

# WRITING WINNING SSD BRIEFS FROM AN OHO ADJUDICATOR

**PRESENTATION MATERIALS**

**JULY 25, 2019, 7:00 – 8:00 EASTERN**

# COMMONLY MISUNDERSTOOD ISSUES: REOPENING AND RES JUDICATA



Judge David G. Hatfield (retired)  
Of Counsel, Chermol & Fishman, LLC  
(federal court appellate matters)



August 13, 2019  
1 - 2pm Eastern Time



Register online:  
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# Presenter

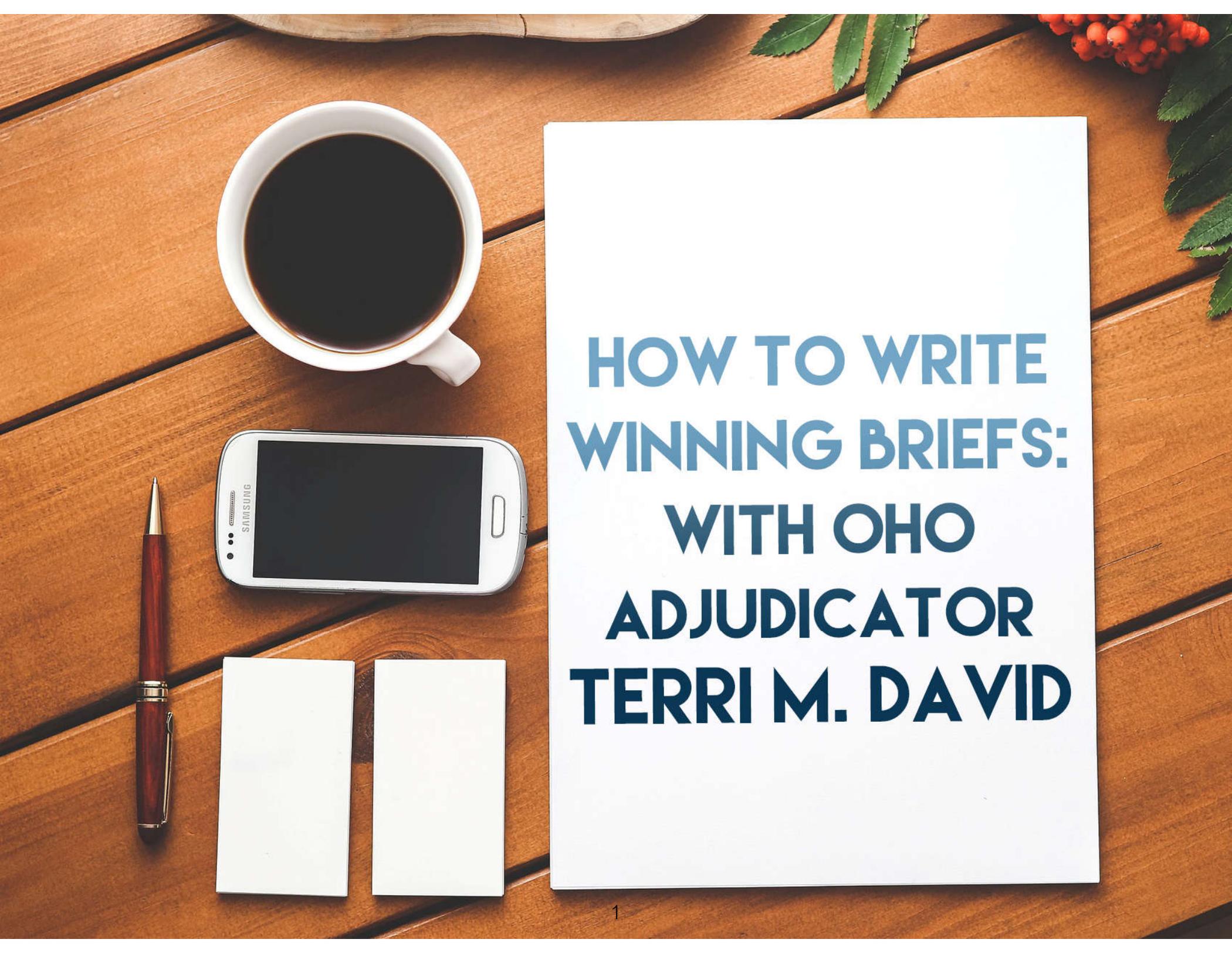
## Terri M. David



Terri is a Social Security Disability (SSD) representative and brief writer. She worked with OHO for 13 years as a senior attorney adjudicator and ALJ decision writer. As a former middle and high school teacher as well as OHO national trainer, she continues to consult and teach SSD professionals on how to win more cases through advocacy and persuasive writing. If you are interested in Terri's products and services, please visit her website at [terrimdavid.com](http://terrimdavid.com). You can also email Terri at [terri@terrimdavid.com](mailto:terri@terrimdavid.com).

### Agenda

- I. **PREPARING TO WRITE THE BRIEF**
- II. **BEGINNING OF THE BRIEF**
- III. **MIDDLE OF THE BRIEF**
- IV. **END OF THE BRIEF**
- V. **QUESTIONS**

A top-down view of a wooden desk. In the upper left, a white cup filled with dark coffee. Below it, a white Samsung smartphone with a black screen. To the left of the phone is a dark red pen with silver accents. Below the pen are two white rectangular sticky notes. In the upper right corner, there are green leaves and a cluster of small red berries. A white rectangular card with blue text is positioned on the right side of the desk.

**HOW TO WRITE  
WINNING BRIEFS:  
WITH OHO  
ADJUDICATOR  
TERRI M. DAVID**

# TERRI M. DAVID

A family of four (two women, a man, and a child) is walking on a beach, holding hands. They are reflected in the shallow water on the sand. The image is overlaid with a semi-transparent blue filter.

**2004: OHA in Nashville**

**2006: ODAR in Falls Church**

**2017: OHO in Houston**

**Currently: SSD Professional in Morocco**

# MY WHY

- **Contribute to SSD community**
- **Support SSD representatives**
  - **Consulting**
  - **Coaching**
  - **Brief Writing**
  - **Training**

# TRAINING GOALS

- Brief writing tips
- Reviewing file efficiently
- Drafting briefs persuasively
- Exceptions to and forewarnings

# TYPES OF BRIEFS

- OTR
- Prehearing
- Post-Hearing

# PREPARING TO WRITE

- **Snack, drink, restroom**
- **Kids and pets**
- **Phone**
- **Timer**
- **Clarity on instructions**

# BEGINNING OF BRIEF

- **Heading**
- **Sections A and B**
- **Introducing and reminding ALJ**
  - **Who, What, When, Where**

# BEGINNING OF BRIEF

- **Introductory paragraphs**
- **Sections A, D, and E**
- **Creating profile for ALJ:**
  - **Age**
  - **Education**
  - **Past relevant work**

# BEGINNING OF BRIEF

- Getting clarity, identifying problems
- Sections A and D
- Title II and Title XVI

# BEGINNING OF BRIEF

- DLI
- SGA
- DDE
- DAA

# BEGINNING OF BRIEF

- STEP 1: SGA
- STEP 4: PRW
- Exceptions and forewarnings

# EX: HEADING

Honorable Judge Wells  
Administrative Law Judge  
Office of Hearings Operations  
1600 S. Street  
Houston, Texas 77096

Re: J.J. Jones, XXX-XX-XXXX

# EX: INTRO PARAGRAPH

## Procedural History

On August 20, 2015, Claimant protectively filed a Title II application for a period of disability and disability insurance benefits and Title XVI application for Supplemental Security Income. In both applications, Claimant alleges disability beginning July 15, 2015. The date last insured is June 30, 2018. There are no prior files. The claimant filed a written request for hearing on January 15, 2016 (20 CFR 404.929 et seq. and 416.1429 et seq.). A hearing is scheduled on December 22, 2018 at 9:30 am.

# EX: VOCATIONAL FACTORS PARAGRAPH

## Vocational Factors

Claimant is currently 51 years, 5 months of age. He was 48 years, 2 months of age at the alleged onset date. He turned age 50 on May 7, 2017. Claimant has 12 years of education and able to communicate in English. Claimant's past relevant work consists of the following:

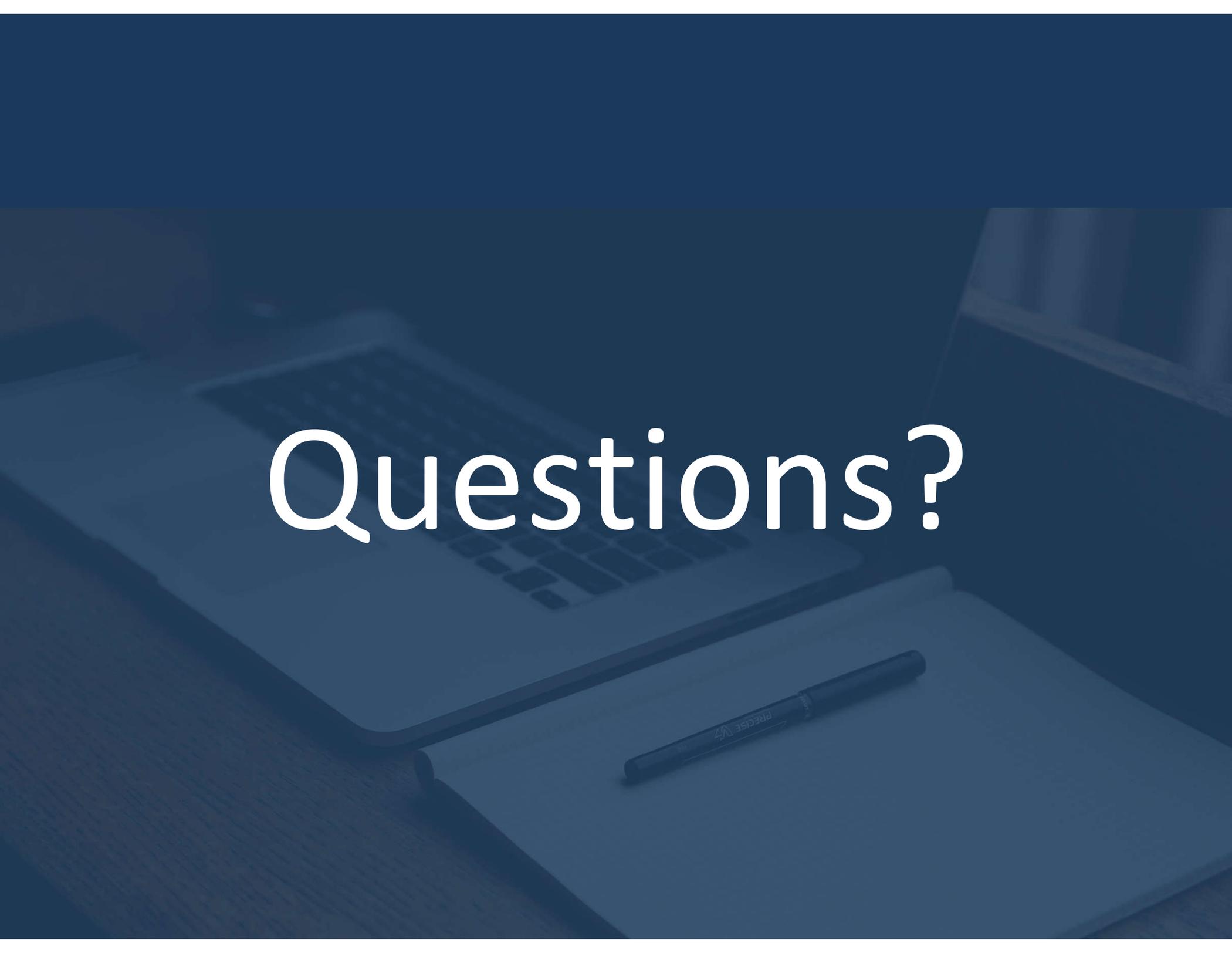
Retail Manager, DOT# 185.167-046, light and skilled

Cashier, DOT# 211.462-014, light and semiskilled

Stocker, DOT# 299.367-014, heavy and semiskilled

# STEP 1: BEGINNING/MIDDLE OF BRIEF

Step 1: The claimant has not engaged in substantial gainful activity since the alleged onset date (20 CFR 404.1571 et seq., and 416.971 et seq.). Although Claimant attempts to work from September 2015-November 2015, his earnings do not rise to the level of substantial gainful activity. His sick and vacation day payments in August 2015 and September 2015 are neither countable earnings nor substantial gainful activity pursuant to 20 CFR 404.1574 and 416.974.

The background is a dark blue gradient. In the center, there is a faint, semi-transparent image of a laptop and a pen on a notepad. The laptop is open, and the pen is lying on the notepad. The overall aesthetic is professional and clean.

# Questions?

# MIDDLE OF BRIEF

- Analyzing each Step of the 5-Step
- Sequential Evaluation:
  - Step 1
  - Step 2
  - Step 3 and 3.5/RFC
  - Step 4
  - Step 5

# MIDDLE OF BRIEF

- ALJs are looking for evidence to support your client's allegations
  - Help
  - Persuade
  - Educate

# MIDDLE OF BRIEF

- **Format**
  - **Sections A, D, E, and F**

# EX: FORMAT

## Medical Evidence and Conclusions of Law

The issue is whether the claimant is disabled under sections 216(i), 223(d) and 1614(a)(3)(A) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. The evidence discussed below shows Claimant is not able to perform substantial gainful activity on a regular and continuous basis due to severe impairments and disabled pursuant to the framework of Medical-Vocational Rule 201.21 and directed by Rule 201.14.

# MIDDLE OF BRIEF

- **Step 2**

- **RFC should mirror severe impairments**
- **Create at beginning or end of review**

# EX: STEP 2

Step 2: Considered singly and in combination, the following impairments are severe because they impose more than a minimal limitation on the claimant's ability to perform basic work activities and are expected to last, or have lasted, more than 12 continuous months:

Lumbar spine degenerative disc disease with radiculopathy

Bilateral carpal tunnel syndrome status-post releases

Insulin Dependent Diabetes Mellitus with neuropathy

Obesity

Major depressive disorder

# MIDDLE OF BRIEF

- **Step 2**

- **Exception and forewarning**
- **Review Listings based on Step 2**

# MIDDLE OF BRIEF

- **Step 3**
  - **Sections A and F**
  - **Meets or Equals**
  - **Exceptions and forewarnings**

# EX: STEP 3

Step 3: Based on the evidence available as of the date of this prehearing brief, Claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and 416.926). However, evidence may show differently on review at the hearing and based on testimony; therefore, alleging a listing level may be an option exercised at the hearing.

# MIDDLE OF BRIEF

- **Step 3.5/RFC**

- **Crux of Case**

- **Sections A, E, and F**

- **Severe Impairment=Functional Limitation**

# MIDDLE OF BRIEF

- **Medical Opinions**
  - **Treating, examining, nonexamining**
  - **ALJ is looking for supportability and consistency**
  - **Supported by MER**
  - **Consistent with MER and other opinions**

# MIDDLE OF BRIEF

- **Medical Opinions**
  - **Exceptions and forewarnings**

# EX: TREATING SOURCE

## Medical Source Opinions

Claimant's primary care physician, Dr. Shalini Patel, completes a Medical Source Statement in May 2018 (10F). Claimant requires treatment with his primary care physician about every two months as of June 2013 (1F, 2F, and 3F). The treating source indicates Claimant is treated for back pain, wrist pain and numbness, and uncontrolled diabetes mellitus with neuropathy (10F/1). Moreover, the treating source reports Claimant did not respond well to physical therapy and requires narcotic pain medication with medicinal side effects (10F/1). The treating source opines Claimant can lift and carry up to 10 pounds occasionally in an eight-hour day; sit for two hours with a sit/stand option every 30 minutes; stand for one hour with a break every 15 minutes; and walk for one hour with a break every 15 minutes. He can rarely bend, twist, squat, or climb stairs and ladders. Claimant can rarely reach, handle, and finger. He should avoid hazards such as operating moving machinery and unprotected heights. The treating source reports functional limitations stem from chronic back and wrist pain as well as an unhealed right foot ulcer. Moreover, narcotic pain medication causes dizziness and drowsiness that interfere with Claimant's ability to operate machinery, be aware in hazardous situations, and concentrate. This opinion is consistent with the evidence of record, internal office visit reports, and the state agency physical consultative examination.

# MIDDLE OF BRIEF

- **Persuasive writing**
  - **Address problems and concerns**
  - **However, Although, and Because**

# MIDDLE OF BRIEF

- **Persuasive writing**

**Example: Although Claimant has a history of substance abuse, he has been sober for three years and continues to experience severe symptoms of depression.**

# MIDDLE OF BRIEF

- **Persuasive writing**

**Example: Unfortunately, Claimant had to reschedule her consultative examination because she was in the hospital for renal failure.**

# MIDDLE OF BRIEF

- **Persuasive writing**

**Example: Claimant experiences some pain relief with Oxycodone; however, medicinal side effects include drowsiness and dizziness that preclude performing activities of daily living.**

# MIDDLE OF BRIEF

- **ALJ and Step 4**
  - **Step 4—If no significant issues, Step 4 is addressed in the beginning of the brief**
  - **If there are significant issues at Step 4, you can reiterate**

# EX: STEP 4

## **Conclusions**

Step 4: Considering Claimant's age, education, work experience, and functional limitations, he is not able to perform any past relevant work (20 CFR 404.1565 and 416.965).

# MIDDLE OF BRIEF

- **Step 5: Grid Rules**
  - **ALJ will apply RFC to GRID Rules**
  - **Meeting Criteria of Rule**
  - **Exception and forewarnings**

# EX: STEP 5

Step 5: The Medical-Vocational Rules direct a conclusion of either "disabled" or "not disabled" depending upon the claimant's specific vocational profile and functional limitations SSR 83-11. When the claimant cannot perform substantially all of the exertional demands of work at a given level of exertion and/or has nonexertional limitations, the Medical-Vocational Rules are used as a framework for decision-making unless there is a rule that directs a conclusion of "disabled" without considering the additional exertional and/or nonexertional limitations SSRs 83-12 and 83-14. If the claimant has solely nonexertional limitations, Section 204.00 in the Medical-Vocational Guidelines provides a framework for decision-making SSR 85-15. In this case, based on a review of the medical evidence of record and vocational factors, Medical-Vocational Rule 201.21 is used as a framework for a finding of disabled and directed by Rule 201.14 on May 7, 2017 when Claimant became age 50.

# MIDDLE OF BRIEF

- **Step 5: Post Hearing Brief**
  - **ALJ: Interacting with the VE**
  - **Deferring to the VE**
  - **Hypotheticals**

# MIDDLE OF BRIEF

- **Step 5: VE and Transferable Skills**
  - **Unskilled work does not create transferable skills**
  - **Skilled work cannot transfer to unskilled work**

# MIDDLE OF BRIEF

- **VE Testimony: Post-Hearing Brief**
  - **Exceptions and forewarnings**

# END OF BRIEF

- **Editing**
- **Grammarly, spell check**
- **Include or exclude Client's signature**
- **Addressed Client's questions/concerns**
- **Set aside, then do final edit**
- **Notes to Client**



Questions?