



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. Y. v. Minister of Employment and Social Development*, 2017 SSTGDIS 19

Tribunal File Number: GP-15-2172

BETWEEN:

**R. Y.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Jeffrey Steinberg

HEARD ON: February 2, 2017

DATE OF DECISION: February 2, 2017

## **REASONS AND DECISION**

### **PRELIMINARY ISSUES**

[1] This matter was originally scheduled for hearing on November 28, 2016. Immediately prior to the hearing, the Appellant requested an adjournment because he was not feeling well and due to the fact his mother was in critical condition and had appointments which he had to attend. He indicated that hopefully, the matter could be rescheduled in the upcoming future. The Tribunal granted the adjournment and rescheduled the matter to today's date.

[2] Notwithstanding receipt of the revised Notice of Hearing (the Notice) scheduling today's hearing, the Appellant did not appear before the Tribunal at the appointed time. A Tribunal operations staff member attempted to contact the Appellant on January 24, 2017 to remind him of the upcoming hearing date, however the Appellant's voice mail system had not yet been set up. The Tribunal Member waited for one-half hour past the appointed start time of the hearing, however the Appellant did not appear.

[3] Subsection 12(1) of the Social Security Tribunal Regulations (the "Regulations") provides that if a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received notice of the hearing. In this case, the Tribunal is satisfied that the Appellant received the Notice

[4] Subsection 12(2) of the Regulations states that the Tribunal must proceed in a party's absence if the Tribunal previously granted an adjournment or postponement at the request of the party and the Tribunal is satisfied that the party received notice of the hearing.

[5] As the Tribunal previously granted an adjournment at the Appellant's request and is satisfied that the Appellant received the Notice, the Tribunal Member proceeded to decide this appeal in the absence of the Appellant.

## **INTRODUCTION**

[6] The Appellant applied for a CPP disability pension on May 21, 2014. The Respondent denied the application at the initial and reconsideration levels and the Appellant appealed to the Social Security Tribunal (the Tribunal).

## **THE LAW**

[7] 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).

[8] The calculation of the MQP is important because a person must establish a severe and prolonged disability on or before the end of the MQP.

[9] 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**

[10] The Tribunal finds that the MQP date is December 31, 2015.

[11] In this case, the Tribunal must decide if it is more likely than not that the Appellant had a severe and prolonged disability on or before the MQP

## **EVIDENCE**

### **Documentary Evidence**

[12] In his Questionnaire dated May 14, 2014, the Appellant stated he completed Grade 9 (finished high school in Iraq). He obtained his forklift license certificate in 2011. He worked between September 20, 2010 and April 5, 2013 in general labour. He stopped working due to a slip and fall on December 27, 2012. He had his own business between May 1, 2005 and May 31, 2009 which went bankrupt. He states he could no longer work due to his medical condition as of December 27, 2012. He received regular EI benefits between May 2013 and August 5, 2013. He described depression, anxiety, chronic pain in lower back, severe headaches and resulting pain into the neck. He further described sleep disturbance, inability to sleep, extreme stress from anxiety and loud noises, debilitating headaches, difficulty concentrating due to anxiety, depression, headaches and chronic pain; difficulty sitting, standing, walking and lifting due to chronic pain in the lower back. As of December 27, 2012, he could no longer run, go on long walks or go to the gym because of chronic pain in the lower back, depression, anxiety and severe headaches. He states he can sit/stand for 15 minutes due to chronic lower back pain. He can walk 5-10 minutes for a very short distance due to chronic low back pain. He can lift/carry 5-6 lbs. for a short distance. He has difficulty/limitations reaching and bending due to lower back pain. He further has difficulty showering, dressing and performing household maintenance activities due to chronic lower pain and neck pain. He has difficulty with long conversations which cause headaches. He has difficulty concentrating on conversations and word finding due to depression, anxiety, headaches and chronic pain. He has short term memory issues. He has significant sleep disturbance due to anxiety, headaches and chronic pain in the lower back. He gets approximately 3 hours sleep at night. He can drive a car for a short distance only because of pain in the lower back. He is prescribed Rabeprazole, Citalopram and Diclofenac. He received chiropractic for chronic pain in the lower back resulting in pain in the neck. GD2-68

[13] In his Notice of Appeal, the Appellant states he still has severe back pain and psychological issues, which have not allowed him to return to work. He still sees doctors and has provided a note which shows he suffers from chronic severe anxiety, depression and low

back pain. He has been scheduled to see a psychiatrist and will have an assessment completed in relation to his physical health.

[14] On July 12, 2014 Dr. Mazaheri, family physician, reported in his CPP Medical Report that he knew the Appellant for five months and started treating him for his main medical condition in November 2013. He diagnosed 1. Depression/anxiety; 2. Low back strain; and 3. Chronic headaches. He noted the Appellant was admitted to William Osler Hospital on December 27, 2012 for a work related lower back injury accident. He stated the physical exam was unremarkable. The Appellant complained of chronic headaches, low back pain and anxiety associated with anger and depression. He cannot concentrate, has low self-esteem and lack of motivation. He says he cannot concentrate or work and has a sleeping problem. He is prescribed Diclofenac, Celexa and Lyrica. Medical/pharmacotherapy is moderately effective. The prognosis is unknown. GD2-59

[15] A December 27, 2012 lumbar spine x-ray did not reveal any abnormal findings. GD2-60

[16] The Appellant filed the following clinical notes of Dr. Goldstein, chiropractor, X Poly Clinic:

- December 18, 2013: complaining of pain in low back. Signs of grimacing standing. Difficulty sleeping. Mood issues. L4-S1 hamstring right.
- January 2, 2014: complaining of pain in low back, difficulty with extension, standing, walking, lifting or bending. Mood/sleep disturbance.
- February 21, 2014: ongoing pain low back, difficulty sleeping and ongoing mood disturbance;
- March 15, 2014: temporary relief – difficulty walking, standing, bending or lifting.
- March 21, 2014: not sleeping, increased stress, mood disturbances;
- March 31, 2014: pain ongoing low back, headaches;
- April 8, 2014: not sleeping well, increased stress, mood disturbances;

- April 15, 2014: low back pain with extension, walking and standing. Sleep disturbances.
- April 24, 2014: constant pain and dysfunction;
- May 5, 2014: complaining of low back, cannot walk or stand for extended periods. Cannot lift or bend.
- May 14, 2014: difficulty sleeping due to pain/stress low back. Headaches.
- May 23, 2014: constant pain, difficulty with ADL's, increased stress.
- June 2, 2014: constant pain low back, base of neck, upper back stiffness;
- June 11, 2014: difficulty with ADLs. Ongoing pain. Temporary relief.
- June 30, 2014: not sleeping, high stress, pain low back, cannot lift or bend without pain.
- July 22, 2014: temporary relief with treatment
- July 28, 2014: difficulty sleeping, very stressed, mood issues, pain low back – complaining lower neck, upper back.
- August 12, 2014: pain ongoing, difficulty lifting, bending.
- September 3, 2014: difficulty with lifting. Cannot sleep. Mood issues. Pain low back.
- September 29, 2014: ongoing low back pain, neck stiffness. Difficulty walking/standing. ADLs limited.

[17] In a June 18, 2015 clinical note, Dr. Mazaheri, family physician, stated the Appellant suffered from chronic severe anxiety, depression and low back pain for about two years. He was still under treatment with medications and physiotherapy. His symptoms had not subsided satisfactorily. He was scheduled to see a psychiatrist to help his anxiety with optimization of his medication. GD1-5

## **SUBMISSIONS**

[18] The Appellant did not provide any written submissions.

[19] The Respondent submitted that the Appellant does not qualify for a disability pension because:

- a) Dr. Mazaheri stated in his July 12, 2014 report that the Appellant's physical exam was unremarkable. He noted that treatment was with medication which was moderately effective.
- b) While he cites low back pain and has been diagnosed with low back strain, there is no evidence to substantiate a severely disability back condition precluding work. An x-ray of the lumbar spine is completely normal and his physical examination findings are unremarkable. While he underwent chiropractic treatment, he has not been referred to an orthopaedic or neurology specialist as would be expected with a severely disabling back condition. He cites back pain and has been prescribed anti-inflammatory medication but has not been prescribed any analgesic medication.
- c) He has been diagnosed with chronic headaches but there has been no evidence to substantiate their severity. He does not appear to be on medication for his headaches and has not been referred for assessment or treatment by a specialist. Diagnostic testing or clinical examination findings have not been provided to suggest severe pathology or impairment.
- d) He is diagnosed with depression and anxiety. The family physician notes in June 2015 that he was referred to a psychiatrist. There have been no medical reports provided from a psychiatrist or any mental health specialist. While treated with a single antidepressant medication, there is no indication he has required any co-morbid treatment. There have been no mental status examination findings to substantiate the severity of this condition.

e) He was only 39 when he applied for disability benefits. As he is approximately 26 years from the standard age of retirement, retraining for more suitable work remains a reasonable option.

## **ANALYSIS**

[20] The Appellant must prove on a balance of probabilities that he had a severe and prolonged disability on or before the MQP.

### **Severe and Prolonged**

[21] The Tribunal cannot be satisfied based on the existing record and absent clarifying testimony from the Appellant to fill in the gaps in the documentary record, that his condition was both severe and prolonged at the MQP.

[22] Although the medical record does set out medical findings relating to the Appellant's physical and mental condition, there exists a dearth of specialist consultations, investigative reports and clinical findings.

[23] Although the Appellant filed clinical notes of Dr. Goldstein, chiropractor, from the X Poly Clinic, it is unclear why these notes stop in September 2014 well before the MQP date; whether the Appellant received additional treatment at the X Poly Clinic; and if so, with what result.

[24] Although Dr. Mazaheri, family physician, set out in a very brief note dated June 18, 2015 that the Appellant suffered from chronic severe anxiety, depression and low back pain; was still under treatment with medications and physiotherapy; that his symptoms had not subsided satisfactorily; and that he was scheduled to see a psychiatrist, this report raises many unanswered questions. For example, did the Appellant see a psychiatrist? If so, when and for how long? What were the findings? Was treatment initiated? If so, with what result? If he has not yet seen a psychiatrist, why not? Is he on a waiting list? Alternatively, did the Appellant fail to comply with this treatment recommendation which explains the absence of any psychiatric reports? Absent evidence from the Appellant on this point and optimally, a psychiatric report commenting on the severity, duration and prognosis of the Appellant's mental status, the



Tribunal cannot be satisfied on a balance of probabilities that the Appellant's mental disability was both severe and prolonged at the MQP.

[25] In terms of the back pain referred to by Dr. Mazaheri, as noted above, it is unclear why, if the Appellant continued to suffer from significant back pain, that the clinical notes from Dr. Goldstein stopped in September 2014. This raises the question whether the Appellant was compliant with ongoing treatment, which may explain the absence of further reports. Alternatively if he was compliant, the Appellant did not appear to testify as to what additional measures he pursued to manage his low back pain and with what result.

[26] The Tribunal further accepts the observation of the Respondent in its Submission that if the Appellant had a severely disabling back condition, it would be expected that he would have been referred to an orthopedic or neurology specialist. Were such referrals made? Are they pending? The Appellant was not present to answer these questions.

[27] In terms of the Appellant's chronic headaches, the Tribunal also notes and accepts as valid the Respondent's observation that the Appellant does not appear to be on medication for his headaches and has not been referred for assessment or treatment by a specialist. Absent clarifying evidence from the Appellant concerning his headaches, efforts made to manage them and the results, the Tribunal cannot be satisfied that this condition contributed to or resulted in a severe and prolonged disability at the MQP.

[28] The Appellant has failed to satisfy his onus and persuade the Tribunal that his disability was both severe and prolonged at the MQP.

## **CONCLUSION**

[29] The appeal is dismissed.

Jeffrey Steinberg  
Member, General Division - Income Security