



# VOCATIONAL SERVICES UNDER THE LONGSHORE AND HARBOR WORKERS PROGRAM

ASSESSMENT AND VOCATIONAL REHABILITATION

# Differences Between Longshore and L&I Vocational Rehab

## L&I Voc Rehab

- ▶ Assigned VRC addresses both employability and retraining
- ▶ Earning capacity is not a factor in determining employability
- ▶ Participation is mandatory for the Assessment and Plan Development processes

## Longshore Program

- ▶ Carrier's VRC focuses on assessment of employability while OWCP's VRC focuses on rehabilitation (placement or retraining).
- ▶ Earning capacity is a critical component to the assessment.
- ▶ Participation is voluntary under the OWCP program

# Who is covered Under the LHWCA?

- ▶ the LHWCA covers longshoremen, harbor workers, and most other people who work on docks and in shipping terminals or shipyards.
- ▶ The LHWCA covers employees in traditional maritime occupations such as **longshore workers, ship-repairers, shipbuilders or ship-breakers, and harbor construction workers**. The injuries must occur on the **navigable waters of the United States or in the adjoining areas, including piers, docks, terminals, wharves, and those areas used in loading and unloading vessels**. Non-maritime employees may also be covered if they perform their work on navigable water and their injuries occur there.

# Status and Situs

- ▶ **The Status Test:** The status test has to do with the nature of the work that the employee performed for the employer. The key is performing “maritime” work. In order for an employee to be eligible for benefits under the LHWCA, “maritime” duties must comprise at least some of the employee’s work for the employer. **This means that some significant part of the employee’s work has to have something to do with the water or marine transport.**
- ▶ **The Situs Test:** The situs test has to do with **the location** where the employee generally worked for the employer. Only maritime employees who work **on, near, or adjacent** to navigable water are covered under the LHWCA.

# Extensions of the Longshore Act

- ▶ **Defense Base Act (DBA)** The DBA covers the following employment activities: (1) Work for private employers on U.S. military bases or on any lands used by the U.S. for military purposes outside of the United States, including those in U.S. Territories and possessions; (2) Work on public work contracts with any U.S. government agency, including construction and service contracts in connection with national defense or with war activities outside the United States; (3) Work on contracts approved and funded by the U.S. under the Foreign Assistance Act, which among other things provides for cash sale of military equipment, materials, and services to its allies, if the contract is performed outside of the United States; and (4) Work for American employers providing welfare or similar services outside the United States for the benefit of the Armed Services, e.g. the United Service Organizations (USO).

# Extensions of the Longshore Act

- ▶ **Outer Continental Shelf Lands Act (OCSLA)** - The OCSLA covers employees working on the Outer Continental Shelf of the United States in the exploration and development of natural resources, for example, off-shore oil drilling rigs.
- ▶ **Non-Appropriated Fund Instrumentalities Act (NAFIA)** - The NAFIA covers civilian employees of non-appropriated fund instrumentalities of the Armed Forces (for example, military base exchanges and morale, welfare, and recreational facilities).

# Scheduled vs. Unscheduled Injuries

## Scheduled Injuries:

- ▶ **Knee, foot, hand, arm, fingers, and eyes**
- ▶ Claimants receive a single, “scheduled” payment at the end of medical treatment as the final compensation payment. This payment is determined only by the percentage of PPD that a physician assigns to the injury.
- ▶ The LHWCA assigns numbers of weeks for “total loss” of such body parts, and claimant would then receive the percent of the number of weeks of the total loss at the end of the claim.
- ▶ Still must show that the worker is capable of suitable alternative employment, but wage capacity is not considered.

## Unscheduled Injuries

- ▶ **Neck, back, shoulder**
- ▶ Claimant receives 2/3 of average weekly wage for the rest of claimant’s life, but employer will receive credit for any income that the employer can prove the claimant can go back to earning.
- ▶ Voc assignment is to identify Suitable Alternative Employment, and assess what wages the claimant is able to return to.
- ▶ Residual earning capacity is reflected in the claimant’s settlement.

# ILWU Stevedore vs Shipyard Worker

## ILWU Stevedore

- ▶ No specific Employer-Dispatched from Union Hall to various Stevedore companies.
- ▶ Union Administers Health and Welfare benefits
- ▶ Pacific Maritime Association-Represents employers. The principal business of the Pacific Maritime Association is to negotiate and administer maritime labor agreements with the ILWU.

## Shipyard Worker

- ▶ Regular employment relationship with employer.
- ▶ May include contract Laborers from third party companies like Labor-ready, etc.



# ILWU Stevedore vs Shipyard Worker

## ILWU Stevedore

- ▶ Registration Levels
  - ▶ Unidentified Casual\*Identified Casual\*  
B registration \*A registration
  - ▶ Skill Levels: Basic, Skill 1, Skill 2, Skill 3
  - ▶ Higher skill and seniority=higher pay but  
all jobs are high paying

## Shipyard Worker

- ▶ Variety of skill levels
- ▶ Pay more inline with labor market as a  
whole
- ▶ Many workers have vocational  
impairments-felony convictions, no  
HS/GED

# Profile of a “typical” Longshoreman

Low education

Singular “labor” work  
history

No computer skills

High wage earner at  
DOI

Often union workers

50+ years old



# Vocational Assessment of Employability vs. Vocational Rehabilitation Services/Retraining

## Assessment: For Carrier

- ▶ Identify Suitable Alternative Employment
- ▶ Assess what wages the claimant is able to return to.

## Rehabilitation: For OWCP

- ▶ Determine best path to rehabilitation: Direct Placement vs. Retraining
- ▶ Voc services are completely voluntary
- ▶ OWCP covers retraining benefit, Carrier covers compensation benefit

# Assessment Referral from Carrier

- ▶ Referral is from Carrier
- ▶ Claimant is typically at MMI. Restrictions are provided by the carrier.
- ▶ Goal is to identify suitable alternative employment to mitigate cost of claim settlement
- ▶ Vocational intake and possible testing
- ▶ Labor market survey: Must identify current openings that worker is qualified for
- ▶ Must identify current wages for each labor market contact
- ▶ VRC attempts to identify highest wage job possibilities
- ▶ LMS is often sent to the IW's physician for approval

# Rehabilitation Referral from OWCP

- ▶ Voc services are completely voluntary
- ▶ Referrals are identified by attorneys, carriers, or even the claimants
- ▶ Similar reporting requirements and processes to L&I referrals
- ▶ OWCP covers retraining benefit, Carrier covers compensation benefit
- ▶ Direct Placement vs. Retraining: Which path makes the most sense?
  - wage at injury vs. placement and training options
  - potential for success
  - worker motivation for placement or training

# Two Agendas; two VRC's – Conflict?

- ▶ What's the problem?
  - ▶ Confusing for worker
  - ▶ Conflict of interest between VRC's working in the same firm
- ▶ Best Practice: Full disclosure to all parties regarding roles in claim.





# Case Study: Joe Worker

## **EDUCATION, LICENSES, SKILLS:**

- ▶ IW grad HS in 1981. Reports difficulty with spelling and reading.
- ▶ No computer skills.
- ▶ Does not have a WSDL. DUI's (x3) in the last 2 years.

**Wage at injury: \$20.85**

## **Post Injury Permanent Medical Restrictions:**

- ▶ Max lift/carry 30 lbs with right arm, frequently lift 20 lbs
- ▶ occasional reaching above head level with right arm
- ▶ no high impact vibratory tasks, occasional low impact vibratory tasks



# Work History:

## WORK HISTORY PROFILE

DATES	DOT TITLE	DOT #	SVP	PD	APTITUDES	WAGE
2000-2014	Shipyard Rigger (Job of Injury)	806.261-014	7	H	33323433225	20.85*
1994-2000	Foundry Worker	519.687-022	2	H	44444533355	
1988-1994	Painter	840.381-010	7	M	34443433343	
1988-1994	Drywall Installer	842.361-030	7	V	34333433333	
1982-1987	Butcher (Slaughterhouse Worker)	525.664-010	6	M	33433434353	



# Placement vs. Training?

## Direct Placement Options (unskilled and transferable skills):

DOT TITLE	DOT #	SVP	PD	APTITUDES	WAGE
Security Guard	372.667-034	3	L	34344444454	11.69
Deliverer, Outside	230.663-010	2	L	44444444445	12.83
Production Assembler	706.687-010	2	L	444444343	9.81
Cashier II	211.462-010	2	L	33344333455	10.71

## Retraining Options:

DOT TITLE	DOT #	SVP	PD	APTITUDES	WAGE
Dispatcher, Motor Vehicle	249.167-014	5	S	33444344455	16.84
Customer Service Representative	239.362-014	5	S	33444344455	14.57
General Office Clerk	219.362-010	4	L	33344233455	12.86
Electronics Assembler	726.684-018	4	L	44433432254	14.28
CNC Machine Operator	609.362-010	5	M	33333433455	18.32

# Outcome of OWCP Assessment – Joe Worker

- ▶ Wage at injury is \$20.85
- ▶ Worker is motivated
- ▶ Aptitudes and academic levels do not support highly academic training
- ▶ Worker does not have WSDL. Has 3x DUI's in the last 2 years.
- ▶ Unskilled jobs do not support wage earnings near level of DOI wage
- ▶ Physical capacities support Light-Medium work.
  
- ▶ **BEST OPTION: Retraining for CNC Machine Operator**
- ▶ Wage per ESD data in King County: \$18.32

# Labor Market Survey

	<b>Company Name</b>	<b>Job Title</b>	<b>Date of Last Hire</b>	<b>Wage (per week)</b>
1.	AAA Washington	Entry Level Customer Service/Sales	April 2015	\$11/hr. + (\$440/week)
2.	Jiffy Lube	Customer Service Advisor	April 2015	\$9.50-10.75/hour (\$285-430/week)
3.	Pierce County Security/Pacific Coast Security	Security Officer	February 2015	\$9.50-12/hr.+ DOE (\$380-480/week)