



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. N. v. Minister of Employment and Social Development*, 2017 SSTGDIS 157

Tribunal File Number: GP-16-2588

BETWEEN:

R. N.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Anne S. Clark

HEARD ON: September 29, 2017

DATE OF DECISION: October 17, 2017

REASONS AND DECISION

OVERVIEW

[1] The Respondent received the Appellant's application for a *Canada Pension Plan* (CPP) disability pension on September 14, 2015. The Appellant claimed that he was disabled because injuries he sustained in a motor vehicle collision (MVC) make him unable to work. 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. I find the Appellant's MQP ended on December 31, 2011.

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

- a) There are gaps in the information in the file and/or a need for clarification.
- b) 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] The Appellant attended the hearing.

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

EVIDENCE

[6] The Appellant was 41 years old at the end of his MQP. He completed grade 12 and a motor vehicle/mechanical diploma. The Appellant testified that he worked as a labourer until January 17, 2012 when he was injured in a motor vehicle collision (MVC). The Appellant's injuries included damage to his left peroneal nerve causing pain and functional limitations in his

left leg, knee and ankle. He also has ongoing pain in his neck and shoulder from damage he sustained in the MVC.

[7] In 2010 the Appellant injured his back at work. He testified that he had a very bad back strain from which he recovered completely. He was medically cleared to return to work and was getting ready to go back to work in Alberta.

[8] On January 17, 2012, the Appellant was involved in the MVC where he sustained injuries to his left leg and neck. His left peroneal nerve was damaged and he required decompression surgery. His condition did not improve and he was not able to return to work as planned. Following his injury and surgery the Appellant received physiotherapy and nerve blocks to address his ongoing symptoms.

[9] Since the injury in 2012 the Appellant developed a bulging disc and arthritis in his neck. He continues to have pain and numbness in his left ankle and foot. His leg “gives out” and he has trouble walking on uneven ground. He has fallen twice in the past year and is now having pain in his right leg. He understands this is caused by overuse and is not unexpected given the damage to his left leg.

[10] The Appellant has pain and numbness in his arms. He believes these symptoms are also from injuries he sustained in the MVC. He has difficulty sleeping and cannot stand for prolonged periods. He struggles with some of his basic personal needs. He can no longer run, play ball, or golf. His pain and physical limitations also make him unable to play with his young children.

[11] The Appellant testified that the back strain he experienced in 2010 was completely resolved and his health was “great”. His oral and written evidence was that he was able to work, and planned to return to work, until he was injured in the MVC on January 17, 2012.

[12] Dr. Mark Sampson was the Appellant’s Family Physician and reported in May 2015 (GD2-38). Dr. Sampson confirmed the Appellant experienced an injury to his left peroneal nerve and would likely have pain in his leg for the rest of his life. Dr. Margaret Fraser reported in April 2015 (GD7-3) that the Appellant was unable to work due to injuries he sustained in the MVC.

[13] The medical evidence confirms the Appellant had left lumbar nerve blocks in 2014 (GD7-7 to 9); physiotherapy following the decompression surgery (GD7-10) and saw Dr. Fraser for ongoing pain in his knee, ankle, leg and shoulder (GD7-11). Diagnostic imaging in June 2015 confirmed findings in his cervical spine (GD7-13). The findings are described in part as “minimal”, “questionable”, and “moderate”. The findings do not identify how long the changes existed or the impact they would likely have on the Appellant’s ability to work.

SUBMISSIONS

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

- a) pain and physical limitations cause by injuries he sustained in January 2012 make him unable to work;
- b) it is unfair to deny his benefits since his injuries occurred only 17 days after the end of his MQP; and
- c) he lives in a region where low earnings from seasonal work is the “way of life” and work that he could do is not available.

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

- a) the evidence does not support a finding that the Appellant’s disability began on or before the end of his MQP, December 31, 2011.

ANALYSIS

Test for a Disability Pension

[16] 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 December 31, 2011 which is the end of the MQP.

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

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

[18] 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

[19] To be entitled to a disability pension the Appellant must demonstrate that he has a condition which renders him incapable of work. The definition of disability in the CPP is inextricably linked to the capacity to work. In addition, eligibility is based on contributions which are made to the Plan. Based on these contributions, the Appellant establishes a Minimum Qualifying Period (MQP). The Appellant's MQP ended on December 31, 2011. Therefore, he must prove not only that he was disabled, but that his disability existed on or before December 31, 2011 and continuously thereafter (*Canada (Attorney General) v. Zakaria*, 2011 FC 136).

Severe

[20] The severe criterion must be assessed in a real world context (*Villani v. Canada (A.G.)*, 2001 FCA 248). This means that when deciding whether the Appellant has a severe disability, I must keep in mind factors such as age, level of education, language proficiency, and past work and life experience. The Appellant did not submit and I did not identify any factors such as those considered in *Villani* that would affect his employability.

[21] During his testimony the Appellant suggested that his ability to find suitable work would be restricted by the labour market in the area where he lives. Socio-economic factors such as labour market conditions are not relevant in a determination of whether a person is disabled within the meaning of the CPP (*Canada (MHRD) v. Rice*, 2002 FCA 47). The Appellant's submission that his ability to find work is restricted by the lack of opportunity in his home area is not relevant to the determination of whether he has a disability as defined by the CPP.

[22] The Appellant's testimony is supported by the medical evidence on file. Specifically that the injuries he sustained in the MVC on January 17, 2012 affect his ability to work. His doctors reported that he unable to work with the injuries he sustained in the MVC. He had a work incident in 2010 however his evidence was that he fully recovered from that injury and was returning to work. The evidence does not suggest that his back strain in 2010 caused or contributed to the symptoms he experienced after the MVC in 2012.

[23] The fact that the Appellant's injury took place close to the end of his MQP does not alter the requirement that his deemed disability must be on or before the end. The Appellant felt it was unfair that the MQP date would be so rigid as to prevent him from being eligible given that his disability happened so close to the date. The MQP is defined by legislation and, based on his contributions, the Appellant's MQP ended on December 31, 2011.

[24] The Tribunal is created by legislation and, as such, it only has the powers granted to it by its governing statute. Therefore, I am required to interpret and apply the provisions as they are set out in the CPP. I cannot consider extenuating circumstances to disregard mandatory requirements under the CPP. Based on all of the evidence including the Appellant's submissions and testimony, his disabling symptoms occurred after his MQP ended and he, therefore, cannot be found disabled as defined by the CPP on or before December 31, 2011.

Prolonged

[25] Paragraph 42(2)(a) of the CPP requires a disability to be both severe and prolonged. As I found that the disability was not severe, it is not necessary to make a finding on the prolonged criterion.

CONCLUSION

[26] The appeal is dismissed.

Anne S. Clark
Member, General Division - Income Security