

Dictionary of Occupational Titles

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January 2009

Why SSA Needs Reliable Vocational Evidence?

Kerner v. Felming, 283 F.2d 916, 921 (2nd Cir.1960)

- There must be “a rational decision” regarding the vocational issues: the claimant was *“admittedly able to do only light work, and this at a location reachable without undue exertion, and presenting a prospective employer with the unattractive combination of age, heart disease, diabetes, and acute worry about himself. No one of these factors might be fatal to employment-indeed, the constellation of them may not be-but the Secretary had nothing save speculation to warrant a finding that an applicant thus handicapped could in fact obtain substantial gainful employment.”*

SSA Response to *Kerner*

- Government and industrial studies (information about individuals “with certain impairments” employed in various occupations)-courts rejected this as speculative and theoretical.
- Individualized approach-VEs at administrative hearing (“Vocational Specialist Program” in cooperation with the Bureau of Disability Insurance, 1966). VE is *“not an employee of SSA or the State agencies, but is an independent contractor engaged by the Bureau of Hearings and Appeals to provide independent and impartial appraisals at the hearing level of the appellate process.”* SSA History of SSA During the Johnson Administration 1963-1968 at www.ssa.gov/history/ssa/lbjoper5.html.

Occupational Information Needed in Disability Claims

- Duties and Demands of jobs
- Material inputs and product outputs
- Service jobs v Production jobs
- Physical, Mental, Emotional Demands of jobs
- Education and Training
- Old v Younger person needed for the job

Legal Framework for the DOT

- **At step IV** of the Sequential Evaluation Process:
“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. We may use the services of the 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...” 20 CFR 404.1560 (a)

Legal Framework (cont’d)

- **At step V** of the Sequential Evaluation-SSA uses “administrative notice” of the DOT and its related data and assumptions, in the Medical-Vocational Guidelines: *“The DOT includes information about jobs (classified by their exertional and skill requirements) that exist in the national economy...”* 20 CFR 404.1569

Legal Framework (cont’d)

DOT underlines assumptions in

- GRIDS-SSR 82-47c
- SCO-SSR 96-9
- Physical Exertional Requirement Definitions-20 CFR 404.1567
- Nonexertional Requirement Definitions-20 CFR 404.1569a
- SSA estimation of “unskilled” jobs-20 CFR Appendix 2 to Subpart P of Part 404, medical Vocational Guidelines Sec. 200.00 (b)

Sources of Vocational Information-VE

- No present standards to become a VE
- No training
- No supervision
- No credential requirements.
- SSA uses *“VEs and VSs as sources of occupational evidence in certain cases.”* 20 CFR 404.1566(e), 416.966(e), SSR 00-4p.

Sources of Vocational Information-DOT

- Disability adjudication framework is founded on the DOT and the supporting assumptions, research, data, and vocational theories.
- SSA must use *“reliable job information”* available from various publications, including DOT and other documents as provided by 20 C.F.R. 404.1566 (d), 416.966(d), SSR 00-4p.

Where the information is coming from?

“We asked the parties at oral argument what makes a vocational

expert an “expert” (and where the information in the Dictionary of Occupational Titles comes from). They did not know. Maybe both the authors of the Dictionary and the vocational expert in this case are talking out of a hat.” Donahue v. Barnhart, 279 F.3d 441, 446 (7th Cir. 2002)

DOT History

- The Dictionary of Occupational Titles (DOT) was created in the 1930s by the U.S. Employment Service to match job seekers with jobs (“an operational tool for use in the day-to-day functioning of Employment Service officers.”)
- DOT, 1st Ed, 1939; updated in 1949, 1965, and 1977, Supplements to the 4th Ed in 1982 and 1986.
- DOT Revised 4th Ed, 1991 (Department of Labor)-occupational information for 12,000 occupations.
- Now Job Service uses O*Net <http://www.onetcenter.org/overview.html>

Where to find DOT?

- Revised 4th Ed of the Dictionary of Occupational Titles, Volumes I and II, U.S. Department of Labor Employment and Training Administration, 1991.
- Online at <http://www.oalj.dol.gov/LIBDOT.HTM>
- Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles (SCO), U.S. Department of Labor Employment and Training Administration, 1993. Reprint available from www.germaniapublishing.com

DOT Structure

- DOT groups jobs into **12, 741** listed “**occupations**” based on their similarities.
- “Occupation” is a collective description of a number of individual jobs performed, “with minor variations”, in many establishments. DOT defines “occupations” through “comprehensive studies” of how similar jobs are performed in different work places. No clear definition.

DOT Structure (cont’d)

Seven basic parts that present data about a job:

- The Occupational Code Number
- The Occupational Title
- The Industry Designation
- Alternate Titles (if any)

- The Body of the Definition
 - Lead Statement
 - Task Element Statements
 - “May” Items
- Undefined Related Titles (if any)
- Definition Trailer

What’s in a Name? DOT Occupational Code

- 9-digit occupational code. Each set of three digits has a special meaning.
- First three digits-a particular occupational group.
- First digit identifies nine broad categories of occupations
 - 0/1 Professional, Technical, and Managerial Occupations
 - 2 Clerical and Sales Occupations
 - 3 Service Occupations
 - 4 Agricultural Occupations
 - 5 Processing Occupations
 - 6 Machine Trades Occupations
 - 7 Benchwork Occupations
 - 8 Structural Occupations
 - 9 Miscellaneous Occupations

DOT Occupational Code (cont’d)

- Nine broad occupations categories break down into 83 occupationally specific “divisions”-first two digits of the occupational code number.
- “Divisions” are divided into 564 “groups” designate by the first three digits of occupational code number.

DOT Occupational Code (cont’d)

Example: **Guard, Security, 372.667-034**

First digit (“3”)-occupational category “Service Occupations”

Second digit (“7”)-division within the “Service Occupations” category (“37”- Protective Service Occupations)

Third digit (“2”)-occupational group within the division (“372”- Security Guards and Correction Officers, Except Crossing Tenders”)

DOT Occupational Code (cont’d)

Example: **Guard, Security, 372.667-034**

Middle three digits-the Worker Functions ratings of the tasks

performed in the occupation.

Every job requires a worker to function in relation to data, people, and things. The middle three digit code characterizes how 24 worker functions are related to the worker's primary involvement with data, people, and things.

DOT Occupational Code (cont'd)

Example: **Guard, Security, 372.667-034**

The Worker Function Code ("667") can be found in any occupational group. It signifies that the worker in an occupation with this code is

"comparing" the data in his job

"Speaking-Signaling" to people in his job

"Handling Things" in his job

The code is the broadest level of responsibility or judgment in relation to data, people, things.

DOT Occupational Code (cont'd)

Example: **Guard, Security, 372.667-034**

The last three digits differentiate a particular occupation from all others (occupations can have the same first six digits, but no two occupations can have the same nine digits).

If a six digit code (first six digits) is applicable to only one occupational title, the final three digits will always be 010. If there is more than one occupation within the same first six digits, the final three digits are assigned in alphabetical order of titles in multiples of four (010, 014, 018, 022)

Security Guard is the seventh of eight occupations with the same six digits ("372.667")-it's assigned a final three digit code "034".

DOT Occupational Title

- **Base Title** (always in upper-case boldface letters)-title by which the occupational is known in the majority of work places.

Example: **Guard, Security, 372.667-034**

- **Master Titles**-describe work duties common to a number of jobs (typical duties which are commonly performed within a particular occupation).
- **Term Titles**-occupations within the same title but *few* common duties.

DOT Occupational Title

- **Alternate Titles**-synonym for the base title (shown in a lower-case letters immediately after the base title and its industry designation). An occupation may have a large number of alternate titles or none.

Alternate Titles carry the code numbers and industry designations of the base title, can be found in DOT, p. 1225 (Alphabetical Index of Occupational Titles).

Example: **Guard, Security, 372.667-034**

Alternate Titles: "patrol guard", "special police officer," watchguard."

DOT Industry Designation

- Appears in parenthesis following the occupational base title (often differentiates between two or more occupations with identical titles but different duties). Often tells about
 - Location of the occupation (hotel, machine shop)
 - Types of duties associated with the occupation (education)
 - Products manufactured (optical goods, textile)
 - Processes used (electroplating, petrol refin.)
 - Raw materials used (nonfer. Metal stonework)

Example: **Guard, Security (any industry), 372.667-034**

The Body of the DOT Definition

Two or three main parts:

- a lead statement
- several task elements
- "may" item

The Body of the DOT Definition (cont'd)

- **The Lead Statement**-the first sentence following the industry designation and alternate titles (if any), followed by a colon.
- Summarizes the entire occupation, offers essential information
 - Work actions
 - Objective or purpose of the worker actions;
 - Machines, tools, equipment, work aids;
 - Materials used, products made, subject matter dealt with, services rendered;
 - Instructions followed.

The Body of the DOT Definition (cont'd)

- **The Element Statement**-indicates the specific tasks the worker performs to accomplish the overall job purpose described in the lead statement.
- **"May" Items**-describe duties required of workers in the occupation in some jobs but not others (does NOT indicate

that the worker has any discretion as to whether to perform the task)

Definition Trailer

- Attached to each DOT definition, contains selected occupational analysis characteristics:
 - GOE Code (Guide of Occupational Exploration)
 - Strength rating (Sedentary (S), Light (L), Medium (M), Heavy (H), and Very Heavy (V));
 - Reasoning (R), Mathematical (M), and Language (L) development levels of GED;
 - SVP level (Specific Vocational Preparation);
 - DLU (The Date of Last Update)

Example: **Guard, Security (any industry), 372.667-034** GOE: 04.02.02
STRENGTH: L GED: R3 M1 L2 SVP: 3 DLU 88

Definition Trailer-GOE

Guide to Occupational Exploration-cross reference to SCO, 1993, Part A of the SCO is arranged according to GOE codes, SVP levels, physical demands and occupational conditions.

Definition Trailer-Strength Rating

- Corresponds to the SSA definition of exertional levels. SSR 83-10
- DOT estimates the strength factor in occupations-Appendix C, pp. 1012-1013, Appendix C, DOT; pp. C-1 through C-3, SCO.
- ALJs may accept VEs rejection of the DOT exertional classifications based on the outdated character of the DOT and more recent reliable “personal experience” of the VE. Ask how VE arrived at his/her exertional classification and whether it corresponds to the DOT methodology.

Definition Trailer-GED

- General Educational Development in three areas of Reasoning Development (R), Mathematical Development (M), Language Development (L).
- U.S. Employment Service in its Occupational Analysis Program uses a difficulty factor to estimate reasoning, language, and math skills. There are six levels of difficulty.

Definition Trailer-SVP

- Specific Vocational Preparation (p. 1009 of the DOT, p B-1 of the SCO):
- 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 situation. Lapsed time is not the same as work time. SVP excludes orientation time required for a fully qualified worker to become accustomed to the specific conditions, it does not include time the

worker spends obtaining reasoning, language, and mathematical skills which are learned in school and also necessary for a person to be functional.

Sources of SVP

- Vocational school (high school, commercial or shop training, technical school)
- Apprenticeship training;
- In plant training (organized classroom provided by the employer);
- On-the-job training (under instruction of a qualified worker);
- Essential experience in other jobs.

SVP-Practice Point

- The Commissioner acknowledges there are only 137 unskilled sedentary occupations in the DOT. SSR 96-9p, n.5. www.ssa.gov/OP_Home/rulings/di/01/SSR96-09-di-01.html#fnr5.
- After the VE testifies to the existence of unskilled sedentary jobs, ask the VE to confirm that his or her testimony is consistent with the DOT pursuant to SSR 00-4p. www.ssa.gov/OP_Home/rulings/di/02/SSR2000-04-di-02.html. If the VE testified that your client could perform unskilled sedentary work, ask the VE to explain which one of these jobs from the DOT conforms to the testimony. Only six jobs have an SVP of 1.

Problems with the DOT

- Inadequate data-more information about production jobs v. service jobs (possible inbuilt bias), boundaries between occupations are not as distinct as presented in the DOT, no clear definition of "occupation", inconsistent occupational titles and definitions.
- Inadequate occupational characteristics originally created. Report of the National Academy of Sciences "Work, Jobs, and Occupations: a Critical Review of the Dictionary of Occupational Titles" available at www.nap.edu/catalog/92html
- Old information- job analyses in the DOT dates to 1990, 100% of definitions are over 18 years old. "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." 20 C.F.R> 404.1565(a) By Regulation, the DOT is no longer reliable.

"Companion Volumes" to the DOT-statutory authority to use

- Administrative notice: "*When we determine that unskilled, sedentary, light, and medium job exist in the national economy (in significant numbers 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..*"
- (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 SSA by various State employment agencies; and
- (5) Occupational Outlook Handbook, published by the Bureau of Labor Statistics." 20 CFR 404.1566(d)

Occupational Outlook Handbook

- Available on line at www.bls.gov/oco/home.htm
- Revised every two years, designed to “provide valuable assistance to individuals making decisions about their future work lives.”
- Describes what workers do on the job, working conditions, the training and education needed, earnings, and expected job prospects.
- Advocacy Point: SSA has rejected O*Net, however, SSA regulations adopted the Occupational Outlook Handbook, and this may open the door to O*Net data. CFR 404.1566(d)

Occupational Employment Statistics (OES)

- Produces employment and wage estimates for over 800 occupations.
- Self-employed are not included.
- Available at <http://www.bls.gov/OES/>

Occupational Employment Statistic Survey (OES)

- Bureau of Labor Statistics (BLS)
- “Sample” survey to make projections.
- Handbook of Methods is at www.bls.gov/opub/hom/.
- No differentiation between full- time work or part- time work in the data collection. Limited use in SSA cases-SSR 96-8p dictates to determine whether the claimant can perform “regular and continuous” job.
- Does not collect/report “skill” levels, “exertional” demands, does not correspond to DOT occupations, self reported and sample survey.

VE Disagrees with the DOT

- How reliable are the statistical sources that a VE uses to identify the numbers of jobs in the labor market for specific occupations?
Ex: County Business Patterns do not provide occupational data (provide the number of employees working in the primary industry) Housing and Household Economic Statistics Division at the Census Bureau collects occupational data. Census does not collect DOT-related information.
- Questions to ask:
 - Are the VE’s data up-to-date?
 - Where did it come from?
 - When/How was it last updated?
 - If the report the VE is relying on says it is for the most recent quarter of the year, what Census year was used to designate codes? Why is this report using 1990 codes?
 - Does VE know which DOT codes are associated with the 2000 Census Codes?

Adjudicator Must Resolve Conflicts between VE testimony and the DOT

“When vocational evidence provided by a VE is not consistent with information in the DOT, the adjudicator must resolve this conflict before relying on the VE... 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.” SSR 00-04p

Attempts to Reform the Vocational Evaluation Process

- SSA request for information “Seeking sources capable of providing the Agency with a revised and updated version of the DOT Revised 4th Ed and its companion publication, SCO, published by DOL.” FBO Daily Issue, June 6, 2003 FBO # 0554
- NPRM, 70 Fed. Reg. 43589 (July 27, 2005)
- Final Rule, 71 Fed. Reg. 16,423-16,462 (March 31, 2006)
- Establishment of the Occupational Information Development Advisory Panel, 73 Fed. Reg. 78864 (December 23, 2008)