



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SZ v Minister of Employment and Social Development*, 2019 SST 1684

Tribunal File Number: GP-18-825

BETWEEN:

S. Z.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Katherine Wallocha

Claimant represented by: C. Z.

Teleconference hearing on: June 25, 2019

Date of decision: June 28, 2019

DECISION

[1] I have decided the Claimant is not eligible for the *Canada Pension Plan* (CPP) disability pension, so I am dismissing his appeal. Here are the reasons why.

OVERVIEW

[2] The Claimant worked in construction when, on December 3, 2016, he fell seven feet from scaffolding onto a concrete floor. He has been unable to return to work since the accident. He applied for CPP disability pension on June 21, 2017. The Minister refused the application. The Claimant appealed to the Social Security Tribunal stating that he has contributed to the plan and he is disabled and unable to work.

THERE ARE TWO ISSUES IN THIS APPEAL

[3] A person who applies for a disability pension has to meet the requirements that are set out in the law that deals with CPP disability benefits. First, you have to meet the contribution requirements. The legal term for this is the “minimum qualifying period”¹ (MQP). The Claimant’s MQP date is December 31, 2011.

[4] Second, you have to have a disability that is “severe” and “prolonged”². You have to have that disability on or before the MQP date.

[5] The issues I have to decide are whether the Claimant’s MQP was calculated correctly, and whether the Claimant’s disability was severe and prolonged by the MQP date. It is up to the Claimant to prove³ this.

WAS THE CLAIMANT’S MQP CALCULATED CORRECTLY?

[6] Yes, I find that the Claimant’s MQP was calculated correctly. The Claimant’s MQP is December 31, 2011.

¹ It is found at s.44(1)(b) of the *Canada Pension Plan* (CPP).

² This requirement is found at s.42(2)(a) of the CPP.

³ The legal test for proof in this case is that the Claimant has to show it is **more likely than not** her disability is severe and prolonged.

[7] The calculation of the MQP refers to the “disability basic exemption”. Any contributions to the CPP must not be less than the year’s disability basic exemption to be considered valid. Employment income and contributions to CPP are based on the pensionable employment income amounts. The Claimant’s pensionable employment income amounts are recorded when he files his income taxes with the Canada Revenue Agency (CRA). The information is then provided to the Minister as a Record of Earnings to determine the Claimant’s entitlement to CPP disability benefits.

[8] The Claimant worked as a stucco and stone worker. His Record of Earnings and the Earning Details Report show that he worked for an employer and was also self-employed. The information further shows that the Claimant did not have valid earnings in 2010, 2011, 2012, 2013, and 2015. He reported valid earnings in 2014 and 2016.

[9] The Claimant initially submitted that it looks like there were years when he did not contribute to CPP benefits, but he stated that in those years he had a low income. He did all his tax returns but none of the accountants told him that he had to pay for CPP benefits. The Claimant submitted in his notice of appeal that he worked and paid taxes but the accountant did not properly record the money for his CPP contributions. The letter from the Minister says there were no contributions for four of the six years, but he says the Minister is incorrect. He did contribute when he paid all his income taxes.

[10] At the hearing, the Claimant testified he did work during the period where the Record of Earnings says he did not work. He was unable to provide any details about the work he did stating that he cannot remember exactly because of his injury, but he did work. He stated that he worked his whole lifetime and he does not know why the Record of Earnings shows that he did not work.

[11] Although the Claimant says he worked in 2010 to 2013, there are no reported earnings. While I respect the Claimant’s submission that he paid his income taxes, CPP contributions are based on his earnings from employment. If the Claimant’s earnings were not reported or were lower than the basic disability exemption amount, then the Claimant would not have contributed to CPP.

[12] The Claimant had to make valid CPP contributions in four out of six years. His Record of Earnings shows the last six year period in which he had four years of valid CPP contributions began on January 1, 2006, and ended on December 31, 2011, where the Claimant had valid CPP contributions from 2006 to 2009. This means his MQP ended on December 31, 2011.

[13] I find that the Claimant's MQP was calculated correctly, and he is required to prove he had a disability that was severe and prolonged by December 31, 2011.

IS THE CLAIMANT'S DISABILITY SEVERE AND PROLONGED?

[14] If the Claimant is incapable regularly of pursuing any substantially gainful occupation because of his disability, that is a severe⁴ disability. If the Claimant's disability is likely to be long continued and of indefinite duration, that is a prolonged⁵ disability. The Claimant's disability must be both severe and prolonged for the Claimant to receive a disability pension.

The Claimant was not disabled before December 31, 2011

[15] To decide if the Claimant's disability is severe, I have to look at all of the Claimant's medical conditions together to see what effect they have on his capacity to work.⁶

[16] The Claimant agrees that before his accident at work on December 3, 2016, he was not disabled. The Claimant informed the Minister that before his accident, he had not seen any type of family physician or specialist because he was never ill. He told his neurologist that he did not have any of these complaints before his fall. He testified that he liked his job, he liked working, he was happy. He was doing very well before his accident, he was hard-working and powerful with no problems.

[17] The Claimant bases his disability pension application on post-concussion syndrome, chronic neck and back pain, hearing loss in his right ear, and vision impairment in his right eye. He testified that he attempted physiotherapy but nothing helped him. The only thing that works is

⁴ The legal definition of "severe" is found at s.42(2)(a)(i) of the CPP.

⁵ The legal definition of "prolonged" is found at s.42(2)(a)(ii) of the CPP.

⁶ The Federal Court of Appeal explains this in a case called *Bungay v Canada (Attorney General)*, 2011 FCA 47.

the medication he takes for the pain; however, this medication makes him feel very sleepy, like he is in a coma.

[18] While I understand that the Claimant is unable to return to work following his accident, the law requires that he prove he became disabled before his MQP date of December 31, 2011. He has not done so.

[19] I recognize that the Claimant is no longer able to work, he has contributed for a number of years and he is a father of six children. However, he is still required to meet the contribution requirements. While I am sympathetic to the Claimant's situation, the law does not provide any exceptions or allow for any discretion.

[20] The Claimant admits that he was not disabled until after his accident on December 3, 2016. Therefore, I cannot conclude that his disability was severe before December 31, 2011.

[21] There is no need for me to consider whether the disability is prolonged, because I have decided the disability is not severe.

CONCLUSION

[22] The Claimant does not have a severe and prolonged disability. The result is that his appeal is dismissed.

K. Wallocha
Member, General Division - Income Security