

Social Security Disability: From Start to Finish

COUNTERING VOCATIONAL EXPERT TESTIMONY IN DISABILITY LITIGATION

Introduction

The Social Security Administration makes extensive use of vocational experts in hearings. According to HALLEX (the Office of Disability Adjudication and Review's Hearings, Appeals and Litigation Law Manual:

I-2-5-48. Vocational Experts — General

Last Update: 9/28/05 ([Transmittal I-2-68](#))

VEs are vocational professionals who provide impartial expert opinion during the hearings process on claims under title II and title XVI of the Social Security Act or claims for Black Lung Benefits by either testifying at hearings or providing written responses to interrogatories.

The following general guidelines apply to an ALJ's use of a VE in the hearing proceedings:

- The ALJ may use a VE before, during, or after the hearing.
- The ALJ must avoid any off-the-record discussion with the VE. If such a discussion occurs, the ALJ must summarize the discussion on the record at the hearing or by entering a written summary into the record as an exhibit.
- The ALJ may not use a VE who has had prior professional contact with the claimant.
- The ALJ may not ask a VE to provide an opinion on psychological (i.e., medical) matters even if the VE is a certified mental health professional. (See [I-2-5-61](#), Use of Dually-Qualified Vocational and Medical Experts.)
- The VE's opinion is not binding on the ALJ. The ALJ must weigh a VE's opinion along with all other evidence.

I-2-5-50. When to Obtain Vocational Expert Opinion

Last Update: 9/28/05 ([Transmittal I-2-68](#))

A. When an ALJ May Need to Obtain VE Opinion

An ALJ may need to obtain a VE's opinion, either in testimony at a hearing, in person, by telephone, by video teleconference or in written responses to interrogatories, when:

1. the ALJ is determining whether the claimant's impairment(s) prevents the performance of past relevant work; or
2. the ALJ is determining whether the claimant's impairment(s) prevents the performance of any other work and he or she cannot decide the case under any of the tables in Appendix 2, Subpart P of Regulations No. 4, because:
 - the claimant's residual functional capacity falls between two exertional levels; e.g., the claimant may be able to perform more than the full range of sedentary work, but less than the full range of light work;
 - the claimant has solely nonexertional limitations; or
 - the claimant has a combination of exertional and nonexertional limitations; e.g., back impairments with limited sitting or standing tolerance.

B. When the ALJ Must Obtain VE Opinion

The ALJ must obtain a VE's opinion, either in testimony at a hearing in person, by telephone, by videoconference or in responses to written interrogatories, when directed by the Appeals Council or a court.

I-2-5-52. Selecting a Vocational Expert

Last Update: 9/28/05 ([Transmittal I-2-68](#))

A. General

All ALJ contact with a VE about a case must be in writing or at a hearing, and all correspondence with the VE must be made part of the record.

When an ALJ determines that VE testimony is needed, the ALJ or designee will inform the claimant and the representative by placing a statement to that effect in the "REMARKS" section of the Notice of Hearing. (See [I-2-3-15](#), Notice of Hearing.)

The ALJ or designee will, before the hearing, furnish the VE with copies of all evidence relating to the claimant's vocational history. If additional vocational evidence is received at the hearing, the ALJ will, if possible, provide it to the VE for review before the VE testifies.

B. HO Staff Recommends Use of VE

Before scheduling the hearing, the ALJ or designee must thoroughly review the case to determine what, if any, additional evidence is needed to decide the case. If a designee performs the review and believes that VE opinion is needed, the designee will make that recommendation to the ALJ.

C. ALJ Determines that VE Opinion is Needed

If the ALJ determines (or agrees) that VE opinion is needed, the ALJ will decide the manner in which to receive the VE opinion (i.e., whether to receive the opinion in testimony at the hearing, by telephone, by videoconference or in response to written interrogatories). (See [I-2-5-30](#), Medical or Vocational Expert Opinion — General.)

D. Selection of VE from RO Roster

Each RO maintains a roster of VEs who have agreed to provide impartial expert opinion pursuant to a BPA with OHA. (See [I-2-5-31](#), Blanket Purchase Agreements.) The ALJ or designee must select a VE from the roster in rotation to the extent possible; i.e., when an ALJ selects a VE to provide expert opinion in a case, that VE will go to the bottom of the roster and will not be called again by that ALJ or any other ALJ in the HO until all other VEs on the roster are called. Each RO maintains a roster of VEs who have agreed to provide impartial expert opinion pursuant to a BPA. If a VE is not available on the RO roster of the HO's region, then the ALJ should look to other RO rosters to obtain the services of a VE.

If an ALJ uses a VE from the roster, the HO staff will assign a purchase order number and complete a Contractor's Invoice in WebBass. (To access the Contractor Invoice, Form HA-590, in DGS, go to DGS, click on the "Contractor's Invoice" tab.)

E. Selection of VE Not on RO Roster

An ALJ may use a VE who does not have a BPA with OHA if no VE on any RO roster is available, or there are other extenuating circumstances which require the one-time purchase of such VE's services.

The same terms and conditions that apply to a VE providing services pursuant to a BPA also apply to a VE providing services without a BPA. Authorize payment to a VE without a BPA by completing Optional Form 347, Order for Supplies or Services.

I-2-5-54. Obtaining Vocational Expert Testimony

Last Update: 9/28/05 ([Transmittal I-2-68](#))

A. The HO staff will contact the VE and schedule him or her for hearings as necessary.

The notification letter is produced when the Notice of Hearing is generated. To request an VE to testify at a hearing, the ALJ or HO staff will complete the notice in DGS at the same time the Notice of Hearing is generated for the claimant. Under the "Hearing Information" tab in the Notice of Hearing user form, select either "Vocational Expert" or "VE & ME" depending on what type of expert testimony needed, and the VE's notice will be generated automatically. The HO staff must modify the form as necessary to adapt it to the specific case and include:

- all identifying information;
- the issues to be considered; and
- the name and telephone number of an HO staff person the VE may contact if he or she has any questions or problems.

B. Distribution of Notice of Hearing to Vocational Expert

Distribute the Notice of Hearing to the VE as follows:

- Send the original to the VE, along with any necessary enclosures (See [I-2-5-38 C.](#), below.)
- Send copies to the claimant and the representative.
- Place a copy in the CF.
- Place a copy in the HO file.

C. Providing the VE with Relevant Evidence

The ALJ must provide the VE with relevant vocational evidence that will assist the VE in providing the vocational opinion. This evidence must include:

- photocopies of the vocational evidence arranged in chronological order and marked as proposed exhibits;
- a copy of the VE's professional qualifications for verification;
- **NOTE:**
- Do not include the professional qualifications of other sources.
- a list of the proposed exhibits tendered to the VE using Form HA-540, Exhibits List (to access Form HA-540 go to DGS, click on the "Exhibit" tab; then click on "Exhibit List" tab);
- copies of all prior correspondence between the ALJ and the VE, if any;
- a transcript or summary of any vocational testimony provided in a prior hearing on the same case; and
- a copy of pertinent parts of the VE orientation package if there is no BPA with the VE.

I-2-5-54. Obtaining Vocational Expert Testimony

Last Update: 9/28/05 ([Transmittal I-2-68](#))

A. The HO staff will contact the VE and schedule him or her for hearings as necessary.

The notification letter is produced when the Notice of Hearing is generated. To request an VE to testify at a hearing, the ALJ or HO staff will complete the notice in DGS at the same time the Notice of Hearing is generated for the claimant. Under the "Hearing Information" tab in the Notice of Hearing user form, select either "Vocational Expert" or "VE & ME" depending on what type of expert testimony needed, and the VE's notice will be generated automatically. The HO staff must modify the form as necessary to adapt it to the specific case and include:

- all identifying information;
- the issues to be considered; and
- the name and telephone number of an HO staff person the VE may contact if he or she has any questions or problems.

B. Distribution of Notice of Hearing to Vocational Expert

Distribute the Notice of Hearing to the VE as follows:

- Send the original to the VE, along with any necessary enclosures (See [I-2-5-38 C.](#), below.)
- Send copies to the claimant and the representative.
- Place a copy in the CF.

- Place a copy in the HO file.

C. Providing the VE with Relevant Evidence

The ALJ must provide the VE with relevant vocational evidence that will assist the VE in providing the vocational opinion. This evidence must include:

- photocopies of the vocational evidence arranged in chronological order and marked as proposed exhibits;
- a copy of the VE's professional qualifications for verification;
- **NOTE:**
- Do not include the professional qualifications of other sources.
- a list of the proposed exhibits tendered to the VE using Form HA-540, Exhibits List (to access Form HA-540 go to DGS, click on the "Exhibit" tab; then click on "Exhibit List" tab);
- copies of all prior correspondence between the ALJ and the VE, if any;
- a transcript or summary of any vocational testimony provided in a prior hearing on the same case; and
- a copy of pertinent parts of the VE orientation package if there is no BPA with the VE.

I-2-5-55. The Vocational Expert's Testimony

Last Update: 9/28/05 ([Transmittal I-2-68](#))

During the opening statement, the ALJ must explain why VE testimony is necessary. The VE may attend the entire hearing, but this is not required.

Before the VE testifies, the ALJ must:

- ensure on the record that the VE has examined all vocational evidence of record;
- ensure that the record contains an accurate statement of the VE's professional qualifications;
- give the claimant and the representative an opportunity to ask the VE questions about his or her professional qualifications; and
- summarize the opening statement or relevant testimony on the record (e.g., testimony regarding the claimant's vocational history) if the VE was not present.

NOTE:

All VE testimony must be on the record.

The ALJ should take care to elicit useful and objective testimony from the VE. For examples of the types of questions the ALJ might ask, see [I-2-5-94](#), Sample-Interrogatories to Vocational Expert.

If the VE's reply to an ALJ's question is ambiguous or overly technical, the ALJ must follow-up with more specific questions. An ALJ must not question a VE about any matter which is not within the VE's area of expertise and responsibility. For example, the ALJ must not ask a VE about medical matters, how the ALJ should decide the case or whether the number of jobs identified by the VE in the regional and national economies are "significant." However, the ALJ can ask the VE to provide the number of specific jobs identified in the regional and national economies.

If certain VE testimony is based on an assumption, the VE or ALJ must clearly describe the assumption on the record.

If a claimant raises an objection about a VE's opinion, the ALJ must rule on the objection and discuss any ruling in the decision.

The ALJ must also determine if there are any conflicts between the jobs identified by the VE and how the jobs are described in the Dictionary of Occupational Titles and how the jobs are

performed in today's workplace. If there are conflict(s), the ALJ must ask the VE to identify the conflict(s) and inquire how the VE resolved the conflict(s) and whether the conflict(s) impact the number of jobs testified to by the VE. If the number of jobs testified to by the VE as being available are impacted, the ALJ must obtain from the VE the basis of any adjustments and how the adjustments were derived. See SSR 00-4p.

One of the things I did to prepare for this talk was to speak to a few active Vocational Evaluators. They were able to give me some useful information about what they see in their roles. Of course, they have to remain anonymous, but you will see references to their comments in this paper.

1. The "Government" Statistics: What Information is Collected

Some of the "government statistics" are listed in 20 C.F.R. 404.1566 (d).

The Administration 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
- (5) *Occupational Outlook Handbook*, published by the Bureau of Labor Statistics.

The "Government" statistics are gathered by the Department of Labor, the Bureau of the Census, the Bureau of Labor Statistics, etc.

The primary source for purposes of Social Security Disability cases is the Dictionary of Occupational Titles. The DOT was first developed in the 1930s and was last updated in 1991,

so it is somewhat out of date, but under Social Security Regulations the vocational experts must rely on the DOT or say why they disagree with it.

The Social Security Administration is not the only federal agency that depends on the DOT. It is also important in immigration practice. The United States Citizenship and Immigration Service (USCIS) looks to the DOT and the Occupational Outlook handbook when determining whether to grant visas for workers seeking admission to the United States for particular jobs.

Although the Dictionary of Occupational Titles itself was last updated in 1991, that does not mean that all of the jobs were updated then. Many of the jobs listed in the DOT were last updated in the 1970's. For example:

CODE: 359.367-010

TITLE(s): ESCORT (personal ser.) alternate titles: guide escort

Acts as social partner for person of opposite sex to enable individual to attend functions, participate in activities requiring a partner, or provide companionship or protection while visiting public establishments, such as restaurants, night clubs, theaters, and gambling houses. May suggest places of entertainment and arrange for transportation and tickets. May speak one or more foreign languages. May accompany individual on sightseeing tour [GUIDE, SIGHTSEEING (amuse. & rec.; personal ser.) 353.363-010].

GOE: 09.01.01 STRENGTH: L GED: R3 M2 L3 SVP: 2 DLU: 77

The GOE is the "Guide for Occupational Exploration." This was designed to provide information about the interests, aptitudes, entry level preparation and other traits required for successful performance in the occupation. It's mostly for the benefit of counselors. I haven't found it to be very informative.

The Strength rating is of great importance. Social Security places a lot of emphasis on strength ratings, both in the “grid” regulations and in creating hypothetical questions for vocational experts. It is particularly important to bear in mind the definitions of “sedentary” and “light” work.

S-Sedentary Work - Exerting up to 10 pounds of force occasionally (Occasionally: activity or condition exists up to 1/3 of the time) and/or a negligible amount of force frequently (Frequently: activity or condition exists from 1/3 to 2/3 of the time) to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.

L-Light Work - Exerting up to 20 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly (Constantly: activity or condition exists 2/3 or more of the time) to move objects. Physical demand requirements are in excess of those for Sedentary Work. Even though the weight lifted may be only a negligible amount, a job should be rated Light Work: (1) when it requires walking or standing to a significant degree; or (2) when it requires sitting most of the time but entails pushing and/or pulling of arm or leg controls; and/or (3) when the job requires working at a production rate pace entailing the constant pushing and/or pulling of materials even though the weight of those materials is negligible. NOTE: The constant stress and strain of maintaining a production rate pace, especially in an industrial setting, can be and is physically demanding of a worker even though the amount of force exerted is negligible.

The GED “General Educational Development” covers aspects of education required for satisfactory job performance. R is Reasoning, M is mathematical development, and L is language development. There are a few observations I’d like to make about these. The first is that the lowest level for any job is 1. The reading requirement at level 1 is Reading: Recognize meaning of 2,500 (two- or three-syllable) words. Read at rate of 95-120 words per minute. Compare similarities and differences between words and between series of numbers. Writing: Print simple sentences containing subject, verb, and object, and series of numbers, names, and addresses.” This means that according to the DOT there really aren’t any jobs that an illiterate person can do. The second thing to notice is that by the time you get to the third level of

mathematical development, it gets fairly demanding, requiring knowledge of algebra and geometry that many of us even in the legal profession have long since forgotten. You'll notice that VE's will tend to identify jobs with low R, M, and L numbers even if the hypothetical doesn't contain any specific restrictions in that regard just because there is no reason to add to the difficulty of the job.

The SVP, "Specific Vocational Preparation" is the time required to learn the job. Again, even when the hypotheticals don't call for it, most VE's will look for jobs with relatively low SVP's:

- 1 Short demonstration only
- 2 Anything beyond short demonstration up to and including 1 month
- 3 Over 1 month up to and including 3 months
- 4 Over 3 months up to and including 6 months
- 5 Over 6 months up to and including 1 year
- 6 Over 1 year up to and including 2 years
- 7 Over 2 years up to and including 4 years
- 8 Over 4 years up to and including 10 years
- 9 Over 10 years

The "DLU: 77" in this description tells us that this job description was last updated in 1977. Even though the "current" Dictionary of Occupational Titles was published in 1991, many of the jobs were updated even earlier still.

2. The "Private" Statistical Sources: Repackaging Free Government Statistics

Some companies make the DOT and other vocational information available on the web. For instance, Information Technology Associates , <http://www.occupationalinfo.org/> is a good source.

One software program that comes highly recommended by at least two of the Vocational Evaluators I talked to is Job Browser Pro. http://www.skilltran.com/jb_order.htm. This software is advertised as providing the following features:

Version 1.6 - Primary Features

- **Estimate DOT Employment Numbers** using a *revolutionary new methodology* rooted in existing government statistics
- **Continuous Peer Review** of Skill *TRAN* industry suggestions for DOT occupations - enhances the accuracy and defensibility of this new methodology using the collective wisdom of vocational professionals
- **Full-Time / Part-Time / Self-Employment** Percentages for OES groups.
- **2008 CENSUS-based National Wages/Employment Numbers**
(using Census 2000 codes)
- **2008 OES-Based Wages/Employment Numbers** - National, State, Metropolitan Statistical Area (MSA) and **175 NEW NON-MSA Areas** (i.e. Rural) - Mean and Median
- **2006—>2016 OES Long Term National Occupational Growth Projections** with automatic interpolation of employment numbers in intervening years by NAICS industries
- **Occupational Density** - Determine percentage of OES occupations in a specific NAICS industry. Apply to MSA employment numbers for a better estimate of employment numbers for a specific DOT
- **Top Jobs** based on educational level and OES occupational growth
- **2008—>2009 Occupational Outlook Handbook**
- **SOC 2000 / O*NET** Code and Titles Cross References for each DOT code
- **Search by SOC 2000 / O*NET Code or by Unskilled Occupations**
- Lists of selected titles now include Industry, O*NET, SVP & GED and are pre-sorted by industry, strength, and title.
Lists can also be re-sorted by clicking the column heading.
- **Hyperlinks to O*NET Online** and sources of additional information
- **O*NET Career Exploration Tools - Version 3.0** distributed on the Job Browser *Pro* CD-ROM (optional installation)
- **Fully integrated, editable Job Analysis Format**
- Display of DOT occupation details always shows DOT Master Title and all civilian and military alternate titles.
- Revised help files now include frequency distribution tables for all *DOT*worker characteristics
- More than 36,000 occupational titles (includes civilian & military titles)
- Images from the new *OOH*
- Ability to print list of selected titles and save to an HTML file
- Date of last *DOT* update now included in QuickView and Cross References.
- Ability to copy and paste all sections to your favorite Windows word processor.

3. The Methodological Shortcomings of the Sources and Their Inability to Produce Reliable Estimates

Social Security Disability is often a fantasy world. Some of the fantasies help the claimant, but most of the fantasies hurt him or her. Vocational experts can identify jobs that just don't exist in the real world, but that are definitely there in theory.

The Definition Trailer does not tell you nearly everything you need to know about a job. In recognition of that deficiency, the Department of Labor published *Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles*. There can be useful information in *Selected Characteristics*. The physical demands are much more detailed. There are numerous physical demand components including climbing, balancing, stooping, kneeling, crouching, crawling, reaching, handling, fingering, feeling, talking, hearing, tasting/smelling, near acuity, far acuity, depth perception, accommodation, color vision, and field of vision. There are also about a dozen environmental conditions.

An entry in *Selected Characteristics* looks like this:

DOT Code	DOT Title/DOT Industry Designation(s)	S		Physical Demands		Environmental Conditions	
		V	S	F	T	W	C
		P	I	e	a	e	i
869.662-010	LIFT-SLAB OPERATOR (construction)	7	M O O O O O N F F F	N F F N F N F N N N	F N N N 4 N N N N N N N N F		

The physical demands and the environmental conditions are set out in detail.

There is also the Department of Labor's O*Net system. The job descriptions do not always match up with the DOT. For instance, the example for the Escort job, described above, is changed in the O*Net system to "39-9099.00 - Personal Care and Service Workers, All Other."

You can plug your DOT number into the "DOT Crosswalk Search" on

<http://www.onetonline.org/crosswalk/>. There you type in the DOT code and get the O*net code.

There you can learn that what was “Assembler” 734.687-010 (Sedentary, SVP 2) is now 51-9199.00 - Production Workers, All Other.

4. How to Leave the VE's Testimony in Shambles

There are several approaches to attacking a Vocational Expert's testimony. To an extent, we're walking on eggshells when dealing with Vocational Experts. Years of experience, confirmed by interviews with a few others, including at least one VE, confirm that Administrative Law Judges seem to be protective of VE's. Since the ALJ is your audience, you don't want to attack the VE and achieve nothing other than annoying the ALJ. As another VE told me, “Don't shoot the messenger.”

An important strategy is to ask your own hypotheticals based on what you believe the record shows and based on your client's testimony. A vocational expert will usually testify that there are no jobs in the economy for an employee who would have to miss more than two regularly scheduled workdays a month, or who cannot reliably arrive to work on time. There are no jobs that allow you to lie down in the middle of the day to rest.

One vocational evaluator I talked to says that in his experience lawyers come in well prepared with medical evidence and testimony but poorly prepared from a vocational standpoint. He believes that one thing we should always do is try to determine what DOT numbers apply to our client's past relevant work. We should know the demands of that work. In particular we should understand the skills required to do the claimant's past relevant work as those jobs are ordinarily performed in the national economy. Without this information, it is difficult to challenge a VE's findings that your client has skills transferrable to other lines of work.

Many vocational experts will have a list of unskilled sedentary and light jobs with a minimal amount of training involved that they can pull out once they hear the judge's hypothetical. One VE told me that I should start making a list of the VE's and the jobs they identify, since some will keep using the same jobs over and over again. There's nothing wrong with that, assuming the jobs are actually consistent with the judge's hypothetical, but you can at least know and think about the jobs they identify and be prepared beforehand.

The numbers of jobs come from several sources, including the Current Population Survey. <http://www.census.gov/cps/> These numbers are based on a three year average. They don't reflect the sharp declines in all sorts of jobs that we've seen in the last several years.

One VE pointed out to me that it's often difficult to determine the DOT number for past relevant work. Usually all they have to go on is the claimant's description of his past relevant work, and frequently that is pretty sketchy. This can be a good area for cross-examination, particularly if the question is transferrable skills.

One VE complained that the Office of Disability Adjudication and Review does not send him as much information about a file as it used to. Much of the information ODAR used to send—e.g. treatment notes and hospital records—was useless, but other information—such as the earnings record—had value.

Should you ask a VE where he or she got the numbers of jobs available in the national and local economy? One VE told me that it's usually not a good idea to cross-examine too vigorously about where the VE got his numbers. The judges usually aren't impressed, and some will consider what we might think of as a small number of jobs as substantial. Another expressed surprise that lawyers never ask him that question, even though he would have a good answer for it if we did. He reported that an unrepresented claimant once asked him where he got

the numbers, and he had to explain the current population survey. Remember, the DOT and *Selected Characteristics* just describe jobs. They don't say how many there are.

One VE described the Occupational Outlook Quarterly as a projection of jobs the Department of Labor expects to be available in the future.

One of the more aggressive approaches is the one found in David F. Traver's *Social Security Disability Advocate's Handbook*. Traver recommends reviewing the Vocational Expert's résumé or curriculum vitae. Occasionally there may be something of use. He gives the example of a vocational expert who included a Doctor in Philosophy of Religion from the Universal Life College¹. He showed that the VE had purchased her "Doctorate" for \$100.00 from the Universal Life Church in Modesto, California. There actually is no Universal Life College.

Unless you find another Doctor of Philosophy of Religion from the Universal Life College, actually challenging the credentials of a VE at a hearing is probably a waste of time. As Tarver notes, "It is typically fruitless to attempt to show the VE does not meet Social Security's minimum standards to be a VE, as those standards essentially do not exist." *Id.* § 1900.1

The evaluation of the credentials may also be useful to make sure that the VE does not step outside his or her area of expertise. It is also useful to determine whether the VE has placement experience, or other useful experience.

Traver recommends using a "null hypothesis" mental framework. What he means by that is that you start with the assumption that the VE's testimony has no basis and you make the VE provide a basis for his testimony. This strategy has its disadvantages in that it will mostly just allow the VE to bolster his or her testimony. But sometimes it can be useful.

¹ In the interests of full disclosure—and nothing else—I am a minister in the Church of the Subgenius. The qualifications for ministry are similar to those in the Universal Life Church, except that it's cheaper. It's now \$35.00. And it comes with a guarantee: Eternal salvation or *triple* your money back!"

Terms like “simple” work, “routine” work, “repetitive” work, “low stress” work do not convey all that much meaning. Make sure that the vocational evaluator understands these terms the way you do.

Traver also recommends asking the VE to bring the resources he plans to rely on to the hearing. *Id.* § 1902.1.3. The argument is that such documents are necessary for a fair cross-examination. I have never done this, or even considered it. First, most don’t use paper resources any more. They use a computer program. Second, vocational experts now appear by telephone. Third, the ALJ is probably going to deny this motion as burdensome. Let’s face it, if a VE has to bring the DOT, *Selected Characteristics*, Census Bureau reports, and the like to a hearing, VE is going to be a medium exertional level job. There is some authority, however, for Traver’s position on this point. *McKinnie v. Barnhart*, 368 F.3d 907, 910-11 (7th Cir.2004)

Social Security regulations require the VE to rely on the Dictionary of Occupational Titles and other resources that are not only out of date, but incomplete.

Make sure that any jobs identified by the VE are not part-time jobs.

When a VE asserts that his information as to the number of jobs comes from census records, point out that the census records don’t ask the exertional demands, skill level, etc. Census forms usually just ask for a job title. And it is dependent on the citizen/employee to adequately identify the job. Do not allow a VE to base too much on census reports and nothing else without challenging the testimony

5. How to Frame the Issues and Preserve Them for Appeal

It can be quite a challenge to make a record at a hearing. You don't have the advantage of prehearing discovery to know what the vocational expert's testimony would be and to focus your cross-examination and your arguments accordingly. But frequently, if you want to challenge the expert's testimony, you have to do so at the hearing.

Sometimes you can get the Administrative Law Judge to hold the record open so that you can submit additional interrogatories to the vocational expert. This allows you to avoid wasting the Administrative Law Judge's time with questions, some of which will not go anywhere.

Frequently the only practical way to check up on the vocational expert's testimony is to make the best notes you can at the hearing, ask the judge to hold the record open, and research the jobs when you get back to your office. You should be able to preserve your record with a post-trial brief.