Employer Validation of Jobs Performed with a Sit/Stand Option

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Vocational experts are increasingly being asked by Administrative Law Judges in Social Security hearings to come up with job options that would allow a potential employee the ability to sit and/or stand at will as needed. There currently exists no resources on this topic, and experts are typically left with conveying opinions based solely on their expertise. This study was designed to gather empirical validation regarding this crucial job accommodation by surveying two hundred and ninety employers and employees regarding whether certain jobs could be performed by workers who required the ability to sit/stand at will when needed. Results are provided for 13 job titles in 11 different work settings. The implication for vocational experts is to provide them with employer validated opinions in order to minimize challenges.

The 1993 Daubert v. Merrill Dow Pharmaceuticals decision, where an expert's testimony was disqualified due to his inability to substantiate his opinions based on a commonly accepted and methodologically valid approach, placed vocational and other experts (VE) on notice as to how they proffer their opinions (Daubert Ruling as cited in Field, 2000). Previously, expert witnesses were able to essentially base their opinions on their education, training and experience, regardless how far off their opinion might be from commonly accepted opinions in their field. The Daubert decision, however, requires that expert testimony must be founded on a methodology that is scientifically valid and can be properly applied to the facts of the case. In addition, the methods or techniques used to derive at any conclusions had to be generally accepted by the profession and subjected to peer review and publication (Isom & Marini, 2002; Weed, 1999). Although the Daubert ruling doesn't definitively apply in providing Social Security Administration testimony, attorneys and non-attorney representatives have the right to challenge and subsequently have VE testimony excluded on appeal if the VE is unable to back up his or her opinions.

In the forensic VE arena, proffering opinions regarding whether claimants are able to work when testifying for the Social Security Administration, VEs continue to rely upon their education, training and experience when testifying. Although many experts continue to remain unchallenged by attorneys or non-attorney representatives when opining that a hypothetical person could perform job "X", other experts are being routinely challenged about the basis of an their opinions, their proof, sources, and methodology (C. Williams, personal communication, April 3, 2007).

The present study was designed to begin building empirical support in addition to expert "experience" regarding whether persons can perform certain jobs with the accommodation of being able to sit or stand at will when needed. This is one of the more frequently cited hypothetical's from Administrative Law Judges (ALJ), particularly in cases of low back injury with/without herniated disc laminectomy, diskectomy, or spinal fusion (C. Williams, personal communication, April 3, 2007). Chronic low back pain is a typical complaint in the majority of such cases. As such, 290 employers and employees performing specific jobs identified by the authors were surveyed as to whether these jobs could indeed be performed with a sit/stand option as needed. Results of the study are presented following a brief literature review on the topic.

Review of the Literature

The study of low back pain and return to work suggests this topic has been well documented in the literature. Epidemiologically, Poiraudeau and Revel (2007) cite overall prognostic studies in industrialized nations indicating a 60% to 90% prevalence of reported low back pain, and that in 85% to 95% of such cases, pain and disability disappear within three months. Only 10% remain on disability after six months, thereby accounting for 80% of all low back pain costs (Biering-Sorensen, 1984; Frymoyer, Cats-Baril 1991; Rossignol, Suissa & Abenhaim, 1988). Fordyce (1995) notes low back pain as the most frequently cited reason for work absenteeism.

Medical factors. Fordyce et al., (1992) reported that a history of back surgery was a poor predictor of return to work, with second surgeries twice as likely to fail,

and three or more follow-up surgeries 10 times more likely to fail (Bigos et al 1992; Fordyce et al 1992). In addition, being told that one has had a "failed back surgery" is predictive of poor outcome in return to work and reinforces pain behavior despite the fact that the term does not imply a technically unsuccessful operation, but rather the development of chronic pain syndrome (Mayer et al.,1998).

Other mediating factors in poor return to work outcome for persons with chronic pain involve deconditioning syndrome which generally appears after four to six months of limited activities (Mayer, Smith & Keeley et al., 1985). Specifically, individuals with low back pain typically restrict their movements in fear of exacerbating their symptoms, and as such, often begin to gain weight and lose critical muscle mass in their back and other areas.

Psychological factors. The psychological and personality factors intricately linked to chronic low back pain complaints has also been the subject of numerous research studies (Andersson, 1997; Bandura, O'Leary, Taylor,Gauthier & Gossard 1987; Mackenzie et al 1998; Marhold, Linton, & Melin 2002; Watson, Booker, Moores & Main 2003). Andersson (1997) for example, cites a number of co-occurring low back pain psychological factors related to a poor prognosis of returning to work including, anxiety, depression, somatisation symptoms, job dissatisfaction, increased stress, negative body image, and poor drive satisfaction. Relatedly, Marhold, Linton, and Melin (2002) tested 154 participants and found that their beliefs about their ability to return to work significantly affected employment outcome and predicted sick leave. Perceived physical job demands and work danger perceptions predicted return to work. Specifically, injured workers who perceived the physical job demands as too harsh and the hazards of working to be too dangerous, were less likely to return.

Shaw and Huang (2005) held focus groups with 28 clients with low back pain and found client primary concerns revolved around the fears of re-injury, concerns of being able to return and do the same job without re-injury, problems in obtaining the necessary work supports, and maintain job security. The group was also concerned as to how supervisors and coworkers would perceive them. The authors further note that poor expectations for recovery, pain avoidance beliefs, greater perceptions of stress, and pain catastrophizing were all predictors of poor return to work.

External factors. Aside from the medical and psychosocial factors regarding chronic back pain and return to work, there are also a number of external factors which can impact return to work predictability. Andersson (1997) noted that job dissatisfaction was a predictor for persons with low back pain in not returning to work. In addition, the longer an individual remains off work, the less likely they will ever return to work (Shaw & Huang, 2005; Waddell, 1987). Also as noted earlier, when individuals perceive the job as physically too demanding or hazardous, they too are less likely to return to work. Conversely, Mackenzie et al., (1998) found that individuals with lower extremity fractures were more likely to return to work when they had a higher education, higher socioeconomic status, better social support, job stability, and low physical demands required in their job.

Perhaps one of the most intriguing external factors regarding low back pain and return to work is the involvement in litigation. Suter (2002) recruited 200 chronic low back pain participants for a study involving return to work when litigation was occurring. Participants took a depression inventory, pain scale, and disability inventory. Results indicated that those individuals who went back to work reported less depression, less pain, and less perceived disability than the group who was unemployed. In addition, the litigation group continued to describe their pain, depression and disability at the same level of intensity throughout the course of litigation; what Suter describes as a perseveration affect. These findings are supported by other research suggesting that involvement in litigation delays or actually prevent any recovery in perceived pain, improvement in functional limitations, and depression (Hayes et al., 1993; Philips & Grant 199a, b). In the Suter (2002) study, it was believed that litigation actually increased pain symptoms theorized due to the added stress of the litigation process. Indeed, participant symptoms reportedly improved once litigation was completed.

Methods

Procedures

Researchers first received approval from the Institutional Review Board at a southern university. Those involved in the actual interviewing of employers and employees in various work settings were required to take the Citi human subjects online certification test prior to conducting interviews. Two of the researchers who are experienced VEs developed the list of jobs and work settings which they believed employers/employees might concur that the predetermined list could otherwise be performed with a sit/stand option. Since a preponderance of VE testimony generally involves unskilled or semiskilled work, the jobs on the predetermined list all met these criteria. Researchers then either called employers in advance for appointments, or simply requested to do an interview if the researchers were visiting such establishments (e.g., going to the movies). At the conclusion of each interview which lasted several minutes, researchers would hand the interviewee a page noting the study purpose and who

to call at the University regarding any further information on the study.

Survey

The survey was designed with six questions, with an additional open-ended question specifically asking for any additional comments. Minimal demographic information was collected and included the type of work setting, interviewee job title, and the specific job title being researched. The six questions were designed with a yes/no response and were as follows: 1) Could an employee perform this job sitting the entire eight-hour shift; 2) Could an employee perform this job standing the entire eight-hour shift; 3) Could this job be performed sitting or standing at will as needed; 4) Would you consider it a reasonable accommodation to allow a worker to perform this job rotating from sitting to standing as they need; 5) Do you believe that the quality of this job would be negatively affected if a worker were to perform it sitting and/or standing as needed; and, 6) Is there a quota requirement or production requirement for this job?

Results

Researchers decided questions 1 and 2 were inconsequential and added nothing to the findings, so these questions were dropped. Essentially, the predetermined list of jobs were either jobs already involving sitting or standing for six or more hours in an eight hour day, therefore, asking the question was redundant.

Question 3 Re: whether the employer and/or employee believed the job could be performed sitting or standing at will as needed yielded fairly consistent results. As Table 1 indicates, the majority of participants indicated 10 of the 13 jobs could be performed sitting or standing as needed. In particular, security guards, ticket takers, desk clerks, some cashier positions, mall kiosk sales clerk and grocery stocker could be accommodated. Less than 50% of these employers/employees agree that the position of greeter, restaurant host/hostess, and grocery store cashier could be performed with a sit/stand option.

Regarding Question 4 as to whether allowing a sit/stand option would be considered a reasonable accommodation to make, all employers/employees indicated in varying agreement that it would be reasonable to make this accommodation for all 13 jobs. Table 2 indicates the frequency of agreement by this group. Despite the fact that interviewees did not believe the greeter, restaurant host and grocery store cashier could be performed with the sit/stand option, the majority agreed that providing the option would be a reasonable accommodation.

Question 5 dealt with whether interviewees believed the quality of the job would be negatively affected if a worker were able to perform it sitting or standing as needed. This question was recorded as the number of participants who responded "no" pertaining to the belief that the job would not be negatively affected by allowing this accommodation. Table 3 outlines participant responses to this question, suggesting overall that statistically in all the jobs listed, the majority of employers/employees agreed the quality of the job would not be negatively affected.

The final Question 6 dealt with whether or not a quota was required for the jobs, again with a "no" response being recorded as no quota requirements. Overall, respondents indicated two of the 13 jobs had perceived

Table 1. ***Could an Employee Perform This Job Sitting or Standing at Will As Needed?***

Job Title	Work Setting	Percentage Saying Yes	Sample Size
Greeter	Grocery store	33%	45
Cashier	Gas bar island	96%	25
Parking security	Grocery store	100%	20
Hotel security guard	Hotels/businesses	90%	10
Stocker	Grocery store	92%	25
Cashier	Grocery store	5%	20
Cashier	Convenience store	96%	25
Telemarketer	Call Center	100%	20
Ticket taker	Movie theater	96%	25
Security guard	School parking	100%	20
Desk clerk	Hotel	100%	25
Sales clerk	Mall kiosk	100%	20
Host/hostess	Restaurant	0%	10

Table 2. ***Would You Consider It a Reasonable Accommodation To Allow a Worker to Sit or Stand At Will As Needed on This Job?***

Job Title	Work Setting	Percentage Saying Yes	Sample Size
Greeter	Grocery store	64%	45
Cashier	Gas bar island	88%	25
Parking security	Grocery store	100%	20
Hotel security guard	Hotels/businesses	90%	10
Stocker	Grocery store	88%	25
Cashier	Grocery store	85%	20
Cashier	Convenience store	92%	25
Telemarketer	Call Center	95%	20
Ticket taker	Movie theater	100%	25
Security guard	School parking	95%	20
Desk clerk	Hotel	100%	25
Sales clerk	Mall kiosk	100%	20
Host/hostess	Restaurant	70%	10

quota requirements (the word perceived is used because other employers/employees in similar jobs but different settings indicated no quotas were enforced). The two jobs where quotas were mostly believed to be a requirement included the grocery store stocker and telemarketer. In the open-ended queries that followed, several employees of the stocker position expressed that so many pallets of merchandise were supposed to be unloaded per hour, however, the policy was never enforced. Regarding the telemarketer position, 90% of respondents agreed that telemarketers have approximately 5 minutes with which to deal with each customer. One telemarketer indicated that if an employee was allowed to stand, it generally indicated he or she was having a problem which then signaled a supervisor was needed. Unless this accommodation is known to supervisors, standing up would be confusing to them. Table 4 reflects participant responses to the quota requirement question.

Open-Ended Comments

Researchers also separately recorded open-ended comments by employers/employees and made several

Table 3. ***Do You Believe That the Quality of This Job Would Be Negatively Affected if a Worker Were to Perform It Sitting and/or Standing As They Needed?***

Job Title	Work Setting	Percentage Saying No	Sample Size
Greeter	Grocery store	53%	45
Cashier	Gas bar island	92%	25
Parking security	Grocery store	100%	20
Hotel security guard	Hotels/businesses	100%	10
Stocker	Grocery store	92%	25
Cashier	Grocery store	90%	20
Cashier	Convenience store	88%	25
Telemarketer	Call Center	100%	20
Ticket taker	Movie theater	100%	25
Security guard	School parking	100%	20
Desk clerk	Hotel	92%	25
Sales clerk	Mall kiosk	96%	20
Host/hostess	Restaurant	70%	10

interesting observations regarding some of the comments. Specifically, regarding the greeter position, one greeter stated that allowing a person to sit would convey laziness, and therefore it should not be allowed. The majority of employers for all jobs in the study, however, would defer and comply with a medical note regarding a job accommodation. Several of the larger grocery store managers indicated that in certain instances, injured employees would be moved to a less demanding job within the store. Interestingly, regarding the grocery stocker position, one employer noted he had just been informed that an employee who used a wheelchair had just received an employee of the month award for stocking shelves.

Reviewing other comments concerning telemarketers, three indicated that an agent could not sit or stand an entire shift, especially during peak hours. In addition, a majority of respondents indicated a quota existed of having to be on/off the phone within five minutes, while other telemarketers indicated there was a quota of having to sell 6-11 tickets per hour (Ticketmaster), but that telemarketers were generally not reprimanded for missing the quota.

Discussion

Overall, employers and employees alike were in high agreement regarding whether specific jobs could be performed with a sit/stand option as needed, whether allowing such an option was a reasonable accommodation, and whether or not the quality of a job might be negatively affected by such an accommodation. We found a 98% agreement in responses between employers and employees. It appears from these findings then that of the 13 positions, only the greeter (33%), restaurant hostess (0%) and grocery store cashier (5%) were deemed unable to be performed with a sit/stand option. One third of the participants did agree that the greeter position could be performed sitting/standing, however, relatively no restaurant hostess employers or grocery store cashier's agreed to the question. It should be noted, however, that follow-up questioning with these participants as to whether or not allowing a worker to sit/stand in these three positions would be a reasonable accommodation, 64%, 70%, and 85% respectively agreed that it would.

Limitations of the Study

Several limitations exist in this study. First is the usual generalizability of findings to other populations. Our sample came from two geographic areas; South Texas and the Las Vegas, Nevada area. We should note that the majority of businesses we contacted represented national chains, and although one would not likely find 100% total consensus on any issue for any group, the national chains are more likely to share a similar philosophy. A second limitation deals with some of the low sample sizes in different cells. Although a sample size of 45 is adequate, two of our specific job titles only had sample sizes of 10. Since, however, there exists no previous research in this area, even a low sample size of employer/employee opinions may be more powerful than simply one VEs experience in testifying. Finally, although participants were informed upfront that the researchers were students involved in a university research project, some of the employers/employees may have still answered in a socially desirable manner regarding perceived interest in wanting to accommodate employees with disabilities.

Table 4. ***Is there a quota requirement or production requirement for this job?***

Job Title	Work Setting	Percentage Saying No	Sample Size
Greeter	Grocery store	98%	45
Cashier	Gas bar island	100%	25
Parking security	Grocery store	100%	20
Hotel security guard	Hotels/businesses	100%	10
Stocker	Grocery store	16%	25
Cashier	Grocery store	65%	20
Cashier	Convenience store	100%	25
Telemarketer	Call Center	10%	20
Ticket taker	Movie theater	100%	25
Security guard	School parking	100%	20
Desk clerk	Hotel	100%	25
Sales clerk	Mall kiosk	75%	20
Host/hostess	Restaurant	100%	10

Implications of the Study and Future Research

Future researchers could focus on expanding this study beyond these initial jobs. We believe there are numerous other job titles that exist in significant numbers which may allow for a sit/stand option. In addition, it would be recommended to have larger cell sizes and conduct the study in various regions of the country for better generalizability.

Implications of the study are to strengthen VE testimony in Social Security cases beyond that of simply citing their education, training and experience. If VEs are citing any of these positions in their testimony, noting our findings as backup will strengthen their opinions largely because employers/employees concur that these positions can indeed be performed with a sit/stand option.

Conclusion

This was a first of its kind study surveying employers and employees of specific jobs in specific work settings as to whether certain jobs could be performed with a sit/stand option as needed. Participants agreed that all but three of the 13 jobs surveyed could indeed be performed with this option, and a majority of all participants indicated that all the jobs could allow for the option as a reasonable accommodation. Vocational experts testifying in Social Security cases where ALJs might pose a hypothetical with a sit/stand option, can now back up their opinion with the strength of the findings in this study.

References

Andersson, G.B.J. (1997). Epidemiological features of chronic low-back pain. In J.W. Frymoyer (2nd Ed.), *The adult spine: Principles and practice* (pp.93-141). Philadelphia: Lippincott-Raven.

Bandura, A., O'Leary, A., Taylor, C. B., Gauthier, J., & Gossard, D. (1987). Perceived self-efficacy and pain control: Opioid and nonopioid mechanisms. *Journal of Personality and Social Psychology, 53*(3), 563-571.

Biering-Sorensen, F. (1984). Physical measurements as risk indicators for low back trouble over a one-year period. *Spine, 9,* 106-119.

Bigos, S.J., Battie, M.C., Spengler, D.M., Fisher, L.D., Fordyce, W. E., Hansson, T.H., et al., 1991). A prospective study of work perceptions and psychosocial factors affecting the report of back injury. *Spine, 16,* 1-6.

Fordyce, W. E., Bigos, S. J., Battie, M.C., & Fisher, L.D. (1992). MMPI Scale 3 as a predictor of back injury report: What does it tell us? *Clinical Journal of Pain, 8,* 222-226.

Frymoyer, J.W., & Cats-Baril, W.L. (1991). An overview of the incidence and costs of low-back pain. *Clinical Journal of North America, 22,* 263-271.

Gusman, J., Karjalainen, K., Malmivaara, A., Irvin, E., & Bombardier, C. (2001). Multidisciplinary rehabilitation for chronic low back pain: Systematic review. *British Medical Journal, 322,* 1511-1516.

Linton, S. J. (1985). The relationship between activity and chronic back pain. *Pain, 21,* 289-294.

MacKenzie, E.J., Morris, J.A., Jurkovich, Y.Y., Cushing, B.M., Burgess, A.R., DeLateur, B.J., et al. (1998). Return to work following injury: The role of economic, social and job-related factors. *American Journal of Public Health, 88*(11), 1630-1637.

Marhold, C., Linton, S. J., & Melin, L. (2002). Identification of obstacles for chronic pain patients to return to work: Evaluation of a questionnaire. *Journal of Occupational Rehabilitation, 12*(2), 65-75.

Mayer, T.M., McMahon, M. J., Gatchel, R.J., Sparks, B., Wright, A., & Pegues, P. (1988). Socioeconomic outcomes of combined spine surgery and functional restoration in workers' compensation in106-spinal disorders with matched controls. *Spine, 23,* 598-606.

Mayer, T., Smith, S., Keeley, J., et al. (1985). Qualifications of lumbar function: Sagittal plane trunk strength in chronic low back pain patients. *Spine, 10,* 765-772.

Poiraudeau, S., Rannou, F., & Revel, M. (2007). Functional restoration for low back pain: A systematic review. *Annales de Readaptation et de Medecine Physique,* 1-5.

Polatin, P.B., Kinney, R. K., Gatchel, R.J., Lillo, E., & Mayer, T.G. (1993). Psychiatric illness and chronic low-back pain: The mind and the spine-which goes first? *Spine, 18,* 66-71.

Rossignor, M., Suissa, S., & Abenhaim, L. (1988). Working disability due to occupational back pain: Three-year follow of 2300 compensated workers in Quebec. *Journal of Occupational Medicine, 30,* 502-505.

Shaw, W.S., & Huang, Y. (2005). Concerns and expectations about returning to work with low back pain: Identifying themes from focus groups and semi-structured interviews. *Disability and Rehabilitation, 27*(21), 1269-1281.

Suter, P. B. (2002). Employment and litigation: Improved by work, assisted by verdict. *Pain, 100,* 249-257.

Tulder, M.W., Koes, B.W., & Bouter, L.M. (1995). Cost-of-illness study of back pain in the Netherlands. *Pain, 62,* 232-240.

Vendrig, A. A. (1998). Prognostic factors and treatment-related changes associated with return to work in the multimodal treatment of chronic back pain. *Journal of Behavioral Medicine, 22*(3), 217-232.

Waddell, G. (1987). A new clinical model for the treatment of low back pain. *Spine, 7,* 632-644.

Watson, P.J., Booker, C.K., Moores, L., & Main, C.J. (2004). Returning the chronically unemployed with low back pain to employment. *European Journal of Pain, 8,* 359-369.

Author Notes

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SSA Revised Fee Schedule
Pricing for Vocational Experts

	Date of Call Order				
VE Services	**10/01/08 – 9/30/09**	**10/01/09 – 9/30/10**	**10/01/10 – 9/30/11**	**10/01/11 – 9/30/12**	**10/01/12 – 9/30/13**
A(1) Study	$ 135	$ 139	$ 143	$ 148	$ 152
A(2) Remand Study	$ 155	$ 160	$ 164	$ 169	$ 174
A(3) Interrogatory	$ 130	$ 134	$ 138	$ 142	$ 146
A(4) Additional Evidence	$ 125	$ 129	$ 133	$ 137	$ 141
A(5) Rule 1 Applies: First Appearance of Day	$ 165	$ 170	$ 175	$ 180	$ 186
A(5) Rule 2 Applies: Other Appearance of Day	$ 130	$ 134	$ 138	$ 142	$ 146
A(6) Discussion	$ 145	$ 149	$ 154	$ 158	$ 163

Note: For more detailed information on the schedule and the planned implementation, it is suggested that VEs contact their regional SSA office. Eds.