



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. G. v Minister of Employment and Social Development*, 2018 SST 1344

Tribunal File Number: GP-17-1415

BETWEEN:

B. G.

Appellant

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Virginia Saunders

Appellant represented by: Kelsey Croft

Teleconference hearing on: October 4, 2018

Date of decision: November 2, 2018

DECISION

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

OVERVIEW

[2] The Appellant is now 56 years old. In 1991 he immigrated to Canada from India, and soon began working as a X¹. He worked and made valid contributions to the CPP in most years up to 2014². He applied for a CPP disability pension in June 2016³. He claimed he had been unable to work since June 2014, because of backache, right knee problems, and inability to use his left leg; and he noted other impairments including depression, polio, osteoarthritis, and leg length discrepancy⁴. The Minister denied the application initially and on reconsideration, and the Appellant appealed to the Social Security Tribunal.

[3] The CPP defines disability as a physical or mental disability that is severe and prolonged. A person has a severe disability if he 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 death⁵.

[4] The Appellant must prove on a balance of probabilities that he became disabled on or before the end of his Minimum Qualifying Period (MQP), which is calculated based on his contributions to the CPP⁶. The Appellant's MQP ended on December 31, 2014.

ISSUES

[5] Does the Appellant have a severe disability, meaning he was incapable regularly of pursuing any substantially gainful occupation by December 31, 2014?

[6] If so, was the disability likely to be long continued and of indefinite duration by December 31, 2014?

¹ Appellant's testimony

² GD4-20

³ GD2-23-27

⁴ GD2-107-113

⁵ CPP paragraph 42(2)(a)

⁶ CPP paragraph 44(1)(b), subsections 44(2), 52(3)

ANALYSIS

Severe disability

[7] A disability is “severe” not because a person has a particular diagnosis or suffers from severe impairments, but because his disability prevents him from earning a living. He must be incapable regularly of pursuing any substantially gainful occupation; not just incapable of performing his usual job⁷. He must demonstrate this by providing medical evidence of his disability; as well as evidence either that he has no work capacity, or that he tried to work but was unable to do so because of his condition⁸. He must also prove he became disabled before the end of his MQP, and that he continues to be disabled⁹.

[8] The Appellant has not met this test. While it is clear that he has significant health issues, viewing the evidence as a whole does not allow me to find that his condition was severe by December 31, 2014.

Appellant’s statements

[9] At the hearing, the Appellant submitted through his representative that he was disabled because of polio, a weak left leg, alcoholism, depression and chronic pain. He testified to previous problems with alcohol, depression, and knee pain; but stated that despite these conditions and the fact he had polio as a child, he was able to work. He testified that work became difficult after he fell and injured his back, which he thought happened in May 2014. He began to feel tired, and he had difficulty walking and going up and down stairs. He fell often. He testified that he is angry, depressed, and worried; and that he cannot sleep. He described similar difficulties in a letter of March 2017¹⁰. His disability questionnaire of June 2016 noted only physical limitations with walking, carrying, bending, breathing, and driving because of pain and having to drag his left leg, which was affected by polio¹¹.

⁷ *Klabouch v Canada (A.G.)*, 2008 FCA 33

⁸ *Klabouch v Canada (A.G.)*, 2008 FCA 33; *Villani v. Canada (A.G.)*, 2001 FCA 248; *Joseph v. Attorney General of Canada*, 2017 FC 391

⁹ *Joseph v. Attorney General of Canada*, 2017 FC 391

¹⁰ GD2-12

¹¹ GD2-110

[10] I did not place much weight on the brevity of the Appellant's disability questionnaire. He does not read or write English, and he relied on someone else to complete those forms for him. Although he testified that he told the person what to write, I think it is highly likely that some things were missed. I note that he did list depression among his impairments¹², as did his family doctor when she completed the CPP medical report a month earlier¹³. I believe the Appellant made an honest effort to tell the truth when he gave information, including when he testified at the hearing. However, his memory is poor or vague in some respects. For example, he did not remember if he injured himself in March or May 2014; he did not remember what medication he took after he injured himself; he was unclear about when his difficulties with frequent falls began; or when he took anti-depressants. His evidence, both oral and written, was not sufficiently detailed to overcome the fact that the medical evidence simply does not support a conclusion that he has a severe condition that arose on or before December 31, 2014.

Report of Dr. G. Parhar May 2018

[11] The Appellant filed a May 2018 medical-legal report by Dr. G. Parhar¹⁴. The report states the Appellant told Dr. Parhar that he injured himself in a workplace incident on March 1, 2014; that he then took time off work; and that he had not worked at all since May 30, 2014. He reported he had pain in multiple areas, headaches, fatigue, decreased energy, a depressed mood, sleep problems, and thinking problems. He told Dr. Parhar these all began "immediately at the time of his March 1, 2014, injury", although he also stated his left leg pain began before his back pain¹⁵.

[12] Dr. Parhar based his opinion on an interview and physical examination of the Appellant in April 2018; a review of the Minister's initial and reconsideration decisions on the Appellant's CPP disability application; and a review of x-rays of the Appellant's lumbar spine and knees done in February 2016¹⁶. He diagnosed the Appellant with:

- post-polio weakness and deformity of the left leg;

¹² GD2-109

¹³ GD2-100-104

¹⁴ GD7-3-29

¹⁵ GD7-15-18

¹⁶ GD7-13, 24

- osteoarthritis (degenerative disc disease) of the lumbar spine;
- leg length discrepancy (left shorter than the right);
- osteoarthritis of the left knee;
- depression;
- insomnia;
- hypertension;
- high cholesterol;
- alcoholism;
- bilateral carpal tunnel syndrome;
- likely osteoarthritis of the cervical and thoracic spine;
- muscle tension headaches;
- chronic myofascial pain in both shoulders and the right wrist; and
- right hip musculoligamentous injuries, with a likelihood of osteoarthritis.

[13] In Dr. Parhar's opinion, the Appellant had a severe and prolonged disability well before December 31, 2014; in particular, he was incapable of full or part-time work even with the most sedentary or light work activity¹⁷.

Other medical records 1998-2018

[14] As of January 1998, the Appellant received his primary medical care from a family practice that included the same Dr. Parhar who wrote the report referred to above. It appears he mostly saw Dr. Parhar up to July 2014; after that, he saw Dr. S. Ahmed and Dr. L. Samaroo¹⁸; and as of December 2015, he mostly saw Dr. E. Cochien. The Appellant filed what appears to be a complete record of his visits to that medical practice from January 1998 up to August 2018¹⁹; as well as reports from other physicians and physiotherapists from that period²⁰.

¹⁷ GD7-27

¹⁸ Dr. Samaroo's name is not on the clinic notes; however, notes for visits in July 2014 indicate the Appellant was sent for blood tests and colon screening (GD2-60, 62). The results indicate they were ordered by Dr. Samaroo (GD2-82-85, 90). The Appellant also stated in his disability questionnaire that he last saw Dr. Samaroo in September 2014 (GD2-111).

¹⁹ GD2-60-81; GD10-4-65; GD12-34-72

²⁰ GD2-50, 106; GD10-67-71, 78-80; GD12-1-34

[15] These show the Appellant has a complicated medical history. Childhood polio affected his left leg and later his hands; he had occasional falls and broke his leg as a result of one in 1997; he was involved in several motor vehicle accidents between 1998 and 2005 which caused pain of various types; he became depressed after his wife died in an accident in 2005, after which he took anti-depressant medication off and on; he struggled with alcohol for many years; and he had longstanding chronic back pain for which he often took Tylenol 3.

[16] The records also show the Appellant saw his family doctor four times in 2012 and three times in 2013²¹. He did not go at all between the end of October 2013 and mid-July of the following year²². After that, he went in September and December 2014; and did not return until December 2015²³. His visits in 2012 and 2013 were routine ones to have his blood pressure checked and review lab results. He looked well and was in no acute distress; examinations were unremarkable; and he had no new concerns. He was prescribed Tylenol 3 for back pain in March 2013, as he had been many times before²⁴. At his visits in July and September 2014 he had his blood pressure checked, was referred elsewhere for removal of calluses on his foot; and was sent for colon cancer screening and blood tests. In December 2014 he reported he had low back pain that was aggravated with walking. He was noted to have mildly restricted lumbar flexion and some tenderness in the paralumbar area. He was advised to exercise, use heat compression, and avoid heavy lifting. He was to continue on his current medications²⁵. It appears Dr. Ahmed prescribed more Tylenol 3 the following month although there is no record of an office visit²⁶.

Weighing the evidence

[17] I gave almost no weight to Dr. Parhar's opinion about the Appellant's condition at his MQP. Dr. Parhar accepted without question the Appellant's assertion that all his issues began in March 2014 and caused him to be unable to work. While he noted the Appellant had been a patient at his family practice since January 1998, he did not review any of the Appellant's medical records, including his own chart notes, except the 2016 x-ray report referred to above.

²¹ GD2-60; GD12-34-39

²² GD2-60-62

²³ GD2-62-67

²⁴ For example GD10-6, 7, 17, 18, 71, 76; GD12-5, 18

²⁵ GD2-63-64

²⁶ GD2-65

The Minister's initial and reconsideration decisions - which Dr. Parhar also reviewed – contained no information about the Appellant's condition before his MQP, except to describe what happened when he was seen for low back pain in December 2014²⁷.

[18] Dr. Parhar did not explain how he arrived at his conclusion that the Appellant was incapable of any type of work by December 2014, despite there being no evidence the Appellant sought medical help for any of these conditions when the accident happened, or for many months after that. He did not explain how his colleagues could fail to notice debilitating physical and psychological issues when the Appellant went to their clinic in July, September and December 2014. He did not explain how a person with a severe and prolonged disability would not be sent for imaging and specialist treatment; but instead would be advised to take minimal conservative measures to treat his pain and would be offered nothing for depression, insomnia, or alcoholism.

[19] In contrast, the Appellant's medical records show that while he had many health challenges, they were under control by 2012 at the latest, and remained so until well after December 31, 2014. His work history and his own testimony confirm that he managed reasonably well, with and without medication, and was able to work at least partway into 2014. He described a fall at work in March or May 2014, but he did not report it to his family doctor or otherwise seek medical help. He testified that one reason he did not, was that he thought his condition would improve on its own. These suggest to me that in 2014 the Appellant's pain and other conditions were not as significant as he now remembers. The fact that he may have been taking medication for them does not mean he was disabled.

[20] I acknowledge the Appellant's testimony that he depended on others to drive him to medical appointments, and this affected his access to some degree. However, he also testified that if he really needed to go to the doctor, his brother would take him. It is therefore reasonable to expect that if his condition had required him to seek medical advice in 2014, he would have done so. It is significant that when he did see doctors in 2014, he did not mention the issues he claims have prevented him from working since the first half of that year. The exception to this is his report of low back pain in December 2014; however, the recommendation for conservative treatment and lack of investigation suggest the Appellant's pain was no worse than it had been in

²⁷ GD2-4-6, 15-17

the past. Furthermore, the fact that he did not return to his doctor until a year later indicates that her recommendations were sufficient to control his pain.

The Appellant's condition was not severe at December 31, 2014

[21] The Appellant submitted that his fall in May (or March) 2014 “put him over the top” physically and psychologically; and left him unable to work at all as of that date, or at least by the end of that year. There is no evidence to support this. The evidence indicates that if the Appellant’s condition worsened, it did not do so until well after his MQP. In December 2015, he told Dr. Cochien that he took Tylenol 3 only occasionally²⁸. He did not mention depression until January 2016²⁹. He was not sent for x-rays until February 2016³⁰. He complained of hand tremors in February 2016, and stated he had these since he stopped drinking three-and-a-half years earlier³¹; but there is no evidence they were an issue for several years before that. His son and daughter told Dr. Cochien in April 2016 that the Appellant was occasionally a binge drinker at parties³². While the Appellant clearly had drinking problems before 2012, neither he nor any family members had expressed concerns about them for several years.

[22] In deciding if the Appellant had work capacity at his MQP, I must keep in mind factors such as his age, level of education, language proficiency, and past work and life experience³³. There is no doubt the Appellant’s employment opportunities were limited by all of these. When he stopped working, he was 52 years old. He has only seven or eight years of formal education in India, and he has never studied English. He cannot read or write in English at all, and he does not speak or understand it well. He has no computer skills, and his work history has involved only physical labour.

[23] Except for his age, the Appellant’s employment was always affected by these factors. Despite them, he managed to work as a X until early 2014. I accept that he had a fall at that time which caused him to have back pain, as he testified. I accept that this pain might have prevented him from working for a short time. However, there is no evidence that back pain or any other

²⁸ GD2-66

²⁹ GD2-67

³⁰ GD2-59

³¹ GD2-70

³² GD2-73

³³ *Villani v. Canada (A.G.)*, 2001 FCA 248

condition limited his work capacity after that until 2016 at the earliest. The medical evidence in 2014 indicates there was no reason why the Appellant could not have returned to work as a X, or to have attempted some other position with similar or lighter physical requirements. At that time, he was the same age he was when he last worked, so that would not have been a factor either.

[24] I find the Appellant had work capacity before December 31, 2014. He must therefore show he tried to obtain or maintain employment, and was unsuccessful because of his health condition³⁴. He has not done so.

[25] I must consider all the Appellant's possible impairments, not just the biggest or the main ones³⁵. However, I must also be concerned with whether his impairments combined to leave him with a severe and prolonged disability on or before December 31, 2014. As discussed above, while I acknowledge the Appellant has had many health issues over many years, the evidence is that he was generally able to work in spite of them. There is nothing to support a conclusion that – either alone or in combination – they left him incapable regularly of pursuing any substantially gainful occupation by December 31, 2014.

Prolonged disability

[26] A person must prove his disability is both severe and prolonged. Because I decided the Appellant's disability was not severe at his MQP, I did not consider whether it was prolonged.

CONCLUSION

[27] The appeal is dismissed.

Virginia Saunders
Member, General Division - Income Security

³⁴ *Inclima v. Canada (A.G.)*, 2003 FCA 117

³⁵ *Bungay v. Canada (A.G.)*, 2011 FCA 47