



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. L. v Minister of Employment and Social Development*, 2020 SST 339

Tribunal File Number: GP-18-2710

BETWEEN:

R. L.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Tyler Moore

Date of decision: January 20, 2020

DECISION

[1] The Claimant is not entitled to a Canada Pension Plan (CPP) disability pension. My reasons are as follows.

OVERVIEW

[2] The Claimant last worked as a part-time hospital service worker from June 2010 until January 2014. He indicated that he stopped working because of hypertrophic cardiomyopathy, hemorrhoids, and a hernia. The Minister received the Claimant's application for the disability pension on September 21, 2017. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] To qualify for a CPP disability pension, the Claimant must meet the requirements that are set out in the CPP. More specifically, the Claimant must be found disabled as defined in the CPP on or before the end of the minimum qualifying period (MQP). The calculation of the MQP is based on the Claimant's contributions to the CPP. I find the Claimant's MQP to be December 31, 2012 or a possible prorated date of January 31, 2013.

ISSUES

[4] Did the Claimant's conditions result in him having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2012 or a possible prorated date of January 31, 2013?

[5] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2012 or a possible prorated date of January 31, 2013?

ANALYSIS

[6] Disability is defined as a physical or mental disability that is severe and prolonged¹. A person is considered to have a severe disability if incapable regularly of pursuing any

¹ Paragraph 42(2)(a) *Canada Pension Plan*

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, which means if the Claimant meets only one part, the Claimant does not qualify for disability benefits.

Severe disability

i. The medical evidence does not support a severe disability at the time of the MQP or possible prorated date.

[7] The measure of whether a disability is “severe” is not whether a person suffers from severe impairments, but whether the disability prevents them from earning a living. It’s not a question of whether they are unable to perform their regular job, but rather their inability to perform any substantially gainful work². In assessing the severity of a disability, I also have to consider their condition in its totality. That means considering all of the possible impairments, not just the biggest impairments or the main impairment³.

[8] It is up to the Claimant to demonstrate that his disability was severe by the time of the MQP or possible prorated date. I can only rely on the evidence presented to make my decision. Unfortunately, there is very limited medical evidence that is dated around the time of the MQP. The only real evidence dated around that time was an abdominal CT scan, but even that was dated almost a year later. The findings of the CT scan did reveal a small periumbilical hernia. The Claimant also submitted that his condition got much worse after 2012 and 2013. I have to be mindful, however, that a significant worsening of the Claimant’s condition after the MQP or possible prorated date, is not relevant.

[9] The Claimant submitted that he suffers from a congenital heart defect that went undiagnosed until 2015. It was only found while being screened for hemorrhoid surgery. He also reported that since 2005 he has been suffering from many symptoms that he now attributes to the heart condition he was unaware of at the time. He thought that his increasing fatigue and shortness of breath were because of deconditioning and weight gain. It wasn’t until many years

² *Klabouch v. Canada (A.G.)*, 2008 FCA 33

³ *Bungay v. Canada (A.G.)*, 2011 FCA 47

after his symptoms started that he first sought medical help. Finally, the debilitating pain he had from longstanding hemorrhoids and a hernia prompted him to go to the doctor.

[10] The medical evidence on file shows that the Claimant had pacemaker surgery in 2016. His family doctor, Dr. Tissera, noted in September 2017 that his symptoms were shortness of breath at night, heart palpitations, and fainting spells. His mobility was also limited and he was unable to lift or carry. Dr. Tissera felt that the Claimant was unable to work effectively. The date of his report, however, was several years after the MQP or possible prorated date had expired.

[11] The Claimant's cardiac surgeon, Dr. Ralph-Edwards, reported in August 2016 that the Claimant was assessed a year earlier when a pre-operation hemorrhoid screening showed a heart murmur. The Claimant had been started on medication and diagnosed him with hypertrophic obstructive cardiomyopathy. He described that the Claimant had been significantly affected by his symptoms. The scheduled hemorrhoid surgery had to be put off until his heart condition was treated. Unfortunately, the Claimant has not been able to have hernia or hemorrhoid surgery because of risks associated with his heart condition.

[12] The Claimant underwent surgery for his cardiomyopathy in January 2018. Dr. Rabson, the Claimant's cardiologist, reported that the recovery period after surgery was very complicated. In his November 2018 report, Dr. Rabson concluded that the Claimant was permanently disabled from work.

[13] There is no question that the Claimant's condition has been complicated. He stopped working in 2014 to seek treatment for hemorrhoids and a hernia. Then, by chance, doctors found that he had a more serious heart condition that needed to be treated first. I find that there is supportive evidence of an obvious decline in the Claimant's condition after 2015, when Dr. Ralph-Edwards found a cardiomyopathy by chance. I accept that he has been unable to work for the last few years. While I did find the Claimant to be credible, the evidence is not compelling that he was suffering from a severe disability that precluded him regularly from any substantially gainful work at the time of the MQP or possible prorated date.

ii. The Claimant was employable at the time of the MQP or prorated date.

[14] The severe part of the test has to be assessed in a real world context⁴. So, when deciding whether a person's disability is severe, I have to consider factors such as age, level of education, language proficiency, and past work and life experience.

[15] The Claimant is 44 years currently. He was 37 at the time of the MQP or possible prorated date. He is fluent in English, and finished high school as well as certification as a health care aide. The Claimant has worked mainly as a health care aide/orderly. Given his education and the uniformity of his work experience, I find that he only has some transferable skills. Any lack of transferable skills, however, is outweighed by the evidence that he continued to perform regular duties at work until May 2014, his relatively young age, and the fact that no lighter alternate work was sought or attempted. As a result, I find that the Claimant retained some work capacity at the time of the MQP or possible prorated date.

iii. The Claimant's post-MQP work demonstrates capacity.

[16] Where there is evidence of work capacity, a person must show that efforts at obtaining and maintaining employment has not been successful because of their health condition⁵.

[17] The Claimant submitted that he stopped working in May 2014 at the recommendation of his employer. His employer recognized that he was in pain from his hernia and hemorrhoids. Though his Record of Earnings may not reflect high earnings in 2013 and 2014, the Claimant continued to perform regular duties without modification and had good attendance until May 2014.

[18] The Claimant continued working until May 2014 because he needed the money. He submitted that from 2012 until he stopped working he couldn't do any prolonged standing, sitting, or strenuous work. When he did leave work, he was reportedly advised by his employer that after he had sought medical care and had surgery, he could return to his job.

[19] The Claimant took on his most recent part-time role in 2010 in anticipation that it would become full-time. He worked 20 hours or less per week because that was all the work that was available to him. He has not looked for any other work since May 2014, and did not look for

⁴ *Villani v. Canada (A.G.)*, 2001 FCA 248

⁵ *Inclima v. Canada (A.G.)*, 2003 FCA 117

alternate work after 2010 even though he reported symptoms. The Claimant submitted that his quality of life hasn't improved. He can't sit or stand for any length of time, and he can't do any strenuous activity. His constant fatigue has led to dizziness and fainting, and he has had more than one cardiac arrest event. Thankfully, the pacemaker that was implanted in 2016 has saved him.

[20] While I am empathetic to the Claimant's current health status, based on the evidence in the Hearing file and the Claimant's submissions, I find that he retained the capacity to work at the time of the MQP or possible prorated date. I am not convinced that on a balance of probabilities he was suffering from a severe disability, as defined in the CPP, at that time.

[21] The Claimant reported that he continued working the hours that were available to him, his attendance was good, and his job did not have to be modified. He worked for almost 1.5 years after the expiration of the MQP or possible prorated date and didn't ever seek alternate employment. Treatment options also had yet to be exhausted.

CONCLUSION

[22] The appeal is dismissed.

Tyler Moore
Member, General Division - Income Security