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

Citation: E. P. v Minister of Employment and Social Development 2019 SST 1477

Tribunal File Number: GP-19-1744

BETWEEN:

E. P.

Applicant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Income Security Section

Decision by: Raymond Raphael

Date of decision: December 5, 2019

Canada

DECISION

[1] The Claimant has not established new material facts.

OVERVIEW

[2] The Claimant was 50 years old when he applied for a *Canada Pension Plan* (CPP) disability pension in December 2016.[1] He stated that he had been unable to work since August 2011 because of pain and swelling in, as well as limited use of, both knees and thumbs; constant fatigue from lack of sleep; constant distraction from daily flashbacks; and anxiety from triggers.[2] The initial CPP medical report diagnosed post-traumatic stress disorder and bilateral knee arthritis.[3]

[3] The Minister denied the application initially and upon reconsideration. The Claimant appealed to the Social Security Tribunal. In July 2019, the General Division dismissed the appeal.

[4] The Claimant is applying to amend or rescind that decision.[4]

[5] I decided this application based on the documents and submissions filed because an oral hearing was not required, there were no gaps in the information in the file, and there was no need for more clarification.

The General Division decision

[6] The General Division member dismissed the appeal after conducting a videoconference hearing on June 5, 2019. The Tribunal Member found that the Claimant had failed to establish that it was more likely than not that he had a severe disability in accordance with the CPP requirements.

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[1] GD2-214
[2] GD2-262
[3] GD2-248
[4] RA1

[7] A qualifying disability must be severe and prolonged.[5] A Claimant's disability is severe if it causes him to be incapable regularly of pursuing any gainful occupation. His disability is prolonged if it is likely to be long continued and of indefinite duration.

[8] The Claimant was required to prove that it was more likely than not that he became disabled by the end of his Minimum Qualifying Period (MQP), which was calculated based on his contributions to the CPP. His MQP ended on December 31, 2012.[6]

[9] The Tribunal Member stated that to establish a disability in accordance with the CPP requirements there must be sufficient medical evidence at the time of the MQP and continuously since. He accepted that there was a significant amount of medical evidence after the December 31, 2012 MQP. However, he determined that this medical evidence did not relate back to on or before the MQP. The Tribunal Member found that the objective medical evidence on or before the MQP did not substantiate a severe disability.

ISSUE

[10] Has the Claimant established new material facts?

ANALYSIS

Test for New Facts

[11] I may amend or rescind the General Division decision if the Claimant presents a new material fact that could not have been discovered at the time of the hearing with the exercise of reasonable diligence.[7]

[12] The Claimant must submit new information that was not readily accessible at the time of hearing. The new information must also be material – that is, it could reasonably be expected to have affected the outcome of the hearing if the Tribunal Member had known about it at the time.

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[5] Subsection 42(2) of the CPP
[6] Record of Contributions: GD3-8
[7] Section 66(1)(b) of the Department of Employment and Social Development Act

[13] A new facts application is not an appeal, nor is it an opportunity to reargue the merits of a claimant's disability claim. Instead, it is a tool designed to allow the Tribunal to reopen one of its decisions if new and relevant evidence comes to light that existed but, for whatever reason, was previously undiscoverable by the exercise of reasonable diligence.[8]

[14] The Claimant relied on the following documents as evidence of new facts:

1. Receipts from Dr. Kirsh, chiropractor, running from October 2006 to December 2006 and from January 3, 2007 to July 25, 2007 for an examination and adjustments, [9]
2. Receipts from Dr. McCrimmon, chiropractor, in June 2009 for an initial visit and adjustments, [10]
3. Prescription receipts dated February 28, 2009, June 11, 2009, and October 27, 2009,[11]
4. Dr. Kirsh's chiropractic notes from December 20, 2003 to August 21, 2007,[12] and
5. A 2013 article from the Royal College of Physicians and Surgeons, titled "Joint hypermobility: emerging disease or illness behaviour".[13]

[15] The Claimant stated that he did not know that copies of the receipts existed until he recently discovered them. The originals had been submitted with his income tax returns for 2006, 2007, and 2009. He obtained the notes from Dr. Kirsh after the hearing. The article relates to the real world context of his "HCTD".[14]

[16] All of the documents that the Claimant submitted as new facts were in existence at the time of the hearing. He would have known about the receipts because he attended for the treatments and paid for them. He also paid for the prescriptions. He would also have known that Dr. Kirsh made notes. The article was published in 2013. The Claimant has not explained why he was not able to obtain the documents for the hearing.

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[8] *R.B. v Minister of Employment and Social Development and V.H*, 2019 SST 29
[9] RA1-5 to 6
[10] RA1-7
[11] RA1-8 to 9
[12] RA1-10 to 15
[13] RA1-16 to 18
[14] It appears that the Claimant intended HDCT (heritable disorder of connective tissue)

[17] In addition, the Claimant has not explained how these documents could reasonably have been expected to have affected the results of the General Division decision. The chiropractic receipts only confirm the dates of his attendance for chiropractic treatments over three years before the MQP date. The Tribunal Member was aware that the Claimant had attended for chiropractic treatments. At the hearing, the Claimant testified that in 2012 he found that chiropractors gave him better relief than medical doctors.[15] With respect to the prescription receipts, it is difficult to envision how the fact that the Claimant took some prescription medications more than three years before the MQP could have reasonably affected the outcome of the decision. Further, at the hearing, the Claimant testified that he was not taking any prescription medications in 2012. He was only taking over the counter medication like Tylenol.[16]With respect to the article, the Claimant suggests this may relate to the natural progression of his condition. However, an article without supporting medical documentation could not reasonably be expected to have affected the outcome of the decision.

[18] The Claimant has not presented any new facts that could not have been discovered at the time of the hearing with the exercise of reasonable diligence. In addition, he has not presented any new material facts that could reasonably have been expected to have affected the outcome of the General Division decision.

CONCLUSION

[19] The application is dismissed.

Raymond Raphael
Member, General Division - Income Security

[15] GD Decision, para 17, lines 2 -3
[16] GD Decision, para 17, lines 3-4