

With respect to the claim for a period of disability and disability insurance benefits, there is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant's earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through December 31, 2005. Thus, the claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

After careful review of the entire record, the undersigned finds that the claimant has been disabled from February 28, 2002, through the date of this decision. The undersigned also finds that the insured status requirements of the Social Security Act were met as of the date disability is established.

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, or work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. If the claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed 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). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his ability to do physical and mental work activities

on a sustained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the undersigned must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f) and 416.920(f)). If the claimant has the residual functional capacity to do his past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the undersigned must determine whether the claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he is not disabled. If the claimant is not able to do other work and meets the duration requirement, he is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g), 404.1560(c), 416.912(g) and 416.960(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, the undersigned makes the following findings:

- 1. The claimant's date last insured is December 31, 2005.**
- 2. The claimant has not engaged in substantial gainful activity since February 28, 2002, the amended alleged onset date (20 CFR 404.1520(b), 404.1571 *et seq.*, 416.920(b) and 416.971 *et seq.*).**

This finding is supported by claimant's earnings record (Exh. 5D).

- 3. The claimant has the following severe impairments: degenerative disc disease of the lumbosacral spine and mold exposure manifesting as chronic bronchitis, diverticulitis, diverticulosis, colitis, myositis, chronic pain, and chronic fatigue (20 CFR 404.1520(c) and 416.920(c)).**
- 4. The claimant does not have an impairment or combination of impairments that meets or medically equals 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).**
- 5. The claimant has the residual functional capacity to lift/carry 20 pounds occasionally and 10 pounds frequently; walk/stand less than 2 hours and sit 2 to 3 hours in an 8-hour**

day; never climb ramps, stairs, ropes, ladders, or scaffolds, or work at unprotected heights or around dangerous moving machinery; occasionally balance, stoop, kneel, crouch, and crawl; and cannot be exposed to extremes of heat, humidity, fumes, noxious odors, gases, chemicals, poor ventilation, or dust.

In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and 416.929 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and 416.927 and SSRs 96-2p, 96-6p, and 06-3p.

Claimant was hospitalized in September 2002 with muscular pain thought to be associated with a viral illness (Exh. 6F/51). Claimant states that he had been living in a house that was damaged in a storm resulting in the roof leaking and since that time had developed recurring episodes of sore throat, fever, body pains, joint pain, headaches, and fatigue (Exh. 2F/2). He began receiving treatment by Keval Patel, M.D., who specializes in infectious diseases. In January 2003, it was noted that he had been exposed to mold resulting in chronic pneumonia and chronic bronchitis and had received multiple treatments, but continued with problems (Exh. 5F/30). He was placed on Demerol for pain (Exh. 5F/12). Claimant has been referred to various specialists without resolution of his symptoms (Exh. 18F/20). Claimant has had an episode of diverticulitis and diverticular abscess that required surgery. A Dr. Garrity, who is Professor of Medicine and Pulmonary at Loyola University Medical Center, examined claimant and stated that while the origin of claimant's symptoms are not clear, his symptoms sounded like mold infection (Exh. 19F/10).

Claimant's case was reviewed by Richie C. Shoemaker, M.D., who has done extensive research into mold infection, and based on his review he opined that claimant has a residual functional capacity consistent with that cited above (Exh. 24F). The previous Administrative Law Judge did not give much weight to Dr. Shoemaker's opinion finding that the evidence did not show him to be an expert in the area of bio-toxicology. However, subsequent information supplied by Dr. Shoemaker shows otherwise (Exh. 32F).

Claimant continues to have the symptoms cited above as well as chronic fatigue. Dr. Patel has diagnosed claimant with chronic fatigue syndrome (Exh. 18F/3). Claimant has complained of low back pain for several years (Exh. 5F/19, 15) and MRI scan reveals degenerative disc disease at the L5-S1 level (Exh. 25F/3). The combination of claimant's impairments and symptoms caused thereby support Dr. Shoemaker's opinion and his opinion along with statements by Dr. Patel are given controlling weight.

Residual functional capacity is "an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis. A 'regular and continuing basis' means 8 hours a day, 5 days a week or an equivalent work schedules" (SSR 96-8p, 20 CFR 404.1545 and 20 CFR 416.945). Claimant's impairments prevent him from sustaining work for a normal work day and workweek.

After considering the evidence of record, the undersigned finds that the claimant's medically determinable impairments could reasonably be expected to produce the alleged symptoms and that the claimant's statements concerning the intensity, persistence, and limiting effects of these symptoms are generally credible.

The State agency medical consultants' physical assessments are given little weight because the medical opinions of Dr. Shoemaker and Dr. Patel are more consistent with the record as a whole and evidence received at the hearing level shows that the claimant is more limited than determined by the State agency consultants.

6. The claimant is unable to perform any past relevant work (20 CFR 404.1565 and 416.965).

The demands of the claimant's past relevant work exceed the residual functional capacity.

7. The claimant was a younger individual age 18-44 on the established disability onset date (20 CFR 404.1563 and 416.963).

8. The claimant has at least a high school education and is able to communicate in English (20 CFR 404.1564 and 416.964).

9. The claimant's acquired job skills do not transfer to other occupations within the residual functional capacity defined above (20 CFR 404.1568 and 416.968).

10. Considering the claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1560(c), 404.1566, 416.960(c), and 416.966).

In determining whether a successful adjustment to other work can be made, the undersigned must consider the claimant's residual functional capacity, age, education, and work experience in conjunction with the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix 2. If the claimant can perform all or substantially all of the exertional demands at a given level of exertion, the medical-vocational rules direct a conclusion of either "disabled" or "not disabled" depending upon the claimant's specific vocational profile (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 decisionmaking 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 decisionmaking (SSR 85-15).

If the claimant had the residual functional capacity to perform the full range of sedentary work, considering the claimant's age, education, and work experience, a finding of "not disabled" would be directed by Medical-Vocational Rule 201.28. To determine the extent to which the claimant's additional limitations erode the unskilled sedentary occupational base, the Administrative Law Judge asked the vocational expert whether jobs exist in the national

economy for an individual with the claimant's age, education, work experience, and residual functional capacity. The vocational expert testified that given all of these factors there are no jobs in the national economy that the individual could perform.

Based on the testimony of the vocational expert, the undersigned concludes that, considering the claimant's age, education, work experience, and residual functional capacity, a finding of "disabled" is appropriate under the framework of the above-cited rule.

11. The claimant has been under a disability as defined in the Social Security Act since February 28, 2002, the amended alleged onset date of disability (20 CFR 404.1520(g) and 416.920(g)).

DECISION

Based on the application for a period of disability and disability insurance benefits filed on May 28, 2004, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act since February 28, 2002.

Based on the application for supplemental security income filed on April 26, 2004, the claimant has been disabled under section 1614(a)(3)(A) of the Social Security Act since February 28, 2002.

The component of the Social Security Administration responsible for authorizing supplemental security income will advise the claimant regarding the nondisability requirements for these payments and, if the claimant is eligible, the amount and the months for which payment will be made.

/s/ Michael McShane

Michael McShane
Administrative Law Judge

August 27, 2010

Date