

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION

DALE M. CAMPBELL, )  
 ) Civil Action No. 5:04CV00008  
 Plaintiff, )  
 )  
 )  
 v. ) **MEMORANDUM OPINION**  
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 JO ANNE B. BARNHART, )  
 Commissioner of Social Security, ) By: Honorable Glen E. Conrad  
 ) United States District Judge  
 Defendant. )

Plaintiff has filed this action challenging the final decision of the Commissioner of Social Security denying plaintiff's claims for disability insurance benefits and supplemental security income benefits under the Social Security Act, as amended, 42 U.S.C. §§ 416(i) and 423, and 42 U.S.C. § 1381 *et seq.*, respectively. Jurisdiction of this court is pursuant to 42 U.S.C. § 405(g) and 42 U.S.C. § 1383(c)(3). As reflected by the memoranda and argument submitted by the parties, the issues before this court are whether the Commissioner's final decision is supported by substantial evidence, and if it is not, whether plaintiff has met the burden of proof as prescribed by and pursuant to the Act. Stated briefly, substantial evidence has been defined as such relevant evidence, considering the record as a whole, as might be found adequate to support a conclusion by a reasonable mind. Richardson v. Perales, 402 U.S. 389, 401 (1971).

The plaintiff, Dale M. Campbell, was born on May 6, 1943 and eventually reached the seventh grade in school. Mr. Campbell has worked as a gasoline station attendant and as a factory production laborer. He last worked on a regular basis in 2001. On October 4, 2001, plaintiff filed applications for disability insurance benefits and supplemental security income benefits. Mr. Campbell alleged that he became disabled

for all forms of substantial gainful employment on July 15, 2001 due to two strokes, residuals of a triple by-pass operation, scoliosis of the spine, and arthritis of the spine. He now maintains that he has remained disabled to the present time. As to his application for disability insurance benefits, the record reveals that Mr. Campbell met the insured status requirements of the Act at all relevant times covered by the final decision of the Commissioner. See, generally, 42 U.S.C. §§ 414 and 423.

Mr. Campbell's claims were denied upon initial consideration and reconsideration. He then requested and received a de novo hearing and review before an Administrative Law Judge. In an opinion dated March 27, 2003, the Law Judge also determined that Mr. Campbell is not disabled. While the Law Judge did not make explicit findings as to the nature or diagnoses of plaintiff's physical, mental, and emotional problems, the Law Judge's summary of the evidence suggests findings of residuals from triple by-pass heart surgery, chronic obstructive pulmonary disease, and degenerative disc disease. Because of these problems, the Law Judge considered Mr. Campbell to be disabled for past relevant work as a production laborer. However, the Law Judge found that plaintiff retains sufficient functional capacity to perform past relevant work as a gasoline station attendant, which the Law Judge considered to be light in exertional requirements. Accordingly, the Law Judge ultimately concluded that Mr. Campbell is not disabled, and that he is not entitled to benefits under either federal program. See, generally, 20 C.F.R. §§ 404.1520(e) and 416.920(e). The Law Judge's opinion was adopted as the final decision of the Commissioner by the Social Security Administration's Appeals Council. Having exhausted all available administrative remedies, Mr. Campbell has now appealed to this court.

While plaintiff may be disabled for certain forms of employment, the crucial factual determination is whether plaintiff was disabled for all forms of substantial gainful employment. See 42 U.S.C. §§ 423(d)(2)

and 1382c(a). There are four elements of proof which must be considered in making such an analysis. These elements are summarized as follows: (1) objective medical facts and clinical findings; (2) the opinions and conclusions of treating physicians; (3) subjective evidence of physical manifestations of impairments, as described through a claimant's testimony; and (4) the claimant's education, vocational history, residual skills, and age. Vitek v. Finch, 438 F.2d 1157, 1159-60 (4th Cir. 1971); Underwood v. Ribicoff, 298 F.2d 850, 851 (4th Cir. 1962).

After a review of the record in this case, the court is unable to conclude that the Commissioner's final decision is supported by substantial evidence. The medical record confirms that Mr. Campbell suffers from residuals of triple by-pass surgery, chronic obstructive pulmonary disease, and degenerative disc disease. Mr. Campbell has a variety of subjective complaints, including exertional dyspnea, chronic leg pain, recurrent back pain, and chest pain. Despite this fairly significant list of physical problems, the court believes that the medical records support the Law Judge's finding that Mr. Campbell retains sufficient functional capacity for light exertion. However, because of the environmental restrictions caused by plaintiff's chronic obstructive pulmonary disease, the court finds that the Law Judge erred in determining that plaintiff remains capable of performing work at a gasoline station. Inasmuch as the Law Judge found that Mr. Campbell is no longer able to perform the medium levels of exertion required in his job as a production laborer, it follows that plaintiff has met the burden of proof in establishing disability for all forms of past relevant work. Even assuming that plaintiff remains capable of performing a full range of light work activity, the medical vocational guidelines direct a determination of disabled in this case. Accordingly, the court concludes that plaintiff has met the burden of proof in establishing disability for all forms of substantial gainful employment.

There are no disputes in the medical record in this case. In addition to his musculoskeletal problems and cardiac difficulties, it seems that plaintiff suffers from chronic obstructive pulmonary disease, primarily on the basis of emphysema associated with many years of cigarette smoking. The state agency physician who evaluated the medical record in Mr. Campbell's case specifically determined that plaintiff must now avoid even moderate exposure to fumes, odors, dusts, gases, or poor ventilation. (TR 144). Likewise, Dr. Ben Farley, one of Mr. Campbell's treating physicians, reported that plaintiff should avoid fumes, smoke, and dust because of chronic obstructive pulmonary disease. (TR 188).

At the administrative hearing, Mr. Campbell testified that in his job as a gasoline station attendant, he was assigned to a booth in the middle of the lot. (TR 209). However, he was required to pump gas for elderly and handicapped customers. (TR 209). He stacked oil, swept the lot, and dumped trash as part of his regular duties. (TR 210). When asked why he quit this work, plaintiff testified as follows:

Well, I came down with emphysema. I think I was starting on that before my wife passed away, I think. And asthma. Then when I was breathing the gasoline and stuff, the fumes were starting to get to me, then I couldn't breath right, and I still can't. (TR 215).

Given Mr. Campbell's undisputed, medically related intolerance for environmental irritants, such as gasoline, the court finds that plaintiff has met the burden of proof in establishing disability for the past relevant work he previously performed as a self-service gasoline station attendant. Even assuming that the Law Judge properly found that plaintiff retains sufficient functional capacity for a full range of other, light work activity, the court believes that the medical vocational guidelines direct a determination of disabled in this case. At the time of alleged disability onset, Mr. Campbell was 58 years of age. Thus, for purposes of the guidelines, he qualified as an individual of "advanced age." See 20 C.F.R. §§ 404.1563(e) and 416.963(e). Having reached the eighth grade in school, plaintiff was deemed to possess a "limited education" for purposes of the

guidelines. See 20 C.F.R. §§ 404.1564(b)(3) and 416.964(b)(3). It is undisputed that plaintiff has performed unskilled work, or work which did not impart transferable skills. See 20 C.F.R. §§ 404.1568 and 416.968. Given these personal circumstances, and assuming a residual functional capacity for a full range of light work, Rule 202.02 of Appendix 2 to Subpart P of the Administrative Regulations Part No. 4 directs a determination of disabled in Mr. Campbell's case.

In denying plaintiff's claim, the Administrative Law Judge discounted the opinions from the state agency physician and plaintiff's treating physician, indicating that Mr. Campbell cannot tolerate exposure to environmental irritants. The Law Judge noted that, at least as of the time of the administrative hearing, plaintiff was still abusing cigarettes, and that plaintiff's breathing problems could not be overly severe if he still inhales cigarette smoke. In a memorandum in support of her motion for summary judgment, the Commissioner defends the Law Judge's decision to discredit the findings of the state agency physician and treating physician, noting that Mr. Campbell's continued use of cigarettes goes to the issue of his credibility. However, the court has some difficulty viewing plaintiff's use of cigarettes as a credibility issue, inasmuch as plaintiff has never denied such use or suggested that his breathing would not improve if he ceased this use. In any event, the undisputed medical evidence indicates that plaintiff is not currently able to tolerate exposure to environmental irritants. If the Commissioner feels that plaintiff has failed to follow prescribed treatment, the Commissioner may undertake the appropriate protocol in considering whether Mr. Campbell qualifies for a continuing period of disability or disability insurance benefits. See 20 C.F.R. §§ 404.1530 and 416.930. Mr. Campbell cannot expect to receive disability insurance benefits or supplemental security income benefits on the basis of a medical condition for which he refuses to follow prescribed treatment.

For the reasons stated, the court is unable to conclude that the Commissioner's final decision is supported by substantial evidence. The court finds that Mr. Campbell has met the burden of proof in establishing disability for all forms of substantial gainful employment. The court finds that plaintiff has met the burden in establishing that he became disabled for all forms of work as of July 15, 2001, as alleged at the time of the administrative hearing. (TR 207).

For the reasons stated, the court is constrained to conclude that the Commissioner's final decision is not supported by substantial evidence. Defendant's motion for summary judgment must therefore be denied. Upon the finding that plaintiff has met the burden of proof as prescribed by and pursuant to the Act for entitlement to disability insurance benefits, judgment will be entered in favor of plaintiff. The final decision of the Commissioner will be reversed and the case remanded for the establishment of proper benefits. The Commissioner's final decision denying supplemental security income benefits will also be reversed to the extent that the denial was based on the finding that plaintiff is not disabled. However, since the Commissioner has apparently not considered whether plaintiff meets the financial eligibility requirements under that benefit program, the court must remand the case for an appropriate determination. An order and judgment in conformity will be entered this day.

The Clerk is directed to send certified copies of this opinion to all counsel of record.

ENTER: This 10<sup>th</sup> day of January, 2005.

/s/ GLEN E. CONRAD  
United States District Judge

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 JO ANNE B. BARNHART, )  
 Commissioner of Social Security, ) By: Honorable Glen E. Conrad  
 ) United States District Judge  
 Defendant. )

For reasons stated in a memorandum opinion filed this day, it is now

ADJUDGED AND ORDERED

as follows:

1. The Commissioner's motion for summary judgment shall be and hereby is DENIED;
2. The Commissioner's denial of plaintiff's claim for a period of disability and disability insurance benefits shall be and hereby is REVERSED with judgment entered in favor of the plaintiff;
3. The Commissioner shall compute and award appropriate benefits to plaintiff;
4. The Commissioner's denial of plaintiff's claim for supplemental security income benefits shall be and hereby is REVERSED and MODIFIED to reflect plaintiff's disability for all forms of substantial gainful employment; and
5. Plaintiff's claim for supplemental security income benefits shall be and hereby is REMANDED to the Commissioner for a determination of plaintiff's eligibility under the remaining statutory criteria.

The Clerk is directed to send certified copies of this judgment and order to all counsel of record.

ENTER: This 10<sup>th</sup> day of January 2005.

/s/ GLEN E. CONRAD  
United States District Judge