

## I-2-6-74. Testimony of a Vocational Expert

Last Update: 6/16/16 (Transmittal I-2-175)

### A. Prehearing Actions

When an administrative law judge (ALJ) determines that the testimony of a vocational expert (VE) is needed at a hearing, the ALJ must:

- Have no substantive contact related to the merits of the case with the VE except at the hearing or in writing, and ensure that any such writing is exhibited; and
- Request that the VE examine any pertinent evidence received between the time the VE completed the case study and the time of the hearing.

For instructions on obtaining testimony either at a hearing or in written responses to interrogatories from a VE, see Hearings, Appeals and Litigation Law (HALLEX) manual, sections I-2-5-48 through I-2-5-61.

Assisting hearing office (HO) staff will:

- Send copies of any correspondence between the ALJ and the VE to the claimant and make the correspondence an exhibit; and
- If the VE is appearing via telephone, confirm the VE's telephone number before the hearing.

**NOTE:** When a VE is scheduled to testify at a hearing, HO staff must notify the claimant of this appearance in the "REMARKS" section of the notice of hearing. The notice of hearing must also specify the manner in which the VE will appear.

### B. Conduct of the Hearing

At the hearing, the ALJ must advise the claimant of the reason for the VE's presence and explain the procedures all participants will follow.

The VE may attend the entire hearing, but this is not required. If the VE was not present to hear pertinent testimony, such as testimony regarding past relevant work or educational background, the ALJ will summarize the testimony for the VE on the record.

All VE testimony must be on the record. After administering the oath or affirmation, the ALJ must (on the record):

- Ask the VE to confirm his or her impartiality, expertise, and professional qualifications;
- Verify the VE has examined all vocational evidence of record;
- Ask the claimant and the representative whether they have any objection(s) to the VE testifying; and
- Rule on any objection(s). The ALJ may address the objection(s) on the record during the hearing, in narrative form as a separate exhibit, or in the body of his or her decision.

**NOTE:** For information about how the Social Security Administration qualifies a VE, see HALLEX I-2-1-31. If an ALJ finds that a referral of a VE for further review of his or her qualifications may be appropriate, see the instructions in HALLEX I-2-1-32.

### C. Questioning the VE

The ALJ will ask the VE questions designed to elicit clear and complete information. The claimant and the representative have the right to question the VE fully on any pertinent matter within the VE's area of expertise. However, the ALJ will determine when they may exercise this right and whether questions asked or answers given are appropriate.

The ALJ will also ensure the following during questioning of the VE:

- If the VE's replies are ambiguous or overly technical, the ALJ will follow up with specific questions in order to obtain a response that is understandable to the average person.
- The ALJ will not permit the VE to respond to questions on medical matters or to draw conclusions not within the VE's area of expertise. For example, the VE may not provide testimony regarding the claimant's residual functional capacity or the resolution of ultimate issues of fact or law.
- The ALJ will not ask or allow the VE to conduct any type of vocational examination of the claimant during the hearing.
- If the VE bases certain testimony on an assumption, the ALJ will ask the VE to clearly describe the assumption on the record.

## **D. Hypothetical Questions**

The ALJ may use hypothetical questions to elicit the VE's testimony about whether a person with the physical and mental limitations imposed by the claimant's medical impairment(s) can meet the demands of the claimant's previous work, either as the claimant actually performed it or as generally performed in the national economy, or any other work in the national economy (and the availability of such work).

## **E. Conflicts With the Dictionary of Occupational Titles**

Before the ALJ may rely on a VE's testimony to support a disability decision, the ALJ must inquire on the record whether there are any conflicts between occupational evidence the VE provided and information contained in the *Dictionary of Occupational Titles* (DOT), including its companion publication, the *Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles* (SCO), published by the U. S. Department of Labor. The ALJ must identify and obtain a reasonable explanation for any such conflict. The ALJ also must explain in the decision how he or she resolved any identified conflict. See Social Security Ruling 00-4p: *Titles II and XVI: Use of Vocational Expert and Vocational Specialist Evidence, and Other Reliable Occupational Information in Disability Decisions*.