

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Index No.: 5801/13

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AVI MOSHKOVICH, ELIZABETH MARIA
MOSHKOVICH, and SHIRLEY SMITH,

**NOTICE OF EXPERT
INFORMATION
PURSUANT TO CPLR
3101(d)**

Plaintiff,

-against-

GATEWAY INDUSTRIES, INC, and
FJC SECURITY SERVICES, INC.,

Defendant(s).
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PLEASE TAKE NOTICE, that plaintiff, AVI MOSHKOVICH and ELIZABETH MARIA MOSHKOVICH, by and through their attorneys, JOHN C. DEARIE AND ASSOCIATES, respond to demand for expert information as follows:

1. Plaintiff may call the following expert at the trial of this action:

Edmond A Provder
Occupational Assessment Services, Inc.
300-3 Route 17 South
Lodi, NJ, 07644

Dr. Provder is a Certified Rehabilitation Counselor and employability and vocational expert.

2. Dr. Provder will testify regarding his evaluation of Avi Moshkovich on January 13, 2015, his review of medical records and of other relevant materials and pleadings with respect to this matter.

3. The subject matter upon which said expert is expected to testify is set forth in his Employability Report for Avi Moshkovich, dated February 19, 2015 and annexed hereto as Exhibit A.

4. The Curriculum Vitae of Dr. Provder is attached as Exhibit B.

5. The facts and opinions upon which Dr. Provder is expected to testify are based upon his education, professional experience in the field of employability and

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vocational rehabilitation evaluations, as well as his evaluation of Plaintiff, and a review of Plaintiff's medical records and documentation.

Plaintiff reserves the right to supplement and/or amend this response through the time of trial.

Dated: New York, New York
March 9, 2015



THOMAS A. BOYLE JR., ESQ.
LAW OFFICE OF JOHN C. DEARIE
Attorneys for Plaintiff(s)
Avi Moshkovich and Elizabeth Maria
Moshkovich
515 Madison Avenue, Suite 1118
New York, New York 10022
212-980-0404

TO: Claudia L. Boyd
Lewis Johs Avallone Aviles, LLP
ATTORNEYS FOR DEFENDANTS
FJC SECURITY SERVICES, INC.
One CA Plaza, Suite 225
Islandia, NY 11749
631.755.0101
631.755.0117 fax

Claude N. Grammatico
Law Office Epstein, Gialleonardo, & Frankini
ATTORNEYS FOR DEFENDANT(S)
GATEWAY INDUSTRIES, INC.
330 Old Country Road, Suite 200
Mineola, NY 11501
(516) 493-4513
(516) 493-4501 fax

Michael J. Croce
Michael J. Croce, Esq., P.C.
305 Broadway - Suite 100
New York, New York 10007-3627
(212) 566-5828
(212) 202-4957 fax

EXHIBIT A



Executive Office

THE ROTHMAN CENTER

Second Floor • Suite 4A

300-3 Route 17 South

Lodi, New Jersey 07644-3810

973.365.2227 • 1.800.292.1919

Fax 973.365.2722 • E-mail uasinc@uasinc.org

Additional Locations

New York City

Toms River, NJ

Miami, FL

**EMPLOYABILITY AND
EARNING CAPACITY EVALUATION
on
Avi Moshkovich**

**Prepared for the Law Offices of
John Dearie & Associates**

February 19, 2015

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EMPLOYABILITY AND EARNING CAPACITY EVALUATION

on

Avi Moshkovich
SS#122-62-7236

At the request of his attorneys, Mr. Moshkovich was examined for the purpose of a comprehensive vocational evaluation, findings of employability, an assessment of any transferable skills learned from past occupations, evaluation of his earning capacity in the local labor market, and a determination as to the feasibility of Mr. Moshkovich receiving vocational rehabilitation services. He was evaluated on 1/13/15 for a total of three hours at our office in New York City. Mr. Moshkovich reports injuring his neck, left shoulder, and low back on 6/23/11 due to an on the job motor vehicle accident.

CONFIDENTIALITY ISSUES

Mr. Moshkovich 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 that the purpose of the evaluation was to assess his ability to return to work, specifically to provide an assessment of how his impairments and resultant medical limitations impact on his occupational disability, employability, and earning capacity, and that the information gathered in the evaluation would be included in a written report and forwarded to his attorney.

He was advised that Occupational Assessment Services abides by all federal laws dealing with medical records and that they would be confidential. He was told that once the report and case had been completed, it was our office policy to either send the records back to the referring attorney or shred the file.

Mr. Moshkovich was told that any verbal 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. Moshkovich seemed to understand these parameters and agreed to continue.

PURPOSE OF REFERRAL

Mr. Moshkovich was referred to Occupational Assessment Services for a comprehensive vocational evaluation to assess the effect of his handicapping conditions on his vocational capacity, employability, loss of access to the labor market, and earning capacity.



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The information used to formulate the vocational opinions in this report are based on the specific facts about Mr. Moshkovich.

The Vocational Evaluation consisted of a standardized Vocational Diagnostic Interview and the administration of a battery of vocational tests to assess the level of the individual's vocational functioning and the effect of his exertional impairments on his vocational capacity.

The specific manner in which Mr. Moshkovich's vocational disabilities may impede 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. Moshkovich's employability, transferable skills, earning capacity, and vocational rehabilitation potential.

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)

Vocational experts familiar with the methodology employed and the career and rehabilitation theory cited in this report can replicate the findings by applying the assumptions, methodology, and supporting analysis.

REFERRAL QUESTIONS

The vocational evaluation focused on answering the following questions:

1. What is Mr. Moshkovich's vocational capacity?
2. Could he return to his prior work as a Police Officer and perform the full range of required work activities?
3. Has his prior work as a Police Officer provided him with any transferable skills that could be used to perform work requiring less physical capability?
4. If he has no transferable skills, what other types of jobs could he perform on a sustained, competitive basis?
5. What is his residual earning capacity?
6. What effect have Mr. Moshkovich's physical impairments had on his work life?
7. What is the feasibility of Mr. Moshkovich participating in a vocational rehabilitation program?



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VOCATIONAL EVALUATION METHODOLOGY

The Employability and Earning Capacity Evaluation used the methodology commonly used in the discipline of rehabilitation counseling by rehabilitation and career professionals and vocational experts, which consists of eight parts: (App. B13)

1. The initial section involves *collecting data and facts specific to Mr. Moshkovich* by reviewing the medical records and medical restrictions, earnings information, and deposition, as well as other documents that describe the evaluatee's condition. This data provides background information to better understand the evaluatee and his medical treatment, and to make a determination as to the nature, extent, permanency, and functional limitations of his medical condition.
2. The second section consists of performing a standard Vocational Diagnostic Interview to obtain information on the evaluatee's background, formal or informal education, past employment and earnings history, medical condition, medical treatment, and residual functional capacity.
3. A vocational analysis is performed on Mr. Moshkovich's past relevant work as a Police Officer. This consists of classifying the evaluatee's occupations 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. Moshkovich'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 evaluatee's pre-injury vocational capacity. (App. B3)
4. Using the Vocational Diagnosis and Assessment of Residual Employability (VDARE) process, a Transferability Skills Analysis is performed using the OASYS computer program. Mr. Moshkovich's work history is analyzed 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) are used to analyze the skills inherent in Mr. Moshkovich's past jobs. This information is used to make a determination regarding Mr. Moshkovich'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. This involves *synthesizing data and information* with an emphasis on his ability to return to work.
5. A Labor Market Access (LMA) analysis was conducted through the development of the evaluatee's pre and post injury worker trait vocational profile made to determine Mr. Moshkovich's ability to enter the labor market given his skill level and vocational capacity. (App. B7) This involves *identifying the reasonable consequences and problems* related to the evaluatee's work ability and noting jobs, if any, the evaluatee can perform.



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6. A review is made of all of the materials and a *vocational expert opinion* is formulated as to Mr. Moshkovich's post-injury vocational capacity, transferable skills, employability, earning capacity, and the feasibility of him to receive vocational rehabilitation services.

7. If the individual is found to be employable given the results of the vocational evaluation, research is conducted regarding the evaluatee'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. Moshkovich can perform within his vocational capacity, and the current wage rates for these occupations.

VOCATIONAL EVALUATION ASSUMPTIONS

The vocational opinions regarding Mr. Moshkovich'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. Moshkovich's physical condition and medical treatment.
2. The evaluatee was cooperative and complied throughout the vocational evaluation process.
3. The evaluatee did not intentionally exaggerate or give false information regarding his physical or psychological symptoms.
4. The history and information given during the standardized vocational diagnostic interview was truthful and accurate to the best of the evaluatee's ability. That there is no significant discrepancy between the evaluatee's claimed disability and the objective findings of the vocational evaluation.
5. Mr. Moshkovich's pre-accident vocational functioning is estimated within at least the average range based on his educational and occupational history.
6. Mr. Moshkovich performed the various vocational tests to the best of his ability.
7. Mr. Moshkovich's physical conditions and resultant reduction of vocational capacity are permanent.
8. No opinion is reached by this expert as to the causality of Mr. Moshkovich's medical condition.

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.



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Since *Kerner v. Flemming*, 283 F.2d 916 (2d Cir. 1960), Vocational Experts, who are professionals educated, trained, and skilled in job placement and knowledgeable about labor market conditions, have been asked to formulate vocational opinions about specific job opportunities of a person based on their age, education, background, work experience, and medical condition.

The vocational opinions in this report are based on my education, training, experience, and the information contained in various traditional vocational sources, ^(App. B) including federal and state government publications. In addition, the opinions are based on the information available to me at the time of my evaluation, including medical and other records, the evaluatee's history as obtained from the standardized vocational interview, the vocational evaluation testing results, my professional clinical judgement, labor market research, and the conclusions made.

The opinions reached in this report rely on the quality, accuracy, and honesty of the evaluatee's reported history, complaints, symptoms, and functional capacity, as well as cooperation with any vocational testing administered.

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

Since this rehabilitation counselor hopes that his recommendations can assist the evaluatee's treating clinicians and other rehabilitation counselors in returning him to work, I hereby request that the evaluatee and his attorneys involved in this matter secure the necessary releases that would permit the treating clinicians to contact me to discuss the findings in this report.

EARNING CAPACITY ASSESSMENT

Several factors were specifically considered during this vocational evaluation to determine Mr. Moshkovich's loss of earning capacity. Earning capacity is defined as what a person is able to earn, expected earnings is expected to earn, and actual earnings are what a person actually earned. (Horner & Sleznick, 1999). ^(App. B33) Earning capacity considers the ability of an individual to select an occupation they are qualified to perform or will be qualified in the future. The persons' ability to earn money is considered their earning capacity.

Consideration was made regarding such factors as the ability to apply previously learned skills, cognition, medical prognosis, future career prospects given the injured persons vocational capacity, pre-existing and acquired vocational handicaps, work motivation, and demonstrated earnings history. ^(App. B17)



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The purpose of the evaluation is to investigate how these factors impact on Mr. Moshkovich's ability to work on a sustained regular competitive basis and earn money given his residual functional physical and/or mental capacity.

The analysis of a person's earning capacity is a four-part process:

1. Subject - Specific factors: Medical issues, Psychological issues, Education, training and specialty skills, Work history, and Acquired experience and skills.
2. Data from Examination - Vocational Interview, Vocational Testing.
3. Labor Market Research - Dictionary of Occupational Titles; O*NET, State and Federal Government wage information
4. Earning Capacity Opinion

COMPETITIVE EMPLOYMENT EVALUATION

The purpose of this employability evaluation is to assess the evaluatee's ability to perform competitive employment. Competitive employment, as defined in 34 CFR 361.5(b)(10), means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting, and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled. A job that is set aside for the person with disabilities is not competitive and the employer is looked at as beneficent. The person must be able to produce work at a level that is acceptable to an employer. For example, if 80 widgets are required to be assembled in one hour, the person is expected to meet this quota.

RECORDS REVIEWED

The following hospital records were reviewed:

South Nassau Communities Hospital (2/1/12) states "Open microdiscectomy L5-S1."

The following physician records were reviewed:

Orlin & Cohen Orthopedic Associates (6/30/11-7/15/12) includes epidural steroid injection records and states "Lumbar radiculopathy. Herniated cervical and lumbar intervertebral disc. Cervical radiculopathy. Cervical and lumbar sprain. Shoulder impingement. Prognosis: Remains guarded. He remains under active care for his injuries. His percentage of temporary impairment is total."

Island Orthopaedic Medicine (5/13/13) states "I believe the claimant is permanently disable(d) as cervical spine degenerative changes are marked as well as marked lumbar spine



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degenerative disc disease at level of discectomy at L5-S1...Disability is causally related to his occupation as I believe he will be able to function in a non-physical occupation."

The following diagnostic records were reviewed:

Dr. Tice (7/10/11) on MRI of the left shoulder states "Linear signal hyperintensity is identified within the distal supraspinatus at the greater tuberosity insertion site compatible with partial tear of the rotator cuff. Acromioclavicular hypertrophic changes consistent with impingement syndrome. Signal changes within the infraspinatus tendon along the posterior margin of the superior humeral head suggestive of changes related to rotator cuff tendinitis."

Dr. Tice (7/10/11) on MRI of the lumbar spine states "L5/S1 disc herniation demonstrating left lateral recess extension and displacing the left S1 nerve root posteriorly compatible with impingement abutting the right S1 nerve root in the right lateral recess and demonstrating bilateral proximal neural foraminal extension approaching the exiting L5 nerve roots. L4/5 disc bulge with superimposed left proximal neural foraminal disc herniation abutting the exiting left L4 nerve root."

Dr. Winter (9/8/11) on MRI of the cervical spine states "Multilevel disc herniations with cord compression and stenoses from C3/4 through C6/7. There is an extruded right lateral component at C4/5 into the right neural foramen with right C5 nerve root impression. At C3/4 there is encroachment into the left neural foramen. The disc herniations have right predominant components at both C5/6 and C6/7."

Dr. Winter (2/25/13) on MRI of the cervical spine states "C2/3 subligamentous disc herniation extending peripherally toward the left neural foramen more evidence on the axial images since the previous study. Disc herniation associated with C3/4 through C6/7 have not shown appreciable change since the previous study. Subligamentous C3/4 disc herniation again impressing on the cord with central stenosis extending peripherally toward the left neural foramen."

The following employment and financial records were reviewed:

Job description for Port Authority Police Officer.

Sobel Tinari Economics Group - Appraisal of Economic Loss (12/12/14) notes pecuniary losses of between \$8,306,395 and \$8,477,081.

Mr. Moshkovich's joint income tax returns: 2008 (\$167,662); 2009 (\$165,375); 2010 (\$181,283); 2011 (\$140,004); 2012 (\$105,601); 2013 (\$97,185).

The following legal records were reviewed:

Deposition of Avi Moshkovich (6/10/14).



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GENERAL DESCRIPTION

Mr. Moshkovich arrived on time for the session, neatly groomed and attired. He states being 6 feet, 4 inches in height and weighs 300 pounds. A weight loss of 40 pounds is reported since the time of the accident. He came to the interview by railroad and subway which took one hour and 45 minutes and resulted in complaints of neck and low back pain during the trip to the office.

BACKGROUND INFORMATION

He is 42 years of age, born 11/22/72 in the former USSR. He came to the United States on 9/11/79. He is married and resides in a house (3280 Knight Street, Oceanside (Nassau County), New York 11572; Telephone 516-208-6764) with his wife and three children, ages 9, 8, and 5.

EDUCATIONAL AND TRAINING BACKGROUND

Mr. Moshkovich graduated from John Bowne High School in 1990 where he took a general course of study.

From 1990 to 1996, he attended Queens College, receiving 101 college credits with a major in psychology but did not get a degree.

From 7/18/96 to 2/97, he attended the New York City Police Academy for Police Training.

From 3/4/02 to 5/02, Mr. Moshkovich attended the Port Authority Police Academy for Police Training at Fairleigh Dickinson University.

He denies any other technical, vocational, or special rehabilitation training. Military service is denied.

Mr. Moshkovich has not received any private or public vocational rehabilitation services for job training or placement.

WORK HISTORY

Employment from 3/4/02 to 6/23/11 was as a Port Authority Police Officer. This occupation involved performing radio motor patrol and foot patrol, as well as responding to all types of emergencies. In addition, he did fire fighting and boat patrol. This work is best described in the U.S. Department of Labor's Dictionary of Occupational Titles ("DOT") (App.B1) on page 273 as follows:

Police Officer (government services)



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PATROL OFFICER; TRAFFIC OFFICER. Patrols assigned beat on foot, on motorcycle, in patrol car, or on horseback to control traffic, prevent crime or disturbance of peace, and arrest violators. Familiarizes self with beat and with persons living in area. Notes suspicious persons and establishments and reports to superior officer. Reports hazards. Disperses unruly crowds at public gatherings. Renders first aid at accidents, and investigates causes and results of accident. Directs and reroutes traffic around fire or other disruption. Inspects public establishments requiring licenses to ensure compliance with rules and regulations. Warns or arrests persons violating animal ordinances. Issues tickets to traffic violators. Registers at police call boxes at specified interval or time. Writes and files daily activity report with superior officer. May drive patrol wagon or police ambulance. May notify public works department of location of abandoned vehicles to tow away.

It is given the code number 375.263-014. On the standard five-point physical demand scale of Sedentary - Light - Medium - Heavy - Very Heavy, this occupation would be considered Medium to Very Heavy Work as it involved the lifting of people weighing over 100 pounds. It is classified as semi-skilled work.

He reports earning from \$150,000 to \$170,000 per annum.

From 7/96 to 3/3/02, he was employed as a New York City Police Officer, performing train patrol, foot patrol, and radio motor patrol with the same job duties as above.

Mr. Moshkovich never returned to work after his accident.

Mr. Moshkovich reports being placed by the Port Authority on accident disability retirement on 6/15/13, receiving 3/4 of his pay.

He is receiving \$2,429 per month in Social Security Disability Benefits, having been found unable to perform any substantial gainful activity by the federal government.

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. Moshkovich's past work history indicates that his main occupation was as a Police Officer. Based on the job description he gave, this work required Medium to Very Heavy Physical capability.

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

The competencies inherent in this occupation are the following:



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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. Exercises sound judgment. Expresses confidence in own judgment. 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. Possess ability to make logical and clear decisions quickly. Prioritizes time for assigned duties. Seeks clarity of roles and information. Sees consequences and implications of actions. Self monitors and corrects elements of performance. Serves customers. Understands attitudes, interests and needs of others. Uses direct persuasion, facts and figures. Works as a member of a team.

Reading: Reads to the level of understanding manuals, trade journals and periodicals. Knows how to use dictionaries, thesauruses and encyclopedias. Employees working as Alarm Investigator, Detective I, House Officer, Detective II and Merchant Patroller are responsible for reading internal memorandums that provide updated information on security matters. Responsible for reading and following apprehension and surveillance procedures, and knowing under what circumstances to contact police. Must be able to read at a level of comprehending materials equal to the skill of reading adventure stories. Able to look up unfamiliar words in dictionary for meaning, spelling, and pronunciation. Able to read and follow written instructions.

Writing: May prepare simple detailed reports regarding investigations, internal security procedures and policies. Security personnel listed above may be required to keep accurate written information in an activity log and document investigation, accident and criminal reports. Conforms to all rules of punctuation, grammar, diction and style. Requires the ability to write compound and complex sentences, using cursive style, proper end punctuation and employing adjectives and adverbs.

Mathematics: All of the occupations require the ability to add, subtract, multiply and divide all units of measure and perform the four operations with like common and decimal fractions, and perform arithmetic operations involving all American monetary units.

PROTECTING

Protecting human life and property against loss from fire, pests, and other natural hazards, and from negligence, criminal acts, and unlawful practices. Includes work situations, such as maintaining peace and order, directing traffic, patrolling establishments and areas, and apprehending lawbreakers; extinguishing fires; and exterminating pests.

Cautioning. Guarding. Policing.

According to Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles, U.S. Department of Labor, Employment and Training Administration,



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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 PROPERTY AND PEOPLE, and is coded 04.02.02. This occupation is given the ONETSOC code: 33-9032.00 for Security Guards.

In analyzing 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. Moshkovich's prior work has contained the following aptitudes:

- G-3 **Intelligence:** General learning ability.
- V-4 **Verbal:** Ability to understand meanings of words and ideas associated with them.
- N-4 **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-4 **Clerical Perception:** Ability to perceive pertinent detail in verbal or tabular material.
- K-4 **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-4 **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-5 **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:

- R - Performing repetitive work, or performing continuously the same work, according to set procedures, sequence, or pace.



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P - Dealing with people beyond giving and receiving instructions.

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.

WORKING CONDITIONS INFORMATION - Guards

Most guards spend considerable time on their feet, either assigned to a specific post or patrolling buildings and grounds. Guards may be stationed at a guard desk inside a building to monitor electronic security and surveillance devices or to check the credentials of persons entering or leaving the premises. They also may be stationed outside at a guardhouse of the sort found at gated communities and use a portable radio or telephone that allows them to be in constant contact with a central station outside the guarded area. Guard work is usually routine, but guards must be constantly alert for threats to themselves and the property they are protecting. Guards who work during the day may have a great deal of contact with other employees and members of the public. Guards usually work at least 8-hour shifts for 40 hours per week and are often on call in case an emergency arises. Some employers have three shifts, and guards rotate to equally divide daytime, weekend, and holiday work.

PRE-EXISTING ACCIDENTS/INJURIES AND/OR MEDICAL CONDITIONS

He reports having a left knee arthroscopic surgery in 2004. In 2009 he had an on the job accident, injuring the right knee which resulted in arthroscopic surgery. He states returning to full duty with no restrictions after these surgeries.

PHYSICAL COMPLAINTS

Mr. Moshkovich's current complaints include constant low back pain radiating down the left leg to the foot, constant neck pain varying in intensity radiating down both arms into the 4th and 5th fingers of the hand, low back spasms, difficulty sleeping (sleep apnea, uses a CPAP), fatigue, numbness in 4th and 5th fingers of both hands and both feet more severe on the left, and weakness in the hands and feet. He reports being affected by cold and damp weather. Mr. Moshkovich reports no deficits in hearing or with his vision.

MEDICAL TREATMENT

Hospitalizations and Surgeries

Mr. Moshkovich was hospitalized at South Nassau Communities Hospital (2/1/12) for open microdiscectomy L5-S1.

Physicians

He is treated by Dr. Fuast, an orthopedic surgeon at Orlin & Cohen Orthopedic Associates who states, "Lumbar radiculopathy. Herniated cervical and lumbar intervertebral disc.



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Cervical radiculopathy. Cervical and lumbar sprain. Shoulder impingement. Prognosis: Remains guarded. He remains under active care for his injuries. His percentage of temporary impairment is total." He sees this physician once every three months. This physician has recommended a low back fusion.

Therapy Treatment

Physical Therapy was received before and after his surgery on a three time per week basis. He also had a period of acupuncture.

Pain Management Treatment

He was treated by Dr. Yadegar who performed two epidural injections.

Medication Regimen

He takes the following medications: Tramadol for pain and Cyclobenzaprine as a muscle relaxer.

Orthotic Devices

None reported.

ACTIVITIES OF DAILY LIVING

Mr. Moshkovich can independently wash, dress, and bathe himself.

His daily activities include watching television.

Mr. Moshkovich reports that he owns a computer at home which he can use for email and internet. He reports experiencing low back pain when he uses his computer for more than 15-20 minutes.

The shopping and household chores are performed by his wife who is employed as a Social Worker.

He reports resting during the day due to his severe back pain.

Mr. Moshkovich denies involvement in any hobbies, sports, or special interests. Before being injured, Mr. Moshkovich participated in weight lifting and going to the gym.

RESIDUAL FUNCTIONAL CAPACITY SELF-ASSESSMENT

Mr. Moshkovich gives the following as his current physical capacity: able to sit 15-20 minutes noting neck and low back pain, able to stand 10-15 minutes experiencing low back and left leg pain, and able to walk 10-15 minutes experiencing low back and left leg pain, as



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well as fatigue. He reports difficulty bending due to his low back pain. He can climb a flight of stairs within normal limits. He is able to lift and carry 5-10 pounds.

He is able to grasp and manipulate with both hands, noting numbness in his hands. The dominant hand is the right. He is limited in moving his neck along all planes.

He has a New York State driver's license. Mr. Moshkovich reports difficulty driving for more than 45 minutes due to his low back and left leg pain.

EVALUATION TESTING METHODOLOGY

The vocational evaluation test battery was designed to assess Mr. Moshkovich's future vocational handicaps, vocational capacity, and earning capacity.

Selection of the tests administered were based on Mr. Moshkovich's prior work experience as a Police Officer, educational level, and disabling condition.

The vocational evaluation work area consisted of Mr. Moshkovich seated at a table where he had the option of sitting or standing. The evaluator was seated at the same table observing him throughout the testing session.

Standardized tests and work samples were administered for observing the impact and effect of Mr. Moshkovich's disabling condition on his ability to perform Sedentary, Light, Medium, Heavy, and Very Heavy types of work activities, as they exist in the labor market and are defined in the DOT. Work samples are "hands on" tasks whereby the person works with the actual tools, equipment, or work processes of a particular occupation.

Instructions for the tests were given in a standardized manner to replicate an actual work environment either orally, in writing, or through demonstration. All tests have a sample section which Mr. Moshkovich had to successfully complete before beginning the task. Time limits were set for each task.

Emphasis was placed on observing such worker characteristics as the quality and quantity of work, work tolerance, reaction to job changes, work pressure, ability to comprehend directions, physical stamina, ability to concentrate, ability to work under supervision, and ability to work at an even, sustained pace.

An analysis of the Vocational Evaluation involves an interpretation of the score of each test (objective finding) and relating it to the observations made of the effect of Mr. Moshkovich's disabling condition while the test was performed. Norm groups consisting of industrial or employed workers were used to assess his rate of productivity in the competitive labor market.

Scores are reported using a scale of above average (Aptitude Level 1 & 2; 68th to 99th percentile), average (Aptitude Level 3; 34th to 65th percentile) and below average (Aptitude Level 4 & 5; 1st to 33rd percentile) compared to people in the norm group. A score of above



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average signifies a competitive level of performance and the production level required of persons employed in this capacity. An average score indicates a level of production approaching a competitive level, which indicates potential employability. A below average score denotes a level of production below that for competitive employment.

Through the administration of several tests which measured the same vocational construct, constant observation through the evaluation, and a review of the test scatter, it was my opinion that the test battery was internally consistent, reliable, and valid.

In addition, it is my opinion that Mr. Moshkovich worked to the highest level of his capability given his past vocational experience, educational level, and handicap, and that the test results accurately reflect his vocational capacity for sustained gainful employment.

VOCATIONAL EVALUATION RESULTS AND BEHAVIORAL OBSERVATIONS

Purdue Pegboard is designed to measure gross movements of the arms, hands, and fingers, as well as fine finger dexterity. Mr. Moshkovich's scores on this test were below average on the right-hand section, below average on the left-hand section, below average on the both-hand section, and below average on the four-part assembly section when compared to the male industrial applicant norm group. This test is related to jobs involving the workers' trait factor Handling (.887). He reported experiencing low back pain, as well as numbness in the 4th and 5th fingers of both hands.

Vocational Aptitude Battery - Manual Dexterity Test assesses the individual's ability to work with his hands in placing and turning motions. This manipulative test requires the person to assemble large, three-piece fittings on an assembly board. The size of the fittings requires the person to use only his whole hands or wrists to perform this task. Mr. Moshkovich obtained an average score compared to the competitively employed norm group. He reported experiencing neck and low back pain, as well as numbness in both hands and feet, while working in a standing position.

Vocational Aptitude Battery - Finger Dexterity Test assesses the individual's ability to use the fingers to work with small objects quickly and correctly. This manipulative test involves assembly of a small, five-piece object, which requires the person to use only his fingers in the performance of this task. Mr. Moshkovich obtained a score of below average compared to the competitively employed norm group. He performed this test in a standing position.

Employee Aptitude Survey - Verbal Comprehension is a measure of an individual's vocabulary as it is used in oral and written communication. When compared to the general productive male population norm group, Mr. Moshkovich's score was above average. While working in a seated position, he reported experiencing neck and low back pain, as well as numbness in the fingers of both hands.

Employee Aptitude Survey - Visual Speed and Accuracy is a test of a person's ability to compare pairs of numbers and indicate whether they are the same or different. Mr. Moshkovich's score was average compared to the general productive male population norm



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group. While working in a seated position, he reported experiencing neck and low back pain, as well as numbness in the fingers of both hands. He noted impaired concentration while performing this test.

Employee Aptitude Survey - Verbal Reasoning involves being presented with a list of facts and having to indicate if the conclusions drawn from these facts are true or false. When compared to the general productive male population norm group, Mr. Moshkovich's score was average. While working in a seated position, he reported experiencing neck and low back pain, as well as numbness in the fingers of both hands. He noted impaired concentration while performing this test.

Employee Aptitude Survey - Word Fluency is a test of a person's ability to rapidly think of certain words. Mr. Moshkovich's score was average compared to the general productive male population norm group. While working in a seated position, he reported experiencing neck and low back pain, as well as numbness in the fingers of both hands. He noted impaired concentration while performing this test.

Employee Aptitude Survey - Manual Speed and Accuracy is a test of an individual's ability to make quick and accurate movements with the hand. Mr. Moshkovich's score was average compared to the general productive male population norm group. While working in a seated position, he reported experiencing neck and low back pain, as well as numbness in the fingers of both hands. He noted impaired concentration while performing this test. He stood at the test's completion.

Office Skills Tests - Forms Completion consists of reading a page of information and entering this information into the appropriate place on the form. Mr. Moshkovich's score was average compared to the clerk norm group. While working in a seated position, he reported experiencing neck and low back pain, as well as numbness in the fingers of both hands. He noted impaired concentration while performing this test.

Dynamometer Hand Testing is a measurement of an individual's gross grasping ability. Strength-of-grip measurements taken on three successive attempts with the Jamar Dynamometer, set at the third notch, revealed an average grip on the right of 29 Kg and 29 Kg on the left. Mr. Moshkovich's grip measurements were compared to the male industrial workers' norm values of 48.5 Kg on the right and 44.6 Kg on the left from Hunter's Rehabilitation of the Hand.

TRANSFERABILITY SKILLS ANALYSIS

Transfer of skills involves an assessment of skills that a person used on one job which can be interchanged or substituted into another job to be used to determine the employability of the person. Skills are learned by doing. In the context of Social Security Disability, transferable skills are defined as the assessment of work functions acquired from performance of skilled or semi-skilled jobs which can be applied to meet the requirements of other skilled or semi-skilled jobs. This process is based on a synthesis of information from an evaluatee's background history including medical, psychological, educational, social and



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vocational information. Using acquired skills has been proven to be the most cost-effective means of returning an injured worker back to gainful employment. Transferable skills can make the difference between a person working or not working. The Transferability of Skills Analysis (TSA) is the foundation to identify similar or related jobs that are consistent with or equal to the worker's capabilities and functional restrictions. The seven step process of Transferability of Skills Analysis involves Identifying jobs in a person's work history, Select an occupational code with title (using the DOT or O*Net), Profile the jobs, Create an unadjusted vocational profile, Create the residual functional capacity profile, Finding related or similar jobs, and locating jobs in the local labor market.

Mr. Moshkovich's work history was analyzed using The Vocational Diagnosis and Assessment of Residual Employability (VDARE) process which is an organized or systematic way to assess transferable work skills and vocational potential for work. The VDARE process uses the evaluatee's work history as the basis to build an assessment of the evaluatee's vocational functioning. The analysis takes into account the factors of physical demands, working conditions, general educational development, specific vocational preparation, aptitudes, work activities, and work situations.

Research was conducted regarding the level and types of skills, aptitudes, and physical demands required of each job. A transferability of skills analysis was performed to determine which occupations in the labor market he could perform within his vocational capability.

Based on this process, Mr. Moshkovich is unable to continue working as a Police Officer, and due to his pain and resultant physical limitations, will have significant difficulty using his previously learned transferable skills to perform other related occupations.

ASSISTIVE TECHNOLOGY

Rehabilitation Counselors recognize that the use of Assistive Technology or Rehabilitation Technology increases the ability and work choices available to a person with an impairment. Assistive Technology is defined by the Technology-Related Assistance for Individuals with Disabilities Act of 1994 (PL 103-218) is "any item, piece of equipment, or production system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capacities of individuals with disabilities."

In some cases, Assistive Technology is not always the answer; however its use can create options which otherwise might not be available.

In this case, I considered what Assistive Technology could assist Mr. Moshkovich in being competitively employed.

VOCATIONAL REHABILITATION ASSESSMENT

The Federal and State Government have combined to fund and service disabled persons, The Rehabilitation Act of 1973. This act redirected the vocational rehabilitation program making



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its first priority to provide services to severely disabled individuals. The Workforce Investment Act and Rehabilitation Act Amendments of 1998 provided funding for a "one-stop delivery system" for individuals needing help in securing employment.

The purpose of vocational rehabilitation is to provide training and other services when the injured person can be reasonably expected to perform full-time, competitive, gainful work requiring at least Sedentary Physical demands. The New York State ACCES-VR (Adult Career and Continuing Educational Services - Vocational Rehabilitation) can provide such services as individual vocational counseling, vocational technical training, educational services, on-the-job training, assistive technologies, and job placement assistance.

The vocational rehabilitation process has six phases with the injured person receiving the services that are best suited for them:

Phase 1. Injured worker is assisted by the counselor to return to their same job using such techniques as work evaluation and work hardening.

Phase 2. Vocational Rehabilitation Counselor works with the employer to accommodate the employee and return them to work with the same employer in a different job.

Phase 3. Injured worker is placed into a job in the same industry.

Phase 4. Counselor identifies worker's transferable skills, aptitudes, and interests and attempts job placement in all industries.

Phase 5. When the worker cannot be placed directly in alternative employment, placement in training or educational programs is required with selective job placement services provided once the program has been completed.

Phase 6. When the worker's vocational capacity is reduced below that of Sedentary type work and they do not meet the minimum physical capacity to receive vocational rehabilitation services.

State Vocational Rehabilitation services are usually provided at no cost to Social Security Disability recipients or to an injured worker. Receiving vocational rehabilitation services, may be based upon the person's resources.

Due to Mr. Moshkovich's reduced vocational capacity, he is not a candidate for vocational rehabilitation services and fits into Phase 6.

VOCATIONAL CONCLUSIONS

1. Below competitive vocational capacity and level of production on tasks requiring abilities similar to those required in his past relevant work as a Police officer which



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indicates an inability to perform this occupation at a competitive rate or transfer previously learned skills to other types of semi-skilled jobs.

2. Impaired fine, medium, and gross dexterity, as well as bimanual coordination.
3. Diminished gross grasping strength of the right and left hands as measured by the Jamar Dynamometer.
4. Below competitive production rates on bench assembly-type tasks of an unskilled type with Sedentary and Light exertional demands.
5. Approached a competitive level of production on inspection-type tasks requiring Sedentary Physical demands.
6. Approached a competitive level of production on clerical-type tasks requiring Sedentary Physical capability.
7. Difficulty concentrating on clerical-type tasks
8. Complaints of neck pain, low back pain, numbness in the fingers of both hands, numbness in both feet, and fatigue becoming more intense after working two hours on Sedentary and Light tasks.
9. Based on the observations made of Mr. Moshkovich during the vocational evaluation, it is my opinion, from a vocational standpoint, that he has the following physical capacity: able to sit 15-20 minutes, able to stand 10-15 minutes, able to lift and carry 5-10 pounds, and could alternately perform these movements for three to four hours out of an eight-hour workday. This is an insufficient vocational capacity to perform work requiring even Sedentary Physical capability.

RESIDUAL EARNING CAPACITY

The establishment of the residual earning capacity involves determining:

- A. What jobs a person is capable of doing,
- B. How likely it is that the individual can find employment in those jobs, and
- C. The pay scale for the types of jobs the person is capable of doing.

The functional limitations imposed by Mr. Moshkovich's injuries 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.



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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 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.
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 this injury, Mr. Moshkovich has suffered severe vocational limitations.

JOB SEARCH EFFORTS

Since Mr. Moshkovich's accident, he has not worked or looked for work due to his severe limitations.

EMPLOYABILITY AND EARNING CAPACITY OPINION

Based on the results of the vocational evaluation performed on Mr. Moshkovich and the conclusions made, as well his age, three year College education, and past work experience of semi-skilled work as a Police Officer, the following are my opinions, as a Vocational Expert, regarding his rehabilitation plan, access to the labor market, placeability, earning capacity, and labor force participation.

Vocational Handicaps

It is my expert opinion, based on the evaluation, that Mr. Moshkovich demonstrates significant handicaps which impede his employability. These handicaps include:



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Sitting
Standing
Walking
Bending
Stooping
Kneeling
Squatting
Lifting and Carrying
Diminished Grip Strength - *Right & Left*
Manual and Finger Dexterity - *Right & Left*
Grasping and Manipulating - *Right & Left*
Reduced Physical Stamina and Endurance
Impaired Concentration

Rehabilitation Plan

An assessment was made regarding Mr. Moshkovich's potential to receive vocational rehabilitation services. In order to formulate this opinion, consideration was made regarding Mr. Moshkovich's age, three year College education, and past work experience of semi-skilled work as a Police Officer.

Due to Mr. Moshkovich's reduced vocational capacity, he is not a candidate for vocational rehabilitation services.

Access to the Labor Market

The OASYS computer analysis was performed regarding Mr. Moshkovich's age, three year College education, past work experience of semi-skilled work as a Police Officer, work attributes, transferable skills, current vocational capacity, and the effect of his medical condition on his ability to access the labor market

Given Mr. Moshkovich's severe limitations and reduced vocational capacity, he is precluded from accessing the labor market.

Placeability

Given his age, three year College education, and past work experience of semi-skilled work as a Police Officer, it is my expert opinion that Mr. Moshkovich could not be competitively placed in the job market on a full-time, competitive basis.

Earning Capacity

This individual's neck, left shoulder, and low back injuries with residual severe pain and physical limitations present a severe impact on his ability to obtain and maintain employment.



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Based on the results of the Vocational Evaluation performed on him, the observations made while he performed Sedentary and Light types of work simulations, and the conclusions made, as well as his age, three year College education, and past work experience of semi-skilled work as a Police Officer, the following are my opinions, as a Vocational Expert, regarding Mr. Moshkovich's employability and earning capacity:

1. Mr. Moshkovich is unable to perform his past relevant work as a Police Officer.
2. Mr. Moshkovich's past earnings as a Police Officer best represent his pre-injury earning capacity.
3. Mr. Moshkovich is unable to transfer his skills to other types of semi-skilled occupations due to his severely reduced vocational capacity.
4. Mr. Moshkovich is unable to perform any Sedentary, Light, Medium, Heavy, or Very Heavy Work existing in the local or national economy on a sustained, full-time, regular, competitive basis.
5. Mr. Moshkovich is unemployable for any job existing in the competitive labor market. This is the same opinion reached by the U.S. Federal Government in awarding him Social Security Disability Benefits.
6. In his present state, Mr. Moshkovich has sustained a total loss of earning capacity over his work life due to his impairments.
7. At the present time, Mr. Moshkovich is not a candidate for vocational rehabilitation services due to his reduced vocational capacity.

Labor Force Participation

In formulating my opinion regarding Mr. Moshkovich's employability and earning capacity, I considered the various factors which affect an injured person's work life expectancy in the competitive labor market. I considered that it may take him longer to find a job and that he may be unemployed longer between jobs. Mr. Moshkovich may require time off for medical treatment and may have difficulty keeping a job. Lastly, his limitations may force him to retire earlier than planned.

Prepared by:

A handwritten signature in dark ink, appearing to read "Edmond Provder", is written over a horizontal line.

Edmond Provder
Certified Rehabilitation Counselor
Diplomate, American Board of Vocational Experts

5-POINT PHYSICAL DEMAND SCALE

Sedentary Work involves:

- ▶ EXERTING 10 pounds of force occasionally, and/or a negligible amount of force to lift, carry, push, pull, or otherwise move objects, including the human body.
- ▶ SITTING most of the time, walking and standing occasionally.

Light Work involves:

- ▶ EXERTING 20 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly to move objects.
- ▶ Even if weight exertion is negligible, WALKING OR STANDING to a significant degree, and/or
- ▶ SITTING most of the time but with pushing and/or pulling of arm or leg controls, and/or
- ▶ Working at a production rate pace entailing constant pushing and/or pulling of materials.

Medium Work involves:

- ▶ EXERTING 20 to 50 pounds of force occasionally, and/or up to 10 to 25 pounds of force frequently, and/or up to 10 pounds of force constantly to move objects.

Heavy Work involves:

- ▶ EXERTING 50 to 100 pounds of force occasionally, and/or up to 25 to 50 pounds of force frequently, and/or 10 to 20 pounds of force constantly to move objects.

Very Heavy Work involves:

- ▶ EXERTING in excess of 100 pounds of force occasionally, and/or in excess of 50 pounds of force frequently, and/or in excess of 20 pounds of force constantly to move objects.

Occasionally = up to 1/3 of the time

Frequently = 1/3 to 2/3 of the time

Constantly = 2/3 or more of the time

*Appendix B****VOCATIONAL RESOURCES CONSULTED***

1. Dictionary of Occupational Titles, Fourth Edition-Revised, U.S. Department of Labor, Employment and Training Administration/JIST Works, Inc., 1991.
2. O*Net (Occupational Information Network) On Line <http://online.onetonline.org>
3. Job Browser Pro, Version 1.6.6 Skilltran, Spokane, Wa., 2012.
4. Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles, U.S. Department of Labor, Employment and Training Administration, 1993.
5. The Guide For Occupational Exploration, 2000 Edition, Farr, Ludden & Shatkin, Published by JIST Works Inc., 2000.
6. The Transitional Classification of Jobs, 6th Edition, J. E. and T. F. Field, Elliott & Fitzpatrick, Inc., 2004.
7. OASYS - Transferable Skills Program, VERTEK, Washington.
8. The Revised Handbook for Analyzing Jobs, U.S. Department of Labor, Employment and Training Administration/JIST Works, Inc., 1991.
9. Occupational Outlook Handbook, 2013-2014 Edition, U.S. Department of Labor, Bureau of Labor Statistics Bulletin 2700/JIST Works, Inc., 2013 also at <http://www.bls.gov/ooh/>
10. Rehabilitation Consultant's Handbook, 4th Revised Edition, Roger O. Weed and Timothy F. Field, Athens, GA 2012.
11. A Guide to Rehabilitation Volume I and II, Deutsch, Paul M. & Sawyer, Horace Ahab Press, Purchase, New York 2000.
12. A Theory of Work Adjustment, Dawis, R.V., England, G.W., & Lofquist, L.H.; Minnesota Studies in Rehabilitation XV, Bulletin #38, St. Paul, MN: University of Minnesota, 1964.
13. A Theoretical Model for Rehabilitation Counseling, Rehabilitation Counseling Bulletin, 33 (4), pp268-278.

14. Occupational Employment Statistics, May 2013 Metropolitan Area Occupational Employment and Wage Estimates New York-Northern New Jersey-Long Island, NY-NJ-PA at http://stats.bls.gov/oes/current/oes_35620.htm#43-0000
15. The Dollar Value of a Day, Time Diary Analysis, 2013 Dollar Valuation, Expectancy Date, Shawnee Mission, Kansas 2014.
16. National Vital Statistics Reports, Vol 63, No 7, November 6, 2014.
17. The Vocational Expert, Revised and Updated (2005), Blackwell, Terry L, Field, Timothy F et.al, Jenkins, William M, Amderson Robert M, Dietrich Wilson, L., Elliott & Fitzgerald, Inc, Athens, Georgia 2005.
18. Foundations of Forensic Vocational Rehabilitation, Robinson, Rich H, Editor, Springer Publications, New York, 2014
19. Approach to Estimating Lost Earnings, Dilliman, Everett, G, Field, Timothy F et.al., Elliott & Fitzgerald, Inc, Athens, Georgia 2002.
20. Approach of Earning Capacity, 3rd Edition, Shahnasarian, Michael, Lawyers & Judges Publishing Company, Inc. Tucson, AZ, 2011
21. The Rehabilitation Professional, Special Issue Diminished Future Earning Capacity Van de Bittner, Eugene E and Field, Timothy F et.al., Volume 20, Number 2, 2012
22. Work & Disability, 2nd Edition, Szymanski, Edna M, Parker, Randal M., E. Pro-ed Publishing Company, Austin, Texas 2003.
23. A Guide to Vocational Assessment, 2nd Edition, Power, Paul W., Pro-ed Publishing Company, Austin, Texas 1991.
24. The Quick Desk Reference for the Forensic Rehabilitation Consultants, Field, Janet E, Elliott & Fitzgerald, Inc, Athens, Georgia 2002.
25. Advanced Issues in Forensic Rehabilitation, Volume I & II, Havranek, Joseph E., Elliot & Fitzpatrick, Inc, Athens, Georgia 2007.
26. The Professional Practice of Rehabilitation Counseling, Maki, Dennis R., Tarvydas Vilija M., Springer Publishing Company, New York, N.Y. 2012.

27. Current Population Reports - Household Economic Studies, Americans with Disabilities:1994-1995, U.S. Department of Commerce, Economics and Statistics Administration, P70-61, August 1997.
28. Americans With Disabilities: 2010. Current Population Reports Brault, Matthew W. U.S. Department of Commerce, U.S. Census Bureau, July 2012
29. 2012 American Community Survey, U.S. Census Bureau at www.factfinder2.census.gov
30. Chartbook on Work and Disability at <http://www.infouse.com/disabilitydata/workdisability/>
31. Persons with Disabilities, Labor Market Activity 1994, Hale, Thomas, Hayghe, Howard & McNeill, John, Monthly Labor Review, September 1998.
32. Trends in Labor Force Participation Among Persons With Disabilities, 1983-1994, Trupin, Laura, Sebesta, Douglas, Yelin, Edward, and LaPlante, Mitchell, Disability Statistics Rehabilitation Research And Training Center, Institute of Health and Aging, University of California, San Francisco, CA, April 1997.
33. Horner, Stephen M., and Frank Slesnick. "The Valuation of earning Capacity Definition, Measurement and Evidence." Journal of Forensic Economics 12, no. 1 (1999): 13-32.

Appendix C

Employability - Glossary of Terms

Aptitude - the specific capacities or abilities required of an individual in order to facilitate the learning of or carrying out of some task or job duty.

Disability - any physical, mental, or emotional condition that is chronic or long-lasting, which is severe enough to limit the individual's functioning and which results in a handicap to productive activity.

Earnings Loss - the individual's expected loss of earnings, if any, which results from the injury. Loss of earnings is based on history whereas loss of earnings capacity is projected into the future.

Earnings Capacity - ability of individual to obtain and hold the highest paying of jobs to which he might have access. Access is determined by worker traits, work skills and amount of training.

Employability - exists if a person possesses skills, abilities, and traits necessary to perform a job; the kinds and types of jobs which a person with a disability might be able to perform.

Essential Functions - (an Americans with Disabilities Act and 1973 Rehab. Act term) fundamental job duties of the employment position the individual with a disability holds or desires.

Exertional Level - physical abilities necessary for certain types of jobs; includes sedentary, light, medium, heavy, and very heavy.

Functional Limitations - results from physical, mental, and emotional disabilities which adversely affects the workers capacity to function at a job.

Handicap - the effect of the disability on the ability to perform gainful work.

Illiteracy - inability to read or write; generally little or no formal education.

Intelligence Quotient (IQ) it is a measure of general intelligence obtained by testing.

Job Description - narrative description of activities and requirements of a job; does not necessarily accurately reflect what a worker will actually do in that job.

Limited Education - some ability in reasoning, arithmetic, and language skills, but not enough to perform semi-skilled or skilled job; generally the 7th to 11th grades according to definition by the Social Security Administration.

Labor Market Access (LMA) a method for determining the employability and loss of access to the labor market of an individual with a disability. Utilizes the Vocational Diagnosis and Assessment of Residual Employability process (VDARE) to determine residual functional capacity.

Loss of Access - generally related to the loss of access to the labor market. Persons with injuries may suffer a reduction in the numbers of jobs which are available to them as a result of reduced work life expectancy (such as earlier retirement, or part-time rather than full time work) or due to functional limitations which prevent the client from choosing certain occupations.

Marginal Education - ability in reasoning, arithmetic, and language skills sufficient to perform simple, unskilled types of jobs; generally, 6th grade & below.

Mental Limitation - retardation and learning disabilities are grouped as a functional limitation, although the casual circumstances are quite different; both refer to a hindrance or negative effect in the learning and performance of activities and to other overt manifestations of inadequate mental function.

Mobility Limitations - function of getting from one place to another is limited; may be caused either by physical disability or environmental barriers.

Non-Exertional Impairment - does not limit physical exertion and does not directly affect ability to sit, stand, walk, lift, carry, push, or pull; does have impact on ability to work.

Employability - Glossary of Terms

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Pain Limitation - pain refers to an unpleasant sensation characterized by throbbing, aching, shooting or other unpleasant feelings associated with bodily injury or disorder. When pain is continuing, unremitting, uncontrollable, and severe, it may constitute a severe functional limitation to normal living.

Partial Disability - exists if the individual cannot perform some or all of the work for which he or she was fitted prior to the injury.

Physical Demands - the physical requirements made on the worker by the specific job worker situation.

Placeability - economic conditions and employer attitudes are such that a person can actually be placed in a job; the difficulty in placing a person with a disability in a job.

Psychometric Instruments - standardized instruments which measure correlative mental functioning of a cognitive, psychomotor, or effective nature purported to be important to specific job performance utilizing abstracted tasks.

Residual Functional Capacity - a disabled person's remaining physical and mental work potential and capacity.

Sheltered Workshop - It provides transitional and/or long-term employment in a controlled and protected working environment for those who are unable either to compete or to function in the open job market due to their handicap.

Skill Level - level of knowledge of work activity and degree of judgment required to perform a certain job; includes unskilled, semi-skilled, and skilled.

Temperament - personal traits consisting of the individual's characteristic mode or inclination of emotional response.

Total Disability - exists if the individual is unable to return to preinjury employment and unable (due to an injury) to obtain employment with similar livelihood.

Transferability of Skills - skills that were used in one job can be interchanged or substituted into another job; used to determine the employability of a person.

VDARE Process - (Vocational Diagnosis and Assessment of Residual Employability) uses client's work history as a basis upon which to build an assessment of client vocational functioning capabilities.

Vocational Assessment - process by which vocational expert determines loss of vocational functioning due to a disability and helps clients to correlate their characteristics as workers with the characteristics of occupations.

Vocational Rehabilitation Services - services designed to enable a handicapped person to secure and retain employment.

Wage Loss Analysis - a procedure which addresses the amount of wages lost to a worker as a result of an injury.

Work Tolerance - ability to sustain a work effort for a prolonged period of time, ability to maintain a steady flow of production at an acceptable pace and acceptable level of quality, ability to handle a certain amount of pressure.

Work Samples - a well defined work activity involving tasks, materials, and tools which are identical or similar to those in an actual job or cluster of jobs. It is used to assess an individual's vocational aptitude, worker characteristics, and vocational interest.

Worker Trait - the requirements made of the worker in terms of aptitudes, general educational development, vocational preparation, physical demands, and personal traits.

Resources: Vocational Evaluation and Work Adjustment Standards With Interpretive Guidelines and VEWA Glossary, Copyright, 1977.

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EXHIBIT B

PROFESSIONAL QUALIFICATIONS OF EDMOND A. PROVIDER300-3 Rt 17 South, Lodi, NJ 07644 - (800) 292-1919 - www.oasinc.org**EDUCATION**

1971 B.S. Rehabilitation Counseling, Pennsylvania State University
1973 M.Ed. Rehabilitation Counseling, Pennsylvania State University
1977-1987 Rehabilitation Counseling Doctoral Candidate, 60 credits, N.Y.U.
2003 University of Florida/Intelicus Life Care Planning Program for Catastrophic Case Management, 128-post graduate hours

PROFESSIONAL EXPERIENCE***Vocational Expert/Life Care Planner
Occupational Assessment Services****August 1981 to Present*

Evaluate the vocational potential and employability of able-bodied and disabled individuals through interviewing, reviewing records, and/or administration of vocational testing to provide a vocational appraisal as to the individual's ability to work in the competitive labor market. Develop and implement Life Care Plans for catastrophic individuals. Consult with industry and government agencies regarding Americans with Disabilities Act.

Provide initial assessment, vocational evaluation, counseling, case management, and job-placement services to assist industrial-disabled and able-bodied clients return to gainful employment, given their residual functional capacity. Approved vendor—New Jersey Division of Vocational Rehabilitation Services, New Jersey Commission for the Blind and Visually Impaired, New York Commission for the Blind and Visually Handicapped.

Testimony accepted in Federal and State Courts—New York, New Jersey, Pennsylvania, Maine, Massachusetts; state courts—Florida, New Hampshire, Connecticut, Ohio, Wisconsin, Illinois, North Carolina.

***Vocational Consultant
Social Security Administration****June 1997 to September 2000
October 1977 to September 1985*

Provided impartial vocational testimony in Social Security Disability hearings as to claimants' ability to perform substantial gainful activity, given their residual functional capacity.

***Supervisor Vocational Facilities
Mount Sinai Hospital****December 1979 to December 1981
July 1974 to August 1978*

Supervised and administered the Sheltered Workshop and Vocational Evaluation Programs, which included the provision of supervision, counseling, work adjustment services, and job placement services to the physically disabled, mentally ill, visually impaired and industrially disabled.

Vocational Consultant*February 1975 to December 1979*

Administered and developed vocational rehabilitation programs for South Beach Psychiatric Center, Staten Island Association for the Visually Handicapped and the Contemporary Guidance Service.

***Rehabilitation Counselor
Federation of the Handicapped****March 1973 to July 1974*

Provided individual and group counseling, vocational evaluation, work adjustment, and job placement services to severely physically disabled, visually impaired and developmentally disabled clients.

PROFESSIONAL AFFILIATIONS

Certified Rehabilitation Counselor (#18792); Diplomate, American Board of Vocational Experts (#00448)
Certified Life Care Planner (#0501)

Professional Member of National Rehabilitation Counseling Association; National Rehabilitation Association; Vocational Evaluation and Work Adjustment Association, Job Placement Division; Brain Injury Association, Inc.; IARPS; RESNA

Index No.: 5801/13

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

AVI MOSHKOVICH, ELIZABETH MARIA
MOSHKOVICH, and SHIRLEY SMITH

Plaintiff,

-against-

GATEWAY INDUSTRIES, INC, and
FJC SECURITY SERVICES, INC.,

Defendants

3101(d) EXCHANGE - PROVDER

THE LAW OFFICE OF
JOHN C. DEARIE & ASSOCIATES
515 Madison Avenue
New York, New York 10022
(212) 980-0404