- (6) You were given the opportunity to work, despite your impairment, because of family relationship, past association with your employer, or your employer's concern for your welfare.
- 6. Section 404.1574 is amended by redesignating current paragraph (a)(3) as (a)(6); revising paragraphs (a)(1), (a)(2), newly designated (a)(6), (b)(1), and (b)(4) and the heading of paragraph (b)(6); and adding new paragraphs (a)(3) through (a)(5), (c), and (d) to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

(a) * * *

- (1) Your earnings may show you have done substantial gainful activity. In evaluating an employee's work activity for substantial gainful activity purposes, our primary consideration is the earnings that are derived from the work activity. The amount of your earnings from work you have done may show that you have engaged in substantial gainful activity. Generally, if you worked for substantial earnings, we will find that you are able to do substantial gainful activity. However, the fact that your earnings were not substantial will not necessarily show that you are not able to do substantial gainful activity. We generally consider work that you are forced to stop or to reduce below the substantial gainful activity level after a short time because of your impairment to be an unsuccessful work attempt. Your earnings from an unsuccessful work attempt will not show that you are able to do substantial gainful activity. We use the criteria in paragraph (c) of this section to determine if the work you did was an unsuccessful work attempt.
- (2) We consider only the amounts you earn. When we decide whether your earnings show that you have done substantial gainful activity, we do not consider any income that is not directly related to your productivity. When your earnings exceed the reasonable value of the work you perform, we consider only that part of your pay which you actually earn. If your earnings are being subsidized, we do not consider the amount of the subsidy when we determine if your earnings show that you have done substantial gainful activity. We consider your work to be subsidized if the true value of your work, when compared with the same or similar work done by unimpaired persons, is less than the actual amount of earnings paid to you for your work. For example, when a handicapped person does simple tasks under close and continuous supervision, our determination of whether that person

has done substantial gainful activity will not be based only on the amount of the wages paid. We will first determine whether the person received a subsidy; that is, we will determine whether the person was being paid more than the reasonable value of the actual services performed. We will then subtract the value of the subsidy from the person's gross earnings to determine the earnings we will use to determine if he or she has done substantial gainful activity. Paragraphs (a)(3), (a)(4), (a)(5), and (a)(6) of this section explain how we determine the amounts of subsidies.

(3) Evidence of subsidy from your employer. We will first ask your employer to tell us if your wages have been subsidized and, if so, the amount of the subsidy. Your employer may set a specific amount as the reasonable value of your services. If the wages you receive exceed the reasonable value of the actual services you performed, we will regard the excess as a subsidy rather than earnings. Any of the following circumstances may indicate the existence of a subsidy:

(i) You work in sheltered

employment.

(ii) Childhood disability is involved. (iii) You have a mental impairment.

(iv) There is a marked discrepancy between the amount of your pay and the value of your services.

(v) You receive an unusual degree of help from others to do your work.

(vi) Your impairment indicates you would need an unusual degree of help from others.

(vii) You are involved in a government-sponsored job training and

employment program.

(4) When your employer does not tell us the value of your subsidy. If your earnings are subsidized and your employer does not set the amount of the subsidy, or does not adequately explain how the subsidy was determined, we will use the following criteria to determine the amount of your subsidy:

- (i) In most instances, we will determine the amount of your subsidy by comparing the time, energy, skills, and responsibility involved in your services with the time, energy, skills, and responsibility involved in the performance of the same or similar work by unimpaired individuals in your community. We will estimate the proportionate value of your services according to the prevailing pay scale for your work.
- (ii) In other instances, it may be possible for us to determine the approximate extent of your subsidy based upon other indications of your productivity, such as your need for an unusual degree of supervision or

assistance in the performance of simple tasks, the length of time you need to do simple tasks, or how efficiently you are able to do simple tasks.

(5) Subsidies in organizations that hire the handicapped. If you work for an organization that hires the handicapped and the organization either operates at a loss or receives charitable contributions or government aid, this does not necessarily establish that your work is subsidized. Our determination of whether or not you receive a subsidy, and the amount of any subsidy you may receive, will depend upon your productivity rather than the financial condition of your employer's business.

(6) If you are working in a sheltered or special environment. If you are working in a sheltered workshop, you may or may not be earning the amounts you are being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that you are not earning all you are being paid. Because persons in military service being treated for severe impairments usually continue to receive full pay, we evaluate their work activity in a therapy program or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual

amount of the earnings.

(b) Earnings guidelines.—(1) General. If you are an employee, we first consider the criteria in paragraph (a) of this section and § 404.1576, and then the guides in paragraphs (b)(2), (3), (4), (5), and (6) of this section. When we review your earnings to determine if you have been performing substantial gainful activity, we will subtract the value of any subsidized earnings (see paragraph (a)(2) of this section) and the reasonable cost of any impairment-related work expenses from your gross earnings (see § 404.1576). The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your earnings for comparison with the earnings guidelines in paragraphs (b)(2), (3), (4), and (6) of this section. See § 404.1574a for our rules on averaging earnings.

(2) * *

(3) * * *

(4) If you work in a sheltered workshop. If you work in a sheltered workshop or a comparable facility especially set up for severely impaired persons, we ordinarily will consider that your earnings from this work show that you have engaged in substantial gainful activity if the guides in paragraph (b)(2) of this section are met.