

CASE NO. 16-_____

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

RICHARD DEPALMA,

Plaintiff-Appellant,

v.

Case No.: 14-cv-817-jdp

**CAROLYN W. COLVIN,
Acting Commissioner of Social Security,**

**Hon. James D. Peterson
United State District Judge**

Defendant-Appellee

**Appeal from a Judgment from
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

DOCKETING STATEMENT

Dana W. Duncan
Attorney for the Plaintiff-Appellant
Duncan Disability Law, S.C.
State Bar I.D. No. 01008917
3930 8th Street South, Suite 201
Wisconsin Rapids, WI 54494
(715) 423-4000

Plaintiff-Appellant, Richard DePalma, by his attorney, Dana W. Duncan, **Duncan Disability Law, S.C.**, submits this docketing statement alleging the following:

1. The District Court's jurisdiction is contained in an appeal of an adverse decision of the Commissioner of Social Security under §216(i) and 223 of the Social Security Act, 42 U.S.C. §416(i) and 423(d).
2. The judgment to be reviewed is an order and judgment by the Honorable James D. Peterson, District Judge, dated November 25, 2015 and entered on November 25, 2015, affirming the decision of the Defendant-Appellant, Carolyn W. Colvin, Acting Commissioner of Social Security, denying the plaintiff-appellant's application for a period of disability and disability insurance benefits under 42 U.S.C. §§216(i) and 223. Dkt. 19, 20.
3. This docketing statement is submitted pursuant to Circuit Rule 3(c) and Circuit Rule 28(a).
4. A Notice of Appeal was filed on or about the 4th day of January, 2016.
5. The Notice of Appeal from the order of the Honorable James D. Peterson is an appeal from a final judgment adjudicating all of the claims with respect to all parties.
6. As procedural history:
 - A. Pursuant to 42 U.S.C. §405(g), Plaintiff, DePalma, sought judicial review of the final administrative decision of the Commissioner of Social Security (SSA or Commissioner). The matter was filed and submitted on briefs in May 12, 2015, July 8, 2015, and August 7, 2015.
 - B. The matter was based upon an applications filed on December 6, 2011. R79.
 - C. The application was denied on February 1, 2012 and the reconsideration denied on September 10, 2012. R84-87, 89-92.

- D. On August 27, 2013, ALJ Thomas J. Sanzi issued a nine-page decision. R71-79.
- E. The ALJ found that DePalma had not engaged in substantial gainful activity since December 6, 2011, the application date, and had the following severe impairments: bilateral knee impairment status post November 2010 left knee replacement and November 2011, right knee meniscus repair; left shoulder impairment; degenerative disc disease of the lumbar spine. R73.
- F. She found that DePalma did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1. R74.
- G. In determining the residual functional capacity, the ALJ found that DePalma could “perform a range of light work . . . except he (was) limited to no more than occasional crouching, kneeling, crawling, and climbing of ladders, ropes or scaffolds and he (was) limited to no more than frequent climbing of stairs and ramps or reaching overhead with his left arm. He (was) limited to jobs that can be performed while using a hand held assistive device required at all times when standing.” R74.
- H. Turning to steps four and five, the ALJ found that, first, DePalma was unable to return to his past relevant work as a carpenter or as a maintenance worker both at the medium exertional level. The vocational expert testified that the requirements of the claimant's past relevant work exceeded his current residual functional capacity. He also found that DePalma was born on February 5, 1967, and was 44 years old, which was defined as a younger individual age 18-49, on the date the application was filed. DePalma had at least a high school education and was able to communicate in English. R78

- I. Transferability of job skills was not material to the determination of disability because using the Medical-Vocational Rules as a framework supported a finding that the claimant was "not disabled," whether or not the claimant had transferable job skills. R78.
- J. Considering DePalma's age, education, work experience, and residual functional capacity, there were jobs that exist in significant numbers in the national economy that he could perform. Noting that the non-exertional limitations would erode the full-range of light work, the ALJ asked the VE a hypothetical question which encompassed the RFC. The ALJ noted, "The vocational expert testified that given all of these factors the individual would be able to perform the requirements of representative occupations at the light exertional level such as info clerk, with 1,727 jobs in the state economy; shipping clerk, with 1,799 jobs in the state economy; and survey worker, with 1,601 jobs in the state economy."
- K. A finding of "not disabled" was therefore appropriate. The ALJ also noted, "I did propose a sedentary residual functional capacity to the vocational expert. He testified that jobs existed in numbers that I find to be significant."
- L. Accordingly, DePalma had not been under a disability, as defined in the Social Security Act, from December 6, 2011, through the date of the decision. R18. Based on the application for supplemental security income filed on December 6, 2011, the DePalma was not disabled under section 1614(a)(3)(A) of the Social Security Act. R18.
- M. DePalma filed in Federal District Court, Western District of Wisconsin on November 26, 2014. Dkt. No. 1.
- N. The ALJ erred in failing to given the opinion of the treating physician proper weight and failing to lay a foundation for the vocational testimony.

- O. Following the submission of briefs, the Honorable James D. Peterson, United States District Judge, issued an Opinion and Order on November 25, 2015 upholding the decision the Commissioner's final decision.

Dated this 24th day of January, 2016.

Respectfully submitted,

Duncan Disability Law, S.C.
Attorneys for the Plaintiff-Appellant

/s/ Dana W. Duncan

Dana W. Duncan
State Bar I.D. No. 01008917
3930 8th Street South, Suite 201
Wisconsin Rapids, WI 54494
(715) 423-4000