

INDIVIDUAL UNEMPLOYABILITY

PROTECTED WORK ENVIRONMENT EVIDENCE GUIDE

The inquiry is fact-specific: whether the position is lower-income and shielded from ordinary competition because of service-connected disabilities.

38 C.F.R. 4.16

BUILD THE RECORD

WHAT MAY HELP SHOW THE ACTUAL WORK SETTING

1

PAY AND HOURS
Income, schedule, unpaid time, reduced hours, and whether compensation matches duties.

2

MODIFIED EXPECTATIONS
Attendance, pace, output, deadlines, supervision, and disciplinary standards.

3

DUTY CHANGES
Tasks removed, reassigned, simplified, shared, or performed by others.

4

WHY THE SUPPORT EXISTS
Evidence linking unusual workplace protection to service-connected limitations.

5

EMPLOYER OR COWORKER DETAIL
Firsthand descriptions of the support actually provided.

6

ORDINARY ACCOMMODATION CONTEXT
An ordinary ADA accommodation alone generally does not establish a protected environment.

FACT SPECIFIC

No single factor controls. Income is central, and above-ordinary protections may matter when they shield the worker from competition.