



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. M. v Minister of Employment and Social Development*, 2018 SST 1240

Tribunal File Number: GP-17-2699

BETWEEN:

R. M.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Adam Picotte

Teleconference hearing on: November 16, 2018

Date of decision: November 19, 2018

DECISION

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

OVERVIEW

[2] The Claimant had a long work history. He had most recently worked as a labourer from January to July 2015. After that he stopped working because he was sick and had started to experience back problems. The Minister received the Claimant's application for the disability pension on March 22, 2017. 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, 2017.

PRELIMINARY MATTERS

[4] This appeal was initially scheduled as a teleconference. A notice of hearing setting out the date, time, and contact information for the hearing was sent to the Claimant on October 30, 2018.¹ On November 8, 2018 a Registry Officer called the Claimant and left a voicemail confirming the details of the hearing and provided contact information if he had any questions. The Claimant did not return the call. On November 16, 2018 I called into the teleconference line for the hearing and waiting 30 minutes for the Claimant to call in. He did not. I then waited until November 19, 2018 to write this decision in case the Claimant contacted the Tribunal later to advise of reasons for his non-attendance. The Claimant did not contact the Tribunal. As a result I am satisfied that the Claimant had notice of the hearing and has chosen not to participate. I am therefore satisfied that the matter should proceed on the record.

¹ GD0-1

ISSUE(S)

[5] Did the Claimant's conditions lower back pain result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2017?

[6] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2017?

ANALYSIS

[7] Disability is defined as a physical or mental disability that is severe and prolonged². 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

Do the Claimant's limitations prevent him from regularly pursuing any substantially gainful occupation?

[8] I must assess the severe part of the test in a real world context³. This means that when deciding whether a person's disability is severe, I must keep in mind factors such as age, level of education, language proficiency, and past work and life experience.

[9] I am mindful that the Claimant has a grade 10 education.⁴ He had most recently worked as a labourer from January to July 2015 but stopped because he had become sick and was experiencing back problems.⁵ The Claimant detailed that his lower back problem prevented him from working because of bending, lifting, and standing for long lengths of time. He detailed that he could only work short distances, and that sitting and standing for more than 2 hours caused

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

³ *Villani v. Canada (A.G.)*, 2001 FCA 248

⁴ GD2-57

⁵ GD2-57

pain flare-ups in his lower back.⁶ However, there is a lack of information on his file about his work history. His record of earnings demonstrates that he has worked regularly from 1983 to 2010.⁷ The nature of this work is unknown as the Claimant did not provide any information about his work history in his questionnaire and did not attend his oral hearing. Keeping in mind that the Claimant bears the onus of proving his case the lack of information provided by the Claimant does not support a finding of severe in the real world context.

[10] 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 work⁸.

[11] Again, and problematic for the Claimant is that he has not provided any information in respect of his attempts to work and his efforts to return to work. Dr. George, family physician, detailed that the Claimant had lower back pain from a back injury.⁹ He noted that the Claimant likely had L5-S1 spondylolisthesis and narrow disc spacing. This had resulted in back pain flares that interfered with his ability to sit and stand and do any heavy lifting.¹⁰ It was noted that the Claimant was in use of tigerbalm as needed and Tylenol and robaxacet as needed.¹¹ However, while the Claimant may have limitations, there is still work capacity and without further information respecting his attempt to return to work, the Claimant has not shown that he has a severe disability within the meaning of the CPP.

[12] For these reasons I find that the Claimant does not have a severe disability within the meaning of the CPP.

⁶ GD2-60

⁷ GD2-41

⁸ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

⁹ GD2-52

¹⁰ GD2-53

¹¹ GD2-54

CONCLUSION

[13] The appeal is dismissed.

Adam Picotte
Member, General Division - Income Security