

Examining the Ethical Implications of the Transferable Skills Analysis

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The goal of this presentation is to examine the practical and theoretical ethical implications of doing (or not doing) skill transfers to identify alternative occupations. Accordingly, extracts of the ABVE and CRC code (with citations and added emphasis) are included below as well as a case history and three (3) abbreviated evaluation reports

AMERICAN BOARD OF VOCATIONAL EXPERTS CODE OF ETHICS

General Guidelines (2) Respect the integrity of individuals with whom I work. My primary obligation is to provide a *fair and reasonable evaluation of the individuals being assessed by me to determine their vocational capacity.*

Canon 2 RESPECT FOR REFERRAL SOURCES, PARTIES, EVALUEES

Rules of Professional Conduct

R2.4 When Vocational Experts provide services at the request of a third party, the Vocational Expert clarifies the nature of their relationship to all involved parties. As a case consultant or expert witness, Vocational *Experts have an obligation to provide unbiased, fair and reasonable opinions.*

R2.6 Vocational Experts will utilize *their education, training and labor market research experience when deriving opinions regarding employment options, earning capacity and placement potential of the individual being evaluated.*

Canon 6 ASSESSMENT

Vocational Experts shall ensure that the selection, administration and interpretation of assessment measures is done in accordance with the standardization attributed to each test instrument.

Rules of Professional Conduct

R6.6 When utilizing computerized assessment services, the Vocational Expert will ensure that such services are based on appropriate research to establish the validity of the results that are obtained. The Vocational Expert must be familiar and able to explain the procedures used in arriving at interpretations. It is the individual Vocational Expert's responsibility to justify the use of such computerized documents as to the appropriateness, validity and reliability of such data.

The CRC Code

SECTION F: FORENSIC AND INDIRECT SERVICES

F.1. CLIENT OR EVALUEE RIGHTS

a. PRIMARY OBLIGATIONS. Rehabilitation counselors produce unbiased, objective opinions and findings that can be substantiated by information and methodologies appropriate to the evaluation, which may include examination of individuals, research, and/or review of records. Rehabilitation counselors form opinions based on their professional knowledge and expertise that can be supported by the data gathered in evaluations. Rehabilitation counselors define the limits of their opinions or testimony, especially when an examination of individuals has not been conducted. Rehabilitation counselors acting as expert witnesses generate written documentation, either in the form of case notes or a report, as to their involvement and/or conclusions.

F.2. REHABILITATION COUNSELOR FORENSIC COMPETENCY AND CONDUCT

h. CRITIQUE OF OPPOSING WORK PRODUCT. When evaluating or commenting upon the professional work products or qualifications of other experts or parties to legal proceedings, rehabilitation counselors represent their professional disagreements with reference to a fair and accurate evaluation of the data, theories, standards, and opinions of other experts or parties.

F.4. FORENSIC BUSINESS PRACTICES

a. PAYMENTS AND OUTCOME. Rehabilitation counselors do not enter into financial commitments that may compromise the quality of their services or otherwise raise questions as to their credibility. Rehabilitation counselors neither give nor receive commissions, rebates, contingency or referral fees, gifts, or any other form of remuneration when accepting cases or referring evaluatees for professional services. While liens should be avoided, they are sometimes standard practice in particular trial settings. Payment is never contingent on outcome or awards.

The Case Summary

The case is that of a 33 year old woman who is suffering from a Left median nerve injury. She is Right handed. She is contemplating surgery. She has worked in three different positions, initially as a *Retail Customer Service Representative* (10.00/hr.), then as an *Emergency Ambulance Technician* (15/hr.) and most recently as an *Administrative Assistant* (19/hr.). She is limited to *Sedentary Work* because of a 10 pound lifting restriction. She is able to walk or stand for a full work day. She is further limited to no more than *Occasional Reaching Handling or Fingering* with the Left Upper Extremity.

Testing revealed GOE interests in (in decreasing order):

- 11 *Leading/Influencing* An interest in leading and influencing others by using high-level verbal or numerical abilities in business, education, research, or management positions.
- 07 *Business Detail* An interest in organized, clearly defined activities requiring accuracy and attention to details, primarily in an office setting.
- 10 *Humanitarian* An interest in helping individuals with their mental, social, spiritual, physical and vocational concerns, through medical or social services, therapy, or nursing.
- 12 *Physical Performing* An interest in physical activities performed before an audience, such as sports or daring physical feats.

Aptitude testing yielded at least average aptitudes in all areas with above average ability (2 on the DOT scale of 1 to 5 with 5 lowest) in:

- General Learning Ability: The ability to "catch on" or understand instructions and underlying principles; the ability to reason and make judgments. Closely related to doing well in school.
- Verbal Aptitude: The ability to understand meanings of words and to use them effectively; to comprehend language, understand relationships between words and to understand meanings of whole sentences and paragraphs.
- Form Perception: The ability to perceive pertinent detail in objects or in pictorial or graphic material. Ability to make visual comparisons and discriminations and see slight differences in shapes and shadings of figures and widths and lengths of lines.
- Clerical Perception: The ability to perceive detail in verbal or tabular material. Ability to observe differences in copy, to proofread words and numbers, and to avoid perceptual errors in arithmetic computation.

NOTE: Motor Coordination, Finger Dexterity, Manual Dexterity, and Eye-Hand-Foot Coordination were not tested.

Alpha Report

Work History

Job Title	DOT Title	DOT Code	SVP	Strength	Actual Reported Hourly	OES Hr. Median Wage
<i>Administrative Assistant</i>	Administrative Assistant	169.167-010	7	Sedentary	\$19.00	\$23.22
<i>Emergency Ambulance Technician</i>	Emergency Medical Technician	079.374-010	5	Medium	\$15.00	\$16.30
<i>Customer Serv. Rep.</i>	Sales Clerk	290.477-014	3	Light	10.00	\$11.19

A Transferable Skills Analysis was performed adjusting the profile to Sedentary Exertion and accepting all other variables dictated by the work history limiting the search to no less than a *Good* level (Same or similar (3 digit or 2 digit) WF and MPSMS codes). Recommended employment is as an Administrative Assistant with little or no loss of income, but some possible loss of employability in that she could not do any job that requires lifting more than 10 pounds or requires Frequent to Constant use of *both* upper extremities. Other suggested occupations include:

DOT Title	DOT Code	SVP	Strength	SOC 2010	OES Hr. Median Wage
Administrative Assistant	169.167-010	7	Sedentary	43-6011	\$23.22
Customer Service Representative	239.362-014	5	Sedentary	43-4051	\$16.57
Hospital-Admitting Clerk	205.362-018	4	Sedentary	43-4111	\$16.23
Information Clerk	237.367-022	4	Sedentary	43-4171	\$13.23

Beta Report

Work History

Job Title	DOT Title	DOT Code	SVP	Strength	Actual Reported Hourly	OES Hr. Median Wage
Administrative Assistant	Administrative Assistant	169.167-010	7	Sedentary	\$19.00	\$23.22
<i>Emergency Ambulance Technician</i>	Emergency Medical Technician	079.374-010	5	Medium	\$15.00	\$16.30
Customer Serv. Rep.	Sales Clerk	290.477-014	3	Light	10.00	\$11.19

Beta did testing, but not a Transferable Skills Analysis and found that the following jobs were a good match for the claimant.

DOT Title	DOT Code	SVP	Strength	SOC 2010	OES Hr. Median Wage
Optometric Assistant	079.364-014	6	Sedentary	29-2799	\$21.56
Preparole-Counseling Aide	195.367-026	6	Sedentary	21-1092	\$23.30
Cardiac Monitor Technician	078.365-010	5	Sedentary	29-2031	\$24.81
Job Development Specialist	166.267-034	5	Sedentary	13-1078	\$27.32

Charlie Report

Work History

Job Title	DOT Title	SVP	Strength	Actual Reported Hourly	OES Hr. Median Wage
Administrative Assistant	Administrative Clerk	4	Light	\$19.00	\$14.26
<i>Emergency Ambulance Technician</i>	Ambulance Attendant	3	Medium	\$15.00	\$11.35
Customer Serv. Rep.	Sales Clerk	3	Light	10.00	\$11.19

Charlie reported doing a Transferable Skills Analysis but used the above job titles (note the lack of specificity such as DOT codes as opposed to the ones in the other two. In addition Strength was limited to Sedentary to and limited Reaching Handling and Fingering to Occasionally. Suggested alternative occupations as follows:

Title	SVP	Strength	SOC 2010	OES Hr. Median Wage
Information Clerk	4	Sedentary	43-4171	\$13.23
Call-Out Operator	2	Sedentary	43-4041	\$14.91

Discussion Questions:

1. Teasing out bimanual tasks:
 - Dominant vs. non-dominant injury
 - One-handed vs. two-handed
 - Using injured extremity to assist the other
2. Addressing common case situations, given skewed, missing DOT data:
 - Reaching Overhead
 - Sit / Stand / Walk
 - Vision
 - No Work History
3. Use of GED-RML vs. GVN
4. Search Methods:
 - “Classic TSA” (WF-SVP-MPSMS) vs.
 - OGA vs.
 - GOE vs.
 - SOC vs.
 - O*NET vs.
 - ???
5. Does Venue matter / influence the search strategy used?
6. Adjusting Post-Injury Profile without any case evidence to support it
7. Using test results vs. pre-injury profile
8. What search strategy is used to prepare a list of post-injury occupations?
9. What is a “good” match?
10. Charlie Report uses a low-skilled version of the work history – Is this a strategy used by plaintiff vs. defense? Why? What is the impact?
11. Data sources:
 - DOT vs. O*NET
 - CPS vs. OES vs. ???
 - Non-government sources: ERI vs. McCroskey vs. LMS vs. ???