



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. V. v. Minister of Employment and Social Development*, 2017 SSTGDIS 159

Tribunal File Number: GP-16-3334

BETWEEN:

R. V.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Jackie Laidlaw

HEARD ON: October 11, 2017

DATE OF DECISION: October 25, 2017

REASONS AND DECISION

OVERVIEW

[1] The Respondent received the Appellant's application for a *Canada Pension Plan* (CPP) disability pension on November 19, 2015. The Appellant claimed that he was disabled because of a bad ankle. 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, 2015.

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

- a) More than one party will attend the hearing.
- b) The method of proceeding is most appropriate to allow for multiple participants.
- c) The method of proceeding provides for the accommodations required by the parties or participants.
- d) Videoconferencing is available within a reasonable distance of the area where the Appellant lives
- e) 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.
- f) The appellant is represented and as such a videoconference would be appropriate.

[4] The following people attended the hearing:

- a) R. V., Appellant

b) Patrick Poupore, Representative

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

PRELIMINARY ISSUES

Adjournment

[6] The hearing was initially scheduled for October 3, 2017 as a videoconference in X. On September 7, 2017 the Appellant's representative requested the location change to X to accommodate the Appellant's new address. On September 11, 2017 the Tribunal member allowed the hearing location to change to X.

[7] On September 13, 2017 the Appellant's representative asked for an adjournment as the date conflicts with another court appearance. On September 15, 2017 the Tribunal member allowed the adjournment until October 11, 2017, as a videoconference from X.

EVIDENCE

Oral Testimony

[8] The Appellant completed Grade 9 and left high school in March of Grade 10 as his girlfriend was pregnant. He was not put back any years in school but was not a good student. He did not pass Grade 7 or 8 and was just moved up to Grade 9.

[9] He never got a high school diploma. He has never had any further formal education. He has never attempted to get any upgrading or further education.

[10] He worked when he was 12 years old as a farm labourer at a potato farm in the summers. Then he had two summer jobs laying sod.

[11] At 17, when he left school and got married he worked at a car wash full time for six months. Then he went to a job recycling at a dump for six months. Again at age 17 he worked at an outside mill for six months. He was not fired from any of these jobs. He left to get better job.

[12] His son was born in X X (he is currently 36 years old).

[13] After his son was born he went to work in construction mixing cement. He did that for one year then was laid off.

[14] He went on Employment Insurance (EI) and drove a taxi.

[15] At age 20 he worked as a deck man at a mine where he would outfit the underground cage with supplies, using a forklift. He did that for four years. Then he worked at a warehouse where he would operate the forklift and it also required a lot of walking. He worked there for nine years.

[16] At age 32 or 33 he started to work for a courier company that was a subcontractor for Canada Post. He stayed there for one year, but continued to work as a courier for 10 years. The job involved sorting parcels, loading his vehicle, delivering the parcels to home. It required a lot of walking and moving in and out of the vehicle. He handed 100 parcels a day. He did this on his own for 10 years full time.

[17] He then moved to working as a janitor for the X School Board in X. After two years of working there he hurt his ankle. He stopped working in 2011.

[18] He did not get any long term disability from the school board as he was declined. He litigated and the case resolved.

[19] He went on 15 weeks of EI sick benefits for his ankle. He never got EI again. He supported himself by selling items and working with his courier contracts.

[20] While at the school board he kept two of his courier contracts. He would do the jobs in the morning before going to the school.

[21] After he hurt his ankle he stopped working for the school board. His daughter would do the courier shifts for him.

[22] He did courier routes five days a week, paying him \$600.00 a month gross. The job was keeping him afloat.

[23] The job went down to two days a week and it was not paying enough for him to continue so he gave the job to his sister. He stated he did not give the courier contracts to his sister because he was moving. The last time he worked was December 2015.

[24] He did move in July 2016 to X.

[25] His right knee and left ankle are the most severe conditions.

[26] His ankle made him walk with a limp by 2015. After 15 minutes of walking he would sit for 30 minutes, take a Tylenol 3, then walk another 15 minutes. His balance was not good. He could not walk on uneven ground. He could not carry more than 20 lbs. He cannot wear shoes above the ankle or any work boots.

[27] His toes lock at night.

[28] His right knee is in pain as he is favouring his ankle. In 2015 he had constant pain. In 1990 he had a right knee arthroscopy and was good for 20 years. The pain started around 2012 after the ankle. It has affected his ability to walk as it swells. Dr. Allison told him his right knee might get better after the ankle is fused. There is no diagnosis. It is getting worse.

[29] In 2015 he suffered from diabetes but was managing it with diet and lifestyle changes. He was not on Metformin or Insulin. He has since gained weight and need to return to taking medications, and will return to his doctor to discuss this.

[30] In 2015 he had a lump on his left knee which is gone now and did not affect him. At the time his hands and fingers locked up. He stated it is "white hand" but he has not been given any diagnosis. His fingers and hands would lock in the morning and he would have to rub them to get the circulation going. He is not seeing a doctor for the condition.

[31] His sleep is compromised as he hurts on the left due to his ankle and on the right due to his knee. He takes Tylenol 3 with codeine. In the morning he is extremely tight and walks improperly. He is tired during the day and cannot do things. He is tired in the morning.

[32] In 2015 he lived with his second wife, in the same house but apart. He was in the basement in 500 sq. ft. He cleaned his own area. He can grocery shop, but in small loads.

Sometimes his ankle would affect his ability to do housekeeping. Dishes and cooking are a chore as he cannot stand more than 15 or 20 minutes and it is a concrete floor. Stairs are also difficult.

[33] He can drive. He does not use a computer.

[34] His son will cut the grass as he has a business doing it.

[35] He tried to use an ankle brace for three days and could only keep it on for 20 minutes. He never tried again. He did not tell Dr. Van Vliet that the brace did not feel right.

[36] It was never recommended by any doctor that he get orthotics, exercise or physiotherapy.

[37] He stated he stopped seeing Dr. Van Vliet in 2016. Dr. Van Vliet was not coming through with the surgery in September 20, 2012. He was waiting for the surgery and Dr. Van Vliet stated that he had lost his file. He had stopped smoking for the surgery, and then started again.

[38] In 2016 he quit smoking for four months and saw Dr. Van Vliet. He went to two MRI's and Dr. Van Vliet never got back to him on the one in 2016. He was referred to Dr. Patrick Allison to get an appointment to schedule surgery.

[39] He saw a Dr. Allison in June 2017.

[40] He quit smoking two months ago.

[41] Dr. Allison told him the brace he was prescribed was not the right brace. He also told him his ankle will have to be fused. At the time, he could only walk 15 to 20 minutes and needs Tylenol 3 with codeine. After 15 minutes of walking his ankle will swell up and pain shoots from the ankle down to the foot.

[42] He stated his ankle is worse today because he has the knee making it worse.

[43] Dr. Allison is an orthopaedic surgeon specializing in extremities. He told him if he had received the operation when he was supposed to his foot would not have to be fused.

Documentary Evidence

Questionnaire

[44] The questionnaire dated November 19, 2015 indicates the Appellant completed Grade 9. He worked for the X X X part time, one hour a day, 4 days a week making \$7,661 annually from October 12, 2009 until September 13, 2011 and put “n/a” where the question was why he stopped working. He notes being self-employed as a bank deposit courier from June 6, 2002 and is still working. He has two small delivery contracts. He also notes being the custodian for X school board from September 27, 2010 to June 14, 2013.

[45] His doctor told him to return to work as per pain tolerance and his employer would not accept those conditions. Therefore he could not return to work.

[46] The day he plans to start looking for work is post-surgery/healing.

[47] He has been unable to work since September 14, 2011 due to posterior tibial tendon dysfunction of his left ankle.

[48] He also has diabetes Type II; high blood pressure and is overweight.

[49] He will receive surgery in the near future, exact date not yet determined.

[50] In 1990 he received physiotherapy for his right knee.

Medical Report

[51] The report dated April 22, 2016 from Dr. Cohen, family doctor since 2006 diagnoses Grade 11B posterior tibial tendon deficiency of the left ankle since 2011. The Appellant is 5’10” and 305 lbs. He has swollen, tender medially left ankle and a range of motion of 70%. there is “no endurance” on his feet standing and walking 20 minutes due to ankle pain.

[52] He needs surgery to his left ankle. But there is difficulty with access and availability.

[53] He takes Tylenol 3 every 12 hours as needed.

[54] The prognosis is that it is likely to stay as is – has been since 2011 without surgery.

[55] Other notes are that he has a Grade 9 education and he normally works a surface mine and has to use his ankle and be mobile.

Other documents

[56] Dr. Cohen's clinical notes show surgery to his right knee steadily active walking on March 3, 2011. September 6, 2011 painful right knee "cartilage". He feels burnt out and cannot cope at work in. September 12, 2011 sprain of left ankle. September 19, 2011 pain in left ankle 50% better. November 2, 2011 saw orthopedist who ordered a brace. may need surgery. December 20, 2011 he saw Dr. Lafontaine who said osteoarthritis of the ankle and said he is okay to work if he can. The job will not accept the note as he was told he cannot return to work unless he is 100%. March 31, 2012: given return to work letter with restrictions of walking 15 to 20 minutes and rest for 20 minutes from Lafontaine. Work refused restrictions. Another orthopedist said surgery is warranted.

[57] A script from Dr. Cohen dated September 6, 2011 states he was ill August 31 and September 1 and 2. He will have to stay off work until September 12, 2011. On September 19, 2011 Dr. Cohen wrote another note saying he needs another 7-14 days off work. On October 3, 2011 he wrote another note suggesting he needs another month off work unless there are very light duties available with no repetitive walking. Another note on November 2, 2011 states he is unable to do his regular duties for a month. On December 5, 2011 Dr. Cohen wrote he has reduced endurance in the use of his left foot. He can do modified duties, say 1 school for 4 hours a day. On December 8, 2011 he wrote as of December 5, 2011 he is off work until he sees Dr. Lafontaine on December 13, 2011. On December 13, 2011 he wrote he has left ankle pain and past sprain. He can return to regular work and hours as per his tolerance. On December 20, 2011 he wrote he is unable to work for two months.

[58] An undated handwritten record of Dr. Cohen notes he spoke with Dr. Lafontaine after the MRI. (presumably November 30, 2011). Dr. Lafontaine said "nothing we can do, take an anti-inflammatory, wear the brace and return to work on regular duties". The note Dr. Lafontaine gave the Appellant stated he can return to work as pain tolerance. Dr. Cohen noted he can only work with restrictions of walking, sitting and resting.

[59] An attending physician statement from Dr. Cohen, undated, notes he has a severe sprain of the left ankle, is being treated by Dr. Lafontaine, orthoped, has pain and no endurance but is okay for two hours. It also notes he had decreased endurance of the use of his right ankle. The treatment is that he is off work. He can do modified duties working one school for 4 hours.

[60] A consultation with Dr. Aaron Van Vliet, orthopaedic surgeon, on October 7, 2011 shows the Appellant's ankle had no swelling and mild tenderness. The diagnosis was possibly posterior tibial tendon deficiency probably at stage IIA or IIB. The best way to treat it at this point is an ankle stirrup or braces and was given a prescription. He will follow up with the fracture clinic once the MRI has been completed.

[61] On December 13, 2011 Dr. Lafontaine wrote Dr. Van Vliet that the Appellant tried bracing and still has some pain, though it has gotten better recently. The impression was a left ankle post pain secondary to early arthritic changes which should resolve with some anti-inflammatories. He should continue wearing his ankle bracing. He can return to work today progressively to regular work and hours as per his pain tolerance. There is no follow up planned. If he starts to progressively have more problems and is unable to work he should see Dr. Rabinovich a foot and ankle specialist.

[62] An emergency and outpatient follow up on February 15, 2012 indicates he cannot tolerate a return to work and applied for long term disability. He would do a desk job only. He is off work indefinitely.

[63] A follow up with Dr. Van Vliet of the orthopaedic clinic on March 5, 2012 shows the brace did not help. He has posterior tibial tendon insufficiency and he would benefit from a tendon transfer.

[64] A "to whom it may concern" letter from Dr. Van Vliet, handwritten, on March 29, 2012 indicate she has posterior tibial tendon dysfunction diagnosed in December 2011. He currently cannot stand or walk more than 15 minutes. He is unable to do his full duties given his limitations due to pain until he gets operative management of his condition.

[65] A script from Dr. Van Vliet dated April 23, 2012 notes he will get an operation on September 2012 and a cast for six (indiscernible). He is unable to return to work x 3/12. (sic)

[66] A script on January 7, 2013 from Dr. Cohen state he cannot do his job as is and requires surgery. “will you give him very modified work”.

[67] A letter from Dr. Van Vliet on July 10, 2013 notes the Appellant can have non-operative treatment, which is the same as what he is doing, or an operation. He wanted the operation. The doctor stated he needs to quit smoking for at least three weeks before being booked for the operation. He smokes half a pack a day.

[68] On August 8, 2013 Dr. Van Vliet notes they were planning on booking surgery that day but he has not quit smoking. On the positive side he is taking care of his diabetes quite well.

[69] On October 10, 2013 Dr. Van Vliet notes he had quit smoking for 10 days. He needs to quit for approximately one month before booking the operation.

[70] On June 2, 2015 a typed note, presumed to be Dr. Cohen’s clinical notes, show he has not smoked since May 4 and will get a consult with Dr. Van Vliet for the surgery booking. On November 18, 2015 the notes show he wants to see Dr. Mahmoudi though he is not a specialist in ankles. He can only stand and walk 20 minutes. It was suggested he be referred back to Dr. Van Vliet. He takes Tylenol 3 twice daily.

[71] A consultation with Dr. Van Vliet on February 27, 2016 notes he has not tried anti-inflammatories, he is not using any braces, he has not had physiotherapy or injections and he is not using any orthotics. There was mild swelling of the left ankle and planovalgus deformity of the left ankle and foot. Range of motion of the left ankle and subtalar joints are full and pain free.

Diabetes

[72] On July 15, 2013 a letter from Nathalie Guevin, registered dietician, notes he attended class and has made major changes to his eating habits for his diabetes. He quit smoking for six months then restarted and needs to quit prior to ankle surgery. He will quit cold turkey and does not want any smoking cessation program information.

Diagnostic Images

[73] A radiographic image of the left ankle on September 12, 2011 shows a small calcaneal spur otherwise unremarkable.

[74] A CT scan of the lower extremity on October 4, 2011 found a small cortical irregularity of the medial malleolus, which is thought to be chronic with no acute fracture.

[75] A radiographic image of both ankles on October 7, 2011 showed a small left plantar calcaneal spur of the left ankle and a traction osteophyte at the Achilles tendon of the right ankle.

[76] An MRI of the left ankle on November 30, 2011 showed a large number of abnormalities and moderate ankle and subtalar joint effusions. Mild ankle joint degenerative changes,

[77] A radiology image of the bilateral foot dated March 29, 2012 shows some plantar arch of the right foot and left with small left plantar calcaneal spurring, otherwise unremarkable.

[78] An X-ray of the bilateral ankles and feet on June 24, 2013 showed loss of the plantar arch of the right and left foot. A small left plantar calcaneal spur. Weight bearing of the right and left ankles unremarkable and minimal arthropathy in the ankle joints.

[79] An X-ray of the bilateral foot on February 23, 2016 shows flattening of the arc of the right and left foot and no significant degenerative changes.

Other information

[80] The Respondent's submissions refer to a telephone conversation on July 17, 2017 with the Appellant where he reports being seen by Dr. P. Allison, orthopaedic surgeon who proposed to perform a left ankle fusion. He also stated he was not taking any medication for his diabetes. His high blood pressure was being managed with medication. He worked as a self-employed courier until January 2016 when he moved away and gave his courier contract to his sister.

SUBMISSIONS

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

- a) Due to his level of education he would be hard pressed to enter the workforce successfully. He is qualified to do nothing.

- b) He made efforts to quit smoking, which is recognized as very difficult.
- c) He has been candid and honest in his testimony.

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

- a) The posterior tibial tendon dysfunction (adult acquired flatfoot) does not show any severe pathology to prevent him from performing suitable work within his functional limitations.
- b) He has not attempted treatment with anti-inflammatory medication, physiotherapy or injections.
- c) His doctor recommended he return to work on a graduated basis and with limitation. It was his employer who wanted him to return at 100%. He then continued to work as a self-employed courier until January 2016 when he moved.

ANALYSIS

Test for a Disability Pension

[83] 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.

[84] 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.

[85] 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

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

Severe

[87] The Appellant suffers from diabetes. His condition was stable at the time of the MQP and there is no indication he was unable to work due to diabetes.

[88] The diagnostics as well as the medical documents show the Appellant has had ankle pain and restrictions since 2011 and has required an operation on his ankle since 2012. It was due to his own inability to quit smoking that the operation has been delayed for roughly five years. He states he is now scheduled to have a more detailed operation of fusing the ankle.

[89] The Appellant has asked that the Tribunal not place too much weight on the hearsay evidence of Dr. Allison. The Tribunal has taken all of Dr. Allison's comments as testified to by the Appellant with the same weight and viewed in a reasonable context.

[90] It would be reasonable that if the Appellant has already waited for five years for surgery and continues to use his ankle his condition would deteriorate and require a more complex operation as the years progress.

[91] Dr. Allison also told the Appellant that the ankle brace he was prescribed was not the correct one for his condition. The Tribunal has no way of determining if this is the case.

[92] Regardless, the Appellant stated that he used the ankle brace for only three days, 20 minutes at a time then stopped. He did not report that to Dr. Van Vliet, Dr. Lafontaine or Dr. Cohen.

[93] In October 2011 Dr. Van Vliet noted the best way to treat the ankle at the time was an ankle brace. Dr. Lafontaine noted in December 2011 that he should continue wearing the brace, take anti-inflammatory and return to work. Dr. Lafontaine also noted there was nothing else to do.

[94] By March 2012 Dr. Van Vliet noted the brace did not help and that he needs an operation to manage his condition as he is unable to do his full work duties.

[95] From October 2011 to March 2012 the doctors were under the impression the Appellant was still trying the only recommended treatment of wearing a brace.

[96] At that point Dr. Van Vliet recommended the next option of an operation as the brace did not work.

[97] It is presumed that had he used the brace he eventually would have been able to work without restrictions.

[98] Both Dr. Cohen and Dr. Lafontaine recommended graduated work initially assuming he was wearing the brace. It was only his employer who would not allow him to return unless he was 100% better. The Appellant testified that the reason he could not return to his job was that his employer would not let him return to modified duties. He did continue to work part-time as a courier.

[99] There is no way to determine if the condition would have been resolved with the use of a proper brace. It was noted however to be the best and only treatment at the initial stages. The Appellant was not compliant with the recommended treatment. More importantly, he was not disclosing this information to the doctors.

[100] The Appellant stated that the operation was set for September 2012 but Dr. Van Vliet lost his file. There is evidence to show that Dr. Van Vliet did set a September 2012 date for an operation.

[101] Whether Dr. Van Vliet lost his file or not, Dr. Cohen was still his treating physician and presumably would have been able to contact Dr. Van Vliet to remind him of the surgery if the Appellant was ready to proceed.

[102] Dr. Van Vliet spoke with the Appellant in July 2013 regarding having an operation. The Appellant wanted one and was told he had to quit smoking for at least three weeks.

[103] The operation was going to be set in August 2013 but the Appellant had not quit smoking. It was noted again in October 2013 that he had quit for only 10 days and now needed to quit for a month before surgery. The next note is from Dr. Cohen's records in June 2015, a year and a half later, indicating that the Appellant has not smoked for a month and Dr. Van Vliet should book surgery.

[104] The pattern over the years is that the Appellant did not comply with the only recommendation that he quit smoking for a specified relatively short period before having surgery. He was not even required to quit for good, just to quit for three to four weeks prior to surgery. In 2015 he had quit for a month but returned to smoking before surgery could be booked.

[105] The Appellant submits that quitting smoking is a very difficult endeavor. The Tribunal recognizes that it is a very difficult thing to do. However, it was not just a recommendation, it was the barrier to having an operation. It remains a barrier today, as he has attempted to quit again for two months now and is waiting for the surgery with Dr. Allison.

[106] The Appellant has a duty to mitigate his condition and comply with recommended treatment otherwise it may jeopardize his appeal for a CPP disability benefit.

[107] Claimants have a personal responsibility to cooperate in their health care. (*Kambo v. MHRD*, 2005 FCA 353)

[108] The Appellant twice did not comply with recommended treatment, and in doing so exacerbated his condition. The use of a brace early on could have resolved his condition. If the brace did not work as recommended, early surgery as well may have resolved the condition.

[109] It could be argued that the Appellant did attempt to comply with quitting smoking, and the Tribunal accepts that he has tried. However, he did not comply with the use of the brace initially and did not inform the doctors that he stopped using it after three days. This delayed the treatment and potential recovery.

[110] The Tribunal finds that it was unreasonable for the Appellant not to comply with the recommendations of two treating specialists, Dr. Lafontaine and Dr. Cohen.

[111] Dr. Allison has noted that his right knee might get better once he gets the surgery. That would seem reasonable however there is no evidence to indicate a diagnosis or prognosis for the knee to determine if this is a fact.

[112] 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 a person's disability is severe, the Tribunal must keep in mind factors such as age, level of education, language proficiency, and past work and life experience.

[113] The Appellant has noted that he is prevented from working due to his lack of education. The Tribunal accepts this to be a possibility. As well, he has no transferable skills other than manual labour. He proved he could continue doing the manual courier work with his ankle condition until 2015, but the income was minimal and almost a fifth of his usual income up to 2011. It is noted that he did not stop working as a courier due to his health condition, but rather because it did not pay much.

[114] Therefore, while he could do his courier job, it was not substantially gainful.

[115] The Tribunal accepts that in a real world context the Appellant would be prevented from working due to his lack of education and past work and life experiences.

[116] The "real world" context also means that the Tribunal must consider whether the claimant's refusal to undergo treatment is unreasonable and what impact that refusal might have on the claimant's disability status should the refusal be considered unreasonable. (*Lalonde v. Canada (Minister of Human Resources Development)*, 2002 FCA 211).

[117] He failed to comply with recommended treatments and therefore denied himself the potential opportunity to resolve his condition and return to substantially gainful work years ago.

[118] Therefore, in a real world context, had the Appellant followed recommendations he may have been able to continue working at a substantially gainful occupation.

[119] The Tribunal understands that it was an unfortunate accident which caused the Appellant's condition initially. However, it was his unreasonable non-compliance to follow recommendations that has prevented and delayed a possible resolution. The Tribunal accepts that

he attempted to comply a number of times with quitting smoking. Despite his failed attempts at quitting smoking, which resulted in a delayed surgery, which has yet happened, he failed to wear a brace as instructed. He also failed to inform the doctors of his non-compliance who reasonably would have recommended a different type of brace or different treatment. The Tribunal also recognizes there is still a surgery yet to perform which may potentially resolve his condition.

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

Prolonged

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

CONCLUSION

[122] The appeal is dismissed.

Jackie Laidlaw
Member, General Division - Income Security