



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. J. v Minister of Employment and Social Development*, 2019 SST 1511

Tribunal File Number: GP-18-1800

BETWEEN:

N. J.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Adam Picotte

Teleconference hearing on: September 13, 2019

Date of decision: September 14, 2019

DECISION

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

OVERVIEW

[2] The Claimant grew up as the youngest of 10 children. He suffered some abuse as a child and reflected that this has caused him anxiety and social isolation in his life. The Minister received the Claimant's application for the disability pension on May 9, 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, 2014.

ISSUE(S)

[4] Did the Claimant's psychological conditions, keratoconus, dyslexia, cross-dominant brain, and other medical conditions result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2014?

[5] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2014?

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's functional limitations have not prevented him from regularly pursuing any substantially gainful occupation.

[7] In a medical report from April 2015, Dr. Ebrahim detailed that the Claimant had been treated for PTSD, depression, and anxiety since April 2012. Dr. Ebrahim detailed that the Claimant was downcast and anxious looking. He has a low mood, difficulty with trust and anxiety significantly impaired his ability to get or keep work. He has difficulty maintaining relationships. Finally, the Claimant had not been able to work for three years because of his symptoms.²

[8] However, I reviewed Dr. Ebrahim's chart notes from January 2014 to April 2016. Those records do not indicate any chronic mental health condition. Primarily, the Claimant saw his doctor either on behalf of his mother or for physical ailments, including the flu, and a twisted ankle.³

[9] The Claimant did see Dr. Ebrahim on May 28, 2015 on account of being upset because of how he was treated by his mother's care person.

[10] It was not that the Claimant did not have an opportunity to speak to his doctor about his mental health condition. He saw his physician several times over that period. He spoke to his doctor about acute stress after being banned from seeing his mother after 8pm in the evening. But did not speak to the physician about any ongoing chronic mental health symptoms.

[11] I asked the Claimant about this discrepancy.

² GD2-78

³ GD2-59-62

[12] The Claimant told me that he did not talk to his family physician about his psychological concerns until recently. He told me that just because he did not talk to his doctor did not mean that he did not have difficulties.

[13] He told me he finally spoke to his doctor because he needed a report for a disability benefit and he got the courage to talk to his doctor. He told me that he started to feel better about talking to his doctor.

[14] I found the Claimant's statements about not speaking to his family physician unpersuasive. He was able to speak about feeling acutely distressed and about physical issues but not about what he describes as his most challenging medical ailment.

[15] What emerged during the hearing was that the Claimant has a distrust of medicine and physicians. He told me that he would rather not take medication and felt that natural remedies are more benefits to a person's well-being than pharmacological intervention. For instance he told me about his brother-in-law, who recently died from cancer. Everyday, while sick and receiving chemotherapy, we would tell him to stop that treatment and take a naturopathic remedy, as it was more likely to assist him in recovery.

[16] The Claimant also told me how his physician had referred him to a psychiatrist but that he had declined the referral because all the psychiatrist would do was to medicate him. I have accorded a significant amount of weight to the Claimant's unwillingness to obtain appropriate medical treatment. In doing so, I want to emphasize that my finding is not in relation to his sickness preventing him from obtaining treatment. The Claimant demonstrated through his attendance at his physician's office that he would seek medical assistance. However, he was clear that he did not trust physicians and refused a referral to a psychiatrist.

[17] To be entitled to a disability pension, an applicant is obliged to abide by and submit to treatment recommendations and, if this is not done, the applicant must establish the reasonableness of his/her non-compliance.⁴ This compliance must be viewed in the context of the applicant's circumstances. Here, the Claimant refused to even meet with the psychiatrist. As such, he did not make even a basic attempt to seek relief from his medical condition. The lack of even a basic form of engagement demonstrates that the Claimant has not met his obligations under the CPP.

⁴ *Bulger v. MHRD* (May 18, 2000) CP 9164

The Claimant had a residual capacity to obtain and maintain employment.

[18] I am mindful that the Claimant asserted that he has suffered from his medical conditions for a long time and that these conditions have been chronic for a long time. In this respect, he told me that he had been let go from a number of jobs. However, the Claimant also had no problem finding new employment once terminated. Taken in a real world context, the Claimant had excellent credentials and as such, a strong ability to obtain employment. He further had strong work experience and spoke English fluently. Tied to this, is that the Claimant told me during the hearing that his psychological condition has not changed. This was confirmed by witnesses who stated that it has only been in the last couple of years, post MQP, the Claimant's psychological condition has really worsened.

[19] In this context, I asked the Claimant whether he sought any other employment after he was laid-off in 2011. He told me that he had not. He spoke to one friend who advised him to call a person her know that worked for human resources at an employer. The Claimant failed to follow up on this offer. The Claimant made no further attempts.

[20] It is notable during the same time, he was able to care for his mother by attending a care facility daily for three hours. He was also able to engage in physical activities such as tennis and trying out for a community sports team.

[21] 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.

[22] The lack of effort at obtaining and maintaining employment is not supportive of a severe disability.

[23] I find that the Claimant had a residual work capacity after his MQP. He is not entitled to a disability benefit.

CONCLUSION

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

[24] The appeal is dismissed.

Adam Picotte
Member, General Division - Income Security