



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. A. v Minister of Employment and Social Development*, 2018 SST 1211

Tribunal File Number: GP-17-1716

BETWEEN:

D. A.

Claimant (Appellant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: David Somer

Teleconference hearing on: September 26, 2018

Date of decision: October 10, 2018

DECISION

[1] The Claimant is not entitled to a Canada Pension Plan (CPP) disability pension.

OVERVIEW

[2] The Claimant was 53 years of age at the time of his application for CPP disability benefits in May 2016. He has a grade 12 education and last worked on a part-time basis as a sales representative for X. He stopped work in July 2018 because of a retinal detachment in his left eye which impacted his ability to drive and use a computer and eventually required surgery to repair the damage. The Minister received the Claimant's application for the disability pension on May 3, 2016. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] To qualify for a CPP disability pension, the Claimant must meet the requirements that are set out in the CPP. More specifically, the Claimant 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 Claimant's contributions to the CPP. I find the Claimant's MQP to be December 31, 2019.

ISSUES

[4] Did the Claimant's heel spurs, plantar fasciitis, retinal detachment and obesity result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by the date of the hearing as his MQP is in the future?

[5] If so, was the Claimant's disability also long continued and of indefinite duration by the date of the hearing?

ANALYSIS

[6] Disability is defined as a physical or mental disability that is severe and prolonged¹. A person is considered to have a severe disability if 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. A person must prove on a balance of probabilities their disability meets both parts of the test, which means if the Claimant meets only one part, the Claimant does not qualify for disability benefits.

Severe disability

[7] The Claimant testified that he last worked beginning in December 2014 as a part-time sales representative for X. He was able to work mostly online and he was able to schedule his work around his disabilities, namely problems with his feet. He worked 80 hours per month and 20 hours per week, taking as many breaks as needed. His job was to audit merchandise within retail stores and install signage where necessary. He stopped work in July 2018 because of a retinal detachment in his left eye which required surgery and affected his ability to drive and use a computer. He previously worked at X as an order picker for 2 years, doing 12 hour shifts. This work was very physical and he had to stop because of problems with his feet and legs. Previously he worked as a buyer in a X corporate office for 20 years. He stopped work there due to a company reorganization and was offered a buyout. He was then unemployed for 2 years. The Claimant further testified that his wife left him in January 2018 and he presently lives in a house with his 3 adult children who do most of the household chores. He is unable to drive at present but he hopes to resume being able to do so after he heals from his eye surgery that was done in July 2018. The Claimant also stated that he is no longer able to volunteer at his church with outdoor cooking events.

[8] In a letter to Service Canada dated November 22, 2016, the Claimant wrote that he has limited mobility and his disability insurer does not recommend that X take him back. Therefore, with his chronic conditions, he cannot secure substantial meaningful employment. With his chronic condition and the stress that he is under, he has had to resort to a new medication to control his mental issues along with his pain medications. He has hurt his leg tendons from the

¹ Paragraph 42(2)(a) *Canada Pension Plan*

extreme vibration from the double walkie that he worked on for over a year at X. He stated that his condition will not improve and is chronic.

[9] In the initial medical report dated April 29, 2016², Dr. K. Ludlow, General Practitioner, with a special interest in pain management and Dr. V. Gavranic, General Practitioner, diagnosed the Claimant with heel spurs and plantar fasciitis. He is also morbidly obese with a body mass index of 41.7. The physicians listed the Claimant's limitations as difficulty walking for more than 10 minutes due to pain. He is able to stand only 5-10 minutes, 2-4 hours cumulative in a workday with frequent breaks. He is able to lift waist to shoulder 10 pounds frequently, 30 pounds occasionally and 40 pounds rarely. He can carry 20 pounds occasionally and 35 pounds rarely. He has great difficulty climbing stairs. He is prescribed Vimovo which provides some pain improvement. He has had little improvement from physiotherapy with pain and function. Platelet rich plasma lessened his right foot pain. The Claimant's prognosis is that his condition is chronic.

[10] A right heel x-ray³ on February 9, 2015 showed bilateral plantar and posterior calcaneal spurs that may be the cause of the heel pain. An ultrasound of the right heel⁴ on October 9, 2015 shows a persistently thickened plantar fascia with no significant calcaneal bony spurring. He had his first PRP injection on August 21, 2015 for right plantar fasciitis and he reports considerable improvement in his right heel symptoms. His pain score today was 3-5/10, previously 8/10.

[11] An MRI scan of the Claimant's aorta and both legs⁵ on February 9, 2015 revealed a normal aorta. The arteries in his legs are widely patent. The bilateral popliteal arteries became gradually more attenuated. I understand this to mean that the Claimant has no circulation problems that would affect his ability to work.

[12] In a letter to the Claimant's family physician dated February 24, 2016,⁶ Janine Fries, Rehabilitation Specialist, wrote that she had been working with the Claimant for the purpose of facilitating his function in a return to work. He has been off work since December 5, 2015 from

² GD2-143-146

³ GD2-149

⁴ GD2-147

⁵ GD2-69-70

⁶ GD2-94-95 a

his full-time position at X. As for his functional abilities, he is able to stand for 5-10 minutes constant; 2-4 hours cumulative in a workday and is allowed to take frequent breaks. He is able to walk occasionally. His lifting and carrying are limited. The physiotherapist stated that without significant weight loss, the prognosis for return to full regular duties is poor even with a short-term conditioning program. Ms. Fries stated that she does not anticipate that his employer would be able to accommodate him in any capacity. In the meantime, the Claimant has been encouraged to discuss a suitable weight loss program and encouraged to continue exercising on his own by renewing his gym membership.

[13] In a letter dated March 27, 2017⁷, Dr. Vanya Gavranic, writing for Dr. Kyla Ludlow, wrote that the Claimant has a history of plantar fasciitis, heel spurs and knee pain. He is not able to sustain gainful employment because of limitations due to these conditions which include an inability climb up or down stairs, an inability to stand longer than 5-10 minutes and an inability to be able to walk for more than 15 minutes before he gets severe pain in his feet and knees. He has had slight improvement with platelet rich plasma injections in the right foot. He manages his pain with the extra -strength Tylenol as needed. His knee pain has not been yet diagnosed and x-rays are forthcoming. The Claimant is working on his weight loss and is interested in a referral to weight loss clinic.

[14] In a letter dated June 26, 2015, to Janine Fries, Rehabilitation Specialist, Noel Pulido⁸, physiotherapist, wrote that he first saw the Claimant in December 2014 regarding complaints of pain and bilateral heel is an Achilles tendons. He was treated for total 7 sessions and his treatment ended when his insurance coverage was used up. Mr. Pudilo stated that the Claimant could not return to his regular duties which involve standing for approximately 12 hours per shift and was limited in his ability to climb stairs or ladders. While he could walk 100-200 m, he required rest in between repetitive rounds of walking or prolonged standing. On May 12, 2015, Mr. Pulido reported that the Claims coverage allowed him to resume treatment. The Claimant reported having received cortisone injections the week before which was helpful in reducing his pain symptoms and he attends hydrotherapy twice a week.

⁷ GD1-13

⁸ GD2-94-95

[15] During the hearing, the Claimant testified that he also has been diagnosed for 4-5 years with diabetes type II for which he takes metformin. He further testified that this diagnosis did not interfere with his work. He also suffers from depression and low mood along with sleep problems for which he was referred to a psychiatrist in January 2018 for a phone consultation and started receiving counseling from his family physician. He takes no medications for his depression. In addition, an MRI scan of the Claimant's aorta and bilateral legs on February 9, 2015 revealed a normal aorta. The arteries in his legs are widely patent. The bilateral popliteal arteries became gradually more attenuated. I have concluded that neither his diabetes, vascular circulation nor his depression are conditions that would have prevented him from seeking and maintaining suitable gainful employment at the time of the hearing.

Although the Claimant's health condition and functional limitations impacted his capacity to work, he was still able to find suitable part-time work until he became disabled in July 2018

[16] I must assess the Claimant's condition in its totality, which means I must consider all of the possible impairments, not just the biggest impairments or the main impairment. I have considered all the Claimant's medical conditions including diabetes, depression, foot problems and obesity.

[17] The Claimant testified that he stopped work as a sales representative for X in July 2018 because he required surgery due to a detached retina in his left eye. Previously, he underwent laser treatment 3 times in 2017.

[18] I find that the Claimant had a severe disability in July 2018 for a number of reasons. Firstly, he had to stop his part-time work at X July 2018 because he required surgery to his left eye. This was a job that was particularly suited to person with his limitations. The incident with his eye prevented him from being able to drive and use a computer which was essential to the requirements of his job. Although he had substantially gainful earnings in 2016, there are no reported earnings in 2017 and 2018 according to his record of earnings in the file. He was unable to return to his previous job at X according to the report from Mr. Pudilo, physiotherapist. He was only able to work at X because he was able to set his own pace and work only when he could do so. Secondly, his limitations with standing, walking, carrying and lifting would prevent him from seeking other types of gainful employment. Thirdly, while he has tried to control his

obesity with diet and exercise, this condition is such that it would prevent him from seeking and maintaining gainful employment on or before the date of the hearing.

[19] The measure of whether a disability is “severe” is not whether the person suffers from severe impairments, but whether the disability prevents the person from earning a living. It’s not a question of whether a person is unable to perform their regular job, but rather the person’s inability to perform any substantially gainful work⁹. I find that the Claimant is unable to perform any substantially gainful work at the time of the hearing but it is likely that he could return to work following healing from his left eye surgery.

[20] Where there is evidence of work capacity, a person must show that efforts at obtaining and maintaining employment have been unsuccessful because of the person’s health condition¹⁰. I find that there is no evidence of the Claimant’s capacity to work because of his limitations based on medical documents and his testimony. He is therefore exempt from the requirement in *Inclima* to provide evidence that his failure to find and maintain employment was unsuccessful by reason of his health condition. In fact, he was employed part-time until he required eye surgery in July 2018. He transitioned from physical labour to a more sedentary job but could no longer do that as a result of his eye condition. The combination of his conditions I July 2018 resulted in him having no work capacity.

Prolonged Disability

[21] The Claimant only stopped working in July 2018 because of the need for surgery to his left eye. He testified that he hoped to resume driving after healing from the surgery. He has been on EI sick benefits since July 2018 which indicates his intention to return to work. He further testified that he hoped to be able to return to work someday. It is too early to determine if the Claimant has a prolonged disability since he only stopped working in July 2018 and he has an excellent prospect of returning to part-time work according to his capabilities. I have determined that the Claimant does not have a prolonged disability as of the date of this hearing because I believe that it is more likely than not, that he will be able to return to work in the near future.

⁹ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

¹⁰ *Inclima v. Canada (A.G.)*, 2003 FCA 117

[22] The Claimant has the burden of proof, and after a careful review of the evidence, I have found that the Claimant has not established, on the balance of probabilities, a prolonged disability in accordance with the CPP criteria.

CONCLUSION

[23] The appeal is dismissed.

David Somer
Member, General Division - Income Security