

An Analysis of Key Characteristics and Practices of Vocational Experts Contracted by the Social Security Administration

Scott T. Stipe, Thomas Dunleavy, Emer Broadbent and Chrisann Schiro-Geist

The Social Security Administration (SSA) contracts with Vocational Experts (VEs) who are called upon to testify at Social Security Office of Disability Adjudication and Review (ODAR) hearings at the request of Administrative Law Judges (ALJs). Based on the 2005 SSA/ODAR roster, over 800 VEs are on contract throughout the United States. This article reports the results of a survey which examined key characteristics of the VE population. Data collected include educational background, experience in relation to vocational rehabilitation or vocational evaluation, and experience in provision of vocational expert forensic testimony. The survey sought information regarding fees that respondents charge for private practice forensic vocational services other than SSA/ODAR including but not limited to workers compensation, personal injury, and divorce cases. Recommendations are made for the Social Security Administration to consider in maintaining this highly credentialed, experienced group of experts.

Introduction

The Social Security Administration's reliance upon Vocational Experts began in the early 1960s. Vocational Experts are contracted with by the Administration to personally appear and testify at Office of Disability Adjudication and Review (ODAR) face-to-face or telephonic hearings throughout the United States. While the Contract requirements specify that the ODAR seeks Vocational Experts with considerable experience and education in fields such as vocational rehabilitation or vocational evaluation, the level of fee reimbursement for VEs has not changed since the early 1970s and are therefore out of step with market rates for similar services provided in other venues. Over the years at conferences, including those at the International Association of Rehabilitation Professionals (IARP) and the American Board of Vocational Experts (ABVE), discussions have ensued about approaching the Social Security Administration to bring contracted rates for experts in line with com-

peting market rates for similar professional services in the private sector.

While there have been previous discussions and requests made to the Social Security Administration regarding rate increases, such have historically been met over the years with responses that indicate that the administration sees no need to increase rates while an adequate number of vocational experts agree to contracts at the present rate. The response from Vocational Experts has been one of frustration. Experts indicate their wish to continue to perform this important work and are well aware of their value to Administrative Law Judges (ALJ), Social Security claimants and their representatives, and to the disability determination process at-large. Yet VEs must increasingly choose to abandon or significantly reduce this important work since, for reasons which have never been adequately explained by SSA, the rates have been stagnant for decades and made lower each year in real terms as a result of inflation. Current reimbursement is \$110 for first hearing of the day and \$75 for each additional hearing. These fees include compensation for

time the VE must make available to review each file in order to prepare for hearings. In some settings, VEs are also asked to provide pre-hearing reports regarding claimant work history of record. From a forensic standpoint, ODAR hearings have become significantly more rigorous with increased evidentiary demands made of VEs due to court precedents and new Social Security rulings (SSR 00-4p). Utilizing the U.S. Department of Labor's Inflation Calculator found at www.bls.gov, a tool based upon the Consumer Price Index, the unchanged rates would today equate to \$278.14 for first hearing of the day and \$189.64 for each additional hearing based upon inflation alone comparing 1980 to 2007 values.

Analysis of inflation from 1972, which is the best estimate of the last time VE fees were adjusted to current level, the figures would be \$548.29 for first hearing of the day and \$378.84 for each additional case. Further analysis reveals that there is no other venue with rates remaining frozen decade after decade either in the private sector or in Federal agencies such as the US Department of Labor Office of Workers Compensation and the Department of Veteran's Affairs. Even within SSA/ODAR, fee reimbursement to medical experts for file review and residual functional capacity evaluations have a built in inflation adjustment that has increased annually to meet economic inflation rate.

At the 2002 International Association of Rehabilitation Professionals (IARP) meeting in San Diego, CA, two Vocational Experts, Scott Stipe of Portland, OR and Thomas Dunleavy of Chicago, IL, called an *ad hoc* meeting of SSA VEs. Ensuing discussion led to the formation of the SS VE Task Force, created as an IARP sub-committee. An e-mail listserv called the SS VE Forum was created and made available exclusively to SS VEs regardless of IARP membership. Subsequent listserv discussions revealed that there is a national shortage of VEs. Administrative Law Judges who have increasingly relied upon the testimony of Vocational Experts over the years, have complained that many more highly qualified Vocational Experts have elected to discontinue their contracts due to rates that have not changed for decades. They have also complained that lesser qualified experts are often less capable of providing needed vocational information. ALJs have also provided reports published by SSA which have consistently documented that they rely upon VEs at a very high level and find VE testimony to be crucial in assisting them in coming to appropriate decisions.

In developing the IARP SS VE Task Force, the focus has been to work toward achieving a fair increase in SSA Vocational Expert fee scale, as well as to increase utilization of VEs in relation to possible future SSA programs which may include direct services to claimants. SS VEs are the best qualified professionals to ac-

curately evaluate employability because, in most instances, they routinely provide vocational evaluation, rehabilitation, and employment services in their private practices.

The Task Force has had correspondence with SSA in reference to the need for adjusting VE fees. There have been numerous "round table" discussions with VEs at various national conferences, and discussions with ALJs throughout the United States who uniformly agree on the vital importance of Vocational Experts and the need to increase fees in order to maintain an adequate supply of contracted VEs.

In order to better analyze the issue, the authors requested information from SSA as to the names and contact information of VEs under contract. While this request was originally denied, our group was successful in a Freedom of Information Act request which ultimately led to obtaining a listing of approximately 800 VEs under SSA/ODAR contract.

Task Force co-chairs, Scott Stipe and Thomas Dunleavy, developed a survey in order to collect key data from the VE population based on this public record. The survey sought to collect information about existing VE credentials, educational level, business practices, and fee reimbursement levels work other than SSA/ODAR. Through the assistance of IARP, postcards were mailed to all Vocational Experts listed on the roster. VEs were directed to access an internet based website to complete the survey. A total of 486 respondents completed the survey, along with 32 others who partially responded.

As the data represented in the following tables indicates, Social Security VEs are very highly credentialed and experienced in vocational rehabilitation and labor market access for individuals with disabilities. In relation to discussions of shortages or potential shortages of VEs, a significant percentage of respondents indicate that they intend to perform only the same or even fewer numbers of SSA/ODAR hearings, a fact that will surely exacerbate SSA's problems with finding such professionals in the future. It is clear that competing marketplace opportunities for VEs are overtaking the demand that SSA/ODAR has for VE services.

Questionnaire Results

Responding VEs reported having practiced for a mean number of 23.8 years as vocational professionals with a range of 48 years (Minimum of 2 years, maximum of 50 years) and a standard deviation of 8.5 years. The mean amount of time under contract as a VE with SSA was 13.37 years (Minimum of 0 years, maximum of 50 years) and a standard deviation of 8.9 years.

Non-SSA court-related fee rates for these experts averaged \$111/hour for research time, \$116/hour for interview/evaluation time and \$154/hour for testimony time. A mean increase of 61% in overall fee rates was

reported over the past five years and a mean increase of 94% was reported over the past 10 years.

The majority (75.5%) of the VEs were practicing with Master's level educational credentials, while 17.8% had doctoral level educations.

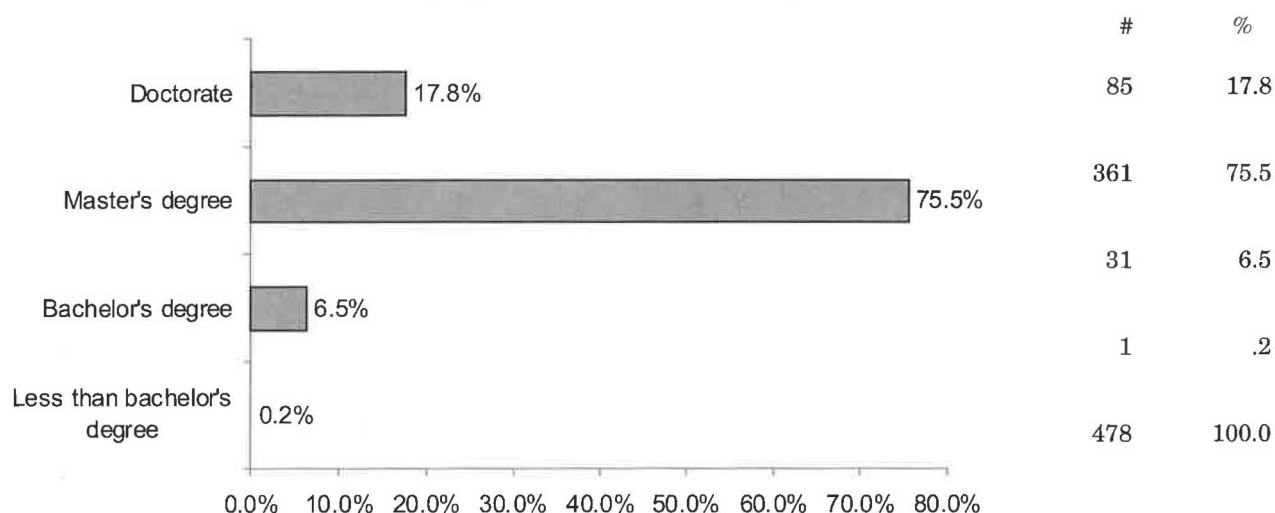
The majority of VEs had vocational-related educations, with 48% reporting Vocational Rehabilitation Counseling as their major and 4% reporting Vocational Evaluation – a total of 52%. Other helping professions were reported as well, 10% having been trained in Psychology, 24% in Counseling and 2% in Social Work.

Slightly less than 20% of the surveyed VEs (19.6%) reported having no professional certification. Just over 42% reported a single certification and the remainder (38.4%) had two to five professional certifications. Of the certifications held, over two thirds (68.7%) were Certified Rehabilitation Counselors. Other related certifications included CDMS (21.4%), ABVE (12.4%), CVE (10.5%), CCM (21.2%), and CLCP (5.4%).

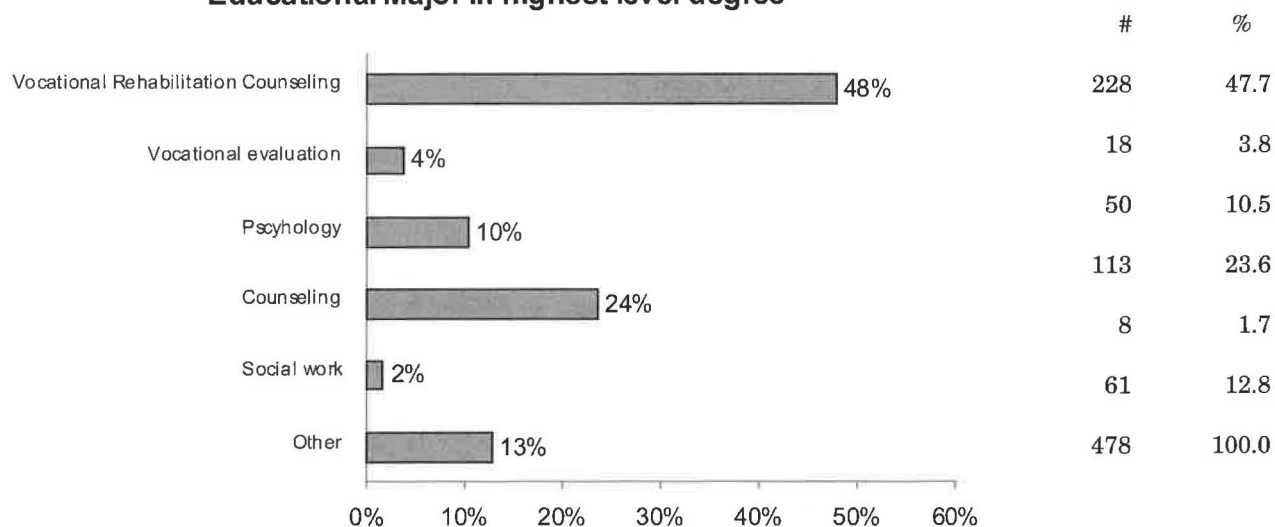
The vast majority of VEs (82%) provided other vocational evaluation and expert testimony in relation to other types of cases and 50% expected to be less able to accept SSA VE work in the future.

Through publication of results from this survey the authors hope that SSA will see a need to increase Vo-

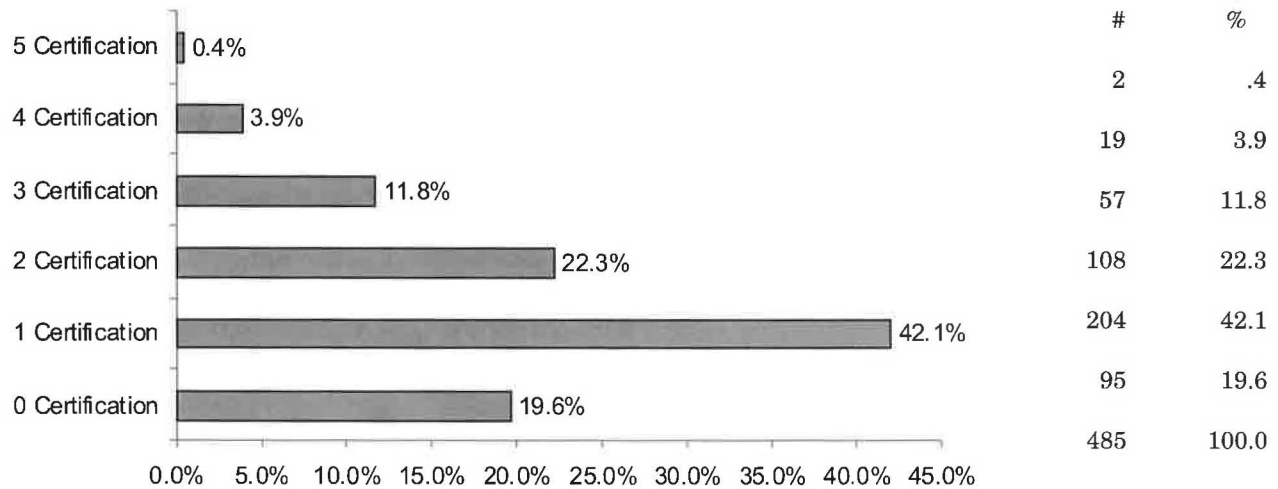
Education Level (highest level of education)



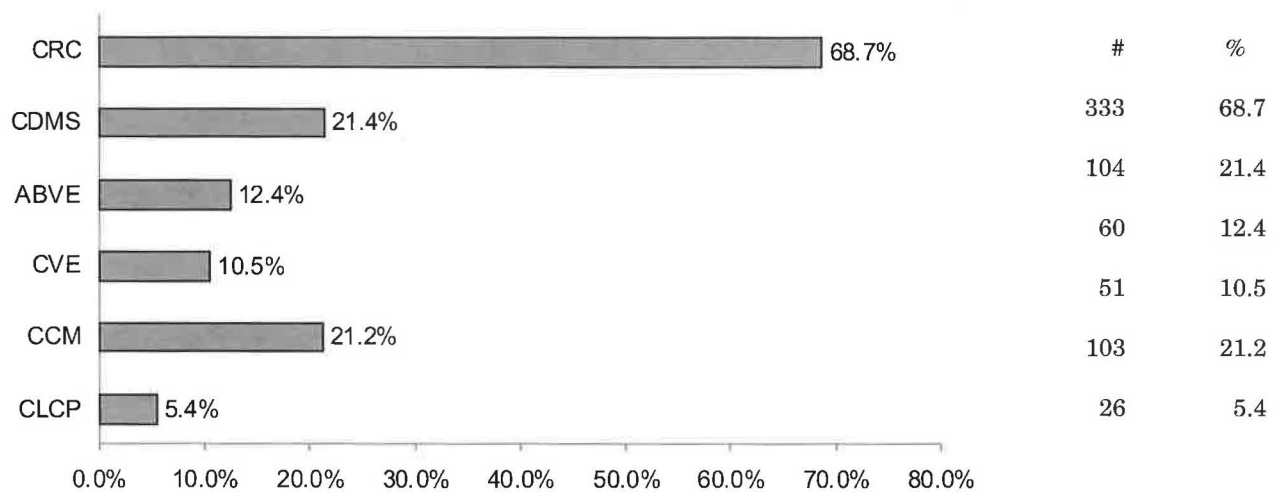
Educational Major in highest level degree



Numbers of national certifications hold



Types of National Certifications Hold



cational Expert fee reimbursement so that these fees will be in parity with current market rates. As of this writing, the news publication, USA Today and many other news sources have stated that Social Security has a backlog of over 750,000 cases awaiting decision, and this number is expected to grow unless measures are taken to improve and streamline the disability determination process. The authors feel that VEs can provide an immense service to assist in expediting this process. The majority of SS VEs who are currently under contract are highly qualified to provide services well beyond the current hearing process, to include vocational evaluation and employment services for

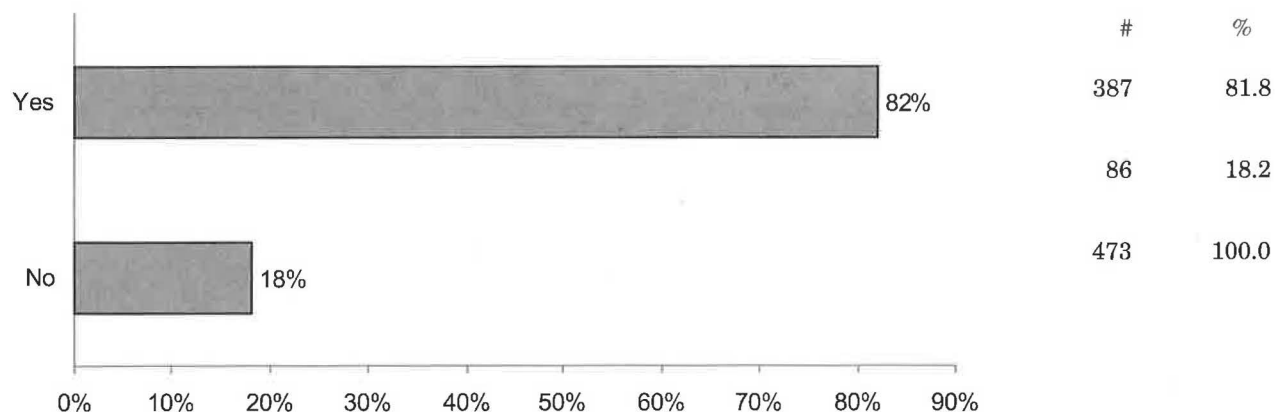
claimants and beneficiaries. This is a topic which call for further examination and discussion.

Biographies

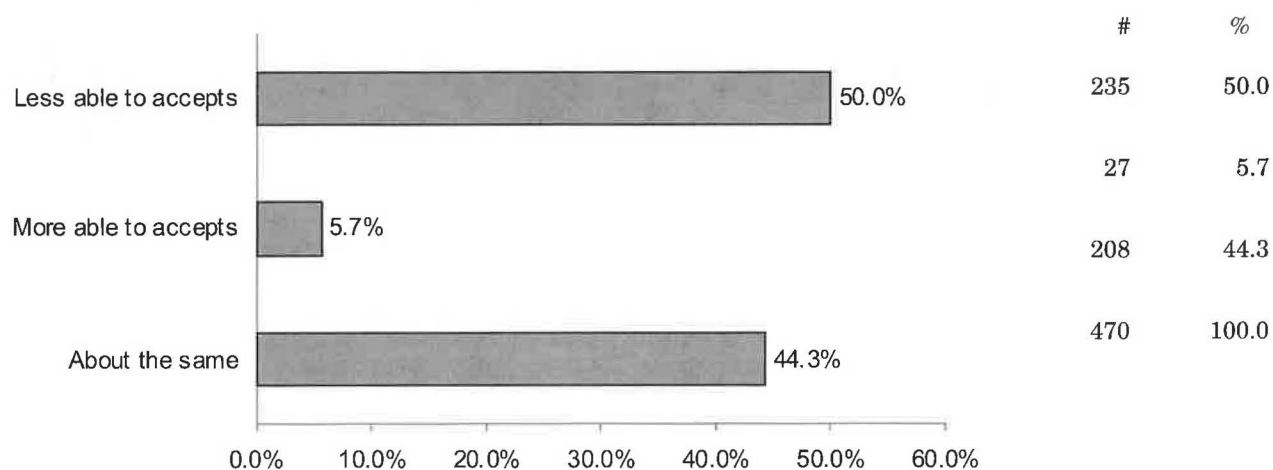
Scott T. Stipe, MA, CRC, CDMS, LPC, is a vocational evaluator and forensic vocational expert in Portland, Oregon. He has been in the rehabilitation field for over thirty years. He is co-owner of Career Directions Northwest, a private rehabilitation firm in Portland.

Thomas Dunleavy, MS, LCPC, CRC, CDMS, has been a Vocational Expert with the Social Security Administration since 1983. His firm, Disability Innova-

In addition to your work with SSA, do you also provide vocational evaluation and expert testimony in relation to other types of cases?



SSA has not increased the rate structure to SSA VEs for several decades. As time goes by, do you expect to be:



tions Ltd, is located in Oak Park, Illinois and serves the Chicago region

Emer Broadbent, J.D., Ph.D., CRC, is the Director of the University of Memphis Institute on Disability (UMID) and an Assistant Professor of Social Work at the University of Memphis. He was Executive Director of the Council on Rehabilitation Education for five years.

Chrisann Schiro-Geist, Ph.D., LCP, ABVE-D, CRC, is the Senior Vice Provost for Academic Affairs at the University of Memphis in Memphis, Tennessee.

T r a n q u i l i t y .



It starts with a solid risk management program, including the IARP-Sponsored Professional Liability Insurance Plan.

Plan features include:

- Licensing Board Defense Reimbursement
- Deposition Expense Reimbursement
- Loss of Earnings Reimbursement



Do you have peace of mind over your liability protection?

Find out more at:

1-800-503-9230 or **www.proliability.com/33671**

All coverages are subject to the terms and conditions of the policy.

ADMINISTERED BY: Marsh Affinity Group Services, a service of Seabury & Smith, 1-800-503-9230.

UNDERWRITTEN BY: Chicago Insurance Company, a member company of the Fireman's Fund Insurance Companies.
33671, 33672, 33673, 33674 © Seabury & Smith, Inc. 2008

CA#0633005

Use of Expert Vocational Witnesses in Divorce Cases

Eric Bensch and Peter Hollar

Introduction

Vocational Counselors as expert witnesses are commonly used in personal injury and workers' compensation cases to determine employability and wage earning capacity. Divorce may also involve economic loss if one spouse has been out of the labor market, has been partially or totally financially dependent on the other spouse or is unable to work for various reasons. Divorced spouses may benefit from training or various types of career counseling services to improve their wage earning capacity. The same methodology that is used in determining wage loss, earning capacity and cost of return to work in personal injury or workers' compensation cases can also be used in divorce cases to reach equitable settlements.

A Vocational Expert has training and experience in vocational counseling, evaluation and other service provision. This profession was originally developed to assist wounded soldiers returning from war and to help other individuals who have disabilities that limit their ability to work. For the past 25 or 30 years, the skills from this profession have been used successfully in many legal settings involving the determination of economic loss related to wage earning capacity issues.

Wage Earning Capacity

Wage earning capacity can be defined as the wage that an individual is capable of earning based on a number of factors, such as education, work history, training, experience, physical capacity, the labor market and geographic area. In a divorce case, if a spouse's wage earning capacity is suspected of being limited, a Vocational Expert may be used to make an assessment. The services provided may include a recommendation for training and an estimation of associated costs that will enable a spouse to become financially self sufficient. This is especially important when one spouse is unskilled and/or lacks recent employment experience. Without a plan to improve employability and financial self-sufficiency, the spouse may be awarded indefinite maintenance.

The process for determining the wage-earning capacity of a spouse begins with a meeting between the spouse (when available) and the Vocational Expert to conduct an interview about the individual's back-

ground that includes: age, education, employment experience, volunteer activities, hobbies, and interests. A Vocational Expert also inquires into and obtains documentation of the individual's functional capacity in the event that a medical condition exists. This information will identify any physical or emotional constraints (such as limits on lifting, a history of carpal tunnel syndrome, requirements for multi-tasking, fear of strangers, etc.) that may affect ability to work, in general and in a specific occupation. Aptitude/achievement testing and interest inventories may also be administered to identify and measure interests and abilities and the need for further vocational training or remedial education. Using all of this information, the Vocational Expert assesses a spouse's wage earning capacity.

"Arguably, the demand that women, even women with small children, are to work in the waged labor market is one of the most important changes in decades regarding middle class women's work lives" (Murphy, 1995). Divorce cases involving abused women with children demand a special wage earning capacity assessment.

For example, an attorney referred Ellen Smith (age 53) to a vocational expert for a wage earning capacity assessment. This woman obtained a high school diploma and she worked part time as a housekeeper in a nursing home. After her marriage in 1973, she spent most of her time as a homemaker—a stay at home mother, attending to her three children. Eventually, when all of her children were in high school, Ms. Smith trained as a Licensed Practical Nurse, graduating from a technical college in 1993. After she got her LPN certificate, she worked full time as a Licensed Practical Nurse from 1993 to 2000.

When she still had minor children, even though she did not receive a wage, her work as a stay-at-home mom had economic value because of the costs associated with hiring child care and cleaning services, purchasing prepared food, etc. Thus, her work both as a stay-at-home mom and as an LPN had economic value that contributed to the financial well-being of her family.

After Ms. Smith entered the work force on a full time basis, her husband started to physically and emotionally abuse her. In March 2000, she was forced to stop

working as an LPN as a result of the abuse. This scarred her face and injured her back due to being punched in the head and slammed against walls.

The abuse had far reaching affects on her, especially on her self esteem and ability to relate to other people. She stopped going to church and quit her quilting group because she was ashamed of her obvious injuries and the questions they invoked from others. This produced isolation and further limited her employability by preventing her from networking. She was physically unable to continue as an LPN because she could not assist with lifting and transferring patients due to back pain. Because she was ashamed of the abuse and blamed herself for it, she did not seek medical treatment. Thus, the extent of her injuries was not known.

After enduring escalating abuse for several years, Ms. Smith escaped to live in a domestic violence shelter, as protection against her husband who continued to threaten her. A psychiatrist diagnosed Ms. Smith as having Post Traumatic Stress Disorder (PTSD) and depression related to the abuse. She was also found to have a low sense of self worth.

Methodology of Assessment of Damages

As part of the divorce process, Ms. Smith's attorney referred her to a Vocational Expert to assess her employability, taking into account all the facts described above, along with some additional information. Her attorney also considered filing a domestic tort because of the physical and psychological damage suffered by Ms. Smith at the hands of her husband.

At the recommendation of the Vocational Expert, she was sent for medical examinations by an orthopedic surgeon and a physical therapist who performed a physical capacity evaluation. These professionals determined that she had significant damage to her lower back that limited her to a range of sedentary to light work. She was able to stand and walk frequently, but lacked the ability to lift more than 15 pounds on an occasional basis and 5 pounds frequently. She could not bend or stoop except on a seldom basis and she was completely restricted from climbing ladders or scaffolds. These restrictions effectively prevented her from going back to her usual occupation as a Licensed Practical Nurse.

The Vocational Expert gave Ms. Smith a battery of standardized tests to assess her vocational interests, academic achievement level, aptitudes and other factors. The results of these tests were used to identify possible areas for further vocational exploration and to assess the feasibility of her stated goals. These results were used in conjunction with her physical re-

strictions to identify possible jobs that she could perform.

Psychologically, she was being treated for PTSD and depression, and was receiving assistance in separating from her husband both psychologically and physically. She was assessed psychologically to have the emotional capacity to be employed on a full time basis, provided she was able to continue with her psychotherapy. She could not work with the public, due to her negative self image related to the facial disfigurement, her PTSD symptoms and to avoid being found by her husband.

Ms. Smith's current wage earning capacity was limited by the following constraints: Educationally, she had a college certificate as a Licensed Practical Nurse but was unable to perform this work which would require a medium lifting capacity (up to 50 pounds occasionally). As a result of the lifting restriction, her skills would not transfer to most other jobs in the medical field. Her other work experience (housekeeper) was at a low paying, unskilled, work level that exceeded her lifting restrictions. Not being able to work in a public setting further reduced her available work options.

Based on the above limitations Ms. Smith would be qualified to work at entry-level positions, such as a fast food cook, a day care worker and a small parts assembler, which are frequently part-time work with no benefits. (Ms. Smith clearly needed a job with medical benefits because of an on-going need for treatment of her back injury.) A labor market survey was conducted to substantiate the availability of jobs/wage levels/benefits/work hours for a person with her stated limitations. If Ms. Smith had been able to continue working as a Licensed Practical Nurse, her wage earning capacity would have significantly exceeded the level (mostly minimum wage) for the unskilled work she can now perform. In order to reach a level where she could be self-supporting, she would need additional training.

Ms. Smith had also been accustomed to a certain standard of living during the 34 years of her marriage. Because her spouse had worked as an IRS Agent, she was used to a solidly middle class life style. If she could only work in minimum wage jobs, her standard of living would be reduced to poverty level following the divorce. In the interest of fairness, she needed to be able to earn a middle class wage to maintain a semblance of her former standard of living.

The Washington Occupational Information System (WOIS) was utilized to predict an average income range for entry-level jobs, for Licensed Practical Nurse, and for possible jobs for which she could be retrained in a short period of time (one to two years). As a result of additional vocational testing and research of local training programs, the Vocational Expert determined that Ms. Smith could be retrained as a medi-

cal laboratory technician. This occupation makes use of some of her previous skills and interests in the medical field and requires an Associate Degree (one to two years of school taking into consideration credit she might receive from her LPN training) or a certificate from some hospitals, vocational schools or the military.

This occupation would have an average wage range of \$2,393 to \$3,314 per month, which is not too far below the wage range for LPN of \$2,990 and \$3,759 per month. With this new occupation, Ms. Smith would be able to support herself in a manner that may eventually approximate her wage earning capacity prior to the abuse that ended her career as an LPN.

In order to boost her self confidence, the Vocational Expert recommended that Ms. Smith be examined by a board-certified plastic surgeon who recommended that Ms. Smith have her nose surgically rebuilt and two facial scars "revised." The surgeon gave a cost estimate for this work. Because of the need for plastic surgery and on-going treatment for her back injuries (which may or may not be covered by future health insurance), Ms. Smith's medical costs were included in a domestic tort, which encompassed other issues as well.

It was clear from the assessment by the Vocational Expert that Ms. Smith had not maximized her earning capacity given her responsibility as the primary caretaker of her three children. The vocational assessment was beneficial in assessing total damages and the cost of mitigating the damages. Information for the judicial system to determine lost earning capacity was considered in light of her facial disfigurement and severe psychological impairment as well as the time she spent out of the labor market, under-employed or in recovery and retraining. The Vocational Expert was uniquely qualified to assess pre-injury versus post-injury employment potential and was called to testify about the vocational impairment produced by Ms. Smith's abuse in both the divorce process and the domestic tort process. "The whole point of earnings capacity analysis is to determine, in an equitable and reasonable manner, future lost earnings of an injured person" (Field, et al., 2006).

It can be surmised that but for the lost opportunity cost of child rearing and part-time work, Ms. Smith would have potentially furthered a full-time career (possibly to include advanced nursing training). For example, Ms. Smith's lost opportunity cost of caring for her children would be the foregone full-time nursing wage, as an LPN or, possibly, a Registered Nurse. Moreover, the most significant damages would likely include medical expenses (long term counseling/psychotropic medications, plastic surgery, treatment for her back injury), training costs and earnings replacement issues. All of these factors were used to

effect an equitable outcome to Ms. Smith's divorce and domestic tort.

Conclusions and Summary

In sum, Vocational Experts rely on a holistic mixture of quantitative (e.g., standardized tests, physical capacity evaluations) and qualitative analyses (e.g., subjective client accounts, facts from collateral sources), integrated with knowledge of the world of work, vocational education and training. Through the use of well researched and time-tested vocational techniques that have been used on hundreds of thousands of individuals, Vocational Experts can provide objective information to calculate economic damages associated with divorce and domestic torts. Thus, Vocational Experts are uniquely qualified to provide the highest quality analysis for the Court in family law proceedings involving divorce.

References

- Field, T., Johnson, C., Schmidt, R., Van De Bittner, E. (2006). *Methods and Protocols: Meeting the Criteria of General Acceptance and Peer Review under Daubert and Kumho*, Athens, GA: Elliot & Fitzpatrick, Inc.
- Murphy, P.A. (1995). *Vocational Expert Witness Testimony in Divorce: Some Problematic Issues: Gender, Work and Divorce*, American Board of Vocational Experts Monograph Series, 3rd ed., 42-52.

Biographies

Eric Bensch, MA, CRC, CDMS, is a vocational counselor for OSC Vocational Systems Inc. in Tacoma, Washington. He is also a clinical member of the Association of Marriage and Family Therapists and a Licensed Marriage and Family Therapist in the State of Washington. He provides forensic services at the request of attorneys and expert witness testimony for the Social Security Administration and the Rail Road Retirement Board.

Peter Hollar, MA, CRC, CDMS, is a vocational counselor for OSC Vocational Systems, Inc., in Tacoma, Washington. He has provided vocational services for industrially injured workers in various capacities since 1990. Mr. Hollar has also provided testimony to the Washington State Board of Industrial Insurance Appeals.

Both Mr. Bensch and Mr. Hollar can be contacted at OSC Vocational Systems, Inc. at 917 Pacific Ave., Suite 308, Tacoma, WA 98402, phone (253) 779-5485 or email: peter@osc-voc.com or eric@osc-voc.com