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1. *EMPLOYABILITY AND EARNING CAPACITY EVALUATION on Richard Drake, 2009 Misc. Filings LEXIS 1773*

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EMPLOYABILITY AND EARNING CAPACITY EVALUATION on Richard Drake, 2009 Misc. Filings LEXIS 1773

United States District Court for the Eastern District of New York, Brooklyn Division

Case No. 02-CV-1924 (FB) (RML)

March 5, 2009

Reporter
2009 Misc. Filings LEXIS 1773 *

RICHARD W. DRAKE, Plaintiff, -against- LABORATORY CORPORATION OF AMERICA HOLDINGS, KEVIN WILSON, NORTHWEST TOXICOLOGY, INC., DAVID J. KUNTZ, ELSOHLY LABORATORIES, INC., DR. WILLIAM H. WHALEY, and WEST PACES FERRY MEDICAL CLINIC, Defendants

Expert Name: Mr. EDMOND ALAN PROVDER, C.R.C., C.L.C.P., Ph.D., D.A.B.V.E.

Text

Mr. Drake was examined for the purpose of assessing his employability and earning capacity regarding a "failed" drug test in 10/93 and subsequent termination, when he was employed as a Flight Attendant for Delta Airlines.

In addition, I performed a comprehensive vocational evaluation, made findings of employability. conducted a transferability of skills evaluation learned from past occupations, evaluation of his earning capacity in the local labor market, and an assessment as to the reasonableness of his job search.

He was evaluated on 2/13/08 for a total of two and a half hours at my office in Lodi, Bergen County, New Jersey.

CONFIDENTIALITY ISSUES

Mr. Drake was evaluated by the undersigned in compliance with the ethics of a Certified Rehabilitation Counselor and the American Board of Vocational Experts. He was informed of the purpose of the evaluation, specifically to provide an assessment of how his termination has affected his employability and earning capacity, and that the information gathered in the evaluation would be included in a written [*2] report. Mr. Drake was told that any information obtained in this forensic evaluation was not confidential.

He was advised that because this was a forensic evaluation, and that no rehabilitation counselor - client relationship exists or was implied, that this office would not be providing direct rehabilitation services to him. Mr. Drake seemed to understand these parameters and agreed to continue.

PURPOSE OF REFERRAL

Mr. Drake was referred to Occupational Assessment Services for the purpose of assessing his vocational capacity, employability, and earning capacity given his termination and subsequent legal action.

The Evaluation consisted of the administration of a standardized diagnostic vocational interview to observe and assess the effect of his termination and subsequent legal action on his vocational capacity.

The specific manner in which Mr. Drake's termination impeded his ability to perform Sedentary. Light, Medium, Heavy, and Very Heavy types of occupations, (App. A) as they exist in the labor market, are explored in this report.

The results of the evaluation served as a foundation to assess Mr. Drake's employability, transferable skills, [*3] placeability, and earning capacity.

The vocational opinions expressed in this report are based on the various assumptions made in this report. These opinions were formulated using sound vocational principles for job-person matching and job placement.(App. B12)

REFERRAL QUESTIONS REGARDING EARNING CAPACITY

The vocational evaluation focused on answering the following questions:

1. What was Mr. Drake's vocational capacity after his termination?
2. What was his expected pre-termination earning capacity as a Flight Attendant?
3. Had his past relevant work as a Flight Attendant provided him with any transferable skills that could have been used to perform other types of work?
4. What effect has Mr. Drake's subsequent legal action had on his ability to obtain employment?
5. What effect has Mr. Drake's notoriety from his "failed" drug test resulting in his termination from Delta Airlines had on his ability to obtain employment?
6. What is his expected post-termination earning capacity?

VOCATIONAL EVALUATION METHODOLOGY

The Employability and Earning Capacity Evaluation consists of seven parts:

1. The initial **[*4]** section involves reviewing the earnings information, and Mr. Drake's deposition. This data provides background information to better understand the client and his job.

2. The second section consists of performing a standard Vocational Diagnostic Interview to obtain information on the client's background, education, past work and earnings history.

3. A vocational analysis is performed on Mr. Drake's past relevant work. His employment as a Flight Attendant and other jobs were classified using standard government codes from the U.S. Department of Labor's Dictionary of Occupational Titles ("DOT")(App. B1), and O*Net (App. B2) to determine the physical demands. Worker Functions, Specific Vocational Preparation (SVP), skill level, and the General Educational Development (GED) of Mr. Drake's employment. From these government publications, information is obtained regarding the skills and competencies, the aptitudes, and the job temperaments required for job performance. This data helps the vocational expert to determine the client's vocational capacity.(App. B3)

4. Using the Vocational Diagnosis and Assessment of Residual Employability (VDARE) process, Mr. Drake's work history is analyzed **[*5]** to determine his skills, aptitudes, and skill level.(App. B7) Such government publications as the Dictionary of Occupational Titles, O*Net, the Guide For Occupational Exploration, and the Classification of Jobs 2000 (App. B1, B2, B5, B6) is used to analyze the skills inherent in Mr. Drake's past job as a Flight Attendant. This is used to make a determination regarding Mr. Drake's ability to transfer his skills learned from his previous employment or education to other employment within his vocational capacity, in the competitive labor market.

5. A Labor Market Access (LMA) analysis is made to determine Mr. Drake's ability to enter the tabor market given his skill level and vocational capacity.(App. B7)

6. A review was made of all of the materials and an opinion is formulated as to Mr. Drake's post-termination vocational capacity, employability, placeability, and earning capacity.

7. If the individual is found to be employable given the results of the vocational evaluation, research is conducted regarding the client's residual earning capacity in the local labor market using state and federal government statistics or private labor studies to determine whether jobs exist that Mr. **[*6]** Drake can perform within his vocational capacity and the current earnings for these occupations.

VOCATIONAL EVALUATION ASSUMPTIONS

The vocational opinions regarding Mr. Drake's employability, earning capacity, and vocational rehabilitation potential expressed in this report are based on the assumptions that:

1. The records reviewed were complete and accurately reflect Mr. Drake's employment situation.

2. The history and information given during the standardized vocational diagnostic interview was truthful and accurate to the best of the client's ability.

3. Mr. Drake's pre-accident vocational functioning is estimated within at least the average range based on his educational and occupational history.

FORMULATION OF OPINIONS

The vocational opinions expressed in this report are given within a reasonable degree of certainty or probability as a Rehabilitation Counselor and Vocational Expert. These opinions are based on my education, training, and information contained in various federal and state government publications. In addition, the opinions are based on the information available to me at the time of my evaluation, including **[*7]** records, the client's history as obtained from the standardized vocational interview, my professional clinical judgement, labor market research, and the conclusions made.

If any of the oral or documentary information provided is false, fictitious, fraudulent, or misleading, it may change the conclusions and opinions reached in this employability evaluation. The opinions expressed are case specific to this client. Should there be additional information that becomes available at a later time for my review, I reserve the right to modify my vocational opinions.

RECORDS REVIEWED

I reviewed extensive records regarding Mr. Drake:

I reviewed the, following records from Delta Airlines' File:

Employment Eligibility Verification; Application for Employment (8/30/91); Pan Am Records noting an anniversary date of 3/23/63.

Employee Orientation Welcome Aboard; Delta Airlines Anti-Drug Program (11/89, 7/91)

I reviewed the following records regarding employment search:

None

Mr. Drake's Income Tax and Social Security Earnings records:

Mr. Drake's Income Tax Records 1990 ($ 31,890), 1991 ($ 33,307), 1992 ($ 35,955), 1993 **[*8]** ($ 42,052), 1994 ($ 105), 1995 ($ 16,206), 1996 ($ 31,249), 1997 ($ 34,414), 1998 ($ 12,959).

I reviewed the following litigation related records:

Summons; Complaint and Jury demand Trial (12/28/01).

Mr. Drake's deposition transcript (11/12/08, 12/10/08).

GENERAL DESCRIPTION

Mr. Drake arrived on time for each session, neatly groomed and attired. He is dressed in a sports jacket and slacks. He states being 6 feet in height and weighs 224 pounds. Mr. Drake drove to the interview by himself, which took 60 minutes.

BACKGROUND INFORMATION

He is 65 years of age, born 3/6/43 in Orange, New Jersey. He is married and resides in a house (3456 Whiting Road, Marshall (Fauquier County), Virginia 20115; Telephone 540-364-0063) with his wife, where he has lived for six years. His three children are all grown.

EDUCATIONAL AND TRAINING BACKGROUND

Mr. Drake graduated from Columbia High School in 6/61, where he took an academic course of study. He attended Cornell University from 9/61 to 6/63 taking a business course of study. He reports being a "C" student and was "way over his head" in this college.

From **[*9]** 1969 to 1970, he attended Monmouth College on a full time basis taking business courses.

He attended Flight Attendant School while working in Pan Am on three occasions each lasting from 2 to 6 weeks.

From 1964 to 1967, Mr. Drake served in the United States ***Army*** where he was a Nuclear Missile Technician.

At the time of the incident, Mr. Drake was licensed to carry a weapon in the state of New York, Arizona, Washington and Florida. He voluntary cancelled all of these licenses when he failed his drug test.

He denies any other technical, vocational, or special training.

WORK HISTORY

Employment from 9/91 to 12/3/93 was as a Flight Attendant for Delta Airlines. This occupation involved onboard in flight service and safety procedures for international flights. This work is best described in the U.S. Department of Labor's Dictionary of Occupational Titles ("DOT")(App. B1) on page 255 as follows:

AIRPLANE-FLIGHT ATTENDANT

AIRPLANE-CABIN ATTENDANT. Performs variety of personal services conducive to safety and comfort of airline passengers during flight: Greets passengers, verifies tickets, records destinations, and directs passengers to assigned **[*10]** seats. Assists passengers to store carry-on luggage in overhead, garment, or under seat storage. Explains use of safety equipment, such as seat belts, oxygen masks, and life jackets. Walks aisle of plane to verify that passengers have complied with federal regulations prior to take off. Serves previously prepared meals and beverages. Observes passengers to detect signs of discomfort, and issues palliatives to relieve passenger ailments, such as airsickness and insomnia. Administers first aid according to passenger distress when needed. Answers questions regarding performance of aircraft, stopovers, and flight schedules. Performs other personal services, such as distributing reading material and pointing out places of interest. Prepares reports showing place of departure and destination, passenger ticket numbers, meal and beverage inventories, palliatives issued, and lost and found articles. May collect money for meals and beverages.

It is given the code number 352.367-010. On the standard five-point physical demand scale of Sedentary - Light - Medium - Heavy - Very Heavy, this occupation would be considered Medium Work as it involves lifting of suitcases weighing up to 50 pounds. **[*11]** It is classified as semi-skilled work. He was transferred to Delta Airlines when the Pan Am routes were purchased.

At the time of his termination, he had completed two weeks of training as a "Line check flight attendant," which would have increased his pay by 15%. He would have been employed as an "on the job" Flight Attendant Trainer.

Mr. Drake reports that if he would not have been terminated his estimated earnings would have been $ 65,000 per annum.

His 1992 income tax returns indicate a yearly income of $ 36,127 and $ 41,000 per annum (for 10 months) in 1993.

Medium Work is defined by the DOT, page 1013, as exerting 20 to 50 pounds of force occasionally (up to one-third of the time), and/or 10 to 25 pounds of force frequently (one-third to two-thirds of the time), and/or greater than negligible up to 10 pounds of force constantly (two-thirds or more of the time) to move objects. Physical demand requirements are in excess of those required for Light Work.

OTHER PHYSICAL DEMANDS:

BA - Balancing - Frequent

ST - Stooping - Occasional

RE - Reaching - Frequent

HA - Handling - Frequent

FI - Fingering - Occasional

TA - Talking - Frequent

HE - Hearing **[*12]** - Frequent

Every job requires a worker to function, to some degree, in relation to Data, People, and Things. The DOT has identified and defined these "Worker Functions," and the fourth, fifth, and sixth digits of the occupational DOT code reflect these relationships to Data (D), People (P), and Things (T). This occupation has been assigned the following relationships:

D3 - Compiling: Gathering, collating, or classifying information about data, people, or things. Reporting and/or carrying out a prescribed action in relation to the information is frequently involved.

P6 - Speaking-Signaling: Talking with and/or signaling people to convey or exchange information. Includes giving assignments and/or directions to helpers or assistants.

T7 - Handling: Using body members, handtools, and/or special devices to work, move, or carry objects. Involves little or no latitude for judgment with regard to attainment of standards or in selecting appropriate tool, object, or materials.

The Department of Labor classifies occupations by Specific Vocational Preparation (SVP),(App. B1) which is defined as the amount of lapsed time required by a typical worker to learn the **[*13]** techniques, acquire the information, and develop the facility needed for average performance in a specific work situation.

This occupation requires an SVP level of 3, which includes jobs that take over one month and up to three months to learn.

The General Educational Development (GED)(App. B1) has been analyzed regarding those aspects of education (formal and informal) which are required of the worker for satisfactory job performance. The GED is composed of three divisions: Reasoning Development, Mathematical Development, and Language Development. Mr. Drake's occupation has the following GED classifications:

Reasoning Development Level 4, which means a person must at least be able to "apply principles of rational systems to solve practical problems and deal with a variety of concrete variables in situations where only limited standardization exists" and "interpret a variety of instructions furnished in written, oral, diagrammatic, or schedule form."

Mathematical Development Level 3, which means a person must at least be able to "compute discount, interest, profit and loss; commission, markup, and selling price; ratio and proportion, and percentage" and **[*14]** "calculate surfaces, volumes, weights, and measures." Utilizing algebra, he must at least be able to "calculate variables and formulas; monomials and polynomials; ratio and proportion variables; and square roots and radicals." Utilizing geometry, he must at least be able to "calculate plane and solid figures; circumference, area, and volume" and "understand kinds of angles, and properties of pairs of angles."

Language Development Level 3, which means a person, when reading, must at least be able to "read a variety of novels, magazines, atlases, and encyclopedias" and "read safety rules, instructions in the use and

maintenance of shop tools and equipment, and methods and procedures in mechanical drawing and layout work." When writing, he must at least be able to "write reports and essays with proper format, punctuation, spelling, and grammar, using all parts of speech." When speaking, he must at least be able to "speak before an audience with poise, voice control, and confidence, using correct English and well-modulated voice."

Employment from 6/63 to 1964 and 1967 to 1991 was as a Flight Attendant/Union Leader for Pan Am Airlines. This occupation involved onboard in **[*15]** flight service and safety procedures for international flights. He was the Union Chairman in New York for three years. This work is best described in the U.S. Department of Labor's Dictionary of Occupational Titles ("DOT")(App. B1) on page 255. It is given the code number 352.367-010. On the standard five-point physical demand scale of Sedentary - Light - Medium - Heavy - Very Heavy, this occupation would be considered Medium Work as it involves lifting of up to 50 pounds. It is classified as semi-skilled work.

Employment from 1975 to 1993 was as an Armed Security Guard/Body Guard for Mandel Security' in New York. This occupation personal protection for dignitaries and their family members who were visiting New York City area. This work is best described in the U.S. Department of Labor's Dictionary of Occupational Titles ("DOT")(App. B1) on page 269. It is given the code number 372.667-034. On the standard five-point physical demand scale of Sedentary - Light - Medium - Heavy - Very Heavy, this occupation would be considered Light Work. He worked irregularly at this job earning from $ 0 to $ 2000 per annum. It is classified as semi-skilled work. He was unable to perform this job, **[*16]** when he had to turn in his weapon due to the failed drug test.

He was licensed to carry a weapon in the state of New York, Arizona, Washington and Florida. He cancelled all of these licenses, when he failed his drug test.

From 1995 to 1996, he was an Account Coordinator for Schlecter Industrial Supply in Plainfield, New Jersey. This was his brothers-in-law's company. This company provides industrial supplies which operated store rooms as a sub-contractor for Hercht Salenese, Merek Pharmaceutical, Mobil and Exxon. The companies were charged for what they used in their daily operation. As this company was being sold, Mr. Drake was involved in maintaining the current customers and developing new accounts during the transition. This work is best described in the U.S. Department of Labor's Dictionary of Occupational Titles ("DOT")(App. B1) on page 227. It is given the code number 274.357-034. On the standard five-point physical demand scale of Sedentary - Light - Medium - Heavy - Very Heavy, this occupation would be considered Light Work. He reported earning about $ 600 a week at this job.

He also earned income from house renovations while residing in New Jersey. He could **[*17]** not continue doing this type of work as he could not get a mortgage, due to his unemployment.

Since 2000, he has worked on his Nut and Berry 15 acre farm in Virginia. He is involved in purchasing the trees, maintaining them, planting them, and caring for them. He has made no money in this endeavor, but expects to get a harvest in Spring 2009. The farmer's cooperatives are interested in his production. He estimates a profit of $ 10,000 per annum. He started this endeavor, when he could not obtain other employment.

He reports receiving Old Age Social Security Benefits since age 62. He receives $ 1,311 per month in benefits.

This vocational information is consistent with the information contained in the standard occupational reference works listed in Appendix B.

ANALYSIS OF PAST WORK EXPERIENCE

An analysis of Mr. Drake's past work history indicates that his main occupation was as a Flight Attendant. Based on the job description he gave, this work required Medium physical capability.

Based on the job description given by Mr. Drake, on a scale of unskilled (Specific Vocational Preparation 1-3), semi-skilled (Specific Vocational Preparation 4-6), **[*18]** and skilled or professional (Specific Vocational Preparation 7-9), his occupation would be classified as semi-skilled.

The skills and competencies inherent in this occupation are the following:

Able to control personal emotions. Able to appropriately handle highly emotionally charged situations. Anticipates obstacles. Assesses and takes action in situations that are dangerous to self and others. Breaks problem apart systematically. Concerned with order. Demonstrates a high degree of honesty and integrity. Discovers and meets underlying needs. Exercises leadership. Exercises sound judgment. Expresses confidence in own judgment. Innovative. Interacts with citizens of a variety of income, residential, and social circumstances. Learns to modify performance based on training and field experience. Makes logical conclusions. Performs job duties in a highly responsible manner. Persists in problem solving. Possess ability to make logical and clear decisions quickly. Prioritizes time for assigned duties. Seeks clarity of roles and information. Sees consequences, implications of actions. Self-monitors and corrects elements of performance. Serves customers. Understands attitudes, **[*19]** interests, needs of others. Uses direct persuasion, facts, and figures. Work as a working member of a team. Sensitive to diverse cultures.

Reading: Reviews flight passenger list, food and beverage lists, and flight scheduling information. Verifies tickets and assigned seating information. Reviews and explains use of safety equipment and emergency procedures. Verifies boarding procedures and flight information. Must read to the level of comprehending safety rules and instructions. Must be able to locate, understand, and interpret written information in prose and documents, including catalogs, manuals, and schedules. Identifies relevant details, facts, and specifications, and locates the meaning of unknown or technical vocabulary.

Writing: Writes order receipts, description of merchandise for storage. Documents pertinent information of potential customers. May complete requisition forms to order merchandise from stockroom. Able to record messages in writing, recording information completely and accurately. May record passenger destinations, and prepare reports showing place of departure and destination.

Mathematics: Performs computations using basic numerical **[*20]** concepts such as whole numbers and percentages in practical situations. Makes reasonable estimates of arithmetic results with or without a calculator. Able to discount, interest, profit and loss and perform addition, subtraction. multiplication and division of all units of measure. Able to perform arithmetic operations involving all American monetary units.

INFORMATION GIVING

Providing information to people regarding places, events, programs, and procedures.

Advising, Answering, Explaining, Informing, Lecturing, Reading, Receiving, Speaking.

According to Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles, U.S. Department of Labor, Employment and Training Administration, 1993, COJ 2000 The Classification of Jobs, Fifth Edition, J. E. and T. F. Field, Elliott & Fitzpatrick, Inc., 1999, and Dictionary of Worker Traits, Volume I and Volume II, A. F. Kearns and R. E. Neeley, Vocational Research Institute, 1987, this occupation is found in the Worker Trait Group SAFETY AND COMFORT SERVICES, and is GOE coded 09.01.04. This occupation is given the O*NET code:39-6031.00 for the occupational unit Flight Attendants.

In analyzing **[*21]** aptitudes in occupations, the U.S. Department of Labor uses a five-point scale: 1 (highest 10 percent of the population), 2 (highest one-third of the population), 3 (middle one-third of the population), 4 (lowest one-third of the population), and 5 (lowest 10 percent of the population). Mr. Drake's prior work has contained the following aptitudes:

G-3 **Intelligence**: General learning ability.

V-3 **Verbal**: Ability to understand meanings of words and ideas associated with them.

N-3 **Numerical**: Ability to perform arithmetic operations quickly and accurately.

S-4 **Spatial**: Ability to comprehend forms in space and understand relationships of plane and solid objects.

P-4 **Form Perception**: Ability to perceive pertinent detail in objects or in pictorial or graphic material.

Q-3 **Clerical Perception**: Ability to perceive pertinent detail in verbal or tabular material.

K-3 **Motor Coordination**: Ability to coordinate eyes, hands, or fingers rapidly and accurately in making precise movements with speed.

F-4 **Finger Dexterity**: Ability to manipulate small objects and move the fingers rapidly and accurately.

M-3 **[*22] Manual Dexterity**: Ability of a person to work with the hands in a skillful manner, as well as work with the hands to perform placing and turning motions.

E-3 **Eye-Hand-Foot Coordination**: Ability to move the hand and foot coordinately with each other in accordance with visual stimuli.

C-4 **Color Discrimination**: Ability to perceive or recognize similarities or differences in colors, or in shades, or other values of the same color.

This occupation requires the following Temperaments or Situations to which the worker must adapt:

V - Performing a variety of duties, often changing from one task to another of a different nature without loss of efficiency or composure.

S - Performing under stress when confronted with emergency, critical, unusual, or dangerous situations or situations in which speed and sustained attention are make-or-break aspects of the job.

P - Dealing with people beyond giving and receiving instructions.

Significant Points

- Competition for positions is expected to remain keen because the opportunity for travel attracts more applicants than there are jobs.

- Job duties are learned through formal on-the-job training **[*23]** at a flight training center.

- A high school diploma is the minimum educational requirement; however, applicants with a college degree and with experience in dealing with the public are likely to have the best job opportunities.

Nature of Work

Major airlines are required by law to provide flight attendants for the safety and security of the traveling public. Although the primary job of the flight attendants is to ensure that security and safety regulations are followed, attendants also try to make flights comfortable and enjoyable for passengers.

At least 1 hour before each flight, attendants are briefed by the captain-the pilot in command-on such things as emergency evacuation procedures, coordination of the crew, the length of the flight, expected weather conditions, and special issues having to do with passengers. Flight attendants make sure that first-aid kits and other emergency equipment are aboard and in working order and that the passenger cabin is in order, with adequate supplies of food, beverages, and any other provided amenities. As passengers board the plane, flight attendants greet them, check their tickets, and tell them where to store carry-on **[*24]** items.

Before the plane takes off, flight attendants instruct all passengers in the use of emergency equipment and check to see that seatbelts are fastened, seat backs are in upright positions, and all carry-on items are properly stowed. In the air, helping passengers in the event of an emergency is the most important responsibility of a flight attendant. Safety-related actions may range from reassuring passengers during rough weather to directing passengers who must evacuate a plane following an emergency landing. Flight attendants also answer questions about the flight; distribute reading material, pillows, and blankets; and help small children, elderly or disabled persons, and any others needing assistance. They may administer first aid to passengers who become ill. Flight attendants generally

serve beverages and other refreshments and, on many flights, especially international, heat and distribute precooked meals or snacks. Prior to landing, flight attendants take inventory of headsets, alcoholic beverages, and moneys collected. They also report any medical problems passengers may have had, the condition of cabin equipment, and lost and found articles.

Lead, or first, **[*25]** flight attendants, sometimes known as pursers, oversee the work of the other attendants aboard the aircraft, while performing most of the same duties.

WORKING CONDITIONS INFORMATION - Flight attendants

Because airlines operate around the clock and year round, flight attendants may work nights, holidays, and weekends. In most cases, agreements between the airline and the employees' union determine the total daily and monthly working time. Scheduled on-duty time usually is limited to 12 hours per day although some contracts provide daily actual maximums of 14 hours, with somewhat greater maximums for international flying.

Attendants usually fly 65 to 90 hours a month and generally spend another 50 hours a month on the ground preparing planes for flights, writing reports following completed flights, and waiting for planes to arrive. Most airlines guarantee a minimum of 65 to 85 flight hours per month, with the option to work additional hours. Flight attendants receive extra compensation for increased hours.

Flight attendants may be away from their home base at least one-third of the time. During this period, the airlines provide hotel accommodations and an allowance **[*26]** for meal expenses. Flight attendants must be flexible and willing to relocate. However, many flight attendants elect to live in one place and commute to their assigned home base. Home bases and routes worked are bid for on a seniority basis. The longer the flight attendant has been employed, the more likely he or she is to work on chosen flights. Almost all flight attendants start out working on reserve status or on call. On small corporate airlines, flight attendants often work on an as-needed basis and must adapt to varying environments and passengers.

The combination of free time and discount airfares provides flight attendants the opportunity to travel and see new places. However, the work can be strenuous and trying. Flight attendants stand during much of the flight and must remain pleasant and efficient, regardless of how tired they are or how demanding passengers may be. Occasionally, flight attendants must deal with disruptive passengers. Also, turbulent flights can add to possible difficulties regarding service, including potential injuries to passengers.

Working in a moving aircraft leaves flight attendants susceptible to injuries. For example, back injuries and **[*27]** mishaps can occur when opening overhead compartments or while pushing heavy service carts. In addition, medical problems can arise from irregular sleeping and eating patterns, dealing with stressful passengers, working in a pressurized environment, and breathing recycled air.

WAGE AND BENEFIT RESEARCH

According to the U.S. Dept. of Labor Occupational Outlook Handbook [2008-2009] on Page: 498 the Median annual earnings of flight attendants were $ 53,780 in May 2006. The middle 50 percent earned between $ 33,320 and $ 77,410. The highest 10 percent earned more than $ 99,300.

Some airlines offer incentive pay for working holidays, night and international flights, or taking positions that require additional responsibility or paperwork.

Flight attendants and their immediate families are entitled to free or discounted fares on their own airline and reduced fares on most other airlines. Some airlines require that the flight attendant be with an airline for 3 to 6 months before taking advantage of this benefit.

Other benefits may include medical, dental, and life insurance; 401K or other retirement plan; sick leave; paid holidays; stock options; paid **[*28]** vacations; and tuition reimbursement.

Flight attendants also receive a "per diem" allowance for meal expenses while on duty away from home. Flight attendants are required to purchase uniforms and wear them while on duty. The airlines usually pay for uniform replacement items, and may provide a small allowance to cover cleaning and upkeep of the uniforms.

The majority of flight attendants hold union membership, primarily with the Association of Flight Attendants. Other unions that represent flight attendants include the Transport Workers Union of America and the International Brotherhood of Teamsters.

EMPLOYMENT SUMMARY

The following is a summary of Mr. Drake's dates of employment, job title, and employer based on the work history provided during the interview portion of the evaluation.

DATE OF EMPLOYMENT	JOB TITLE	EMPLOYER
9/91 to 12/3/93	Flight Attendant	Delta Airlines
6/63 to 1964 & 1967 to 1991	Flight Attendant/Union Leader	Pan Am Airlines
1975 to 1993	Armed Security Guard/Body Guard	Mandel Security
1995 to 1996	Account Coordinator	Schlecter Industrial Supply

WAGE ANALYSIS

The **[*29]** following wage records were reviewed to ascertain Mr. Drake's past earnings history:

YEAR	Actual W-2 Earnings/ Income Tax Returns
1990	$ 31,890
1991	$ 33,307
1992	$ 35,955
1993	$ 42,052
1994	$ 105
1995	$ 16,206
1996	$ 31,249
1997	$ 34,414
1998	$ 12,959

MEDICAL COMPLAINTS

Mr. Drake states that he has had no physical or emotional impairments which prevent him from working.

JOB-SEARCH EVALUATION

After a person loses a job, it is reasonable to assume that he will make every effort to locate another job, if continued income is required.

Methodologies used by job applicants include: networking with peers. co-workers, friends, and competitors; computer searches; contacting headhunters and/or employment agencies; job fairs and newspaper want advertisements.

He reports after his termination, he was unable to obtain employment due to his "failed" drug test. On a job application, he would have had to lie about the occurrence and chance being fired for lying. In addition, he would have been confronted as to why he left his position at Delta Airlines.

From 1994-1995, he tried to obtain employment **[*30]** as a Flight Attendant at United Airlines, Continental Airlines, and American Airlines. He submitted job applications to United and American. He applied to Continental at a job fair from an advertisement in the newspaper.

He had a job interview with American Airlines, but did not get the job which he attributes to his "failed" drug test.

In 1996, he applied for a job at UPS as a Driver as he knew someone who worked there. He was interviewed, but did not get the job. Mr. Drake thinks he was rejected because he tried to explain his "failed" drug test.

At the end of 1996, he was offered a job at Turtle and Hughes as a Driver. This was the company that took over Schlecter Industrial Supply. He was told that the company's insurance company had a "problem" with his "failed" drug test. After the transition phase of the purchase, he was not offered a job in any capacity.

About 1999 for three months, he was offered an on site job in Syracuse overseeing an operation for a new customer. He worked for this company in 2000 for 2 months in Cincinnati to maintain the account at Fram Filters. He earned about $ 1000 per month.

He notes that the "failed" drug test has devastated **[*31]** his reputation and he is viewed as a "druggie."

Mr. Drake does not have a resume or cover letter.

He reported not networking or using a headhunter or out placement service. He did not know what a headhunter was and the purpose was explained to him during the interview.

Mr. Drake says that being "old" and having the "failed" drug test on his record makes getting a job impossible.

He did not look for any work using such internet job search sites as Monster and Career builder noting that he is not computer literate.

Recently, Mr. Drake was offered a position as an Assistant Manager at a local Supermarket, but he did not take this job as he "did not want everyone in the town to know about his "failed" drug test " The salary offered was $ 40,000.

He reports that the fact his name comes up on a "Goggle Search" and all the information about his "failed" drug test is available to potential employers, friends, neighbors, and the general public has negatively affected his reputation.

REASONABLENESS OF JOB SEARCH

Mr. Drake has tried to find alternative employment as a Flight Attendant, but did not obtain employment with the airlines. He was **[*32]** able to obtain employment with his brothers-in-law's company for several years, as he did not require a background check.

After being unable to find employment he started his own business i.e. a Nut and Berry Farm. To date, he has not earned any money from this business.

Mr. Drake is aware that he would not be hired by a company, which performed formal background check due to his "failed" drug test. In addition, a background check would yield the various litigation that he has been involved with secondary to his termination with Delta Airlines, which would scare away potential employers.

His need to disclose the "failed" drug test and the circumstances for his termination from Delta Airlines would also negatively affect his ability to be hired by an employer. If he lied about why he was terminated and his new employer discovered the real reason for his termination he would also be fired.

Lastly, it is not unusual for an employer to "Goggle" or "Yahoo" search a perspective employee. If this is done with Mr. Drake his name is listed 8th on the first page in Goggle and no listing on the first page of Yahoo. However, if this is done using the search terms Richard Drake **[*33]** Flight Attendant on Goggle you get 10 items listed some of which refer directly to drug testing.

A recent article in BusinessNC.com on Job-Candidate Selection and the Internet notes that 1 in 5 employers use the internet to find information about job applicants. The website Vault.com noted in a survey of employers that 44% of employers have looked up potential hires on social networking sites. 82% of the employers responded that if they perceived something as negative on the website it would affect the hiring decision. In addition, 39% of employers responded that the looked up profiles of someone already employed.

The combination of his notoriety due to his "failed" drug test and his many lawsuits regarding this occurrence would result in his being unemployable and not placeable in a job.

TRANSFERABILITY SKILLS ANALYSIS

Mr. Drake's work history was analyzed using The Vocational Diagnosis and Assessment of Residual Employability (VDARE) process. Research was conducted regarding the level and type of skills, aptitudes, and physical demands required of each job. A transferability of skills analysis was performed to determine which occupations in the labor **[*34]** market he could perform within his vocational capability and placeability.

Based on this process, Mr. Drake has a skills which could be used to obtain employment in a variety of positions. His ability to use his previously learned skills has been negatively affected by his "failed" drug test and litigation, which have render him unemployable.

RESIDUAL VOCATIONAL CAPACITY

The establishment of the residual vocational capacity involves determining:

A. What jobs a person is capable of doing, and

B. How likely it is that the individual can find employment in those jobs.

C. How likely it is that the individual can be hired in those jobs.

The resulting actions (litigation, notoriety, search engine results) caused by Mr. Drake's termination are the major determinants of the opportunities, or lack thereof, available to him for vocational alternatives.

Functional limitations may affect an individual's job and earnings potential in one or more ways.

1. The limitations may make it impossible, or at least difficult, to perform certain necessary job tasks.

2. The limitations may limit mobility and make it difficult for the individual to get to **[*35]** and from the job site.

3. The limitations may make it impossible, or at least difficult, to perform job tasks at a competitive rate, which is the level of production acceptable to an employer.

4. The limitations may interact with the work environment in such a way as to make performance difficult, uncomfortable, or dangerous. Page 19

5. There may be increased danger or risk to oneself because of the physical limitations and the difficulty of performing certain functions.

6. The limitations may affect the work or safety of co-workers or the public.

7. The limitations may impair one's competitive ability, thereby impeding normal progress up the "organizational ladder" or the chance of getting a job in the open labor market.

All of these elements need not exist in every case of functional limitations. In some cases, there may be other factors that would hinder job performance or labor market competitiveness. To the extent they are present, however, the elements will generally affect the individual's ability to obtain and retain employment, may affect the types of jobs potentially available, or may affect future raises, promotions, and/or job mobility.

Because of his termination, **[*36]** Mr. Drake has suffered severe vocational limitations to obtain and maintain employment, which affects his ability to obtain employment equal to his post-termination occupation at Delta Airlines.

EMPLOYABILITY OPINION

Based on the results of the Vocational Evaluation performed on him, and the conclusions made, as well as his retirement age, some college education, and past work experience of semi-skilled work as a Flight Attendant, the following are my opinions as a Vocational Expert regarding Mr. Drake's employability, placeability and earning capacity:

1. It is my opinion as an employability expert that Mr. Drake's "failed" drug test, while employed as a Flight Attendant has rendered him unemployable.

2. His pre-termination earning capacity is best represented by the average earning Flight Attendant which is $ 53,780 to the highest 10 percent of Flight Attendants who earned more than $ 99,300, based on his seniority at Pan Am and Delta Airlines.

3. It is my opinion as an employability expert that Mr. Drake's "failed" drug test, with the resultant litigation and notoriety as noted by an Internet Goggle Search, would cause him to fail a routine background **[*37]** check and make him "toxic" to an employer.

4. Mr. Drake has been able to transfer his skills to obtain employment at his brother-in-law's company as an Account Manager for an Industrial Supply Company, but this is considered a beneficent employer.

5. It is my opinion that Mr. Drake has conducted a reasonable job search given his "failed" drug test, with the resultant litigation and notoriety have rendered him unemployable and not placeable in the competitive labor market.

6. Due to his termination from Delta, Mr. Drake has sustained a significant diminution of earning capacity.

Preppared by:

/s/ [Signature]
Edmond Provder
Certified Rehabilitation Counselor
Diplomate, American Board of Vocational Experts

Appendix

[SEE APPENDIX A IN ORIGINAL]

[SEE APPENDIX B IN ORIGINAL]

[SEE APPENDIX C IN ORIGINAL]

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