



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. A. v Minister of Employment and Social Development*, 2019 SST 1553

Tribunal File Number: GP-19-477

BETWEEN:

G. A.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Connie Dyck

Teleconference hearing on: December 12, 2019

Date of decision: December 27, 2019

DECISION

[1] G. A. is the Claimant. I have decided that he is not entitled to a Canada Pension Plan (CPP) disability pension. I know this decision is disappointing. I will explain why I made this decision. Following are my reasons.

OVERVIEW

[2] The Claimant worked as a foreman in receiving and shipping. He stopped working in 2014 when he was 32 years old. He developed anxiety after a double murder happened with co-workers at the warehouse where he worked. In 2015 and August 2016, he was in car accidents. He has had low back pain since then. He applied for a CPP disability pension in August 2018. His application was denied. He appealed to the Social Security Tribunal. I am the Tribunal member who heard his appeal.

ISSUE IN THIS APPEAL

[3] A person who applies for a disability pension has to meet the requirements that are set out in the law that deals with CPP disability benefits. First, you have to meet the contribution requirements. The legal term for this is the “minimum qualifying period”¹. That is not a problem in this appeal. The Claimant’s minimum qualifying period is December 31, 2016.

[4] Second, you have to have a disability that is “severe and prolonged”². You have to have that disability on or before the date of the minimum qualifying period.

[5] For most people “severe” means something that is “really bad” or “really significant”. Similarly, most people think of prolonged as something that takes a long time, or a longer time than expected. But, the words “severe” and “prolonged” have special meanings in this area of law. This can be confusing. I will explain what the terms severe and prolonged mean when it comes to CPP Disability Pension decisions.

¹ It is found at Section 44(1)(b) of the *Canada Pension Plan* (CPP).

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

What Does Severe Mean?

[6] The law says that if a person is unable regularly to pursue any substantially gainful occupation because of their disability then they are severely³ disabled.

[7] Severely disabled is not about the nature of a disability. Severely disabled is about whether the disability impacts a person's capacity to work. This means if a disability is so severe that it prevents a person regularly from working at a job that gives some income then they are severely disabled. It is important to note that this does not mean a former job or a job with a comparable wage; it is any job that is substantially gainful, even if the pay is lower than previous jobs.

What Does Prolonged Mean?

[8] Prolonged means that a disability is "long continued" and is "of indefinite duration" or "is likely to result in death"⁴. For a disability to be "prolonged" the disability must be almost permanent in nature. So if a person has a reasonable chance to regain the ability to work at some time in the near future then their disability is not prolonged.

[9] The Minister says that the Claimant may be unable to return to his former position and may have experienced a worsening of his condition after December 31, 2016. But, the evidence does not support a condition that would have prevented him from working in other suitable employment by December 31, 2016. That is why his application was refused.

[10] The Tribunal's file indicates that the Claimant presently has numerous conditions. I must assess the Claimant's condition in its totality, which means I must consider all of the possible impairments, not just the biggest impairments or the main impairment⁵.

[11] To decide if his disability is severe, I have to consider how the Claimant feels about the impact these conditions have on his capacity to work. I also have to consider what his doctors and other medical professionals say about his condition, including such things as the results of

³ The legal definition of "severe" is found at s 42(2)(a)(i) of the *Canada Pension Plan*

⁴ The legal definition of "prolonged" is found at s 42(2)(a)(ii) of the *Canada Pension Plan*.

⁵ *Bungay v Canada (AG)*, 2011 FCA 47

medical tests. If the Claimant is able to regularly do some kind of work that is substantially gainful⁶, then he is not entitled to a disability pension.

The evidence does not support that the Claimant is disabled

[12] The measure of whether a disability is “severe” is not whether the person suffers from severe impairments, but whether the disability prevents the person from earning a living⁷. Although the Claimant may not want to return to his previous employment, because of the emotional trauma he experienced, I find that the evidence does not support that he is incapable regularly of performing other substantially gainful work.

i) PTSD/anxiety

[13] The Claimant completed a Traumatic Psychological Injury (TPI) assessment. Based on the assessment results, it was recommended that the Claimant attend a Level II TPI program which involved meeting with an Occupation Therapist and a psychologist⁸. The Claimant was transferred to a Level I TPI program in August 2014 with restriction against working at the X’s warehouse. The Claimant had 25 individual psychology sessions. These sessions were to explore vocational options and assist the Claimant with processing grief. The sessions stopped because Dr. Blackburn (psychiatrist) found that the Claimant was fit to return to work and did not present with a psychiatric diagnosis.

[14] The Claimant was seen by Dr. Blackman (psychiatrist) for an Independent Medical Examination in September 2014. The exam was related to his psychiatrist and psychological status.⁹ The Claimant said that although he was no longer suffering from any sequelae of acute stress, he did not wish to return to work at any warehouse. He would like to change careers and perhaps go into retraining. The Claimant denied any present problems except his difficulty on deciding a future career and retraining. He was not complaining of any emotional reactions nor did he have any sleep or appetite issues, loss of energy, concentration or memory problems. He did not have any physical ailments and did not admit to anxiety or depression. Dr. Blackman said

⁶ This is explained in a Federal Court of Appeal decision called *Klabouch v Canada (MSD)*, 2008 FCA 33

⁷ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

⁸ This report begins at GD 2-134

⁹ Dr. Blackman’s report begins at GD 2-129

there was no evidence of any anxiety or depression nor was there any symptomatology suggestive of PTSD. The Claimant appeared well oriented in all areas and there was no evidence of cognitive or perceptual dysfunction. Dr. Blackman said the Claimant did not present with psychiatric diagnosis according to the DSM 5. It was his opinion that from a psychiatric perspective, the Claimant was quite fit for work and there were no work restrictions.

[15] The Claimant started using CBD oil in 2018 and Dr. Ghani noted that the Claimant's anxiety and sleep were both improved.¹⁰ The Claimant testified that CBD oil had been "life changing" for him. He explained that CBD oil has helped his focus and his anxiety. It has also helped with his physical pain. He explained that when he applied for a CPP disability pension, he had basically "given up on life" and nothing worked in his lifestyle. Now, thanks to his family doctor, his chiropractor and his pharmacist, things are improving. His outlook on life and his anxiety have improved. He no longer sees a counsellor or a psychiatrist. He wants to continue to focus on his health.

[16] The Claimant submitted a note from Dr. Ghani dated October 1, 2019.¹¹ Dr. Ghani said that the Claimant's PTSD and depression had worsened due to a crisis situation the week before. There was some improvement in the week following the crisis. However, this is almost 3 years after the Claimant's minimum qualifying period of December 31, 2016, the date by which he must be found to be disabled.

[17] Based on Dr. Blackman's opinion in 2014 and the Claimant's testimony today, with medication and support, it seems that his anxiety, PTSD, depression are improved and would not interfere with his capacity to work.

ii) physical condition including neck and back pain

[18] The Claimant said he had low back pain since two car accidents. The first accident was in 2015 and the second in August 2016.

¹⁰ The clinic note is at GD 2-79

¹¹ Dr. Ghani's note is at GD 4-2

[19] In September 2016 and MRI of the Claimant's spine was taken.¹² The Claimant had a normal lumbar spine. He had early lower cervical spondylosis and partial loss of the cervical lordosis in his cervical spine.

[20] In October 2016, the Claimant completed a questionnaire¹³. He stated that he had no functional limitations except for difficulty concentrating and sleeping. He said that his functional ability to sit, stand, walk, lift/carrying, reach, bend, see, speak, hear and remember were all "ok". He said he could not return to work because of emotional injuries. In June 2018, now 1 ½ years since his MQP date, he said that he had no difficulty sitting, standing, seeing, speaking, remembering or concentrating and driving a vehicle¹⁴. This would support that the Claimant has some work capacity.

[21] In April 2017, the Claimant was seen by Dr. Cheung at Pain, Spine and Sport Medicine Clinic¹⁵. He told Dr. Cheung that he was going to school soon. Dr. Cheung examined the Claimant and concluded that he had chronic mechanical low back pain. The Claimant was not interested in spinal interventions. Dr. Cheung recommended physiotherapy. The Claimant's family doctor said in July 2018, that the Claimant had benefit from physiotherapy¹⁶.

[22] Dr. Jackman examined the Claimant in April 2017 and concluded he had no physical restrictions.¹⁷ It was his expectation that the Claimant would return to work in September 2017.

[23] In July 2018, an MRI of the Claimant's spine was taken¹⁸. The results were normal.

[24] The Claimant told me that he was taking medications prescribed to him by his doctor. These helped with the pain. He also has pain relief from the CBD oil (Cesamet) which he began using in 2018. He told me that he has experienced improvement in his symptoms since using the CBD oil and thanks to the support and treatment from his family doctor and his chiropractor.

¹² The MRI findings are at GD 2-88

¹³ The questionnaire begins at GD 2-138

¹⁴ The Claimant's form is at GD 2-110

¹⁵ Dr. Cheung's report begins at GD 2-84

¹⁶ Dr. Ghani's report is at GD 2-101

¹⁷ Dr. Jackman's report is at GD 5-5

¹⁸ The report is at GD 2-87

[25] While the Claimant may have difficulties returning to a physically demanding occupation, I find that the evidence of Dr. Jackman and the testimony of the Claimant support that he would have capacity for a lighter duty job, including sedentary or part-time work or to retrain.

The Claimant's personal circumstances would not prevent him from working

[26] I must assess the severe part of the test in a real world context¹⁹. This means that I consider the Claimant's personal circumstances such as age, level of education, language proficiency, and past work and life experience in combination with the health condition and resulting limitations.²⁰

[27] The Claimant was only 34 years at the time of his MQP. He has a grade 12 education and is fluent in English. He worked for X from July 2006 to 2014. In 2014, he was working in shipping and receiving as a lead hand. Although, his work experience is primarily with one employer, he has transferable skills. These include leadership skills and duties involved in working in a warehouse, receiving shipments and preparing shipments for delivery. I also considered that the Claimant would be a candidate to retrain. In fact, the Claimant told Dr. Cheung in April 2017 that he was planning on returning to school. I asked the Claimant at the hearing if he had in fact returned to school. He told me that he had not because he was focusing on his health which was the most important thing right now. Based on the Claimant's age, level of education and his functional abilities noted by Dr. Jackman in April 2017, I find that the Claimant would be a candidate to retrain.

Financial hardship does not define a disability

[28] The Claimant testified that he is experiencing financial hardship as his income has decreased and he has a family to help support. While I am sympathetic to the Claimant's situation, financial hardship is not relevant to the determination of eligibility for a disability pension, that is, it is not a basis on which disability benefits are paid.²¹

¹⁹ *Villani v Canada (AG)*, 2001 FCA 248

²⁰ *Bungay v Canada (AG)*, 2011 FCA 47

²¹ *Canada (MHRD) v. Rice*, 2002 FCA 47

[29] I understand that the Claimant feels that he is disabled. However, the medical evidence does not support a conclusion that he is unable to do any kind of work.

[30] If a person has some capacity to work, then the law requires that they have to show some efforts to find work²². The Claimant in this case did not make efforts to find work.

[31] As I mention above, a person needs to have a disability that is severe and prolonged to get benefits. I conclude that the Claimant's disability is not severe. This is because he has some work capacity and because he did not make efforts to find work.

[32] There is no need for me to consider whether the disability is prolonged, because I have decided that the disability is not severe.

CONCLUSION

[33] The Claimant does not have a severe and prolonged disability. The result is that his appeal is dismissed.

Connie Dyck
Member, General Division - Income Security

²² The Federal Court of Appeal explains this at paragraph 3 in a case called *Inclima v Canada (AG)*, 2003 FCA 117