



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. V. v Minister of Employment and Social Development*, 2019 SST 1585

Tribunal File Number: GP-18-232

BETWEEN:

R. V.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Brisette Lucas

Claimant represented by: Duncan Allison

Teleconference hearing on: May 1, 2019

Date of decision: July 24, 2019

DECISION

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

OVERVIEW

[2] The Claimant was 44 years old when he applied for benefits in June 2017. He claimed that he was disabled because of post-traumatic stress disorder (PTSD) and stress from a previous heart attack. The Claimant last worked as a project manager from August 2013 to February 2015 but claimed he could not continue because of his limitations.

[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. The Respondent denied the application initially and upon reconsideration because the Claimant did not have a severe and prolonged disability as of his MQP.

ISSUES

- a) Whether the limitations caused by PTSD and stress from a previous heart attack resulted in the Claimant being incapable regularly of pursuing any substantially gainful occupation, on or before December 31, 2017; and
- b) If so, whether the disability was likely to be long continued and of indefinite duration.

ANALYSIS

[4] A person is considered to have a severe disability if he or she is 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 death¹. 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) of the CPP

Severe disability

The Claimant has an honest belief that he is severely disabled

[5] I must assess the Appellant's condition as a whole and consider all of his impairments that affect employability, not just his biggest impairments or his main impairment.² The Claimant explained how he sees his medical condition in writing³ and at the hearing. He testified that he had a heart attack in 2014, and after attempting a gradual return to work he was ultimately not successful. He stated that is currently being treated for anxiety, and had been on Zoloft and Ativan as of his MQP. When the medication works he is quite sleepy afterwards and has diminished functionality. The Claimant that he cannot work in any job due to the unpredictability of his PTSD and panic attacks. He also stated he is unable to adhere to a schedule, interact with people and avoid things that would trigger his conditions.

[6] I think the Claimant was telling the truth when he made submissions and testified. His answers to questions at the hearing were consistent with his written submissions. I find the Claimant credible; however, I must also look at the objective evidence on file to determine whether it supports the Claimant's testimony.

The medical evidence on file does not support the Claimant's submissions

[7] The measure of whether a disability is "severe" is not whether the person suffers from severe impairments, but whether his or her disability prevents him or her from earning a living. Severity of the disability is not premised upon a person's inability to perform his or her regular job, but rather on his or her inability to perform any gainful occupation⁴. There are several medical reports on file that confirm that the Claimant had a heart attack and suffers from anxiety and PTSD. Although I have reviewed all of the medical evidence, I will mostly refer only to the most relevant evidence.

² *Bungay* 2011 FCA 47

³ GD2-132

⁴ *Klabouch* 2008 FCA 33

- a) In a report dated June 19, 2014 Dr. Lodge, Cardiothoracic Surgeon, stated that he performed quadruple bypass surgery in April. The Claimant was discharged following an uncomplicated hospital stay and was noted to have resumed work and driving.⁵
- b) In a report dated September 26, 2014 Dr. Rose, Cardiologist, noted that upon emanation the Claimant was able to exercise to a heart rate of 166, did not have any evidence of ischemia, no chest pain or EKG changes. Dr. Rose stated that the Claimant was on appropriate therapy and could resume normal activities.⁶
- c) In a Clinic Note dated September 9, 2014 Dr. Tilley noted that the Claimant found work stressful, was irritable afterwards and was having panic attacks again. He was considering changing careers.⁷
- d) In a Clinic Note dated January 19, 2015 Dr. Tilley noted that due to depression and anxiety the Claimant had low mood, no interest in regular activities poor memory and concentration and broken sleep. He was having trouble at work, unable to complete tasks, and was forgetful.⁸
- e) On March 10, 2015, Dr. Singleton noted that the Claimant has been unwell for the past six months. He has low mood, no interest in regular activities, poor memory and concentration, anxiety, and panic attacks. He was given supportive counselling and prescribed with Ativan and Effexor.⁹
- f) In a report dated February 8, 2016, Dr. Hancock, family physician, that the Claimant has panic attacks, depression, and anxiety. He was prescribed with Ativan and Celexa.¹⁰

[8] I find that that the Claimant's physical, psychological and cognitive functional limitations did not prevent him from performing any substantially gainful occupation as of December 2017. The Respondent submitted that the reports on file indicate the Claimant had a good response to

⁵ GD2-52

⁶ GD2-53

⁷ GD2-69

⁸ GD2-78

⁹ GD2-81

¹⁰ GD2-78

psychotherapy and was anticipated that participation in mental health services would assist the Claimant in returning to work. I agree. The Claimant was initially stopped working due to a heart attack and then later developed depression and anxiety that he claimed prevented him from working; however, despite his diagnoses, the medical evidence from June 2016 indicated an overall improvement in his symptoms and daily functioning when his medication and counselling was optimized.¹¹ Dr. Adey noted that the Claimant was eager to go back to work and felt he was able to.¹² In December 2016, Dr. Adey noted that the Claimant's psychotherapeutic counseling provided positive results and that his affect was congruent and normal, mood was normal and no anxiety present. The medical evidence after that time indicates that the Claimant was still suffering from some limitations, but it does not indicate a significant deterioration from the June 2016 report that would persuade me he was unable to work in any substantially gainful occupation.¹³ Although in June 2017, Dr. Hancock wrote that the Claimant continued to have multiple stressors and has acute reaction to stress, he was received counselling and the prognosis for his condition was "to be determined". I find that this report is not indicative of a severe condition that work due to his conditions.

[9] Even if I accept, based on the testimony and medical evidence that the Claimant could not work in his usual position, which was cognitively demanding, I find that he had the capacity to work in an alternate position. The Claimant feels he is totally disabled from working; however, the medical evidence does not support that conclusion. If a person has some capacity to work, they must show efforts to find work¹⁴. The Claimant has not tried to work in any capacity. As a result, the Claimant did not make efforts to find alternate work, and therefore I cannot conclude that his disability is severe.

[10] I must also consider factors such the Claimant's age, education level, language proficiency, and past work and life experiences when determining his employability¹⁵. The Claimant was 45 years old with some university education as of December 31, 2017. The Claimant has varied work experience, having held jobs as gas station attendant, mortgage broker,

¹¹ GD2-48

¹² GD2-48

¹³ GD2-96

¹⁴ *Inclima v. Canada (A.G.)*, 2003 FCA 117

¹⁵ *Villani* 2001 FCA 248

and cable salesperson. He has no language barriers or learning difficulties. I find that the Claimant's personal factors did not limit his ability to seek and retain alternate employment. He is relatively young and has transferable skills and a level of education that he could have used to find substantially gainful work.

[11] I find that the Claimant has not established on the balance of probabilities, a severe disability as defined in the CPP. There is no need for me to consider whether the disability is prolonged, because I have found that it is not severe.

CONCLUSION

[12] The appeal is dismissed.

Brisette Lucas
Member, General Division - Income Security