



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. I. v Minister of Employment and Social Development*, 2019 SST 1504

Tribunal File Number: GP-18-2142

BETWEEN:

S. I.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Virginia Saunders

Claimant represented by: Allison Schmidt

Teleconference hearing on: December 5, 2019

Date of decision: December 16, 2019

DECISION

[1] S. I. is the Claimant in this case. He applied for a *Canada Pension Plan* (CPP) disability pension in September 2017. The Minister of Employment and Social Development (the Minister) refused the application. The Claimant appealed to the Social Security Tribunal.

[2] I heard the Claimant's appeal on December 5, 2019. I am allowing the appeal. I have decided the Claimant is entitled to a CPP disability pension, with payment as of February 2017. These are my reasons.

OVERVIEW

[3] The Claimant stopped working as a heavy duty mechanic in October 2016. He had shortness of breath, laboured breathing, chest pain, exhaustion, and dizziness. In his disability application he said these limited him in many ways. He had no strength or stamina, and was often dizzy. He had difficulty with most movement, speaking, concentrating, remembering, and sleeping.¹

[4] The Claimant is entitled to a CPP disability pension if he meets these conditions:

- he must have contributed to the CPP within a time frame called the minimum qualifying period or MQP;
- he must have a disability that is severe and prolonged, and
- he must have become disabled on or before the end of his MQP.²

[5] The Claimant's MQP will end on December 31, 2020. Because this is in the future, he must be disabled as of the date I heard his appeal.³

THE ISSUE IN THIS APPEAL

¹ The Claimant's disability application and questionnaire are at pages GD2-32-36 and GD2-129-135.

² Paragraph 44(1)(b), and subsections 44(2), and 52(3) of the *Canada Pension Plan*

³ The Claimant's CPP contributions are shown at pages GD2-38-39.

[6] I have to decide if the Claimant has a severe and prolonged disability. It is the Claimant's responsibility to prove this.⁴

THE CLAIMANT HAS A SEVERE DISABILITY

[7] The Claimant and his wife, C. I., testified at the hearing. They were spontaneous and straightforward when they gave their evidence. They did not embellish. I believe what they told me about the Claimant's condition. After considering their testimony and the evidence in the file, I am satisfied the Claimant has had a severe disability since October 2016.

How the Claimant's symptoms affect him

[8] The Claimant is 59 years old. For many years he worked in auto body shops doing painting and repairs. Around 2001 he started to have chest pains and fatigue. His doctor advised him to change occupations, so he became a heavy duty mechanic. There was no painting involved, and his symptoms improved dramatically. He developed chest pains again when he took a position as a manager in a body shop and was exposed to paint. His symptoms went away when he left that job.⁵

[9] The Claimant resumed work as a heavy duty mechanic and welder. He was fine until September 2016, when he developed a cough and shortness of breath after a hunting trip in northern BC. He was diagnosed with bronchitis and given antibiotics and inhalers. He went back to work. Soon after that his cough started again, his shortness of breath got worse, and he started to have chest pains and dizziness. His boss told him to stop working until he was better.

[10] The Claimant did not get better. He got worse. He has not worked since October 2016. At the hearing he told me he would like to do some type of work but he cannot because his symptoms are debilitating and unpredictable. His shortness of breath is triggered by cold air, humidity and exertion, and by smells like perfume, scented candles, cleaning products, chemicals, and food. It can also occur without warning. He can go to bed at night feeling well, and wake up the next morning having to work to get air in his lungs. His coughing causes chest

⁴ The legal test is that the Claimant must prove he is disabled on a balance of probabilities; in other words, he must show it is more likely than not that he is disabled.

⁵ Dr. Carsten, August 14, 2008, GD4-36-37

pains and pain in his legs. Then he starts to feel nauseous and dizzy. When his symptoms get very bad he lies down. Sometimes they will pass in 15 or 20 minutes, and sometimes they will stay for the rest of the day. He can never tell.

[11] C. I. told me the Claimant used to be a normal, vibrant, middle-aged man. He worked hard at his job, and did “whatever needed to be done” at home, including all the yard work and snow removal. Now C. I. does the chores on her days off from her own full-time job with the BC government. She and the Claimant used to live in a 2400 square foot house on 10 acres. They moved to a smaller house on a smaller property because C. I. could not keep up with the work involved. The Claimant helps out when he can. He will do one light chore and lie down. He spends most of his days either sitting down or lying down. C. I. transferred her job to a local office so she can take the Claimant to the hospital and to medical appointments. Because his condition is so unpredictable he does not drive anywhere alone, in case his symptoms come on and he cannot drive himself home.

[12] The Claimant used to enjoy activities like hiking, fishing, camping, and playing hockey. He has given these up. His social life has been affected as well, because he avoids places where he might be exposed to scents and unknown triggers. He does not go to weddings, parties or movies. If he and his wife go to a restaurant they will go at off-peak times to minimize his exposure. Even so, they have to leave if anyone nearby is wearing perfume.

[13] The Claimant estimated that in a period of two weeks more than half the days are “bad”. On those days he has chest pains and dry cough for hours, and gets nothing done. On “good” days he wakes up without chest pain or shortness of breath. This may give him a window of time in the morning when he can accomplish a few light chores like seasoning meat and placing it in a pan to be put in the oven later. As the day progresses his energy drops and his shortness of breath gets worse. He described a typical “good” day as one in which he accomplishes a few menial duties, with lots of time sitting or lying down.

What the medical evidence says about the Claimant’s condition

[14] The Claimant has been to many specialists and has had extensive testing. Despite this, no one has found a cause for his symptoms. In August 2018 he saw a respiratory specialist, Dr.

Carlsten, who summarized the investigations to date. The only thing Dr. Carlsten could suggest was to increase the Claimant's Tecta dose to see if his severe GERD (gastroesophageal reflux disease) might be making his symptoms worse. If that did not cause any improvement, he suggested a methacholine challenge to rule out occupational asthma, although he thought this was unlikely to be the problem.⁶

[15] The Claimant told me he increased the Tecta but nothing changed. His doctor's encounter notes confirm this.⁷ His records also confirm that he could not do a methacholine test because he coughed too much.⁸ At the hearing he told me he tried again in September 2019 and was still unable to complete the test.

[16] In May and August 2019 the Claimant saw Dr. Rolf, another respiratory specialist. Dr. Rolf's report described extensive investigations that did not lead to a diagnosis. These included normal cardiac and lung function, and no significant sleep apnea. He ordered further testing, including some repeats of those already carried out. He is exploring possibilities like hyperventilation syndrome, and musculoskeletal dyspnea. He said "I do not think the final chapter on this is written yet. There is still a fair bit that needs to be done."⁹

[17] The Claimant told me he took magnesium as Dr. Rolf suggested, with no change. He is still having more tests, including a CT scan of his head. He still sees Dr. Rolf, who told him he is exploring things like brain stem damage, or arthritis in his ribs that prevents his chest from expanding. The Claimant still does not have a diagnosis.

[18] The Minister says the Claimant is not disabled because the testing performed to date has not identified a medical condition that would prevent him from doing some type of work.¹⁰ It is true the Claimant does not have a diagnosis. That is not for lack of trying. It does not mean there is nothing wrong with him. The doctors he has seen since October 2016 have never even hinted that they do not believe he has the symptoms he claims. The Minister correctly noted elsewhere

⁶ Dr. Carlsten, August 31, 2018, GD4-33-35

⁷ Dr. Saeed, September and November 2018, GD4-12-13

⁸ Dr. Nair, October 21, 2018, GD4-30

⁹ Dr. Rolf, May 22, 2019, GD4-66-69; August 21, 2019, GD4-39-64

¹⁰ Minister's submission GD5-6

that it is the Claimant's capacity to work, not the diagnosis, that determines whether a disability is severe.¹¹

[19] The Claimant has to provide objective medical evidence to demonstrate his disability.¹² But that evidence does not have to include a definite diagnosis. The *Canada Pension Plan Regulations* say an applicant has to supply the Minister with a report of a physical or mental disability that includes the nature, extent and prognosis of the disability, the findings upon which the diagnosis and prognosis were made, and any limitation resulting from the disability.¹³ I take that to mean the report has to include any findings, but does not always have to include a diagnosis. To require otherwise would mean anyone with legitimate but mysterious complaints would not be eligible for a CPP disability pension. As to whether the Claimant's evidence is objective, his doctors believe what he tells them and have observed some of his limitations on functional testing. That, along with their willingness to continue searching for a diagnosis, is objective evidence of the Claimant's condition.

The Claimant does not have any work capacity

[20] The Claimant's disability is severe if he is "incapable regularly of pursuing any substantially gainful occupation".¹⁴ That means the disability must prevent him from earning a living at any type of job, not just his usual position.¹⁵ The Minister argued the medical evidence does not show any serious pathology that would prevent the Claimant from doing suitable work within his limitations, and noted he has not tried alternate lighter work.¹⁶ If there is any evidence the Claimant has some work capacity, he has to show he tried to work but could not because of his health condition.¹⁷

[21] But the Claimant does not have any work capacity. He has shortness of breath that causes coughing, chest pains, dizziness, and fatigue. It occurs with and without exertion, so it would not matter if he restricted himself to a sedentary job. He is highly sensitive to scents and chemicals

¹¹ Minister's submission, GD3-5; *Klabouch v. Canada (A.G.)*, 2008 FCA 33

¹² *Warren v. Canada (Attorney General)*, 2008 FCA 377

¹³ Subsection 68(1) *Canada Pension Plan Regulations*

¹⁴ Paragraph 42(2)(a) *Canada Pension Plan*

¹⁵ *Klabouch v. Canada (A.G.)*, 2008 FCA 33; *Ferreira v. Canada (A.G.)*, 2013 FCA 81

¹⁶ Minister's submission, GD3-3

¹⁷ *Inclima v. Canada (A.G.)*, 2003 FCA 117

he is likely to encounter in any workplace. His daily activities are significantly limited by his symptoms. They come on without warning and can last for long periods. Given their severity, frequency, and unpredictability, I cannot see how the Claimant would be employable in a competitive work environment in the real world.

[22] Furthermore, in deciding if the Claimant has any work capacity, I must also look at things like his age, level of education, language proficiency, and past work and life experience.¹⁸ These do not work in his favour either. He was 56 years old when he stopped working. He has a Grade 9 education and has only ever worked in jobs requiring physical labour. These rule out the possibility of finding or retraining for home-based work he could do on a flexible schedule.

[23] The Claimant has provided credible evidence of his limitations, supported by medical reports from objective medical personnel. I am satisfied he has been incapable regularly of pursuing any substantially gainful occupation since he last worked in October 2016.

THE CLAIMANT HAS A PROLONGED DISABILITY

[24] A disability is prolonged if it is likely to be long continued and of indefinite duration.¹⁹ That is the case here. The Claimant has undergone extensive testing. He has followed all medical recommendations. Nothing has helped. More than three years after his symptoms appeared, his doctors do not know what is wrong with him. Although they are still looking for a diagnosis, there is nothing to indicate when or if one will be found. Therefore, the Claimant's condition is prolonged.

CONCLUSION

[25] The Claimant had a severe and prolonged disability in October 2016, when he had to stop working. Payments start four months after the date of disability, as of February 2017.²⁰

[26] The appeal is allowed.

Virginia Saunders

¹⁸ *Villani v. Canada (A.G.)*, 2001 FCA 248

¹⁹ Paragraph 42(2)(a) of the *Canada Pension Plan*

²⁰ Section 69 *Canada Pension Plan*

Member, General Division - Income Security