 964–71 (2010); Peter J. Lemoine, “Crisis of Confidence: The Inade-

quacies of Vocational Evidence Presented at Social Security Disability Hearings, Part II," *Social Security Forum*, Sept. 2012, p. 4.

The administrative law judge found that the applicant was capable of performing "a restricted range of light work." On the basis of that finding a vocational expert testified that the applicant "would be able to perform the requirements of representative unskilled light occupations such as: cashier, with 1,000 such jobs existing in the Fort Wayne region [where the applicant lives] and 10,000 such jobs existing in Indiana; shipping and receiving weigher, with 200 jobs in the region and 2,000 jobs in Indiana; and production inspector, with 500 jobs in the region and 5,000 jobs in Indiana" (citations omitted). For unexplained reasons he didn't estimate the number of jobs in these categories in the nation as a whole.

The only public source that the vocational expert cited for the numbers we've just quoted was the *Dictionary of Occupational Titles* (4th ed. 1991) (the "DOT" as it is called). He did testify that he had also relied on his "knowledge of the industry" — "my past experience, knowledge of these positions, employers that do accommodate for individuals with varying degrees of limitations or impairments, hence personal experience and labor market surveys [] account for a portion of my testimony." But he didn't explain how impressions from unspecified past experience and "knowledge" could enable him to determine numbers of particular jobs. Nor did he reveal what surveys he had relied upon and what they had shown.

As for his reference to the *DOT*, not only is that an obsolete catalog of jobs (most of the entries in it date back to

1977) but it contains no statistics regarding the number of jobs in a given job category that exist in the local, state, or national economy. For the numbers, vocational experts normally rely on a journal called the *Occupational Employment Quarterly*, published by a company called U.S. Publishing, although the vocational expert in this case did not mention the journal. The source of the journal's statistics is census data, and the Census Bureau reports not the number of jobs in each job category in the *DOT* but instead the number of jobs in a broader job category that includes some of the *DOT*'s narrower categories. The vocational expert divides the number of jobs in the broad category by the number of finer categories within the broad category, and the result is his estimate of the number of jobs in the finer category, that is, the number of jobs the administrative law judge believes the applicant for benefits is capable of performing.

So if the broad category contains 10,000 jobs, and there are 20 finer categories within it, one of which consists of the jobs the applicant can perform, the vocational expert would estimate, and the administrative law judge accept, that there were 500 jobs in that category. That would be an arbitrary estimate, since there would be no basis for thinking that all the finer categories include the same number of jobs—namely, in our example, 10,000 divided by 500. (For this understanding of how the vocational experts arrive at their conclusions, see, besides the sources cited earlier, David F. Traver, "Cross-Examination of Vocational Expert on U.S. Publishing Data," *Attorney Education Center*, www.jameseducationcenter.com/articles/cross-examination-public-data/ (visited Dec. 4, 2014), reporting an admission by a vocational expert that this is indeed how vocational experts arrive at their numbers.)

We do not know how the vocational expert in this case calculated the numbers to which he testified. Nothing in the record enables us to verify those numbers, which the administrative law judge accepted.

While we're trying to solve or at least identify puzzles, we'll take a crack at one more—why it is that the vocational expert is required to estimate the number of jobs in the applicant's locality and region, as well as in the nation as a whole, that the applicant for benefits can perform. For if there is a substantial number of such jobs in the nation, the applicant's claim fails, no matter how few there are in his locality or region. We are guessing that the reason for requiring estimates of local and regional job availability as well as national is that the number of jobs of a particular type in the nation as a whole might be very small, yet if they were concentrated in the applicant's area he might have a significant opportunity for obtaining work that he was capable of performing even though people living elsewhere would not have that opportunity.

REVERSED AND REMANDED.