



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. B. v Minister of Employment and Social Development*, 2019 SST 649

Tribunal File Number: GP-19-112

BETWEEN:

K. B.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Nicole Zwiers

Claimant represented by: Paul Sacco

Teleconference hearing on: June 27, 2019

Date of decision: June 27, 2019

DECISION

[1] The Claimant is entitled to a Canada Pension Plan (CPP) disability pension to be paid as of June 2017.

OVERVIEW

[2] The Claimant developed narcolepsy in May 2012 and stopped working in September 2013 as a result. The Minister received the Claimant's application for the disability pension on May 11, 2018. 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

¹ 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 in September 2013

[7] The Claimant was diagnosed with narcolepsy, a condition that prevents him from any or sufficient restorative sleep and causes “sleep attacks” during the day. These attacks are unpredictable, may last from 10 minutes to an hour and occur 3 to 4 times daily. They come without more than 10 to 15 minutes warning. The Claimant is asleep when a sleep attack occurs and finds the attacks more frequent when he has done anything requiring concentration.

[8] The Claimant testified that he is unable to work since 2013 when he stopped working. His condition prevents him from engaging in any regular activity due to its frequency and unpredictability. The Claimant testified that in 2013 he went off work on short-term disability because of the titration of the medication for narcolepsy. He then went on long-term disability. The Claimant is now at the maximum dose of the medication. Although the medication has stabilized his condition, it is an irreversible chronic condition.²

[9] The medical documents support the Claimant’s appeal. Dr. Subramanian of the Queensway Sleep Clinic has been treating the Claimant since December 2015 up to the present. Dr. Subramanian said in written letters that the Claimant does not get restorative sleep, sleeps 5 to 6 hours and has 15-30 minute naps 3 times daily. Dr. Subramanian found that the condition made the Claimant not competitively employable because it is a stable but chronic, irreversible condition.

[10] The other medical reports support the finding that the Claimant’s condition is stable but chronic.³ The Claimant has followed the treatment recommended and continues to see Dr. Subramanian monthly. There is no expectation of improvement.

² GD5-1-3

³ GD2-145, GD2-176 and GD2-177

[11] The Claimant lives with a woman and her two adult children. Although the Claimant testified that he tries to help with grocery shopping and chores, he cannot complete most chores because of his condition. The Claimant has a driver's license but rarely drives. The Claimant finds driving in traffic requires great concentration and he is then tired for 2 days following any driving.

[12] The evidence shows that the Claimant had a severe disability in 2013 when he stopped working.

The Claimant does not have capacity to work

[13] I must assess the severe part of the test in a real world context⁴. 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 52 years old at the time of his CPP disability application. He has grade 12 education with an X certificate. He worked for the same X company since 1987 until he stopped working in 2013. He has not held regular employment anywhere else. He has not looked for any other work or attempted to return to work since he stopped working.

[14] The Claimant testified that his condition makes it impossible to work. When asked what would happen if he took sedentary employment, the Claimant answered that he would fall asleep. I find that the Claimant's testimony, the medical evidence that supports his testimony, as well as his condition, age and limited skillset in X, make him an unsuitable candidate for retraining. The Claimant testified that he could not concentrate sufficiently in a course to learn any material. He avoids reading because that causes him to fall asleep. I accept that when the real world context is applied, the Claimant does not have capacity to work.

[15] 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's not a question of whether a person is unable to perform their regular job, but rather the person's

⁴ *Villani v. Canada (A.G.)*, 2001 FCA 248

inability to perform any substantially gainful work⁵. The Claimant is unable to earn a living due to his condition.

[16] 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 impairment⁶. Although the Claimant testified to his other conditions of osteoarthritis in his knee, gout and depression and anxiety, he agreed that these are not conditions that prevent him from working. The Claimant testified that his narcolepsy is the main condition that prevents him from working. I accept on the evidence that the Claimant is unable to work as a result of this condition. I make no findings in respect of his other conditions.

[17] Given the evidence before me, I find that the Claimant had a severe disability in September 2013 when he stopped working. Therefore, I find that the Claimant had a severe disability by his MQP.

Prolonged disability

[18] The Claimant's condition is chronic and there is no cure. The medication the Claimant takes has stabilized his condition but he will need medication for the remainder of his life. The Claimant diagnosed in 2012 and eventually stopped working in 2013 as his physician titrated him on the medication he currently takes. I accept that the Claimant's condition is long continued and of indefinite duration as of September 2013. Thus, I find the Claimant had a prolonged disability as of his MQP.

⁵ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

⁶ *Bungay v. Canada (A.G.)*, 2011 FCA 47

CONCLUSION

[19] The Claimant had a severe and prolonged disability in September 2013 when he stopped working due to his condition. However, to calculate the date of payment of the pension, a person cannot be deemed disabled more than fifteen months before the Minister received the application for the pension⁷. The application was received in May 2018 so the deemed date of disability is February 2017. Payments start four months after the deemed date of disability, as of June 2017⁸.

[20] The appeal is allowed.

Nicole Zwiers
Member, General Division - Income Security

⁷ Paragraph 42(2)(b) *Canada Pension Plan*

⁸ Section 69 *Canada Pension Plan*