



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. P. v Minister of Employment and Social Development*, 2019 SST 109

Tribunal File Number: GP-18-626

BETWEEN:

A. P.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Brisette Lucas

Claimant represented by: Connie Oliverio

Teleconference hearing on: January 16, 2019

Date of decision: January 18, 2019

DECISION

[1] The Claimant is not eligible for a CPP disability pension.

OVERVIEW

[2] The Claimant applied for benefits in August 2017. He claimed that he was disabled due to an accident that re-injured his lower back¹. The Claimant was last employed as an X in a warehouse from March 2009 to June 2009 when he stopped working due to the limitations caused by his injuries including chronic low back pain, hyperlipidemia and depression.

[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, 2006. The Respondent denied the application initially and upon reconsideration because the Claimant did not have a severe and prolonged disability as of his MQP.

ISSUES

- a) Whether the limitations caused by lower back injury resulted in the Claimant being incapable regularly of pursuing any substantially gainful occupation, on or before December 31, 2006; and
- b) If so, whether the disability was likely to be long continued and of indefinite duration.

ANALYSIS

[4] A person is considered to have a severe disability if he or she 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 death². 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.

¹ GD2-118

² Paragraph 42(2)(a) of the CPP

Severe disability

The Claimant did not have a serious health condition that limited his capacity to work as of December 31, 2006

[5] The Claimant had several workplace-related lower-back injuries in his occupation as a warehouse worker. He was last injured prior to his MQP in March 2003 when he twisted his back lifting a heavy carton. I have considered the following pre-MQP medical evidence.

- a) In a note dated November 19, 1999 Dr. Murti noted that the Claimant continued to suffer from mechanical and discogenic back pain.³
- b) In a note dated February 5, 2000 Dr. Murti noted that the Claimant suffered from chronic persistent low back pain associated with chronic degenerative disc disease of the spine at L4-5 level and right-sided L5 spondylosis.⁴
- c) In a note dated July 29, 2000 Dr. Murti noted that the Claimant suffered from chronic persistent low back pain associated with chronic degenerative disc disease of the spine associated with herniate disc at L4-5 level.⁵
- d) In a note dated January 10, 2001 Dr. Murti stated that the Claimant continued to suffer from chronic mechanical and discogenic back pain as a result of his back injury.⁶
- e) In a letter dated March, 2001, Dr. Roscoe, Orthopedic Surgeon, stated that the Claimant appeared to have ongoing sciatic symptoms with evidence of L5 radiculopathy.⁷
- f) In a letter dated April 11, 2001 Dr. Roscoe stated that the Claimant had chronic low back pain and disability that he will have to deal with on a long-term basis.⁸

³ GD2-74

⁴ GD2-73

⁵ GD2-72

⁶ GD2-71

⁷ GD2-70

⁸ GD2-68

- g) In a report dated August 28, 2003 Dr. Prutis noted that the Claimant continued to experience low back pain and difficulty with daily activities. Dr. Prutis stated that the Claimant was unable to be gainfully employed.⁹
- h) In a report dated March 4, 2003 Dr. Murti, Family Physician, stated that the Claimant continued to suffer from back pain as a result of his back injury.¹⁰

[6] There must be medical evidence of the Claimant's health conditions.¹¹ Although the Claimant experienced limitations and may not have been able to work in his usual occupation, I find that the evidence regarding the Claimant's medical conditions do not support a finding of a severe disability as of December 31, 2006. In a Vocational Evaluation Report dated May 16, 2006, it was determined that the Claimant could work in alternate positions within his physical restrictions.¹² I find that the Claimant's limitations related to his back pain caused him to be unable to do his usual occupation as a warehouse worker; however, the limitations that affected those limitations do not extend to sedentary work. His limitations were not severely disabling on or before December 31, 2006 in that they did not preclude him from doing sedentary work.

[7] I must consider all of the Claimant's medical conditions, and not just the main impairment.¹³ The record shows the Claimant was diagnosed with hyperlipidemia in June 2017.¹⁴ I find that even though the Claimant was suffering from hyperlipidemia, there is nothing in the record to indicate he had sufficiently disabling limitations from this condition as of December 31, 2006. The Claimant submitted that he became depressed due to the seriousness of his last accident in June 2009.¹⁵ At the hearing he testified that he sought counselling in 2010 and that he eventually made the decision to stop taking medication for his depression. I find that even though the Claimant had depression there is nothing in the record to indicate he had sufficiently disabling limitations from this condition as of December 31, 2006.

⁹ GD2-66

¹⁰ GD2-67

¹¹ *Villani v. Canada (A.G.)*, 2001 FCA 248

¹² GD2-61

¹³ *Bungay*, 2011 FCA 47

¹⁴ GD2-85

¹⁵ GD2-120

The Claimant's activities after his MQP indicated a capacity to work

[8] The Claimant was last employed as a warehouse X from March 2009 to June 2009 when he stopped because he reinjured his back on the job. The Claimant's job duties were similar to his previous warehouse work. It was a physical job requiring him to bend, twist, and lift heavy load. His injury occurred when he lifted a 400-pound drum. The Claimant testified that he did not want to pursue this type of work but felt that he did not have a choice given his qualifications. His ROE indicates earnings of 9,775 in 2009.¹⁶

[9] The Claimant testified that he upgraded his education over the course of 15 – 18 months in 2007. He testified that he attended courses five days a week, approximately three hours a day. Although he completed his coursework he stated that he needed to take frequent breaks, did not retain anything and did not receive any credits towards formally completing high school.

[10] I find that these activities indicate that the Claimant's medical conditions, alone or in combination, did not regularly prevent him from pursuing any substantially gainful employment as of his MQP. He was able to work and attend courses after his MQP. Moreover, it was not until after his June 2009 accident that the Claimant felt he could no longer work due to his medical condition¹⁷. His specific statement was that he has been totally disabled since June 2009¹⁸. The Claimant's representative submitted that the Claimant suffered from medical conditions that were severe and prolonged from the date he stopped working, June 2009¹⁹. She further urged me to consider a Workplace Safety Insurance Appeals Tribunal (WSIAT) decision granting the Claimant benefits for that program. I note that eligibility under WSIAT is irrelevant to the issue before me as the applicable legislation and eligibility requirements are different. Moreover, even if I were to accept the decision as evidence, it does not support that the Claimant was severely disabled as of his MQP. I find that all of the evidence before me supports that he was not severely disabled until June 2009.

¹⁶ GD2-38

¹⁷ GD2-120

¹⁸ GD2-124

¹⁹ GD2-103

[11] 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 condition.²⁰ The evidence reveals that the Claimant had the capacity to seek and retain sedentary employment as of his MQP. A Vocational Evaluation Report dated May 16, 2006 showed that the Claimant was capable of alternate work provided the jobs were within his physical restrictions.²¹ This is supported by two medical reports made after the Claimant's MQP. In February 2009 Dr. Prutis stated that the Claimant can only be employed in activities that do not involve lifting and that sedentary work would be more appropriate for him.²² In September 2009, Dr. Gizzi, the Claimant's family doctor, recommended that the Claimant pursue office or sedentary work.²³ I note that these two medical opinions are subsequent to the Claimant's MQP; I therefore find that the Claimant had the residual capacity to work in a sedentary capacity as of his MQP as indicated in the Vocational Evaluation Report. The Claimant pointed out that both Dr. Gizzi and Dr. Prutis²⁴ eventually determined that he was disabled from all types of work. I note that these statements were made after the expiration of the Claimant's MQP and, in the case of Dr. Prutis, only after his final workplace injury in June 2009.

[12] I considered the Claimant's submissions that he did not feel qualified for office work, which was his definition of sedentary; however, office work is not the only type of work that is considered sedentary. His Vocational Evaluation Report identified retail work, cashier, telemarketing, gate attendant, night watchman, concierge, ticket taker, electronics assembler as jobs he could potentially perform without any educational upgrading as training on site was typically offered for these roles²⁵. Sedentary work is not synonymous with office work; it simply means work that is not labour-intensive. I find that the Claimant has not proven on a balance of probabilities that efforts at obtaining and maintaining employment have been unsuccessful because of his health condition since he did not pursue work within his limitations.

²⁰ *Inclima v. Canada (A.G.)*, 2003 FCA 117

²¹ GD2-61

²² GD2-52

²³ GD2-166

²⁴ GD2-47

²⁵ GD2-61

[13] I must assess the severe part of the test in a real world context²⁶. 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. The Claimant was 47 years old as of his MQP with a grade 10 education. There is some evidence that the Claimant had an average range intellectual capacity²⁷; however despite that he was retrained as an X.²⁸His primary work experience has been as a factory worker. Even though he only has a grade 10 education and has worked primarily in non-sedentary work, he was relatively young as of December 2006 and does not have a language barrier. I find he had residual work capacity as of his MQP when I consider his personal circumstances in combination with his medical condition.

CONCLUSION

[14] The appeal is dismissed.

Brisette Lucas
Member, General Division - Income Security

²⁶ *Villani*

²⁷ GD2-63

²⁸ GD2-193