



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. C. v Minister of Employment and Social Development*, 2019 SST 1248

Tribunal File Number: GP-18-1479

BETWEEN:

A. C.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Gerry McCarthy

Teleconference hearing on: September 5, 2019

Date of decision: September 6, 2019

DECISION

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

OVERVIEW

[2] The first employer questionnaire in the Appeal file from “X” indicated the Claimant started working on August 14, 2017, and stopped on January 1, 2018. The second employer questionnaire in the Appeal file indicated the Claimant started working as a X for “X” on March 26, 2018, and was still working for the employer. The Claimant submitted that his main disabling condition was a severe anxiety disorder, severe depression, and thoughts of suicide and insomnia. The Claimant also submitted that his condition had deteriorated. The Minister acknowledged the Claimant’s symptoms, but submitted that the medical evidence did not support his medical condition precluded him from working.

[3] The Claimant’s second application for CPP disability benefits was received on January 23, 2012, with an MQP of December 31, 2012. This application was dismissed by the Tribunal following the Claimant’s hearing on July 7, 2015. There was no request for leave to appeal to the Appeal Division of the Tribunal. The Minister received the Claimant’s current application for the disability pension on February 14, 2017. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[4] 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 from January 1, 2013 (the day after his previous MQP) to his current MQP of December 31, 2020.

PRELIMINARY MATTERS

[5] The Claimant’s teleconference hearing was scheduled for September 5, 2019, at 1pm Eastern Time. I waited 30-minutes for the Claimant to attend the hearing, but the Claimant did

not attend. I was subsequently advised by the Tribunal that the Claimant had not contacted them to request an adjournment.

[6] The information on file does indicate the Claimant contacted the Tribunal on August 19, 2019, and confirmed that he received his Notice of Hearing and would attend the hearing on September 5, 2019. Section 12(1) of the *Social Security Tribunal Regulations* states that: “If a party fails to appear at a hearing, the Tribunal may proceed in the party’s absence if the Tribunal is satisfied that the party received notice of the hearing.” Under the circumstances, I am satisfied the Claimant received notice of his hearing and will proceed in his absence.

ISSUES

[7] Did the Claimant’s conditions result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation from January 1, 2013, to the date of the hearing on September 5, 2019?

[8] If so, was the Claimant’s disability also long continued and of indefinite duration?

ANALYSIS

[9] 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

[10] I must assess the severe part of the test in a real world context². 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.

[11] 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 inability to perform any substantially gainful work³.

[12] 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.

[13] 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 condition⁵.

Did the Claimant have a severe disability from January 1, 2013, to September 5, 2019?

[14] I find on a balance of probabilities the Claimant did not have a severe disability from January 1, 2013, to September 5, 2019, for the following reasons:

[15] First: As of June 5, 2019, the Claimant was working 40-hours per week as a X making \$48,000.00 per annum. Specifically, X from "X" reported on June 5, 2019, that the Claimant began working for them on March 26, 2018, and was still working for them as a full-time X. The employer further indicated there were no issues with the Claimant's attendance or quality of work (GD5-37). I realize the Claimant explained in his Notice of Appeal that his condition was deteriorating. However, the latest evidence was that the Claimant was regularly working at

² *Villani v. Canada (A.G.)*, 2001 FCA 248

³ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

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

⁵ *Inclima v. Canada (A.G.)*, 2003 FCA 117

substantially gainful employment and I accept the employer questionnaire from “X” as credible because it was detailed, documented in writing, and signed by the employer.

[16] Second: The Claimant’s return to employment was not a failed work attempt. For example, the Claimant starting working for “X” on August 14, 2017, and stopped working January 18, 2018. The employer questionnaire indicated the Claimant’s employment ended because he “quit” or was “terminated” by mutual agreement.” However, there was nothing in the employer’s questionnaire about the Claimant leaving his employment for health reasons (GD7-2). Furthermore, the Claimant started working again for “X” in March 2018 and according to the latest evidence was still working for this employer. I realize the Claimant explained in a letter (dated June 21, 2019) that he had been on Employment Insurance and Employment Insurance sickness Benefits and was trying to get back into the workforce, but had not been able to secure anything. However, the evidence on file was that as of June 5, 2019, the Claimant was working at substantially gainful employment for “X.”

[17] Third: The medical reports do not support that the Claimant had a severe disability. I realize Dr. Ibraheim concluded in June 2018 that the Claimant had features of a major depressive disorder with anxious distress and features of general anxiety not otherwise specified. Nevertheless, the report from Dr. Ibraheim does not indicate the Claimant was precluded from working. Furthermore, the reports and clinical notes from Dr. Rawal do not indicate the Claimant was precluded from working due to his medical condition.

[18] Finally, I realize in a Notice of Appeal the Claimant wrote that Dr. Ibraheim increased his medication and he had to attend “Mindfulness Group Orientation” every two-weeks. The Claimant also explained he needed disability benefits to continue to live. However, I must apply the legal test for CPP disability benefits to the evidence. In short, the Claimant returned to work in 2017 and according to the evidence on file has been working full-time at substantially gainful employment for “X” since March 2018. On this matter, the case law has been clear: The capacity of an applicant for a disability pension to regularly engage in remunerative employment was the very antithesis of a severe and prolonged disability (*Miller v. Canada [A.G.]*, 2007 FCA 237).

Prolonged disability

[19] Since I have determined the Claimant did not have a severe disability, I am not required to make a finding on the prolonged criterion.

CONCLUSION

[20] The appeal is dismissed.

Gerry McCarthy
Member, General Division - Income Security