



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. O. v. Minister of Employment and Social Development*, 2017 SSTGDIS 197

Tribunal File Number: GP-17-429

BETWEEN:

D. O.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Adam Picotte

HEARD ON: December 15, 2017

DATE OF DECISION: December 15, 2017

REASONS AND DECISION

OVERVIEW

[1] The Respondent received the Appellant's application for a *Canada Pension Plan* (CPP) disability pension on February 9, 2016. The Appellant claimed that he was disabled because of stress. 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 August 31, 2017. This is because the Appellant commenced receipt of a retirement pension in September 2017.

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

- a) The Appellant will be the only party attending the hearing.
- b) The issues under appeal are complex.
- c) There are gaps in the information in the file and/or a need for clarification.
- d) Credibility is not a prevailing issue.
- 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) Teleconference is appropriate as there is no additional parties and translation therapies are not required.

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

EVIDENCE

Application for disability benefits

[5] On February 9, 2016 the Appellant submitted an application for disability benefits. He enclosed a completed questionnaire. The questionnaire contained response to questions about both his personal and medical history.

Personal history

[6] The Appellant indicated that he had a grade 12 education. He had no further schooling or technical training. The Appellant detailed that he had most recently been employed as a truck driver from May 2010 to October 28, 2015. He stopped working because of stress.

Medical history

[7] The Appellant indicated that he could no longer work as of November 1, 2015. He detailed that he could no longer work because of stress and an inability to focus on driving.

[8] The Appellant endorsed a number of functional limitations, including the following:

- Walking 30 minutes;
- Lifting 25 pounds;
- Difficulty with working on memory and stress;
- Poor memory and concentration.

[9] The Appellant detailed that he used both a walker and a cane.

Medical report for disability benefits

[10] On May 31, 2016 Dr. Rohachuk submitted a medical report in support of the Appellant's application for disability benefits.

[11] Dr. Rohachuk provided diagnoses of major depressive disorder, polysubstance abuse with complete sustained remission, post-traumatic stress, and dependant personality.

[12] Dr. Rohachuk detailed that the Appellant was depressive symptoms that were long term and chronic. He was also noted to have a pelvic fracture from 2014

[13] Dr. Rohachuk indicated that the Appellant's prognosis was such that he was unable to return to work. He noted that the Appellant needed to complete group and individual therapy and at the time his prognosis was unknown. Dr. Rohachuk detailed that he would be reassessed.

Additional evidence

[14] On April 20, 2016 Dr. Astorga, Psychiatrist, conducted an assessment on the Appellant. Dr. Astorga, detailed that the Appellant had diagnoses of major depressive disorder, polysubstance abuse in complete remission and dependent personality traits.

[15] Dr. Astorga indicated that the Appellant had a limited response to multiple trials of antidepressants.

[16] Dr. Astorga recommended that the Appellant use Bupropion. He was also recommended to attend a day treatment program for behavioural activation as well as attend individual therapy.

[17] In a May 5, 2016 note Dr. Rohachuk detailed that the Appellant continued to be seen regularly and was currently waiting for individual and group therapy.

[18] In a May 19, 2016 note from the day treatment program it was noted that the Appellant was not an appropriate referral as the program did not offer a behavioural activation and anger management group.

[19] The Appellant had a neurological assessment conducted on November 22 and 23, 2016 by Dr. Newton Registered Psychologist. Dr. Newton provided a history of the Appellant's psychological condition as well as a breakdown of his level of function. Dr. Newton noted that testing indicated that the Appellant had high measures for severe anxiety and depression.

[20] The Appellant was noted to have a poor overall sense of well-being and a low level of functioning in many areas of daily living. He was noted to be on the low average range of intellectual functioning.

[21] The Appellant was noted to have genuine difficulties with tasks that required inhibition of verbal and motor responses, divided attention, and feedback utilization.

Testimony of the Appellant

[22] The Appellant stated that he is still going through treatment and going to different places for therapy. The Appellant stated that he is getting therapy for wellness and stress.

[23] The Appellant stated that he most recently worked as a truck driver from 2010 to 2015. Prior to this he worked as a school bus driver for three years. Prior to being a school bus driver he was in the military for 23 years. He stated that he was a driver in the military as well.

[24] The Appellant confirmed he stopped working in 2015. He stated that since 2015 he has not attempted to return to any work. He stated that he has not attempted any return to work because he is not ready to.

[25] The Appellant stated that he was getting anxious from verbal abuse from colleagues. He went to his doctor and he prescribed that he get some things straightened out before going back to work.

[26] The Appellant stated that he is working at a cafeteria as a cashier and selling clothing. He stated that both jobs are volunteer position. The Appellant stated that he is doing the volunteer work five days a week. He stated the most he works is four hours a day. His job duties include pricing and taking money to put in the till. The Appellant stated that he is doing all of the tasks. He stated that he also helps with cleaning and cooking.

[27] The Appellant confirmed that he continues to take medication for his anxiety. The Appellant stated that his medication assists with his medical condition. He states that it helps with his anxiety and anger. He stated that it also helps with his sleep.

[28] The Appellant stated that he engages in sporting activities and going on trips. He stated that he plays volleyball, goes swimming, and goes to the gym. The Appellant stated that there are no activities that he doesn't engage in any longer.

SUBMISSIONS

[29] The Appellant submitted that he qualifies for a disability pension because he has a severe and prolonged disability.

[30] The Respondent submitted that the Appellant does not qualify for a disability pension because he did not have a severe and prolonged disability on or before his MQP.

ANALYSIS

Test for a Disability Pension

[31] 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.

[32] 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.

[33] 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.

Severe

[34] In this case the Appellant has asserted that he is unable to work because of his stress or anxiety. While the Tribunal accepts that he has an anxiety condition the evidence does not support that this condition is severe within the meaning of the CPP.

[35] The Tribunal accords significant weight to the testimony of the Appellant. He stated that he volunteers five days a week as a cashier and selling clothing. He stated that his duties also included cleaning and cook. He has not been accommodated or taken a reduced role in his volunteering. Rather he does all of the tasks assigned to him.

[36] Where there is evidence of work capacity, a person must show that effort at obtaining and maintaining employment has been unsuccessful by reason of the person's health condition (*Inclima v. Canada (A.G.)*, 2003 FCA 117).

[37] In this case the Appellant's volunteer work evidences work capacity. He is doing a broad spectrum of duties comparable to remunerated employment. However, his evidence was that he has not applied for any employment. Given the indication of work capacity the test in *Inclima* does not support a finding of severe.

[38] The Tribunal also accords significant weight to the Appellant's testimony that the medication he takes has significantly improved his anxiety. He detailed that the medication helps with his anxiety and anger and that he sleeps well. He also evidenced that he engages in various sporting and outdoor activities. He stated that there are no activities that he cannot engage in.

[39] Given the preponderance of evidence supporting residual capacity and the lack of any attempt to return to employment coupled with his significant degree residual physical and social activities the Tribunal is satisfied that the Appellant does not have a severe disability within the meaning of the CPP.

Prolonged

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

CONCLUSION

[41] The appeal is dismissed.

Adam Picotte
Member, General Division - Income Security