



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. S. v. Minister of Employment and Social Development*, 2017 SSTGDIS 133

Tribunal File Number: GP-17-415

BETWEEN:

**D. S.**

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: Jackie Laidlaw

HEARD ON: September 5, 2017

DATE OF DECISION: September 19, 2017

## REASONS AND DECISION

### OVERVIEW

[1] The Respondent received the Appellant's application for a *Canada Pension Plan* (CPP) disability pension on March 8, 2016. The Appellant claimed that he was disabled because of a heart attack in 2008, PTSD and depression. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[2] To be eligible for a CPP disability pension, the Appellant must meet the requirements that are set out in the CPP. More specifically, the Appellant must be found disabled as defined in the CPP on or before the end of the minimum qualifying period (MQP). The calculation of the MQP is based on the Appellant's contributions to the CPP. The Tribunal finds the Appellant's MQP to be December 31, 2019. However, as he is in receipt of a CPP retirement benefit as of February 1, 2017, he must be found disabled the month prior to receipt of a CPP retirement benefit, therefore as of January 2017.

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

- a) The Appellant will be the only party attending the hearing.
- b) Videoconferencing is not available within a reasonable distance of the area where the Appellant lives
- c) The issues under appeal are not complex.
- d) There are gaps in the information in the file and/or a need for clarification.
- e) The issue is not complex and a teleconference is applicable.

[4] The following people attended the hearing:

- a) D. S., Appellant
- b) B. H., Observer

[5] The Tribunal has decided that the Appellant is not eligible for a CPP disability pension for the reasons set out below.

## **PRELIMINARY ISSUES**

### *Late Appeal*

[6] On May 31, 2017 the Tribunal determined the Appellant filed his notice of appeal within 90 days.

### *Retirement Benefit Cancellation Entitlement*

[7] The Appellant has been in receipt of a CPP retirement benefit since February 1, 2017. He applied for a CPP disability benefit on March 8, 2016 prior to receipt of the retirement benefit. He is entitled to cancel his CPP retirement benefit in favour of a CPP disability benefit if he is found eligible.

### *Adjournment*

[8] At the time of the hearing the observer was present and noted that the Appellant had to leave that day for a job. He would not be available to attend the hearing.

[9] The Tribunal member adjourned the hearing with the agreement of the Appellant to Tuesday September 5 at 10:00 am.

### *Representative*

[10] The observer had intentions to be the representative, however, the Tribunal never received a signed authorization from the Appellant.

[11] The observer did not have any testimony prepared as a witness.

[12] At the hearing the Tribunal Member made an oral determination to have the representative present as an observer and support for the Appellant. The observer was sworn in nonetheless.

## **EVIDENCE**

*Oral Testimony*

[13] The Appellant completed Grade 10. He took some mining training. He is fluent in the English language and speaks a little German.

[14] He worked as a miner for over 30 years. The last five years he has worked as a bulldozer (dozer) operator.

[15] In 2008 he had a heart attack. He has a pacemaker and a stint. He sees Dr. Marban, the cardiologist once a year now. He takes medications for his heart and he has been told to exercise and eat healthy foods.

[16] He suffers from Raynaud's Syndrome which makes it impossible for him to work in the winter as his hands go white. He is not getting any treatment for his hands but states he may need surgery in the future as he also has problems with his elbows and carpal tunnel.

[17] He did not have any income in 2011 or 2012 as he was getting dizzy spells, felt pain and physically it was hard to get up to work. He got over the feeling and forced himself to do work to make ends meet.

[18] He has been going to numerous doctors over the years for different work related injuries. Mainly the doctors have done nothing for him and have told him to stay off work. He tries to get some exercise.

[19] In 2016 he was diagnosed by Dr. Villeda, a family doctor for three years, and Dr. Carter, a psychiatrist, with post-traumatic stress disorder (PTSD). The doctors wanted to give him some pills but he chose to use cannabis instead.

[20] He finds the cannabis helps take his mind off things and takes pain away. It works. He has not been using it quite a year, but does use it daily.

[21] His doctor never told him to get psychiatric treatments.

[22] The Appellant always worked hard physical labour and now he cannot. He was brought up on a farm and now he is unable to do any hard labour.

[23] He is working seasonally as a “dozer” and has worked for the same company at the same job for a number of years.

[24] He stated that he just sits in the bulldozer and works the controls. He is currently working 8 or 12 hour days, depending on the weather, five days a week.

[25] He makes around \$800 a week, depending on how long the season will last. Usually he makes around \$20,000 for the season.

[26] His contracts start in May and stop when the weather freezes. He has to quit then as he cannot work the winters due to his Raynaud’s Syndrome. He then goes on Employment Insurance (EI) for a few months until he starts work again in the spring.

[27] He stated he made double his income in 2016 because there was more work, and he worked more hours. He did try that year to work winters but found he could not.

[28] Working the bulldozer is painful on his hands. His older injuries cause pain in his arms, legs, neck and lower back. He lives with it daily. The marijuana helps, which he only takes after work. It also helps him sleep.

[29] Despite his pain, he stated he has to work or he ‘would not be here’.

### ***Documentary Evidence***

#### *Questionnaire*

[30] Received March 8, 2016 shows the Appellant completed Grade 10 and received modular training on October 6, 1981 from mining school and a miner certificate on December 1, 1982. He works seasonally 10 to 12 hours a day from May to October as a Dozer Loader, operator for Bestland Excavation. He worked from May 30, 2013 until December 10, 2015. He stopped work because it was seasonal.

[31] He received regular EI benefits from January 5, 2016 until April 14, 2016.

[32] He has been unable to work as a miner as of August 1, 2008 due to a heart attack. The drilling job would shake his pacemaker off working properly. His hands and feet are freezing in

the cold wet climates underground. He does not have the same power or air to do anything physical. His right knee and hip are sore from a mining accident in 1986.

[33] Since his heart attack he has only done a bit of yard work.

[34] He can stand for 2 to 3 hours and walk two miles or for 2 hours.

[35] His family doctor is Dr. Sara Birnie since January 2016. Dr. Philip Carter is a doctor he saw about depression from 2012 until 2015. Dr. Harpreet Aujla is another physician.

[36] Medications are: Telmisartan 40 mg daily; Acetylsalicylic 81 mg daily; Atorvastatin 80 mg daily; Ezetimibe 10 mg daily; and Vitamins B12 and D daily.

[37] He notes a mining accident in 1986 where he fell in the mine. He had a number of WCB claims over the years mining in Northwest Territories, Ontario, Manitoba and Saskatchewan. He had a heart attack in 2008 with a pacemaker and stint put in. He has had periodic checks for Raynaud's disease, which he still has but no recent diagnosis. He has had many traumatic experiencing including retrieving bodies from mines and putting them in body bags.

[38] He is short on concentration, depressed, lacks interest in any activities or public outings.

#### *Medical Report*

[39] Dated June 13, 2016 and signed by Sara Birnie, nurse practitioner and co-signed by Dr. Dan Hunt who did not examine the Appellant. Sara Birnie has known the Appellant since December 2015. The diagnosis is heart attack on June 9, 2008 with stent, pacemaker and current investigations on multiple stressors causing possible PTSD and major depressive disorder. The significant history for PTSD is that the Appellant worked in mines and witnessed many traumatic and threatening circumstances. He lost many friend/coworkers as a result of work related incidents.

[40] Ms. Birnie is not aware of any hospitalizations in the past two years.

[41] The physical examination showed he has depression since the heart attack with poor sleep, nightmares of mining accidents, deaths and falls. He is abusing alcohol. He has suicidal

thoughts of shooting himself. He was dressed appropriately, good hygiene, appropriate eye contact and conversation. He becomes teary when talking about PTSD symptoms and depression.

[42] He has been referred to see Dr. Carter, a psychiatrist on June 2016 for PTSD and MDD. He is followed by his cardiologist and goes to a pacemaker clinic.

[43] Medications for his heart are: Telmisartan 40 mg daily; ASA 81 mg daily; Lipitor 80 mg daily and Ezetrol 10 mg daily.

[44] The prognosis is his heart disease is stable. PTSD and depression prognosis pending the psychiatry assessment and treatment.

#### *Psychological*

[45] An initial assessment with Dr. Meghan Carter, Psychiatrist on May 20, 2016 notes the Appellant is single, lives alone, no children, never married and works as a bulldozer operator during the summer months and is unemployed in the winter. His mental health trouble started in 2000 when he was working as a miner. He began experiencing the onset of nightmares regarding horrific events he experienced, and had terminal insomnia. He did not seem to meet full PTSD criteria, continued to work and did not experience any avoidance symptoms.

[46] In 2008 he had a heart attack and was off work. That was when he engaged in avoidance behaviours, avoid places and people that would trigger flashbacks. He returned to work a year later. In 2008 he was laid off from his job at the mine and experienced financial difficulties.

[47] Due to his sleep disturbances from the PTSD after 2008 he began to self-medicate with alcohol and cannabis. He has unsuccessfully tried to cut down. He has been charged twice with impaired driving and lost his license in the past year for a year.

[48] At the same time he became depressed with thoughts of suicide. He never experienced any psychotic symptoms or manic symptoms. He has never had a panic attack. He has never been on any psychotropic medication nor sought any assistance for his mental health.

[49] He also has Raynaud's Syndrome which limits him from working in the winter. He is on a low dose of Prednisone for this.

[50] The prognosis was PTSD, chronic with delayed onset; Depressive Disorder, not otherwise specified – differential diagnosis major depressive episode, chronic vs. alcohol induced mood disorder with depressive features; alcohol use disorder; and cannabis use disorder.

[51] The recommendations were to provide him with ample psycho-education regarding risks and benefits of psychotropics in PTSD, but he was quite reluctant to take medication. Prazosin was suggested nightly as well as Quetiapine to provide some sedation. It was recommended he connect with Community Mental Health Intake for a treatment plan that would target his substance abuse. It was also suggested he open a WCB claim given he has PTSD symptoms clearly due to work-related incidences.

[52] Dr. Carter did not intend to follow-up with the Appellant.

#### *Other Documents*

[53] A record of earnings shows the Appellant made below the yearly minimum income in 2009; \$7,226 in 2010; \$19,577 in 2013; \$17,974 in 2014; \$17,365 in 2015 and \$30,435 in 2016.

[54] On October 14, 2016 B. H., the observer acting as a representative spoke with S. Rivard, the medical adjudicator. She noted that the Appellant works seasonally driving the dozer, working four to five days a week for 8 to 10 hours a day. The work is good therapy for him and his employer is aware of his issues and accommodating him. He would be worse if he was sitting at home. He lives alone and she is worried about him when he will be off work in the winter. He is supposed to have a follow up with the psychiatrist but does not have an appointment yet. He opened a WCB claim and applied for a Disability Tax Credit. She stated he cannot work in the winter due to his "white hand syndrome". She stated he may harm himself if the CPP decision is to deny his claim and was quite worried about him.

[55] On June 21, 2017 the observer, B. H., acting as a representative had a telephone conversation with Lynn Ohlson, medical adjudicator. She stated the Appellant is not coping well with the stress of the appeal. He did return to his dozer job this spring, working seasonally at the



same job. He operates the bulldozer and does not get off the machine and perform any type of physical work. This was accommodated work from his employer.

## **SUBMISSIONS**

[56] The Appellant submitted that he qualifies for a disability pension because:

- a) He is unable to work in the winter due to Raynaud's Syndrome.
- b) He has had a heart attack and is suffering from PTSD.

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

- a) The information shows the Appellant continues to work within his limitations on a seasonal basis and his earning in 2016 were above the substantially gainful benchmark.

## **ANALYSIS**

### **Test for a Disability Pension**

[58] The Appellant must prove on a balance of probabilities, or that it is more likely than not, that he was disabled as defined in the CPP on or before the end of the MQP.

[59] 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 MQP.

[60] 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.

### **Minimum Qualifying Period**

[61] The Tribunal finds that the MQP is December 31, 2019. As he has been in receipt of a CPP retirement benefit since February 2017 his MQP is then January, 2017.

### **Severe**

[62] The Appellant suffered a heart attack in 2008 and there is no indication he has not recovered with the help of a stint and a pacemaker. He is still under the care of the cardiologist for an annual follow up.

[63] The heart attack has lessened his ability to work at hard manual labour, such as mining, however he has managed to find suitable employment working a bulldozer.

[64] The Appellant is suffering from PTSD and depression. He has sought counselling for his condition and is continuing to get psychological help.

[65] It is his prerogative to decide not to take prescription medication. However, he has shown he is trying to find the right medication, and it would appear the cannabis has been helpful with his psychological issues as well as his sleep.

[66] The Appellant has testified that he not only needs to work for financial reasons, but also as a form of therapy.

[67] The observer, B. H., also explained to the medical adjudicator that his work was a form of therapy.

[68] The Tribunal does not dispute that he is suffering from PTSD and some depression and recognizes that he is trying to manage his conditions through marijuana, treatment and work.

[69] The Appellant is unable to work in the winter due to his Raynaud's Syndrome. The Tribunal accepts this is reasonable given his age, the manual labour jobs and the northern climate.

[70] However, he has continued to make a substantially gainful income seasonally working a bulldozer.

[71] Section 68.1 of the *CPP Regulations* states that “substantially gainful”, in respect of an occupation, describes an occupation that provides a salary or wages equal to or greater than the maximum annual amount a person could receive as a disability pension.

[72] In 2016 the maximum annual disability pension was \$15,489.72. The Appellant made \$30,435.00 in 2016. He has stated he will make roughly \$20,000 a year seasonally. This is verified by his record of earnings.

[73] 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).

[74] The Tribunal accepts that the Appellant is suffering from PTSD caused by his previous job as a miner. Ironically it is new work which has helped to treat his condition and keep his mind off his stress disorder. Therefore he is capable of working with his condition. More importantly he has stated he needs to work to help treat his condition.

[75] While the Tribunal is sympathetic to the Appellant’s disability, he has shown he is capable of making a substantially gainful income on a regular basis.

[76] The Tribunal finds the Appellant has failed to prove a severe disability that renders him incapable regularly of pursuing any substantially gainful occupation.

### **Prolonged**

[77] As the Tribunal found that the disability was not severe, it is not necessary to make a finding on the prolonged criterion.

**CONCLUSION**

[78] The appeal is dismissed.

Jackie Laidlaw  
Member, General Division - Income Security