SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 00–3 (10)]

Haddock v. Apfel; Use of Vocational Expert Testimony and the Dictionary of Occupational Titles Under 20 CFR 404.1566, 416.966—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 00–3 (10).

EFFECTIVE DATE: June 20, 2000.

FOR FURTHER INFORMATION CONTACT: Cassia W. Parson, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–0446.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to claims within the Tenth Circuit. This Social Security Acquiescence Ruling will apply to all decisions made on or after June 20, 2000. If we made a decision on your application for benefits between July 13, 1999, the date of the Court of Appeals' decision,[1] and June 20, 2000, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to the prior decision. You must demonstrate, pursuant to 20 CFR 404.985(b)(2) or 416.1485(b)(2), that application of the Ruling could change our prior decision in your case.

Additionally, when we received this precedential Court of Appeals' decision and subsequently determined that a Social Security Acquiescence Ruling might be required, we began to identify those claims that were pending before us within the circuit that might be subject to readjudication if an Acquiescence Ruling was subsequently issued. Because we determined that an Acquiescence Ruling is required, we are publishing this Social Security Acquiescence Ruling. We will send a notice to those individuals whose claims we have identified which may be affected by this Social Security Acquiescence Ruling. The notice will provide information about the Acquiescence Ruling and the right to request readjudication under the Ruling. It is not necessary for an individual to receive a notice in order to request application of this Social Security Acquiescence Ruling to the prior decision on his or her claim as provided in 20 CFR 404.985(b)(2) or 416.1485(b)(2), discussed above.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005—Special Benefits for Disabled Coal Miners; 96.006—Supplemental Security Income.)

Dated: June 5, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 00–3 (10)

Haddock v. *Apfel*, 196 F.3d 1084 (10th Cir. 1999)—Use of Vocational Expert Testimony and the *Dictionary of Occupational Titles* under 20 CFR 404.1566, 416.966—Titles II and XVI of the Social Security Act.

Issue: Whether an Administrative Law Judge (ALJ), when receiving evidence from a vocational expert (VE) must ask the expert how the testimony or information corresponds to information provided in the *Dictionary of Occupational Titles* (DOT).[2] If the testimony or evidence differs from the DOT, whether the ALJ must ask the expert to explain the difference.

Statute/Regulation/Ruling Citation: Sections 223(d)(2)(A) and 1614(a)(3)(B) of the Social Security Act (42 U.S.C. 423(d)(2)(A) and 1382c(a)(3)(B)); 20 CFR 404.1520(f)(1), 404.1566(d) and (e), 416.920(f)(1), 416.966(d) and (e); Social Security Rulings (SSRs) 83–12, 85–15, and 96–9(p).

Circuit: Tenth (Colorado, Kansas, New Mexico, Oklahoma, Utah or Wyoming).

Haddock v. *Apfel*, 196 F.3d 1084 (10th Cir. 1999).

Applicability of Ruling: This Ruling applies to decisions at the Administrative Law Judge (ALJ) hearing and Appeals Council levels of administrative review.

Description of Case: The claimant, Robert M. Haddock, applied for disability insurance benefits claiming that he was disabled since November 1992 due to hip problems, shortness of breath related to heart and lung problems, lack of strength, and residual chest pains resulting from a heart attack in May 1992. Born on January 6, 1942, Mr. Haddock had worked as a lead carpenter, school bus driver, school janitor, and lift-dump operator. Following the denial of his application for benefits at both the initial and reconsideration steps of the administrative review process, the claimant requested and received a hearing before an ALJ.

The ALJ denied Mr. Haddock's claim at step five of the sequential evaluation process for determining disability. The ALJ found that Mr. Haddock retained the residual functional capacity (RFC) to perform sedentary work if he could alternate sitting and standing. During the hearing, a VE testified that four jobs would accommodate Mr. Haddock's restrictions. The VE did not give the source of his information, nor did anyone at the hearing ask the VE to identify or discuss his sources.

Based on the VE's testimony and Rule 201.11 of the Medical—Vocational Guidelines, 20 CFR part 404, Subpart P, Appendix 2, the ALJ found that Mr. Haddock was not disabled. The Appeals Council denied review, making the ALJ's denial of benefits the Social Security Administration's (SSA's) final decision.

Mr. Haddock brought suit and the district court adopted the magistrate judge's recommendation to uphold SSA's decision. The district court decision was appealed to the Court of Appeals for the Tenth Circuit by Mrs. Haddock due to her husband's death on December 2, 1997. On appeal, the claimant argued that, of the four jobs the

[1] The decision was issued on July 13, 1999. On November 9, 1999, the Tenth Circuit Court of Appeals amended the decision on denial of rehearing.

[2] Employment and Training Administration, U.S. Department of Labor, *Dictionary of Occupational Titles* (Fourth Edition, Revised 1991) and its companion publication, *Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles*, (1993).

VE testified Mr. Haddock could perform, only one was described in the DOT as matching the exertional restrictions that the ALJ found Mr. Haddock had. The claimant argued that the VE testimony regarding the other three jobs Mr. Haddock could perform did not constitute substantial evidence because of the contradiction between the DOT's description of the exertional requirements of the three jobs and the limitations the VE had to assume because of the hypothetical questions posed by the ALJ.

The Court of Appeals for the Tenth Circuit remanded the case to SSA to investigate whether there was a significant number of specific jobs that the claimant could have performed. The court found that the ''ALJ must investigate and elicit a reasonable explanation for any conflict between the Dictionary [DOT] and expert testimony before the ALJ may rely on the expert's testimony as substantial evidence to support a determination of nondisabilty.''

Holding: The Tenth Circuit held that before an ALJ may rely on expert vocational evidence as substantial evidence to support a determination of nondisability, the ALJ must ask the expert how his or her testimony as to the exertional requirement of identified jobs corresponds with the DOT and elicit a reasonable explanation for any discrepancies.

The court stated that the ALJ bears the burden at step five to show that there are jobs in the regional or national economies that the claimant can perform with the restrictions found by the ALJ. Because the claimant's RFC was restricted to alternate sitting and standing which would limit his ability to do a full range of sedentary work, the court noted that the ALJ ''must cite examples of occupations or jobs the individual can do and provide a statement of the incidence of such work* * * ''[3] The court summarized, that in cases such as this, ''the ALJ must find that the claimant retains a particular exertional capacity, decide whether the claimant has acquired transferable skills, identify specific jobs that the claimant can perform with the restrictions the ALJ has found the claimant to have, and verify that the jobs the claimant can do exist in significant numbers in the regional or national economies. All of these findings must be supported by substantial evidence.''

The court found that ''[w]hat the agency's regulations and rulings require an ALJ to do, or even allow an ALJ to do, to produce substantial vocational evidence at step five is not clear. 20 C.F.R. §404.1566(d)(1) states that '* * * [SSA] will take administrative notice of reliable job information available from various governmental and other publications [including the] Dictionary of Occupational Titles.' '' The court found that the regulation suggests that an ALJ at step five ''must correlate a VE's testimony in an individual case with vocational information provided in the Dictionary of Occupational Titles or other reliable publications.'' The court then narrowed its focus and found that there was a conflict between the VE's testimony and the DOT as to the exertional requirements of three of the jobs identified by the VE. The court concluded that ''the ALJ should have asked the expert how his testimony as to the exertional requirement of these three jobs corresponded with the Dictionary of Occupational Titles, and elicited a reasonable explanation for the discrepancy on this point, before he relied on the expert's opinion that claimant could perform these three jobs.''

The court stated that it was not holding that the DOT ''trumps'' a VE's testimony when there is a conflict about the nature of a job. Rather, the court explained that it was merely holding that the ALJ must investigate and obtain a reasonable explanation for any conflicts found. The court noted that a reasonable explanantion could include the fact that a job is not included in the DOT, but documented in some other acceptable source, or that a specificed number or percentage of a particular job is performed at a lower RFC level than the DOT shows the job to generally require.

Statement As To How Haddock Differs From SSA's Interpretation Of The Regulations

At step five of the sequential evaluation process (step eight in continuing disability review claims), we consider the vocational factors of age, education, and work experience in conjunction with a claimant's RFC to determine whether a claimant can do other jobs that exist in significant numbers in the national economy other than the claimant's past relevant work. We determine whether work exists in the national economy that a claimant can do when a claimant's physical or mental abilities and vocational qualifications meet the requirements of a significant number of jobs (in one or more occupations).

In determining the existence of unskilled sedentary, light, and medium jobs in the national economy, we take administrative notice of reliable job information available from various governmental and other publications. Our regulations provide examples of governmental publications, including the DOT, and other vocational resources that we will administratively notice for this purpose, 20 CFR 404.1566(d) and 20 CFR 416.966(d).

We may use the services of a VE in cases involving complex vocational issues, 20 CFR 404.1566(e) and 20 CFR 416.966(e). For example, a VE may testify as to whether a claimant's work skills can be used in (transferred to) other work and the specific occupations in which they can be used. A VE may also testify as to the effects of solely nonexertional impairments on the range of work a person can do (a person's occupational base) or the extent of erosion of a person's occupational base caused by nonexertional limitations, SSR 96–9p, SSR 85–15 and SSR 83–12.

According to our procedures, an ALJ must resolve conflicts in the evidence. This includes conflicts in opinion evidence from a VE and job information contained in the DOT. When such conflicts are evident, the expert should be asked to explain the basis for his or her opinion and the reason it differs with the DOT. The ALJ is responsible for resolving the conflict and must explain in the determination or decision how the conflict was resolved. Unlike the court's holding, our procedures do not place an affirmative responsibility on the ALJ to ask the expert about the possibility of a conflict between the evidence that he or she provides and the information in the DOT.

The Tenth Circuit held, that as a preliminary step, before an ALJ may rely on expert vocational evidence, to support a finding of nondisability, the ALJ must ask the expert whether his or her testimony is consistent with the DOT.

Explanation of How SSA Will Apply the Haddock Decision Within the Circuit

This Ruling applies only to cases in which the claimant resides in Colorado, Kansas, New Mexico, Oklahoma, Utah or Wyoming at the time of the decision (ALJ hearing or Appeals Council levels of review).

Before relying on expert vocational evidence to support a decision of nondisability at step five of the sequential evaluation process (step eight in continuing disability review claims), an ALJ will ask the expert whether the expert's evidence is consistent with information provided in the DOT. If the evidence from the vocational expert differs from the DOT, the ALJ will elicit a reasonable explanation for any conflict

[3] The court cited Social Security Ruling 96–9p.

between the DOT and the expert's evidence. The ALJ will explain in the decision how he or she resolved the conflict between the vocational expert's evidence and information in the DOT and will give the reasons for accepting or rejecting the vocational expert's evidence.

We intend to clarify the regulations at issue in this case, 20 CFR 404.1566 and 416.966, through publication of an SSR and we may rescind this Ruling when the clarification is made.

[FR Doc. 00–15426 Filed 6–19–00; 8:45 am]

BILLING CODE 4191–02–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2000–7502]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of charter renewal.

SUMMARY: The Secretary of Transportation has renewed the charter for the Merchant Marine Personnel Advisory Committee (MERPAC) to remain in effect for a period of two years from May 20, 2000, until May 20, 2002. MERPAC is a federal advisory committee constituted under 5 U.S.C. App. 2. Its purpose is to advise the Coast Guard on matters relating to the training, qualification, licensing, certification and fitness of seamen serving in the U.S. merchant marine. The charter is available on MERPAC's Internet web page at http://www.uscg.mil/hg/g-m/advisory/merpac/merpac.htm.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Luke B. Harden, Acting Executive Director, or Mr. Mark C. Gould, Assistant to the Executive Director, Commandant (G–MSO–1), U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593–0001, telephone 202–267–0229.

Dated: June 14, 2000.

Howard L. Hime,

Acting Director of Standards.

[FR Doc. 00–15513 Filed 6–19–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 172 meeting to be held July 26–27, 2000, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: July 26: (1) Plenary Convenes at 9:00 a.m.; (2) Introductory Remarks; (3) Review and Approve Agenda; (4) Working Group (WG)–2, VHF Data Radio Signal-in-Space Minimum Aviation System Performance Standards, review comments on final work (written inputs only) and vote on DO–224A (distributed in advance).

Note: This is a single-purpose meeting convened solely for the purpose of completing the final draft of DO–224A. No comments will be accepted that were not submitted for review, in writing, prior to the meeting. July 27: (5) WG–2/Plenary as necessary; (6) Other Business; (7) Dates and Locations of Next Meeting; (8) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 14, 2000.

Jane P. Caldwell,

Designated Official.

[FR Doc. 00–15537 Filed 6–19–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Special Committee 194; ATM Data Link Implementation

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 194 meeting to be held July 10–13, 2000, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Ave., NW, Suite 1020, Washington, DC 20036.

The agenda will include: July 10: Working Group (WG) 3, Human Factors. July 11: WG–1, Data Link Ops Concept & Implementation Plan; WG–3, Human Factors; WG–4, Service Provider Interface. July 12: WG–1, Data Link Ops Concept & Implementation Plan; WG–3, Human Factors; WG–4, Service Provider Interface. July 13: Plenary Session: (1) Welcome and Introductory Remarks; (2) Review Agenda; (3) Review/Approve of Previous Meetings; (4) Working Group Reports; (5) Other Business; (13) Date and Location of Future Meetings; (14) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC. 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 14, 2000.

Jane P. Caldwell,

Designated Official.

[FR Doc. 00–15538 Filed 6–19–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To impose and Use a Passenger Facility Charge (PFC) at Monterey Peninsula Airport, Monterey, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Monterey Peninsula Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 20, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following