

NADR

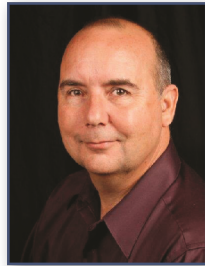
National Association of Disability Representatives

NADR NEWS

The NADR News is published by the National Association of Disability Representatives

1ST QUARTER, 2016

FROM THE PRESIDENT...



It amazes me every year, without fail, that our annual conference provides the much needed encouragement and training we need to better serve our clients. More so than any other professional seminar I've attended, the NADR conference always

pays for itself with either facts and strategies I've learned from the presenters, or tips I've picked up in conversation with fellow attendees. I'm continually impressed with the knowledge base and skill of our membership. One reason NADR is such a great organization is everyone's willingness to share. Whether on the Talklist or at the conferences, members share their knowledge, experience, tools, and successes. If you have not been able to attend one of our annual conferences, please do yourself a favor and plan on attending the 2017 conference in Reno, NV, March 5-8. Think of it as an investment in your career!

I am very pleased to report that the PAC fund is much healthier thanks to the many members who recently contributed. With this being an election year, we have many great opportunities to speak to lawmakers regarding our organization and explain our position on many disability related issues. How many times have we told our clients that the hearing is an opportunity for SSA to see them as a person instead of just paper? The same is true for political action. Attending events and speaking to lawmakers means that NADR will be seen as the group of dedicated professional disability representatives, versus an unknown professional association on paper. Without regular

member contributions to this fund, we would not be able to develop important relationships with congressional staff. Special thanks to our Greg Cates and our PAC committee volunteers for working so hard for this important cause!

Equally important is our legislative fundraising. At the conference, Jeanne Morin, Lou Enoff, Art Kaufman, and Lisa Smith gave important updates about what we can expect from congress and SSA in the next year. They even touched on discussions we are currently having with the Acting Commissioner regarding raising the representative fee cap. NADR would not be where we are today without our Legislative Affairs team. Among other achievements, they secured the opportunity for non-attorney representatives to qualify for direct pay. Consider how different your business would be if you had to rely on collecting fees from your clients. Currently, we have issues that are threatening our businesses; including future policy updates that will make it more difficult for claimants to be approved. NADR pays Jeanne and Lou to be our "eyes on the ground" in DC and speak on our behalf to insure our businesses are not compromised by new legislation. What is that protection worth to you? NADR can only pay for these services if members donate to the legislative (lobby) fund. We had a fantastic response to our fundraising efforts at the conference and I appreciate everyone who stepped up to the plate! Donators to this fund are the reason we have a voice in Washington, DC!

Additionally, I want to express how thankful I am to work on the NADR Board with other members

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THE “AS PERFORMED” CLASSIFICATION

In my opinion, the cross examination of the Vocational Expert is the most important part of the hearing. Not challenging the VE’s opinion regarding the classification of jobs in a hearing is detrimental to a case. Many attorney and non-attorney representatives cross examine VE’s on the number of jobs cited during testimony, looking to discredit the VE based on the numbers, census codes, and GED Levels associated with the jobs. However, the entire process is hinged on the classification of the jobs deemed relevant by the ALJ. If the VE testifies that one can no longer do their past relevant work, then the ALJ and the representative will inquire as to whether or not the claimant can perform other jobs. This process typically involves the VE classifying the jobs related to past work activities performed by the claimant. The ALJ determines the past relevant work that they believe meets the substantial gainful activity (SGA) level, which involves a person who is earning more than a certain monthly amount. This determination is important to a VE because it then spotlights which jobs are to be classified.

Following classification, the claim can shift into a new direction. A seasoned VE will assess the duties of the claimant in the respective jobs to properly classify the jobs “as performed” and not as it is classified in the Dictionary of Occupational (D.O.T.) Titles. “As Performed” simply refers to how that particular individual performed the job (i.e. how much did they have to lift, how long did they stand in performing the essential job duties, etc.) and if they have met the Specific Vocational Preparation level (SVP), which indicates if one has performed the job long enough to become proficient in that job. Although the job titles are the same across the nation, how it is routinely performed may be altered to include more steps, more responsibility, more weight lifted, etc. by the employer. It is best for the disability representative to understand that building their case on the numbers cited by a VE to indicate how many jobs are found within the regional or national economies is “barking up the wrong tree”. The strength of the case is within the classification of the jobs and not in the numbers. The “as performed” classification offered by the VE can change the entire dynamic of the case. In some instances, the “as performed” classification may allow for the consideration of a grid rule or limit an individual from engaging in the past work based on their limitations stated by their treating physician listed within a medical source statement.

Representatives should address the classifications of jobs during their examination of the claimant asking questions about their past employment. Representatives should be detailed in asking how much the claimant lifted, how long they sat, stood, walked, if any heavy machinery was operated etc. It would further benefit a representative to invest in a job classification software such as Job Browser Pro or OASYS, this will enable them to have an idea of the job classification(s) and also transferable skills that the claimant may possess prior to a hearing to formulate a strategic approach. Additionally, an employability evaluation conducted by a VE can further address the “as performed” aspect of the vocational portion of a case to adequately highlight whether or not the claimant can perform past work or other jobs within the regional and/or national economies.

A non transferable skills scenario would be as follows: During the initial interview with a claimant that has a case coming up, a representative may learn that the new claimant has been employed as a Laundry Sorter and not delve into the job title, exertional levels or duties. Subsequently, the representative may take this information at face value not using a software program or an employability evaluation to classify the work/job title shared by the claimant. Later the representative will learn that the laundry sorter position is classified as follows: 361.687–014, laundry sorter, light, SVP 2(unskilled). Once this information is collected, the representative can begin strategizing for the upcoming hearing, building their entire premise of the case on the medical evidence and the classification of the job based on the limited information collected. The representative may later learn during the hearing via VE testimony that this 53-year-old woman with an 11th grade that has been employed as a laundry sorter for 15 years at a local Laundromat had to only lift 10 pounds and was able to do her job while seated at a workstation; only had to walk for two hours out of an eight hour day and folded wash towels and kitchen towels during her employment. During the examination of the claimant (in the hearing) it has been discovered that the claimant performed the job as a laundry sorter but has performed the work at the sedentary exertional level. The classification of this job has now been reduced from light to sedentary, offers no transferable skills as it is an unskilled job, and may possibly meet a grid rule all stemming from the “as performed” testimony from the VE.

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THE “AS PERFORMED” CLASSIFICATION *(Continued from page 5)*

A transferable skill scenario would be as follows: A 58-year-old woman comes into your office that has a high school education and has been employed for the last three years as a Child Day Care Program Supervisor. Prior to securing this job, she explains that she held jobs as a Cashier for six years, Sales Clerk for five years, Child Care Center worker for two years, and lastly she was employed as a Child Day Care Program Supervisor for the last three years before applying for disability. The representative collects significant information on each job delving deep into the job duties of the claimant and listed the following classifications: Cashier, 211.462-010, Light, SVP 2; Sales Clerk, 279.357-054, Light, SVP 3; Child Care Center Worker 359.677-018, Light, SVP 4; Child Day Care Program Supervisor, 168.167-090, Light, SVP 8. Following these classifications, the representative now strategizes that this claimant has transferable skills based on the work as a Child Day Care Program Supervisor for which she was employed for three years. The hearing ensues where the VE classifies the jobs. The judge then inquires as to whether or not the past relevant work yields any transferable skills. The VE testifies that there are no transferable skills from the Sales Clerk position as it is a semi skilled job. The VE further states that there are no transferable from the Child Day Care Program Supervisor as the claimant did not work in this job long enough to become proficient. The SVP level requires that an individual be employed at this job from 4 to 8 years to become proficient and the claimant has only been employed for three years therefore there are no transferable skills and this job may be eliminated from the past relevant work history. This case has now taken a dramatic turn in the claimant may meet a grid rule.

Questions a Representative Should Ask:

1. What is your job Title?
2. How long have you worked there?
3. What were your essential job duties to perform your job properly?
4. How much did you lift, stand, sit, walk etc.?
5. Did you manage, supervise or have hiring and firing discretion?
6. Do you have any certifications in this area of employment?

These questions will give the representative a starting point to gathering the necessary information to appropriately

classify the past work that has been performed by the claimant and to formulate a considerable strategy to approaching a Social Security Disability Hearing.

Dr. Silvio S. Reyes is a Vocational Expert, Vocational Evaluator and Life Care Planner for the Catastrophically Injured. He has testified in over 6000 Social Security Cases and is actively involved as a Vocational Expert in the areas of Personal Injury, Workers Compensation, Medical Malpractice, Premises Liability, Product Liability and Divorce. He is credentialed as a Certified Rehabilitation Counselor, Registered Professional Vocational Evaluator, Certified Life Care Planner, Licensed Professional Counselor, and National Certified Counselor who has provided services to people with disabilities since 2000. Dr. Reyes can be reached at Silvio.Reyes@mtbmglobalrehab.com or 800 482 1846

Federal Court Appeals Across the Nation

David F. Chermol, Esquire



*Former
GS-15 Attorney
for SSA-OGC*

*2013-14
NADR Member
of the Year*

Chermol & Fishman, LLC

Fax: 215-464-7224

Please visit our website at:

www.ssihelp.us

Email: dave@ssihelp.us