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5 November, 2007

Re: Vocational Testing Standards

The Bureau of Rehabilitation and Reemployment Services (BRRS) is in receipt of your inquiry in which you requested clarifications regarding two issues relative to vocational testing standards.

Your two question issues are as follows:

- 1) Is it acceptable to have any persons other than the test administrator, subject and other essential person, such as interpreter, present during the administration of vocational testing? Would the presence of an extraneous third person during vocational testing be considered to be a distraction or intrusion potentially affecting test performance and validity?
- 2) Does the presence of a third person, including an observing attorney, violate the principles of privacy and confidentiality required by your standards and CCWAVES for an acceptable test environment, or would such intrusion be considered as a factor that alters the test environment and therefore tends to invalidate test results?

Succinctly, Section 440.491(1)(e), Florida Statutes, defines reemployment assessment as a written assessment performed by a qualified rehabilitation provider which provides a

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comprehensive review of the medical diagnosis, treatment, and prognosis; includes conferences with the employer, physician, and claimant; and recommends a cost-effective physical and vocational rehabilitation plan to assist the employee in returning to suitable gainful employment.

Rule 6A-22.0031, Florida Administrative Code, further defines reemployment assessment to include the results of any vocational, interest, academic, psychological or other testing if conducted with the injured employee.

Rule 6A-22.010(8), Florida Administrative Code, states, "Testing instruments, including work samples, used in vocational evaluations, reemployment assessments or other reemployment service activities may be administered and scored under the supervision of a qualified rehabilitation provider. Testing instruments shall be interpreted by the qualified rehabilitation provider with whom the contract for services is authorized."

Rule 6A-22.010(7), Florida Administrative Code, states, "Any qualified rehabilitation provider or employee of the Department or other public or private agencies administering, scoring, and interpreting testing instruments shall have the training and education required by the publisher of the testing instrument."

As can be seen from the above, any testing done as part of a reemployment assessment needs to be administered and scored under the supervision of a qualified rehabilitation provider who is qualified to administer the test. There is nothing in statute or rule that permits any other party to participate in the testing. As part of the administration of the test, the supervising qualified rehabilitation provider has the authority to include other persons, such as translators, who may be necessary for the administration of the test.

There is nothing in statute or rule that permits the injured employee's attorney to be an observer of any testing. Indeed there is no provision in statute or rule that permits any observer to the testing.

If the injured employee's attorney has any legal authority permitting him or her to attend the testing as an observer, the attorney should present that legal authority to the Judge of Compensation Claims. Our review of the law did not discover any such authority.

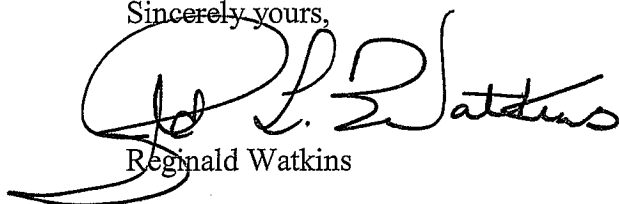
To answer your questions directly:

1. The law does not permit an observer to be present at the testing. Persons present at the testing must be part of the administration of the test. The qualified rehabilitation provider supervising the testing has the authority to decide who those persons are.

2. The presence during the testing of a person who is not part of the testing process under the supervision of the qualified rehabilitation provider would not be valid under statute or rules. The qualified rehabilitation provider has to administer the test as it was meant to be administered by the publisher of the test. If that includes privacy and confidentiality, the test should be administered in that environment with no extraneous third parties present.

I hope that the aforementioned adequately responds to your inquiry. If you have questions or require additional information, please let me know.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Reginald Watkins". The signature is stylized with a large initial "R" and "W".

Reginald Watkins

c: Sonya Harrington, BRRS District 7
Paul Lincolnhol, BRRS Senior Management Analyst