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EMPLOYABILITY AND EARNING CAPACITY EVALUATION
on
Carlos Ordonez

Prepared for the Law Offices of Lewis Brisbois

June 26, 2018

TABLE OF CONTENTS

	Page
Disclosure	1-2
Disclaimer	2
Purpose of Referral	2-3
Referral Questions	3
Vocational Evaluation Process	3-4
Vocational Evaluation Methodology	4-6
Vocational Evaluation Assumptions	6-7
Earning Capacity Assessment	7
Evaluation of Residual Functional Capacity	7-8
Formulation of Opinions	8-9
Records Reviewed	9-11
General Description	11
Background Information	11
Educational and Training Background	12
Work History	12-15
Analysis of Past Work Experience	15-16
Cognitive Complaints	16-17
Emotional Complaints	17
Physical Complaints	17
Medical Treatment	17-18
Activities of Daily Living	18-19
Residual Functional Capacity Self-Assessment	19
Evaluation Testing Methodology	19-20

Vocational Evaluation Results. 20-21

Analysis of Test Results 21-22

Transferability Skills Analysis. 22-23

Vocational Rehabilitation Assessment 23-24

Job Search Efforts. 24

Employability and Earning Capacity Opinion. 24-26

Appendix A: 5-Point Physical Demand Scale
Appendix B: Vocational Resources Consulted
Appendix C: Glossary of Terms-Employability
Curriculum Vitae

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EMPLOYABILITY AND EARNING CAPACITY EVALUATION
on
Carlos Ordonez

Mr. Ordonez 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 his receiving vocational rehabilitation services. He was evaluated on 6/12/18 for a total of two hours at our office in New York City Mr. Ordonez attributes his condition to an on the job accident that occurred on 12/5/14 wherein he sustained injuries to his head resulting in cognitive limitations, anxiety, and depression. In addition, he reports injuring his shoulders, neck, and entire back.

CONFIDENTIALITY ISSUES

Mr. Ordonez was evaluated by the undersigned in compliance with the ethics of a Certified Rehabilitation Counselor, the American Board of Vocational Experts, and IARP Forensic member.

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 medical impairments and resultant functional limitations impact on his employability, and earning capacity and that the information gathered in the evaluation would be included in a written report.

Mr. Ordonez 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 had been completed, it was our office policy to either send the records back to the referring attorney or shred the file.

He was told that any verbal information obtained in this forensic evaluation was not confidential. The evaluee indicated not recalling seeing me as a treating rehabilitation counselor at any time outside this forensic evaluation. 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. Ordonez was told that no conclusions would be reached during the evaluation session as it was necessary to complete a review of all of the documents, the standardized vocational diagnostic interview, vocational testing, and observations which will be contained in a report with my final vocational opinions. Mr. Ordonez seemed to understand these parameters and agreed to continue.

DISCLOSURE

Mr. Ordonez was advised that this evaluation is held in accordance with the most recent (2017) Professional Code of Ethics of the Commission on Rehabilitation Certification. He was advised that the evaluation was being conducted within the parameters of litigation and that any information obtained during the evaluation was not confidential.

In addition, Mr. Ordonez was advised that this one-time evaluation was forensic in nature and that no client-counselor relationship was implied; that no direct rehabilitation services would be provided to him by Occupational Assessment Services, Inc.; and that an unbiased evaluation of his post-injury employability, earning capacity, and access to the labor market was the only purpose of this evaluation.

He was also told that Occupational Assessment Services fully complies with the laws concerning medical records and these would be kept confidential. Once the case is resolved, the corporate policy is to destroy the file by shredding the case records. Mr. Ordonez indicated an understanding of these rules of procedure and conduct and agreed to continue.

DISCLAIMER

This evaluation occurred in the context of an ongoing forensic matter. Discovery and other processes may reveal new information not available at the time of this evaluation. Therefore, the Vocational Expert/Rehabilitation Counselor retains the right to modify vocational opinions later in a matter consistent with new documentation presented.

At the onset of this current evaluation, the evaluee was reminded of the nature and purpose of the current evaluation. Mr. Ordonez was made aware that the ethical and professional obligation was to provide a balanced, fair examination without regard to the Party who retained him.

I have no personal interest with respect to the parties involved, nor any interest that might prevent me from providing an unbiased opinion. My compensation is not contingent on the analyses, opinions, or conclusions of this report.

PURPOSE OF REFERRAL

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

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

The Vocational Evaluation consisted of a standardized Vocational Diagnostic Interview and the administration of standardized tests and work samples to observe and 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. Ordonez's medical impairments 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. Ordonez'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. Ordonez's vocational capacity?
2. Could he return to his prior work as a Demolition Worker and perform the full range of required work activities?
3. Has his prior work as a Demolition Worker 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. Ordonez's physical impairments had on his work life?
7. What is the feasibility of Mr. Ordonez participating in a vocational rehabilitation program?

VOCATIONAL EVALUATION PROCESS

The general procedures for conducting a vocational assessment of earnings capacity consist of a review of background information, a vocational interview, testing if appropriate, an analysis of work history, an analysis of transferable skills from the work history and education, and labor market information. (App. B10)

The process begins with the collection of vocationally relevant background information. (App. B36)

A determination of occupations that can be performed by this individual is made. If this individual is employable, labor market data from the Department of Labor is reviewed to

determine average salaries that exist in the occupations that can be performed. Salaries of job openings are considered, if available. Prior earnings may be given consideration and can reflect what an individual would be expected to earn based on actual earnings.(App. B34)

The marketability of the skills and abilities are also considered. Based on findings of this analysis, opinions are rendered concerning earnings capacity if this individual is able to engage in employment. If there are medical or psychological issues, they are considered in forming an opinion of earnings capacity. The purpose of this procedure is to determine skills acquired from prior work that could be used or transferred to other similar jobs that could be performed using those skills. (App. B34)

An analysis of the transferability of skills is the accepted standard procedure in the vocational assessment of individuals. (App. B34)

If an individual is established in a career that is consistent with the education and prior work experience, it is not necessary to perform an analysis of transferable skills or examine alternate jobs.(App. B11)

VOCATIONAL EVALUATION METHODOLOGY

The Employability and Earning Capacity Evaluation used the RAPEL method which consists of five sections:

Rehabilitation Plan - Based on the injured person's vocational and functional limitations, vocational strengths, emotional functioning, and cognitive capabilities. Also this may include testing, counseling, rehabilitation technology, job analysis, job coaching, and vocational placement. Also considered are reasonable accommodations.

Access to the Labor Market - Computer programs, transferability analysis, statistics, and evaluee's work experience.

Placeability - Likelihood the evaluee will be successfully placed in competitive employment. Consideration is made of statistics, employment data (if any) for specific medical conditions, community economic situation (local unemployment rate), and availability of jobs.

Earnings Capacity - Based on the above information, a comparison is made regarding the evaluee's pre-incident ability to earn and post-incident earning capacity. Also considered are his earnings by education, and computer analysis based on worker traits.

Labor Force Participation - Evaluee's work life expectancy. Consideration is made regarding part-time versus full-time work, time lost due to the injury, medical treatment or follow-up, earlier retirement, etc.

This methodology is described by Roger Weed and Timothy Field in Rehabilitation Consultant's Handbook, 4th Revised Edition. The RAPEL methodology has been used by Vocational Experts for more than 25 years and has been peer reviewed numerous times.

In order to use this peer reviewed methodology generally accepted in the field of Rehabilitation counseling and commonly used in the discipline of rehabilitation counseling by rehabilitation and career professionals and vocational experts in litigation and non-litigation settings, the evaluation consisted of eight parts: (App. B13)

1. The initial section involves *collecting data and facts specific to Mr. Ordonez* by reviewing the medical records and medical restrictions, Mr. Ordonez's deposition, and other documents that describe the evaluee's condition. This data provides background information to better understand the evaluee 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 evaluee'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. Ordonez's past relevant work as a Demolition Worker. This consists of classifying the evaluee'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. Ordonez'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 evaluee's pre-injury vocational capacity.(App. B3)

4. Based on the information obtained in the document review, vocational interview, and vocational analysis, a vocational evaluation test battery is administered to measure the evaluee's post-injury vocational aptitudes, abilities, skills, and vocational capacity for competitive employment. It assists in determining the individual's functional capacities and limitations. The testing helps in determining the vocational significance of the injury on the person's employability and post-injury vocational capacity.

5. Using the Vocational Diagnosis and Assessment of Residual Employability (VDARE) process, a peer reviewed widely accepted methodology, a Transferability Skills Analysis is performed using the OASYS computer program, which uses the classic method (Work Field, SVP, MPSMS). Mr. Ordonez'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 - 2010 codes (974 occupations), 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. Ordonez's past jobs. This information, along with the vocational test battery results, is used

to make a determination regarding Mr. Ordonez'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.

6. A Labor Market Access (LMA) analysis was conducted though the development of the evaluee's pre and post injury worker trait vocational profile made to determine Mr. Ordonez'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 evaluee's work ability and noting jobs, if any, the evaluee can perform.

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

8. If the individual is found to be employable given the results of the vocational evaluation, research is conducted regarding the evaluee's residual earning capacity and the number of such jobs in the local labor market using state and federal government statistics such as OES (Occupational Employment Survey) - State and Local, OOH (Occupational Outlook Handbook 2018-2019) - National or private labor studies to determine whether jobs exist that Mr. Ordonez can perform within his vocational capacity and the current wage rates for these occupations. This is the standard type of Labor Market Information used and relied upon in the field of Rehabilitation Counseling.

VOCATIONAL EVALUATION ASSUMPTIONS

The vocational opinions regarding Mr. Ordonez'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. Ordonez's physical condition and medical treatment.

2. The evaluee was cooperative and complied throughout the vocational evaluation process.

3. The evaluee 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 evaluee's ability. That there is no significant discrepancy between the evaluee's claimed medical impairments and the objective findings of the vocational evaluation.

5. Mr. Ordonez's pre-accident vocational functioning is estimated within the average range based on his educational and occupational history.

6. Mr. Ordonez performed the vocational testing battery to the best of his ability.

7. Mr. Ordonez'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. Ordonez's medical condition.

EARNING CAPACITY ASSESSMENT

Several factors were specifically considered during this vocational evaluation to determine Mr. Ordonez's loss of earning capacity. Earning capacity is defined as what a person is able to earn, expected earnings is defined as what a person 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 for in the future. The person's 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 person's vocational capacity, pre-existing and work motivation, and demonstrated earnings history.(App. B11)

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

EVALUATION OF RESIDUAL FUNCTIONAL CAPACITY

A functional limitation is the inability of an individual to perform an action or set of actions, either physical, psychological, or cognitive because of a physical or emotional restriction which is often referred to as a disability or handicap. Functional capabilities may be used to describe the vocational capacity of a particular individual with a disability to try to complete a task or perform work of a certain physical demand level in a specific work environment.

The professional analysis of the worker and their job characteristics has resulted in the development of standardized descriptions for the physical demands and environmental conditions of individual occupations. The recognized standard, is the United States Department *Dictionary of Occupational Titles, Selected Characteristics of Occupations Listed in the Dictionary of Occupational Titles* and the *Revised Handbook for Analyzing Jobs*. The impediments and capabilities of disabled persons, whether traumatic or congenital may be restated by Rehabilitation Counseling Professionals as functional limitations in accordance with the U.S. Department of Labor.

Rehabilitation Counselors and Labor Market Analysts use functional capacity descriptions to match a disabled worker with a job description, in order that the physical, emotional or cognitive requirements of a job are within the worker's capacities, taking to avoid a match that would jeopardize worker safety or compromise performance. Based upon the comprehensive vocational evaluation and my experience with individuals who have similar impairments and vocational capacity, I formulated an assessment as to this evaluee's vocational capacity utilizing the U.S. Department of Labor's Five Point Physical Demand Scale contained in Appendix A of this report.

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.

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 private, federal and state government publications. The current knowledge and methods used in the field of forensic vocational rehabilitation were applied in determining Mr. Ordonez's employability and earning capacity.

In addition, the opinions are based on the information available to me at the time of my evaluation, including medical and other records, the evaluee's history as obtained from the standardized vocational interview, the vocational test battery results, my professional clinical judgment, labor market research, and the conclusions made.

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

RECORDS REVIEWED

The following hospital records were reviewed:

Bellevue Hospital Center (12/5/14-12/11/14) states "Intracranial hemorrhage, right craniectomy, evacuation of hematoma."

Bellevue Hospital Center (12/11/14-12/24/14) inpatient rehabilitation records.

Queens Nassau Rehabilitation & Nursing Center (12/24/14-3/9/15) inpatient rehabilitation records.

Bellevue Hospital Center (3/9/15-3/13/15) states "Chest pain, cranial defect, right cranioplasty."

The following physician records were reviewed:

Dr. Head, IME (5/31/16-10/10/17) states "Essentially normal psychiatric examination with no objective evidence of any underlying psychiatric condition or disorder. Post traumatic stress disorder, by history, not clinically apparent...I can find no objective clinical evidence of neurological or psychiatric impairment at this time."

Dr. Redfield - Neuropsychological Evaluation (4/1/16-4/8/16) states "Depressive disorder due to traumatic brain injury with major depressive-like episode. Anxiety disorder due to traumatic brain injury. Mild neurocognitive disorder due to traumatic brain injury with behavioral disturbance (depression, anxiety, irritability, aggressiveness)."

Dr. Amorapanth (4/26/16-1/16/18) states "Ongoing impairments of cognition, refractory post traumatic migraine headaches, neck/shoulder myofascial pain, and residual motor impairment in the left upper and right lower extremities following TBI sustained after a fall off scaffolding while at work 12/5/14."

Dr. Fusco (2/1/16-3/14/16) states "Moderate severity TBI with cognitive impairment and multiple musculoskeletal injuries and headache/chronic migraine...Degree of disability 100%."

Dr. Karp (9/21/15-12/16/15) states "Traumatic brain injury, diffuse pain."

Dr. Kwon (8/12/15) states "Grade 5 AC separation, labral tear and partial thickness rotator cuff tear. Based on his imaging and symptoms I find him a candidate for a left shoulder

arthroscopic acromioplasty, possible rotator cuff repair, and biceps tenodesis followed by open AC stabilization."

Dr. DeMarco (5/28/15-9/29/15) states "Cervical and lumbar derangement with strain/sprain and radiculopathy, impingement and instability of both shoulders, rule out rotator cuff pathology and labral pathology."

Dr. Kim (7/28/15) includes acupuncture treatment records and states "Chronic bilateral low back pain, with sciatica presence unspecified. Chronic pain due to injury. Cervicalgia. Myalgia. Diffuse pain."

Dr. Kiprovski (5/12/15-4/27/17) states "Mr. Ordonez sustained significant traumatic brain injury. He is experiencing cognitive impairment, daily headaches, and residual motor deficits in the upper and lower extremities."

Dr. Barr (5/27/15) states "Moderate level of traumatic brain injury secondary to a work related accident in December 2014. He continues to experience a number of associated symptoms."

Rusk Rehab Ambulatory Care Center (6/26/15-7/12/17) physical, occupational, and psychological therapy treatment records.

Bellevue Hospital Center (12/11/14-3/31/15) ambulatory care and therapy treatment records.

An-Noor Pharmacy; Al-Haqq Pharmacy.

The following diagnostic records were reviewed:

Dr. Yang (6/1/15) on MRI of the cervical spine states "Spondylosis at C3-4, C4-5, C5-6 and C6-7. Mild canal stenosis at C3-4, mild to moderate at C4-5 and C5-6. Left foraminal stenosis at C3-4, bilateral foraminal stenosis at C4-5 and C5-6."

Dr. Yang (6/1/15) on MRI of the lumbar spine states "Minimal retrolisthesis of L1 on L2. Spondylosis at L1-2, L3-4, L4-5 and L5-S1. Central annular tear at L4-5 flattening the anterior thecal sac. Mild bilateral foraminal stenosis at L1-2, L3-4 and L5-S1."

Dr. Jonisch (6/6/15) on MRI of the right shoulder states "Bursal surface fraying supraspinatus and infraspinatus tendon superimposed upon moderate tendinosis. Punctate interstitial supraspinatus tendon tear. Intrasubstance signal within the anterior/inferior labrum. Findings which can be seen with biceps tendinitis."

Dr. Jonisch (6/6/15) on MRI of the left shoulder states "Elevated distal clavicle with respect to the acromion-focus of ossification anterior to the distal clavicle, and thickening of and edema within the coracoclavicular ligaments. The findings are compatible with prior acromioclavicular joint injury. Intrasubstance signal within the superior labrum. Findings which can be seen with biceps tendinitis. Moderate supraspinatus and infraspinatus

tendinosis with bursal surface fraying of both tendons. Deep surface fraying distal fibers subscapularis tendon."

The following employment records were reviewed:

Mr. Ordonez's Workers' Compensation Board files for 2011 and 2014 accidents including medical records.

Mr. Ordonez's records from Mason Tenders District Council Local #79 noting a status of Journeyman.

The following legal records were reviewed:

Deposition of Carlos Ordonez (11/13/17, 11/29/17, 1/3/18).

GENERAL DESCRIPTION

Mr. Ordonez arrived on time for the session, neatly groomed and attired. He is walking with the assistance of a straight cane.

He states being 5 feet, 3 inches in height and weighs 168 pounds. Mr. Ordonez reports a weight gain of 15 pounds since his accident. He came to the interview by subway which took about one hour and 15 minutes. During the trip to the office, Mr. Ordonez reported being confused on the train which resulted in his using a map.

Mr. Ordonez reports being able to speak and comprehend English but feels more comfortable using an interpreter to translate from English to Spanish. Rolando Rodriguez from Legal World was the interpreter.

Also present was Rawle Byer, a legal assistant from Mr. Ordonez's attorney's office.

Throughout the evaluation, he appears sad. He is able to respond to all questions asked of him in an appropriate manner.

When discussing his cognitive limitations, he gets upset and takes a short break. He also stands after about 45 minutes of the evaluation, using the desk for support.

BACKGROUND INFORMATION

He is 57 years of age, born 9/5/60 in Ecuador. He came to the United States in 1993.

He is married and resides on the second floor of a two-family house (9428 76th Street, Ozone Park (Queens County), New York 11416) with his wife.

EDUCATIONAL AND TRAINING BACKGROUND

Mr. Ordonez attended school up to the 7th grade in Ecuador.

He is able to read and write Spanish. He notes being able to speak and comprehend "some" English.

He attended Mason Tender training and received on the job training.

He took OSHA, Scaffold Use and Safety, and Confined Spaces courses.

Mr. Ordonez denies any other technical, vocational, or special rehabilitation training.

He served in the Ecuadorian Army in 1981 for 15 months as a Soldier.

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

WORK HISTORY

Employment from 1996 to 12/5/14 was as a Demolition Worker (Construction Laborer) through Laborers Union Local #79. At the time of his accident, he had been employed for about 14 years by a demolition company in New Jersey. This occupation involved erecting inside scaffolds, demolition, using a sledge hammer and electrical compressor machine, and cleaning debris. While performing this job, he had to load and unload trucks. This work is best described in the U.S. Department of Labor's Dictionary of Occupational Titles ("DOT") (App. B1) on page 911 as follows:

CONSTRUCTION LABORER (construction)

Performs any combination of following tasks, such as erecting, repairing, and wrecking buildings and bridges; installing waterworks, locks, and dams; grading and maintaining railroad right-of-ways and laying ties and rails; and widening, deepening, and improving rivers, canals, and harbors, requiring little or no independent judgment: Digs, spreads, and levels dirt and gravel, using pick and shovel. Lifts, carries, and holds building materials, tools, and supplies. Cleans tools, equipment, materials, and work areas. Mixes, pours, and spreads concrete, asphalt, gravel, and other materials, using handtools. Joins, wraps, and seals sections of pipe. Performs variety of routine, nonmachine tasks, such as removing forms from set concrete, filling expansion joints with asphalt, placing culvert sections in trench, assembling sections of dredge pipeline, removing wallpaper, and laying railroad track. Many of these jobs are not full time; project size and organization of work determine whether workers spend their time on one job or transfer from task to task as project progresses to completion. Some workers habitually work in one branch of industry, whereas others transfer according to availability of work or on seasonal basis. Work is usually performed with other workers. May be designated according to specific work performed.

It is given the code number 869.687-026. On the standard five-point physical demand scale of Sedentary - Light - Medium - Heavy - Very Heavy, this occupation would be considered Very Heavy Work as it involved the lifting of debris weighing up to 100 pounds. It is classified as unskilled work.

Mr. Ordonez reported earning $34.75 an hour for a 40-hour work week at this job plus some overtime. He reported earning $980 net a week.

Very Heavy Work is defined by the DOT, page 1013, as exerting in excess of 100 pounds of force occasionally (up to one-third of the time), and/or in excess of 50 pounds of force frequently (one-third to two-thirds of the time), and/or in excess of 20 pounds of force constantly (two-thirds or more of the time) to move objects. Physical demand requirements are in excess of those required for Heavy Work.

OTHER PHYSICAL DEMANDS:

CL - Climbing - Occasional
BA - Balancing - Occasional
ST - Stooping - Frequent
CR - Crouching - Frequent
CW - Crawling - Occasional
RE - Reaching - Frequent
HA - Handling - Frequent

COMMON ENVIRONMENTAL WORKING CONDITIONS (to which the worker is exposed):

WE - Exposure to weather - Frequent
NO - Noise Intensity Level - Loud
AT - Atmospheric Conditions - Occasional
OT - Other Environmental Conditions - 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:

D6 - Comparing: Judging the readily observable functional, structural, or compositional characteristics (whether similar to or divergent from obvious standards) of data, people, or things.

P8 - Taking Instructions-Helping: Attending to the work assignment instructions or orders of supervisor. (No immediate response required unless clarification of instructions or orders is needed.) Helping applies to "non-learning" helpers.

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 techniques, acquire the information, and develop the facility needed for average performance in a specific work situation.

This occupation requires an SVP level of 2, which includes jobs that take more than a short demonstration and up to one month 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. Ordonez's occupation has the following GED classifications:

Reasoning Development Level 2, which means a person must at least be able to "apply common sense understanding to carry out detailed but uninvolved written or oral instructions" and "deal with problems involving a few concrete variables in or from standardized situations."

Mathematical Development Level 1, which means a person must at least be able to "add and subtract two digit numbers" and "multiply and divide 10's and 100's by 2, 3, 4, 5" and "perform the four basic arithmetic operations with coins as part of a dollar" and "perform operations with units such as cup, pint, and quart; inch, foot, and yard; and ounce and pound."

Language Development Level 1, which means a person, when reading, must at least be able to "recognize meaning of 2,500 (two- or three-syllable) words" and "read at rate of 95-120 words per minute" and "compare similarities and differences between words and between series of numbers." When writing, he must at least be able to "print simple sentences containing subject, verb, and object, and series of numbers, names, and addresses." When speaking, he must at least be able to "speak simple sentences, using normal word order, and present and past tenses."

He has not worked or looked for work since his accident.

Mr. Ordonez is receiving $1,300 every two weeks in New York State Workers' Compensation Benefits.

Mr. Ordonez has not applied for Social Security Disability 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. Ordonez's past work history indicates that his main occupation was as a Demolition Worker (Construction Laborer). Based on the job description he gave, this work required Very Heavy Physical capability.

Based on the job description given by Mr. Ordonez, 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 unskilled.

The competencies inherent in this occupation are the following:

MATERIAL MOVING

Conveying materials manually and by use of machines and equipment, such as cranes, hoists, conveyors, industrial trucks, elevators, winches, and hand-trucks.

Carrying. Dragging. Drawing. Dumping. Forking. Hanging. Hoisting. Lifting. Loading. Relaying. Shackling. Shoveling. Skidding. Throwing. Unloading. Wheeling.

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 LOADING, MOVING, and is coded 05.12.03. This occupation is given the O*NET code: 47-3012.00 for All Other Construction and Extractive Workers, Except Helpers.

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. Ordonez's prior work contains the following aptitudes:

G-4 **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-5 **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-3 **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-4 **Eye-Hand-Foot Coordination**: Ability to move the hand and foot coordinately with each other in accordance with visual stimuli.

C-5 **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.

COGNITIVE COMPLAINTS

Mr. Ordonez reports experiencing impaired short-term memory. He notes having diminished concentration.

Mr. Ordonez notes difficulty reading due to problems retaining and remembering what he has read.

In addition, Mr. Ordonez reports experiencing a shortened attention span and that he is easily distracted while performing tasks.

Mr. Ordonez reports difficulties in word retrieval. He reports difficulty multi-tasking. He has an impairment in his organizational abilities.

He reports his thinking is now slower than prior to his accident.

Mr. Ordonez received cognitive rehabilitation at NYU for almost two years on a two to three times per week.

Dr. Redfield - Neuropsychological Evaluation (4/1/16-4/8/16) states "Depressive disorder due to traumatic brain injury with major depressive-like episode. Anxiety disorder due to traumatic brain injury. Mild neurocognitive disorder due to traumatic brain injury with behavioral disturbance (depression, anxiety, irritability, aggressiveness)."

Dr. Barr (5/27/15) states "Moderate level of traumatic brain injury secondary to a work related accident in December 2014. He continues to experience a number of associated symptoms."

EMOTIONAL COMPLAINTS

Emotionally, Mr. Ordonez reports feelings of anxiety, depression, difficulty getting along with others (withdrawn), and difficulty dealing with stressful situations.

He complains of anger, as well as frustration, with respect to his functional restrictions and restricted lifestyle. He reports getting "mad about everything."

Mr. Ordonez received some treatment from a therapist at NYU. He reports stopping therapy in 12/17 as the insurance stopped paying for these services.

Dr. Head, IME (5/31/16-10/10/17) states "Essentially normal psychiatric examination with no objective evidence of any underlying psychiatric condition or disorder. Post traumatic stress disorder, by history, not clinically apparent...I can find no objective clinical evidence of neurological or psychiatric impairment at this time."

PHYSICAL COMPLAINTS

His current complaints include constant neck pain radiating down both shoulders and into the arms more on the left side, numbness in the left hand, constant back pain from the neck to the low back radiating down the right leg to the foot, constant headaches (6-7 pain), fatigue, difficulty sleeping (medication), numbness in the right leg, and weakness in the right leg.

He reports his condition is affected by cold and damp weather.

Mr. Ordonez reports having some limitation in hearing, reporting "a sound" in the left ear on walking. He wears glasses for reading.

MEDICAL TREATMENT

Hospitalizations and Surgeries

Mr. Ordonez was hospitalized at: Bellevue Hospital Center (12/5/14-12/11/14) for intracranial hemorrhage, right craniectomy, evacuation of hematoma; Bellevue Hospital Center (12/11/14-12/24/14) for inpatient rehabilitation; Queens Nassau Rehabilitation & Nursing Center (12/24/14-3/9/15) for inpatient rehabilitation; Bellevue Hospital Center (3/9/15-3/13/15) for chest pain, cranial defect, right cranioplasty.

Physicians

Mr. Ordonez is treated by Dr. Kiprovski (5/12/15-4/27/17) who states "Mr. Ordonez sustained significant traumatic brain injury. He is experiencing cognitive impairment, daily headaches, and residual motor deficits in the upper and lower extremities." He sees this physician on a once every three month basis.

He was treated by Dr. Amorapanth (4/26/16-1/16/18) who states "Ongoing impairments of cognition, refractory post traumatic migraine headaches, neck/shoulder myofascial pain, and residual motor impairment in the left upper and right lower extremities following TBI sustained after a fall off scaffolding while at work 12/5/14."

Therapy Treatment

Mr. Ordonez attended Rusk Rehab Ambulatory Care Center (6/26/15-7/12/17) for physical, occupational, and psychological therapy.

Pain Management Modalities

None reported.

Medication Regimen

He takes Cymbalta for depression, Baclofen 20 mg T.I.D., Duloxetine 60 mg at bedtime, and Gabapentin 600 mg T.I.D. for pain.

Orthotic and Positioning Devices

Mr. Ordonez uses a cane for support.

ACTIVITIES OF DAILY LIVING

He can independently wash, dress (needs help putting on his shirt and socks), and bathe himself.

His daily activities include watching television, reading, and listening to music.

He reports purchasing three birds who are "always" with him and are like "service pets."

Mr. Ordonez reports being able to use his telephone for email and internet.

He can accompany his family to perform the shopping.

He is able to perform the light household chores. The heavier chores are performed by his wife and children.

Mr. Ordonez reports "resting all the time."

He denies involvement in any hobbies, sports, or special interests. Prior to the accident, he was involved in soccer.

Currently, Mr. Ordonez reports "working out" on a daily basis for 30 minutes, lifting weights and making movements. These are prescribed exercises from a physical therapist.

RESIDUAL FUNCTIONAL CAPACITY SELF-ASSESSMENT

Mr. Ordonez gives the following as his current physical capacity: able to sit 30 minutes noting pain in "all the parts of my body" which effect his ability to sit, able to stand 30 minutes noting fatigue, able to walk 20 minutes noting fatigue, able to slowly climb one flight of stairs, able to lift and carry eight pounds, and able to use both hands to grasp and manipulate objects noting numbness and weakness in the left hand resulting in items dropping out of this hand. The dominant hand is the right. He is unable to bend, kneel, squat, or stoop due to his low back impairment.

He has a Washington State driver's license. Mr. Ordonez reports not driving since his accident. He is able to use the bus or subway.

EVALUATION TESTING METHODOLOGY

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

Selection of the tests administered was based on Mr. Ordonez's prior work experience as a Demolition Worker, educational level, and medical condition.

The vocational evaluation work area consisted of Mr. Ordonez 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. Ordonez's medical 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. Ordonez 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. Ordonez's medical 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 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.

VOCATIONAL EVALUATION RESULTS

Wide Range Achievement Test, Revision 5 (WRAT 5) is a nationally norm-referenced test that measures the basic academic skills of word reading, spelling, math computation, and sentence comprehension for individuals ranging from age five to 85 plus. The WRAT 5 is intended to help screen for achievement weakness in reading, mathematics, and spelling; and obtain an estimate of achievement in each of these content areas. The WRAT 5 can serve as part of a comprehensive psycho-educational or neuropsychological test battery in a variety of settings to enhance understanding of an individual's total functioning. On the reading section of this test, Mr. Ordonez scored at the 2.4 grade equivalency, placing him in the first percentile when compared to his age group (55-64). While performing this test in a seated position, Mr. Ordonez reported experiencing fatigue.

Purdue Pegboard is designed to measure gross movements of the arms, hands, and fingers, as well as fine finger dexterity. Mr. Ordonez'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 age 50 to 59 norm group. This test is related to jobs involving the workers' trait factor Handling (.887). While performing this test in a seated position, he reported difficulty with grasping and manipulating objects with his left hand as it "does not respond like it used to."

Vocational Aptitude Battery Manual Dexterity measures an individual's ability to work with their hands easily and skillfully in pacing and turning motions. Mr. Ordonez's score on this test was below average when compared to the competitive employment norm group. While

performing this from a standing position, he reported difficulty grasping and manipulating objects with his left hand.

Vocational Aptitude Battery Finger Dexterity measures an individual's ability to move the fingers quickly and accurately to work with small objects. Mr. Ordonez's score on this test was below average when compared to the competitive employment norm group. While performing this from a standing position, he reported difficulty grasping and manipulating objects with his left hand.

Employee Aptitude Survey - Visual Speed and Accuracy measures an individual's ability to compare numbers or patterns quickly and accurately. When compared to the general productive male population norm group, Mr. Ordonez's score was below average. While performing this test in a seated position, he reported experiencing "mental fatigue" and trouble seeing the writing on the paper.

Employee Aptitude Survey - Manual Speed and Accuracy measures an individual's ability to make repetitive, fine finger movements rapidly and accurately. When compared to the general productive male population norm group, Mr. Ordonez's score was below average. While performing this test in a seated position, he reported experiencing trouble seeing the writing on the paper.

Dynamometer Hand Test is a measurement of an individual's gross grasping ability. Three strength-of-grip measurements on each hand, using the Jamar Dynamometer set at the third notch, revealed that Mr. Ordonez averaged 31 Kg on the right and 25 Kg on the left. When compared to the averages of the male industrial worker norm group (Hunter's Rehabilitation of the Hand) of 48.5 on the right and 44.6 on the left, Mr. Ordonez's scores were below average.

ANALYSIS OF TEST RESULTS

Through the administration of several tests which measured the same vocational construct, as well as constant observation through the evaluation and a review of the test scatter, it was my opinion that the test battery was **NOT** internally consistent, reliable, or valid. It is my expert opinion that he did not perform the tests to the best of his ability or use maximum effort given his education, past work experience, and medical condition. This is highlighted by his poor performance on the Manual Speed and Accuracy Test which is performed in a seated position and involves minimal exertion, requiring only placing a dot with his pencil into the center of a circle on the test paper.

The quality and quantity of work on the various tests were below average. He did not work at an even, sustained pace during the test evaluation.

An analysis of the Vocational Evaluation test results involves an interpretation of the score of each test (objective finding) and relating it to the observations made of the effect of Mr. Ordonez's medical condition while the test was performed.

In conclusion, it is my expert opinion that Mr. Ordonez did not work to the highest level of his capability given his past vocational experience, educational level, and medical condition. Mr. Ordonez's test results do not accurately reflect his vocational capacity for sustained, gainful employment.

Therefore, it is my expert opinion that little weight can be given to Mr. Ordonez's test scores, and thus, my opinion is based on the interview, transferability of skills analysis, and review of jobs he could perform in the local labor market.

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.

The U.S. Federal Government states (20 CFR 404.1568 (d) "Skills that can be used in other work (transferability)...(1) We consider you to have skills that can be used in other jobs, when the *skilled or semiskilled* activities you did in the past work can be used to meet the requirements of skilled or semi-skilled work activities of other jobs or kinds of work. This depends largely on the similarity of occupationally significant work activities among different jobs. (2) How we determine skills that can be transferred to other jobs. Transferability is most probable and meaningful among jobs which: (i) The same or lesser degree of skill is required; (ii) The same or similar tools and machines are used: and (iii) The same or similar raw materials, products, processes, or services are involved."

This process is based on a synthesis of information from an evaluee's background history including medical, psychological, educational, social and 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. Ordonez's work history and the test results were 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. This is a peer reviewed published methodology accepted in the field of Rehabilitation Counseling. The VDARE process uses the evaluee's work history as the basis to build an assessment of the evaluee'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. The search is conducted based on Occupational Group Arrangement (OGA), Data People and Things (DPT), Guide for Occupational Exploration (GOE), Work Field (MTEWA), Specific Vocational Preparation (SVP) and DOT Industry.

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.

Mr. Ordonez's past employment as a Demolition Worker is considered unskilled work.

If he is unable to return to his prior work as a Demolition Worker, Mr. Ordonez is capable of performing Assembly, Packaging, Filling Machine Operator, and Inspector type occupations on a full-time basis which require Sedentary or Light Physical demands and are within his vocational capacity.

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 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.

Mr. Ordonez is a candidate for vocational rehabilitation services and fits into Phase 4 or 5.

JOB SEARCH EFFORTS

There is no indication that Mr. Ordonez has conducted a reasonable job search or contacted the New York State ACCES - VR (Adult Career and Continuing Educational Services - Vocational Rehabilitation) for vocational rehabilitation services.

EMPLOYABILITY AND EARNING CAPACITY OPINION

Based on the results of the vocational evaluation performed on Mr. Ordonez and the conclusions made, as well as his advanced age, 7th grade education with illiteracy in English, and past work experience of unskilled work as a Demolition Worker, 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:

Rehabilitation Plan

An assessment was made regarding Mr. Ordonez's vocational potential and his ability to receive vocational rehabilitation services. In order to formulate this opinion, consideration was made regarding Mr. Ordonez's advanced age, 7th grade education with illiteracy in English, past work experience of unskilled work as a Demolition Worker, and vocational capacity secondary to his medical condition.

If he wants to change occupations, it is suggested that Mr. Ordonez contact the local city, state, or federal agencies that could assist him in job-seeking efforts or in obtaining civil service positions. These services would be provided at no charge to him. He is a candidate to receive vocational rehabilitation services at no cost from the local ACCES - VR (Adult Career and Continuing Educational Services - Vocational Rehabilitation).

Mr. Ordonez's employment efforts would be enhanced if he contacted employment agencies.

Access to the Labor Market

Given his exertional complaints, Mr. Ordonez's ability to access the labor market would be limited to work requiring Sedentary and Light Physical demands.

Placeability

Given his advanced age, 7th grade education with illiteracy in English, and past work experience of unskilled work as a Demolition Worker, it is my expert opinion that Mr. Ordonez could be competitively placed in the job market on a full-time, competitive basis.

In order to reach this opinion, I considered Mr. Ordonez's background, the economic consequences in his community, local employment statistics, and the existence of suitable jobs. If Mr. Ordonez is able to perform the essential functions of a job, his job-search efforts will be helped by The Rehabilitation Act of 1973 and the Americans with Disabilities Act. These laws protect him from discrimination from potential employers. In addition, employers are required to make job modifications and reasonable accommodations at the job site. As an incentive for employers to hire persons such as Mr. Ordonez, targeted tax credits are available for the employer.

Selective job placement services are available to Mr. Ordonez through the local state vocational rehabilitation program.

Earning Capacity

Based on the results of the Vocational Evaluation, as well as his advanced age, 7th grade education with illiteracy in English, and past work experience of unskilled work as a Demolition Worker, the following are my opinions, regarding Mr. Ordonez's employability and earning capacity:

1. If he is not able to return to his prior work as a Demolition Worker, it is my opinion, as a Vocational Expert, that Mr. Ordonez is able to perform the following representative unskilled work on a full-time basis which requires Sedentary or Light Physical capacity:

JOB TITLE	NUMBER OF JOBS	MEAN SALARY
Inspector	4310	$39,370
Industrial Truck Operator	2070	$34,670
Packaging and Filling Machine Operator	18,530	$28,100

JOB TITLE	NUMBER OF JOBS	MEAN SALARY
Cutter & Trimmer	1060	$32,970
Painting, Coating & Decorating Worker	940	$31,610
Locker Room Attendant	1,850	$28,870
Assembler	18,390	$28,450

These jobs exist in the New York local economy (5/17). These jobs exist in greater numbers in the national economy. It is my opinion, as a Vocational Expert, that he could perform the above occupations on a sustained, full-time, regular, competitive basis. (App. B14)

2. Mr. Ordonez has had the capacity to earn from $28,100 to $39,370 per annum on a full-time basis over his work life. (App. B14)

3. It is recommended that Mr. Ordonez contact the New York State ACCES-VR for vocational rehabilitation services and selective placement services.

4. Mr. Ordonez's ability to be employed and earn income is based on his motivation to be employed and earn money in a job with a salary commensurate with his past experience.

Labor Force Participation

In formulating my opinion regarding Mr. Ordonez's employability and earning capacity, I considered the various factors which affect an injured person's work life expectancy in the competitive labor market.

Prepared by:

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 ⅓ of the time

Frequently = ⅓ to ⅔ of the time

Constantly = ⅔ or more of the time

U.S. Department of Labor's Dictionary of Occupational Titles, Fourth Edition, Revised 1991, page 1013

Appendix B

VOCATIONAL RESOURCES CONSULTED

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22. Vocational Assessment: Evaluating Employment Potential, Havaranek, J. Field, T., Grimes, J. W.: Athens, GA: Elliott & Fitzpatrick Inc. 2001.

23. Vocational assessment and rehabilitation outcomes, Caston, H. L. & Watson, A. L., Rehabilitation Counseling Bulletin, 43 (1), 61 66 1990.

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

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.

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PROFESSIONAL QUALIFICATIONS OF EDMOND A. PROVDER

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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 *August 1981 to Present*
Occupational Assessment Services

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.

Vocational Expert/Physician Life Care Planning *December 2011 to Present*

Evaluate the employability and earning capacity of 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.

Director/Rehabilitation Counselor/Phoenix Rehabilitation Center *July 2007 to December 2010*

Develop Rehabilitation Center for poor, physically disabled children in the Vidigal Favela in Rio de Janeiro Brazil which involved community coordination, volunteer recruitment, fund raising, and government liaison.

Vocational Consultant *June 1997 to September 2000*
Social Security Administration *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 *December 1979 to December 1981*
Mount Sinai Hospital *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 ABVE, IARPS, AREA, NAFE, RESNA