



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. P. v Minister of Employment and Social Development*, 2019 SST 1550

Tribunal File Number: GP-18-56

BETWEEN:

A. P.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Lianne Byrne

Claimant represented by: James Wallbridge

Videoconference hearing on: April 10, 2019

Date of decision: May 14, 2019

DECISION

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

OVERVIEW

[2] The Claimant worked as an underground miner until he stopped working in December 2013 due to chronic pain. The Minister received the Claimant's application for the disability pension on November 30, 2016. 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.

ISSUE(S)

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

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

ANALYSIS

[6] Disability is defined as a physical or mental disability that is severe and prolonged¹. 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.

¹ Paragraph 42(2)(a) *Canada Pension Plan*

Severe disability

The Claimant had a severe disability as of December 31, 2017.

[7] I am not satisfied that the Claimant was incapable regularly of pursuing any substantially gainful occupation as of December 31, 2017. The Claimant testified that he began working as a miner in March 2007. He described this job as heavy physical work done mostly underground. He enjoyed his job and was able to perform his duties until December 24, 2013, when he was injured in a snowmobile accident. He has not returned to work in any capacity since this accident.

[8] He described a very serious snowmobiling accident on December 24, 2013. He was snowmobiling off trail when he was thrown into a tree. He sustained numerous fractures, including in two vertebrae, all left-sided ribs, left arm, and his right foot. He also punctured his left lung and sustained a head injury. He underwent surgeries to insert pins and plates throughout his body.

[9] Since then, he has been suffering from chronic, constant pain and weakness. He was also diagnosed with depression and has been on antidepressant medication since 2017. He has difficulty remembering and concentrating.

[10] His life has changed dramatically since the accident. His common law relationship of 20 years ended. He is now living with his parents. He has difficulty with prolonged sitting and standing. He no longer does any cooking, cleaning, laundry or yard work. He is unable to keep any sort of routine. He stopped all of the activities he used to enjoy, including coaching hockey, golfing, skiing, hunting, fishing, camping, and other outdoor activities.

[11] He was asked about references in the medical reports to his volunteer activities. He explained that he was an assistant coach on his son's hockey team. He was responsible for taking care of the water bottles and opening the doors for children during the game. When he was in too much pain, he would sit down on the bench. In addition, he joined the snowmobile club as a way to get out of the house and get his mind off things. He attends meetings once a month during the winter season to discuss trails.

[12] The Claimant's mother also testified at the hearing that her son led a normal life before his snowmobiling accident. He was happy and physically active. He took care of his children, helped around the house and was involved in activities such as golf, boating, camping, horseshoeing, ski-doing and fishing. He has changed considerably since the accident. He is unhappy, angry, rude and always in a bad mood. He is also always in pain. He has stopped all of his activities. She described the Claimant as a loner. He spends most of his time in his room sleeping.

[13] I also considered the many medical reports on file, which have not all been summarized. Dr. James McKay, family physician, reported on January 3, 2017 that the Claimant has polytrauma from a snowmobile accident, C7 vertebral fracture, flail chest, manubrium fracture, left scapular fracture, left humeral fracture, and fractures of T4, T5, T10 and T11. He has had chronic pain syndrome since the accident despite active treatment. Dr. McKay was uncertain if he would be able to work in any physically demanding job, noting that he is easily fatigued.

[14] Similarly, Dr. Jordi Cisa, orthopaedic surgeon, reported on October 2, 2015 that he suffered serious musculoskeletal injuries, which result in him being substantially unable to engage in the essential tasks of his employment. However, on October 4, 2016, Dr. Cisa reported that he would have the physical capacity to re-enter the work force, although he may be required to engage in a work conditioning program or graduated return to work program.

[15] Dr. Jean-Guy Gagnon reported on August 25, 2016 that he continues to experience pain throughout his body and is irritable and moody.

[16] On September 2, 2016, Dr. D. Berbrayer, psychiatrist, reported that he sustained a closed head injury and multi-trauma. He has been left with ongoing physical impairments. On May 24, 2017, Dr. Berbrayer reported that he has significant problems with social adaptation. He has anger problems with family relationships and this would prevent him from doing any job.

[17] Dr. R. Van Reekum, neuropsychiatrist, reported on July 8, 2017 that he has chronic constant pain in various sites of his body, mobility impairments, sleep disturbance, reduced stamina, mood/anxiety/adjustment disorder, personality change, weight loss, cognitive complaints and possible cognitive impairments. The combined impact of the many mental health sequelae cause him to be unable to work in his previous job at present and will continue to pose significant barriers to his ability to attain and maintain competitive employment of any type in the future. Dr. R. Van Reekum, physiatrist, reported on August 11, 2017 that he meets the criteria for a catastrophic impairment.

[18] Dr. Ramamoham Veluri, psychiatrist, reported on September 12, 2016 that he developed an adjustment disorder with mixed anxiety and depressed mood. He also has a diagnosis of personality change. From a psychiatric point of view, he is not capable of returning to his pre-accident employment as a miner. However, he does not suffer a complete inability to engage in any occupation he may be suited by means of education, training or experience. A different type of modified work, such as office work where less interpersonal issues are present, could be a starting point for him.

[19] Dr. Barbar Connolly, neurologist, reported on September 30, 2016 that he complains of pain in his left arm, left thorax, mid back and right foot. He also experiences headaches. From a neurological point of view, he was felt to be capable of returning to his pre-accident employment. He does not have any functional limitations from a neurological perspective.

[20] Dr. Lionel Marks de Chabrist, pain management, reported on January 19, 2017 that he continues to complain of pain in his left shoulder and thoracic pain. His intermittent low back pain is likely overuse syndrome. He may benefit from a return to some form of work. If he is not capable of returning to his previous employment, he will require a career assessment and job retraining or further education to prepare him from a different career. Dr. de Chabrist reported on May 29, 2017 that he has been trying to do a few little jobs here and there but finds any work aggravates his pain. Dr. de Chabrist explained the concept of work hardening and a graduated approach to working where he stages his activities gradually and builds up resilience.

[21] Dr. Keith Klassen, clinical psychologist, reported on March 8, 2017 that he meets the criteria for adjustment disorder with mixed anxiety and depression. He has very poor sleep, poor memory and new learning.

[22] Jane Gobbo, registered nurse, reported on October 11, 2018 that he reports being able to ride his snowmobile on groomed trails although not for long periods of time. He noted being able to drum for short periods of time although the next day he is stiff and sore. He helps coach his son's hockey team and has joined the snowmobiler's trail planning committee. He cannot work while taking narcotic pain medications and he is unable to decrease his use of medication at this time.

There is evidence of work capacity.

[23] I accept that the Claimant suffered serious injuries in the snowmobile accident and has had ongoing pain and depression. However, I considered that 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 work².

[24] Although I accept that the Claimant is unable to return to his employment as a miner, or any other physically-demanding jobs, there are several medical reports indicating that the Claimant is capable of returning to or retraining for alternate work, including reports from Dr. Cisa, Dr. Veluri and Dr. de Chabrist. I therefore find that there is evidence of work capacity.

[25] 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 condition³. In this case, the Claimant has not applied for any other light jobs or attempted to retrain. After the MQP, in the summer of 2018, he made an attempt to do physically-demanding work for one of his friends. The job involved helping to re-shingle a roof. He had to bend to pick up shingles, which caused a jabbing pain in his ribs. He was unable to help with the roof. However, it is not surprising that the Claimant was unable to do this physically-demanding job given his functional limitations.

² *Klabouch v. Canada (A.G.)*, 2008 FCA 33

³ *Inclima v. Canada (A.G.)*, 2003 FCA 117

[26] 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 impairment⁴. In this case, in finding that the Claimant's disability is not severe, I considered that he was 45 years old as of the MQP with a grade 12 education. He is fluent in the English language. He has worked mainly doing physically-demanding jobs in the mining industry.

[27] While it is true that the Claimant has only worked in physically-demanding jobs, he is relatively young and fluent in the English language. In a vocational assessment dated September 21, 2016, Diamantis Zervas, vocational evaluator, reported that he currently meets the entry requirements for vocational school training programs. He was also felt to have the potential to secure alternate work in a number of suitable employment options, including mining equipment sales representative, dispatcher, materials coordinator, central control room operator, inspector and tester and material control coordinator. In considering his personal characteristics, he would not be precluded from attempting such lighter work or retraining for lighter work within his restrictions.

[28] Despite evidence of work capacity, he has made very few attempts to look for alternate work and has not made any attempts to retrain. Therefore, he has not shown that his efforts at obtaining and maintaining employment have been unsuccessful because of his health condition.

[29] 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 impairment⁵. Having considered the totality of the evidence and the cumulative effect of the Claimant's medical conditions, I am not satisfied on the balance of probabilities that he suffers from a severe disability.

CONCLUSION

[30] The appeal is dismissed.

Lianne Byrne
Member, General Division - Income Security

⁴ *Bungay v. Canada (A.G.)*, 2011 FCA 47

⁵ *Bungay v. Canada (A.G.)*, 2011 FCA 47