

JPV BUSINESS SOLUTIONS(JPV): POLICY DOCUMENT

GUIDE TO ESTIMATE EFFECTS OF INJURIES ON EARNING CAPACITY v2 02/2023

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AIM AND PURPOSE

The main aim and purpose of this policy is to assist Industrial Psychologists associated with the Medico-Legal part of JPV Business Solutions to make a quantified estimate of reduction in earning capacity – especially when the monetary effect of injuries on earnings are not clear or needs to be supplemented. The secondary purpose is to clarify to the receivers or users of our opinions, what was measured and how to interpret it.

ASSUMPTIONS

The major assumption regarding the use of the guide is that a trained and experienced industrial psychologist (IP) will be using it in a personal injury case. Furthermore, sufficient expert opinion will be at the disposal of the IP – for instance Orthopaedic Surgeon, Occupational Therapist (OT) and other experts as required by the nature of the injury. The IP will also have sufficient job description as well as work performance information available such as gained via an individual interview with the injured and via an interview with the relevant supervisor. So, the guide is in essence a tool to assist the IP to integrate his or her opinion as formed by all the different viewpoints and available information. Once the IP had been exposed to all the information that is usually available the ESTIMATION TABLE below should on its own be enough to assist him or her to make his or her estimate, even without additional explanation. Therefore, the general assumption is that, if a suitably skilled and experienced IP came to the point where he or she is comfortable to sign a report with a formulated opinion, such an IP should then also be able to use the Table and allocate a “Level” intuitively. However, for clarity’s sake and to improve a consistent outcome despite different users some guidelines follow below:

1. EARNING CAPACITY.

JPV defines earning capacity as the ability of a person to earn money via some form of work or labour. So, earning capacity relates to employment or self-employment in a free labour market. Regarding personal injury the effect of injuries on earning capacity is referred to in this guide as *impairment* in earning capacity or *reduction* in earning capacity. It is imperative to “anchor” earning capacity to a specific job or type of work. The reason is that a person may experience a significant loss of ability to earn via doing physically demanding work, but less so regarding lighter or sedentary work. Vice versa brain injury may significantly affect the ability to earn via mentally challenging work but less so for physical work. So, the effect of injuries on the ability of the person to earn is considered in terms of aspects like reduced productivity and quality, poorer decision making, strained interpersonal relations and reduced attractiveness in the labour market. Ultimately earning capacity relates to employability. For instance, even if a person can still do a job much like before in terms of productivity and quality, his or her inability to do it as part of a team may cause a loss of earning capacity as the labour market will find such a person less attractive.

See Tinari (2016) and Horner & Slesnick (1999) for further reading.

2. EARNING CAPACITY AND ACTUAL EARNINGS

Earning capacity refers to earning potential. In other words, it refers to the potential or likelihood of gaining certain earnings through work and not necessarily to actual earnings. However, it is so that the actual earnings of a person may indeed have been affected by injuries and that would form part of the evidence of the effects of the injuries and the IP opinion regarding reduction in earning capacity.

However, reduction in earning capacity is often not directly related to actual earnings. As long as a person can obtain and maintain a job, the person may, in practice, earn as others with similar backgrounds do. This may, in some instances, be due to having sympathetic employers. However, in some jobs, earnings are more directly related to earning capacity, for instance where a person is paid per work piece done or where someone is working for commission, or entrepreneurs whose earning capacity and earnings are often directly related. Furthermore, even if a person can keep a job, progress might still be slower and might peak at a later stage or at a lower level due to reduced earnings capacity. And reduced earning capacity can often lead to earlier retirement due to things like a loss of job satisfaction or further deterioration in abilities as the person gets older.

3. EARNING CAPACITY AND RISK OF EARNINGS LOSS

A person who has a reduced earning capacity would usually be more at risk in the labour market. If the person should lose his/her job, it might be more difficult to find a job again. Or when there is organisation restructuring or cost savings the person with reduced earning capacity will probably be more at risk of being laid-off. Many injured people can still earn as they did before, but they have to exert more effort to produce the same results, as they may be slower or make more mistakes that require rework. Such increased effort may then mean sacrifices in other life domains like family time and/or personal leisure. That would mean the individual is less buffered against stress. The long-term effects of such increased stress are hard to predict and not necessarily within the expertise of the IP. However, the IP should consider such long-term effects as best as possible with available information or may ask for clarification from other experts. All in all, any loss of earning capacity increases the risk of loss of earnings and therefore reduces the certainty of earning predictions.

4. ASSESSING REDUCTION IN EARNING CAPACITY

4.1 GENERAL BACKGROUND

JPV suggests that the ultimate reduction in earning capacity should be assessed by an Industrial Psychologist (IP). Industrial psychologists require assistance from other professions to assess the physical and psychological effects of personal injury. However, the evaluation and translation of such injury effects on the career and earnings of individuals should be done by IPs who are work and career experts as well as earnings experts. Koch (2021) correctly points out that as far as earnings are concerned, industrial psychologists should not assess potential earnings but *likely* earnings. That can usually be done as far as pre-injury earnings are concerned. However, it is not always possible to predict the effect of loss of earning capacity in likely Rand and Centstems in the post-injury scenario. At times the likely post-injury earnings are the same as the likely pre-injury earnings. (See 2 above). However, that would usually not be a true reflection of the loss of the injured as the *risk* of earnings loss has increased. (See 3 above). For reasons such as these the courts and legal experts have devised a method to compensate loss of earning capacity where it cannot be quantified in Rand and Cents loss of earnings. It is done via the so-called contingency deductions. Without going into the technicalities of that, it boils down to a percentage deduction from a predicted income stream. The traditional role of the IP in allocating such contingencies is that the IP would suggest that a contingency deduction should be made (without prescribing the size of the contingency) and then list a set of problems associated with the injury, and the effects of such problems on the work and career of the injured that should be considered in granting a contingency. So, although earning capacity loss is assessed by IPs, in practice it remains mostly a verbal description. At times some IP opinions do include some specific reduced productivity or quality figures, or quantified work performance assessments made by supervisors (e.g., on a 10-point scale). However, specific figures are rare and usually it will just be verbal descriptions. In practice, legal experts, such as medico-legal attorneys and advocates, are quite skilful in translating the loss of earning capacity into percentage contingency deductions. However, the JPV practice notes the following problems with these traditional roles and methods:

- a) Some legal experts tend to over-interpret or under-interpret the IP description of loss of earning capacity (depending on which side they represent). Such legal experts then allocate contingency percentages that do not fairly reflect the reality of the loss suffered by the injured.
- b) Contingencies are often the sticking point in settlement – especially when one or both sides propose contingencies that are not a fair reflection of loss. Often differences about contingencies are the main reason for having to go to court.
- c) In mediation contingencies also tend to be the main reason for finding it hard to settle.
- d) To increase the clarity of what they predict, some industrial psychologists would describe the contingency level they suggest, for instance “... a slightly higher than normal contingency...”. Due to the conventions that have developed in the field the percentage size of specific contingency descriptions is well-known.
- e) The JPV practice is of the view that industrial psychologists should not get involved in suggestions regarding the size of the contingency. Contingencies have been devised by legal experts and are based on legal arguments and case-law that is outside the expertise of the industrial psychologist.
- f) To avoid the problem of being taken to task for stepping outside their scope of practice, industrial psychologists would suggest a specific level of contingency, and then (somewhat deviously in the view of the JPV practice) cover themselves by the phrase “contingencies are the prerogative of the court”.
- g) Some judges place pressure on industrial psychologists to suggest a specific size of contingency during court procedures.
- h) Some industrial psychologists (very few) actually suggest the specific percentage size of contingencies.

The fact that some industrial psychologists tend to hint at or suggest the size of contingencies, and the fact that some judges demand from IPs to indicate what the size of contingencies should be, shows that there is an intuitive sense that the industrial psychologist should be more involved in the final quantification of loss of earning capacity (and therefore in solving the size of the monetary compensation). As far as expertise is concerned, the JPV practice is of the opinion that the IP is best qualified to express a realistic quantified opinion on the loss of earning capacity. However, by using contingencies for such quantification, industrial psychologists are using a legal tool for their opinion. In the view of the JPV practice a big reason for using contingencies is that the IP community do not have a specific tool or method to assess earning capacity loss in quantified terms. Therefore, the JPV practice policy is that our industrial psychologists should bear the burden of quantifying earnings capacity loss via the tool supplied in this procedure document. The final interpretation and size of the contingency allocated is still up to the legal experts. But they have a better and a quantified basis for doing that if we supply a quantified estimate of loss of earning capacity.

4.2 ASSESSING LEVEL AND PERCENTAGES

The intended purpose and quest of this policy is to assist associate IPs to quantify their opinion regarding reduction in earning capacity. The ESTIMATION TABLE below must be used. First of all, a specific job or type of work needs to be considered. The effects of the injury on the specific job or work type are then evaluated according to the available evidence and the description in the table. Furthermore, the percentage effect should also be considered. For instance, an injured Domestic Worker who starts work at 7 o'clock and usually finished at around 1 o'clock before being injured, now finishes at around 3 o'clock. That is an additional 2 hours. In productivity terms that is 2/7 hours or a drop of 28%. The description anchors the effects of the injury, and the additional productivity figure confirms it. Therefore it seems reasonable to allocate a Level 4 reduction in earning capacity. However, it must be noted that the percentage earning capacity loss is not directly related to productivity loss. Earning capacity is the potential to earn. (See 1 and 2 above). Therefore, the effect of the injury on potential employment is the key element that is measured. THE PERCENTAGE COLUMN IS AN ESTIMATE OF THE SIZE OF THE OVERALL EFFECT ON EMPLOYABILITY. See notes at the Table at 4.6 regarding assessing this percentage. In practice the percentage productivity loss and employability loss would be expected to be similar. But although we suggest that quantified productivity loss can be considered to determine a Level, that is only an indication of one of the effects of the injury and not directly a prediction of how employers

will react to the loss. Take the example of an underground miner. According to the tasks he executed before, the occupational therapist may have opined that he is still able to do the tasks of an underground miner, but that he may have some loss of productivity. In terms of productivity loss only, a Level 2 or a Level 3 earning capacity loss may be considered. However, the critical issue for the miner is if he will be able to pass the physical tests for retaining his Red Ticket (Mine Medical Pass). He also lost some hearing due to the injury. That will mean he may not pass such a physical examination. If, in the opinion of the audiologist, he may have trouble passing mine medical tests, his earning capacity has therefore been affected at least at Level 5. If he actually failed a mine medical test, that would mean a Level 6 and above reduction in terms of underground mining work. However, if he was a gardener before he may be able to return to gardening and the reduction in gardening work – where there is not the same level of safety requirements – his estimated reduction in earning capacity would then probably be at Level 2 to 3.

4.3 THE REASON FOR ASSESSING A PERCENTAGE RANGE AND ITS RELATIONSHIP TO CONTINGENCIES

The Industrial Psychologist, as an expert witness, is supposed to assist the legal team to determine what the likely effect of the injury would be on employability and earnings. It is well established that a likely opinion is one that has at least a 50% plus 1% chance of occurring. The whole of the IP opinion should be formulated with this standard in mind. The JPV practice disagrees with the convention that the whole of an IP opinion is a “postulation”. That opens the door for IP opinions that is wholly speculative and without reference to the 50% plus 1% standard. The JPV practice suggests that IPs should refer to a “postulation” only if there is not sufficient certainty about the 50% plus one standard – and specifically state that. In line with this the JPV practice suggests a range of percentage loss of earning capacity/employability. As we want to reflect a reasonable or “likely” loss of earning capacity it is prudent to allocate a “Level” of earning capacity loss that covers a *range* of percentages and not a single percentage that would require a type of calculation. All in all, although it is anchored by available evidence and applied expertise, it remains an expert opinion and not a calculation.

It is so that the idea of allocating a percentage employability loss was developed to specifically inform contingencies. The JPV practice was subject to unscrupulous legal experts who used our suggested allocation of contingencies to instruct actuaries to calculate very high contingencies. In a few specific matters instructions for calculating post-injury contingencies of 50% was given – so unrelated to the reasonably small size of the employability effect that in two cases the actuary actually contacted us. Due to this our practice decided to quantify our opinion more clearly to limit such abuse.

However, the JPV practice do not suggest that our percentage estimate of employability reduction dictates to the legal team what contingencies should be. As we indicated above, although our understanding is that contingencies were developed to compensate injured people whose risk of loss of earnings cannot be clearly quantified, we do not assume that the basis of allocating percentages are the same as our basis for estimating employability effects. However, our sense is that there is a huge overlap in the reasonings, and type of evidence used for both concepts – see our discussions above. Therefore, our suggestion is that there should be a fair level of correlation between our estimated percentage employability effect/risk of unemployment and contingencies allocated. However, the specific percentages for pre- and post- injury contingencies should rather be negotiated or determined via the application of legal expertise and case law. For instance, we only estimate a range of loss of employability – and for compensation specific single figures are required for pre- and post-injury. Without being prescriptive about it, what could be considered is that our estimate of percentage employability effect should be added to the “normal” future loss contingency.

4.4 WHOLE CAREER AND LIFE-LONG EARNING STREAM SHOULD BE CONSIDERED

The focus of the industrial psychologist is the full career and earnings stream of the injured. So, the quantification estimate should ideally be for loss of earnings over the full career of the injured – including worsening or improvement. However, it is so that expert examiners often do not clearly state their opinion regarding future improvement or worsening. At times only the current functional impairment is considered and the cost of future treatment, without indicating the likely effects of treatment or worsening in spite of

treatment. So, the IP will have to clarify his/her understanding of the future employability effects. For instance saying that the earning capacity loss allocated covers the interpreted life-long effects. Or indicating uncertainty and explaining the position. For instance: "Based on my interpretation of the available evidence, my estimate of current earning capacity loss as Motor Mechanic is Level 3 – but is unclear to me what the effect of future worsening may be. As possible future hip replacement is indicated my understanding is that there would then be a period of deterioration until replacement. Possibly to Level 4. After successful replacement it is my understanding that Mr XXX will return to Level 3 earning capacity loss – but as Dr XXX indicated another hip replacement possible deterioration up to that point would again have to be considered."

4.5 ADVANTAGES TO MEDIATION AND ESTIMATION OF EARNING CAPACITY LOSS.

Mediation as a settlement method is being explored and developed by SAMLA and the RAF. One of the possibilities for support of mediation is single expert appointment. We suggest that the use of quantified earning capacity loss as explained in this document would greatly benefit settlement in mediation and we therefore hope that other IPs, not directly associated with the JPV practice, would use the suggested quantification methods explained in this document. See note at the beginning of this guide regarding their use by other IPs.

4.6 ESTIMATION TABLE: REDUCTION IN EARNING CAPACITY

The table below provides a basis against which reduction in earning capacity can be estimated. **Remember that a specific job or type of work must always be considered.**

ESTIMATION TABLE: REDUCTION IN EARNING CAPACITY

LEVEL *	DESCRIPTION	% EMPLOYABILITY EFFECT*
0	None: No loss of earning capacity and no effect on employment.	0%
1	Very Slightly: Barely noticeable effect. Employment in defined job or work type only very slightly affected in practice if at all.	1% - 5%
2	Slightly: Clearly an effect but minimal. Employment in defined job or work type may be slightly affected but employers may not be aware of problems.	6% - 10%
3	Low: Clearly an effect and bothersome. Employment in defined job or work type may be somewhat affected if employers are aware of problems but injured may be able to hide them.	11% - 20%
4	Low moderate: Still functional in defined job or work type but with difficulty. Employment affected and person must be accommodated.	21% - 35%
5	Moderate: Functioning in and employment in defined job or work type doubtful.	36% - 50%
6	High Moderate: Functioning in and employment in defined job or work type unlikely.	51% - 65%
7	High: Minimal functionality left. Employment in defined job or work type very unlikely.	66% - 80%
8	Very High: Virtually no functionality left: Employment in defined job or work type extremely unlikely.	81% - 95%
9	Severe: In practice no functionality left: Employment in defined job or work type not expected.	96% - 99%
10	Very Severe: No earning capacity left and no functionality at all: No employment in defined job or work type expected at all	100%

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*Notes regarding assessment of the Level and employability percentage.

See explanations at 4.2 above regarding assessment of the Level. Regarding the percentage employability effect:

This percentage is an estimate and an assessment of the **risk of being unemployed and/or the risk of loss of earnings** (*remember that a specific job or work type should always be considered and therefore the percentage would only refer to such a job or work type*)

REGARDING THE LEVELS OF EARNING CAPACITY LOSS:

There are two points that are clearly measurable: Level 0 and Level 10.

Level 0: No loss of earning capacity. If there is no loss of earning capacity, there would also be no risk of being unemployed in the defined job or work type.

Level 10: With no earning capacity left there would be a 100% risk of not being employed in the defined job or work type.

There is another level that is fairly clearly measurable in percentage employability effect: That is Level 6. Level 6: At this point the critical statement is, "...employment in job or work type unlikely." The forensic guideline of Likely or Unlikely being a 50% plus 1% certainty or risk comes into play here. As the person is not expected to be employed or work in the defined job or work type the risk of being unemployed is therefore more than 50% as 51% is the lower margin of the range.

Apart from Level 0, 10, and the lower margin of Level 6 - None of the other percentages in the table have been allocated on a clearly measurable basis. As the mentioned levels are the only ones that are actually quantifiable on a solid basis all other percentage sizes are an estimate of "notches" in between. It was allocated according to the experience and judgement of the JPV practice. Productivity was considered and, in general, percentage productivity loss would be expected to correlate well with the percentage loss at the levels. See for instance the example of the productivity loss of a Domestic Worker at 4.2. However, as explained there, ultimately the *reaction of employers* is estimated, not productivity, and the SA job market should be considered. See the example of the Underground Miner at 4.2.

At Level 1 to 3 the expected earning risk is not complete unemployment – the risk is that the person may not earn as well as healthier counterparts. The percentages are meant to indicate the size of the effect of that risk. See discussion under point 3 in the beginning of this document.

From Level 4: The expected risk is that the person may indeed be unemployed or unemployed for periods of time.

So all in all – the percentage scale in the ESTIMATION TABLE was mostly developed based on expert judgement of reasonable percentages, and the user of the table have to use expert judgement to allocate a level and percentage unemployment risk. Industrial Psychologists are well-versed in using work performance scales and that same skill should be applied here. Industrial psychologists are experts regarding selection of employees and predicting employer reactions and that expertise is applied in the table.

APPLICATION NOTES TO THE ESTIMATION TABLE

We suggest the following:

1. Up to Level 3: The person would usually have returned to work. Often the supervisor would be unaware of problems unless the person confides in him/her, as problems would not be that easily observable. In the competitive SA job market and job culture people often do not confide in supervisors as they are afraid of losing their jobs or having their earnings affected. The effects would be picked up by the OT who would mention some problems but usually the person would be deemed still "suitable" for the job.

2. Level 4: Although the person might be back at the job the supervisor would usually be aware of problems and would have made some arrangements to accommodate the person. The OT might still deem the person suitable for the job but will usually add some qualification regarding getting some accommodation at work or excluding some tasks. At these levels, employers might have tried to accommodate the person and it might even have worked for some time, but eventually the injured or the employer might have decided it is not working sufficiently.
3. Level 5: This is the level at which the person will often not have returned to work. If the person has returned, employers would be very accommodating and have made substantial changes to job demands. The OT would usually deem the person no longer suitable for the job.
4. Level 6 and Above: We find people are no longer working in jobs where they experience this level of earning capacity reduction. If they work for themselves they might carry on with some limited activity but usually would then experience substantial reduction in earnings. So, for all practical purposes, we find Level 6 and above are not used. They are however important in providing a systematic view of what is estimated in the scale as a whole. We suggest that they may be used to indicate progress while a person is undergoing procedures and is highly accommodated, with a view to eventually return to some level of substantial previous performance. In practice though, for level 6 or above, it is no longer useful to allocate any Level of reduction of earning capacity. Usually it would be better to simply state the person is not expected to be able to return to such work at all – and not refer to the assessment table as it just complicates matters. However, we suggest that at times, depending on the circumstances, they may prove useful.
5. Lack of expert opinion or lack of some information: At times there is a lack of expert opinion or information such as whether the person returned to work or not - and estimates are then hard to make. But the instructing attorney insists on the report being completed without such information. In keeping with the approach at our practice that we take the risk of coming to clear conclusions (and not leaving over to others to do our work) we suggest the following: (1) State that there is not sufficient information and what is required (2) MAKE AN ESTIMATE OF EARNING CAPACITY REDUCTION but state that it is tentative and based on the information available and complete and submit the report (3) Follow up with the attorney or workplace to obtain information and write and addendum once the information is obtained.

Also see CONSIDERATIONS and HINTS on the pages following this one

5. CONSIDERATIONS AND HINTS FOR ESTIMATING EARNING CAPACITY LOSS

5.1 CONSIDER WORK IN A SYSTEMS OR A PROCESS MODEL

In forensic psychology, work that leads to earnings are of importance. Work can be thought of in a systems model of **input, process** and **output**:

Input. The person's energy and time and talents are the key inputs. The person will also receive information and instructions to do the job. There will be some tools – nowadays a computer is a major tool for many jobs. There can also be physical tools like a shovel or sophisticated tools like a bulldozer or even a whole processing plant operated by the person. Physical, electronic and mental material will be used. Injuries may cause problems in inputs: The person may have less physical and mental capacity, if instructions are misunderstood due to injuries to mental capacity or loss of hearing, energy may be wasted on rework. Due to pain and weakness injured people may have to exert more effort and energy to produce the same result as before.

Process. The person must process the material. The person must interact with Data, People and Things on various levels of sophistication in order to produce outputs.

Outputs. Various forms of output results follow: These could be *Physical* and *Information* outputs or even the reactions of subordinates or the improved performance of trainees. The usual measure of outputs are in productivity measures. However for earning capacity loss employability is the concept that is measured, but the size of productivity loss and employability loss would be expected to correlate well – except where productivity is not the main basis for employment decisions. (See the example in 4.2 above).

5.2 PHYSICAL EMPLOYABILITY LOSS VERSUS THE SA OPEN LABOUR MARKET

South Africa has a labour market where there is an over-supply of low skills and an under supply of high skills. So a person with, for instance, mostly physical labour skills may find that even a fairly small earning capacity loss – say having a limp but still an overall highly functioning leg – may find that employers react very negatively to a limp as there are an abundance of healthy counterparts and they do not feel they have to take the risk to employ a person with a limp.

5.3 PERFORMANCE DIMENSIONS

As we are dealing with a personal injury environment the key questions are:

- (1) Has work performance been affected?
- (2) If so, how much?

Theoretically the “Outputs” should be the main place of evaluating the effect of injury on performance. However, the world of work is complex and most often people are working in settings where teams are involved and others can compensate for the reduction in earning capacity of the injured so that ultimately the results remain the same. Even where individual outputs are observable, our practice has found that supervisors would report that the outputs are the same as before – yet it now takes additional effort of the worker, or the satisfaction has reduced as it is accompanied by pain or additional stress. So, although the supervisor may not even be aware of the problems, the injured person uses more effort. Overall, the long-term sustainability may be affected. Therefore the IP should evaluate changes in the whole work process model described above in order to make reasonable earning capacity reduction estimates. To assist the IP to make such an estimate the following performance dimensions can be used:

1. Productivity: Individual productivity relates to the amount of output produced within a certain time period. So ultimately the easiest guideline to consider is the speed of work. Lower-level physical work is easier to evaluate as standard units of output are often involved, such as number of units produced. Often productivity of a whole work team is the issue – such as a team that operates and tends to a large and complex production unit or machine. Then it is more difficult to isolate individual productivity, and the effect of the injured person on the morale of the team might be a bigger factor than physical work capacity. Higher level work could be difficult to evaluate as decisions made or recommendations done could still be at the same level but quality could be an issue. That leads to the next dimension.

2. Quality: This relates to the standard of the work and the acceptability of work done. The easiest suggested guideline is the number of errors found. Again, lower-level work is usually easier to evaluate as observable standards, such as straight laid bricks or typing without errors, can be used. The effect of quality on the assessed *Level of Earning Capacity Loss* is more complex than productivity. For instance – the level of mistakes a bookkeeper makes after injury goes up from say 3% to 5% - but that leads to an increase in expensive SARS penalties to her company. Would that be acceptable to her employer? The industrial psychologist will have to evaluate the full implication and interview her superiors regarding this to come to a conclusion regarding the employability effect of this apparent small drop in quality. Furthermore, the effect of bad decisions or poor recommendations might be more difficult to determine as it would usually be up to the judgment of some observer, which is more subjective.
3. Decision making: This relates to quality, but due to its importance in organisations it deserves special mention. Especially where there are cognitive and emotional changes, judgement, problem solving, diagnosis and determining of corrective action might be affected by the incident. And whole departments or sections or even whole organisations can be affected – not only the individual.
4. Interpersonal relations: Even if a person can work as fast as before and work at the same level of errors made, the person's role in the team might have been affected. For instance, the person has become more withdrawn and moodier, and this can ultimately affect the productivity and quality of the team as a whole.
5. Effort: As mentioned before: a person might deliver the same output and quality as before, but it takes more effort than before. This might mean longer hours (such as a domestic worker knocking off later), increased mental effort and maybe working over weekends that were previously free. This might not be sustainable in the long term and/or might affect the person's health – and ultimately output and quality is affected, but at a later stage.

5.4 GENERAL EARNING CAPACITY LOSS IS NOT MEASURED

General earning capacity loss cannot be measured - only loss in terms of a job or type of work.

At best the IP should consider (1) the job occupied at the point of the injury, (2) the work history of the injured, as well as (3) the aptitude and job interest of the person for other jobs. Then, a NUMBER of losses of earning capacity can be made. If all the jobs are similar to an extent, the IP may consider grouping them all into a type of work – say a person who was a Truck Driver, a Semi-skilled motor mechanic and a Forklift driver before, then “Blue Collar Semi-Skilled work” can be used, especially if the earnings history for all were similar. The IP can then endeavour to make a single estimate of loss of Earning Capacity.

The IP should at least estimate the earning capacity loss of the job that the person occupied at the point of the accident. Other options are also considered as listed below.

1. Job occupied at point of accident. The job that the person was doing at the point of the accident, with its specific tasks should AT LEAST be used. Often the OT report contains detailed descriptions that can be used. Usually jobs at one organisation are sufficiently similar to jobs at other organisations so that an estimate of earning capacity loss at one place is also meaningful for similar jobs at other places. However, sometimes jobs are fairly unique. We find that at smaller organisations people sometimes “wear many hats” and are trained to take on multiple roles. For instance, the following is loosely based on an actual case: The person worked as a “Kitchen Assistant” at a small restaurant. Some of the work was off-loading of goods from a truck, some packing and delivery work on foot to nearby customers, and some assistance in the kitchen such as peeling potatoes, and even some level of food preparation that required a fair level of training. This job will be described as Kitchen Assistant (As defined at Restaurant A). Earning capacity loss for this specific job will not be valid for jobs at other organisations as the definition is too unique. So, in order to assist the IP to add value to his or her estimate so that it will be more useful for predicting careers following an accident see the suggestions below.

2. Defined job (Various organisations). When possible, try to make an estimate for a widely defined job. Here the OT report can possibly be used as they will often refer to the wider job market and their opinion of job demands of a specific type of work. They will often mention that at the specific organisation the work was, for instance, fairly light, but generally in the job market such jobs tend to be heavier. The IP can utilise the Dictionary of Occupational Titles (DOT) to define occupations such as Carpenter (Construction), for example, that is available in the DOT. This will increase clarity of what the basis is against which earning capacity loss is evaluated. As these definitions are applicable for tasks that various construction carpenters perform, such description of the job is preferable to a description applicable to only one specific organisation. This allows an estimate of earning capacity loss that is not only valid at one organisation, but one that would be valid at other organisations and therefore provide a better life-long career perspective.
3. Two jobs: It might be that the injured had experience of mostly two different jobs. For instance, the one job might have been a packer handling fairly heavy beverage items. The other job a driver of motor cars with only fairly light weight demands. An injury of, for instance, the right leg will have different implications for the two jobs. In such case it will be better to make an estimate of the DIFFERENT earning capacity losses for BOTH jobs, as it will be relevant for making future predictions.
4. Various jobs: The person might have experience of various jobs. They may have fairly different physical demands or may be in different pay categories. It will be better to list them all and estimate loss of earning capacity for each. Even though it may be harder to interpret, it is better to resist the temptation to deal with earning capacity loss as a single measure. The legal experts will have to consider the full complexity of the losses and integrate the effects.

5.5 TYPES AND LEVEL OF JOBS:

Jobs can vary on various dimensions. The ones that will be covered here relates to the dimensions of Physical versus Mental jobs, Individual versus Team jobs and Lower Level versus Higher Level jobs.

1. Physical versus Mental jobs
 - a. Earning capacity Loss for mostly physical, menial jobs such as Cleaner, Domestic and General Worker can usually be estimated mostly based on the opinion of the orthopaedic surgeon and the OT. The mental aspects of the job are usually not so important as long as the person can follow and implement instructions.
 - b. Semi-Skilled jobs usually tend to have some mix of mental and physical demands. Therefore mental abilities are more critical than only for menial jobs. As there are often machinery involved, safety becomes a more critical aspect and even if the person can cope physically, losing concentration can lead to personal injury or injury to others. So mental evaluation becomes an issue. Although the OT can make an evaluation, usually in cases where there are more serious concerns a neuropsychological evaluation will have to be considered.
 - c. Mental jobs, such as professional and managerial jobs, will tend to be less dependent on physical abilities. However, it will vary. We have found that professional jobs, such as engineer in the mining environment, have physical demands due to inspection tasks at difficult terrains. Even some managerial jobs can be substantially affected by reductions in the ability to drive independently. However, one would usually expect that the major reductions would be the ones that Neuro-related evaluations will indicate (medically and psychologically).
2. Individual versus Team Work
 - a. Working alone, such as the work of a Domestic Worker or a Domestic Gardener, will tend not to affect the work of others. We have often found that such workers can keep their jobs by working somewhat longer hours. However, as they work alone, they often do not have the benefit of having others to assist them and therefore can be prevented to carry on with their work. An administrator working alone in an office without direct contact with

customers will tend to be able to carry on with work in spite of some personality changes, like increased irritability, as others are not directly affected.

- b. Team Workers have the benefit of having others available to assist them with heavier tasks. However, they affect the work of others. A more irritable worker can affect the whole team morale and productivity.
3. Lower Level vs Higher Level work
- a. Lower Level work: In general, lower level work would have lower risk to the organisation and to others. The exception might be where the person operates a machine that can cause damage or injury. So the organisation would be expected to be able to accommodate some level of loss of earning capacity more readily than for a higher level job.
 - b. Higher level work: Due to the high demands of such jobs, as well as the effect on the organisation as a whole, as well as on others, functionality will be deemed more easily affected than for lower-level jobs. So, Level 5 – “Functionality in defined job doubtful” - will be more easily reached as it would be sensitive to changes. So even relatively small changes in the abilities of people like high level marketers, public relations officers, accountants, lawyers and managers can cause the person to lose the ability to function adequately due to the high demands of the jobs.

Reading List

Koch (2021) *The Quantum Yearbook*. Van Zyl, Rudd and Associates.

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Robinson R. H. (2014). Forensic rehabilitation and vocational earning capacity models, chapter 3. In R. Robinson (Ed.), *Foundations of forensic vocational rehabilitation*. New York: Springer Publishing Company.