

Connecting Work Temperaments to the Social Security Administration's Mental Residual Functional Capacity Form

Craig Johnston

Individuals petitioning the Social Security Administration for disability benefits may do so on the basis of psychiatric or cognitive conditions they allege impede gainful employment. In these situations, the court utilizes the Mental Residual Functional Capacity form — containing 20 work-related activities — as a guide for considering employment options. Unfortunately, there does not appear to be uniformity among vocational experts in interpreting how limitations to these work activities impact employment. It is possible however that work temperaments may be associated with these work-activities. If so, the vocational expert would have some means for better understanding the impact of cognitive-mental restrictions on the occupations identified in the Dictionary of Occupational Titles, thereby increasing consistency among vocational experts.

Individuals petitioning the Social Security Administration for disability benefits may do so on the basis of psychiatric or cognitive conditions they allege impede gainful employment. To this end, the Administrative Law Judge (ALJ) may turn to a vocational expert (VE) to assess the impact of mental impairment on the ability to work. The ALJ asks the VE to consider a hypothetical individual, one whose non-medical background is the same as the applicant, and then asks the VE to consider various sets of limitations guided by the Mental Residual Functional Capacity (MRFC) form completed by the medical expert. The MRFC form contains twenty mental/cognitive-associated work activities that the SSA considers central to employment, and allows the ALJ, with assistance from the attending psychiatrist, to rate each according to severity of limitation. The VE is then asked to evaluate what employment options are available to this hypothetical individual in light of restrictions on these mental activities. With influence from this testimony, the ALJ renders a decision either granting or denying disability benefits.

At present issue is the methodology employed by the VE in connecting the identified mental limitations to an individuals' ability to perform sustained remunerative employment. Anecdotal evidence would appear to support the notion that there is no standardized method among VEs holding SSA contracts in drawing conclusions of employability based on the MRFC assessment form. Instead, it would appear, VEs rely on

their varied experience in job placement and understanding of labor market conditions, so that different experts may arrive at different conclusions as to the extent of work impairment, even if presented with the same hypothetical. While the SSA does attempt to establish some consistency among VEs by requiring the use of the Dictionary of Occupational Titles (DOT) as a basis for identifying past work and future ability to engage in employment based on functional limitations (Haddock v. Apfel, 196 F.3d 1084 10th Cir. 1999), and the DOT (when combined with the Classification of Jobs) does contain standardized information on work temperaments (the adaptability requirements of a job) which would appear to partially address mental requirements of a job, there is no present research to suggest that one can in fact draw a parallel between temperaments and those mental activities addressed in the MRFC. By at least providing guidance to the expert by connecting mental activities to the work traits known as "temperaments", VEs may be better equipped in identifying reasonable occupational alternatives for SSA claimants, while continuing to be valued for their knowledge of current labor market conditions and job placement considerations.

How the SSA Considers Mental Capacity for Work

Under 20 C.F.R. § 404.1520a, the SSA outlines how mental impairments are to be addressed. First, the

ALJ weighs whether the claimant has a medically determinable mental impairment, and if it is deemed that such impairment exists, rates the degree to which the individual can function independently, appropriately, effectively, and on a sustained basis across four broad categories: activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation. Next, the ALJ compares the degree of functional loss in each category to the medical impairment listings to determine whether the claimant meets the criteria to be found disabled. Claimants who are rated "none" or "mild" in the four categories are generally found not to have a severe mental impairment while those who have a "marked" functional loss in two or more categories are considered to meet the criteria for a listed impairment. If the claimant does not meet the listings, then the ALJ next evaluates residual functional capacity by considering "an expanded list of *work-related capacities* that may be affected by mental disorders . . ." which are found in the MRFC assessment form. Capacities for competitive, remunerative work are divided into four categories: understanding and memory, sustained concentration and persistence, social interaction, and adaptability. The MRFC assessment form then expands these categories into 20 specific work-related functions that are to be rated.

Under the rules of the Social Security Administration, a determination of disability benefits cannot be based on the "mere theoretical ability" to engage in substantial gainful activity, but must instead be supported by evidence demonstrating that the claimant can either engage in their customary employment or that other employment opportunities exist within the claimant's vocational and functional capacities (Kerner v. Flemming, 283 F.2d 916, 921-22 (2d Cir. 1960)). While the responsibility to offer this evidence initially fell to Hearing Examiners (today's ALJs) who cited published labor market information to make a determination of employability, this approach was found by the courts in 1962 to be inadequate, and the SSA in turn began to utilize VEs to determine whether the claimant could in fact perform work (Harper, 1985).

VEs are qualified to testify in SSA hearings by a combination of education, credentials, and work experience dealing in vocational issues. Their value lies in the ability to identify the claimant's work history, age category, and education, and assess the impact of a person's physical and mental limitations on the ability to perform customary and usual job duties as well as alternative work activity given the functional capacities of the individual and labor market conditions in which one resides (§416.960). The VE obtains information from both written documentation as well as oral testimony from the claimant and medical expert, and is free to draw conclusions as to the claimant's general intelligence, communication skills, and physical endurance, all which contribute to their ultimate

opinion. While the ALJ is prohibited from asking the VE to opine on psychological matters, it is standard procedure to request the expert assess the impact of mental limitations on employability. These include consideration of the four broad categories on the MRFC assessment form (§404.1545). The totality of information is then used to draw a list of occupations the claimant could reasonably be expected to perform and which are available in the local or national labor markets (*Burns v. Barnhart*, 312 F.3d 113, 119 3d Cir. 2002). To rely on this conclusion however, the ALJ is required to ask the expert how he relied on the DOT and elicit a reasonable explanation for any inconsistencies (*Haddock v. Apfel*, 196 F.3d 1084 10th Cir. 1999). A discrepancy between how the job is performed today and how it was performed at the time of the DOT's last update (approximately 1991) is not surprising nor should it be unexpected, but it must be explained by the VE. Herein lay the paradox. The VE is valued for their experience placing individuals with disabilities into jobs and their understanding of current labor market situations. Yet when the reasoning for the discrepancy is based solely on the unique experience of the expert stemming from their work with individuals with disabilities, questions may arise to the reliability and validity of this variation, and it may be argued on appeal that there is no general consensus for the opinion. A more empirical understanding, reflected by inter-rater reliability, as to how the 20 work-related functions apply to the occupational titles in the DOT, and the real world of work, is therefore necessary.

The MRFC Assessment Form and Potential Connection to DOT Temperaments

The evaluation of disability on the basis of mental disorders requires, in part, consideration as to the degree to which limitations impair the claimant's ability to work (SSR 85-16). To be found disabled (when a listing has not initially been met or equaled), the claimant must be found to be unable to perform past work or make an adjustment to other work when considering age, education, work experience, and any imposed functional limitations. One way in which individuals are considered by the SSA to be unable to adjust to alternate work is when they have engaged only in unskilled labor and have only a marginal (6th grade or less) education; or have no past relevant work experience, are over 55 years of age, and have a limited education. If however the claimant has more education, is younger, and/or possesses a work history providing transferable skills, they may still not be found employable if the impairments caused by psychological distress are deemed "severe". Consideration of the claimant's mental residual functional capacity is then necessary to determine the ability to engage in substantial gainful activity (SGA). An assessment of mental residual functional capacity complements the

functional evaluation by requiring consideration of the expanded list of work-related capacities, and assists to identify what employment the claimant can engage in on a "regular and continuing basis" (SSR 96-5p).

The 20 Work-related Tasks

Utilizing the MRFC assessment form, the medical expert rates each of 20 work-related activities on severity of impairment: no evidence of limitation, not significantly limited, moderately limited, markedly limited, and not ratable. From this, the ALJ can present the VE with a hypothetical to solicit an opinion of employability. The work-related activities are divided into four groups. The first category (understanding and memory) contains three activities pertaining to the worker's ability to remember locations and work procedures and understand and remember instructions of various lengths and detail. The second and largest category (sustained concentration and persistence) examines a worker's ability carry out instructions, maintain focus for extended periods of time, maintain a regular schedule, and make judgments, all in the absence of special supervision. The third category is social interaction, and refers to an individuals' ability to work with both the general public and co-workers, and to accept criticism and direction from superiors in a socially and work-appropriate oriented manner. The fourth and final category is adaptation, and refers to the worker's ability to deal with changes to their work environment in a safe manner and to set realistic goals apart from others. Experienced experts, evaluators, and job placement providers will recognize these 20 work-related activities as critical considerations for any job seeker attempting to access jobs in the United States economy.

The Vocational Expert's Challenge

Unfortunately, the DOT does not directly provide concise occupational information on the 20 work-related activities. There are two tangential sources of information that may indirectly address these activities. The first, coming directly from the DOT, is the reasoning category under the larger heading of general educational development (GED). This addresses, in part, activities from the first two broad categories (understanding and memory, and sustained concentration and persistence). This however would appear to be helpful in addressing only a small number of the work-related activities. The second area of information is work temperaments (actually found in the Classification of Jobs (COJ) and Revised Handbook for Analyzing Jobs (RHAJ), but which provides additional information on each of the occupations found in the DOT). The temperaments speak to the adaptability requirements of a job and on face appear to mirror, to some degree, the 20 work-related activities found

on the MRFC. If a true connection does indeed exist, the VE could conceivably link each mental activity to each occupation *objectively*. For example, the mental activity requiring a worker to maintain the "ability to interact appropriately with the general public" would appear on face to equate to the temperament of "dealing with people", denoted by the letter "P". Any limitation on the claimant's ability to interact appropriately with the general public would create some barrier to working in occupations (i.e. sales clerk, counselor) requiring this temperament. A further examination of the temperaments category is warranted.

Temperaments

Temperaments refer to the personal traits used by the worker in adjusting to the requirements of his or her job (Miller, Treiman, Cain, & Roos, 1980). By understanding an individuals' personality, and matching them to jobs requiring that personality trait, the likelihood of successful job placement is enhanced. A person's dissatisfactions or failure to perform adequately can sometimes be attributed to an inability to adapt to a work situation rather than to an inability to learn and carry out job duties (RHAJ, 1991). When considering a claimant's mental residual functional capacity, it is helpful to understand limitations on personality which may in turn impeded a return to work.

The RHAJ identifies 11 temperaments (See Table 1). Published research on temperaments is scarce beyond the *Handbook*. A look to the process of job analysis however yields information on how temperaments factor into work activity. The category "temperaments" is one of the components of job analysis because different job situations call for different personality traits on the part of the worker. Experience in placing individuals in jobs indicates that the degree to which the worker can adapt to work situations is often a determining factor for success.

When performing a job analysis, the analyst must take care to evaluate what adaptability requirements are demanded of the worker. This is not always easy, as temperaments are not always readily visible (e.g. performing effectively under stress). Analysts found the temperaments traits (along with aptitudes and interests) to be more ambiguous than others (physical and environmental aptitudes, SVP, etc.). Nor could analysts offer a ready explanation for how they decided on these ratings, other than to say they learned through experience or that it was a matter of getting a feel for the job (CBSSE, 1980). In fact, the "temperaments" trait reflects a theory of vocational preference for which the empirical support is limited.

Through a combination of interviews and observation however, raters for the United States Department of Labor (subsequently utilized in the formation of the DOT) identified at least one temperament for each of the over 12,000 occupations identified in the DOT.

Table 1
List of Temperaments

D – directing, controlling, or planning activities of others
R – performing repetitive duties
I – influencing people in their opinions, attitudes, and judgments
V – performing a variety of duties
E – expressing personal feelings
A – working alone or apart in physical isolation from others
S – working effectively under stress
T – attaining precise set limits, tolerances, and standards
U – working under specific instructions
P – dealing with people
J – making judgments and decisions

Source: The Revised Handbook for Analyzing Jobs

Temperaments were selected based on their importance “in relation to the kinds of adjustments which the worker must make for successful job performance” (RHAJ, 1991). Because of the ambiguity associated with temperaments, professional judgment of the VE will remain highly valued, particularly given the dated information of the DOT. As the jobs have changed over the years, so too may have the temperaments. The VE is in the best position to provide the court with this information. Ultimately, the work temperaments may be the most direct link to the mental activities found on the MRFC form, thus providing guidance to the expert.

Reasoning GED

While temperaments would appear to go a long way in addressing work activities, it may be necessary to also include the concept of “reasoning” (See Table 2). Utilizing reasoning as defined by the DOT and RHAJ may address certain mental activities (e.g., ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes) which may not be fully explained by temperaments alone. In *Whitzell v. Barnhart*, the ALJ found the claimant to possess the ability to maintain concentration and attention sufficient to performing simple work tasks and to maintain attention and concentration required for more complex or detailed tasks occasionally, but not to maintain attention and concentration for extended periods of time and not on a continuous basis. In response, the VE found the claimant to be capable of occupations requiring a level 2 reasoning educational capacity (associated with a 4-6th grade ability and generally considered to be common in unskilled occupations). By definition (as found in the RHAJ), an occupation requiring a level 2 reasoning capacity calls

for a worker to apply commonsense understanding to carry out detailed but uninformed written and oral instructions. The Court of Appeals found the VE's opinion was inconsistent with the DOT, and the ALJ to have failed to inquire as to the rationale behind the discrepancy. Deviating from the DOT requires such explanation from the VE, with the basis for their rationale most often stemming from individual experiences performing job placement activities.

If it is possible to match temperaments and reasoning GED as identified in the DOT (and more specifically, the COJ) to the MRFC assessment form, then the VE would be able to identify which occupations are impacted by limitations on each of the 20 work-related activities. The second step, assessing the extent to which this temperament is required is more difficult and most probably left to VE clinical judgment. Unfortunately, the DOT only identifies whether the temperament is present, but not to what extent it is required of the worker (unlike aptitudes, which are graded on a progressive scale). The third step, defining the severity level of ratings, would appear to require some level of consensus, as to date the SSA does not offer any guidance on this matter. The present study however is not concerned with examining the means in which severity is determined. In an attempt to assist with the first steps, the following study is conducted.

Current Study

A web-based survey was approved by Northeastern Illinois University's Human Subjects Review Board, and the International Association of Rehabilitation Professionals (IARP). It was this later organization that provided a list of members of its' Social Security Administration Vocational Expert subsection, which

Table 2
Definitions of Reasoning Development

Level 1	Apply commonsense understanding to carry out simple one- or two-step instructions. Deal with standardized situations with occasional or no variables in or from these situations encountered on the job.
Level 2	Apply commonsense understanding to carry out detailed but uninvolved written or oral instructions. Deal with problems involving a few concrete variables in or from standardized situations.
Level 3	Apply commonsense understanding to carry out instructions furnished in written, oral, or diagrammatic form. Deal with problems involving several concrete variables in or from standardized situations.
Level 4	Apply principles of rational systems to solve practical problems and deal with a variety of concrete variables in situations where only limited standardization exists. Interpret a variety of instructions furnished in written, oral, diagrammatic, or schedule form.
Level 5	Apply principles of logical or scientific thinking to define problems, collect data, establish facts, and draw valid conclusions. Interpret an extensive variety of technical instructions in mathematical or diagrammatic form. Deal with several abstract and concrete variables.
Level 6	Apply principles of logical or scientific thinking to a wide range of intellectual and practical problems. Deal with nonverbal symbolism (formulas, scientific equations, graphs, musical notes, etc.) in its most difficult phases. Deal with a variety of abstract and concrete variables. Comprehend the most abstruse classes of concepts.

Source: The Revised Handbook for Analyzing Jobs

at the time contained 242 names, of which five were struck due to providing assistance with the current study, and another 9 were eliminated due to insufficient contact information. The result was 228 potential respondents, all of whom hold contracts with the SSA to provide vocational testimony. Participants requesting a hard copy were mailed one. A total of 46 responses were received, representing 20% of the accessible population. Of these, over half (54%) have performed as a VE for the SSA for more than 9 years, with 80% having served in this role for more than five years. Participants reported their primary source of knowledge of the employability of individuals with mental or cognitive impairments came from coursework at the Masters level (89%), job placement of individuals with such impairments (78%), and vocational evaluation of individuals with such impairments (65%). It is their past experience in placing individuals with such impairments into gainful employment which was cited as the primary basis (91%) for an expert's opinion of employability, with the Social Security guidelines (46%) as the only other source of guidance to receive significant response. Respondents engaged in a variety of other settings, including workers compensation, personal injury, divorce, and medical malpractice. Each of the 10 regions defined by the SSA were represented.

Results

Results of the survey are described in the Appendix, with a few trends emerging. Across each of the 20 work-related activities, respondents typically identified multiple temperaments that can be connected to any single activity. For example, on the work activity "ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods", the 46 respondents identified an average of 6.63 temperaments connected to this mental/cognitive demand. While there were individuals who identified only 1 (or "none") temperament on a particular work activity, this was the exception. Even the lowest recorded temperament on any one activity was indicated by 9% of the respondents ("ability to understand and remember very short and simple instructions").

In fact, there were multiple cases where a temperament that did not appear, on face, to have any connection to the work-activity were cited by multiple respondents. The "E" temperament (expressing personal feelings) was identified by 5 individuals for the work activity of "ability to remember locations and work-like procedures". The "I" temperament (influencing or persuading others) was identified by 13% of the respondents for the work-activity of "ability to travel in unfamiliar places or use public transportation". Perhaps the opportunity to follow up with these respondents would shed light on the rationale for

these associations. Indeed, on other occasions, respondents identified temperaments/work activity connections that would not have been anticipated, but which an argument could be anticipated. For the cognitive/mental activity "ability to understand and remember detailed instructions", 10 respondents identified the temperament "working alone or apart from others" (A). It is surmised that the argument would be that an individual who could not remember detailed instructions would not be able to work alone or apart from others, including co-workers or supervisors. This raises consideration regarding the different interpretations among VEs, which is discussed further in the conclusions section.

The Appendix provides information on each of the 20 work-related activities and those temperaments that were identified by at least half the respondents as being associated with each mental-cognitive activity. The lowest reported temperament is also identified to provide a picture of the range of identified temperaments. From the results, several conclusions are tentatively offered.

Conclusions

The present study serves as a launching point for discussion as to whether VEs can more easily understand the impact of hypothetical limitations to the 20 work-related activities on the MRFC form utilized by the SSA by connecting the activities to work temperaments. While limitations to this study preclude ultimate conclusions, trends in responding appear to provide weight to several preliminary contentions.

1. Reasoning has a strong connection to the work-related activities. It was surmised prior to the administering of the survey instrument that the reasoning variable, as identified under General Educational Development would be helpful in addressing "only a small number of the work-related activities". Examination of survey data finds the vocational expert community in strong disagreement with this assumption. With few exceptions, Reasoning was identified by at least half of the respondents as being associated with most work-related activities. The Reasoning variable is critical. As Language and Mathematics GED always are no more than equal to the Reasoning GED, any reduction in Reasoning will result in a corresponding reduction to these other proficiencies. Although there is no perfect correlation, this reduction would also have some impact on the skill level of jobs the claimant could perform. Therefore, even if the hypothetical posed by the ALJ was not to include consideration of only unskilled work, limitations on any of the work-related activities, as dependent on the individual VE, might nonetheless result in this drastic restriction in skill level consideration. On 16 of the 20 work-related activities, more than half of respondents

identified the Reasoning GED as being associated, indicating that VEs would consider a reduction in reasoning, and by default decreases in mathematics and language proficiencies, as well as specific vocational preparation.

2. For every mental-cognitive work activity, multiple temperaments may be impacted. Most VEs identified multiple temperaments/Reasoning GED as being connected to each activity. It was not uncommon for respondents to indicate that 6 to 7 temperaments would be associated with each of the work-related activities. The result was that each of the 20 activities each temperament received *at least 4* responses, highlighting the diverse perceptions of VE's.

The ramifications are severe in this regard. A review of select commonly cited occupations from across different industries: small product assembler, surveillance system monitor, home companion, cashier II, and information clerk, reveal work activities with 2 or more temperaments, increasing the odds that limitations on any one of the work-related activities, with VEs perceiving up to 6 to 7 associated temperaments, would result in potential elimination of these occupations. Certainly the severity of limitations needs to be explored, but a limitation on any one mental activity, if this many temperaments are truly affected, places many entry-level commonly cited occupations at risk. Yet most of these occupations have only 1-2 temperaments associated with them. It is possible that the DOT/COJ underestimates the extent to which all temperaments are present in any one job. Perhaps even simple assembly jobs require some ability to make judgments and decisions, work under stressful conditions, or express personal feelings. But the idea behind assigning temperament is presumably to identify those temperaments that are pervasive in an occupation, and thus of absolute importance to the worker. For this reason, it would appear on the surface that VEs are too liberal in identifying the extent to which temperaments are connected to mental-cognitive work activities. While individual clinical judgment needs to be respected, each VE may need to consider whether an inability "to maintain concentration for extended periods" truly reflects the temperament "expressing personal feelings". This is not to suggest these VEs are incorrect, but rather to stress that the profession carries varied opinions, that the expert needs to be able to justify their opinion, and that a claimant's ultimate fate can hinge on which VE is assigned to their case.

3. Based on the perception of VEs, any limitations on the work-related activities will particularly jeopardize those occupations requiring the ability to perform repetitive duties (R), attain precise set tolerances (T), work under specific instructions (U), and make judgments and decisions (J). Reasoning aside, these four temperaments were most identified as being associ-

ated with the various activities, frequently being cited by more than half of respondents on each of the activities. Again, some of the more typically cited occupational alternatives from across various industries: small product assembler (R and U), surveillance system monitor (R and U), home companion (J), cashier II (T), and information clerk (J), would be impacted by cognitive-mental limitations. The V and J temperaments are especially tied to the work-related activities, noted by the majority of respondents across the four categories: understanding and memory, social interaction, sustained concentration and persistence, and adaptation. This is not necessarily surprising. Among the over 12,000 titles in the DOT, 45.9% contain the R temperament, 54.8% the T temperament, and 47.3% the J temperament. This suggests that when any mental-cognitive activity cited by VEs and being associated with these temperaments is restricted, approximately half the DOT is immediately eliminated from consideration. The implications are obvious. The U temperament falls at the other end of the spectrum, with just 1.5% of occupations requiring the ability to work under specific instructions. Other temperaments – I, E, A, and S, all are required of less than 4% of occupations. Fewer occupations are therefore impacted by inclusion of these temperaments. Overall, with so many VEs indicating the influence of any one activity on multiple temperaments, the impact of mental-cognitive limitations is quite evident. Again, severity of the restriction needs to be further explored.

4. Vocational clinical judgment should not be disregarded. The SSA previously created grids to identify the impact of age, education, and work history on an individual's employability. These were intended to assist ALJ's in making a determination of disability, and in part, were seen as a means of eliminating the need for VEs in the courtroom. Yet ALJ's continue to turn to VE's to assess the impact of these variables when the claimant does not "grid out". This may be because ALJ's value the VE's knowledge of the world of work in the 21st century. Increasingly, older individuals are pursuing training to embark on second careers. Educational demands of occupations have changed. The age of the workforce has increased. Yet the grids have not kept pace with the changing labor market. The rapidly evolving workforce and volatile labor market requires the grids constantly be updated and short of this, VEs be utilized to explain how these variables interplay with labor market conditions. Vocational experts, with their continued role as job placement providers and vocational evaluators, are in the best position to understand current occupational specific job demands. The impact of cognitive-mental limitations is subject to the same evolution of the labor market. Further, the lack of consensus among respondents to this survey, which may be attributable to any number of factors, lends doubt that a uniform men-

tal-cognitive grid could be created that would accurately reflect the true demands of today's labor market.

Finally, VEs are needed to assess to what extent a temperament is needed in an occupation. Physical functional capacity evaluations provide clear definitions as to the frequency an activity may take place. A job might require an individual to crouch on occasion (up to 1/3rd of the day), or a physician might opine their patient to be able to handle on a frequent (up to 2/3rd of the day) basis. Therefore, hypothetical limitations set by an ALJ are easily interpreted, and the VE is able to adjust the claimant's residual functional capacity accordingly to produce a list of feasible vocational alternatives. This is not possible with temperaments however. The COJ indicates only that an occupation requires the temperament or it does not. There is no "frequency", and yet in reality "dealing with people" may be done for only a brief period, or on a cursory basis, in a particular occupation. Therefore if a claimant is mildly limited, the occupation may still be feasible. It is here where an ALJ will rely on the expertise of the vocational witness. Even with an objective means for connecting temperaments and reasoning GED to the work-related activities, the VE will be valued for their understanding of the extent to which a temperament exists in a job.

Summary

Unfortunately, hard conclusions as to the association between the mental-cognitive work activities as found on the MRFC form and work temperaments as defined in the RHAJ require more in depth analysis. The current study reflects only the perception of VEs, and does not include examination of occupations in today's current labor market against each of the 20 work-related activities. Perhaps this can be addressed through the long-rumored update or replacement of the DOT. Short of this, it may be left to VEs to consider the MRFC form and the role temperaments and reasoning can play when they are called upon to conduct their own job analysis. Given the cost, time, and need for analysis of multiple jobs within the same occupation however, this appears an unlikely solution. What is fairly clear is that there is no standardized means for interpreting the MRFC form. Some respondents found multiple temperaments to be associated with each work activity, while others found none to be associated. This does pose a challenge for claimant's representatives in knowing how to prepare for VE testimony.

The second issue is the question of the validity of temperaments. Empirical support for temperaments is weak and among the vocational rehabilitation community their role is not universally understood. The temperaments are also broad. The "J" temperament,

for example, only indicates that a job requires, or a person is capable of, making judgments and decisions. There is no clarifying explanation of what constitutes a "judgment" or "decision", nor any definition of what constitutes "making" such a judgment or decision. Therefore interpretation is left open as to exactly what this temperament entails. While it would certainly seem to fit that an office manager would be required to make judgments and decisions as traditionally defined, it is not as clear whether a cashier has to make – even to a minimal degree – judgments and decisions. According to the DOT cashiers do not have to exercise this trait, but a vocational expert, based on their knowledge of current labor market trends, may argue that deciding how much change to give a customer is in itself a "judgment and decision". This argument is permissible, provided the VE can defend it. With such latitude and subsequently diversity of opinions, it is not surprise that VEs in turn differ on their opinion of whether this temperament is required of each of the 20 work-related activities on the MRFC form.

Finally, the severity of limitations must be considered. Even if a connection between temperaments can be made, there is one more step to consider: the severity of the limitation. Using the work-related activity "ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes" as an example, it can be seen that the extent of the limitation may influence an expert's ultimate opinion of employability. A vast majority (87%) of respondents opined that the temperament "dealing with people" is associated with this activity. This would potentially impact occupations including gate guard, cashier, companion, and receptionist. But the severity of the restriction: mild, moderate, marked, would determine whether the claimant could ultimately perform these occupations. That is, it is not enough to merely connect a temperament to a work-related activity, but consideration to the extent that it is vital to the job, and how the VE defines each severity level, will ultimately be necessary to determine whether the MRFC form can truly be connected to temperaments and reasoning. The severity of a limitation requires future study.

Despite these shortcomings, the current study attempts to begin dialogue and exploration of a more standardized means for VEs to render opinions of employability when cognitive-mental limitations are in place. Although strongly recommending against any replacement of VEs with uniform "grids", this study seeks to provide guidance to the VE, and help the expert to appropriately identify temperaments that may be impacted by functional limitations. Ultimately, the goal is to more accurately identify feasible occupational alternatives for claimant's applying for Social Security Disability benefits.

References

Burns v. Barnhart, 312 F.3d 113, 119 3d Cir. 2002

Field, J., & Field, T. (2004). *The transitional classification of jobs* (6th ed.). Athens, GA: Elliott & Fitzpatrick, Inc.

Haddock v. Apfel, 196 F.3d 1084 10th Cir. 1999

Harper, R. B. (1985). *The rehabilitation counselor as an expert witness in personal injury litigation*. In L. S. Taylor, M. Golter, & T. E. Backer (Eds.), *Handbook of private sector rehabilitation* (pp. 55-69). New York, NY: Springer.

Kerner v. Flemming, 283 F.2d 916, 921-22 (2d Cir. 1960)

Miller, A., Treiman, D., Cain, P., & Roos, P. (Eds) (1980). *Work, jobs, and occupations: A critical review of the Dictionary of Occupational Titles*. Washington, DC: National Academy Press.

SSR 96-5p: Policy interpretation ruling Titles II and XVI: Medical source opinions on issues reserved to the commissioner. Effective July 2, 1996

Social Security 404.1520a (65 FR 50774, Aug. 21, 2000; 65 FR 60584, Oct. 12, 2000, as amended at 71 FR 16444, Mar. 31, 2006)

Social Security 404.1545 (56 FR 57943, Nov. 14, 1991, as amended at 68 FR 51162, Aug. 26, 2003.)

The Revised Handbook for Analyzing Jobs (1991). [Washington]: U.S Dept. of Labor, Employment and training Administration, U.S. Employment Service.

Dictionary of occupational titles. [Washington]: U.S Dept. of Labor, Employment and training Administration, U.S. Employment Service.

Whitzell v. Barnhart, 379 F. Supp.2d 204 (D. Mass. 2005)

Author Note

Craig Johnston, PhD, CRC, is a vocational consultant with Johnston Vocational Consulting and an assistant professor in the rehabilitation counseling program at Northeastern Illinois University. He is a practicing vocational expert providing testimony in a variety of cases, including in Social Security Administration disability adjudication.