We know some things happen again and again and again. Some things happen with absolute certainty. The sun rises. The sun sets. The tide comes in. The tide goes out. What goes up will come down. These things happen with absolute certainty and can be predicted without doubt.

Some things that involve people also happen with absolute certainty. People are born, they live, and they die. People must eat, drink, and breathe to live. That people will do these things is absolutely certain and predictable.

Individuals engage in other endeavors that occur not with absolute certainty, however, but with reasonable certainty. These things are likely to occur, and can be predicted with likelihood. Regarding an individual’s employment and earnings, predictions can be made with likelihood because what usually happens as a person develops vocationally occurs with reasonable certainty.

Vocational development theory, a career-counseling concept, provides a basis for determining what is likely to occur regarding a person’s employment pattern, and defines the stages of vocational development based on what typically occurs in a person’s life relevant to employment. What usually occurs in an individual’s life from an employment perspective is reasonably predictable. Individuals generally choose a career direction, learn the skills required to work in their career, and maintain employment until separation from the labor force.

An age earning cycle is an economic concept that provides the basis for determining what is likely to occur in regard to earnings over the course of a person’s work life. The age earning cycle describes the usual earning pattern of workers. Most workers earn the least amount of money during their work life when they are young. After choosing a career direction, an individual’s income increases as the skills of the chosen occupation are learned. At the age of thirty-five to forty, earnings are usually maximized. Maximum earnings are usually maintained until near the point of separation from the workforce.

Thus, the concept of vocational development theory and the concept of age earning cycle provide a general framework for predicting what usually occurs in regard to an individual’s employment and earnings during the course of their work life.
When this general framework is used in combination with the rehabilitation counseling process, an individual’s earning capacity then can be determined. Participation in the rehabilitation counseling process results in determinations specific to the person as to what is likely to occur in regard to employment choices. The rehabilitation counseling process identifies the jobs that are available to the individual. Wages paid in the jobs that are available to the person are then used to identify the person’s potential earning capacity or projected earnings.

Thus, while determining an individual’s earning capacity may be complex, the method utilized to determine earning capacity is reasonably straightforward.

In regard to earning capacity assessments prepared for a litigated setting, there was a time when experts who were asked why their opinion should be considered valued and accurate could simply respond “because I am the expert” (i.e., because I said so). Although courts’ guidelines have always required that experts have an established basis for the opinion offered, in recent years, these guidelines have become more strictly enforced. Courts now more consistently require the opinion offered to be based on the accepted practice and methodology of the expert’s profession and the opinion offered must reflect what is more likely than not to occur. Utilizing rehabilitation counseling analysis predicated on vocational development theory and the age earning cycle provides a basis for assessing earning capacity in a manner that is acceptable within the parameters of legal requirements developed by recent court decisions.

This book provides a historical perspective of rehabilitation counseling and illustrates that rehabilitation counseling is an established profession that utilizes accepted practice and methodology. The intent of this book is to provide a synopsis of rehabilitation counseling and earning capacity and to establish the relationship between the two.

In addition to providing a historical perspective of rehabilitation counseling and of earning capacity, this book includes related information authored by economic experts and rehabilitation counseling experts. Books and articles previously written relevant to earning capacity provide information that is most easily understood by experienced evaluators of earning capacity. Those materials make assumptions as to the reader’s level of knowledge relevant to earning capacity assessment rather than explaining basic considerations required to make accurate earning capacity determinations. For instance, vocational development theory and the age earning cycle tend to be referenced by writers in a manner that assumes the reader
has an understanding of these concepts and how these concepts are utilized to determine an individual’s earning capacity.

This book provides explanation of the basic concepts of earning capacity assessment and identifies the considerations that comprise an earning capacity assessment. The information in this book is a concise explanation as to why rehabilitation counseling provides a legally sufficient basis for determining earning capacity.

The usefulness of rehabilitation counseling in determining a person’s earning capacity in light of court requirements will be discussed. This book takes into account the requirements placed on expert methodology by courts since the Daubert and Kumho court decisions (Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993) and Kumho Tire, Inc. v. Carmichael, 119 S. Ct. 1167 (1999)). Prior to these decisions, while experts should have relied on the accepted methodology of their profession in developing and offering opinions, that did not always occur. Expert opinions not based on accepted methodology sometimes were allowed.

Because of the Daubert and Kumho decisions, however, court rulings and guidelines relevant to expert opinions now are more defined and precise, and require adherence to accepted methodologies and practices utilized in the expert’s field. Also because of the Daubert and Kumho decisions, court rules relevant to offering expert testimony have become more strictly enforced.

To summarize, experts are utilized by the legal field to provide information otherwise unavailable to the judge and/or jury in regard to determining the impact of an incident on the person’s life. Qualified experts are accepted by courts to provide information for decision making because the information provided by the expert is reasonably based. To be reasonably based, an expert’s opinion must utilize the usual and customary methodology of the expert’s profession. Rehabilitation counselors are accepted by courts to provide assessment of a worker’s earning capacity because participation in the usual and customary rehabilitation counseling process results in determination of the person’s earning capacity.

This book addresses the relationship between the rehabilitation counseling process and court requirements that expert opinions be based on the usual and customary methodology of the expert’s profession. This book also provides explanation as to why assessing earning capacity is the purview of rehabilitation counselors.

The information contained in the book can be utilized by attorneys to develop an in-depth understanding of earning capacity assessment require-
ments and of earning capacity assessment methodology so that examination of an earning capacity expert will result in a determination as to the accuracy of the opinions offered by that expert. Chapter One explains why rehabilitation counselors are utilized by the courts to assess the impact of an incident on an individual’s earning capacity.