

Comment on the Importance of Unskilled Sedentary Jobs in the Occupational Requirements

Survey for ICR 201502-1220-006, 80 FR 35676, June 22, 2015

Lewis Tager

Law Office of Rachel Pickard

Author Note

Address correspondence concerning this article to Lewis Tager, Social Security Disability Claimants' Representative, Law Office of Rachel Pickard, PO Box 547, Gastonia NC 28053, Phone: 704-867-5341, Fax: 704-867-4490, Email: ltager@rachelpickard.com

Abstract

The 2015 Supporting Statement for the Occupational Requirements Survey Justification (Part A: Overview) did not adequately consider earlier comments that sedentary unskilled positions merit special attention in the ORS. A disproportionately large number of unfavorable disability determinations at step five of the Social Security Administration's (SSA) Sequential Evaluation Process (20 C.F.R. 404.1520 & 416.920) depend upon the existence of the 137 unskilled sedentary job titles in the Dictionary of Occupational Titles (DOT; U.S. Dept. of Labor, 1991a). However, evidence suggests that very few of these jobs exist in the current national economy that still require only unskilled sedentary tasks. Specifically, a pair of decades-old peer-reviewed labor market surveys strongly suggested that most unskilled sedentary jobs no longer existed when the DOT was last revised in 1991. The authors of the 2015 Supporting Statement should reconsider their response to these concerns.

The 2015 Supporting Statement for the Occupational Requirements Survey Justification Part A considered comments received on the notice published at 80 FR 8696 on February 18, 2015, and reported, "Another area of concern was that the collection of information should primarily focus on unskilled positions that are sedentary or have light physical demands, and develop information on employer accommodations for these occupations" (DOL/BLS, 2015, June 1, p. 13). The Supporting Statement did not adequately consider these concerns.

Specifically, SkillTRAN president Jeff Truthan commented that he had, "carefully studied the 137 sedentary, unskilled DOT occupations so often cited by SSA in disability adjudication. . . . [and] Trying to actually find sedentary, unskilled employment is increasing[ly] problematic" (Truthan, 2015, April 20, pp. 1-2). Also, National Association of Disability Representatives president Robert McDowell commented:

Since this information is needed only at step 4 and step 5 of the sequential evaluation process, and skill transferability is only needed at step 5, the collection of information should primarily focus upon unskilled positions (currently SVP 1 or 2) that are performed in a sedentary or light nature (as defined by the RHAI). The occupational demands of these positions including physical, mental, environmental, worker characteristics (temperaments in the RHAI), and frequent employer provisions for accommodation (i.e. rates of time off task, ability to sit or stand at will, etc.) should be intensely developed, studied, and highly replicable (McDowell, 2015, April 20, pp. 4-5).

This comment highlights additional information about the disproportionate importance of unskilled sedentary jobs in disability determinations and concerns about whether these jobs actually exist in significant jobs in the current national economy.

Disproportionate Importance of Unskilled Sedentary Jobs in Disability Determinations.

Most U.S. disability benefit programs¹ currently approve or deny claims based on the

¹ Including Social Security Disability Insurance (SSDI), Supplemental Security Income (SSI), Medicare, Medicaid, Supplemental Nutrition Assistance Program (Food Stamps), and Disability Annuities for Railroad Employees. Veterans Disability Compensation and some private disability insurance plans regulated under the Employee Retirement Income Security Act (ERISA) are notable exceptions.

Social Security Administration (SSA) definition of disability, which for most non-blind adults is the complete inability to do any substantial gainful work as described in the DOT (U.S. Dept. of Labor, 1991a) due to medically determinable impairments (20 C.F.R. 404.1520 & 404.1566-404.1569a; Social Security Ruling (SRR) 00-4p). The least mentally and physically demanding of the 12,741 job descriptions in the DOT are the 137 Unskilled Sedentary Jobs (USJs)², requiring no more than 30 days to learn, no more than 10 lbs of lifting or carrying, and no more than two hours of standing or walking in an eight-hour workday (SSR 96-9p).

SSA's 2013 budget request to Congress provided a concise overview of its policies regarding the use of the DOT in disability claims and the impetus for the ORS:

To determine eligibility for benefits, our adjudicators follow a sequential five-step process to evaluate disability claims. Our focus during the first three steps is on whether the claimant is working and the severity of the claimant's medical conditions. Adjudicators decide the majority of claims at steps four [past work] and five [any other work] in the process, which they then use to determine what type of work the claimant may be capable of performing. In order to make this determination, we require information about available jobs and job requirements throughout the national economy. Our adjudicators and staff use information from the Department of Labor's (DOL) Dictionary of Occupational Titles (DOT) and its companion volume, the Selected Characteristics of Occupations. However, since DOL last updated the DOT in 1991 with no plans for future updates, the information has become outdated and insufficient for our needs. We need a source of current vocational information tailored to our Title II and Title XVI disability programs (SSA, Office of Budget, 2012).

At steps one through four the claimant bears the burden of proof, but at step five the burden shifts to the SSA (*Bowen v. Yuckert*, 1987). "In order to support a finding that you are not disabled at this fifth step of the sequential evaluation process, we [SSA] are responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that you can do, given your residual functional capacity [RFC] and vocational factors" (20 C.F.R. 404.1560(c)(2) & 414.960(c)(2)). SSA

² See list at <http://www.vocrehab.com/ssaunskilled.html>.

decision-makers can meet this burden of proof with evidence in two possible forms: citation to the Medical-Vocational Guidelines (the "Grids") or information about specific jobs. The Grids are a set of 83 Rules that direct findings of disabled or not disabled based on a claimant's exertional level, age, education, and previous work experience (20 C.F.R. Part 404 Subpart P Appendix 2). If a claimant's RFC precisely fits a Rule in the Grids, then that rule directs the decision. Approximately 9.6% of Grid rules (8 out of 83³) direct a finding of "not disabled" and are predicated on the existence of USJs in the national economy, even though USJs comprise only 1.08 % of DOT job titles (137 out of 12,741). USJs play a disproportionately large role in unfavorable step five determinations based on the Grids.

If a claimant's RFC does not precisely fit a Rule in the Grids, then that rule provides a framework for decision-making. In order to sustain a step five framework denial the decision-maker must cite specific jobs that exist in the national economy and that the claimant can still do despite his or her impairments. Trapani & Harkin (2011, May, p. 13) reported that the eleven DOT job titles most commonly cited by DDSs in step five initial denials in 2009 were unskilled (SVP 1 or 2), and six of those were sedentary:

Table 1

The eleven DOT job titles most commonly cited by DDSs in Step 5 denials

DOT Occupational Title^(a)	Code^(b)	SVP^(b)	Exertional Level^(b)	% Step 5 Denials^(a)
Addresser	209.587-010	2	Sedentary	9.5%
Cleaner, Housekeeping	323.687-014	2	Medium	5.7%
Photocopying Machine Operator	207.685-014	2	Light	5.3%
Collator Operator	208.685-010	2	Light	3.7%
Surveillance-System Monitor	379.367-010	2	Sedentary	3.7%
Table Worker	739.687-182	2	Sedentary	3.4%
Packager, Hand	920.587-018	2	Medium	2.7%
Lens-Block Gauger	716.687-030	2	Sedentary	2.6%
Counter Clerk	249.366-010	2	Light	2.3%
Assembler, Small Products II	734.687-018	2	Sedentary	2.2%
Call-Out Operator	237.367-014	2	Sedentary	2.2%

(a) Source: Trapani & Harkin, 2011, May, p. 13. (b) Source: U.S. Dept. of Labor, 1991a.

³ Rules 201.18, 201.19, 201.21, 201.23, 201.24, 201.25, 201.27, & 201.28.

Table 1 shows that 23.6% of all step five denials by State Disability Determination Services (DDS) in 2009 depended, at least in part, on the existence of just these six USJs alone. Although these authors only reported their results for 11 of the 12,741 job titles in the DOT, this table strongly suggests that a disproportionately large number of DDS framework denials are predicated on the existence of USJs.

Trapani & Harkin (2011) did not report similar statistics for step five denials at the ALJ hearing level. However, at the 2013 International Association of Rehabilitation Professionals (IARP) Forensic Conference two professionally renowned VEs presenting a continuing education workshop to over 100 of their colleagues voiced the general consensus that USJs are disproportionately important in VE testimony at the ALJ hearing level as well: “at step five, the issue really is that light and unskilled sedentary labor market” (T. McFarland, Vercillo & McFarland, 2013).

This evidence shows that USJs play a disproportionately large role in step five framework determinations as well as those based on the Grids.

Concerns about the Prevalence and Validity of USJs

According to Trudy Lyon-Hart, president of the National Council of Disability Determination Directors (2013), “The current vocational rules were created for a different society and do not take into consideration today's reality. . . . And we wonder how many unskilled sedentary jobs currently exist, and what exactly do they require in the way of physical and mental abilities” (Lyon-Hart, 2009, p.51). Ms. Lyon-Hart's testimony raised two questions about the DOT's 137 USJs relevant to SSA disability determinations: their *prevalence*, or how many of those jobs still exist in the national economy and where, and their *content validity*, or how accurately and completely the DOT and its companion publications describe the knowledge, skills, abilities, and other characteristics (KSAOs) that the current versions of those USJs require,

and whether they have become *combination jobs* requiring tasks that the DOT describes under different job titles or not at all (32 C.F.R. 656.21(b)(2)). If any USJs have evolved to require tasks that take more than 30 days to learn or more than 10 lbs of lifting or more than two hours of standing/walking in an eight-hour day, then claimants limited to unskilled sedentary work can no longer do those jobs.

Two peer-reviewed studies conducted over 25 years ago addressed these questions, and the results strongly suggested that many of the 137 USJs no longer existed in significant numbers in the national economy in 1991, the year of the DOT's last revision.

Bose, Grzesik, Geist, & Bryant (1986) conducted a telephone labor market survey of a random sampling of 9,200 employers identified as likely to offer unskilled sedentary jobs in the Chicago, IL, Standard Metropolitan Statistical Area (SMSA). These authors used an eight item test instrument to assess whether jobs described by the 74 USJ titles from the DOT were actually unskilled, sedentary, and *self-contained*, meaning, “performed as described in the DOT [and] not in combination with other jobs or tasks” (Bose et al., 1986, p. 87). Of the 460 employers surveyed:

Only 11 had jobs encompassing all three characteristics. Most of the other employers only had tasks representing a part of broader jobs requiring greater responsibilities, and several of the jobs were either above the unskilled level, or more than sedentary (i.e., at least light in physical exertion), or both (Bose et al., 1986, p. 89).

In addition, they found that, “only 2.4% of the employers sampled reported having jobs that were sedentary, unskilled, and self-contained as described in the DOT,” and of the 11 employers reporting USJs, eight jobs had 1-5 employees, two jobs had 6-10 employees, and only one job had 11-25 employees. These authors concluded that USJs did not exist in significant numbers in the Chicago SMSA. They also inferred that USJs probably did not exist in significant numbers in the national economy, and asserted, “the Social Security Administration should not use their current

information regarding sedentary, unskilled jobs in their decision making unless further empirical studies support the use of such data” (Bose et al., 1986, p.92).

Five years later, Bose, Lam, Geist, & Chan (1991) reported a follow-up study conducted in 1989 and 1990 in the Chicago SMSA. This study differed from the Bose et al. (1986) study in three main ways. First, these authors expanded their inquiry to include unskilled light⁴ jobs as well as unskilled sedentary and light jobs that provided sit/stand options. Second, these authors changed their survey instrument to a six-item questionnaire that asked employers whether they had jobs with the characteristics of self-contained sedentary or light work rather than asking about specific DOT titles. Third, these authors changed their sampling methodology to survey a random sample of 21,000 manufacturing employers and 27,800 services employers in the Chicago SMSA rather than just employers in industries deemed likely to have unskilled sedentary jobs. Using this revised methodology, Bose et al. (1991) found more USJs than the Bose et al. (1986) study, concentrated in services industries, as shown in Table 1.

Table 2

Numbers of Employees in Self-contained USJs by Industrial Sector^(a)

Self-contained USJs with	Services	Manufacturing
1-5 employees	49	24
6-10 employees	25	3
11-25 employees	16	1
26-50 employees	2	5
51-100 employees	3	0
100 + employees	4	0
Total	99	33

(a) Source: Bose et al., 1991.

Bose et al. (1991) attributed part of this discrepancy to their finding that several of the jobs employers reported as having the skill and exertional requirements of USJs were not

⁴ Light work requires lifting up to 20 lbs at a time, lifting/carrying up to 10 lbs up to 2/3 of an 8-hour workday, a good deal of standing/walking, and/or pushing and pulling of arm-hand or leg-foot controls (20 C.F.R. 404.1567; SSR 83-10).

consistent with or titled the same as those listed in the DOT. These authors also found fewer USJs in manufacturing industries than in service industries, a ratio that is reversed in the DOT. These findings have implications for the content validity of the 137 USJs. They also found that most USJs in the services sector allow a sit/stand option at the employee's discretion, but also that many of the USJs in both sectors require good communication skills and involve public contact. These findings have implications for the criterion validity of the 137 USJs in disability determinations.

Bose et al. (1991) concluded that their findings generally supported the finding of Bose et al. (1986) that many of the USJs in the DOT did not exist in significant numbers as self-contained jobs in the national economy, and that SSA should refrain from using them in disability decision making pending further research. These authors argued persuasively:

Thus, there currently exists no reasonable alternative for vocational experts, rehabilitation counselors, vocational evaluators, and other professionals involved in job placement services than performing a local market survey to obtain usable data for decision making. Certainly it seems important, perhaps imperative, that this study be replicated in other major metropolitan areas

(Bose et al., 1991).

Unfortunately, my review of the literature did not find any such replication studies published since 1991. However, at the 2013 IARP Forensic Conference SkillTRAN president Jeff Truthan reported that his company's statistical methodology estimated the national sedentary occupational base at "under 200,000 and declining" (J. Truthan, Vercillo & McFarland, 2013). If this estimate is correct the Commonwealth of Virginia, for example, with approximately 2.6% of the nation's population (8,185,867 out of 313,914,040; U.S. Census Bureau, 2012) would have a total of 5,200 USJs, or an average of just under 38 positions per USJ title statewide. It is unlikely that such this figure constitutes "significant numbers" of jobs (20 C.F.R. 404.1566 & 416.966).

Conclusion and Recommendations

It is certainly true that, " SSA must have an OIS that describes a wide-range of occupations in the national economy at all skill and exertion levels" (DOL/BLS, 2015, June 1, p. 13). However, the evidence discussed above suggests that the unskilled sedentary labor market deserves special and urgent attention based on its questionable prevalence and validity and the disproportionate importance in disability determinations.

I recommend that the Occupational Requirements Survey should heed the advice of Art Kaufman, legislative co-chair of the National Association of Disability Representatives, in his testimony before the OIDAP panel, and prioritize study of the unskilled sedentary labor market:

Let's do the 80/20 rule. Let's hit 80 percent of the people with -- as quickly as we can, because we can probably do that very, very quickly with only 20 percent of the work. . . . At this time probably there's 30 to 150 vocational experts testifying at hearings as we speak. Those individuals are telling the judges and the representatives what jobs these individuals could perform. Well, let's find out from those vocational experts the top 100, the top 150 of unskilled sedentary work or unskilled light work and then focus our 80 percent at that time to get the job done so that these people aren't waiting around and having the incorrect decisions made (Kaufman, A., 2010).

This comment suggests that SSA's continuing reliance on unskilled sedentary jobs at step five of the sequential evaluation process runs a high risk of adversely affecting substantial numbers of disability claimants every year. Therefore, the collection of information in the ORS should prioritize unskilled positions, beginning with those that are sedentary.

References

- Bose, J. L., Grzesik, T. A., Geist, G. O., & Bryant, D. R. (1986). Misuse of Occupational Information in Social Security Disability Cases. *Rehabilitation Counseling Bulletin*, 30(2), 83-93.
- Bose, J. L., Lam, C. S., Geist, G. O., & Chan, F. (1991). Occupational information in social security disability cases: A follow-up. *Rehabilitation Counseling Bulletin*, 34(3), 274.
- Bowen v. Yuckert*, 482 U.S. 137, 107 S. Ct. 2287, 96 L. Ed. 2d 119 (1987). Retrieved from https://scholar.google.com/scholar_case?case=4503651684013538360
- DOL/BLS. (2015, June 1). *2015 Supporting Statement for the Occupational Requirements Survey Justification: Part A Overview*. OMB/OIRA. Retrieved from <http://www.reginfo.gov/public/do/DownloadDocument?documentID=560644&version=0>
- Kaufman, A. (2010, January 20). In M. Barros-Bailey (Chair). *Proceedings*. SSA, Occupational Information Development Advisory Panel quarterly meeting, Dallas, TX. Retrieved from http://www.socialsecurity.gov/oidap/meeting_information.htm
- Lyon-Hart, T. (2009, June 10). In M. Barros-Bailey (Chair). *Proceedings*. SSA, Occupational Information Development Advisory Panel quarterly meeting, Chicago, IL. Retrieved from http://www.socialsecurity.gov/oidap/meeting_information.htm
- McDowell, R. (2015, April 20). Public Comment. *Comments from the National Organization of Disability Representatives*. OMB/OIRA. Retrived from <http://www.reginfo.gov/public/do/DownloadDocument?documentID=554311&version=0>
- Social Security Administration, Office of Budget. (2012, February). *Full justification of estimates for appropriations committees, Feb. 2012*. Retrieved from <http://www.ssa.gov/budget/FY13Files/2013FullJustification.pdf>

Trapani, M., & Harkin, D. (2011, May). PowerPoint Presentation. *Occupational and Medical-Vocational Claims Review Study*. SSA. Retrieved from

<https://www.socialsecurity.gov/oidap/Documents/PRESENTATION--TRAPANI%20AND%20HARKIN--OIDAP%2005-04-11.pdf>

Truthan, J. (2015, April 20). Public Comment. *SkillTRAN Comments 20150420*. OMB/OIRA.

Retrieved from

<http://www.reginfo.gov/public/do/DownloadDocument?documentID=554309&version=0>

U.S. Dept. of Labor. (1991). *Dictionary of occupational titles* (4th Ed. Rev.). Washington DC:

U.S. Govt. Printing Office. Retrieved from <http://www.oalj.dol.gov/libdot.htm>

Vercillo, A., & McFarland, T. (2013, November 9). Audio recording. *Methodologies for estimating job numbers by Dictionary of Occupational Titles for Social Security vocational experts*. In B. K. Byers (Chair), 2013 International Association of Rehabilitation Professionals Forensic Conference, Charleston, SC.