

The Social Security Compliant Transferability Search

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The Legal Basis of Transferability:

Transferability, in the Social Security disability sense, is defined as “applying work skills which a person has demonstrated in vocationally relevant past jobs to meet the requirements of other skilled or semiskilled jobs.” SSR 82-41, at 2(b). The launching point for any transferability analysis is C.F.R. §404.1568(d), where Social Security walks through the factors it finds are most probative of when transferability is probable and meaningful.

As an initial ground rule, only past skilled or semiskilled work (SVP 3 or more) creates the potential for generating transferable skills, and skills are only transferable to jobs that are skilled or semiskilled. See SSR 82-41. Moreover, as a policy matter, Social Security views jobs that are at the low end of semiskilled (SVP 3) as rarely providing any transferable skills. See, *Id.* at 2(d).

As for the actual transferability analysis, the regulations state that Transferability is most probable and meaningful among jobs in which:

- The same or a lesser degree of skill is required;
- The same or similar tools and machines are used; and
- The same or similar raw materials, products, processes, or services are involved.

C.F.R. §404.1568(d)(2).

That said, the Regulation notes that “a complete similarity of all three factors (the “Regulatory Factors”) is not necessary for transferability,” explaining that there are degrees of transferability. *Id.*, at (d)(3). Essentially, jobs that match each of the factors exactly are the most directly transferable. Conversely, those jobs where a factor is only “similar” or where one or more of the factors is wholly absent are by degrees less likely to be transferable.

Where to Find Transferability Data:

Based on the underlying transferability law, the first step in identifying transferrable jobs is to remove all jobs that require more skill than the relevant past work (“Subject Job”), because a

worker is not expected to be capable of doing more complex jobs than they have actually performed in the past. See SSR 82-41, at 4(a). The level of skill required by a job is found in its Specific Vocational Preparation (“SVP”) level. While the Regulation notes that some factors are optional, most vocational experts, if not all, agree that jobs do not have transferrable skills to more skilled positions, or jobs with a higher SVP level.

For the next two factors, the first step is to limit jobs to those that match the Subject Job’s Occupational Grouping, as represented by the first three digits of the DOT code. This is because, as explained by the Revised Handbook for Analyzing Jobs (“RHAJ”), the DOT collects occupations that have the same work functions (tools and machines) as well as work products (raw materials, products, processes, and services) into the same occupational group. RHAJ, at 14-1. That so, jobs in the same Occupational Group are most likely to not only share the relevant work skills and knowledge, but also use those skills and knowledge in a similar or even identical manner.

Occupational Groups are identified by the first three digits of the DOT code and are derived as follows:

- All jobs in the DOT are clustered into 1 of 9 “occupational categories” (the first digit);
- Each of these broad categories breaks into 83 occupationally specific “occupational divisions” (the first two digits); and
- The occupational divisions are in turn separated into 564 small, homogeneous “Occupational Groups” (the first three digits).

Because jobs sharing the same Occupational Group are generally the most directly transferrable and will require the least amount of re-training, the first pass of the search is to narrow jobs to those that are in the same group.

Honing in more specifically on the second factor now, within the Occupational Group, search for jobs that use the same or similar tools and machines, which is handled by searching for jobs with the same Work Fields as the Subject Job. Work Fields are categories of “technologies that reflect how work gets done and what gets done.” RHAJ, at 4-1. Machines and tools are directly related to and help describe the method verbs associated with each Work Field. Id. There are a total of 96 different Work Fields, identified by a three-digit code number, and each job can have up to three Work Fields

associated with it. Therefore, jobs with at least one exactly matching Work Field generally involve the use of similar machines and tools.

Similarly, targeting the final factor, stay within the Occupational Group and search for jobs that involve the same or similar raw materials, products, processes, or services, by searching for jobs with the same MPSMS code, which stands for Materials, Products, Subject Matter, and Services. There are 336 different MPSMS categories. *Id.* at 5-1. Like the Work Fields, MPSMS categories are each assigned a three-digit code, and each job can have up to three MPSMS codes associated with it. Additionally, the MPSMS categories are subdivided into groups, which each have their own MPSMS three-digit code; the group codes each end in “0.” If a job corresponds to three or more MPSMS codes within a group, the job is simply listed with the MPSMS group number as its code. Accordingly, jobs with at least one exactly matching MPSMS code (or with a matched MPSMS group), will generally involve the same or similar raw materials, products, processes, or services.

Also, as noted above, the Regulation anticipates that the last two factors can be met by “similar” rather than exact matches. Work Fields are organized into groups, based on their use of similar technologies. Work Field groups are generally organized by the first two digits of their code number, though there are some exceptions (see separate topic regarding Work Field/MPSMS groups). Therefore, a search identifying jobs that share the Subject Job’s associated Work Field group(s) will find more remote, but still potentially transferrable jobs.

Likewise, the MPSMS groups noted above involve largely similar raw materials, products, processes, and services. Like the Work Fields, MPSMS groups share the first two digits, with only two exceptions (the groups “560” and “700” contain more than nine categories and require two sets of code numbers). Consequently, a search for only jobs that share the MPSMS group(s) will return potentially transferrable jobs, though not as closely transferrable as those that share the exact MPSMS code.

Work Field/MPSMS groups:

In most cases, Work Field and MPSMS codes that share the same first two digits are in the same “group.” In the case of MPSMS groups, the group itself has a three digit code ending in a “0.”

Unlike the MPSMS groups, the Work Field groups are not identified by name and are not assigned a code; instead, the Handbook for Analyzing Jobs simply separates the groups out from each other and provides a brief description of why the Work Fields were grouped together.

As noted above, the Work Field and MPSMS groups are, with a few exceptions, identified by the first two digits. The following are the exceptions to that rule:

Work Field Exceptions:

- 001 through 005 is a group, while 007 is in a group by itself;
- 031, 032, 033, 034 are not grouped together; each code is its own group;
- 101, 102, 111, and 121 are all organized as a single group; and
- 231 and 232 are organized together into a group, while 233 is separated out into its own group.

MPSMS group exceptions:

- Group 560 (Machinery and Equipment except Electrical) includes all MPSMS codes between 560 and 579; and
- Group 700 (Architecture and Engineering) includes all MPSMS codes between 700 and 719.

Some software will alert you when a group search has an exception, identify the exception(s) for you, and automatically search inside the appropriate group.

The Transferability Search Itself:

Ideally, a transferability search should attempt to find jobs with the following criteria:

- An SVP that is equal to or less than the SVP of the Subject Job;
- Is in the same Occupational Group as the Subject Job;
- Matches at least one of the Subject Job's Work Fields; and
- Matches at least one of the Subject Job's MPSMS codes.

Jobs discovered using this "ideal" search will be the most likely to be directly transferrable.

However, if the "ideal" search does not result in any transferrable jobs, or the resulting jobs do not fit within the residual functional capacity ("RFC") of the subject, the following modifications to the transferability search may be made:

- Remove the requirement that results must match both one of the subject Job's Work Fields and one of its MPSMS codes, allowing results to only match one or the other;
- Remove the requirement that the results match the Subject Job's Occupational Group; or

- Instead of requiring that results match the full MPSMS code or the full Work Field, allow results that only match the MPSMS or Work Field group(s).

These modifications come at the cost of finding jobs that, by degrees, are potentially less transferrable or would require more re-training.

Regardless of the search restrictions used, a significant human element is necessarily a part of each transferability determination. The DOT is old; some information is outdated and some occupations are either no longer available, or not performed in the same way as described. As always when dealing with the DOT, common sense, experience gained in placing job applicants, and independent knowledge of jobs as performed in the current economy is critical to completing a proper transferability analysis. This human element provides the basis for determining the actual degree of transferability, identifying additional jobs that are transferable pursuant to the Regulatory Factors, and/or eliminating identified jobs that are not transferrable as currently performed.

Dealing with a Vocational Consultant's failure to apply the correct transferability standard:

Social Security confirms in SSR 00-4P that “[e]vidence from a VE, VS, or other reliable source of occupational information cannot be inconsistent with SSA policy on transferability of skills.” So a failure to follow the Regulatory Factors should be fatal the Vocational Expert's opinions, if handled correctly.

To that end, you have basically three options when a Vocational Expert fails to apply the correct standard of transferability at the hearing: 1) question them at the hearing and show that their testimony fails to meet the standard; 2) write a post-hearing memo explaining the failure and asking the ALJ to reject the testimony and either pay the case or set another hearing; 3) or do nothing and try to raise it as an appealable issue later. Do not use the third option.

Whether you use the first or the second depends partly on your Federal Circuit's law on raising issues at the hearing, and, to a lesser degree, your own experience with the ALJ. If neither dictate that you need to bring it up at the hearing, my preference is generally to take my time, review the DOT in detail after the hearing, and write a post-hearing memorandum.