

Implications of the Coronavirus Pandemic for Vocational Expert Assessments: A Preliminary Analysis

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The coronavirus disease 2019 (COVID-19), which continues to impact humankind, confronts vocational experts with manifold challenges in performing analyses of claims of loss of earning capacity. This article captures the essence of the historic times during which vocational experts are performing their analyses. A summary of vocationally relevant known and unknown information amidst the crisis provides context for addressing two case studies, illustrating how vocational experts can integrate case-specific and COVID-19 uncertainties to render opinions within a reasonable degree of vocational rehabilitation probability. The first case study requires an analysis presenting opinions tentatively, with final opinions suspended. Opinions in the second study – despite COVID-19 pandemic unknowns – appear in final form. Case analyses include rationale associated with opinions rendered.

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Coronavirus disease 2019 (COVID-19) is a severe, acute respiratory illness (CDC, 2020) that suddenly, in a matter of weeks, has afflicted millions of people worldwide and cast a booming economy into unfathomable disarray (American Journal of Managed Care, 2020). Characterizing its implications for vocational experts as profound, is an understatement. As the economy collapsed, American workers have scrambled to protect their health, jobs, and remainders of their IRAs/401(k)s. Those in nonessential jobs who are fortunate enough to work remotely have done so, while others succumbed to pursuing unemployment benefits. In a seeming nanosecond, unemployment soared from record lows to record highs. To place in perspective the meteoric rise in unemployment COVID-19 caused, the prior record for first time unemployment filings, set in 1982, was 695,000 (U.S. Bureau of Labor Statistics, 2020b). That record was dwarfed during a 3-week period in March/April 2020 when applications for unemployment benefits were 3.28 million, 6.87 million, and 6.6 million, respectively (U.S. Bureau of Labor Statistics, 2020b). Claims were especially high in California, Florida, Michigan, and New York. With a labor force that totals approximately 162 million in 3 weeks, an estimated 1 in 10 workers lost their jobs (U.S. Bureau of Labor Statistics, 2020b). The trend continued and an additional 5.25 million Americans sought unemployment benefits the next week. During the 4-week period ending April 11, 2020, more than 21 million workers filed claims, and that number doubled by the week ending May 30, 2020 (U.S. Bureau of Labor Statistics, 2020c).

Before the pandemic, the largest number of Americans seeking jobless aid during a 4-week period was 2.7 million in fall 1982 (U.S. Bureau of Labor Statistics, 2020b). The pandemic has ravaged industries – airline, cruise, hospitality, automotive, gas and oil, retail sales, manufacturing, agriculture, and entertainment, to name a few – and nonessential businesses throughout the country closed, with federal and state governments directing citizens to stay at home. Pay cuts, furloughs, and lay-offs have become the new norm (Weiss, 2020). Other artifacts of COVID-19 include thousands of nonviolent in-

mates being released from jails and prisons to prevent the disease's spread (Barr, 2020). These have led to new concerns including a spike in crime.

The U.S. government responded to the crisis with, among other things, a colossal \$2.2 trillion stimulus package – the Coronavirus Aid, Relief, and Economic Security (CARES) Act (U.S. Department of the Treasury, nd). In addition to giving adults who earn less than \$99,000 annually up to \$1,200 stimulus checks, the bill expanded unemployment benefits, and offered small businesses assistance through the Paycheck Protection Program and Economic Injury Disaster Loans. A considerable expansion of government spending for further COVID-19 aid appears imminent. This article explores the unprecedented effects of COVID-19 as they relate to vocational experts. As of the time of this article's submission, no imminent economic recovery loomed, and healthcare professionals anticipated a 12-to-18-month period to develop a COVID-19 vaccine. Politicians and healthcare experts were at odds about issues ranging from when to ease stay-at-home advisements to the extent of precautions necessary to implement when civic authorities have deemed it safe to reopen society. Meanwhile, despite the unknown state of our world and vicissitudes in the workplace, vocational experts have continued to go about the work of valuing claims of loss of earning capacity, attempting to provide opinions within a reasonable degree of vocational rehabilitation probability.

To say the least, there are many unknowns, and the state of affairs seems to change as rapidly as the insidious disease onset. The following sections discuss what we know and do not know about COVID-19's effects. These presentations, of course, are not exhaustive, and some of what follows will likely be dated by the time this appears in print. The statements and questions posed intend to both establish a frame of reference particularly important to present-day vocational experts, and to commemorate a historical reference point for readers who might later refer to this work.

The Known About COVID-19 and Related Matters of Particular Relevance to Vocational Experts

The rehabilitation literature (Strauser, 2014; U.S. Bureau of Labor Statistics, 2020a), provides retrospective data, and the unending reporting of real-time COVID-19 events and issues, which offers contemporary data, enables us to draw some reasonable conclusions on matters pertinent to vocational rehabilitation analyses. Currently, these conclusions include the following:

- Epidemiologists, infectious disease specialists, and allied healthcare professionals have yet to fully reconcile COVID-19's scope.
- Unemployment will likely continue to remain high, with many jobs permanently lost.
- Businesses of all sizes will cease operating because of factors ranging from difficulties with maintaining payroll costs to generating revenues, due to their customers' fears to enter their premises.
- Some industries – such as supermarkets, wine and spirits, videoconferencing services, home delivery distributors, and suppliers of protective products – have fared relatively well and, in some cases, prospered during the crisis.
- Recovery will be more protracted and challenging for certain industries.
- Safe workplace practices have and will continue to be developed and implemented.
- A premature ease of social distancing rules could spawn a new wave of COVID-19.
- Historically, people with disabilities experience higher rates of unemployment than able-bodied job candidates, and the disparity enlarges during periods of economic downturn.
- Long lasting, deleterious psychosocial sequelae often follow traumatic events, especially unprecedented ones like COVID-19 (American Psychiatric Association, 2013). Problems with fears (including contact with people and various environments), anxiety, and posttraumatic stress disorder, for instance, will likely have some effect on workers' and consumers' behaviors.

- Generally, those in unskilled jobs have fewer opportunities to work remotely than those in higher-skilled jobs.

The Unknown About COVID-19 of Particular Relevance to Vocational Experts

COVID-19 has caused unprecedented, worldwide havoc on all institutions including those beyond the workplace – from places of worship to academic institutions, sports events, and facilities providing care to the elderly – and upended life for all. In its wake, many questions beyond what vocational experts know need to be answered, including:

- Will subsequent waves of COVID-19 recur, necessitating the redeployment of austere measures instituted during the shut-down of nonessential businesses and stay-at-home directives? If so, how will these affect: (a.) job incumbents and job candidates, and (b.) labor markets?
- When will it truly be safe to “reopen the economy?”
- How will COVID-19 affect various demographic groups of our workforce during the near and intermediate terms, including those ranging from new workplace entrants to those in the latter phases of their career development (Super, 1990)?
- What new industries and occupations will arise in the midst of COVID-19 and its aftermath, including after it is contained and eradicated?
- Regarding the workplace in the midst of COVID-19 and beyond, how will the myriad changes and concerns we have already encountered continue to affect it and the way we work?
- How long will labor markets take to recover from COVID-19’s destruction?
- Will government aide be remotely sufficient to help rehabilitate the economy?

The knowns and unknowns enumerated above, both singularly and in tandem, portend enormous implications for vocational experts. Regardless, claims of loss of earning capacity – initiated before and after COVID-19 – will continue, and the justice system will call on vocational experts to apply the science of their profession to perform analyses and render opinions within a reasonable degree of vocational rehabilitation probability. Adding to this task’s complexity is the adversarial environment in which experts perform and defend their work (Shahnasarian, 2009; 2012).

Addressing COVID-19 in Vocational Expert Analyses

The International Association of Rehabilitation (IARP) Standards of Practice (2007) provide a touchstone to synthesize in vocational assessments pertinent factors such as those COVID-19 introjects. Among other things, the standards mandate experts to consider variables relevant – both individual and labor market – in the assessment process (Standard D5), and to understand specific barriers/opportunities to examinees’ implementation of a vocational plan (Standard D7b). Clearly, during the near future, acknowledging pertinent COVID-19-related factors and integrating them into analyses will be indicated in many assessments of claims of loss of earning capacity. While the questions posed above remain unresolved, some vocational expert assessments will necessitate incomplete, tentative, or suspended final opinions.

The two case studies selected for discussion below illustrate how vocational experts integrated case-specific information with COVID-19-related factors – both known and unknown – to address loss of earning capacity questions in compliance with practice standards. In the first case study, reaching final conclusions was not possible; however, the expert in the second case study determined there was sufficient evidence to provide final opinions. The discussions include rationale the experts applied.

Case Study 1

A 35-year-old, with an 11th grade education, passed the general equivalency diploma (GED) exam and holds employment as a forklift driver where he experienced a work-related, left-lower-extremity crush accident. His injuries required him to undergo amputations of three toes, and he acquired secondary problems that included right knee and ankle symptoms due to overuse, and intermittent lower back pain due to an antalgic gait and altered postaccident body mechanics. Further, the examinee experienced significant disability adjustment problems.

Other relevant facts include the examinee becoming injured more than one and one-half years before the examination and he had not since worked. The vocational expert conducted his assessment in early March 2020, before stay-at-home directives and declaration of COVID-19 as a pandemic, and the opinion, presented below, was offered on the eve of the massive unemployment filings:

Regarding Mr. Smith's work capacity, he has been unable to resume his former occupation as a forklift operator, and it is improbable that he will regain this capacity. I recommend that he restrict future employment pursuits to sedentary work. Mr. Smith's injuries and associated disabling problems from his 2018 accident have caused him to lose access to a large sector of the workplace previously accessible to him. Additionally, he has acquired several vocational handicaps that, within a reasonable degree of vocational rehabilitation probability, will further diminish his residual vocational capacities. I support his efforts to secure a home-based, telephone-oriented job that would permit him the flexibility he requires. Obtaining a position of this sort will be challenging for Mr. Smith, especially in view of the recent labor market vicissitudes caused by the COVID-19 pandemic. My prognosis for his vocational rehabilitation at this time is guarded / poor. I recommend an update assessment when the workplace becomes more stable.

In this case, the vocational expert reached conclusions supported by facts and analyses at hand, including (a) the plaintiff's injuries rendered him permanently unable to resume his prior occupation and other types of physically demanding employment, secondary to acquired disabling problems, and (b) the plaintiff was a candidate for alternate employment, albeit at a sedentary level. The expert also referenced vocationally relevant factors that threatened future employability and earnings, including those COVID-19 pose. Of note, the expert stopped short of recognizing a loss of earning capacity, as well as quantifying a potential loss, by recommending an update assessment when the labor market stabilized in light of the pandemic. This approach served to advance the vocational analysis and provide interested parties germane information while deferring opinions on monetary loss; not refraining from the latter would diminish the expert's credibility and invite criticism of a speculative opinion.

Case Study 2

Like the case summarized above, the examinee in Case Study 2 became injured well before the COVID-19 pandemic; however, unlike the examinee in Case Study 1, he returned to work and had continued to work until the crisis upended his career development. This and other case-specific facts enabled the examiner to arrive at more definitive opinions.

Briefly, Case Study 2 involves a 73-year-old realtor who specialized in an exclusive Florida luxury market. His core clientele spent their winter months in a wealthy community and brought with them their horses to ride, show, and compete in polo matches and racing events. The plaintiff pursued a claim of loss of earning capacity for injuries he associated with a 2016 vehicular accident, alleging problems with cognitive dysfunction. Excerpts from the vocational expert's analysis follow:

Mr. Jones conveyed his early career development involved equestrian work, and he secured licenses as a realtor and real estate broker more than 20 years ago. During recent years he has been self-employed. Mr. Jones described a specialized niche he established: equestrian-related residential sales in Southwest Florida. According to Mr. Jones, this niche is highly competitive and, beyond traditional realtor work, required him to network extensively via horse shows, charity

events, and social outings where he attempted to develop/convert relationships to generate listings and sales. The specialized niche he developed had a seasonal component, and most of his efforts were in January, February, and March. He recalled his cognitive difficulties began “right away” after his 2016 accident, and he assessed they have rendered him less effective as a realtor. Specifically, Mr. Jones cited postaccident difficulties with interpersonal relationships and handling his preaccident work volume, which he asserted has diminished his competitiveness. His records document complaints of minor neurocognitive difficulties. During my clinical interview, Mr. Jones, understandably, was quite anxious about the COVID-19 pandemic and his personal safety, and he disclosed his plans to self-isolate. By extension, he discussed his significant concern about the viability of the real estate market due to the current crisis. Obviously, because of the COVID-19 pandemic, the types of social events Mr. Jones noted attending have been cancelled/ indefinitely postponed. These unfortunate world events likely would have adversely impacted his vocational/ avocational activities, regardless of any injuries he might have sustained in 2016. Of course, the full effects of the COVID-19 pandemic on Mr. Jones’ industry cannot be fully assessed at this time. From a physical perspective, he appears capable of performing sedentary/ light exertion work tasks comparable to those he reported performing preaccident. He scored in the high-average range of intellect on testing I administered, consistent with my estimate of his preaccident level. Before the disruption caused by the COVID-19 pandemic, Mr. Jones indicated, he had continued socializing, including hosting dinner parties and other functions, albeit on a smaller scale than what he reported to do preaccident. The activities of daily living he presented indicate he continued to maintain a high level of activity before COVID-19 social distancing directives. He spoke confidently about his skills and knowledge of his industry niche, and assessed he is psychologically well-adjusted. The information I have thus far had an opportunity to consider is insufficient to support Mr. Jones’ claim of loss of earning capacity secondary to his 2016 accident.

Several factors enabled the vocational expert to reach final opinions, despite COVID-19’s unknowns. The analysis considered the plaintiff’s age and phase of career development, lack of documentation supporting contentions of accident-related cognitive deficits, and anticipated ongoing adverse effects of COVID-19 on his specialized occupational niche.

Further, facts arising from the expert’s examination – including test data providing evidence the plaintiff’s cognition was well above average, and analyses of comparable pre-accident/post-accident vocational and avocational activities before the pandemic – belie a conclusion that a 2016 accident caused impaired vocational functioning. Also noteworthy, the plaintiff did not produce documentation demonstrating postaccident income loss. The composite findings led the examiner to determine extant evidence did not support a claim of loss of earning capacity. In this case, and unlike Case Study 1, the expert bifurcated the issue in dispute alleging to have caused vocational impairment – namely, the 2016 accident – and the COVID-19 event, eliminating the latter as a factor meriting further consideration in the claim. On this point, it was COVID-19 that led to the plaintiff’s withdrawal from the workplace, not his alleged cognitive dysfunction.

Summary

The times in which we live, to say the least, are uncertain, yet, the work of evaluating claims of loss of earning capacity goes on. COVID-19 is the metaphorical elephant in the room that contemporary vocational experts will need to evaluate on a case-by-case basis. As always, best practices call for making evidenced-based deductions. As the COVID-19 pandemic evolves, longitudinal data facilitating vocational experts’ ability to synthesize empirical information in their analyses will emerge. In the interim, as always, experts should fully and comprehensively perform assessments of earning capacity based on available evidence. Additionally, they should cite limitations associated with their analyses and avoid making unsupported/unsupportable inferences (Robinson, 2014; Shahnasarian, 2015). Doing anything less diminishes the quality of an analysis and exposes the expert to an opinion being limited and/or disqualified (Daubert, 1993).

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