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DEPARTMENT OF  
HEALTH AND HUMAN SERVICES  
: Social Security Administration  
OFFICE OF HEARING8 AND APPEALS

1949  
P. REGEA  
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FOR

DECISION

XN THE CASE OF

CLAIM FOR

Transit0 B. Ybarra  
(Claimant)

Period of Disability and  
Disability Insurance Benefits

(Wage Earner)~)

525-92-8488  
(Social Security Number)

This case is before the Administrative Law Judge on a request for a hearing. The Administrative Law Judge considered all the documents identified in the record as exhibits as well as the testimony and arguments presented at the hearing. The claimant appealed from a determination that he was not entitled to, or eligible for, a period of disability and disability insurance benefits.

The general issues are whether the claimant is entitled to a period of disability and disability insurance benefits under sections 216(i) and 223 of the Social Security Act, as amended, respectively. 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 to either result in death or last for a continuous period of not less than 12 months.

The specific issues are whether the claimant was under a disability and, if so, when such disability commenced and the duration thereof; and whether the disability insured status requirements of the Act are met for the purpose of entitlement.

Regulation 404.1520 provides a five-step sequential process used in the evaluation of disability. In applying these sequential steps, the Administrative Law Judge concludes that a decision on whether the claimant is disabled can be made at step one. The evidence of record establishes that the claimant is working, that this work activity involves significant physical or mental activities and that the claimant does this work in anticipation

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of pay or profit. Therefore, this work is at such a level as to be considered substantial gainful activity. Consequently, the Administrative Law Judge finds that the claimant is not disabled within the meaning of the Social Security Act.

The application filed on February 23, 1994 alleges an inability to work since November 25, 1993 because of Psoriasis and Hepatitis C (Exhibit 9). The uncontroverted, evidence of record shows that the claimant is 55 years of age, has acquired a general equivalency diploma and has past relevant work as a heavy equipment operator (Exhibits 1,9 and 20). A review of the claimant's earnings record shows that he met the disability insured status requirement for a period of disability at all -times pertinent-to-this decision (Exhibit 8).

The claimant testified at the hearing that he returned to work at his former job on November 22, 1994 and is still working. His earnings average over \$1,400 per month. He has no impairment-related work expenses and he receives no subsidy from his employer. In accordance with the adjudicatory criteria found in 20 CFR 404.1574 and Social Security Ruling 83-33, the Administrative Law Judge finds that the claimant's work activity constitutes substantial gainful activity as defined in 20 CFR 404.1572. Moreover, no closed period of disability can be found as the claimant engaged in substantial gainful activity less than twelve consecutive months after the date he alleged that his disability began.

#### 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 November 25, 1993, the date that the claimant stated he became unable to work, and continues to meet them through the date of this decision.
2. The claimant is working as a heavyequipment operator, and, has been since November 22, 1994, and is earning an average of over \$1,400 per month (20 CFR 404.1574).
3. The claimant's work activity involves significant physical or mental activities for pay or profit (20 CFR 404.1573).

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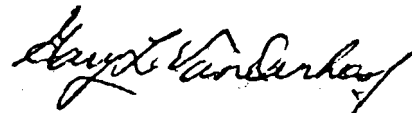
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4. The claimant's work activity constitutes substantial gainful activity within the meaning of the regulations (20 CFR 404.1572).
5. The claimant has not been unable to engage in substantial gainful activity for any continuous period of at least 12 months.
6. The claimant was not under a "disability" as defined in the Social Security Act, at any time through the date of this decision (20 CFR 404.1520(b)).

DECISION

It is the decision of the Administrative Law Judge that, based on the application filed on February 23, 1994, the claimant is not entitled to a period of disability or disability insurance benefits under sections 216(i) and 223, respectively, of the Social Security Act.



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Gary L. Vanderhoof  
Administrative Law Judge

**JUL241995**

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Date

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