



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. R. v. Minister of Employment and Social Development*, 2016 SSTGDIS 35

Tribunal File Number: GP-13-806

BETWEEN:

K. R.

Appellant

and

**Minister of Employment and Social Development
(formerly Minister of Human Resources and Skills Development)**

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Virginia Saunders

HEARD ON: April 22, 2016

DATE OF DECISION: May 13, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

K. R.	Appellant
Michelle Bissenden	Appellant's Representative
G. J.	Observer
A. S.	Observer
A. C.	Interpreter

INTRODUCTION

[1] In January 2006 the Respondent Minister determined that the Appellant was disabled pursuant to the *Canada Pension Plan* (CPP). The Appellant was deemed to have become disabled in June 2004, and he began receiving a CPP disability pension effective October 2004. On August 21, 2012, the Respondent determined that the Appellant ceased to be disabled in January 2011 and cancelled the Appellant's pension as of January 31, 2011. He was assessed an overpayment for amounts received from February 2011 to August 2012, inclusive. The Respondent maintained this decision on reconsideration. The Appellant appealed the reconsideration decision to the Tribunal on May 8, 2013.

[2] The appeal was scheduled to be heard by videoconference for the following reasons:

- a) More than one party will attend the hearing.
- b) Videoconferencing is available within a reasonable distance of the area where the Appellant lives.
- c) The issues under appeal are complex.

[3] The hearing was adjourned and rescheduled twice: first at the Appellant's request, and then due to technical difficulties. To avoid further delay, the Tribunal heard the appeal in person.

THE LAW

[4] Subsection 70(1) of the CPP provides that a disability pension ceases to be payable for the month in which a beneficiary ceases to be disabled.

[5] Paragraph 42(2)(a) of the CPP defines disability as a physical or mental disability that is severe and prolonged. A person is considered to have a severe disability if he or she is incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death.

[6] Section 70.1 of the *Canada Pension Plan Regulations* (CPP Regulations) states that if a person who has been determined to be disabled returns to work, he must inform the Minister of Employment and Social Development without delay.

ISSUE

[7] The Appellant agreed that he ceased to be disabled in November 2011. The issue on this appeal is whether he ceased to be disabled earlier than that date, and in particular in January 2011 as submitted by the Respondent.

EVIDENCE

[8] When the Appellant applied for CPP disability benefits in September 2005 he stated that he had been employed as a "fixer" since 1992, and that he had been unable to work since April 2003 because of depression and because he collapsed often. He listed functional limitations with standing, walking, lifting, remembering, concentration and sleeping.

[9] The disability application contained the following declaration, signed by the Appellant:

I agree to notify the Canada Pension Plan of any changes that may affect my eligibility for benefits. This includes: an improvement in my medical condition; a return to work

(full, part-time, volunteer, or trial period); attendance at school or university; trade or technical training; or any rehabilitation.

[10] A medical report dated September 5, 2005, by the Appellant's family doctor, Dr. Gill, stated that the Appellant had major depressive disorder; possible bipolar spectrum disorder; panic disorder and agoraphobia; chronic generalized anxiety disorder; and diabetes. Dr. Gill stated that the Appellant had experienced a sudden onset of multiple somatic complaints accompanied by marked anxiety symptoms. Initially a physical cause was suspected and appropriate investigations were undertaken. Treatment with numerous anti-depressants, anti-psychotics and lithium had all failed. Dr. Gill stated the Appellant had seen psychiatrist Dr. Rana with only minimal improvement over the past two years. Dr. Gill felt the Appellant's prognosis was very poor.

[11] Additional medical information was supplied by Dr. Rana, and by another psychiatrist, Dr. Zoffman, whom the Appellant saw for an independent psychiatric evaluation in 2005:

- a) Dr. Zoffman's report of April 4, 2005, indicated that the Appellant described his workplace as dangerous; that he worried about safety; that he had stressful shift rotations; and that a unionization drive that he supported made him fear for his job due to threats from his superiors. He began to feel weak and disoriented and eventually stopped working. When he saw Dr. Zoffman he had low energy and appetite, insomnia, poor concentration, and sadness. He described chronic generalized anxiety, chronic muscle tension, continual worried rumination and agoraphobia. At the time he was able to help his wife get his children ready for school, and he would walk them to school and then pick them up in the afternoon. He would lie in bed and worry. He would occasionally help with vacuuming, and might visit a friend who lived nearby. He might work in the garden. His activities were limited by fatigue and "tiredness in his legs." He wanted to return to work and was feeling fairly severe financial pressure.
- b) Dr. Zoffman stated "[a]t the present time I am of the opinion that the limitations that [the Appellant] endures are related to the ongoing symptoms of depression and generalized anxiety with panic attacks. He has poor concentration and attention." She recommended avoidance of rotating day and night shifts or any attempt to engage in his current work

schedule. She recommended increased structure, activation, cognitive behavioural therapy and further pharmacological intervention. She stated that once the Appellant achieved greater resolution of symptoms he would be a candidate for a vocational program leading to graduated reintegration to work, but noted that this would require significant accommodation.

- c) Dr. Rana's report of December 1, 2005, stated that the Appellant had been under her care since February 2004. He had been off work since April 2003 after having panic attacks. She stated that after her initial assessment her impression was that the Appellant had major depressive disorder, generalized anxiety disorder and panic disorder without agoraphobia. In spite of trying different medications, in June 2005 he continued to have residual symptoms of depression including sleep disturbance, low energy level, somatic preoccupation and impaired concentration, "due to which most likely he will not be able to perform any job at this time." She stated that the Appellant had been depressed for more than two years and his prognosis for recovery was guarded. She stated that he needed to be in remission before considering a graduated return to work.

[12] On the basis of the above information the Respondent concluded that the Appellant was disabled as defined in the CPP, and informed him by letter dated January 16, 2006. The letter advised the Appellant to inform CPP if he returned to work and had earnings of \$4200 in 2006.

[13] The Respondent stated that the Appellant was sent annual newsletters beginning in February 2007 that advised him that he was to report changes in his situation to CPP. An example of these was provided by the Respondent. It is dated February 2012 and stated: "You may earn up to \$5000 in 2012 before you need to contact us (gross income before taxes whether you were employed or self-employed)" and "Be sure to tell Service Canada if: your work-related earnings are more than \$5,000 in 2012 (even if previously declared to another organization such as the Canada Revenue Agency or a social assistance office); your return to work was unsuccessful; [or] your medical condition has improved."

[14] At the hearing the Appellant testified that before he became disabled he worked in a factory, repairing and maintaining machinery. He testified that after stopping that job he did not work again until 2010 as discussed below. Since 2004 he has seen his psychiatrist Dr. Rana

regularly. Eventually they began discussing the possibility of him returning to some type of employment. Dr. Rana told him that he should not sit at home, but she cautioned that if he returned to his previous line of work he would likely become more depressed. She encouraged the Appellant to think of something he might be able to do out of his home.

[15] The Appellant testified that he thought he might be able to drive a taxi, and decided to try that. By January 2010 he had obtained a TaxiHost Pro certification, which involved a three-day course. He continued to have anxiety and panic attacks, but in October 2010 he started to work part-time driving a cab for Bel-Air Taxi. He increased the number of shifts he worked so that by November he was taking a cab out regularly as if he was working full-time.

[16] The Appellant testified that he leased a taxi for \$100 for each shift. This amount was taken out of the fares collected, as was the cost of gas. He testified that although Bel-Air records show that he had a taxi out for shifts of eight hours or more, these did not reflect that he was actually working. He was taking medication and his mood was low, with anxiety and nervousness. He felt that something bad was going to happen, and he felt that his body was cold. He testified that often he felt that had to stop working, in which case he would take the taxi back to Bel-Air and go home. He would be recorded as continuing to be on shift until the next driver logged in.

[17] In December 2010 the Respondent initiated a review of the Appellant's file. On December 2, 2010, he was sent a Disability Reassessment Questionnaire to complete, with information requested from October 1, 2004 to present. The covering letter advised the Appellant that he was obliged to report to CPP if he returned to work and had total earnings of \$4700 or more in 2010, or if his medical condition improved.

[18] The Appellant returned the completed questionnaire that month. He testified that he had relied on his 17-year-old daughter to complete the questionnaire for him, and that she translated the questions for him because sometimes he has difficulty understanding English. His daughter then wrote down his answers. In the questionnaire he stated that at present he had "major depression, very panicky, unable to concentrate, unable to be around a crowd, feeling hopeless and helpless, trouble focusing, making decisions." He stated that his condition remained unchanged during the period under review; that he had not developed any new medical

problems; that he continued to see Dr. Gill and Dr. Rana for treatment; and that he had not engaged in job training, a return to school, a rehabilitation program, or any work activity during the period under review.

[19] Dr. Gill completed a Reassessment Medical report dated December 12, 2010, in which he stated that the Appellant had panic disorder and major depressive disorder with anxiety. He was unable to leave home unaccompanied. He had decreased memory, concentration, fatigue, emotional lability and depressed mood. Dr. Gill had last seen the Appellant on that date. He stated that there was no change in the Appellant's condition and his prognosis continued to be very poor.

[20] The Appellant testified that in October, November and December 2010 he usually managed shifts of four to seven hours in the taxi before having to leave. He was not sure if he ever worked a 12 hour shift in this period. He testified that he did not state that he was working when he completed the questionnaire in December 2010, because he did not consider that he was in fact working as opposed to attempting to work. He did not report his earnings to CPP because he did not know that he was supposed to. He understood that he had to report his income to Revenue Canada.

[21] The Appellant testified that during this period he continued to have regular symptoms of anxiety and depression. After three months of trying to work he felt that he could not continue. He testified that if he worked at all in January 2011 it was only for two or three shifts, and he stopped completely after that. He continued to have an identification number at Bel-Air Taxi, which he testified was known and used by other drivers if they wanted to work more than their usual 12 hour shift.

[22] The Appellant continued to see Dr. Rana every six weeks, and to take medication for his symptoms. Dr. Rana encouraged him to continue trying to work, but he felt unable to do so.

[23] In June and August 2011 the Respondent contacted the Appellant as it had received information that he was working as a taxi driver. He was asked to provide taxi logs, bank statements and other information.

[24] The Appellant responded to questions in writing on September 9, 2011, stating that he did not work from 2004 to 2009 and that he had no earnings in those years. He stated that he began driving a taxi for Bel-Air Taxi on October 4, 2010, and that in 2010 he worked “starting part time sometime one day or three day or 5 day on call and my health condition.” He stated that he leased a taxi for 12 hours per day but did not always drive the full 12 hours because of his health. He stated that he had not taken a training course prior to obtaining his Class 4 Driver’s License (which documentation in the file indicated he had obtained in 1994). He provided the cab numbers and the names of the owners of the taxis he drove, and stated that he picked up and dropped the taxis off at the Bel-Air office. He stated that he had not reported taxi courses, work and earnings to CPP because he had been reporting these to Dr. Rana who had encouraged him in his work attempts. He stated that he did not know he was to report to CPP, and that he had not yet filed a 2010 income tax return, which would show his income as \$2870 for that year.

[25] The Appellant provided the Respondent with a list of hours worked and total earnings from October to December 2010. These showed that he worked seven full-time shifts over three weeks in October; and 19 and 21 full-time shifts in November and December respectively. He noted earnings on each work day that added up to \$1165.1 in October; \$3551.6 in November and \$3867.20 in December. At the hearing the Appellant testified that these amounts were the total fares earned that day, and that he took home a portion of these after deducting the cost of gas and the \$100.00 per day lease.

[26] H. D., the manager of Bel-Air Taxi Inc., completed an Employer Questionnaire for the Respondent on July 6, 2011. He stated that the Appellant began working for the business in October 2010 and was still employed as a “lease operator can driver – self-employed.” He worked part-time, irregular or casual hours. His hourly rate, the number of hours worked, and his total earnings since 2004 were unknown.

[27] The Appellant testified that he returned to work driving a taxi in November 2011, gradually increasing his hours to full-time. At the same time he was able to reduce his use of anti-depressants and he is no longer taking them. He continues to take anxiety medication, as he still gets nervous when he is working and outside his home.

[28] In a letter dated February 15, 2012, Dr. Rana stated that the Appellant had been in her care since February 2004; that that he suffered from major depressive disorder and panic disorder, with a partial response to medication; and that “[h]e continues to have significant anxiety and panic attacks whenever under stress.” Dr. Rana stated that in August 2009 she recommended a graduated return to work, but that the Appellant continued to have physical and psychiatric issues. When the Appellant advised her in October 2010 that he would like to drive a cab and that his name was on a waiting list, “I encouraged him to do so because having goals in life and being productive has a positive effect on symptoms of depression and anxiety.” Dr. Rana stated that the Appellant told him in August 2011 that he started driving a cab part-time in January of 2011. Dr. Rana encouraged the Appellant to gradually increase his hours depending on his mental state, and she understood that the Appellant had been driving a cab full time since November 2011.

[29] In February, March and April 2012, the Appellant replied to further questioning by the Respondent. In addition to providing answers similar to what he provided in September 2011, the Appellant stated he went to the RCMP to apply for a taxi/chauffeur permit in 2008, and was told that he first had to take a mandatory TaxiHost program. He began this program in November 2008 but did not complete the second level. He was informed several months later that the two levels had been combined and he completed the program in January 2010, after which he returned to the RCMP and applied for the permit. He was not required to submit medical reports to the RCMP. He stated that he first started driving a taxi on October 10, 2010. He stated that he earned \$2550.00 driving a taxi in 2011; and that he owned 50% of a taxicab which he purchased on November 15, 2011. The Appellant testified that he no longer returned cabs to the Bel-Air office because his co-owner lived near him and it was convenient for both of them for the cab to be returned to his partner’s home rather than to the Bel-Air office.

[30] The Respondent requested lease records, dispatch records, meter records, passenger logs and debit and credit card transactions for the cabs the Appellant stated he drove, for the period January 2008 to December 2011. These were provided by Bel-Air Taxi in March 2012. Credit card records revealed transactions processed under the Appellant’s driver identification number in March through December 2011. Mr. V., the accountant for Bel-Air who provided the reports stated “The only other record we have for him is the dispatch record for the period from

November 25, 2011 to December 2011.” The Appellant testified that credit card and debit charges made under his identification number before November 2011 were a result of other drivers using his identification number, and were not an indication that he was working in that time.

[31] In a letter dated August 21, 2012, the Respondent told the Appellant that the information in his file indicated that he began working as a taxi driver in January 2011 and continued to work full time. It stated: “As you returned to regular employment and have the support from your specialist, you are no longer deemed disabled in accordance with Canada Pension Plan legislation.” He was advised that his benefit stopped as of January 31, 2011, and he was assessed an overpayment of approximately \$25,000 for amounts received from February 2011 through August 2012.

[32] In response, the Appellant’s daughter wrote a letter for him stating that he only worked a few days in January 2011, and that his income in that year was less than \$4800. He repeated that he began working full time in November 2011.

[33] Earnings details provided by the Respondent indicate that the Appellant reported \$2870.00 in gross and net business income in 2010, and \$2407.00 gross business income with no net business income in 2011. In 2012 and 2013 his gross business income was above \$27,000.

[34] The Respondent submitted the results of an internet search indicating RCMP advice that in order for a person to obtain a chauffeur’s permit “[m]atters under the mental health act will be reviewed on a case-by-case basis supported by medical reports/recommendations from the applicant’s caregiver.”

SUBMISSIONS

[35] The Appellant submitted that he ceased to be disabled no earlier than November 2011 because up until that time his condition continued to be severe and prolonged.

[36] The Appellant agreed that he ceased to be disabled as of November 2011, and agreed that his disability benefits should end in that month.

[37] The Respondent submitted that the Appellant ceased to be disabled in January 2011 because:

- a) He was able to work on a part-time but reasonably regular basis from October to November 2011, after which he was able to go to full-time hours, and by February 2011 a finding of a severe and prolonged disability was no longer supported by the evidence;
- b) Dr. Rana indicated that she had encouraged the Appellant to put his name on a wait list to drive a cab in October 2010, and he would have had to provide supportive medical reports in in order to do that;
- c) Dr. Gill's statement that the Appellant was unable to leave the house unaccompanied in December 2010 is not supported by the evidence, as the Appellant indicated that he had returned to part-time work;
- d) Information provided by the Appellant indicated that he worked almost full-time hours from October to December 2010, and his gross earnings reflect that even if he was unable to drive a cab for the full shift, he was still earning well above what the Respondent considers to be substantially gainful; and
- e) The Appellant was advised numerous times since he was granted disability benefits that he had to report work activity, and he failed to do so.

ANALYSIS

[38] Paragraph 70(1)(a) of the CPP provides that a disability pension ceases to be payable with the payment for the month in which the beneficiary ceases to be disabled.

[39] The onus is on the Respondent to prove on a balance of probabilities that the Appellant ceased to be disabled because the requirements of paragraph 42(2)(a) were no longer met at the time his benefits were terminated (*Atkinson v. Canada (Attorney General)* 2014 FCA 187).

[40] The Respondent's decision to award a disability pension and to pay benefits up to and including January 2011 must be dealt with as having been correct. The Respondent must show that the conditions upon which disability payments were made had improved such that the

Appellant no longer qualified for a disability pension (*Boudreau v. MHRD 2000 CP 11626*; *Milton v. MHRD 2003 CP 18657*).

Credibility

[41] The Tribunal found the Appellant to be a credible witness. He clarified and elaborated on written statements in the file. He explained inconsistencies. He stated that he could not remember certain things when it might have been to his advantage to do so. The Respondent did not attend the hearing and did not cross-examine him.

[42] The Respondent noted that the Appellant had an obligation to inform CPP of any return to full or part-time work, and that he was sent several different communications over the years that reminded him of this. The Tribunal accepts that the Appellant received these, and notes that regardless of whether or not he was aware of the obligation stated in them, he was required by section 70.1 of the CPP Regulations to report his return to work.

[43] The Appellant accepts that the Appellant did not read these warnings, that he was unaware of his obligation to report a return to work, and that he to a certain extent relied on his children to help him with paperwork. Given his health and his poor command of English, the Tribunal finds this reasonable. In these circumstances, the Tribunal finds that the Appellant's failure to report his work activity in October 2010 and later does not suggest an attempt to deceive or withhold information, and does not reflect on his credibility.

Did the Appellant's diagnosis or prognosis change by January 2011?

[44] The evidence of the Appellant's diagnosis in January 2011 is contained in Dr. Gill's report of December 2010, and Dr. Rana's of February 2012.

[45] Dr. Gill stated in December 2010 that the Appellant had panic disorder and major depressive disorder with anxiety. He also stated that the Appellant was not capable of leaving the house by himself, when in fact the Appellant was leaving his house regularly to at least take a taxi out for several hours. This inconsistency suggests that Dr. Gill's opinion was not based entirely on a careful assessment of the Appellant's condition at that time. It does not mean that

Dr. Gill's conclusion that the Appellant had panic disorder and major depressive order with anxiety was wrong; it means that the Tribunal cannot place any weight on the report.

[46] However, the onus is on the Respondent to prove that the Appellant's condition had improved. While Dr. Gill's report of December 2010 is not reliable evidence of the Appellant's diagnosis at that time, the Respondent has not provided any other evidence to indicate that the Appellant's diagnosis had changed. Just over one year later, Dr. Rana stated in February 2012 that the Appellant continued to struggle with major depressive disorder and panic disorder.

[47] While the Appellant admitted that Dr. Rana encouraged him to try to work and expected that he would feel better if he did, there is no evidence that there was a firm expectation of significant improvement within a reasonable time frame. The Respondent has provided no evidence that the Appellant's prognosis had changed by January 2011.

[48] The Tribunal finds that in January 2011 the Appellant continued to have a diagnosis of major depressive disorder and panic disorder, and that the poor or guarded prognosis he was given for improvement in 2005 had not changed.

How much did the Appellant work between January 2011 and November 2011?

[49] Regardless of the diagnosis and prognosis, evidence that the Appellant was in fact working regularly by January 2011 might indicate that his symptoms and limitations had improved to the extent that he was no longer disabled as that term is defined in the CPP.

[50] The Appellant admitted that he began to drive a taxi in October 2010. He stated that although he managed to take a cab out regularly between October and December 2010, he often did not complete the full shift. He testified that he found this work difficult; that he often had to go home early; that by January 2011 he essentially stopped working; that if he worked at all in that month it was minimal; and that he did not work at all after that until November 2011.

[51] The Tribunal considered the evidence that suggests that the Appellant was in fact working as a cab driver between January and the end of October 2011:

- a) The statement by Mr. H. D. that the Appellant continued to be employed for Bel-Air Taxi in July 2011. This not inconsistent with the Appellant's testimony. It is apparent

that the Appellant would have been allowed to drive for Bel-Air after December 2010 had he been able to. He continued to have an identification number there, and in that sense he remained an employee. This statement is not evidence that the Appellant was actually working at any given time.

- b) In her letter of February 15, 2012, Dr. Rana stated that the Appellant told her in August 2011 that he began driving a cab part-time in January of that year. The Tribunal finds that this statement was the result of an error or misunderstanding by either the Appellant or by Dr. Rana. It is inconsistent with the documentation that the Appellant had obtained and submitted to the Respondent in that same time frame, indicating that he began driving a cab part-time in October 2010, not January 2011. It is inconsistent with the Appellant's recollection at the hearing, and with previous statements made by his daughter, that by January 2011 he had ceased his part-time work attempt because he could no longer manage, and that he worked minimally in that month and not at all in the ensuing nine months.
- c) Credit card records from Bel-Air show charges to the Appellant's identification number between March and October 2011. The Appellant has provided a plausible explanation for these, which the Tribunal accepts. The Tribunal notes that Bel-Air did not have dispatch records for the Appellant before November 2011 and this is consistent with his testimony.

[52] There are no direct statements by the Appellant – either in the documentation or in his testimony – that he worked regularly between January and November 2011. The Tribunal accepts the Appellant's evidence and finds that he performed little work, if any, in January 2011, and that after that he did not work at all until November 2011.

Was the Appellant's work activity in and after October 2010 substantially gainful?

[53] The Respondent submitted that the Appellant's gross earnings from October to December 2010 were substantially gainful.

[54] The evidence as to what income the Appellant actually earned from driving a cab between October and December 2010 is ambiguous. He reported gross and net business income

of \$2870, for three months of work. His taxi records indicate that he collected \$8583.90 in fares over 47 shifts. The Tribunal accepts the Appellant's evidence that he had to pay \$100 in leasing costs for each shift, which brings the amount he actually earned for himself down to below \$3883.90. The Appellant testified that he had to pay for gas as well, but provided no evidence as to what amount that might have been. Thus, the Tribunal is left to consider evidence that in a roughly three month period of driving a taxi, the Appellant's actual earnings were either \$2870 or a number somewhat higher than that but below \$3800.

[55] The Respondent submitted that CPP has established that a person earns at a substantially gainful rate if he earns \$934.17. The CPP Regulations were amended in 2014. Section 68.1 now sets out a formula for determining in specific dollar terms whether an amount is substantially gainful. It is unclear if the figure submitted by the Respondent is based on the CPP Regulations. In any event, that provision only applies to departmental decisions made after June 18, 2014, and so does not apply to the Appellant. Policy guidelines by which the Respondent decided the issue of substantially gainful are not binding on the Tribunal. In deciding whether the Appellant's remuneration from the business was substantially gainful, the Tribunal must determine whether "the remuneration for the services rendered was not merely nominal, token or illusory compensation but rather compensation which reflects an appropriate reward for the nature of the work performed" (*Boles v. Minister of Employment and Immigration* (1994), CP 2794 (PAB)).

[56] Using the Appellant's stated earnings of \$2870; he earned an average of just over \$60 per shift. Using the higher figure of his cab receipts minus the leasing cost, he would have earned about \$80 per shift. Considering that his shifts were intended to last for between eight to twelve hours, the amount the Appellant was actually able to earn as a wage for driving was roughly equivalent to the BC minimum wage at the time. Arguably this was an appropriate reward for services rendered during a particular shift, and in that limited sense can be viewed as substantially gainful.

Other evidence that the Appellant was capable regularly of pursuing any substantially gainful occupation by January 2011

[57] The issue is not resolved by determining when the Appellant began to work as a taxi driver or what he earned when he was actually working. Although the Tribunal has found that the Appellant was not working to any significant extent by January 2011, it may still find that he ceased to be disabled if it is satisfied on other evidence that he was regularly capable of pursuing any substantially gainful occupation by January 2011. As previously noted, the onus is on the Respondent to provide such evidence.

[58] The Respondent submitted that in order for the Appellant to be put on a wait list for a job as a cab driver, he would have had to provide supportive medical reports. This information was apparently obtained from an RCMP web-site. It is unclear what information such a report might have to contain. There is no evidence that the Appellant was required to provide such a report, and he denied ever being asked to do so. There are no medical reports before the Tribunal that suggest the Appellant was medically cleared to work before November 2011.

[59] Dr. Rana's encouragement of a return to work beginning in August 2009 does not mean that she thought the Appellant had improved to the extent that he could pursue substantially gainful employment. She stated that she encouraged the Appellant to take steps that might have a positive effect on his symptoms, but she also cautioned that he had to keep his stress level minimized to avoid a relapse. Dr. Rana had identified taxi driving as something the Appellant might conceivably be able to do, but she was also concerned about his exposure to stressful situations. There is no evidence that Dr. Rana or anyone else thought that other job possibilities might be suitable to the Appellant's limitations.

[60] The evidence in the file indicates that the Appellant was making genuine efforts to return to the workforce as early as 2008, when he inquired about obtaining a taxi permit, and that he pursued this possibility over several years under the guidance of Dr. Rana. He managed a fairly sustained effort to work in late 2010, but this proved to be too much for him and he could not continue with it. He performed little or no work after that, until November 2011.

[61] In the 13 months between October 2010 and November 2011, the Appellant's earnings from employment were \$2800 to \$3800 at the most. When viewed over the course of a year, his ability to work was not regular, nor was the employment substantially gainful. The fact that he was able to sustain what work he did do for just three months leads the Tribunal to conclude that this was a failed work attempt rather than a return to substantially gainful employment.

[62] The Respondent has not shown any change in the Appellant's condition to support a conclusion that he ceased to be disabled until November 2011, when the Appellant returned to full-time work which he continues to do.

CONCLUSION

[63] The Tribunal finds that the Appellant ceased to be disabled in November 2011. Pursuant to subsection 70(1) of the CPP, his disability pension ceased to be payable to him with the payment for that month.

[64] The appeal is allowed.

Virginia Saunders
Member, General Division - Income Security