Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *G. P. v Minister of Employment and Social Development*, 2019 SST 1651

Tribunal File Number: GP-19-563

BETWEEN:

G. P.

Claimant (Appellant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Kelley Sherwood

Teleconference hearing on: August 20, 2019

Date of decision: September 18, 2019

Canada

DECISION

[1] The Claimant is not entitled to a Canada Pension Plan (CPP) disability pension earlier than June 2018.

OVERVIEW

[2] The Claimant had a long career as a corrections officer. He was diagnosed with PTSD in 2012. He continued to work at his usual job albeit with difficulty until February 2014 when he took early retirement. For financial reasons, he worked part-time in a series of less demanding jobs, on and off, until June 2018 when he stopped working because of his medical conditions.

[3] He applied for a CPP disability pension stating that he could no longer work due to post-traumatic stress disorder (PTSD), anxiety and hypertension. The Minister found the Claimant disabled as of June 2018. The Claimant argued that he was disabled as of February 2014 when he retired from his usual job. The Minister denied the Claimant's request to backdate the onset of his disability. The Claimant appealed the Minister's decision to the Social Security Tribunal.

[4] At the hearing, I explained to the Claimant that (in most circumstances) the legislation limits retroactive payments to 15 months after the application is received for late applicants[1]. Therefore, even if he were successful, his CPP pension would not be payable starting in February 2014. The Claimant said he understood, but wanted to be awarded the maximum retroactivity allowable under the CPP based on his disability application.

ISSUES

[5] Did the Claimant meet the criteria for a severe and prolonged disability before June 2018?

[1] See paragraph 42(2)(b) of the CPP

ANALYSIS

[6] Under the CPP, a disability is a physical or mental disability that is severe and prolonged[2]. 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.

The Claimant had work capacity after he left his usual job

[7] I accept that the Claimant could no longer perform his usual work. He described extreme job stress having witnessed some very traumatic events. His condition and symptoms emerged before leaving his job. He began treatment in 2012. In February 2014, he took an early retirement. I do not dispute the Claimant's evidence that he has been suffering since 2014 (or earlier); however, the suffering of the claimant is not an element on which the disability test rests[3]. The measure of whether a disability is "severe" is not whether the Claimant is unable to perform his regular job, but rather his inability to perform any substantially gainful work[4].

[8] The Claimant's own evidence is that he continued to work after leaving his usual job. Initially, he applied for and received regular Employment Insurance (EI) benefits for 52 weeks. In applying for regular EI benefits, the Claimant was affirming that he was available and looking for work. When his benefits ran out, he got a job with Nutrilawn for the spring/summer of 2015. While the Claimant argued that the job was only seasonal, I note that he worked sufficient hours to qualify for regular EI benefits over the fall/winter months. He returned to work for Nutrilawn in the spring of 2016, but had a health setback, and was unable to work for most of the summer. By September 2016, he stated that he had no choice, but to find another job for financial reasons. He was hired by a cleaning company, X, working three-to-four hours per day, five days a week. The Claimant stated that he was having difficulty performing the work although I note that he retained his employment after X lost the contract to another new firm, Y. Moreover, his employer did not identify performance issues on questionnaires in the file. At some point in 2017

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[2] Paragraph 42(2)(a) *Canada Pension Plan*
[3] *Canada (MHRD) v. Angheloni*, 2003 FCA 140
[4] *Klabouch v. Canada (AG)*, 2008 FCA 33

or 2018, he recalled reducing his hours to two-to-three hours a day, and only on weekends when there was less job stress until he stopped work altogether.

[9] Besides the cleaning job, the Claimant found a second job at a grocery store, Z. He began working as a produce clerk in October 2017. When he was hired, the plan was that he would work 20 hours per week, but he eventually reduced his hours to 12-to-15 hours a week. He stated that he would not have been capable of full-time work. He described some minor accommodations granted by his employer, but I did not find that these were in the realm of a benevolent employer. For an employer to be considered "benevolent", the accommodations offered must go beyond what is required of an employer in the competitive marketplace[5], which was not the case in the Claimant's circumstances. He stated that he had an agreement with his manager that he would work as many hours as he could. He worked evenings when the store was less busy. He always worked with another person who could assist him if needed. He could not lift over 50 pounds. He took breaks to help with his anxiety. He reported missing some work. He stopped work altogether in June 2018 when he stated he hit a wall due to his symptoms of PTSD, stress, anxiety and hypertension. His family doctor, Dr. Hart, who wrote that he would be unable to return to work indefinitely for medical reasons, supported his illness[6]. The Claimant then applied for EI sick benefits, followed by a CPP disability pension.

[10] The Claimant argued that his Disability Tax Credit (DTC)[7] application proves an earlier onset of disability. First, it is important to note that the criteria for a DTC differs significantly from that used to define a disability under the CPP. They are not interchangeable. As well, while Dr. Hart wrote that the Claimant left his employment in 2014 because of declining mental health on the DTC application completed in October 2018, I do not find that his statement is evidence of a severe and prolonged disability at the time. I considered that, on the CPP Medical Report completed in June 2018, Dr. Hart acknowledged that the Claimant had been working part-time since 2014, and was "at this point, unable to work at any position"[8]. Under the CPP, part-time or

[5] *Atkinson v Canada (AG)*, 2014 FCA 187
[6] GD2 – 99
[7] GD2 – 52
[8] GD2 – 101 to 104

seasonal work can be substantially gainful[9]. Accordingly, I disagree with the Claimant that Dr. Hart's evidence supports that the Claimant could not work as of February 2014.

[11] Further, the Claimant argued that his earnings in 2017 and 2018 were below what he would have received had he been in receipt of the maximum CPP disability benefit, and cannot be considered substantially gainful[10]. However, the legislation refers to "substantially gainful", in respect of an occupation, that provides a salary or wages equal to or greater than the maximum annual amount a person could receive as a disability pension. The legislation offers no guidance in situations where a claimant's earnings are below the benchmark amount. In looking at the Claimant's ability to obtain and maintain employment, adhere to a work schedule and work with consistent frequency in remunerative employment, I concluded that the Claimant had ongoing capacity for substantially gainful work until his medical conditions prevented him from continuing in June 2018.

The onus is on the Claimant to prove his disability

[12] The burden to prove a disability under the CPP rests on the Claimant.

[13] The record shows that the Minister contacted and received a response from his employers at X[11] and Z [12]. The Minister tried to contact Y, but the company did not respond to the Minister's request[13]. While the questionnaire for X implies that he stopped work in June 2017 due to a shortage of work, at the hearing, the Claimant explained that X lost the contract to another cleaning company, Y. The Claimant continued his employment with the new company.

[14] The Claimant took issue with the Minister on many issues related to the Employer Questionnaires. He argued that the Minister should have contacted his employer at Nutrilawn, who the Claimant said would have corroborated his difficulties working due to his health condition. He also believes the Minister should have contacted other individuals who worked with him more directly at his places of employment. Those individuals would have been better

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[9] *Landry v. MSD* (October 17, 2007), CP 24673 (PAB)
[10] Section 68.1 of the CPP *Regulations*
[11] GD2 – 56 to 58
[12] GD2 – 59 to 62
[13] GD2 – 73

able to speak to his missed time for medical reasons and need for accommodations. Instead, individuals who never interacted with him completed the forms.

[15] While I listened to the Claimant's frustration, the record shows that the Minister made efforts to seek more information about the Claimant's employment record. The Minister tried to develop a clearer picture of the Claimant's capacity to work. It reached out to his employers. It is not the Minister's fault if one employer did not respond to its request, or if another sent the questionnaire to the human resources department, instead of the local supervisor.

[16] Besides this complaint, the Claimant made numerous other allegations of errors or omissions about how the Minister adjudicated his appeal. I have not addressed all individually in my decision, as I have no authority under the legislation to investigate or correct such matters[14].

[17] In summary, I reviewed his numerous detailed letters explaining his position. I also gave him an opportunity at the oral hearing to refute the Minister's decision, and explain why I should give less weight to questionnaires. I accept that the questionnaires may not present the complete picture of the Claimant's functionality in the workplace. However, in making my decision, I considered the totality of the evidence. In weighing all the evidence, I find that the Claimant retained work capacity after he retired from his usual job. It was only when he could no longer work due to his medical condition in June 2018 that he became disabled as defined in the CPP.

CONCLUSION

[18] The appeal is dismissed.

Kelley Sherwood
Member, General Division - Income Security

[14] Subsection 66(4)