



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *T. K. v Minister of Employment and Social Development*, 2019 SST 1577

Tribunal File Number: GP-18-1436

BETWEEN:

**T. K.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

---

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

---

Decision by: Lianne Byrne

Teleconference hearing on: April 2, 2019

Date of decision: May 14, 2019

## **DECISION**

[1] The Claimant is entitled to a Canada Pension Plan (CPP) disability pension to be paid as of February 2019.

## **OVERVIEW**

[2] The Claimant is a 58 year old man who has only worked in physically-demanding jobs. He stopped working in August 2017 due to fibromyalgia. The Minister received the Claimant's application for the disability pension on August 31, 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, 2020.

## **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 the date of the hearing?

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

## **ANALYSIS**

[6] 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 or is likely to result in death. A person must prove on a balance of

---

<sup>1</sup> Paragraph 42(2)(a) *Canada Pension Plan*

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 had a severe disability as of the date of the hearing.***

[7] I am satisfied that the evidence shows that the Claimant was incapable regularly of pursuing any substantially gainful occupation. 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 work<sup>2</sup>.

[8] I found the Claimant and his wife, D. K., to be forthright, credible and sincere in their testimony. The Claimant testified that he has worked in a variety of physically-demanding jobs. Most recently, as a carpenter.

[9] His health problems began in 1988-1989, when he noticed pain throughout his body. His pain increased over time and began to affect his ability to work. In 2010 or 2011, he began to use medical marijuana, which would reduce his pain enough so that he could continue working. He was able to continue working until August 2017, when he could no longer tolerate the pain.

[10] Since then, his pain has worsened. He describes his pain as starting in one area of his body, then moving around to different areas of his body like a pin-ball machine. He also has a constant pain throughout his body. He was diagnosed with fibromyalgia. His pain worsens with activity and changes in the weather. He is also having difficulty sleeping as well as difficulty concentrating and remembering. He has irritable bowels.

[11] He lives in a house with his wife. She testified that she first noticed his health problems approximately eight years ago, when he had pain all over his body and fatigue. These have worsened over time. Even though the Claimant is at home all day while D. K. is at work, she is

---

<sup>2</sup> *Klabouch v. Canada (A.G.)*, 2008 FCA 33

responsible for all of the cooking and cleaning because of his health problems. She also helps with his personal care.

[12] The medical reports on file confirm that the Claimant has had longstanding pain that has worsened over time. Dr. John Steward, family physician, completed the CPP Medical Report on August 29, 2017, noting that he has fibromyalgia and symptoms of arthritis. He is unable to work. Dr. Stewart noted on October 10, 2018 that any movement causes disabling pain and he cannot sleep for more than four hours due to pain and stiffness. Dr. Stewart also reported on February 11, 2019 that the Claimant is able to walk only 100 metres, but in pain. He also has difficulty concentrating and remembering.

[13] Similarly, Dr. Eric N. Grant, rheumatologist, reported on December 14, 2018 that he has a history of diffuse musculoskeletal symptoms and may have a form of secondary osteoarthritis. He has structural changes in his hand joints intrinsic to the work he has done all his life.

[14] In addition, Dr. D.D. Smith, physical medicine and rehabilitation, reported on November 25, 2015 that his musculoskeletal pain is suggestive of fibromyalgia. On November 21, 2016, he was noted to have chronic musculoskeletal pain managed by cannabis. On November 17, 2017, he was noted to have widespread musculoskeletal pain diagnosed as fibromyalgia. He stopped working due to an increase in his pain.

***The Claimant had no evidence of work capacity as of the date of the hearing.***

[15] I must assess the severe part of the test in a real world context<sup>3</sup>. 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. In this case, in finding that the Claimant's disability is severe, I considered that he is 58 years old with a grade 12 education. He is fluent in the English language. He has only worked in physically-demanding jobs, including hatchery technician, welder, truck driver, agriculturist and, most recently, carpentry.

[16] The Claimant is precluded from performing the types of jobs he has done in the past, or any other job requiring even light physical duties, due to his pain and functional limitations. He

---

<sup>3</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

testified that his pain increases with even light activities. He has never held a sedentary job and, given his age, education and work history, he would be unlikely to obtain a sedentary job even without considering his medical conditions. He is also not a candidate for retraining given his age and functional limitations, including difficulty sitting, remembering and concentrating. I find that the Claimant was not employable in a real world context. I also find that there is no evidence of work capacity.

[17] 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<sup>4</sup>. Having considered the totality of the evidence and the cumulative effect of the Claimant's medical conditions, I am satisfied on a balance of probabilities that he suffers from a severe disability.

### **Prolonged disability**

[18] I find that the Claimant's disability is also prolonged. I considered that Dr. Stewart has been treating the Claimant's main medical condition since November 2015. Dr. Stewart felt that the Claimant is unlikely to improve. Dr. Grant noted the Claimant's long history of diffuse musculoskeletal symptoms. Dr. Smith reported on November 25, 2015 that he has chronic pain for many years and, on November 17, 2017 that his pain had worsened. I also accept the oral evidence provided by the Claimant and his wife that he has had longstanding pain that has increased over time.

[19] Therefore, I find that there is little likelihood of his condition improving in the foreseeable future and accept that the Claimant's disability is long continued and of indefinite duration.

---

<sup>4</sup> *Bungay v. Canada (A.G.)*, 2011 FCA 47

## CONCLUSION

[20] The Claimant had a severe and prolonged disability in October 2018, when Dr. Stewart noted that any movement causes him disabling pain. Payments start four months after the date of disability, as of February 2019<sup>5</sup>.

[21] The appeal is allowed.

Lianne Byrne  
Member, General Division - Income Security

---

<sup>5</sup> Section 69 *Canada Pension Plan*