

CASE NO. 16-\_\_\_\_\_

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UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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BETTY BROWN,

Plaintiff-Appellant,

v.

Case No.: 14-CV-894

CAROLYN W. COLVIN,  
Acting Commissioner of Social Security,

Hon. Barbara B. Crabb  
United State District Judge

Defendant-Appellee

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

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DOCKETING STATEMENT

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Plaintiff-Appellant, Betty Brown, by her 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, Barbara B. Crabb, District Judge, dated November 17, 2015 and entered on November 17, 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. 13, 14.
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 11<sup>th</sup> day of January, 2016.
5. The Notice of Appeal from the order of the Honorable Barbara B. Crabb 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, Brown, 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 15, 2015, July 13, 2015 and August 13, 2015.
  - B. The matter was based upon an applications filed on March 11, 2007 for Disability Insurance Benefits and March 12, 2007 for Supplemental Security Income. R113-121.

- C. The applications were denied on May 27, 2007 and the reconsideration denied on July 25, 2007. R62-63, 65-66.
- D. On August 28, 2014, ALJ John H. Pleuss issued a nineteen-page decision.
- E. The ALJ found that Brown met the insured status requirements of the Social Security Act through September 30, 2008, had not engaged in substantial gainful activity since January 24, 2007, the alleged onset date, and had the following severe impairments: back impairment, obesity, and migraine headaches. R288.
- F. Brown 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. R288. The ALJ indicated that he considered Listing 1.04 and rejected Dr. Shannon's opinion that the Listing was met. R288. He also indicated that he considered Listing 11.03 for Brown's migraine headaches. R289.
- G. Turning to the residual functional capacity, the ALJ found that Brown was able to perform less than the full range of sedentary work. R290. She was able to lift and carry no more than 10 pounds. She was precluded from any crawling, kneeling, or climbing of ropes, ladders, or scaffolds. She was precluded from more than occasional stooping, bending, crouching, twisting, or climbing of ramps or stairs. She required a sit/stand option so that she need not sit for more than 30 minutes at a time or stand for more than 30 minutes at a time. R290. She was precluded from more than frequent reaching in any direction with either upper extremity. She was precluded from work at unprotected heights or around dangerous machinery. She was likely to be off task about 5 to 10 percent of the workday, in addition to regularly scheduled breaks from work. R290.
- H. Turning to steps four and five, the ALJ found that Brown was unable to perform any past relevant work. The ALJ noted, "The vocational expert testified that the claimant has past work as follows: cook, which is medium semi-skilled (SVP3) work. The claimant's residual functional capacity for less than the full range of sedentary work precludes her return to her past relevant work." R301.

- I. The ALJ also found that Brown was born on July 14, 1984, was 22 years old, which was defined as a younger individual age 18-44, on the alleged disability onset date, had a limited education and was able to communicate in English.
- J. The ALJ found that “There (were) jobs that exist in significant numbers in the national economy that (Brown could) perform. Noting that Brown’s “ability to perform all or substantially all of the requirements of this level of work (would be) impeded by additional limitations,” the ALJ 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.
- K. The vocational expert testified that, given all of these factors, the individual would be able to perform representative occupations such as:

Assembler (e.g., DOT 739.687-182), with 1,750 jobs in the Wisconsin economy and 65,000 jobs in the national economy;

Order Clerk (e.g., DOT 209.507-014), with 760 jobs in the Wisconsin economy and 79,300 jobs in the national economy;

Office Helper (e.g., DOT 249.587-018), with 1,660 jobs in the Wisconsin economy and 99,950 jobs in the national economy;

Video Surveillance Monitor (e.g., DOT 379.367-010), with 921 jobs in the Wisconsin economy and 16,736 jobs in the national economy;

Greeter/Attendant (e.g. DOT 342.667-014), with 906 sedentary jobs in the Wisconsin economy and 1,756 sedentary jobs in the national economy, and

Telephone Solicitor (call center) (e.g. DOT 299.357-014), with 712 jobs in the Wisconsin economy.

R302.

- L. The ALJ noted that a finding of “not disabled” was therefore appropriate. R302. Accordingly, the application for Disability Insurance Benefits and Supplemental Security Income were denied. R302.
- M. Accordingly, Brown had not been under a disability, as defined in the Social Security Act, from July 1, 2007, through the date of the decision. 303. Based on the application for a period of disability and disability insurance benefits filed on July 1, 2010 Brown was not disabled under sections 216(i) and 223(d) of the Social Security Act and based on the application for supplemental security income filed on July 1, 2010, the Brown was not disabled under section 1614(a)(3)(A) of the Social Security Act. R303.
- N. Brown filed in Federal District Court, Western District of Wisconsin on December 24, 2012. Dkt. No. 1.
- O. The ALJ erred in failing to give adequately consider Brown’s obesity, the opinion of the treating physician proper weight and failing to provide a proper foundation for the vocational testimony in accordance with law.
- P. Following the submission of briefs, the Honorable Barbara B. Crabb, United States District Judge, issued an Opinion and Order on June 2, 2014 upholding the decision the Commissioner’s final decision.

Dated this 11<sup>th</sup> day of January, 2016.

Respectfully submitted,

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

/s/ Dana W. Duncan

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