



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. R. v. Minister of Employment and Social Development*, 2018 SST 1227

Tribunal File Number: GP-17-1461

BETWEEN:

L. R.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Kelly Temkin

Claimant represented by: Mark Bulicki

Date of decision: October 30, 2018

DECISION

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

OVERVIEW

[2] The Claimant's application for CPP disability benefits was received by the Minister on June 30, 2016. He described his main disabling conditions as pulmonary fibrosis, hypoxemia and vascular disease. He reported limitations with his physical activities of daily living including housework as well as memory, poor sleep and great difficulty breathing. His care was provided by his family physician and an urologist while treatment consisted of medication and rehabilitation in consideration of a lung transplant. The Claimant last worked in the self-employed capacity of a carpenter from 1987 until December 2015 when he stopped due to his medical condition. He felt he could no longer work as December 2015.

[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. The Claimant disagrees with the contributions to the CPP established throughout his work history and disputes the December 31, 2010 MQP date calculated by the Minister.

ISSUE(S)

[4] Is the Claimant's MQP December 31, 2010 or a later date?

[5] Did the Claimant's conditions result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2010?

[6] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2010?

PRELIMINARY ISSUES

[7] The parties were sent a Notice of Hearing on September 12, 2018 (Q&A) with a deadline ¹for submissions of October 12, 2018. The Respondent provided submissions (GD-9); however despite an opportunity to do so the Claimant did not provide submissions. I have proceeded to render my decision based on the record on October 30, 2018.

ANALYSIS

The MQP date is December 31, 2010

[8] The Claimant submits that there is a major issue to resolve, before any others, as to why the Minister decided that pensionable income for the years 2011 through 2014 does not qualify for income for disability purposes. There are a number of other issues raised, mainly medical and "ability to work" but unless the 2011 to 2014 employable earnings are resolved, all other issues will be moot, as he will not have insurable income without those years of work.²

[9] The Minister submits that the Claimant does not meet the contributory eligibility requirements. As the Claimant's date of application was June 2016, the last 6 years in his contributory period were 2010 to 2015. To satisfy the minimum qualifying period requirements, the Claimant must have made valid contributions to the CPP in at least 4 years within the period of 2010 to 2015. The Minister submits that there are valid earnings only in the years 2013 and 2015.³

[10] The Claimant submits that the CPP erred in suggesting he did not work since December 2010 when his tax assessments and CPP contributions summary indicate that he contributed to CPP in 2010, 2011, 2012, 2013, and 2014. However for some reason the CPP had "purged" those CPP contributions from their calculations, and implied that he did not work in those years.⁴ There was no evidence the Claimant returned to Revenue Canada for verification on his CPP amounts.

¹ GD9-5

² GD7

³ GD9-5

⁴ GD5-3

[11] The amounts contributed for the years 2011-2014 are below the minimum contribution amounts to be considered valid for disability purposes.⁵ I find the Claimant did not make valid contributions for years 2011-2014 as they are below the disability amounts for these years. I find that the Claimant's MQP is December 31, 2010 as there were no valid contributions made between 2009 and 2014.

The Claimant's condition was not serious by December 31, 2010

[12] Disability is defined as a physical or mental disability that is severe and prolonged.⁶ The Minister submits that the evidence supports a severe and prolonged medical condition exists at date of application because the Claimant suffered from pulmonary fibrosis and that the respirologist has been treating the Claimant for pulmonary fibrosis, exertional hypoxemia and vasculitis since March 2016. However, the Minister submits that this severe and prolonged medical condition was not evident at the MQP in December 2010. The MQP is a qualifying date established as a direct result of the Claimant's contributions to the CPP throughout his work history. As such, the Minister submits that there is no eligibility for disability benefits at the time he last qualified for benefits in December 2010 and continuously since.⁷

[13] The Claimant was gainfully employed until December 2015 when his respiratory system declined. The fact that the Claimant is unable to work at his date of application is not in dispute by the Minister. However, the Claimant's contributions to CPP have left him with a qualifying period which ended in December 2010. As there is no medical condition preventing work at the MQP, there is no medical basis for finding that the Claimant had a serious medical condition by December 31, 2010. The Claimant admitted that he was diagnosed with an illness in January 2016.⁸ If the Claimant's condition was not severe and prolonged by the expiry of his MQP then, unfortunately the fact that his health deteriorated after his MQP cannot be considered in the determination of disability. I find there is insufficient evidence to make a finding that the Claimant had a serious medical condition at the MQP in December 2010.

⁵ GD9-5

⁶ Paragraph 42(2)(a) *Canada Pension Plan*

⁷ GD9-7

⁸ GD1-5

[14] The severe criterion must be assessed in a real world context. 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. Since the Tribunal is not persuaded that the Appellant suffered from a severe disability as of the MQP it is not necessary to apply the "real world" approach.⁹

[15] I recognize the Claimant is now suffering from a serious medical condition; however, he became unable to work as a result of that medical condition after December 31, 2010. I am not empowered to exercise any form of equitable power in respect of the appeals before me. The Tribunal is created by statute. As such, it can exercise only that power granted by its enabling statute. I have no authority to make exceptions to the provisions of the CPP and I cannot make decisions based on fairness, compassion, or extenuating circumstances.

[16] I find that the Claimant has failed to establish, on a balance of probabilities, a severe disability in accordance with the CPP requirements.

CONCLUSION

[17] The Appeal is dismissed.

Kelly Temkin
Member, General Division - Income Security

⁹ *Giannaros v. Canada (Minister of Social Development)*, 2005 FCA 187