



Functional Capacity Evaluation


VOCATIONAL IMPLICATIONS



Vocamotive

Vocatio – To Be Called

Motum - Passion



Not the violent confrontation between parts of the truth, but the quiet suppression of half of it, is the formidable evil: there is always hope when people are forced to listen to both sides; it is when they attend only to one that errors harden into prejudices, and truth itself ceases to have the effect of truth, by being exaggerated into falsehood.

John Stuart Mill

“On Liberty”

The Medical Model

- ▶ Injury
- ▶ Testing/examination
- ▶ Diagnosis
- ▶ Treatment
- ▶ Rehabilitation
- ▶ MMI

What about vocational recovery?

The Medical/Vocational Model

Phase I

- ▶ Injury
- ▶ Testing/examination
- ▶ Diagnosis
- ▶ Treatment
- ▶ Rehabilitation
- ▶ MMI

Phase II

- ▶ Evaluation
- ▶ Testing
- ▶ Diagnosis
- ▶ Treatment
- ▶ Rehabilitation
- ▶ MVI

Commission Rule On Rehabilitation (9110.10)

- ▶ An employer's vocational rehabilitation counselor, in consultation with the injured employee and, if represented, with his or her representative, shall prepare a written assessment of the course of medical care and, if appropriate, vocational rehabilitation required to return the injured worker to employment.
- ▶ The vocational rehabilitation assessment is required when it can be reasonably determined that the injured worker will, as a result of the injury, be unable to resume the regular duties in which he or she was engaged at the time of injury. When the period of total incapacity for work exceeds 365 days, the written assessment required by this subsection shall likewise be prepared.

CRCC Code of Ethics- The Counseling Relationship

Rehabilitation counselors work in cooperation with their clients to promote client welfare and support them in developing and progressing toward their goals.

Rehabilitation counselors and clients work together to develop integrated, individual, mutually agreed-upon, written rehabilitation counseling plans that offer a reasonable promise of success and are consistent with the abilities and circumstances of clients.

Residual Physical Capacity

FUNCTIONAL CAPACITIES EVALUATION

- FCE protocols are not all created equal.
- Do not always assess workday tolerance.
- Do not always assess standing/walking limitations.
- Do not always contain validity testing.

CAVEAT EMPTOR

Sedentary Work

Exerting up to 10 pounds of force occasionally or a negligible amount of force frequently to lift, carry, push, pull, or otherwise move objects, including the human body.


Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time.

Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.

Light Duty

Exerting up to 20 pounds of force occasionally, or up to 10 pounds of force frequently, or a negligible amount of force constantly to move objects. Physical demand requirements are in excess of those for Sedentary Work.

Even though the weightlifting may be only a negligible amount, a job should be rated Light Work when:

- 
- Requires walking or standing to a significant degree.
 - Requires sitting most of the time but entails pushing or pulling of arm or leg controls.
 - Requires working at a production rate pace entailing the constant pushing or pulling of materials even though the weight of those materials is negligible.

Medium Duty

Exerting 20 to 50 pounds of force occasionally, or 10 to 25 pounds of force frequently, or greater than negligible up to 10 pounds of force constantly to move objects.

Complicating Factors

Standing and Walking Limitations

Workday Tolerance


Reaching, Handling, Fingering

Sedentary Work

- 10-11% of all titles in Dictionary of Occupational Titles.
- 23-25% of work in Chicago metro area.
- Less than 1% of sedentary work is unskilled.


Other Factors

- ▶ Age
- ▶ Education
- ▶ Language Skills
- ▶ Work Experience
- ▶ Transferable Skills
- ▶ Elements of Acquired Disability

- 
- ▶ *Your Doctor is wrong!*
 - ▶ *Did the Doctor even read this thing?*
 - ▶ The spine surgeon needs a spine!
 - ▶ Your FCE Stinks!
 - ▶ My client can't work!
 - ▶ I've got a voc report!
 - ▶ I'm getting an IME!
 - ▶ I'm challenging the FCE!
 - ▶ We are going to trial!!!!

The “Ball of Confusion”


The overall classification is Equivocal due to the client performing indistinctly during a repeated measures protocol.



“The XXXX Hand Strength Assessment protocol consists of a total of 66 randomized unilateral and simultaneous bilateral trials. The client failed three or more of the validity criteria. As outlined in the User’s Guide, this result indicates the strong likelihood that the client was not complying with the test, and the test result is therefore almost certainly invalid.”

Based on the valid effort demonstrated by the client, the following deficits are noted:

- ▶ 1. Diminished functional use of the upper extremities in work above chest level.
- ▶ 2. Diminished functional use of the upper extremities in work above shoulder level.
- ▶ 3. Diminished functional use of the upper extremities in work above the head.
- ▶ 4. *Inability to tolerate sustained or repetitive gripping and/or pinching and or manipulation requiring fine motor control in the upper extremities.*



From an orthopedic standpoint, he has reached MMI. He will continue following up with pain management. Although, I believe he would be able to function at a light to medium category of work. I do not believe he would be able to perform XXXX work, particularly if done over a full workday.

The “It Don’t Add Up!”

Work Hardening Performance

- ▶ Waist to Shoulder Lifts: 40 pounds (previously 30 pounds frequently)
- ▶ Waist to Overhead Lifts: 35 pounds (previously 25 pounds frequently)
- ▶ Floor Level Lifts: 70 pounds (previously 50 pounds frequently)
- ▶ Pushing/Pulling: 50 pounds of force (previously 35 pounds frequently)

FCE Outcome

- ▶ Workday tolerance of 5 to 6 hours with regular breaks
- ▶ Above shoulder lifts of 30.2 pounds on an occasional basis
- ▶ Desk to chair lifts 34.6 pounds on an occasional basis
- ▶ Chair to floor lifts of 32.4 pounds on an occasional basis
- ▶ Carry 12 pounds with the right extremity, 7 pounds with the left
- ▶ Sit for 2 hours in 20 minutes durations
- ▶ Stand for 3 hours in 30 minute durations
- ▶ Walk for 3 to 4 hours for frequent, moderate distances

The “ Lets Just Ignore The Facts!”

- ▶ 51 y/o telecom installer w/14 bilateral upper extremity surgeries.
- ▶ Valid FCE – No reaching, handling, fingering.
- ▶ Respondent VR LMS.
- ▶ No transferable skills analysis.
- ▶ Respondent VR testifies – does not know what reaching, handling, reaching is.
- ▶ Petitioner VR opines work available not consistent with physical restrictions.

Petitioner not credible based on causation.

The “FCE Smackdown”

- ▶ Valid FCE on 53 y/o female - no skills, education, LEP/ U/E injuries.
- ▶ FCE is evaluated-comorbidities.
- ▶ No subsequent physician review.
- ▶ Petitioner required to RTW modified duty.
- ▶ RTW fails.

The “Ethical Dilemma”

- ▶ 2016 FCE Medium Duty.
- ▶ 2018 Treater increases restrictions.
- ▶ New FCE – 3 hour workday/Light Duty.
- ▶ IME.
- ▶ Customer requests VR based on 2016 FCE.



The Counselor Decides?

CRCC Code of Ethics- Conflicting Medical Opinions

It would be outside the scope of practice of the CRC to determine which set of restrictions or recommendations apply. Further, a CRC would need to limit or discontinue services until the conflict is resolved so as to be able to recommend and conduct appropriate job placement activities that are not harmful to the client. Should such a situation arise, the CRC would need to inform the client of the conflict and disclose to the client the need to alert the referral source so that the conflict may be resolved. The client should be advised of any limitations, delays discontinuation of services.

What Now?

1. ID good FCE providers/Work to cooperate on referral.
2. Give the provider a real job description.
3. PA, counsel your clients to give full effort.
4. Review and evaluate the report – understand context of the case.
5. Challenge the M.D./FCE provider as necessary.
6. Work with savvy defense counsel.
7. Use objective CRCs highly skilled in analysis and testimony.

WE ARE THE SYSTEM!



- ▶ The system is not perfect.
- ▶ The truth is what we seek.
- ▶ Bad facts make bad law!
- ▶ Lack of objectivity serves no one.
- ▶ Ethics count.