Resolving Your Achilles Heel—
Cross-Examining Vocational Experts

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I. INTRODUCTION:

One of the most important tools in the arsenal of effective Social Security representation occurs in the realm of effective cross examination. After presenting the medical evidence and the claimant’s testimony, the subject will frequently turn to the question of whether jobs exist in the local or national economy within a defined residual functional capacity. This paper focuses on some of the methods available and the information that a competent representative must procure.

If the vocational expert identifies occupations and jobs in response to every hypothetical question propounded by the ALJ, questioning the vocational expert must occur. The competent representative will either clarify the questions asked, the basis for the answer given, or ask additional hypothetical questions. Failure to do so may fall below the applicable standard of care.

This author anticipates that the oral presentation will focus on specific hypothetical techniques. This paper focuses primarily on the clarification of the questions and answers.

II. A SHORT LIST OF INFORMATION TO SECURE:

Preliminary List of things that you must get from the vocational expert:

2) Standard Occupational Classification (SOC) group numbers;
3) North American Industry Classification System (NAICS) codes;
4) Regurgitation of which limitations the vocational expert heard;
5) The vocational expert’s working definition of terms of art (occasional, frequent, repetitive, etc);
6) Whether the limitations or functions are “scheduled” in the DOT, Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles (1993) (SCO), O*NET, or other publication;
7) How the unscheduled limitations were the subject of a job analysis;
8) Whether the VE has ever conducted a job analysis and labor market survey, if so when;
9) A list of the bona fide occupational qualifications of the job; and
10) The VE’s understanding of h/h function at the hearing.
III. A LONG ANALYSIS

A. Administrative Notice:

Pinning the testimony to the DOT and SCO is critical. While the DOT is out of date, it is still a reasonable resource for the description of unskilled work. Whether those occupations still exist constitutes a difference question. The Commissioner takes administrative notice of the information contained in those and other governmental publications. 20 C.F.R. §§ 404.1566(d); 416.966(d) state:

(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

Since the Commissioner takes notice in all cases of the authoritative Department of Labor publications, that data always becomes part of every file. Since the data becomes part of every file, it is imperative to have the basis for comparison of that data to the vocational expert’s testimony. Social Security Ruling 00-4p conforms to this analysis. Social Security Ruling 00-4p provides in relevant part that:

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.
While this represents the purpose statement of Social Security Ruling 00-4p, it sheds great insight into the purpose and necessity of cross-examination of the vocational expert. This paper assumes that the ALJ has not secured the base information.

B. Complex Hypothetical Questions:

In complex questions, especially with either a quick speaking or soft-spoken ALJ, it is critical to ask the vocational expert to repeat back the impairments heard in the hypothetical questions. Sometimes the vocational expert may not hear what turns out to be a critical limitation in the middle of a lengthy or complex hypothetical question. The prudent practitioner should simply ask, “What were the limitations in hypothetical #2 that you assumed?”

C. Defining the Terms:

Hypothetical questions containing terms of art, frequency modifiers, or intensity modifiers are hopelessly vague. People may and do have vastly different definitions of critical words and phrases. Therefore, a representative must ask what the vocational expert assumes those words and phrases mean to the vocational expert.

“Repetitive” is a term that causes significant difficulty in the examination and cross-examination of vocational experts. Some vocational experts will define a limitation against “repetitive” activity as precluding “constant” activity, i.e. more than two-thirds of the day. Other vocational experts will define a limitation against “repetitive” activity as precluding “frequent” activity, i.e. more than one-third of the day. The regulations describe activity as semi-skilled if it requires dexterity or coordination to perform activities “quickly to do repetitive tasks.” 20 C.F.R. §§ 404.1568(b); 416.968(b).

If “repetitive” were only synonymous with “constant” the regulations would not make sense. An individual would be incapable of gainful activity under the listings if capable of frequent activities with the arms and legs. “Repetitive” includes those ranges of occurrence of “frequent” and “constant.” A prohibition against “repetitive” activity only allows “occasional” activity.

“Low stress” represents another problem area in the examination of vocational experts. ALJs and vocational experts may define “low stress” as having no responsibility for health, safety, or production of others, and no public contact. Responsibility for health and safety of others is “high stress” work activity. These are police officers, firemen, and security personnel. Responsibility for health and safety of others is also found in medical and other types of comparable professional services. Do not allow vocational experts to assume that “low stress” means not having responsibility for “high stress” work activity. This is an absurd definition, defining away the “low” aspect of the limitation associated with, for instance, once or twice episodes of deterioration or decompensation.
These are some of the most common definitional issues that arise during the opportunity to cross-examine a vocational expert. Other issues certainly arise and can form the focus of discussion during the live session.

D. The marriage of information:

It is now time to marry the information form the DOT, SCO and the functional limitations imposed by the vocational expert. Many functional and educational BFOQ of occupations find definition in either the DOT or the SCO. The DOT classifies:

- SPECIFIC VOCATIONAL PREPARATION (SVP);
- GENERAL EDUCATIONAL DEVELOPMENT (GED) including reasoning, math, and language;
- PHYSICAL DEMANDS—STRENGTH RATING (Strength); and
- GUIDE FOR OCCUPATIONAL EXPLORATION (GOE).

The most useful of the information comes from the SVP, GED, and Strength ratings. Skills do not transfer up in complexity. Terry v. Sullivan, 903 F.2d 1273, 1280 (9th Cir. 1990). A person limited to simple repetitive and routine work cannot perform Reasoning level 3 occupations. Zavalin v. Colvin, 778 F.3d 842, 847 (9th Cir. 2015) (collecting cases and joining in a split in the circuits). A person limited to simple one- and two-step instructions cannot perform Reasoning level 2 occupations. Rounds v. Comm’r of Soc. Sec. Admin., 807 F.3d 996, 1002–04 (9th Cir. 2015) (extending Zavalin). Reasoning level 3 requires:

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.

Reasoning level 2 requires:

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.

Reasoning level 1 requires:

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.

For a person with a limited education and no documented function at a higher level, identification of reasoning, math, or language requiring levels 3 or 4 would violate the limitation. Similarly, an individual limited by a marginal education history is most likely limited to GED 1 occupations.
The SCO also contains a wealth of information for use in the cross-examination of a vocational expert. The SCO and the unselected characteristics contained in Labor’s electronic files (and contained in most professional compilations of the DOT) describe the requirements of DOT occupations for:

WORK FIELDS and MATERIALS, PRODUCTS, SUBJECT MATTER AND SERVICES (for use in assessing transferability of skills)

APTITUDES including General Learning Ability; Verbal Aptitude; Numerical Aptitude; Spatial Aptitude; Form Perception; Clerical Perception; Motor Coordination; Finger Dexterity; Manual Dexterity; Eye-Hand-Foot Coordination; and Color Discrimination;

TEMPERAMENTS including working Alone or apart in physical isolation from others; Directing, controlling, and/or planning activities for others; Expressing personal feelings; Influencing people in their opinions, attitudes and the judgment; making Judgments and decisions and; dealing with People; performing Repetitive and/or continuous short-cycle work; performing effectively under Stress; attaining precise limits, Tolerances, and standards; working Under specific instructions; performing a Variety of duties (capped letter signifies the code for the temperament);

PHYSICAL DEMANDS including Climbing; Balancing; Stooping; Kneeling; Crouching; Crawling; Reaching; Handling; Fingering; Feeling; Talking; Hearing; Tasting/Smelling; Near Activity; Far Acuity; Depth Perception; Accommodation; Color Vision; Field of Vision;

ENVIRONMENTAL CONDITIONS including Exposure to Weather; Extreme Cold; Extreme Heat; Wet and/or Humid; Noise Level; Vibration; Atmospheric Cond.; Moving Mech. Parts; Electric Shock; High Exposed Places; Radiation; Explosives; Toxic Caustic Chem.; Other Env. Cond.

The first issue arising from the information gleaned from the SCO concerns transferability of skills. The Commissioner states in 20 C.F.R. §§ 404.1568(d)(1); 416.968(d)(1) that:

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.

(Emphasis added). To establish transferability at all, the Commissioner states in 20 C.F.R. §§ 404.1568(d)(2); 416.968(d)(2) that:
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.

The pertinent question involves the methodology by which any vocational expert determines that skills are or are not transferable to meet the requirements of other work. The requirement for a same or lesser degree of skill is described in the specific vocational preparation time (SVP) in the DOT. *Terry v. Sullivan*, 903 F.2d 1273, 1278 (9th Cir. 1990). The Commissioner adopts the paradigm of transferability based on GOE codes, MPSMS codes, Work Fields, Occupational Group (first three DOT digits), and industry designation. POMS DI 25015.017.

The Aptitudes provide a useful basis for cross-examining the vocational expert with respect to the listed characteristics. Limitations on dexterity, vision, and coordination are the most common issues arising here. The full characteristics rate these functions on a scale between 1 and 5. A rating of 1 means the best 10% of the population; a rating of 2 means the population in the upper third, excluding the top 10%; a rating of 3 means the middle third of the population; a rating of 4 means the bottom third of the population excluding the bottom 10%; and a rating of 5 means the bottom 10% of the population.

The issue that arises outside of dexterity, vision, and coordination concerns the General Learning Ability (GLA). An individual with an IQ of 81 or less is generally considered by psychologists to function in the bottom 10% of the population. In terms of learning ability, an IQ that is not listings level but below 82 would require a GLA 5 occupation. While most ALJs ask vocational experts to limit people with either borderline intellectual functioning or mild mental retardation to simple and repetitive tasks, that does not encompass the totality of the impairments afflicting the person. The individual may require accommodation in work pace or production or the person may simply require more training time. In either event, the mentally deficient person would not be able to meet the BFOQ of an employer.

The other “common” issue arising from the aptitudes deals with dexterity. An individual with impaired manual dexterity or coordination will probably lack the ability to perform occupations requiring levels 1 through 3 (the top two-thirds of functioning in the population). Similarly, an individual with decreased vision or monocular vision may lack the ability to perform occupations requiring levels 1 through 3 in eye-hand-foot coordination. Remember, aptitudes are not learned, they are innate. *Weaver v. Secretary of Health & Human Services*, 722 F.2d 310 (6th Cir.1983). Impairments can erode otherwise innate abilities and cross-examination must explore those issues where relevant.
The temperaments provide another useful source of cross-examination. Individuals with a severe impairment in social functioning may require an occupation that the SCO rates as “Alone.” There are three occupations in the DOT so rated; none are unskilled. Individuals with social functioning impairments would logically lack the ability to perform occupations requiring “Directing,” “Expressing,” “Influencing,” “People,” and “Under.” Individuals with stress limitations should not perform “Stress” occupations. Claimants with a limitation to simple and repetitive occupations would require a “Repetitive” temperament.

The physical demands provide a wealth of information for cross-examination. The most common rated physical requirements are stooping, reaching, handling, fingering, and feeling. Some cases will require inquiry into talking and hearing (especially with limitations in social functioning), the acuity function of near, far, depth, accommodation, color, and field (for visual impairments).

Environmental conditions arise with far less frequency. Noise and hazards are the most common in this set. Noise obviously arises in the hearing impairment cases. Hazards arise in balance and seizure cases.

E. Mental demands critical for unskilled work:

The Commissioner adjudicates millions of claims annually. That experience informs the mandatory obligation to assess residual functional capacity. 20 C.F.R. §§ 404.1545; 416.945. The regulations provide a “such as” list of examples of the mental activities that reduce the ability to perform unskilled work. 20 C.F.R. §§ 404.1545(c); 416.945(c). The Commissioner interprets that regulatory list of examples with 14 critical abilities to performing unskilled work. POMS DI 25020.010 ¶ B.3. The Commissioner states that the claimant must show the ability to:

1. remember work-like procedures (locations are not critical);
2. understand and remember very short and simple instructions;
3. carry out very short and simple instructions;
4. maintain attention for extended periods of 2-hour segments (concentration is not critical);
5. maintain regular attendance and be punctual within customary tolerances. (These tolerances are usually strict.) Maintaining a schedule is not critical;
6. sustain an ordinary routine without special supervision;
7. work in coordination with or proximity to others without being (unduly) distracted by them;
8. make simple work-related decisions;
9. complete a normal workday and workweek without interruptions from psychologically based symptoms and perform at a consistent pace without an unreasonable number and length of rest periods. (These requirements are usually strict.);
10. ask simple questions or request assistance;
11. accept instructions and respond appropriately to criticism from supervisors;
12. get along with coworkers or peers without (unduly) distracting them or exhibiting behavioral extremes;
13. respond appropriately to changes in a (routine) work setting;
14. be aware of normal hazards and take appropriate precautions.

*Id.*

The inability to do any of these directly impacts the critical components of unskilled work. An often-used limitation in hypotheticals propounded by the ALJs involves the “occasional contact with the public, coworkers, and supervisors.” This limitation directly impedes on abilities 11 and 12 of POMS. While criticism from supervisors, as a critical component of unskilled work, may occur occasionally, that proposition does not make the session brief. Nor does working around or with coworkers, as additional critical requirements of unskilled work, imply brevity of contact even if interaction qualifies as occasional. Nailing down on these critical components necessary for unskilled work requires reconciliation between the vocational testimony and the assessed limitations.

**F. Unscheduled Limitations:**

With regularity, questions arise during vocational expert testimony concerning limitations in areas not rated by the DOT and SCO. Examples include limited neck motion, low stress, impaired concentration, and impaired work pace, limited torquing, limits on firm gripping and grasping, and the like. It is important to identify which functions are scheduled (Social Security Ruling 00-4p issues) and which are not scheduled (a more generic basis issue discussed later). Take the time where relevant to separate scheduled from unscheduled BFOQ of the occupations identified.

Unscheduled impairments give rise to a significant question regarding the ability of an individual to perform work activity. Without an authoritative source for the information such as the DOT or SCO, how does the vocational expert know that not repetitive motion from side-to-side would not affect the ability to perform work activity in the designated occupations. It would make sense that the person performs a job analysis of the particular occupations in order to answer the question. Where erosion is identified, a labor market survey would be required because the published data do not give erosion numbers. This gets into the question of what constitutes “expert” testimony as opposed to a “professional guess.”

**G. The Question of Bias:**

The bias question asks “what is your function at today’s hearing.” If the vocational expert responds along the lines that it is his/her function to identify occupations and jobs in response to hypothetical questions, stop right there. The expert has admitted to a bias. It is up to the ALJ to rehabilitate the vocational expert at this point.
The proper function of a vocational expert is to inform the Commissioner of whether jobs exist and their numbers that would realistically exist given a medical-vocational profile. The testimony of a vocational expert must always be tempered by a dose of reality. Could the person keep the job and sustain employment over a lengthy period of time? If not, then the identification is not reality based.

H. Job Numbers:

Now, comes the fun part. The DOT does not specify the number of jobs in any occupational classification. Nor is this author aware of any source that identifies the numbers of jobs in DOT classifications by title. Rather, the data are available typically grouped by Standard Occupational Code (SOC) that group together related DOT titles. This explains why the prudent representative must inquire the SOC numbers and NAICS codes.


I. O*NET and the Exciting Development of Characteristics:

The Occupational Information Network (O*NET) classificatory system replaced the DOT for purposes of the Department of Labor in 1999. The O*NET uses crosswalks to link between the data in the O*NET-SOC and the DOT. O*NET Resource Center, Frequently Asked Questions, general.3 Available on the Internet at [https://www.onetcenter.org/faq.html?d=1&c=All](https://www.onetcenter.org/faq.html?d=1&c=All).

The Commissioner does not list the O*NET as an example of what the Social Security Administration will take administrative notice. 20 C.F.R. §§ 404.1566(d); 416.966(d). However, because the Commissioner takes administrative notice of the OOH, the task requires its application. The OOH includes links to the Occupational Information Network, the O*NET. See [http://www.bls.gov/ooh/about/occupational-information-included-in-the-ooh.htm](http://www.bls.gov/ooh/about/occupational-information-included-in-the-ooh.htm). The hyperlink on the Occupational Information Network takes the user to the O*NET OnLine. See [http://www.onetonline.org/](http://www.onetonline.org/). The crosswalks link on that page takes the user to the crosswalk search, which includes the DOT crosswalk. See [http://www.onetonline.org/crosswalk/](http://www.onetonline.org/crosswalk/). In the dialogue box, the user inputs the DOT code to find the O*NET code.

The O*NET describes the work context of functions in three areas—interpersonal relationships, physical work conditions, and structural job characteristics. These areas provide a total of 57 physical and social factors that influence the nature of work. The O*NET provides statistical quantification about contact with others; exposure to hazards, contaminants, and work in high places; exposure to extremes of lighting; working indoors or
outdoors; distracting or uncomfortable noise levels; postural activities; repetitive motions; sitting; standing; walking and running; consequences of error; automation; length of the work week; decision-making; repetition; time pressure; and work schedules. The O*NET does not describe lifting, carrying, pushing or pulling.

The SOC group of electrical and electronic equipment assemblers (SOC 51-2022.00) contains 61 DOT codes. Stem mounter (DOT 725.684-018) requires sedentary exertion and no skills. The group contains 10 unskilled light DOT codes. With respect to the entire group of occupations, the O*NET details:

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While the DOT gives no data about a sit-stand option, the O*NET gives some data. The O*NET provides a nationwide sampling that not more than 21% of the jobs have sitting half the day and not more than 22% of the jobs have standing about half the day. More than a quarter of the jobs require continuous or almost continuous standing; 16% of the jobs require continuous or almost continuous standing.

Packers and packagers, hand (SOC 53-7064.00) eliminates the notion of unskilled sedentary packing occupations. Those are ampoule sealer (DOT 559.687-014) and hand bander (DOT 920.687-030). With respect to this occupational group of 59 DOT codes (54 unskilled), the O*NET states:
The O*NET provides fertile ground to cross-examine the vocational expert. Has the vocational expert looked at work in one geographic area as opposed to the country? Does the vocational expert have a nationwide experience with the occupations identified that can overcome administrative notice of the O*NET?

J. The Occupational Outlook Handbook

The OOH provides yet another wealth of information. It is a mandatory source of administrative notice. 20 C.F.R. §§ 404.1566(d)(5); 416.966(d)(5). The OOH provides data on typical entry-level education; experience required; and amount of training needed on the job. It also quantifies job numbers for the broad SOC group.

One of the favorites SOC groups identified by vocational experts fall into Production Workers, All Other (SOC 51-9199.00). Like all SOC codes that end in “99,” it is a wastebasket. The O*NET describes all “99” occupational groups as:

“All Other” titles represent occupations with a wide range of characteristics which do not fit into one of the detailed O*NET-SOC occupations. O*NET data is not available for this type of title.

SOC 51-9199 is a compilation of 1,526 DOT codes within the OOH version and 1,589 DOT codes in the O*NET version. The Department of Labor created a new classification for 60 food related occupations in 2012 (SOC 51-3099). The O*NET hasn’t caught up yet. The 1,526 DOT left inside of 51-9199 has the following characteristics per the OOH:
Production workers, all other

All production workers not listed separately.

- 2014 employment: **236,200**
- May 2015 median annual wage: **$27,950**
- Projected employment change, 2014–24:
  - Number of new jobs: **7,700**
  - Growth rate: **3 percent (Slower than average)**

- Education and training:
  - Typical entry-level education: **High school diploma or equivalent**
  - Work experience in a related occupation: **None**
  - Typical on-the-job training: **Moderate-term on-the-job training**

- O*NET:
  - 51-9199.00—Production Workers, All Other
  - 51-9199.01—Recycling and Reclamation Workers

The OOH defines moderate-term on-the-job training as:

> more than 1 month, and up to 12 months, of combined on-the-job experience and informal training that is needed for the worker to develop the skills to attain competency in the occupation; this on-the-job training category also includes employer-sponsored training programs.

The OOH defines high school diploma or equivalent as just that. That's right. Per the OOH these jobs require a high school diploma or equivalent and require moderate amounts of training. The unskilled work for marginal and limited education workers either do not exist or exist in very small numbers. There are over 1,000 DOT codes in this group that require more than sedentary or light unskilled work. The idea that tens of thousands of jobs exist in the unskilled sedentary or light ranges without the presence of skills borders on absurd.

The OOH provides a basis for establishing the disappearance of unskilled labor and occupations that do not require a high school education. These tools can knock out critical forms of work in those cusp cases.
K. County Business Patterns

Occupations exist in industries. The Commissioner takes administrative notice of County Business Patterns. 20 C.F.R. §§ 404.1566(d)(2); 416.966(d)(2). Very few unskilled occupations cross into more than a handful of occupational groups. When the vocational expert identifies an occupation that has limited applicability, it behooves the representative to check County Business Patterns.

- Start with https://www.census.gov/programs-surveys/cbp.html.
- Click on Data.
- Click on CBP Data Tables.
- Click on U.S., States, Counties, Puerto Rico and Island Areas Tables–2014.
- Click on the United States.

The screen should have the American Fact Finder for County Business Patterns.

The base report lists job data by sector. We will walk through the mechanics. To see an illustration, see http://californiasocialsecurityattorney.blogspot.com/2017/03/final-assembler-lens-inserter-and.html. The data for the ophthalmic goods manufacturing industry shows:

<table>
<thead>
<tr>
<th>Geographic Area Name</th>
<th>2012 NAICS Code</th>
<th>Meaning of 2012 NAICS Code</th>
<th>Year</th>
<th>Paid Employees for Pay Period Including March 12 (Number)</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>339115</td>
<td>Ophthalmic goods manufacturing</td>
<td>2014</td>
<td>24,910</td>
</tr>
</tbody>
</table>

The industry code 339115 is the right code per NAICS.com.

<table>
<thead>
<tr>
<th>2012 NAICS</th>
<th>Corresponding Index Entries</th>
</tr>
</thead>
<tbody>
<tr>
<td>339115</td>
<td>Contact lenses manufacturing</td>
</tr>
<tr>
<td>339115</td>
<td>Eyeglass frames (i.e., fronts and temples), ophthalmic, manufacturing</td>
</tr>
<tr>
<td>339115</td>
<td>Eyes, glass and plastics, manufacturing</td>
</tr>
<tr>
<td>339115</td>
<td>Goggles (e.g., industrial, safety, sun, underwater) manufacturing</td>
</tr>
<tr>
<td>339115</td>
<td>Lens coating, ophthalmic</td>
</tr>
<tr>
<td>339115</td>
<td>Lens grinding, ophthalmic (except in retail stores)</td>
</tr>
</tbody>
</table>

L. Employment Projections


BLS presents all of the employment projections. Employment Projections, Industry-occupation matrix data, by occupation (BLS) available at https://www.bls.gov/emp/ep_table_108.htm; Employment Projections, Industry-occupation matrix data, by industry (BLS) available at https://www.bls.gov/emp/ep_table_109.htm. The user can look up employment by occupation to see the industries in which it exists or look up the industry to see what occupations work within that industry or industry group. The parent industry designation form our last example on County Business Patterns gives detail down to NAICS code 339100. That broader industry designation reports total employment of 307,500 jobs. Production workers make up 3,500 of the jobs or 1.1% of the total employment. Because lens inserters and final assemblers do not work in other sub-groups of 339100, and only occur in the ophthalmic good manufacturing industry, aggregation suggests that 1.1% of 24,910 jobs in the industry work as a production worker, all other.

Whether the number is 3,500 or 275 jobs, the most important fact to remember is that production workers, all other contains 20 DOT codes that work in the optical goods industry. There are not thousands of final assemblers and probably less than 50—in the nation.
IV. HYPOTHETICAL QUESTIONS TO THE VOCATIONAL EXPERT

So far this paper has not discussed propounding additional hypothetical questions to vocational experts. Any practitioner of the art of cross-examining vocational experts can spend a great deal of time just examining the basis for the answers given during direct examination. These tactics apply where the ALJ has fairly contained the residual functional capacity in a hypothetical question to the witness but the witness did not give the anticipated testimony. A much more difficult question arises where the ALJ does not propound a hypothetical question that fairly encompasses the representative’s view of the residual functional capacity applicable to the case.

The format is simple for additional hypothetical questions. Repeat what the ALJ said and add on the additional impairments. For example:

If we assume an individual of the same age, education, and work experience that we have been discussing. Assume the limitations described in hypothetical #2. Do you need me to repeat those limitations? If we add to that question the presence of pain that moderately impacts the ability to maintain productivity, concentration, and pace, would such a person be able to maintain and sustain work in any of the occupations that you previously identified?

Strategy requires that additional hypothetical questions start out low and build. No one needs to have the question, “assume the person must lie down for two hours unpredictably in the middle of the day.” Everyone knows the answer to that question; there are no jobs for such a person. Do not waste the time to ask and hear the answer to such “obvious” questions.

Additional hypothetical questions demand that the representative look for limitations in the medical records and from the testimony. Start with the medical records and indicia of limitations contained in those records. Hypothetical questions based exclusively on the testimony of a claimant without any medical support are the result of failure to develop the treating physician opinions properly (some doctors will not cooperate) or a claimant that has a different perception of reality (perhaps a minor physical problem coupled with a somatoform disorder). Again, start with the medical records for additional hypothetical questions. Additional hypothetical questions should quantify the limitations by either using defined terms of art or percentages. The questioning should start with the content of the Vocational Expert Handbook (SSA June 2011). The vocational expert needs to have knowledge of and experience using the vocational resources:
• The Dictionary of Occupational Titles (DOT) and the Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles (SCO);
• County Business Patterns published by the Bureau of Census;

Everything starts with notice of job requirements and then the number of jobs.

GOOD LUCK IN CROSS-EXAMINATION OF YOUR VOCATIONAL EXPERTS!!!
Appendix 1—Sample Cross Worksheet

Submitted By:
Monica Perales, Esq.
Lawrence Rohlfing, Esq.

AGE:

___ 18–44 ___ 45–49 ___ 50–54 ___ 55–59 ___ 60–66

EDUCATION:

___ Illiterate or Unable to Communicate in English ___ Marginal 1–6 years +
___ Limited 7–11 years ___ High School 12 years
___ High School plus:__________________________________________________________
___ Vocational leading to skills: ________________________________________________

WORK EXPERIENCE:

___ Unskilled ___ Semiskilled ___ Skilled

Transferable Skills:

Work Fields:______________________________________________________________

MPSMS Codes: ____________________________________________________________

SVP:_____________________________________________________________________

DOT codes:________________________________________________________________
RESIDUAL FUNCTIONAL CAPACITY #_______:

Exertional:

_____ Sedentary  _____ Light  _____ Medium  _____ Heavy or unlimited
Lift and Carry:  _____ Occasionally  _____ Frequently

Sit:
_____ at a time _____ total in an 8-hour day

Stand:
_____ at a time _____ total in an 8-hour day

Walk:
_____ at a time _____ total in an 8-hour day

Postural:
Squat:
Twist:
Climb Ladders, Ropes, Scaffolding:
Climb Stairs, Ramps:
Balance:
Bend:
Stoop:
Kneel:
Crouch:
Crawl:

Manipulative:
Reach overhead:
Reach at shoulder level:
Reach all other directions:
Handle
Finger
Feel

Visual:
Near Acuity
Far Acuity
Depth Perception
Visual Accommodation
Color Vision
Field of Vision

Communication:
Hearing:
Speaking:

Environmental Limits:
Extreme cold
Extreme heat
Wetness
Humidity
Nose
Vibration
Fumes (pulmonary irritants)
Hazards
Resolving Your Achilles Heel—Cross-Examining Vocational Experts

Section X

DOT/SCO CROSS CHECK

Exertion:

SVP:

GED:

Data:

People:

Things:

Work Fields:

MPSMS:

Aptitudes:
General Learning Ability:
Verbal Aptitude:
Numerical Aptitude:
Spatial Aptitude:
Form Perception:
Clerical Perception:
Motor Coordination:
Finger Dexterity:
Manual Dexterity:
Eye-Hand-Foot Coordination:
Color Discrimination:

Temperaments:
DIRECTING, controlling, or planning activities of others.
Performing REPETITIVE or short-cycle work.
INFLUENCING people in their opinions, attitudes, and judgments.
Performing a VARIETY of duties.
EXPRESSING personal feelings.
Working ALONE or apart in physical isolation from others.
Performing effectively under STRESS.
Attaining precise set limits, TOLERANCES, and standards.

Working UNDER specific instructions.
Dealing with PEOPLE.
Making JUDGMENTS and decisions.

Physical demands:
Climbing:
Balancing:
Stooping:
Kneeling:
Crouching:
Crawling:
Reaching:
Handling:
Fingering:
Feeling:
Talking:
Hearing:
Tasting/Smelling:
Near Acuity:
Far Acuity:
Depth Perception:
Accommodation:
Color Vision:
Field of Vision:

Environmental Conditions:
Exposure to Weather:
Extreme Cold:
Extreme Heat:
Wet and/or Humid:
Noise Level:
Vibration:
Atmospheric Cond.:
Moving Mech. Parts:
Electric Shock:
High Exposed Places:
Radiation:
Explosives:
Toxic Caustic Chem.:
Other Env. Cond.:
**O*NET CROSSCHECK Work Context**

**Physical Work Conditions**
- Cramped Work Space, Awkward Positions:
- Exposed to Contaminants:
- Exposed to Disease or Infections:
- Exposed to Hazardous Conditions:
- Exposed to Hazardous Equipment:
- Exposed to High Places:
- Exposed to Minor Burns, Cuts, Bites, or Stings:
- Exposed to Radiation:
- Exposed to Whole Body Vibration:
- Extremely Bright or Inadequate Lighting:
- In an Enclosed Vehicle or Equipment:
- In an Open Vehicle or Equipment:
- Indoors, Environmentally Controlled:
- Indoors, Not Environmentally Controlled:
- Outdoors, Exposed to Weather:
- Outdoors, Under Cover:
- Physical Proximity:
- Sounds, Noise Levels Are Distracting or Uncomfortable:
- Spend Time Bending or Twisting the Body:
- Spend Time Climbing Ladders, Scaffolds, or Poles:
- Spend Time Keeping or Regaining Balance:
- Spend Time Kneeling, Crouching, Stooping, or Crawling:
- Spend Time Making Repetitive Motions:
- Spend Time Sitting:
- Spend Time Standing:
- Spend Time Using Your Hands to Handle, Control, or Feel Objects, Tools, or Controls:
- Spend Time Walking and Running:
- Very Hot or Cold Temperatures:
- Wear Common Protective or Safety Equipment such as Safety Shoes, Glasses, Gloves, Hearing Protection, Hard Hats, or Life Jackets:
- Wear Specialized Protective or Safety Equipment such as Breathing Apparatus, Safety Harness, Full Protection Suits, or Radiation Protection:

**Interpersonal Relationships**
- Contact With Others:
- Coordinate or Lead Others:
- Deal With External Customers:
- Deal With Physically Aggressive People:
- Deal With Unpleasant or Angry People:
- Electronic Mail:
- Face-to-Face Discussions:
- Conflict Situations:
- Letters and Memos:
- Public Speaking:
- Responsibility for Outcomes and Results:
- Responsible for Others’ Health and Safety:
- Telephone:
- Work With Work Group or Team:

**Structural Job Characteristics**
- Consequence of Error:
- Degree of Automation:
- Duration of Typical Work Week:
- Freedom to Make Decisions:
- Frequency of Decision Making:
- Impact of Decisions on Co-workers or Company Results:
- Importance of Being Exact or Accurate:
- Importance of Repeating Same Tasks:
- Level of Competition:
- Pace Determined by Speed of Equipment:
- Structured versus Unstructured Work:
- Time Pressure:
- Work Schedules: