



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *DO v Minister of Employment and Social Development*, 2019 SST 1683

Tribunal File Number: GP-18-1195

BETWEEN:

D. O.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Kelly Temkin

Teleconference hearing on: January 2, 2019

Date of decision: January 11, 2019

DECISION

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

OVERVIEW

[2] The Claimant bases his disability claim on limitations caused by a right below knee amputation. He worked part-time for a university, taking care of animals in research studies, from May 2016 until April 2017 when he stopped working for a period of time as a result of the amputation. He resumed work in October 2017, and continues to work. The Minister denied the Claimant's disability 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, 2018.

ISSUES

1. Did the limitations caused by the Claimant's right below knee amputation, combined with previously existing conditions of diabetes and hypertension result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2018?
2. If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2018?

ANALYSIS

Test for Disability

[4] Disability is defined as a physical or mental disability that is severe and prolonged.¹ 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. 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

The Claimant's condition was serious by December 31, 2018

[5] 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.

[6] I am satisfied that the medical evidence in combination with the Claimant's testimony demonstrates his health condition was serious on or before his MQP.

[7] On April 24, 2017 the Claimant underwent fourth toe amputation on his right foot due to complications of diabetes. On May 2, 2017 the Claimant's right leg was amputated below the knee due to gangrene caused by diabetes.

[8] When the effects of the Claimant's diabetes reached the point where his right leg had to be amputated below the knee, there is no question that he had a serious medical condition.

Although the Claimant has a serious medical condition, there is evidence that he has capacity to work

[9] In an October 2017 report, the Claimant's physiotherapist notes that the Claimant was fitted with a prosthesis and was a successful prosthetic user, able to traverse most environmental barriers. The physiotherapist writes that throughout the day, the Claimant needs to take time to adjust the prosthesis to accommodate different footwear and socket volume changes. The physiotherapist writes that at times, the Claimant would be unable to wear his prosthesis at all

¹ paragraph 42(2)(a) of the CPP

due to the stump irritation, rashes and when the prosthesis itself was broken or being adjusted. She notes that during these times mobility would be severely restricted.

[10] In a November 2017 report, the Claimant's rehabilitation physician writes the Claimant is doing extremely well. He is able to wear his prosthetic all day with no concerns and can walk quite well without pain. A follow-up visit is planned in four months. In a February 2018 medical report the family doctor confirms the Claimant's hypertension and diabetes are managed with medications. The doctor writes that the Claimant has no flex in the ankle of the prosthetic. Regarding work, the family doctor was of the opinion that the Claimant was able to manage four hours a few days per week. He notes that doing activity for an extended period is challenging. The weight of the prosthetic and being on it for more than four hours is quite challenging for the Claimant.²

[11] The Claimant testified in a straightforward manner consistent with the medical evidence on file. I accept his testimony. During a September 2017 call with staff at Service Canada, the Claimant reported that his employer offered to return him to his part-time job. He testified he was able to return to his part-time position at the university's research studies in October 2017. The available work hours were eight per week. This was also the maximum amount he could manage. He looks after fish and mice including feeding them and mopping the floor occasionally. The Claimant described his job as very easy and not physical. There are some days when he is late for work because of the lengthy time required to get ready for his day with a prosthesis. His employer accepts his late arrival times. The Claimant also volunteered in the community making pierogis with seniors but found this too challenging to continue. He characterized this work as physical involving standing and activity for 4 to 5 hours. He said he missed a couple of days volunteering because of his medical condition although he could not provide specific details regarding dates and timeframes. The Claimant stated that presently it was a major effort to get ready each day and all his activities of daily living took a long time to complete. The Claimant is now able to drive, as his licence was re-instated. The Claimant testified that he saw the specialist most recently in June 2018 and the doctor said everything looked all right. He remains under the care of family doctor.

² GD2-50

[12] I must assess the severe part of the test in a real world context. 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.³ The Claimant testified that he had taken hotel management courses more than 30 years ago. He worked for 18 years as a medical researcher for the federal government, which involved primarily physical work looking after animals but with a paperwork component. He wrote occasional reports and maintained inventory. He said that most of his skills related to looking after the animals and he did not think his skills were particularly transferable. The Claimant admitted that he was capable of lighter work. He thought he could train to work on a computer program and had basic computer skills. I do not find that his age of 57 years is an impediment to employment, since he is able to pursue part-time work and is currently working.

[13] The Claimant's evidence and medical evidence substantiated that the Claimant's disability related solely to the amputation of his right leg. I agree his medical condition precludes him from physically demanding employment. I acknowledge that his family doctor states activity for more than four hours is quite challenging for the Claimant. I find that the Claimant's medical condition does not rule out retraining, education upgrade or performing sedentary work that does not require him to be active. In fact, the Claimant admitted he would be able to work in data entry or inventory control and he is actually working presently. I acknowledge the Claimant's testimony that his age and prosthesis are barriers to finding work; however, there is evidence that he has residual capacity to work.

There is evidence of work capacity and the Claimant is working and has made no efforts to find lighter work

[14] The Claimant said that he made efforts to look for lighter work but it was challenging at 57 with a physical disability. He testified that he stated on his applications he was disabled. However, he could not remember the names of any companies or timeframes when he applied for work. He said he applied for shipping/ receiving positions and inventory clerk. He also thought he could probably do some data entry positions. He admitted that shipper receiving may be not a suitable position but thought since he was in charge of inventory for the animal studies

³ Villani 2001 FCA 248

he could work as inventory clerk. I acknowledge the Claimant's testimony, but he is presently working. The Claimant's income for 2017 is similar to the previous years income.⁴ The Claimant's work is a somewhat physical job. The evidence supports capacity for work and increased hours with a more sedentary job. There is no evidence that the Claimant has looked for more sedentary employment that would reduce the need for him to be active at work and allow him to increase his hours.

[15] I find that the Claimant has not established, on a balance of probabilities, a severe disability in accordance with the CPP requirements as of the December 31, 2018 MQP.

My Authority as a Member of the Tribunal

[16] The Social Security Tribunal only has the authority given to it by legislation. The legislation does not allow a Claimant to receive a disability benefit unless the Claimant meets the requirements in the CPP. I have no authority to waive or vary the terms of the CPP.

CONCLUSION

[17] The appeal is dismissed.

Kelly Temkin
Member, General Division - Income Security

⁴ GD2-33