



Refer To: [REDACTED]

Office of Hearings and Appeals
5751 Uptain Road
Suite 300
Chattanooga, Tennessee 37411

Date:

JUL 26 2002

Cecil [REDACTED]
[REDACTED]
[REDACTED]

NOTICE OF DECISION – FULLY FAVORABLE

I have made the enclosed decision in your case. Please read this notice and the decision carefully.

This Decision is Fully Favorable To You

Another office will process the decision and send you a letter about your benefits. Your local Social Security office or another may first ask you for more information. If you do not hear anything for 60 days, contact your local office.

If You Disagree With The Decision

If you disagree with my decision, you may file an appeal with the Appeals Council.

How to File an Appeal

To file an appeal, you or your representative, if you choose to appoint one, must request the Appeals Council to review the decision. You must make the request in writing. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your request right to the Appeals Council, Office of Hearings and Appeals, 5107 Leesburg Pike, Falls Church, VA 22041-3255. Please put the Social Security number shown above on any appeal you file.

Time to File an Appeal

To file an appeal, you must file your request for review **within 60 days** from the date you get this notice.

The Appeals Council assumes you got the notice 5 days after the date shown above unless you show you did not get it within the 5-day period. The Council will dismiss a late request unless you show you had a good reason for not filing it on time.

SOCIAL SECURITY ADMINISTRATION
Office of Hearings and Appeals

DECISION

IN THE CASE OF

CLAIM FOR

(Claimant)




Period of Disability and
Disability Insurance Benefits

(Wage Earner)

(Social Security Number)

This case is before the Administrative Law Judge on a request for hearing. Pursuant to this request, a hearing was held on June 20, 2002, in Rome, Georgia. The claimant was present and testified, as did his friend, Jacqueline _____ and Mark Boatner, M.S., an impartial vocational expert. The claimant was represented by Jonathan Ginsberg, Attorney at Law. I have carefully considered all the documents identified in the record as exhibits, the testimony at the hearing, and the arguments presented.


The general issue in this case is whether the claimant is under a "disability" within the meaning of the Social Security Act, as amended. The Social Security Act defines "disability" as the inability to engage in any substantial gainful activity due to physical or mental impairment(s) which can be expected either to result in death or last for a continuous period of not less than 12 months.




-  The claimant filed for a period of disability and disability insurance benefits on July 28, 2000, protectively, alleging disability commencing March 2, 2000. The claimant is 42 years old and reports having completed a tenth grade education. He has a work background as a truck driver, fork lift driver, and sand blaster. There is no evidence that the claimant has engaged in
-  substantial gainful activity since the alleged onset date. He has received workers' compensation benefits.
-  Review of the medical evidence shows that the claimant has "severe" impairments. However, the claimant has no impairments, singly or in combination, that meet or equal in severity the criteria of any listing at Appendix 1.

The medical evidence of record confirms that the claimant sustained injuries to his back while at work in March 2000 (Exhibit 3F). Treating physician Robert _____ M.D., prescribed various measures to treat the claimant's thoracic degenerative disc disease, L5-S1 herniated disc, aseptic necrosis of the right shoulder (resulting in atrophy), and eventual development of left hip aseptic

necrosis (Exhibits 10F and 14F). These conservative measures have failed and the claimant has been approved for fusion of L5-S1 (Exhibits 17F and 18F). The medical record further establishes that the claimant has severe chronic obstructive pulmonary disease that has required medical intervention on several occasions (Exhibits 2F, 5F through 9F and 16F).

In evaluating the claimant's residual functional capacity, I find that he has been unable to perform sustained work activity at even the sedentary exertional level, as defined in Social Security Ruling 83-10, since his alleged onset date. The claimant requires lumbar surgery, which may result in the ability to return to work.

 Pursuant to Social Security Ruling 96-6p, I have considered the findings of fact made by state agency and other program physicians regarding the nature and severity of the claimant's impairments. I have not given such findings determinative weight because they were made without benefit of the claimant's oral testimony, without examination of the claimant, and before additional evidence from the claimant's treating sources had been received (Exhibits 14F through 18F).

 The restrictions imposed by the claimant's impairments are sufficient to prevent the claimant from performing any past relevant work. Moreover, the claimant would possess no readily transferable work skills (Social Security Ruling 82-41). Furthermore, as the claimant is unable to perform any sustained work activity as a result of medically determinable impairments,  section 201.00(h) of Appendix 2 and Social Security Ruling 96-9p provide that a finding of disabled is warranted. 

In the present case, I find a conclusion of "disabled" supported by the weight of the evidence, for the reasons previously discussed. Therefore, considering the claimant's residual functional capacity and vocational factors within the meaning of section 201.00(h) and Social Security Ruling 96-9p, I find that the claimant has been disabled commencing March 2, 2000, and continuing, at least, through the date of this decision.

FINDINGS

After careful consideration of the entire record, the Administrative Law Judge makes the following findings:

1. The claimant met the disability insured status requirements of the Act on March 2, 2000, the date the claimant stated he became unable to work, and continues to meet them presently.
2. The claimant has not engaged in substantial gainful activity since March 2, 2000.
3. The medical evidence establishes that the claimant has "severe" impairments, as described in the decision, but that the claimant does not have an impairment or combination of impairments listed in, or medically equal to one listed in Appendix 1, Subpart P, Regulations No. 4.

4. The restrictions imposed by the claimant's impairments are sufficient to preclude any sustained work activity.
5. The claimant is unable to perform any past relevant work and has no transferable work skills.
6. The claimant is 42 years old, which is defined as a younger individual.
7. The claimant reports a tenth grade education.
8. Considering the claimant's vocational factors and inability to perform any sustained work activity within the meaning of section 201.00(h) of Appendix 2 and Social Security Ruling 96-9p, there are not a significant number of jobs in the national economy which the claimant could perform.
9. The claimant has been under a "disability," as defined in the Social Security Act, since March 2, 2000.

DECISION

It is the decision of the Administrative Law Judge that, based on the application filed on July 28, 2000, protectively, the claimant is entitled to a period of disability commencing March 2, 2000, and to disability insurance benefits under sections 216(i) and 223, respectively, of the Social Security Act.



EDUARDO SOTO
Administrative Law Judge

JUL 26 2002

Date