

Vocational Rehabilitation Getting the Injured Employee Back to Work

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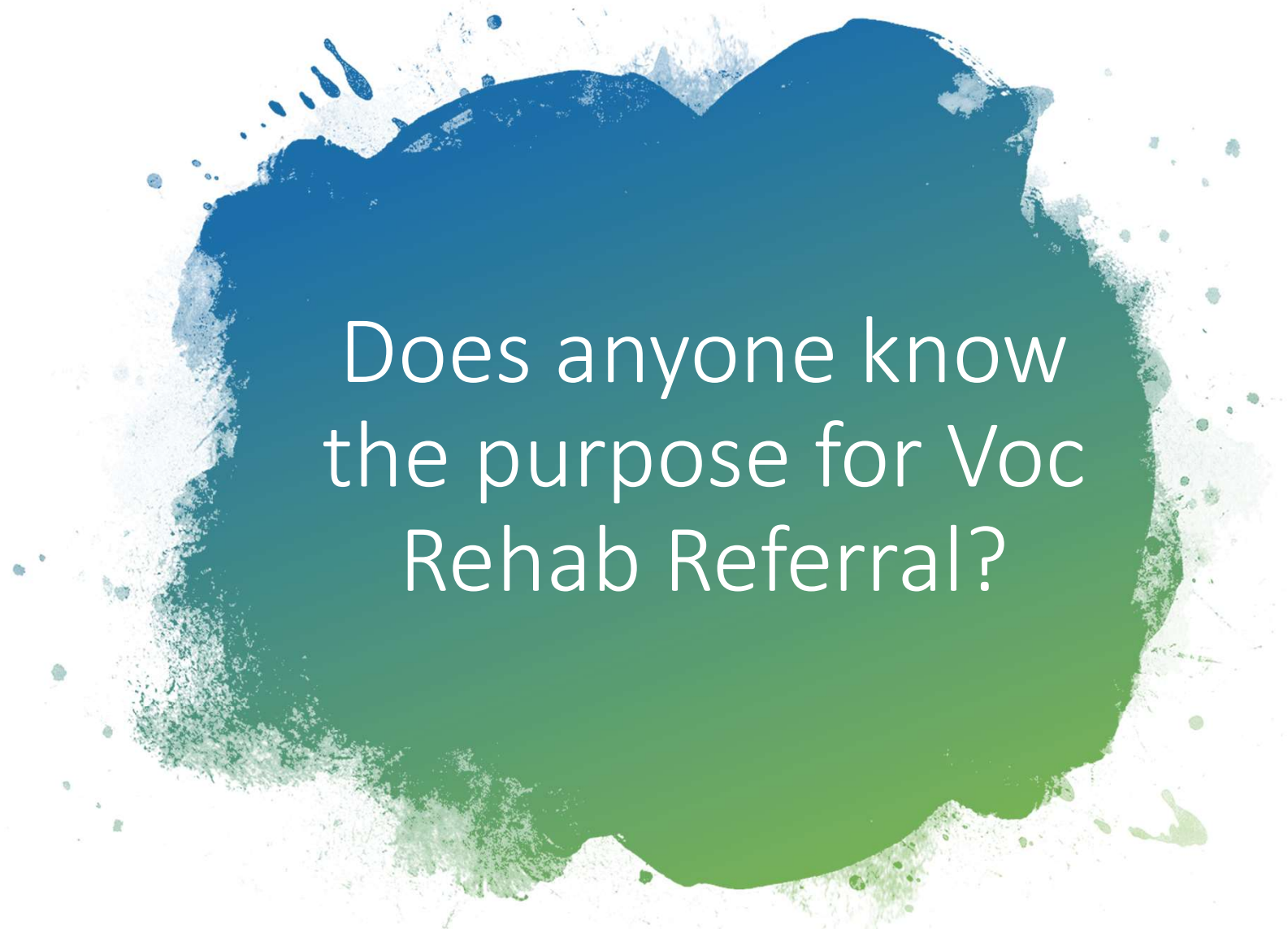
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Objectives

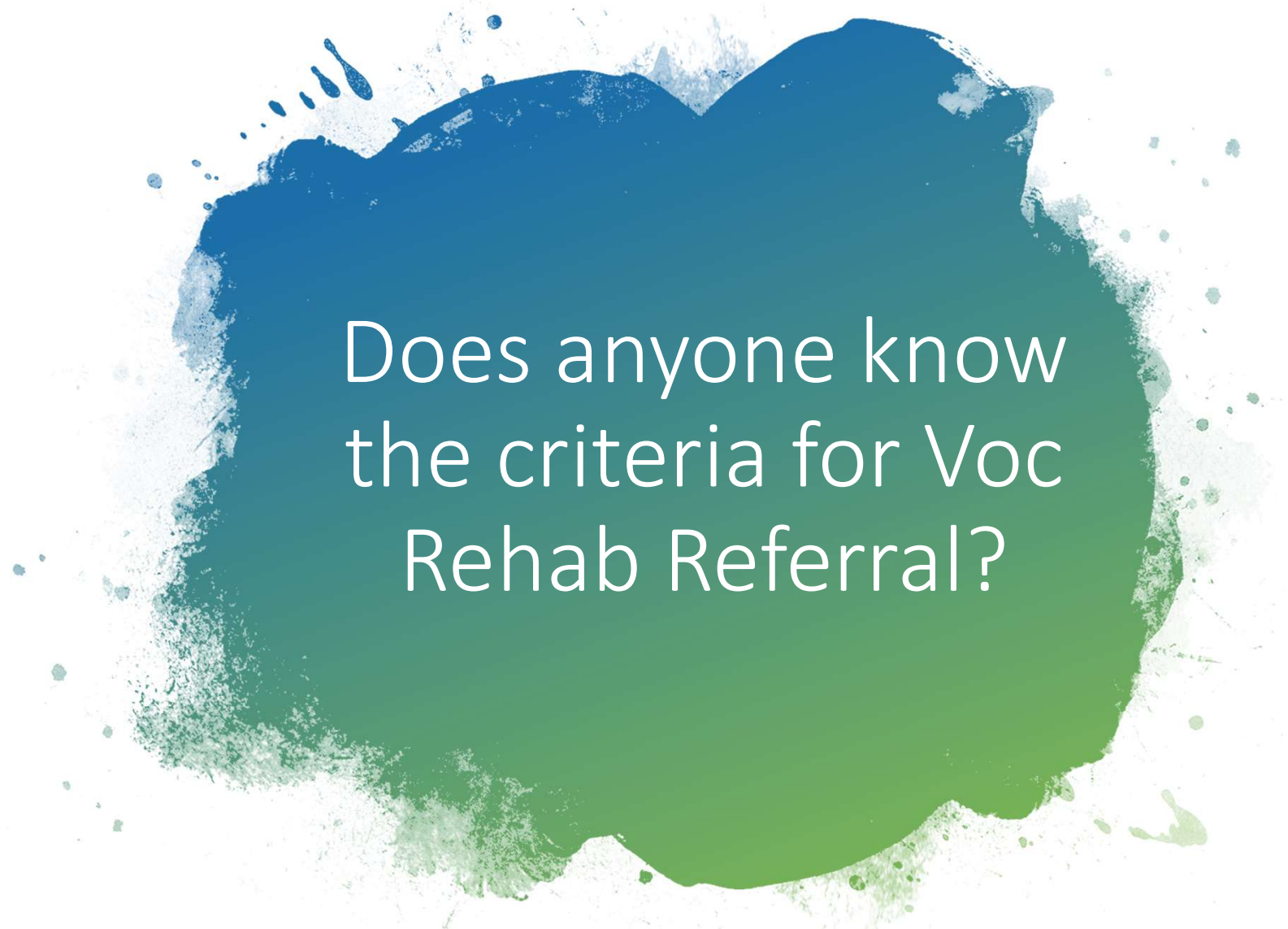
- Identify the purpose of the Vocational Rehabilitation Program
- Explore the roles and responsibilities of those involved in Vocational Rehabilitation process
- Review different options available with Voc Rehab
- Discuss the potential outcomes of the process



Does anyone know
the purpose for Voc
Rehab Referral?

Vocational Rehabilitation Purpose

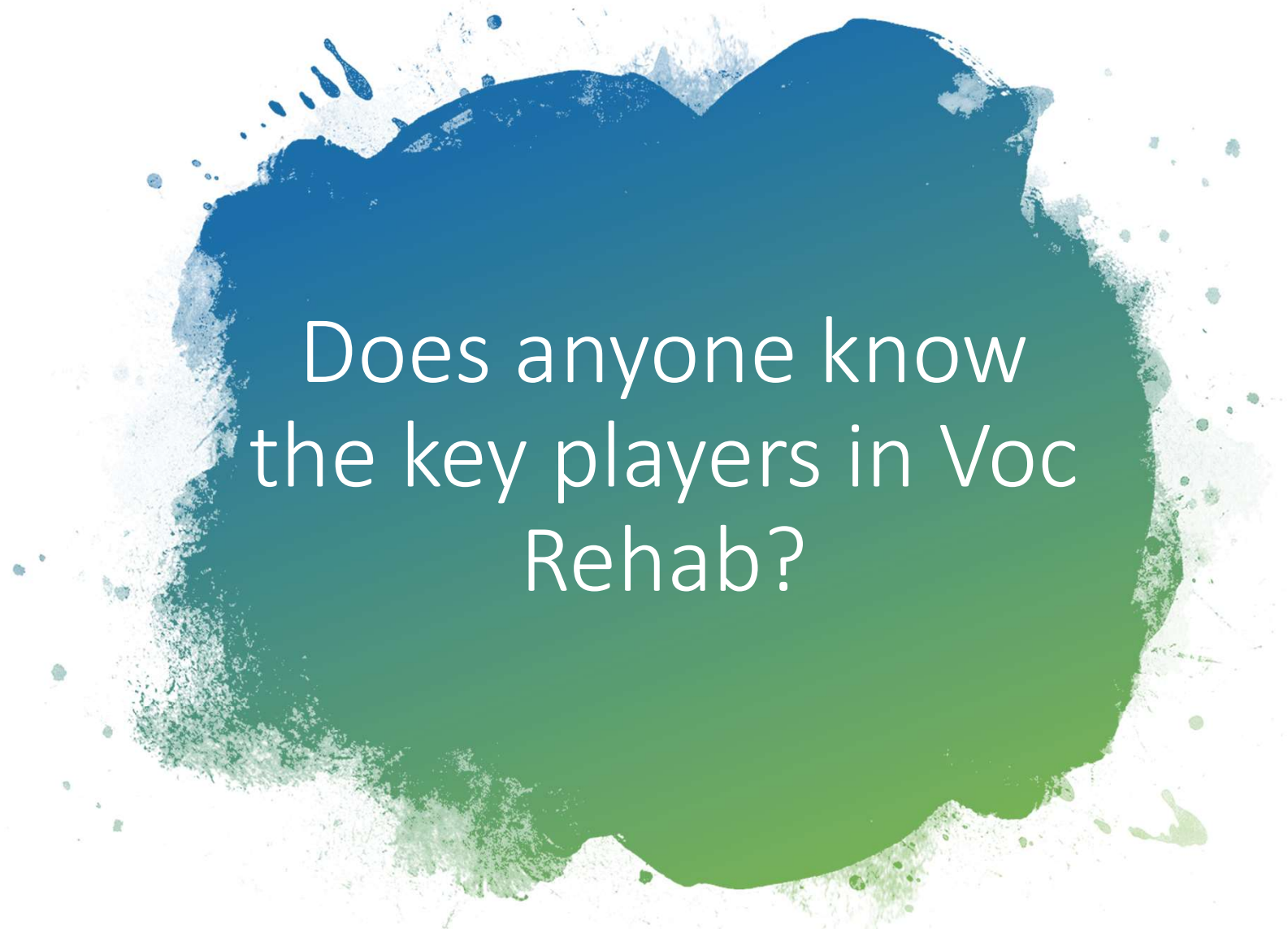
- Minimize the injured worker's disability and assist the claimant in returning to the workforce in suitable employment.
- Helps IW become self-supporting and productive
- Saves money by eliminating or reducing workers' compensation (WC) payments



Does anyone know
the criteria for Voc
Rehab Referral?

Criteria for referrals to Vocational Rehab

- The claimant is receiving compensation
- Capable of working 4 hours per day:
 - Work restrictions should be current and stable
 - Be able to work at least sedentary work
- The Field Nurse has completed medical management
 - May recommend vocational rehabilitation at the end
- The employing agency has not made a job offer or is not able to accommodate
- Limited Referrals can be made if the claimant is only able to perform part-time or sub-sedentary work (depends on the district)



Does anyone know
the key players in Voc
Rehab?

Key Players

- Claims Examiner (CE)
- Rehabilitation Specialist (RS)
- Rehabilitation Counselor (RC)
- Claimant

Key Player Functions

Rehab specialist: coordinates assignment of cases, monitors contracts and quality of services, may guide rehab counselor with on VR services and course of action, communicate with CE about assigned cases. Guide CE on how to recognize when VR services are necessary to assist with RTW and solutions for RTW barriers

Claims Examiner : makes referrals for rehab services, evaluates medical determinations, reviews rehab plans to ensure suitable for medical suitability, keep the RS and RC aware of any changes in medical or factual evidence that may change the current plan, issues warning letter if non-cooperation occurs and issues notices of proposed actions and formal decisions pertaining to a claimant's entitlement to compensation.

Rehabilitation Counselor (RC): will coordinate any necessary medical rehab services, evaluate IW vocational abilities and transferable skills recommends potential suitable occupational choices, facilitate job placement with previous employer, arrange for voc testing and training, conduct labor market surveys, assist with job seeking skills, resume building, identifying potential employers

Claims Examiner's Responsibilities

- Refers appropriate cases for rehabilitation services
- Evaluates medical determinations in cases
- Responds to requests from the RS or RC
- Reviews rehabilitation plans for medical suitability
- Issues warning letters if non-cooperation occurs; issues notices of proposed actions and formal decisions pertaining to a claimant's entitlement to compensation

Rehabilitation Counselor's Responsibilities

- Evaluates the claimant's vocational abilities and transferable skills
- Facilitates employment placement, including with the previous employer
- Arranges for vocational testing and training
- Oversees Occupational Rehabilitation plans

Claimant's Responsibilities

- Must cooperate with VR efforts
- Provide medical documentation when needed
- Maintain a "C" average if in training/school and submit grades and certificates
- Regular attendance training, job fairs, and interviews



Does anyone know
services Voc Rehab
provides?

Services Provided

- Initial Interview
- Placement with previous employing agency (EA)
- Medical Rehabilitation
- Guidance and Counseling
- Vocational Testing
- Training
- Placement with new agency (PNE)
- Assisted Reemployment
- Follow-up Services

Types of Referrals

- Medical Rehab/Occupational Rehab Program
 - Work Hardening
 - Substance Abuse Program
 - Housing and vehicle modifications
- Placement Previous Employment (PPE)
- Placement New Employer (PNE)

Possible Outcomes

- Return to Work with the Previous Employer
- Refusal of Suitable Work with the Previous Employer (Sanction)
- Return to Work with a New Employer (other than the EA)
- LWEC or Constructed LWEC Decision
- Other Outcomes of Rehabilitation

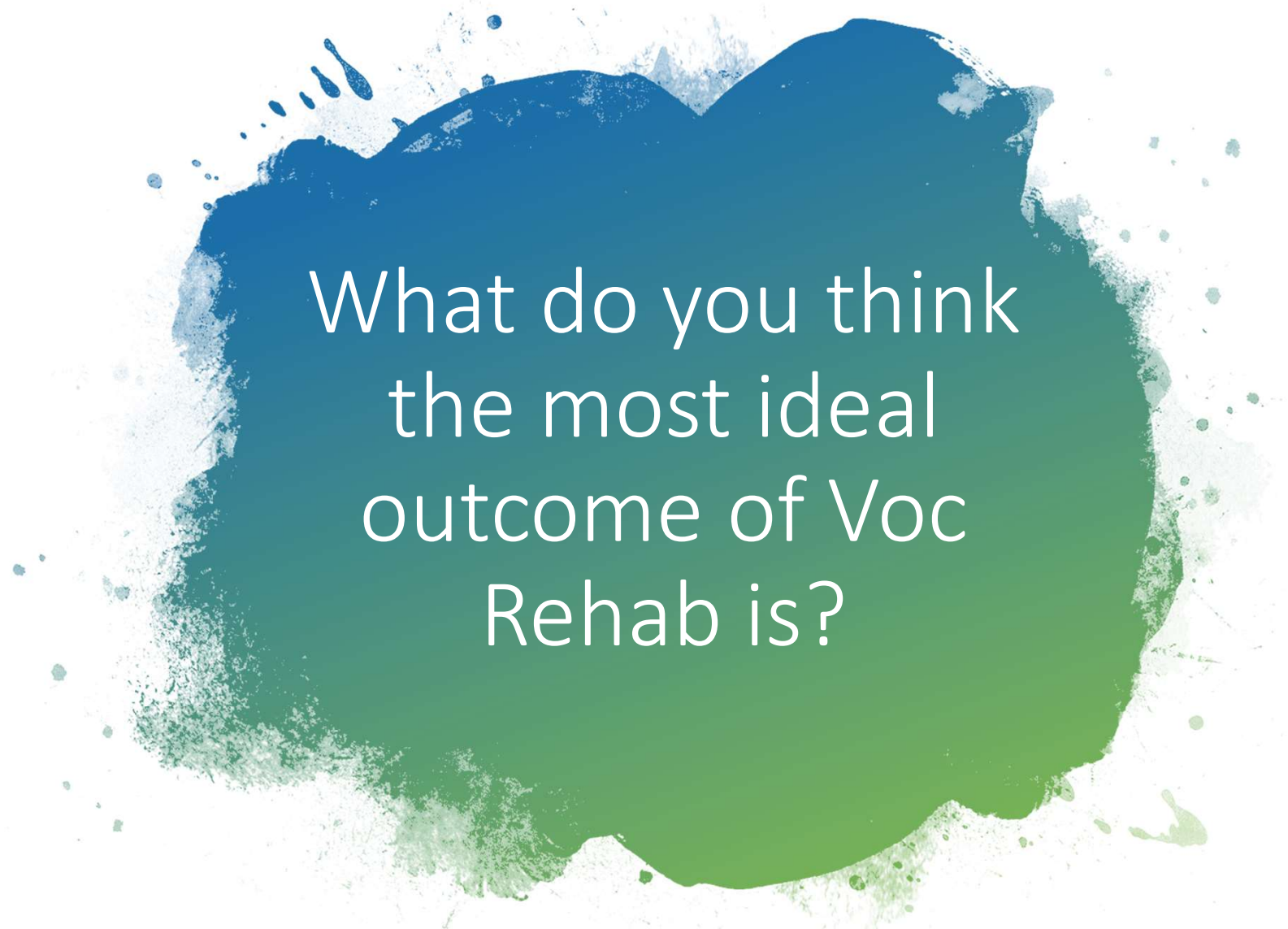
Plan Development

If return to work efforts with PPE are not successful:

- RC will develop a plan to return claimant to work with a new employer (PNE)
- RC will identify suitable jobs:
 - Positions identified must be vocationally and medically suitable
 - Reasonable availability
- RC will prepare written plan

Elements of Plan

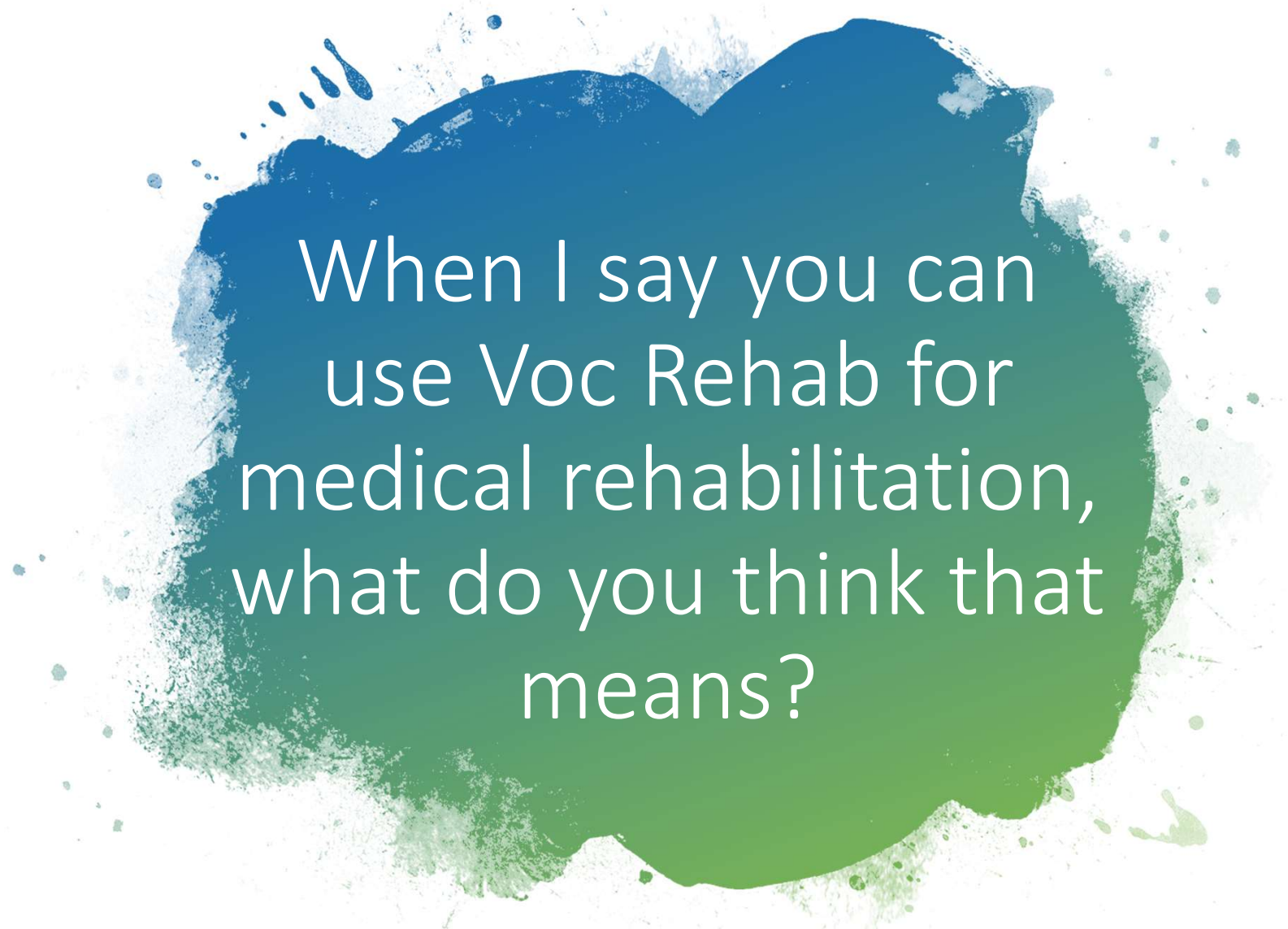
- Factors which affect the plan need to be documented
 - Medically Suitable
 - Vocationally Suitable
 - Reasonable Availability
- Plan goals
- Documentation of job availability
- Plan justification and recommendation
- Claimant's Agreement



What do you think
the most ideal
outcome of Voc
Rehab is?

Placement with Previous Employer (PPE)

- RC instructed to contact EA before exploring other placement options
- Advantages to placement with previous agency:
 - Quickest way to return IW to duty
 - Reduces potential salary loss
 - Preserves IW's pension and seniority rights
 - Places IW in a familiar environment
 - If no response within 30 days or EA indicates re-employment not possible, RC moves to next phase or rehabilitation



When I say you can
use Voc Rehab for
medical rehabilitation,
what do you think that
means?

Medical Rehabilitation

“Medical Rehabilitation refers to those medical and related services necessary to correct, minimize or modify the impairment caused by a disease or injury so that the injured worker can return to an adequate level of function and employment. Thus, it is distinguished from actual medical treatment to cure or relieve the effects of the injury.”

Medical Rehabilitation

Various medical services can be provided during this phase:

- Intensive services provided in catastrophic claims
- Functional Capacity Evaluations (FCE)
- Speech therapy, orthotics, prosthetics
- Psychiatric counseling, drug addiction counseling
- Housing and vehicle modifications



Scenario #1

What do you think?

- In reviewing the latest medical from Dr. Nowwantoff on your 28 year old claimant who, as you've noticed, is on heavy narcotics and has a history of recreational drug use noted, totally disabled the employee as the "effects of the vast amounts of prescribed and admitted recreational drug/alcohol use make it unsafe for him to return to gainful employment at this time." You note the physician states that he wants to try and wean the patient, but the patient unwilling.

What can you do?

Substance Abuse

- Ordinarily, inpatient care will be limited to a one-time 28-day stay at a reputable facility, though in unusual circumstances additional inpatient care may be authorized. The facility selected should be within 25 miles of the claimant's residence wherever feasible.
- Outpatient treatment may be recommended by itself or as a follow-up measure to inpatient care. Such treatment may be authorized when recommended by the attending physician, as may medications prescribed to alleviate the effects of addiction. Likewise, counseling in a group setting may be undertaken at OWCP expense.



Scenario #2

What can we do? How do we move this along?

An employee, who is a cook, injured his back. Two unsuccessful surgeries were performed rendering the IW unable to return to work.

Several years later, the IW physician determined the IW can work with restrictions but not in the former cook position. The IW has a 6th grade foreign education and limited English-speaking skills. The EA is unable to reemploy the IW.

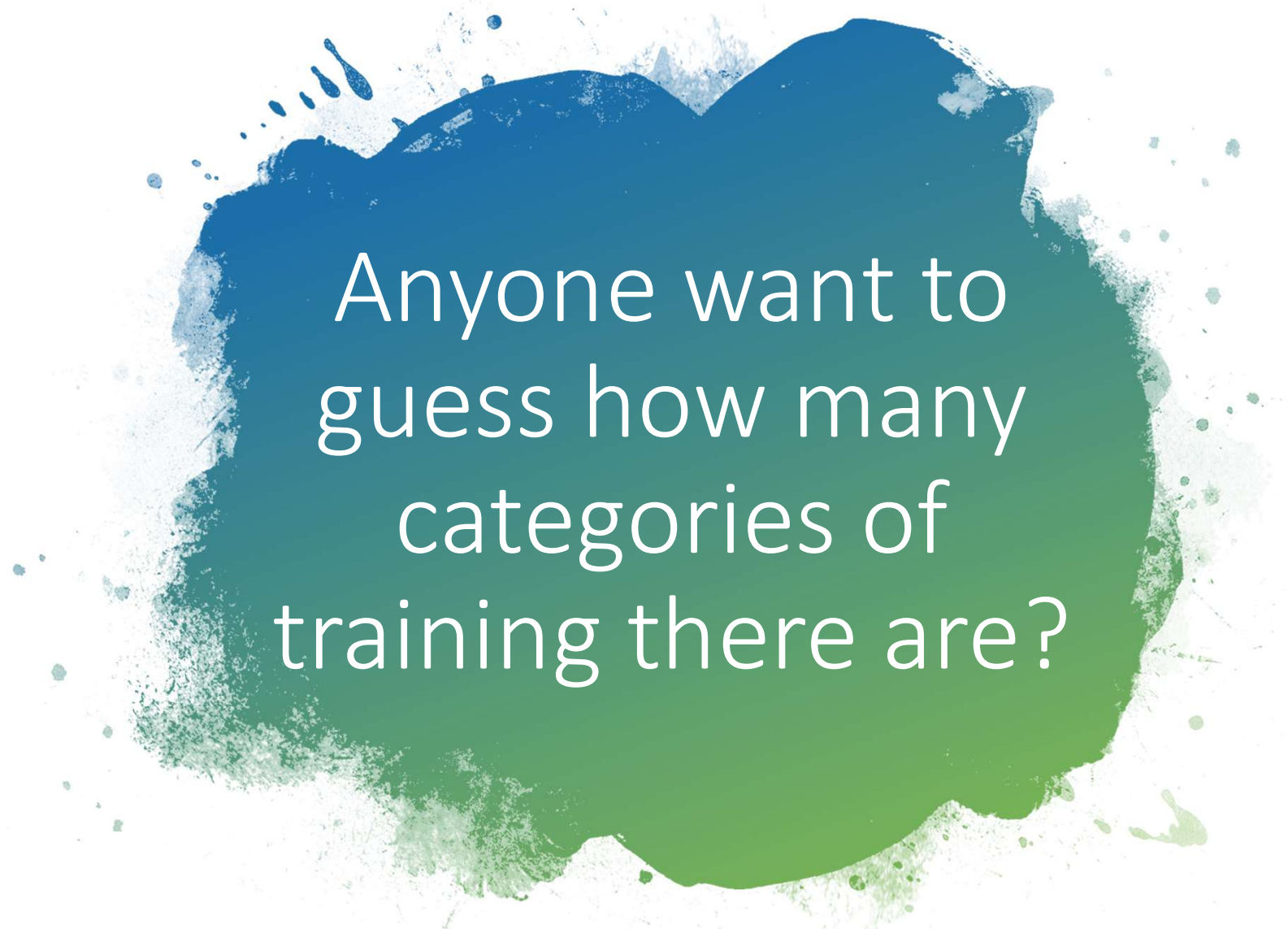
Vocational Testing

- Testing and evaluation are required for most IWs seeking a position with new agency
- Testing consists of standard intelligence, educational, achievement and aptitude assessments

Training

Training is an option if

- The IW has few transferable skills
- Wage earning gap between previous employment and potential position with new agency will be beneficial
- Period of training will enhance IW's employability



Anyone want to
guess how many
categories of
training there are?

Types of Training

- Pre-Vocational training short-term and serves to upgrade basic skills such as literacy, but is not necessarily aimed at specific occupation
- Formal training courses or refresher courses can be provided through business or trade schools, colleges, apprenticeship programs, tutoring, etc.
- On-the-job training is another option for increasing the employability of the claimant

Training Duration and Costs

- Overall limit is two years with exceptions
- Prevocational training limited to one year without extension
- Plans with rehabilitation costs in excess of \$20,000 require DD approval



Scenario #3

What to do, what to do?

An injured worker (IW) has been on the PN status for 15 years. A recent SECOP determined the affects of the work-related conditions had mostly resolved so the IW could return to employment.

Unfortunately, due to restructuring the agency no longer had a position available that met the medical capabilities and employment skills. The EA is thinking of requesting vocational rehabilitation. What can be done with Vocational Rehab in this case?

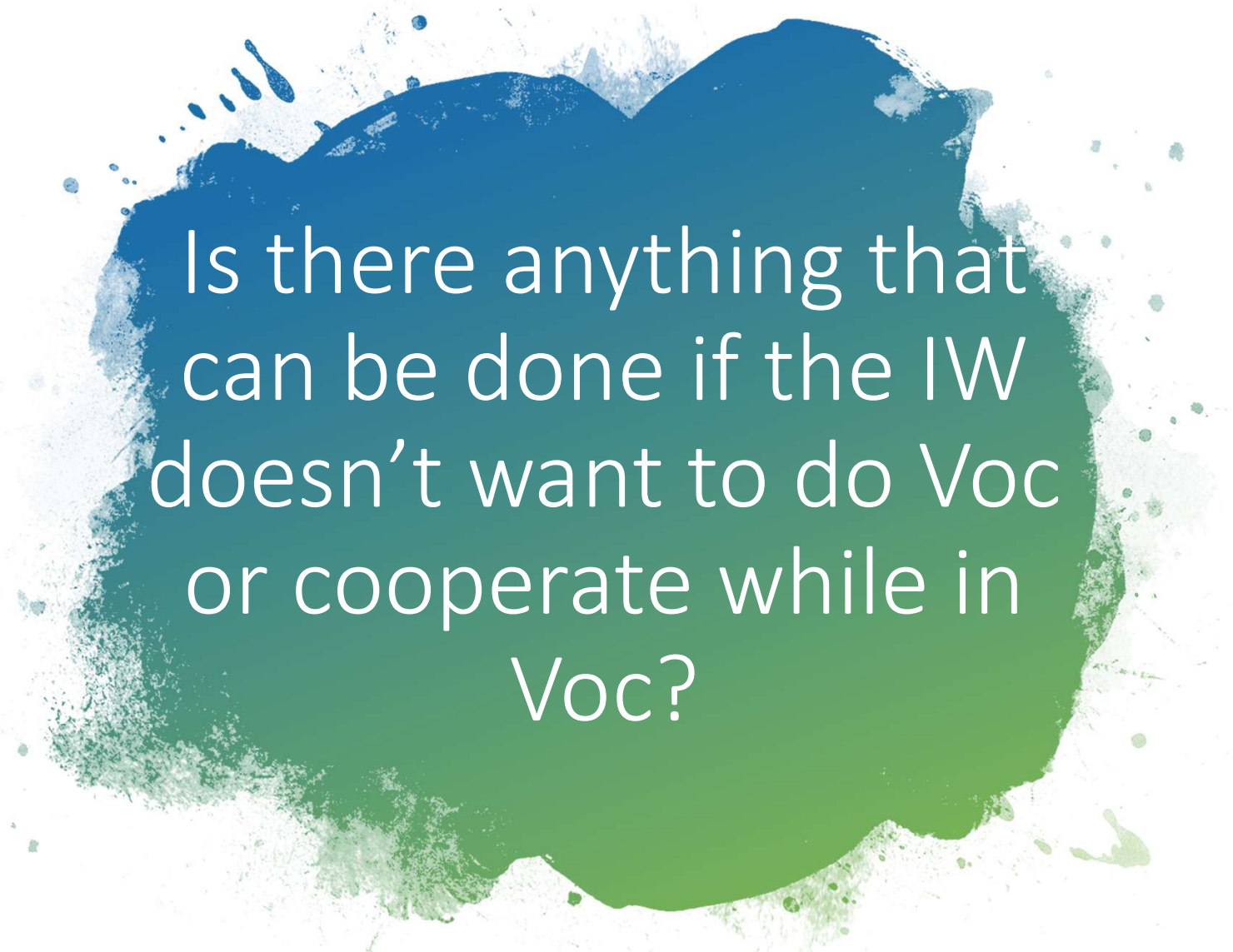
Placement with New Agency (PNE)

Placement plan:

- Identifies at least two vocationally appropriate positions suitable to the work restrictions imposed that are reasonably available within IW's commuting area.
- Provides a 90-day period to find work (extensions provided in rare instances).
- Outlines the responsibilities of IW and RC.

Assisted Reemployment is a temporary wage subsidy incentive intended to increase job offer for IWs whose disability makes them difficult to place

- Up to three years partial salary reimbursement to employers
 - Only offered to Private sector, State or local government agencies
 - Wage subsidy plus LWEC shall not exceed compensation allowable – 75% or 66 2/3%
 - Compensation and employer subsidy is terminated if work related disability ceases
 - Subsidy is not transferrable from one employer to another



Is there anything that
can be done if the IW
doesn't want to do Voc
or cooperate while in
Voc?

Non-Cooperation

Types of Non-Cooperation:

- Refusing to meet with RC
- Refusing to undergo testing or other necessary preparation
- Refusing to participate in an approved training program
- Refusing to participate in or sabotaging placement efforts
- Inconsistent participation (missed appointments or classes, not maintaining a “C” average)

Non-cooperation Consequences

- Failure to cooperate with Vocational Rehabilitation efforts could result in the application of sanctions under 5 U.S.C. 8113(b)
 - Suspension of compensation unless or until IW demonstrates cooperation with VR efforts
- Sanctions are applied based on which stage of participation the claimant is in at the time
 - Failure to cooperate in the early stages of the vocational rehabilitation results in a suspension of compensation to zero
 - During later stages when positions identified: failure to cooperate at this stage results in suspension to reduced compensation to reflect IW's earning capacity

Compliance

If the IW later complies after a formal decision has been issued suspending compensation:

Compensation is reinstated:

- Effective date of reinstatement of compensation is the date the IW indicates in writing his/her intent to comply (and shows compliance)
- Only the HBI/ OLI payment would be retroactive.
- Compliance must be confirmed by RS or RC

Sanctions Under 5 U.S.C. 8115

Refusing or impeding placement efforts will result in reduction of compensation based upon one of the positions identified in the placement plan.

- At end of 90 day placement period, RC submits a final report identifying appropriate positions
- RC indicates whether or not IW participated or cooperated in placement efforts
- CE issues pre-reduction notice
 - IW's wage earning capacity based on one of the identified positions
 - CE issues final decision after 30 days and considers any response to the pre-reduction notice

Actions Following 90-day Placement

If the claimant returns to work:

- Compensation benefits are reduced based upon the actual earnings
- After working 60 days CE issues Loss Wage Earning Capacity (LWEC) decision

If the claimant does not return to work:

- RC confirms the identified positions are reasonably available within commuting area
- CE issues proposed reduction based on one of the selected positions
- After 30 days, final LWEC decision is issued and compensation is adjusted (Constructed LWEC)



Scenario #4

We have these cases, but nothing can be done- or can it?

A medical report shows that Mr. Smith, who's claim was accepted for a right shoulder tear and subsequent surgical repair, now can return to work 3 years later for his shoulder. BUT...

The medical note further states that he is totally disabled from work on a permanent basis as a result of a motorcycle accident he was in a year ago that resulted in a 4-level cervical fusion, bilateral hip fracture, and ongoing lumbar complaints.

Limited Referrals (PM 8-0200)

- If the IW is only able to perform part-time or sub-sedentary work, but for a non-employment- related condition post DOI.
- For IW who cannot work 8 hours per day.
- An Occupational Rehabilitation Program (ORP) may be appropriate when the specific work limitations are unknown or sub-sedentary
 - Options: FCE, work hardening, etc.
- Vehicle or house modifications are necessary

Loss of Wage Earning Capacity (LWEC)

IW salary after placement in a lower-paying position, may be used if fairly/reasonably represents the earning capacity

- Actual - actual earning may be used to calculate reduced compensation if wages are found to fairly and reasonably represent his/her earning capacity.
- Potential – Constructed LWEC. IW completes training but does not return to work. CE determines salary of a suitable position to determine wages IW could earn



Scenario #5

Can we just accept this as done?

Jane Plane is a 62 year old woman who suffered a lumbar disc herniation as well as PTSD that resulted from an assault at work with a patient. Her physician indicates, as well as a second opinion examiner, that she cannot return to work in the capacity as a Nurse given the lifting, walking/standing requirement, and the twisting and other duties of the position and contact with patients that trigger her PTSD.

She has prior experience with as a teller, secretarial positions, a Nursing license, among other minor positions held prior to her hire with the federal government.

She had sedentary and light capacity, 8 hours day, without individual direct patient contact. The agency cannot accommodate her restrictions. She undergoes Voc Training and completes her training. Her agency cannot accommodate her new training skill set nor is there anything open in the current labor market for her to get a job elsewhere.

Constructed LWEC Factors

- Availability of employment
- Usually in area IW currently resides rather than at time of injury
- If IW moved to isolated area with few job opportunities, question of availability applied to area of residence at time of injury
- Any preexisting condition, and the work-related injury and its residuals
- Does not have to consider medical conditions subsequent to date of injury
medical condition

How CE selected Constructed Positions

- The availability of the employment
- Reasonable availability of the jobs in that area.
- Lack of current job openings does not equate to a finding that the position was not performed in sufficient numbers to be considered reasonably available.
- CE will be given two jobs to pick from when issuing a constructed LWEC

ECAB's on Constructed WEC's..

- A Federal or other civil service position in which the claimant is not actually employed may not be considered reasonably available and may not be used to make an LWEC decision. See J.E., Docket No. 08-1582 (issued March 3, 2009) (ECAB held that it was inappropriate for OWCP to base a claimant's WEC on a state or government position as there is no evidence to establish that such positions are available in the general labor market).
- If the claimant can work only part-time or at a sub-sedentary level the position must be reasonably available on the associated basis in the local labor market. A general finding of reasonable availability is not sufficient because a position which can be obtained on a full-time basis may not be available on a part-time basis. See W.M., Docket No. 06-1311 (issued February 23, 2007). Similarly, if the claimant is released to sub-sedentary employment, the LMS must establish that the sedentary position is reasonably available on a sub-sedentary basis. See P.A., Docket No. 10-1907 (issued June 17, 2011).



Scenario #6

Is John really going to be gone?

John Gone is a 48 year old auto mechanic who has a claim accepted for partial amputation of his foot after equipment fell on it.

He has undergone several surgeries and his physician has indicated he can only work 6 hours a day as a result of his continued ghost pain complaints. Objectively his condition is stable as a result of surgery. A second opinion examiner states that Mr. Gone can work a full 8 hours a day, but is limited to 4 hours a day standing, alternating every 2 hours with sitting.

The claimant is unable to go back 8 hours a day as an auto mechanic- and has limited computer skills to do other work that may help him with placement. Voc is established to gain computer skills needed to perform computer/clerical functions.

However his agency is willing to create a auto mechanic/ clerical position after and have it classified. It will be for \$10,000 less a year as a result of not being a full time auto mechanic.

What happens?



Scenario #7

Wait more options?

Melanie Terror is a 40-year-old Medical Support Assistant (MSA) who has a claim accepted for bilateral ulnar and CTS.

She has undergone several surgeries and her physician has indicated she can only work 4 hours a day as a result of her subjective complaints. Objectively her conditions were resolved as a result of surgery. A second opinion examiner states that Ms. Terror can work a full 8 hours a day but is limited to 4 hours a day typing. After the back and forth with the physicians, DOL has held the SECOP to be the medical report of record for restrictions. The claimant is unwilling to return 8 hours and maintains her 4 hours a day. After undergoing VOC and getting the employee back to work, working 8 hours a day with Dragon software to reduce her typing, at her date of injury position.

What happens?



Scenario #8

Their back, rated, can be done with it?

- Wanda Wherego was placed in a permanent position, with an actual LWEC issued. She was placed as a secretary and after a few years saw that there was another position that she thought she'd be capable of doing that was WAY more money than a secretary's salary. So she applied and got the job and is now happily collecting her increase of salary AND her LWEC PR check every 28 days. When you do your review you discover her change in position based on a medical note, as the service did not let you know.

Can this happen?

Vocationally Rehabilitated and Retirement

- Advise CE when IW has completed additional training, which results in change in job position and an increase in salary
- Salary increase must be at least 25% more than the current pay of the job for which the claimant was rated
- If in doubt, notify OWCP, let OWCP make a determination
- Advise CE if IW on LWEC retires to reduce potential dual entitlement issue
 - IW elects continue LWEC or elects OPM benefits
 - Prompt reporting prevents overpayment

Questions?

References

- The FECA (5 U.S.C. 8104) provides that a permanently disabled individual may be directed to undergo vocational rehabilitation. IW receives compensation while cooperating and participating in the rehabilitation process.
- •The FECA (5 U.S.C. 8111) allows DFEC to pay an individual undergoing vocational rehabilitation additional compensation necessary for maintenance, not to exceed \$200 per month.
- •The FECA (5 U.S.C. 8113) allows DFEC to prospectively reduce compensation in accordance with a claimant's wage-earning capacity if he or she refuses, without good cause, to undergo vocational rehabilitation.
- •The FECA (5 U.S.C. 8113) provides restoration rights for injured employees and is administered by the Office Personnel Management.

Resources

- Federal Employees' Compensation Act 5 U.S.C. 8101 et seq.
- Code of Federal Regulations (CFR) Title 20, parts 1-25
- 20 CFR 10 (518, 519, etc.)
- Division of Federal Employees Compensation (DFEC) Procedure Manual Chapter 8
- Division of Federal Employees Compensation (DFEC) Vocational Rehabilitation Counselor Handbook

DOT Chart (Dictionary of Occupational Titles)

Rating	Occasionally	Frequently	Constantly
Sedentary	*-10	*	N/A
Light	*-20	*-10	*
Medium	20-50	10-25	*-10
Heavy	50-100	25-50	10-20
Very Heavy	100+	50+	20+

* = Negligible Weight; N/A = Not Applicable

DOT Definitions Strength Level

- **Sedentary Work:** involves sitting most of the time, may involve walking or standing for brief periods of time
- **Light Work** negligible amount of force constantly to move objects, mostly sitting
- **Medium Work:** involves exerting 20 to 50 pounds of force occasionally or 10 to 25 pounds of force frequently
- **Heavy Work:** involves exerting 50 to 100 pounds of force occasionally, or 25 to 50 pounds of force frequently
- **Very Heavy Work:** involves exerting in excess of 100 pounds of force occasionally, or in excess of 50 pounds of force frequently