SOCIAL SECURITY ADMINISTRATION

Office of Hearings Operations
Harwood Center
1999 Bryan St
Suite 2300
Dallas, TX 75201-9605

Date: January 19, 2021

Benjamin Jennings [redacted]

# Notice of Decision – Unfavorable

I carefully reviewed the facts of your case and made the enclosed decision. Please read this notice and my decision.

**If You Disagree With My 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 must ask in writing that the Appeals Council review my decision. The preferred method for filing your appeal is by using our secure online process available at https://www.ssa.gov/benefits/disability/appeal.html.

You may also use our Request for Review form (HA-520) or write a letter. The form is available at https://www.ssa.gov/forms/ha-520.html. Please write the Social Security number associated with this case on any appeal you file. You may call (800) 772-1213 with questions.

Please send your request to:

**Appeals Council**
**5107 Leesburg Pike**
**Falls Church, VA 22041-3255**

**Time Limit To File An Appeal**

You must file your written appeal **within 60 days** of the date you get this notice. The Appeals Council assumes you got this notice 5 days after the date of the notice unless you show you did not get it within the 5-day period.

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**Suspect Social Security Fraud?**
**Please visit http://oig.ssa.gov/r or call the Inspector General's Fraud Hotline at 1-800-269-0271 (TTY 1-866-501-2101).**

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The Appeals Council will dismiss a late request unless you show you had a good reason for not filing it on time.

**What Else You May Send Us**

You or your representative may send us a written statement about your case. You may also send us new evidence. You should send your written statement and any new evidence **with your appeal**. Sending your written statement and any new evidence with your appeal may help us review your case sooner.

**How An Appeal Works**

The Appeals Council will consider your entire case. It will consider all of my decision, even the parts with which you agree. Review can make any part of my decision more or less favorable or unfavorable to you. The rules the Appeals Council uses are in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J).

The Appeals Council may:

- Deny your appeal,
- Return your case to me or another administrative law judge for a new decision,
- Issue its own decision, or
- Dismiss your case.

The Appeals Council will send you a notice telling you what it decides to do. If the Appeals Council denies your appeal, my decision will become the final decision.

**The Appeals Council May Review My Decision On Its Own**

The Appeals Council may review my decision even if you do not appeal. If the Appeals Council reviews your case on its own, it will send you a notice within 60 days of the date of this notice.

**When There Is No Appeals Council Review**

If you do not appeal and the Appeals Council does not review my decision on its own, my decision will become final. A final decision can be changed only under special circumstances. You will not have the right to Federal court review.

**New Application**

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with my decision and you file a new application instead of appealing, you might lose some benefits or not qualify for benefits at all. My decision could also be used to deny a new application for benefits if the facts and issues are the same. If you disagree with my decision, you should file an appeal within 60 days.



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**If You Have Any Questions**

We invite you to visit our website located at www.socialsecurity.gov to find answers to general questions about social security. You may also call (800) 772-1213 with questions. If you are deaf or hard of hearing, please use our TTY number (800) 325-0778.

If you have any other questions, please call, write, or visit any Social Security office. Please have this notice and decision with you. The telephone number of the local office that serves your area is (866) 627-6991. Its address is:

Social Security
1029 Camino La Costa
Austin, TX 78752-3907

Rebecca B. Sartor
Administrative Law Judge

Enclosures:
Decision Rationale

cc: Lloyd E Bemis
Bemis Roach & Reed
4100 Duval Rd
Bldg 1 Ste 200
Austin, TX 78759



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**SOCIAL SECURITY ADMINISTRATION**
**Office of Hearings Operations**

**DECISION**

**IN THE CASE OF**

[redacted]
(Claimant)

(Wage Earner)

**CLAIM FOR**

Period of Disability and Disability Insurance Benefits

[redacted]
(Social Security Number)

## JURISDICTION AND PROCEDURAL HISTORY

On January 7, 2020, the claimant protectively filed a Title II application for a period of disability and disability insurance benefits, alleging disability beginning December 2, 2019. The claim was denied initially on April 16, 2020, and upon reconsideration on June 11, 2020. Thereafter, the claimant filed a written request for hearing received on August 9, 2020 (20 CFR 404.929 *et seq.*). On January 4, 2021, the undersigned held a telephone hearing (20 CFR 404.936(c) / 416.1436(c)) due to the extraordinary circumstance presented by the Coronavirus Disease 2019 (COVID-19) Pandemic. All participants attended the hearing by telephone. The claimant agreed to a telephone hearing (Exhibit 13E). The claimant was represented at the hearing by Greg Reed. The claimant's main representative is Lloyd E. Bemis, an attorney. Calvin J. Turner, an impartial vocational expert, also appeared telephonically at the hearing.

The claimant submitted or informed the Administrative Law Judge about all written evidence at least five business days before the date of the claimant's scheduled hearing (20 CFR 404.935(a)).

## ISSUES

The issue is whether the claimant is disabled under sections 216(i) and 223(d) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

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, 2024. 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.

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After careful consideration of all the evidence, the undersigned concludes the claimant has not been under a disability within the meaning of the Social Security Act from December 2, 2019, through the date of this decision.

## 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)). 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 (20 CFR 404.1520(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he has demonstrated the ability to engage in SGA (20 CFR 404.1574 and 404.1575). 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, and 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)). 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. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1522, Social Security Rulings (SSRs) 85-28 and 16-3p). 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 is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, and 404.1526). If the claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509), 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)). 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) and 404.1545; 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)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b) and 404.1565). 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)), 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 and 404.1560(c)).

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

**1. The claimant meets the insured status requirements of the Social Security Act through December 31, 2024.**

**2. The claimant has not engaged in substantial gainful activity since December 2, 2019, the alleged onset date (20 CFR 404.1571 *et seq.*).**

**3. The claimant has the following severe impairment: Post-Traumatic Stress Disorder (PTSD) and Obstructive sleep apnea (OSA) (20 CFR 404.1520(c)).**

The above are severe impairments within the meaning of the regulations since it limits the claimant's ability to perform basic work activities (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 limits an individual's ability to perform basic work activities.

An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality (or combination of slight abnormalities) that would not be expected to interfere with the individual's ability to work irrespective of age, education, or work

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experience (SSR 85-28). If the claimant does not have a "severe" medically determinable impairment or combination of impairments, he or she is not disabled. If the claimant has a "severe" impairment or combination of impairments, the analysis proceeds to the third step.

The claimant also has the following nonsevere impairment(s): hypertension and a hernia. The claimant has hypertension; however, it is managed with lifestyle changes as well as medication such as Amlodiphine (Exhibits 2F, p. 13; 4F, p. 3). The claimant has a past medical history of inguinal hernia, without mention of obstruction of gangrene and an umbilical hernia; however, they were repaired in 2011 and since resolved (Exhibits 2F, p. 15; 5F, p. 61). Therefore, the undersigned finds hypertension and a previous hernia non-severe, as they are no more than slight abnormalities having such a minimal effect on the claimant it would not be expected to interfere with hisr ability to work, irrespective of age, education or work experience (Social Security Ruling 85-28). The undersigned considered all of the claimant's medically determinable impairments, including those that are not severe, when assessing the claimant's residual functional capacity.

**4. The claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525 and 404.1526).**

The severity of the claimant's mental impairment does not meet or medically equal the criteria of listing 12.15. In making this finding, the undersigned has considered whether the "paragraph B" criteria are satisfied. To satisfy the "paragraph B" criteria, the mental impairment must result in one extreme limitation or two marked limitations in a broad area of functioning. An extreme limitation is the inability to function independently, appropriately, or effectively, and on a sustained basis. A marked limitation is a seriously limited ability to function independently, appropriately, or effectively, and on a sustained basis.

In understanding, remembering, or applying information, the claimant has moderate limitations. The claimant alleged that he has difficulty remembering generally, completing tasks, paying bills, and taking medications without verbal reminders (Exhibit 6E; Testimony). However, the claimant also stated that he could perform simple maintenance, prepare simple meals, pay bills, go to doctor's appointments, shop, and drive (Exhibit 6E; Testimony). In addition, the record shows that the claimant was able to provide information about his health, describe his prior work history, follow instructions from healthcare providers, comply with treatment outside of a doctor's office or hospital, respond to questions from medical providers, and there is no mention of issues with the claimant's short- or long-term memory. However, the claimant's history of sleep apnea with associated possible fatigue has been considered in restricting the claimant to non-complex instructions (Exhibits 2F, pp. 9-11, 18-19; 3F, pp. 13, 26; 4F).

In interacting with others, the claimant has moderate limitations. Here, the claimant alleged that he has difficulty engaging in social activities, getting along with others, and dealing appropriately with authority (Exhibit 6E; Testimony). However, according to his statements, the claimant is also able to shop, spend time with friends and family, go out alone, and live with others(Exhibit 6E; Testimony). Finally, the medical evidence shows that the claimant was described as pleasant and cooperative (Exhibits 2F, pp. 9, 11-12; 4F).

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The next functional area addresses the claimant's ability to concentrate, persist, or maintain pace. For this criterion, the claimant has moderate limitations. The claimant contended that he has limitations in concentrating generally, focusing generally, and completing tasks (Exhibit 6E; Testimony). On the other hand, the claimant said that he is also able to drive, prepare simple meals, perform household chores, watch television, follow instructions, use the internet, and handle his own medical care (Exhibit 6E; Testimony). Additionally, the record fails to show any mention of distractibility and mental status examinations reflected normal speech, good eye contact, logical thought processes, and normal attention and concentration (Exhibits 2F, pp. 10-11, 19; 4F).

Finally, the claimant has moderate limitations in his ability to adapt or manage himself. The claimant asserted that he has difficulties handling stress and managing his mood (Exhibit 6E). That said, the claimant also stated that he is able to handle self-care and personal hygiene, care for pets, and care for children (Exhibit 6E; Testimony). Meanwhile, the objective evidence in the record showed the claimant to have appropriate grooming and hygiene, normal mood and affect, no problems with temper control, and no psychomotor activity. However, the claimant's history of sleep apnea with associated possible fatigue has been considered in restricting the claimant to work with non-production pace (Exhibits 2F, pp. 10-12; 19; 4F).

Because the claimant's mental impairment does not cause at least two "marked" limitations or one "extreme" limitation, the "paragraph B" criteria are not satisfied.

The undersigned has also considered whether the "paragraph C" criteria are satisfied. In this case, the evidence fails to establish the presence of the "paragraph C" criteria.

The limitations identified in the "paragraph B" criteria are not a residual functional capacity assessment but are used to rate the severity of mental impairments at steps 2 and 3 of the sequential evaluation process. The mental residual functional capacity assessment used at steps 4 and 5 of the sequential evaluation process requires a more detailed assessment of the areas of mental functioning. The following residual functional capacity assessment reflects the degree of limitation the undersigned has found in the "paragraph B" mental function analysis.

**5. After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform a full range of work at all exertional levels but with the following nonexertional limitations: The claimant is able to understand, remember and carry out routine, repetitive tasks with simple decisions and judgement, can occasionally interact with coworkers, supervisors, and the public, can adapt to occasional changes in the workplace, but cannot perform work at a production rate pace.**

In making this finding, the undersigned has 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 SSR 16-3p. The undersigned also considered the medical opinion(s) and prior administrative medical finding(s) in accordance with the requirements of 20 CFR 404.1520c.

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In considering the claimant's symptoms, the undersigned must follow a two-step process in which it must first be determined whether there is an underlying medically determinable physical or mental impairment(s)--i.e., an impairment(s) that can be shown by medically acceptable clinical or laboratory diagnostic techniques--that could reasonably be expected to produce the claimant's pain or other symptoms.

Second, once an underlying physical or mental impairment(s) that could reasonably be expected to produce the claimant's pain or other symptoms has been shown, the undersigned must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the claimant's work-related activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, the undersigned must consider other evidence in the record to determine if the claimant's symptoms limit the ability to do work-related activities.

The claimant is 42 years old with a 12th grade education, alleging disability due to PTSD (Exhibit 2E). He testified that he was fired from his last job due to difficulty with communicating with customers and coworkers. He stated he is unable to work due to difficulty getting along with coworkers, remembering, and concentrating. He reported his wife handles the finances because, if it was up to him, their utilities would be cut off. He said he would forget about bills and spend the money on something else. He testified he gets up in the morning, helps get his children ready for school, and may perform light household chores. He is able to go to the store, but gets what he needs and is right back home. He endorsed PTSD symptoms such as anger, impulsivity, hypervigilance, being easily startled, and suicidal ideations. He reported he was hospitalized for suicidal ideations while in the Army in November 2003. In 2013, he was hospitalized for suicidal ideations and in 2018, he had thoughts of suicide. He testified he has looked for work and had some phone interviews, but then received 100% un-employability from the Veteran's Administration. He contended the medication makes him drowsy. He testified that in the employment environment, he has difficulty when others do not follow the rules and are not doing the right thing. He has problems working as a team and would have issues working independently due to forgetfulness.

After careful consideration of the evidence, the undersigned finds that the claimant's medically determinable impairment could reasonably be expected to cause the alleged symptoms; however, the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely consistent with the medical evidence and other evidence in the record for the reasons explained in this decision.

As for the claimant's statements about the intensity, persistence, and limiting effects of his symptoms, they are inconsistent with a finding of disability. He complained of difficulty remembering, completing tasks, concentrating, and getting along with others (Exhibit 6E). Medical records document a diagnosis of PTSD (Exhibit 1F, p. 6). In August 2019, during individual therapy, the claimant endorsed anger and shame. Mental status examination reflected an anxious mood; however, the claimant exhibited adequate hygiene, cooperative behavior, unremarkable thought process and content, intact memory, and intact insight and judgment

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(Exhibit 2F, pp. 18-19). The following month, the claimant was reporting improvement in symptoms, less anger, being able to control his anger towards his children, less dwelling on memories, and was overall happy with his progress. His mental status was unremarkable and he exhibited a euthymic mood (Exhibit 2F, pp. 10-11). By October, he was discharged from psychological counseling (Exhibit 2F, pp. 9-10).

In March 2020, the claimant underwent a mental consultative examination by Maria Pasqualetti, Psy.D. He reported he could not keep a job, does not like people anymore, and does not like to be around people. He endorsed a depressed mood, sleep disturbance, psychomotor agitation, feelings of worthlessness, irritability, a diminished ability to think or concentrate, and suicidal ideations. He reported his suicidal ideations started with a sexual assault in 2003 and he last had suicidal ideations in 2018. He currently did not have suicidal ideations. The claimant reported he was able to handle self-care, prepare meals, wash dishes, and launder clothes; however, he needs help with using money, paying bills, and shopping for groceries. Mental status examination reflected a serious affect and mood; however, he exhibited normal speech, normal psychomotor, cooperative behavior, appropriate grooming, clear sensorium, goal directed and logical thought processes, average abstraction abilities and intelligence, good memory, normal concentration and attention, and good judgment and insight. Dr. Pasqualetti diagnosed the claimant with PTSD, Major depression, Personal history of sexual abuse, and Personal history of Military Deployment. She opined the claimant would likely have issues with his personal, social, and occupational functioning and would be unable to manage benefits (Exhibit 4F). The undersigned finds Dr. Pasqualetti's opinion not persuasive because it is not supported by the examination and not consistent with the longitudinal evidence. The medical evidence, including notes from his treating doctor, does not document problems interacting with others or managing money (Exhibits 2F-3F).

Medical records document the claimant was diagnosed with obstructive sleep apnea in 2016 after endorsing "awful" snoring, waking in the middle of the night sweating, feeling tired and sleepy in the afternoon, and reported pauses in his breathing per his wife (Exhibit 5F, pp. 57-78). The OSA is treated with a Continuous Positive Airway Pressure (CPAP) machine. Although medical records document a history of non-compliance with use of the CPAP, in March 2019 and January/April 2020, the claimant reported improved symptoms (Exhibits 2F, pp. 8-9; 3F, pp. 11-12; 3F, pp. 57-58; 5F, pp. 73-74). While the claimant has the physical impairment of OSA, no physical limitations have been assessed, but based on the record as a whole, the OSA has been factored in restricting the claimant, due to possible residual fatigue, to non-complex instructions and a non-production rate pace.

As for medical opinion(s) and prior administrative medical finding(s), the undersigned cannot defer or give any specific evidentiary weight, including controlling weight, to any prior administrative medical finding(s) or medical opinion(s), including those from medical sources. The undersigned has fully considered the medical opinions and prior administrative medical findings as follows: State agency psychologists determined the claimant was maximally able to understand, remember, and carry out detailed but not complex instructions, make decisions, attend and concentrate for extended periods, accept instructions, and respond appropriately to changes in the routine work setting (Exhibits 1A; 3A). The undersigned finds their opinion

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persuasive because it was supported by objective evidence and consistent with the longitudinal medical evidence.

However, due to anxiety, irritability, anger, impulsivity, intrusive thoughts, hypervigilance, easily startled, avoidance of activities, and difficulty concentrating (Exhibits 2F, pp. 18-21; 4F; Testimony), the undersigned finds the claimant is able to understand, remember and carry out routine, repetitive tasks with simple decisions and judgement, can occasionally interaction with coworkers, supervisors, and the public, can adapt to occasional changes in the workplace, but cannot perform work with production rate pace.

No analysis has been provided of any evidence that is inherently neither valuable nor persuasive in accordance with 20 CFR 404.1520b(c) and 416.920b(c). This includes administrative determinations by other governmental agencies, as well as statements relating to the ultimate determination of disability under the laws and regulations followed by the Social Security Administration.

Based on the foregoing, the undersigned finds the claimant has the above residual functional capacity assessment, which is supported by the clinical and laboratory findings and other evidence of record. It is reasonable to limit the claimant to simple work activity. However, the nature of his treatment, the findings made during the course of the claimant's treatment, and the claimant's own statements about his daily activities do not support a more restrictive finding. Medical records document the claimant has been diagnosed with PTSD and OSA; however, mental status examinations have been unremarkable for limitations that would prevent simple work activity with interaction and production pace restrictions. The claimant has a history of suicidal ideations, which last occurred in 2018. The claimant is able to handle self-care, care for his children, care for pets, watch television, live with others, perform household chores, go out alone, shop, handle his own medical care, follow instructions, use the internet, and handle changes in routine (Exhibit 6E; 4F; Testimony). While the claimant is certainly limited to some degree, the record does not support that he is limited to the extent alleged.

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

The undersigned finds the claimant has past relevant work as a Technical support specialist (DOT 033.162-018, Light, SVP 7), Telephone repairer, (DOT 822.281-022, Medium, SVP 7), and Precision lens grinder (DOT 716.382-018, Light, SVP 7). As required by SSR 82-62, this work was substantial gainful activity, was performed long enough for the claimant to achieve average performance, and was performed within the relevant period. With his current residual functional capacity as determined, the vocational expert responded that a hypothetical individual identical to the claimant with this residual functional capacity could not perform the claimant's past relevant work. Accordingly, the undersigned finds the claimant is unable to perform past relevant work as actually or generally performed.

**7. The claimant was born on December 4, 1978 and was 41 years old, which is defined as a younger individual age 18-49, on the alleged disability onset date (20 CFR 404.1563).**

**8. The claimant has at least a high school education (20 CFR 404.1564).**

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**9. Transferability of job skills is not material to the determination of disability because using the Medical-Vocational Rules as a framework supports a finding that the claimant is "not disabled," whether or not the claimant has transferable job skills (See SSR 82-41 and 20 CFR Part 404, Subpart P, Appendix 2).**

**10. Considering the claimant's age, education, work experience, and residual functional capacity, there are jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1569 and 404.1569(a)).**

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).

The claimant's ability to perform work at all exertional levels has been compromised by nonexertional limitations. To determine the extent to which these limitations erode the occupational base of unskilled work at all exertional levels, 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 the individual would be able to perform the requirements of representative occupations such as:

| Position | DOT Code | Exertion, Skill | National Jobs |
|---|---|---|---|
| Industrial cleaner | 381.687-018 | Medium, SVP 2 | 11,000 |
| Laborer of stores | 922.687-058 | Medium, SVP 2 | 16,000 |
| Auto detailer | 915.687-034 | Medium, SVP 2 | 60,000 |

Pursuant to SSR 00-4p, the undersigned has determined that the vocational expert's testimony is consistent with the information contained in the Dictionary of Occupational Titles (DOT), except with regard to factors that the DOT does not consider. These factors include contact and interaction with coworkers, supervisors, and the public. The VE testified that his opinion was based on his education, training, and experience.

Based on the testimony of the vocational expert, the undersigned concludes that, considering the claimant's age, education, work experience, and residual functional capacity, the claimant is capable of making a successful adjustment to other work that exists in significant numbers in the

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national economy. A finding of "not disabled" is therefore appropriate under the framework of section 204.00 in the Medical-Vocational Guidelines.

**11. The claimant has not been under a disability, as defined in the Social Security Act, from December 2, 2019, through the date of this decision (20 CFR 404.1520(g)).**

## DECISION

Based on the application for a period of disability and disability insurance benefits protectively filed on January 7, 2020, the claimant is not disabled under sections 216(i) and 223(d) of the Social Security Act.

/s/ *Rebecca B. Sartor*

Rebecca B. Sartor
Administrative Law Judge

January 19, 2021
Date

# LIST OF EXHIBITS

## Payment Documents/Decisions

| Component | No. | Description | Received | Dates | Pages |
|---|---|---|---|---|---|
| Y33 | 1A | T2 Initial DDE PRT by Ph.D. Mental RFC by Ph.D. | | 2020-04-15 | 10 |
| Y33 | 2A | Initial Disability Determination by State Agency, Title II | | 2020-04-15 | 1 |
| Y33 | 3A | T2 Reconsideration DDE PRT by M.D. Mental RFC by M.D. | | 2020-06-09 | 11 |
| Y33 | 4A | Reconsideration Disability Determination by State Agency, Title II | | 2020-06-09 | 1 |

## Jurisdictional Documents/Notices

| Component | No. | Description | Received | Dates | Pages |
|---|---|---|---|---|---|
| Y33 | 1B | T2 Initial Explanation of Determination | | 2020-04-16 | 1 |
| Y33 | 2B | T2 Notice of Disapproved Claim | | 2020-04-16 | 4 |
| Y33 | 3B | SSA-1696 - Claimant's Appointment of a Representative: Lloyd Bemis, III | | 2020-04-27 | 1 |
| Y33 | 4B | SSA-1693 - Fee Agreement for Representation before SSA: Lloyd Bemis, III | | 2020-04-27 | 1 |
| Y33 | 5B | Request for Reconsideration | | 2020-05-19 | 1 |
| Y33 | 6B | T2 Disability Reconsideration Notice | | 2020-06-11 | 3 |
| Y33 | 7B | T2 Reconsideration Explanation of Determination | | 2020-06-11 | 1 |
| Y33 | 8B | Request for Hearing by ALJ | | 2020-08-09 | 2 |

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| | | | | | |
|---|---|---|---|---|---|
| Y33 | 9B | Request for Hearing Acknowledgement Letter | | | 15 |
| Y33 | 10B | Hearing Notice | | 2020-09-25 | 25 |
| Y33 | 11B | Notice Of Hearing Reminder | | 2020-12-17 | 2 |
| Y33 | 12B | SSA-1696 - Claimant's Appointment of a Representative | | 2020-12-29 | 5 |

## Non-Disability Development

| Component | No. | Description | Received | Dates | Pages |
|---|---|---|---|---|---|
| Y33 | 1D | Application Summary for Disability Insurance Benefits | | 2020-01-10 | 2 |
| Y33 | 2D | VA Disability Rating Verification | | 2020-04-22 | 2 |
| Y33 | 3D | Detailed Earnings Query | | 2020-08-13 | 8 |
| Y33 | 4D | Certified Earnings Records | | 2020-08-13 | 2 |
| Y33 | 5D | Summary Earnings Query | | 2020-08-13 | 1 |
| Y33 | 6D | New Hire, Quarter Wage, Unemployment Query (NDNH) | | 2020-08-13 | 2 |
| Y33 | 7D | Medical Evidence of Record | | 2020-05-08 | 2 |
| Y33 | 8D | Certified Earnings Records | | 2020-12-30 | 2 |
| Y33 | 9D | Detailed Earnings Query | | 2020-12-30 | 8 |
| Y33 | 10D | Summary Earnings Query | | 2020-12-30 | 1 |
| Y33 | 11D | New Hire, Quarter Wage, Unemployment Query (NDNH) | | 2020-12-30 | 2 |

## Disability Related Development

| Component | No. | Description | Received | Source | Dates | Pages |
|---|---|---|---|---|---|---|
| Y33 | 1E | HIT Request | | Veterans Affairs | to 2020-01-13 | 1 |
| Y33 | 2E | Disability Report - Adult | | Claimant | to 2020-01-13 | 8 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Y33 | 3E | Disability Report - Field Office | | FO | to 2020-01-13 | 2 |
| Y33 | 4E | 3rd Party Function Report - Adult | | Erin Nickel (Spouse) | to 2020-02-20 | 11 |
| Y33 | 5E | Work History Report | | Claimant | to 2020-02-24 | 10 |
| Y33 | 6E | Function Report - Adult | | Claimant | to 2020-02-24 | 10 |
| Y33 | 7E | Disability Report - Field Office | | FO | to 2020-05-20 | 2 |
| Y33 | 8E | Disability Report - Appeals | | Lloyd Bemis, III (Rep) | to 2020-05-20 | 6 |
| Y33 | 9E | Disability Report - Field Office | | FO | to 2020-08-10 | 2 |
| Y33 | 10E | Disability Report - Appeals | | Lloyd Bemis, III (Rep) | to 2020-08-10 | 6 |
| Y33 | 11E | Exhibit List to Rep PH2E | | Oho Y33 | to 2020-08-13 | 11 |
| Y33 | 12E | Resume of Vocational Expert | | Calvin Turner | to 2020-12-15 | 8 |
| Y33 | 13E | Representative Correspondence | | | to 2020-12-30 | 2 |

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## Medical Records

| Component | No. | Description | Received | Source | Dates | Pages |
|---|---|---|---|---|---|---|
| Y33 | 1F | Progress Notes | | Marc Kundler, M.D. | 2018-11-26 to 2018-12-03 | 28 |
| Y33 | 2F | HIT MER | | Veterans Affairs (Va) | 2019-03-04 to 2020-01-06 | 29 |
| Y33 | 3F | Outpatient Hospital Records | | Austin Outpatient Clinic | 2018-03-23 to 2020-01-06 | 81 |
| Y33 | 4F | CE Psychology | | Maria Pasqualetti, Psy.D. | to 2020-03-23 | 6 |
| Y33 | 5F | Medical Evidence of Record | | Central Tx Vet Hcs | 2014-01-14 to 2020-04-30 | 253 |