

## 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, 2013.
2. The claimant has not engaged in substantial gainful activity since May 5, 2009, the alleged onset date (20 CFR 404.1520(b) and 404.1571 *et seq.*).
3. The claimant has the following severe impairments: chronic headaches, tinnitus, and major depressive mood disorder (20 CFR 404.1520(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 and 404.1526).

The claimant has the following degree of limitation in the broad areas of functioning set out in the disability regulations for evaluating mental disorders and in the mental disorders listings in 20 CFR, Part 404, Subpart P, Appendix 1: moderate restriction in activities of daily living, moderate difficulties in maintaining social functioning, marked difficulties in maintaining concentration, persistence or pace, and no episodes of decompensation, each of extended duration.

5. The claimant does not retain the residual functional capacity to perform even sedentary work as defined in 20 CFR 404.1567(a) on a "regular and continuing basis" for 8 hours a day, for 5 days a week, or an equivalent work schedule on a sustained basis 40 hours per week as set forth in Social Security Ruling 96-8p. Secondary to his mental disorder, he cannot perform even simple, repetitive tasks (i.e. unskilled work). It is therefore concluded that the claimant does not retain the residual functional capacity for any type of work.

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 SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and SSRs 96-2p, 96-6p and 06-3p.

On March 25, 2010, the Department of Veterans Affairs found that the claimant was an honorably discharged veteran who was permanently and totally disabled due to service connected disabilities. Findings made by the VA are not binding upon the Social Security Administration and need only to be given great weight when they are found to be consistent with

other medical evidence of record. In this case, the undersigned assigns great weight to the VA's findings as they are consistent with the overall evidence of record as set forth below.

VA records reveal that service connection for major depressive disorder with mood disorder was granted with an evaluation of 70 percent effective October 29, 2008. Their evaluation of traumatic brain injury, residuals previously evaluated as residuals of concussion syndrome with headaches, which was formerly found to be 10 percent disabling, was increased to 40 percent effective October 23, 2008. Service connection for tinnitus was also granted with an evaluation of 10 percent effective September 15, 2009. A separate 10% evaluation for chronic headaches was also assigned which was previously evaluated as residuals of concussion syndrome with headaches.

Medical evidence from the Gainesville VA Medical Center Healthcare System which includes Jacksonville Outpatient Clinic dated from August 18, 2005, through November 30, 2009, revealed that the claimant was diagnosed and treated for major depressive disorder with mood disorder. Records revealed that the claimant was prescribed Citalopram for mood-related problems which was managed by the claimant's primary care physician. Despite compliance with medication, the claimant was still have problems acting out with anger. The record shows that your current mental condition is associated with your traumatic brain injury (TBI) or residuals of concussion syndrome with headaches.

Records indicate that the claimant had a history of alcohol abuse and reported having received DUIs in the remote past. Evidence further reveals that the claimant has been clean and sober since 1996.

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 consultant's physical assessment and psychological consultants' mental assessments are given little weight because evidence received at the hearing level shows that the claimant is more limited than determined by the State agency consultants. Furthermore, the State agency consultants did not adequately consider the combined effect of the claimant's impairments.

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

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

**7. The claimant was an individual closely approaching advanced age on the established disability onset date (20 CFR 404.1563).**

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

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

**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) and 404.1566).**

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).

Even if the claimant had the residual functional capacity for the full range of sedentary work, considering the claimant's age, education, and work experience, a finding of "disabled" would be directed by Medical-Vocational Rule 201.14.

**11. The claimant has been under a disability as defined in the Social Security Act since May 5, 2009, the alleged onset date of disability (20 CFR 404.1520(g)).**

**12. The claimant's remote history of alcohol abuse is not a contributing factor material to the determination of disability (20 CFR 404.1535 and 416.935).**

### **DECISION**

Based on the application for a period of disability and disability insurance benefits filed on July 22, 2009, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act since May 5, 2009.