



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. H. v Minister of Employment and Social Development*, 2019 SST 409

Tribunal File Number: GP-17-3158

BETWEEN:

**L. H.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Kelly Temkin

Date of decision: March 19, 2019

## **DECISION**

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

## **OVERVIEW**

[2] The Claimant last worked as a carpenter from June 2016 to July 2016 when he stopped working due to a layoff as the job was finished. The Claimant described his main disabling conditions as severe pain in both the lower back and left hip. He indicated he could no longer work due to his medical condition as of January 11, 2017. The Claimant began receiving a retirement pension in December 2015. 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. To receive a disability pension an individual cannot be in receipt of a retirement pension. An individual can request to cancel a retirement pension in favour of a disability pension if he became disabled before the month the retirement pension became payable. The Claimant began receiving a retirement pension in December 2015; therefore, he must be found disabled, within the meaning of the CPP, on or before November 30, 2015, and continuously thereafter.

## **ISSUES**

1. Did the Claimant's severe pain in both the lower back and left hip result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by November 30, 2015?
2. If so, was the Claimant's disability also long continued and of indefinite duration by November 30, 2015?

## **ANALYSIS**

### **Test for a Disability**

[4] Disability is defined as a physical or mental disability that is severe and prolonged.<sup>1</sup> 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 has a serious medical condition by November 30, 2015***

[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 on file demonstrates the Claimant's medical condition was serious on or before November 30, 2015.

[7] In January 2017, the family doctor wrote that the Claimant was being assessed for surgery due to his ongoing medical condition. This precluded a return to work. The doctor would reassess the Claimant in April 2017 regarding his ability to work.<sup>2</sup> In a March 2017 medical report the family doctor diagnosed advanced osteoarthritis of the hips. He started treating the Claimant's main medical condition in December 2014. The doctor noted a history of chronic back pain and a left knee replacement in 2015. He wrote that due to hip pain the Claimant has now required a referral to an orthopedic surgeon for management.<sup>3</sup> A June 2017 medical report from an orthopedic surgeon noted the Claimant has a previous knee replacement and osteoarthritis of the hips. The surgeon wrote that the Claimant's condition would deteriorate.<sup>4</sup>

#### ***The Claimant had work capacity in November 2015, the month before he began his retirement pension***

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<sup>1</sup> paragraph 42(2)(a) of the CPP

<sup>2</sup> GD2-65

<sup>3</sup> GD2-61

<sup>4</sup> GD2-53

[8] 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 is 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 work.

[9] The Minister submits that although the family doctor noted that the Claimant started treatment for the main medical condition in December 2014, there was no medical evidence on file to indicate that those medical issues would have prevented him from working the month before he first received his retirement pension in November 2015.

[10] Although the Claimant has a serious medical condition by November 30 2015, what I must determine is whether in the month before he began receiving a retirement pension the Claimant retained work capacity. The key question in CPP disability cases is not the nature or name of the medical condition, but its functional effect on a claimant’s ability to work.<sup>5</sup>

[11] The Claimant did not stop work until July 2016. He wrote that he could no longer work in January 2017,<sup>6</sup> which occurred after November 2015, the month before he first received his retirement pension.

[12] The Claimant submits that because he became disabled within 15 months after starting his early retirement pension he should be eligible for a disability pension. I acknowledge the Claimant’s evidence that he had physical difficulties in the month before he began the retirement pension<sup>7</sup> and that his family doctor confirmed his main medical condition began in 2014. However, I find there is no medical evidence in support of his inability to work the month before he began his retirement pension. The Contributions record shows substantially gainful earnings for 2015 in the amount of \$35,941.<sup>8</sup> In his Notice of Appeal the Claimant wrote that he was not disabled and still working when he applied for his retirement pension. .<sup>9</sup>

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<sup>5</sup> Ferreira v. Attorney General of Canada, 2013 FCA 81

<sup>6</sup> GD2-68

<sup>7</sup> GD2-23

<sup>8</sup> GD2-32

<sup>9</sup> GD1-3

[13] I do not need to consider whether the Claimant would be capable of engaging in alternate employment, as I am satisfied that he was able to work at substantially gainful employment in the month prior to the receipt of his retirement pension in November 2015. Whether he was able to continue with substantially gainful employment in 2017 is irrelevant.

[14] I have no jurisdiction to grant the remedy that the Claimant is seeking. As a Tribunal Member, I am required to interpret and apply the provisions as they are set out in the CPP. The CPP only permits the Claimant to withdraw a retirement pension in favour of a disability pension if the Claimant proves he was incapable regularly of pursuing any substantially gainful occupation by November 30, 2015, before receiving retirement pension.<sup>10</sup>

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

## **CONCLUSION**

[16] The Appeal is dismissed.

*Kelly Temkin*  
Member, General Division - Income Security

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<sup>10</sup> Subsection 66.1 (1.1) of the CPP and subsection 46.2 (2) of the CPP