



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. P. v. Minister of Employment and Social Development*, 2016 SSTGDIS 81

Tribunal File Number: GP-15-3274

BETWEEN:

B. P.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Adam Picotte

HEARD ON: October 7, 2016

DATE OF DECISION: October 7, 2016

REASONS AND DECISION

PRELIMINARY ISSUES

[1] The matter proceeded on an expedited basis in accordance with the request of the Appellant.

INTRODUCTION

[2] The Appellant's application for a *Canada Pension Plan* (CPP) disability pension was date stamped by the Respondent on November 17, 2014. The Respondent allowed the application and set the date of disability as June 2014 with an effective date of payment of October 2014. The Appellant requested a reconsideration of this decision as he believed his date of disability ought to be June 2013 and therefore his payments should start in October 2013. The Respondent denied this request on the basis that the Appellant worked and had gainful employment from January 2014 to June 2014. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[3] This appeal was scheduled to be heard by Teleconference for the following reasons:

- a) The Appellant will be the only party attending the hearing.
- b) The issues under appeal are not complex.
- c) This method of proceeding respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

[4] However, the Appellant did not attend the teleconference. The Tribunal is satisfied that the Appellant was provided with advance notice of the scheduled teleconference and chose not to attend the hearing.

[5] An October 3, 2016 telephone conversation log detailed that a Case Management Officer at the Tribunal contacted the Appellant and provided him with the call in information and further advised him to call into the teleconference 10 minutes prior to start time. An email indicating this same information as also send to the Appellant.

[6] On October 5, 2016 the Appellant emailed the Tribunal and acknowledged that he had received the Tribunal's email and letter advising of the teleconference and asking that the matter be handled by the Tribunal on his behalf.

[7] On October 7, 2016 the Tribunal contacted the Appellant an hour prior to the hearing to remind him of the requirement that he attend the teleconference to provide his testimony. The Appellant did not answer the phone call nor did he respond to the voicemail left for him.

[8] The Tribunal called into the teleconference and waiting approximately 30 minutes past the start time for the hearing for the Appellant to call in. The Appellant did not call into the hearing.

[9] The Tribunal therefore finds that the Appellant had notice of the hearing date and time and chose not to attend. The Tribunal is also satisfied that it can make a fair and reasoned decision of the claim on the basis of the file materials.

THE LAW

[10] Paragraph 44(1)(b) of the CPP sets out the eligibility requirements for the CPP disability pension. To qualify for the disability pension, an applicant must:

- a) be under 65 years of age;
- b) not be in receipt of the CPP retirement pension;
- c) be disabled; and
- d) have made valid contributions to the CPP for not less than the minimum qualifying period (MQP).

[11] 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.

ISSUE

[12] The only issue before the Tribunal is when the Appellant developed a disability within the meaning of the CPP.

EVIDENCE

Questionnaire for disability benefits

[13] The Appellant submitted a questionnaire in support of his disability benefit application on November 17, 2014.

[14] The Appellant detailed that he had worked most recently for EECOL Electric from January 2014 to June 2014 in the sales department. The Appellant was let go from his employment. Prior to this he had been self-employed as a realtor from January 2004 to June 2013. He detailed that he stopped working in this position due to depression.

[15] The Appellant detailed in his questionnaire that he could no longer work because of his medication condition as of June 2013. He detailed that the illnesses that impaired him from working consisted of the following: depression, anxiety, and post-traumatic stress disorder.

Additional evidence

[16] The Appellant's record of earnings demonstrates that in 2014 he had earnings of \$26,250.00 from January to June.

[17] In a CPP disability benefit employer questionnaire E. F., HR Manager of EECOL Electric Corp detailed that the Appellant had been employed from January 20, 2014 to June 9, 2014. During his employment the Appellant worked 40 hours a week and earning \$2700 semi-monthly. During this time the Appellant was employed full time.

[18] In a record of employment dated June 10, 2014 detailed that for the tax year 2014 the Appellant had total insurable earnings from EECOL Electric Corp in the amount of \$30,370.17.

SUBMISSIONS

[19] The Appellant submitted that he qualified for a disability pension in June 2013 because he should never have attempted to return to work in January 2014. He believed that he was disabled by June 2013.

[20] The Respondent submitted that the Appellant qualified for a disability pension in June 2014 because he was able to maintain gainful employment from January 2014 until June 2014.

ANALYSIS

[21] The Appellant must prove on a balance of probabilities that he had a severe and prolonged disability on or before prior to June 2014.

Severe

[22] For the reasons that follow the Tribunal finds that the Appellant did not develop a severe and prolonged disability prior to June 2014.

[23] The measure of whether a disability is “severe” is not whether the person suffers from severe impairments, but whether his or her disability prevents him or her from earning a living. The determination of the severity of the disability is not premised upon a person’s inability to perform his or her regular job, but rather on his or her inability to perform any work (*Klabouch v. Canada (Social Development)*, 2008 FCA 33).

[24] The evidence supports a finding that the Appellant did not become disabled within the meaning of the CPP until June 2014. The evidence from his employer as well as his record of earnings and his record of employment all demonstrate gainful employment from January 2014 to June 2014. During this time period he earned approximately \$30,000.00. Moreover, he was employed full-time and worked 40 hours a week.

[25] As set out in *Klabouch* the test for severe does not concern the Appellant’s inability to perform his or her regular job, but rather his or her inability to perform any work. The evidence demonstrates that up until June 2014 the Appellant could perform work in a sales department, which he did.

[26] As a result the Tribunal finds that the Appellant become disabled in June 2014.

CONCLUSION

[27] The appeal is dismissed.

Adam Picotte
Member, General Division - Income Security