Vocational experts need to know a little bit of everything. And you should know a lot about them.

A VOCATIONAL EXPERT will need some understanding of psychology. He or she will have to have a grasp of economics. And he or she will also have to understand the rehabilitation process. A considerable amount of academic preparation is involved, and the expert will have to know how to assess and counsel claimants. Additionally, the expert has to know about occupational requirements for a wide array of jobs and have access to information about hiring practices, fluctuations in local labor markets, and national labor trends. This article can’t possibly cover every aspect of what a good vocational expert is, but it can give the attorney a good idea of how vocational experts operate, and what to look for in a vocational expert’s analysis.

GARBAGE IN, GARBAGE OUT • Unlike a clinical psychologist who can generate diagnostic data through a standardized evaluation, a vocational expert must often rely on information that is provided by others. The information can be supplemented by an interview with the client or the employer, but the bulk of information that the vocational expert receives is generated by physicians, insurance companies, and employers. If the information supplied to the vocational expert contains data errors,
the vocational expert’s conclusions are likely to be flawed.

**Vocational Rehabilitation**

Vocational Rehabilitation is a process that begins with a disability and ends with the highest level of employment possible. It includes the provision of services designed to assist the person with the disability adjust to the loss of function and build on residual skills and abilities. Residual skills and abilities are identified through a vocational evaluation and an individualized rehabilitation plan is constructed utilizing skill building, vocational training, and education that will lead to re-employment.

**Vocational Evaluation**

A Vocational Evaluation occurs early in the vocational rehabilitation process to identify residual functional capacity, skills, interests, and aptitudes. Residual functional capacity is a disabled person’s remaining physical and mental work potential. The vocational evaluator designs work samples and utilizes vocational tests to identify what functions and skills remain that can be used for work. The evaluator employs tests that are standardized and the evaluation is conducted in a controlled setting. Measurements are taken, metrics are incorporated, numbers are generated, and conclusions are made based on the data.

In a forensic context, the vocational expert is often utilized at the very end of negotiations when consensus cannot be achieved. There is not an opportunity to do a vocational evaluation. The vocational expert is thus left to make an informed decision independent of a formal, controlled, and standardized vocational evaluation.

**Independent Assessment Of Employability**

An Independent Assessment of Employability is constructed from available data and often requires obtaining additional existing data, but does not rely on generating data through an evaluation. An assessment is not standardized using normative data, does not generate raw data, and relies on information.

This is of critical importance because the reliability and validity of the assessment is only as good as the information upon which it is based. A mistake in the information base may result in a flawed conclusion. The science in an independent vocational assessment is in the gathering and analysis of all relevant information, obtaining data from objective and reliable sources, and extrapolating a defensible conclusion based on the information. If information appears incorrect, the vocational evaluator must assess further.

**TYPES OF INFORMATION ERRORS**

The following errors represent a sampling of what I have encountered in my disability consulting practice:

- **Omission of information.** Critical medical or vocational information is left out. Example: An individual with a post MI cardiac condition has depression secondary to the cardiac event that isn’t mentioned in the cardiologist’s report despite bi-weekly treatment with a psychologist;

- **Discounting information.** Medical information is ignored or not recognized as significant. Example: An individual with AIDS is disabled due to Kaposi’s sarcoma but no significance is given to the fact the a radiologist’s review of an MRI and a neurologist’s evaluation both confirm the diagnosis of AIDS dementia;

- **Relying on incorrect information.** A medical evaluation may be relied upon that is not valid. Example: An individual with a diagnosis of occupational bronchitis is given a spirogram. This exam requires maximum patient performance and is only valid when cooperation is complete. The technician reports that maximum effort did not appear to be given; yet, the physician relies upon this information. In this
particular case, the claimant, who was suing for toxic exposure, was shown on a surveillance video singing in a rock and roll band. Clearly, his spiromgram was invalid yet the physician believed it to be valid. When the physician errs on functional capacity, every conclusion that follows is equally flawed;

• **Commenting outside scope of expertise.** A physician will occasionally comment on issues that are the purview of a vocational expert. Example: a physician comments that a particular job is not stressful and therefore there is no reason that a claimant with advanced heart disease and an MI who is highly reactive to work-related stress can’t perform his occupation;

• **Making faulty assumptions.** In adjudicating disability claims, particularly in the first 24 months of disability, a thorough understanding of the occupation is necessary as the definition of disability will usually include a statement such as, “unable to perform the material and substantial duties of your own or regular occupation due to illness or injury.” Inability to perform the occupation in question is one half of the disability equation but the occupation may not be accurately understood and is incorrectly identified. A similar sounding job title may be pulled from the *Dictionary of Occupational Titles* and the assumption made that this DOT job title is the occupation. Example: An executive director of a non-profit organization functions like a CEO of a public company; however, the occupation is viewed as a mid-level government management position. The DOT job description written in 1977 is not an accurate reflection of the material and substantial duties of the individual’s occupation;

• **Using outdated information.** The *Dictionary of Occupational Titles* is obsolete and is no longer supported by the U.S. Department of Labor. The DOL states:

“The O*NET system, using a common language and terminology to describe occupational requirements, supersedes the 60-year-old *Dictionary of Occupational Titles* with current information that can be accessed online or through a variety of public and private sector career and labor market information systems.” See [www.doleta.gov/programs/ONET](http://www.doleta.gov/programs/ONET).

Despite this statement by the U.S. Department of Labor and the fact that the DOT has job descriptions dating back to 1977, the DOT is still being utilized in claim adjudication.

**When It Doubt, Check It Out**

It is incumbent upon the vocational expert to evaluate all of the information provided to ensure that no mistakes have been made. It is not uncommon to see a mistake made in one medical report repeated by clinicians as fact over a period of years. The error goes unchallenged in the medical file and is passed on from one clinician to another. Because the vocational expert’s conclusions will be flawed if based on incomplete or inaccurate information, the vocational expert must probe deeply and look broadly to identify gaps, inconsistencies, and errors. All information must be approached with a questioning attitude. The vocational expert must go up the data stream and test for validity and accuracy.

**TEEING UP THE VOCATIONAL EXPERT QUESTION** • Vocational experts render opinions in a variety of cases. Experience varies. Opinions regarding earning capacity are provided in personal injury cases, divorce, and worker’s compensation claims. Vocational rehabilitation experts also utilize their rehabilitation backgrounds, with the aid of medical providers, to give opinions on life care plans in catastrophic injury cases in which specialized medical care will be necessary over the lifespan. It is therefore critical that an attorney tee