Understanding Unsuccessful Work Attempts (UWA)

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Introduction

Social Security recognizes that in some cases a beneficiary may try to return to work at a substantial level, but may only be successful for a very short period of time. Social Security doesn’t want to needlessly stop payments to a beneficiary who tries to perform substantial work, only to find that he/she is unable to sustain that effort over time because of a disability.

Disability evaluation is generally concerned with ability to work over an extended period rather than in short, isolated periods. When an individual, after working for a short time in employment or self-employment despite severe impairment, discontinues or markedly reduces such work below the Substantial Gainful Activity (SGA) level, two issues are raised:

1. Was the work substantial enough, and did it last long enough, to warrant a finding of engagement in SGA during the time it was performed?
2. Regardless of the substantiality and duration of the work, does the medical and vocational evidence warrant finding of ability to engage in SGA during or after the period of actual work?

Careful handling of these issues is necessary because a work attempt which is considered “unsuccessful” will not preclude a finding of disability during the time that such work was performed. An “unsuccessful work attempt” (UWA) is defined by Social Security as an effort to do substantial work in employment or self-employment which was discontinued or reduced to the non-substantial gainful activity (SGA) level after a short time (no more than 6 months) because of the individual’s impairment or the removal of special conditions related to the impairment that are essential to the further performance of work.

For UWA policy criteria, see POMS DI 11010.145 and DI 24005.001D.
When the UWA is Applicable

Social Security personnel apply the UWA policy when they are evaluating an individual’s work effort in initial disability determination cases. It’s also used during Continuing Disability Reviews (CDRs) in determining whether, because of work activity, a beneficiary’s disability continues or ceases.

The UWA provision does NOT apply when Social Security is determining whether payments should be made to a beneficiary for a particular month during the Extended Period of Eligibility (EPE) after disability has been ceased because the beneficiary performed SGA, or during the Initial Reinstatement Period (IRP) after the beneficiary has been reinstated through the Expedited Reinstatement provision (EXR).

UWA and the Trial Work Period

The UWA doesn’t technically apply to the Trial Work Period (TWP) since Social Security doesn’t make SGA determinations during the TWP. However, if a period of work Social Security is considering for UWA falls within the TWP, the work must still be considered in the UWA determination. For example, consider a period of work that begins in May and ends in December and the TWP for the beneficiary in question ends in September. In this case, October, November and December can’t be considered an UWA because the entire period of work was eight months, May through December.

Event That Must Precede a UWA

There must be a significant break in the continuity of a person’s work before he/she can be considered to have begun a work attempt that later proved unsuccessful. A significant break in the continuity of a person’s work occurs if the person:

- Discontinued or reduced work activity to the non-SGA level because of the impairment, or the removal of special conditions related to the impairment, that are essential to the further performance of the work; or
- Discontinued or reduced work activity to the non-SGA level prior to the alleged onset date of the impairment for reasons unrelated to the impairment (e.g., retirement, or layoff);
- The individual has never previously engaged in work activity.

Work is considered to be “discontinued” if the person:

- Was out of work for at least 30 consecutive days, or
- Was forced to change to another type of work or another employer.
NOTE: On rare occasions a break lasting less than 30 days may satisfy this requirement if the subsequent work episode was brief and clearly not successful because of the individual’s impairment.

Events That Must Follow a UWA

After the first significant break in continuity of a person’s work, the ensuing period of work is regarded as continuous until the impairment, or the removal of special conditions related to the impairment essential to the further performance of work, causes the work to be “discontinued”, or to be reduced to the non-SGA level. Each continuous period of work activity, separated by significant breaks, may be a UWA so long as the criteria related to duration and conditions of work are met. In addition, there’s no limit on the number of unsuccessful work attempts a beneficiary may experience, as long as each attempt meets the criteria related to duration and conditions of work.

Duration and Conditions of Work

Social Security will consider work of 6 months or less to be an unsuccessful work attempt if the beneficiary stopped working or reduced work and earnings below the SGA level because of an impairment or because of the removal of special conditions that took into account the impairment and permitted the beneficiary to work. SGA level work lasting more than 6 months can’t be an UWA regardless of why it ended or was reduced to the non-SGA level.

IMPORTANT NOTE: Prior to November 16, 2016 Social Security evaluated work between 0-3 months differently from work that lasted 4-6 months when considering whether or not UWA provisions were applicable during an SGA determination. The new regulations removed some of the requirements for evaluation of an unsuccessful work attempt that lasts between 3 and 6 months. Starting in November 2016, Social Security evaluates all work of 6 months or less in the same manner when determining if an unsuccessful work attempt occurred.

Development of Reasons why Work Ended or was Reduced to Non-SGA Level

In considering why a work effort ended or was reduced to the non-SGA level, or if the work was performed under special conditions related to the impairment, Social Security doesn’t rely solely on information from the beneficiary. If impartial supporting evidence is not already a part of the claims file, confirmation with the employer is required. If the information from the employer is inconclusive or if none is available, Social Security or DDS confirms the reason for work discontinuance or reduction with the person's physician or other medical source. Answers on an SSA-5002 (Report of Contact) or SSA-821, to the following questions, helps verify the nature and duration of work and the reason it ended or was reduced:
1. When and why was the SGA-level work interrupted, reduced or stopped?
2. If special working conditions were removed what were those conditions or concessions? When, how and why were they changed?
3. Were there frequent absences from work? Were days and hours of work irregular and, if so, why?
4. Was job performance unsatisfactory because of the impairment?
5. Did the employer reduce the person's duties, responsibilities or earnings because of the impairment?
6. When the employee's work effort ended, was the continuity of employment broken? Did the employer grant sick leave or hold the position open for the person's return?
7. In the case of a self-employed person, what has happened to the business since the discontinuance or reduction of work? If the business has continued in operation, who manages and works in it, and what income does the disabled person derive from it?

Removal of “Special Conditions”

One situation under which SGA-level work may have ended or reduced to the non-SGA level is “the removal of special conditions related to the impairment that are essential to the further performance of work.” That is, a severely disabled person may have worked under conditions especially arranged to accommodate his or her impairment or may have worked through an unusual job opportunity, such as in a sheltered workshop. Special or unusual conditions may be evident in many ways. For example, the person:

1. Required and received special assistance from other employees in performing the job; or
2. Was allowed to work irregular hours or take frequent rest periods; or
3. Was provided with special equipment or was assigned work especially suited to the impairment; or
4. Was able to work only within a framework of specially arranged circumstances, such as where other persons helped him or her prepare for or get to and from work; or
5. Was permitted to perform at a lower standard of productivity or efficiency than other employees; or
6. Was granted the opportunity to work, despite his or her disability, because of family relationship, past association with the firm, or other altruistic reason.

The Role of the CWIC in Unsuccessful Work Attempt (UWA) Cases

CWICs play an important role in helping beneficiaries through the work CDR process and identifying possible unsuccessful work attempts is part of that process.
1. Make sure the information gathering process includes an examination of short periods of SGA level employment. If the beneficiary reports working above SGA for less than 6 months, be sure to ask why employment stopped or was reduced to the non-SGA level.

2. Examine the BPQY to see if wage reports show short periods of SGA work with gaps in between. Follow-up with the beneficiary to find out why he/she was unable to sustain SGA level employment.

3. Check for special conditions that beneficiaries may have had during short periods of SGA level work.

4. Help beneficiaries complete Work Activity Reports (SSA Form 820 or 821) accurately in order to capture information about possible unsuccessful work attempts. Social Security uses the information on Work Activity Reports to make SGA determinations and complete information provided on this form can help Social Security personnel spot a UWA.

5. Explain UWA provisions to beneficiaries to help them understand that a short SGA level work attempt may not cause the loss of cash benefits if the duration and condition requirements are met.

Remember that UWA provisions are one tool in the tool box Social Security employees use to make proper SGA determinations. If UWA provisions apply, there is no need to develop additional work incentives for the period of work in question. If UWA provisions don’t apply to a particular SGA level work attempt, be sure to check on the applicability of IRWE, Subsidy/Special Conditions, or Income Averaging.

**Conducting Independent Research**

All of the policies governing the UWA provisions are found in two POMS citations. Those citations are available online at:

[DI 11010.145 Unsuccessful Work Attempt (UWA) Overview](https://secure.ssa.gov/apps10/poms.nsf/lnx/0411010145)

[DI 24005.001 Unsuccessful Work Attempts (UWA) for Initial Claims and Reconsiderations](https://secure.ssa.gov/apps10/poms.nsf/lnx/0424005001)