

Management Facilitator Guide for OCEP
Vocational Evidence
April 2013

The Facilitator Guide is for use by the HOCALJ and/or HOD or their designee leading a discussion on "Vocational Evidence" following the April 17, 2013 OCEP IVT. Each of the key points below should be addressed in the discussion. Additional discussion points are included below each topic to assist the facilitator in leading the discussion. The session should endeavor to generate discussion rather than a lecture or presentation. Total time for the session should be approximately 45 minutes to one hour.

**I. REVIEW AND DISCUSS THE "FOUR KEYS OF VOCATIONAL EVIDENCE."
ENCOURAGE ALL TO USE IT AS A DESK AID.**

- A. Tip: bring extra printed copies to ensure all have one for discussion.
- B. Use each of the keys as a starting point for discussion. Emphasize the following points in your discussion:

1. MOST ADULT DISABILITY CASES REQUIRE VOCATIONAL EXPERT TESTIMONY

- A. Talk about the fact that at Step 4, vocational evidence helps; at Step 5, you always need it as 20 CFR section 404.1560 (c)(2) and 416.960(c)(2) shift the burden of proof at Step 5 to the Commissioner and the burden can only be met through vocational evidence.

- B. Mention the **two sources of vocational evidence: the Medical Vocational Guidelines and Social Security Rulings and Vocational Expert Testimony** (note citations on the Reference Sheet handout).

- 1. *Discuss that usage of The Medical Vocational Guidelines requires the vocational factors and exertional limits to perfectly match the grid rule.*

- Note: non-exertional limitations will take the case outside the grid rule.

- a. Discuss examples of cases with mental limitations.
 - b. Discuss examples of cases with manipulative limitations.
 - c. *Talk about the **SSRs** and discuss what the *specific de minimis limits* and where they are found – refer to the Reference Sheet Handout and recommend ALJS and attorneys put a copy in their bench book and/or refer to it on the website.*
Emphasize that the limitations must be SPECIFICALLY articulated in the SSR.

2. KNOW SSR 00-4P – ADDRESS CONFLICTS WITH THE DOT

- A. Before relying on Vocational Expert evidence to support a decision, identify and obtain a reasonable explanation for any conflicts between occupational evidence provided by the VE and information in the DOT, including its companion publication, the Selected Characteristics of Occupations (SCO), published by the Department of Labor. Always explain in the decision how any conflict was resolved.
- B. *Practice Tips to Share/Discuss:*

- Always ask the VE if the testimony provided conflicts with the DOT.
- If you suspect a conflict the VE has overlooked, ask about it specifically. *Discuss the example of where the DOT is silent, for example sit/stand* and that while it may not technically be a conflict, be safe and ask the VE the basis for the VE's testimony.
- For all conflicts identified, ask the VE to state the basis for the opinion given (*Discuss basis factors: job placement, career counseling, labor market surveys, knowledge of labor markets, publications, or information from other employers*)
- Determine whether the VE explanation is reasonable and provides a basis for relying on the testimony rather than the DOT and explain the resolution in the decision:
 - Judges, make sure writing instructions include an instruction identifying the conflict and stating why you're accepting the VE testimony
 - Attorneys and paralegals, the FIT template automatically generates the necessary decisional statement if the VE testimony is consistent with the DOT; but, if the instructions and hearing notes show a conflict, explain why the VE testimony or DOT is accepted in a few sentences.
 - In a decision, either accept or reject the VE opinion. Do not assign weight to a VE opinion or use modifiers such as "great," "some," or "little."
 - DOT numbers of each occupation identified by the VE should be included in the decision.
 - Always include the numbers of jobs in the economy the VE gives for each job identified as other work.
 - Double-check that the RFC finding in the decision is identical to that stated to the VE.

3. TRANSFERABLE SKILLS ARE USUALLY NOT AN ISSUE-DON'T ASK ABOUT THEM UNLESS NECESSARY

- A. *Identify the two situations where transferable skills may be an issue:*
 - 1) When the medical vocational rules require it, and
 - 2) In the very rare instance when the claimant's RFC precludes unskilled work but does not preclude semi-skilled or skilled work.
- C. *Discuss if you must get into transferable skills, refer to the "9 steps to transferable skills" – the one page primer authored by former Chief Judge Frank Cristaudo posted on the OCEP website.*

4. EXAMINATION OF THE VE IS LIMITED TO PERTINENT QUESTIONS ON MATERIAL ISSUES. THE ALJ SHOULD DETERMINE THE APPROPRIATENESS OF QUESTIONS ASKED AND ANSWERS GIVEN.

- A. Testimony of a vocational expert is addressed in the regulations at 20 CFR Sections 404.1566 (e) and 416.966(e) and HALLEX 1-2-6-74.
- B. *Discuss the only two objections that can be raised to VE testimony.*
 1. Objections to the QUALIFICATIONS of the VE, and
 2. Objections to the OPINION of the VE

C. Practice Tips To Share/Discuss

1. Establish a foundation for the expert testimony by first qualifying the VE as an expert witness.
2. Reference the VE's statement of qualification, resume, or CV as an exhibit in the file and ask if the exhibit is an accurate statement of the VE's qualifications.
3. Ask the representative or claimant "Do you have any objection to the qualification of this individual to testify as a vocational expert in this hearing? If there is an objection, ask the basis for the objection. Reference the VE's qualifications in the exhibits and permit or conduct additional questioning of the VE's qualification. Rule on the objection.

TIP: Vague and general objections to a VE's qualifications are likely of little merit, but take a few moments to further clarify the vocationally specific experience qualifying him/her as a Vocational Expert. Make a statement that the VE is qualified and address your finding in your decision.

4. If there is an objection to the opinion of the VE, ask the Representative for the basis of his/her objection. Allow relevant questions and make a ruling on the objection. Address the issue in your decision.
5. If an **objection is raised to the number of jobs** testified to by the VE, remember the regulations take administrative notice of reliable job information from various governmental and other publications listed at 20 CFR sections 404.1566(d) and 416.966(d). The VE uses this information in conjunction with other publications and renders an opinion, as a qualified expert, on the number of jobs available. The number of jobs is an estimate, not an exact number known to scientific certitude. **National numbers of jobs** almost always embrace several regions, so national number of jobs will be sufficient (20 CFR Sections 404.1566 and 416.966).
6. The representative may ask for **production of labor market surveys or publications created or used in the VE's professional capacity**. Nothing in the Social Security law, regulations, or HALLEX requires this production. Most of the documents relied upon by the VE are publically available. It's hard to imagine a circumstance where the VE relied only on one document and the ALJ should grant the request for production of documents by the VE (20 CFR Sections 404.1566 and 416.966; SSR 00-4p).

II. FACILITATORS, CONCLUDE BY REINFORCING that the Reference Handout contains the applicable regulations and SSRs. Remind everyone that the OCEP website contains a copy of the OCEP IVT script, questions/answers submitted to the website, the "Four Keys to Vocational Evidence," links to the IVT presentation, CLE information and other related documents.



ODAR Continuing Education Program Quarterly IVT

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FOUR KEYS TO VOCATIONAL EVIDENCE

Social Security Administration
Office of Disability Adjudication and Review



Most Adult Disability Cases Require Vocational Expert Evidence

- The Medical-Vocational Guidelines (“Grid Rules”) direct a finding only if the claimant’s vocational factors and RFC match a Grid Rule. Very few do.
- Limitations of some basic work activities cited in SSRs 83-12, 83-14, 85-15, and 96-9p have a minor effect on the occupational base. In these limited, specific situations, the SSR allows you to use the Grid Rule as a framework for the decision.
- Consider having a vocational expert testify in all adult disability hearings.



Know SSR 00-4p – Address Conflicts with the DOT

- ALJs should always ask the VE if testimony provided conflicts with the DOT.
- Explain in the decision how any conflict was resolved.



Transferable Skills Are Usually Not an Issue; Do Not Assess Unless Necessary

- Do not ask a VE to identify a claimant’s transferable skills unless it is a material issue.
- With very rare exceptions, transferable skills are not a material issue for claimants under age 50.



Examination of the VE Is Limited to Pertinent Questions on Material Issues; the ALJ Should Determine the Appropriateness of Questions Asked

- The VE’s estimate on the number of jobs nationally generally suffices; with rare exceptions, the number of jobs regionally is not necessary.
- Do not permit the VE to answer improperly posed questions.