



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. A. v Minister of Employment and Social Development*, 2019 SST 1590

Tribunal File Number: GP-19-1007

BETWEEN:

R. A.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: John Eberhard

Claimant represented by: J. A.

Teleconference hearing on: November 29, 2019

Date of decision: November 29, 2019

DECISION

[1] I find that the Claimant did not have a severe and prolonged disability as of the last time he qualified for disability benefits. I dismiss the appeal. Here are the reasons why.

BACKGROUND

[2] R. A. is the Claimant in this case. He is 63 years old with a 4-year Industrial Engineering education. He also is forklift and first aid qualified. He worked for the Toronto based X and its successor owner company from September 1974 to February 2009. He was the production assistant foreman responsible for mailing and other jobs. He stopped working for non-medical reasons. He had no earnings in 2010 because he engaged in a wrongful dismissal court case in which he was successful. He went back to work in 2011 as a tree surveyor. He wrote¹ that he could no longer work because of medical issues in 2015. A stroke on August 1, 2015 left him with left-sided symptoms. The stroke is the basis for his disability claim. He has not been able to work since the stroke.

[3] He applied for a Canada Pension Plan (CPP) disability pension on November 8, 2017. The Minister denied his application. He requested reconsideration. The Minister reviewed the file. The Minister affirmed the original decision in October 2018.² The Claimant appealed the Minister's decision to this tribunal. The Minister says the evidence does not show any severe pathology or impairment before his disability pension qualifying date of December 31, 2013. I agree.

[4] The Claimant made a previous application for *CPP* disability benefits on September 22, 2015. The Minister denied the application. There was no appeal of the decision. It is relevant to the extent that it is closer to the date of his qualifying date.

[5] The main question is whether the Claimant has proven that he suffered from a severe and prolonged disability by December 31, 2013. If he has not done so, it is irrelevant if his condition deteriorated after his qualifying date. Unfortunately, the Claimant suffered the stroke on August 1, 2015, over a year after his qualifying date. I acknowledge that he became disabled at that time.

¹ This is found in his application questionnaire at page GD2-400

² The reconsideration decision is found in the file at page GD-2-168

So did the Minister. I cannot find him disabled as defined by the CPP legislation on or prior to the last date he qualified. Therefore, regretfully, I must dismiss the appeal.

ANALYSIS

There are two issues in this Appeal

[6] A person who applies for a disability pension has to meet the requirements that are set out in the CPP law dealing with disability benefits. First, you have to meet the contribution requirements. The formal term for this is the “minimum qualifying period”³ (MQP). That is not a problem in this appeal. You have a commendable record of steady work for over 25 years. Your MQP is December 31, 2013. Second, one has to have a disability that is “severe and prolonged”⁴. You have to have that disability on or before the date of the MQP.

[7] The measure of whether a disability is “severe” is not whether the person suffers from severe impairments. It is whether the disability prevents the person from earning a living. It is not a question of whether a person is unable to perform their regular job but rather his inability to perform any substantially gainful work.⁵ You testified that you have had a variety of work after you left the X. You worked with the YMCA to retrain and find other work after 2009. You confirmed that you worked for “X” as a timber cruiser from May to November 2011. Your work involved walking on uneven forest ground and steep slopes to identify and assess the height, age and quantity of trees and soils. You wrote that you worked in endangered species removal from May to July 2014. You reported working in Windsor on a highway construction job 10 hours a day, 50 hours a week. You laboured at digging up endangered species and separating rhizomes. This involved digging up plants, boxing them and putting them in refrigerated trucks. These were seasonal jobs.

[8] You trained and were close to getting another job as a heavy machinery operator in 2012. You stated that you applied for many other jobs before your stroke. As a person with advancing age, jobs were hard to find. There is no medical evidence that confirms you could no longer do

³ This is found at page GD2-375

⁴ This requirement is found at s.42 (2) (a) of the CPP.

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

this type of work as of your MQP. You testified that before your stroke you were overweight but in good condition and “strong as an ox”.

[9] I find that you did not have a severe disability before your stroke in 2015.

The medical evidence does not support a severe disability at your MQP

[10] Your family doctor is Dr. Samin Hanna. He filed a medical report dated October 26, 2016. He diagnosed you with stroke (with left-sided weakness and dysfunction), hypertension, sleep apnea, obesity and gastroesophageal reflux disease. Your family physician has known you since July 2014. Your stroke occurred in August 2015. The physician describes findings and functional limitations of left sided arm and leg weakness, limping when you walk and slow speech. He notes that there has been no improvement since your stroke despite physiotherapy. You testified about your hand dysfunction resulting from the stroke.

[11] You testified that your reflux medical problem has resolved through a diet program. You still use the CPAP machine. These, and your other conditions, were not debilitating problems for you.

[12] I acknowledge the serious nature of your stroke and its impact on your functionality. The previous medical history is benign. Your doctor treated you for hypertension and sleep apnea. You state that after your stroke you developed anxiety and shortness of breath. The evidence tells me that prior to your stroke, you were able to do a variety of labour related jobs. You have not worked since your stroke.

[13] The main question is whether you have proven that you suffered from a medically severe disability by the expiry of your MQP. It is up to you to prove this⁶. Proof includes the delivery of relevant medical reports. While there is considerable evidence supporting a disability after your stroke, I find that you have not satisfied the onus to prove a disability as of your MQP.

⁶ The legal test for proof is that a Claimant has to show it is more likely than not that, his disability is severe and prolonged.

Medical treatment and findings are not relevant to the question of disability as of your MQP

[14] The Minister's position is that you have not established a severe and prolonged disability within the meaning of the *CPP* on or prior to your MQP of December 31, 2013.

[15] Dr. S. Hanna (Family Physician) completed the initial medical report.⁷ He stated your stroke was complicated by upper and lower left sided weakness (left hemiplegia). He reported you were unable to fully extend your left arm. You walk with a limp. Your speech is slow. He stated that despite physiotherapy and optimal medical therapy you had not improved. In July 2017, Dr. Kanjana Perera, Neurologist also reported. In addition, there are reports in the file from Dr. Mike Sharma, Dr. H. Awad, Dr. G.L. Jone, Dr. Chari and Dr. W. Oczkowski. None of their reports helps in identifying a severe medical condition prior to your stroke. Your health at the time of your MQP clearly allowed you regularly to seek gainful employment.

What I have to decide

[16] To decide if his disability is severe, I have to look at all of your medical conditions together to see what effect they have on your capacity to work as of your MQP. I also have to look at your background (including his age, level of education and past work and life experience). This is so I can get a realistic or "real world" picture of whether your disability is severe⁸. If you are able regularly to do some kind of work that is substantially gainful⁹ then you are not entitled to a disability pension. The test for disability does not mean that everyone with a health problem who has some medical difficulty is entitled to a disability pension.

[17] I am unable to reach the conclusion that in December of 2013 there was any medical condition that prevented you from seeking some form of work within your limitations.

Work History and Personal considerations

⁷ GD2-335 - October 10, 2016 [sic-2017]

⁸ In a decision called Villani, the Federal Court of Appeal explains how to understand the concept of a "severe" disability.

⁹ This is explained in a Federal Court of Appeal decision called Klabouch.

[18] Your work history and activities of daily living assist me in coming to the conclusion that you had work capacity as of your MQP. You claim you could no longer work since August 1, 2015¹⁰ following your stroke. Unfortunately, these findings do not support a severe disability that would have prevented you from working at his MQP of December 2013. A claimant bears the onus of proving he suffers from a severe and prolonged disability prior to the expiration of his MQP.

[19] It is my view that your personal characteristics actually worked to your advantage for employment in the real world in 2013. You have a command of English. You had transferable skills. You had difficulty finding work but had the capacity to retrain and seek work.

[20] You need to have a disability that is both severe and prolonged to get benefits. I conclude that your disability was not severe when you qualified for benefits. There is no need for me to consider whether the disability is prolonged. The purpose of the *CPP* is to provide a pension where a disability forces a claimant to leave the workforce on a long-term basis and not to tide a claimant over a temporary period where a medical condition prevents him from working. Unfortunately, your stroke occurred well after the time when you last qualified.

CONCLUSION

[21] The Claimant did not have a severe disability at the time of his MQP. The result is that his appeal is dismissed.

John Eberhard
Member, General Division - Income Security

¹⁰ GD2-400 and GD2-342