

THE USE OF THE OCCUPATIONAL REQUIREMENT SURVEY IN SOCIAL SECURITY DISABILITY, PERSONAL INJURY AND MEDICAL MALPRACTICE CASES

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Abstract

The Occupational Requirements Survey (ORS) can help provide information regarding jobs in addition to what is provided by the Dictionary of Occupational Titles (DOT) and the Selected Characteristics of Occupations (SCO). It can help in making reasonable adjustments for the number of available jobs in the national economy when testifying in Social Security disability or civil cases, such as in personal injury and medical malpractice matters. The definitions of the occupations used by the federal government are defined by the Standardized Occupational Classification System (SOC). Vocational Experts and Earnings Analysts need to take care when adjusting the number of available jobs because the definitions used by the SOC codes often include two or more DOT titles.

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The Use of the Occupational Requirement Survey in Social Security Disability, Personal Injury and Medical Malpractice Cases.

The Occupational Requirements Survey (ORS) is a product of the Bureau of Labor Statistics (BLS). The ORS provides job-related information regarding physical demands; environmental conditions; education, training, and experience; as well as cognitive and mental requirements for jobs in the U.S. economy. (<https://www.bls.gov/ors/>) Eventually the ORS is expected to publish information that will replace the current evaluation procedure followed by Vocational Experts testifying in Social Security disability cases (Smyth, 2014). This paper addresses the appropriateness of using the ORS in improving a VE's opinion for testimony during Social Security disability hearings and civil cases. The ORS information can be valuable for an Administrative Law Judge or jury to assess the truth in a matter presented to them.

The website gives tools that can access occupational data from the database. The analyzed occupations use the Standardized Occupational Classification System (SOC, [2018]). This system is used by federal agencies to classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data (Bureau of Labor Statistics, 2021). All workers are classified into one of 867 detailed occupations according to their occupational definitions. To facilitate classification, detailed occupations are combined to form 459 broad occupations, 98 minor groups, and 23 major groups. The definitions and structures are different from the Dictionary of Occupational Titles (DOT), which is used by the Office of Hearing Operations (OHO) of the Social Security Administration (SSA) and used extensively in personal injury, and medical malpractice cases. Even though the definitions of jobs are different they can give helpful

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additional information about the availability of jobs for people with restrictions in the national and local economy.

Two examples are discussed below about how the ORS can provide helpful information.

Case 1: Lorial is a police officer who was hurt in a motor vehicle accident. In her job, she walked the streets of the city and dealt with local crime. She suffered from whiplash, hurt her rotator cuff and has trouble reaching overhead. She has back trouble because of damage to her spine since the accident. She says she can only sit for 30 minutes before she needs to get up, stretch and take ten steps. She can only walk for ten minutes before she needs to sit down. She suffers from depression and anxiety. She feels overwhelmed when people pressure her to hurry. Her back hurts particularly when she must be outside in rainy weather. She believes that she can no longer perform her job because she feels overwhelmed with the complexity of the policing job and the physical limitations.

This job can be classified as: DOT code 375.263-014 POLICE OFFICER I. This is a Medium exertional skilled job with a Special Vocational Preparation (SVP) of 6. This job is known for its variety of tasks, dealing with people, judgment and performing under stress.

Table 1 shows information obtained from the Occupational Requirement Survey. Note that the definition in the DOT is not the same as the SOC. There are 18 DOT titles in this SOC code of 33-3051, including that of a patrol officer. (Skilltran LLC, 2020) The BLS shows that there are 654,900 jobs nationally in this group. Skilltran indicates that there are 34, 813 jobs in this DOT group.

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Table 1

ORS	Police and sheriff patrol Officers 375.263-014 POLICE OFFICER I	No. of jobs in the national economy	
		Percent of jobs	34,813
Cognitive Requirements	Control of workload	4.4%	1,532
	Percent of workers, with the ability to pause work	13.3%	4,630
Environmental conditions	Not exposed to wetness	65.9%	22,942
	Not in proximity to moving mechanical parts	90.8%	31,610
	Not exposed to hazardous contaminants	53.8%	18,729
Physical Demands	Percent of day where standing is required (50th Percentile)	50.0%	17,407
	Hours of sitting (50th Percentile - median)	4.80	
	Reaching overhead is required	89.7%	31,227
	Reaching overhead is required, both hands	89.6%	31,192
	10 lbs and less than or equal to 25 lbs is required, frequently	2.7%	940
	25 lbs and less than or equal to 50 lbs is required, frequently	1.2%	418
Education and training	Percent of workers, specific vocational preparation is over 1 month, up to and including 3 months	7.0%	2,437
	Percent of workers, specific vocational preparation is over 1 year, up to and including 2 year	17.6%	6,127
	Percent of workers, minimum education level is a high school diploma	84.70%	29,487

Police officers have the following Skills and competencies: Advising, Enforcing, Inquiring, Inspecting, Interrogating, Interviewing, Questioning, Scanning, Searching. Protecting human, animal, and plant life and property against loss from fire, pests, and other natural hazards, and from negligence, criminal acts, and unlawful practices. Includes work situations, such as maintaining peace and order, directing traffic, patrolling establishments and areas, and apprehending lawbreakers; extinguishing fires; and exterminating pests. Burning,

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Cautioning, Conserving, Demolishing, Draining, Dusting, Firefighting, Fumigating, Guarding, Policing, Spraying. (U.S. Department of Labor, 1991)

A doctor's report shows that Lorial can perform light work as generally defined. She can lift, pull, and push objects occasionally up to 20 Lbs. and frequently up to 10 Lbs. She can occasionally stoop, balance, crouch, crawl, kneel and climb stairs and ramps. She can never climb ropes or ladders. The claimant can perform tasks at a consistent pace but not at a fast production rate pace such as would be required in assembly line type of work. She can make decisions related to her work and tolerate minor work changes. She can frequently be exposed to supervisors, coworkers, and the public. She can only occasionally reach overhead bilaterally, frequently below the shoulder and frequently handle items. She can sit for 4 hours and walk or stand for four hours in an eight-hour workday. She can perform jobs that require alertness and close attention to watching machine process is or inspecting, testing, or otherwise looking for irregularities, or tending or guarding equipment, property, materials, or persons against loss damage or injury, or other types of activities which are similarly less complex than skilled work but more complex than unskilled work.

Selected Characteristics of Occupations (SCO) shows that Police Officer I is a Medium job and therefore with the current RFC, Lorial can no longer perform the job. Police officers occasionally stoop, balance, crouch, crawl, kneel and climb. The job has a great deal of variety and changes, the job is stressful and requires frequent judgment.

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She could perform the job of security guard (DOT-code: 372.667-034). This is a light job with an SVP of 3. This job still may have stressful moments but instead of having to resolve a dangerous situation, the guard's responsibility is to warn the police. According to the SCO, the job is more repetitive and needs less judgment of problem situations. Both jobs deal with people. The police officer will have transferrable skills, as mentioned above, that can be applied to this semi-skilled occupation. There are 8 DOT titles in the SOC group of 33-9032. Skilltran indicates that there are 304,537 of these jobs in the national economy.

Table 2:

ORS	Security Guard	372.667-034 GUARD, SECURITY	No. of jobs in the national economy	
			Percent of economy	jobs
Cognitive Requirements		Control of workload	7.5%	22,840
		Percent of workers, with the ability to pause work	10.4%	
Environmental conditions		Not exposed to wetness	99.2%	302,101
		Not in proximity to moving mechanical parts	99.8%	303,928
		Not exposed to hazardous contaminants	99.0%	301,492
Physical Demands		Choice of sitting or standing	12.0%	36,544
		Median percent of day where sitting is required	50.0%	152,269
		Reaching overhead is required	22.4%	68,216
		Reaching overhead is required, both hands	20.7%	63,039
		10 lbs and less than or equal to 25 lbs is required, frequently	2.7%	8,222
		25 lbs and less than or equal to 50 lbs is required, frequently	1.2%	3,654
Education and training		specific vocational preparation is beyond short demonstration, up to and including 1 month	63.9%	194,599
		Percent of workers, specific vocational preparation is over 1 year, up to and including 2 year	7.2%	21,927
		Percent of workers, minimum education level is a high school diploma	96.90%	295,096

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ORS information shows that 12% or 14,064 of these jobs in the USA allow the worker to have a choice of sitting or standing. There is no information on how many of the jobs with a sit-stand option require overhead reaching. If one assumes that 22.4% require that overhead reaching of all jobs in this SOC group, then one can argue that 77.6% jobs that have a sit-stand option, do not require overhead reaching. Yet, we cannot be sure. Jobs that have a choice of sitting and standing may always require overhead reaching. In that case there are no jobs available.

Case 2. Asaad is a Nurse Practitioner. DOT: 075.264-010. This is a highly skilled light job with an SVP of 8. The job involves occasional stooping, frequent reaching, handling, fingering, feeling, talking, hearing and near acuity. The job further requires directing and supervising people, working with the public, co-workers, and supervisors, and applying judgment to complicated manners. There is only one DOT title in this SOC group of 29-1171. The same methodology was used to estimate the number of available jobs as for Police Officers.

Asaad suffers from PTSD, anxiety, depression, and arthritis in his hands. He reports that he has panic attacks when he is around crowds. He reports he cannot be responsible for decisions that affect people. He feels easily overwhelmed with problems.

Table 3 shows a selection of data that can be applied to this situation.

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Table 3

ORS	Nurse Practitioner	075.264-010 NURSE PRACTITIONER	No. of jobs in the national economy	
			Percent of jobs	145,433
Cognitive Requirements	Percent of workers, with the ability to pause work	13.3%	4,630	
	People skills, more than basic required	100%	34,813	
Environmental conditions	Exposed to moderate noise	76.4%	26,597	
	Not exposed to hazardous contaminants	94.7%	32,968	
Physical Demands	Choice of sitting or standing is allowed	40.4%	14,064	
	Reaching overhead is required	72.9%	25,379	
	Reaching overhead is required, both hands	66.3%	23,081	
	Keyboarding	100.0%	34,813	
	lifting or carrying > 25 lbs and less than or equal to 50 lbs is required, seldom	29.6%	10,305	
	Fine Manipulation is required, both hands	94.6%	32,933	
Education and training	specific vocational preparation is over 4 years, up to and including 10 years	92.3%	32,132	
	Percent of workers, minimum education level is a master's degree	97.9%	34,082	
	Percent of workers, credentials: license is required	89.6%	31,192	

Asaad has a Residual Functional Capacity (RFC) where he needs to be frequently able to pause work, frequently have contact with the public or coworkers but not work near crowds. He can frequently reach and handle. He can only occasionally finger and feel with either hand. He needs to have a job with simple, routine, and repetitive tasks in a low stress environment. The job should be able to be learned in less than a month. He needs a job with no supervisory responsibilities.

A Router would be such a job (DOT: 222.587-038). Selected ORS information shows the following requirements to this and 43-9061. There are 73 DOT titles in this group. Skilltran estimates that there are 34,924 of these jobs in the national economy.

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The SCO shows that the physical demands for this job include frequent reaching and handling, occasional fingering and never feeling. It indicates that the job is unskilled with an SVP of 2 and that directing of people is not part of the job.

Table 4.

ORS	Office Clerks	222.587-038 ROUTER	No. of jobs in the national economy	
			Percent of jobs	38,193
Cognitive Requirements		Percent of workers, with the ability to pause work	78.4%	165,644
		Percent of workers, supervisory duties are not required	96%	201,772
		Percent of workers, problem solving is required less often than monthly, including never	81%	171,348
		Percent of workers, working around crowds is not required	100%	211,280
Physical Demands		Percent of workers, fine manipulation is required, occasionally	70.4%	148,741
		Percent of workers, specific vocational preparation is beyond short demonstration, up to and including 1 month	27.5%	58,102
Education and training		Percent of workers, specific vocational preparation is over 6 months, up to and including 1 year	8.5%	17,959

Conclusions

The Occupational Requirements Survey (ORS) is a useful addition to the information that can be obtained regarding jobs from the Selected Characteristics of Jobs (SCO). A Vocational Expert (VE) can, while using his education and experience, add valuable statistical information to his or her testimony. The VE can make reasonable assessments about the availability of jobs in the National Economy and regional economies that a person with limitations can perform.

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References

- Bureau of Labor Statistics. (2021, April 12). *Standard Occupational Classification*. Retrieved from Bureau of Labor statistics: <https://www.bls.gov/soc/>
- Skilltran LLC. (2020). Job Browser Pro. Spokane Valley, WA, USA.
- Smyth, K. N. (2014, October). *Validation in the Occupational Requirements Survey: Analysis of Approaches*. Retrieved from Bureau of Labor Statistics: <https://www.bls.gov/osmr/research-papers/2014/pdf/st140210.pdf>
- U.S. Department of Labor. (1991). Chapter 4. In *The Revised Handbook for Analyzing Jobs* (pp. 4-26, 4-28).