



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *K. C. v Minister of Employment and Social Development*, 2020 SST 114

Tribunal File Number: GP-19-1214

BETWEEN:

**K. C.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Lianne Byrne

Teleconference hearing on: January 9, 2020

Date of decision: January 27, 2020

## **DECISION**

[1] The Claimant is not entitled to a Canada Pension Plan (CPP) disability pension.

## **OVERVIEW**

[2] The Claimant worked as an electrician journeyman until he stopped working in August 2007. The Minister received the Claimant's application for the disability pension on February 7, 2019. 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, 2008.

## **PRELIMINARY MATTERS**

[4] The hearing was originally scheduled to be held on December 18, 2019. In advance of the hearing, the Claimant requested a private hearing for personal reasons. He was advised by letter dated December 13, 2019 that SST hearings are normally open to the public and that a confidentiality order is required in order for a hearing to be held in private. In order to make a confidentiality order, I must be satisfied that the circumstances of the case require the hearing to be held in private.

[5] He was asked to provide his written reasons for requesting a private hearing. He responded by e-mail on December 13, 2019. He referred to the *Privacy Act* in making his request for a private hearing. This matter was dealt with as a preliminary matter at the hearing on December 18, 2019. I denied his request for a private hearing on the basis that the Open Court Principle supersedes the *Privacy Act*. I also told him that he did not provide sufficient information to satisfy me that the circumstances of the case required a confidentiality order.

[6] The hearing did not proceed as scheduled on December 18, 2019 because the Claimant complained on multiple occasions that the telephone line was breaking up and that he did not

wish to continue the hearing under the circumstances. The hearing was rescheduled for January 9, 2020. The hearing proceeded as scheduled.

[7] At the hearing, I responded to his e-mail request for a detailed explanation of the legislative purpose of the contributory requirements for provincial, federal and private benefit plans. I explained to him that I could not provide the explanation he requested, but I did explain to him the requirements of the CPP. In particular, I explained in detail the concept of the MQP.

### **ISSUE(S)**

[8] Did the Claimant's conditions result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2008?

[9] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2008?

### **ANALYSIS**

[10] Disability is defined as a physical or mental disability that is severe and prolonged<sup>1</sup>. A person is considered to have a severe disability if incapable regularly of pursuing any 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**

[11] 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 living. It is not a question of whether a person is unable to perform their regular job, but rather the person's inability to perform any substantially gainful work<sup>2</sup>.

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<sup>1</sup> Paragraph 42(2)(a) *Canada Pension Plan*

<sup>2</sup> *Klabouch v. Canada (A.G.)*, 2008 FCA 33

[12] The Claimant submitted that he has been ill since 2008. He testified that he stopped performing his duties as an electrician journeyman in 2007 because he felt dizzy and like he was going to collapse. His explained that his job was very physically-demanding and he worried that he would hurt himself or one of his coworkers. He did not see a doctor or receive any treatment at that time.

[13] As of the MQP, he was taking it easy. He does not remember where he was living at that time. His health problems worsened considerably after the MQP. He first saw his family doctor about his health problems in 2013. He was diagnosed with cancer and continued to worsen over time.

[14] I accept that the Claimant is suffering from terminal cancer and is currently very debilitated. However, there are no medical reports on file dated prior to or around the MQP to support the Claimant's submission that he was unable to work as of the MQP. The medical evidence on file indicates that his health problems worsened significantly after the MQP in 2013 and have continued to deteriorate over time. This is consistent with the Claimant's testimony that he did not see any doctors or receive any treatment until 2013.

[15] His family physician, Dr. Jeff Pitcher reported on July 20, 2019 that he has been treating the Claimant since August 2019 for a terminal right parotid tumor with symptoms onset in August 2017. It is evident from this report that the Claimant's significant health problems began after the MQP.

[16] Similarly, in a report from Dr. Christopher Szeto, oncology surgeon, dated September 25, 2018, it was noted that the Claimant was originally seen in November 2013 with a partially calcified mass in the right masticator space. A biopsy in November 2013 showed atypical pleomorphic type of cells. The Claimant was noted to have subsequently missed a number of appointments. Dr. Szeto noted that, since approximately August 2019, he has had increasing pain in the right parotic area, right complete facial droop and weakness in the right shoulder. On October 9, 2018, Dr. Szeto confirmed his diagnosis of non-small cell carcinoma involving the right parotic.

[17] On October 9, 2018, Dr. Andrew Pearce also stated that the Claimant initially presented in November 2013 with a partially calcified mass in the right masticator space and that biopsy showed atypical pleomorphic cells. He failed to attend a number of appointments. He returned in September 2018 with a worsening in his symptoms. He was diagnosed with non-small cell carcinoma.

[18] There are diagnostic investigation reports on file dated after the MQP, which are in line with the reports from Dr. Pitcher, Dr. Szeto and Dr. Pearce.

[19] There is a lack of objective medical evidence dated prior to the MQP. It is evident from the post-MQP medical reports on file that the Claimant's health problems began in 2013 and worsened significantly in 2018. The Claimant also testified that he was not seeing any doctors or receiving any medical treatment around the time of the MQP. I therefore find that there is evidence of work capacity.

[20] Where there is evidence of work capacity, a person must show that efforts at obtaining and maintaining employment have been unsuccessful because of the person's health condition<sup>3</sup>. The Claimant stated that he stopped working as an electrician journeyman due to dizziness and feeling that he would collapse. He felt that there was a safety issue for himself and his coworkers. However, he did not look for any other work since then or attempt to retrain for another type of job.

[21] I must assess the severe part of the test in a real world context<sup>4</sup>. This means that when deciding whether a person's disability is severe, I must keep in mind factors such as age, level of education, language proficiency, and past work and life experience. In this case, in finding that the Claimant's disability is not severe, I considered that he was 44 years old as of the MQP with a high school education and electrician license. He worked full-time as an electrician journeyman from May 1985 to August 15, 2007. He is fluent in the English language.

[22] He was relatively young at the time of the MQP. He had a good education and is fluent in the English language. In considering his personal characteristics, I do not find that he was

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<sup>3</sup> *Inclima v. Canada (A.G.)*, 2003 FCA 117

<sup>4</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

unemployable in a real world context at the time of the MQP. While I acknowledge that he has deteriorated significantly since the MQP, he was not precluded from attempting alternate work within his limitations as of the MQP. He did not make any attempts to find such alternate work. Therefore, he has not shown that his efforts at obtaining and maintaining employment have been unsuccessful because of his health condition.

[23] 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 impairment<sup>5</sup>. Having considered the totality of the evidence and the cumulative effect of the Claimant's medical conditions, I am not satisfied on a balance of probabilities that he suffers from a severe disability.

## **CONCLUSION**

[24] The appeal is dismissed.

Lianne Byrne  
Member, General Division - Income Security

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<sup>5</sup> *Bungay v. Canada (A.G.)*, 2011 FCA 47