




Training, Education & Experience

Pitfalls in Employability Assessments and Retraining Plans




Pre-Existing Conditions or Pre-Existing Limitations?

- ▶ WAC 296-19A-010(1)(a)(ii):
 - ▶ "Employable" means having the skills and training that are commonly and currently necessary in the labor market to be capable of performing and obtaining gainful employment on a reasonably continuous basis when considering the worker's:
 - ▶ Preexisting physical and mental **limitations**.
- ▶ WAC 296-19A-070(1)(f):
 - ▶ The assessment report must include information and evaluation of the worker's:
 - ▶ Preexisting physical and mental **conditions** and the effect of those conditions on the worker's ability to work and/or benefit from vocational services.




Allen v. Dep't of Labor & Indus. 30 Wash. App. 693 (1982)

- In the case at bench, plaintiff's entire physical condition was before the court, including (1) the injury of December 1965, (2) the injury of December 1970, and (3) a determination that the disability from the injury of December 1965 had been increased subsequent to the second injury. Based upon the testimony of the vocational consultant, the jury would be warranted in concluding that plaintiff is presently totally disabled, and that such disability resulted from an aggravation of his initial injury superimposed upon the second injury.




In re Reuben Pister, BIIA Dec., 61,785 (1983)

- The prior injury or disability is viewed not as the cause of the total disability, but merely a condition upon which the subsequent injury combined to cause permanent total disability. . . . Truly, the nature of the limitations described in the record from the pre-existing problems describes a situation setting the stage for an industrial injury, albeit minor, to act as "the straw that breaks the camel's back".



In re Kris L. Ayers, BIIA Dec. 04 10250 (2005)

- It has long been the rule in our Industrial Insurance Act that pre-existing disabling conditions are considered with the residual effects of the industrial injury in determining permanent total disability. *Miller v. Department of Labor & Indus.*, 200 Wash. 674 (1939) and *Fochtman v. Department of Labor & Indus.*, 7 Wn. App. 286 (1972). However, disabilities which manifest after the industrial injury are not considered in determining permanent total disability. *Erickson v. Department of Labor & Indus.*, 48 Wn.2d 458 (1956); *In re Pearl Howes*, BIIA Dec., 58,356 (1982). In short, our Industrial Insurance Act takes the injured worker in the condition it finds the worker at the time of the industrial injury or occupational disease, complete with all pre-existing infirmities.



Working with the Vocational Counselor Pitfalls from the Attorney Perspective

- Communication
 - Problems with the AP
 - Problems with the Injured Worker
 - Problems with the Attorney
 - Problems with the Claim
- Job Analyses
 - Does this make sense?
 - Resolving Conflicts between IW and EOI
 - Restriction-Specific JA
- Pre-Existing Conditions/Limitations
- Transferable Skills: Actually current?
- Labor Market Survey
 - Verifying restriction-match
 - Full-time Entry-Level/New Hires
- Writing the AWA Report
 - Give the Attorney/IW a heads up
 - Stopping time loss



Working with the Attorney

Pitfalls from the VRC Perspective

■ Attorney Agenda

- Push for pension without regard to client needs/Interests.
- Do assertions meet facts?
- Inappropriate influence on AP.
- Selection of attorney-friendly FCE providers.

■ Client Access

- Counseling relationship
- Delay in contact
- Service delivery

■ Attorney Behavior

- Delay, distract, obfuscate
- Does attorney enjoy the adversarial process more than getting at the truth?
- Listen to client's concerns?
- Acknowledge client challenges?
- Help with cooperation issues.
- Mischaracterizing VRC efforts.
- Poor client service.



Age & Occupational Adjustment

WAC 296-19A-010(a) Employable means having the skills and training that are commonly and currently necessary in the labor market to be capable of performing and obtaining gainful employment on a reasonably continuous basis when considering the worker's

- (i) Age, education, experience

Social Security Regulations:

Younger Person—if an individual is under age 50, the regulations provide that generally an individual's age will not seriously affect the ability to adapt to new work situations.

Person Approaching Advanced Age—if an individual is closely approaching advanced age (50-54), age along with a severe impairment and limited work experience will be considered as possibly seriously affecting an individual's ability to adapt to a significant number of jobs in the national economy.

Person of Advanced Age—advanced age (55-59) is considered to be the point at which age significantly affects a person's ability to engage in substantial gainful activity. If an individual is severely impaired, of advanced age, cannot do at least medium work, he/she may be found disabled unless the individual has skills that can be used in (transferred to) less demanding jobs that exist in significant numbers in the national economy.

Person Close to Retirement—if an individual is close to retirement age (60-64) and has a severe impairment he/she will be considered unable to adjust to sedentary or light work unless the individual has skills that are highly marketable.



Super's Career Development Stages

Growth→ Exploration→ Establishment→ Maintenance→ Disengagement

- Growth (Birth to 14 years): Development of self-concept, attitudes and general world of work
- Exploration (15-24 years): "Try out" phase through hobbies, classes, and first jobs. Tentative choice and skill development
- Establishment (25-44 years): Entry-level skill building and stabilization through work experience.
- Maintenance (45-64 years): Continual adjustment process to improve position
- Disengagement (65+): Reduced output, prepare for retirement



Maintenance and Disengagement

During maintenance stage (45-64), individual concerned with **holding** their current position against competition. Learning, updating, and innovating is geared toward current job-specific needs. Motivation is holding one's own in the workplace so as to not become obsolete.

Implications of "holding" for jobs based on skill, GED, temperament?

During disengagement stage (65+), individual is decelerating. May be finding easier ways to doing work and drawing away from new challenges or problems. Motivation is on retirement living and financial security.

Adapted from Donald Super's work



Implications on Vocational Rehab

- Prior exposure to work environment of occupational goal
- Experience with tools, equipment, subject matter of the occupational goal
- Recent success with occupational adjustment (advancement, OJT)
- Hobbies or other activities
- Education level
- Occupational background of social group
- What was skill level, reasoning level, temperaments from most recent work



Other Considerations

- ▶ What facts, observations, or evidence tips may suggest barriers
 - ▶ E.g. Client recalls story of failed attempt at promotion
 - ▶ Cognitive evaluation addresses how client perceives challenges
 - ▶ School records show strong/weak performance in academic areas
 - ▶ Look for patterns