

Max Rae

Attorney

P.O. Box 7790

Salem, OR 97303

FAX: (503) 363-5460

(503) 363-5424

maxrae.atty@comcast.net

House Ways and Means Committee
Subcommittee on Social Security

June 27, 2012 Hearing Concerning Disability Appeals Process Fraudulent Job Numbers Testimony

In a February 28, 2012 hearing in Salem, Oregon, the vocational expert testified that she had been instructed by specific ALJs to provide false job numbers testimony, exaggerating the numbers of jobs existing within specific occupations. She further testified that she had consulted with other vocational experts and confirmed the practice. I reported this to Patrick P. O'Carroll Jr., Inspector General, Social Security Administration, on March 9, 2012, and asked that he take immediate protective action to safeguard the integrity of the disability adjudication process from what appears to be an ongoing and deeply ingrained local practice of fraud and perjury.

On June 21, 2012, Mr. O'Carroll informed Representative Kurt Schrader that he had requested that SSA account for any actions taken with respect to these concerns, and that he had directed his Office of Audit to review and consider this issue in planning future audits of SSA's hearings and appeals process.

This is the problem. At the end of most Social Security hearings, the ALJ calls a vocational expert to describe the claimant's past work and to identify occupations that could be performed under various hypothetical sets of limitations. The vocational expert is then asked the numbers of jobs in each identified occupation, because to deny the claim based on the existence of other jobs, those jobs must exist in "significant" numbers. Hence, the job numbers testimony is often outcome determinative of the claim. In the Ninth Circuit, to deny at Step 5, the ALJ usually has to have testimony identifying a significant number of jobs.

At this hearing, the vocational expert gave job numbers testimony that seemed grossly exaggerated in response to the ALJ's questions. When challenged, she readily admitted that she had provided the numbers of jobs for a group of occupations and not the individual occupation, and further testified under oath:

"When I spoke with judges, the specific judges told me, 'Ms. Ruck, all of the other VE's give the numbers for the OES grouping. If you don't give those numbers, you're stepping out of bounds, or not complying with other vocational experts', and so in order to be in compliance with what the judges have requested, I have stuck with the initial numbers for the OES grouping, but when questioned further I've given the reduced number, which is the number for the specific DOT code."

"When I became a vocational expert, I consulted with other vocational experts as to how they convey the employment numbers, and most of my colleagues do use Job Browser Pro and they do give the employment numbers in the way that I just gave them."

This vocational expert was very innocent and open about all of this. I think that she was doing what she had been told to do and did not realize how wrongly she was being coached. But if this vocational expert's testimony is correct, and I believe it is, countless claimants have been cheated out of their claims as a result of exaggerated job numbers testimony.

This is not an isolated occurrence. Most recently, in a hearing on June 19, 2012 involving a different vocational expert and different ALJ, essentially the same thing happened. I knew that the vocational expert had misrepresented job numbers by stating the numbers for a group of occupations when asked for the numbers of jobs for an individual occupation. I knew because I had the same data source on my laptop at the hearing that the vocational expert testified she was drawing upon. When I challenged the vocational expert for providing the job numbers for an OES statistical group containing 1587 separate occupations when asked for numbers for one particular occupation, she simply responded that she had followed what she understood to be the way it is to be done at these hearings.

I asked the Inspector General to take the following actions:

1. Contact the vocational expert from the February 28, 2012 hearing for specific information. She testified that specific judges had told her to provide group numbers as though they were the numbers for specific occupations. Those judges need to be identified and immediately suspended from conducting further adjudications until a full investigation can be completed.
2. Contact all vocational experts serving the Oregon ODAR offices and advise them that the practice of providing job numbers for a group of occupations when asked for the numbers for an individual occupation is perjury, not accepted agency practice.
3. Investigate and identify those with responsibility for this fraud, and impose appropriate sanctions.
4. Identify all claims where false job numbers testimony may have formed part of the basis for denial, and grant those claimants the opportunity for a new hearing before an ALJ not affected by this pattern of misconduct, and with a new vocational expert. This screening process would not be difficult. The vocational expert demonstrated at the February 28, 2012 hearing how Job Browser Pro software produces job numbers for individual occupations almost instantly upon typing in the reference code from the Dictionary of Occupational Titles. Since ALJs typically include in their decisions both the DOT codes and the job numbers upon which they have relied, any clerk with this software could make the necessary comparison very easily.

I am especially concerned for those claimants who have been wrongly denied without any way of knowing that false job numbers have been stated in their hearings. I am outraged that the misconduct has not been stopped.

Please direct Social Security to take immediate and effective action to identify the victims of this abuse and restore the integrity of our disability adjudication system.

Thank you.

Very truly yours,
s/ Max Rae
Max Rae
Attorney