



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. D. v Minister of Employment and Social Development*, 2020 SST 332

Tribunal File Number: GP-19-225

BETWEEN:

**R. D.**

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: Brian Rodenhurst

Teleconference hearing on: February 6, 2020

Date of decision: February 10, 2020

## **DECISION**

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

## **OVERVIEW**

[2] The Claimant has lost range of motion due to fusion of his right big toe. He appeals the denial of his disability benefit as his big toe is medically disabled. He maintains that following God's word and as supported by a servant of the Lord, his disability benefit should be approved. When able he does missionary work in Niagara Falls, Ontario. He believes the main reason he should be granted a disability benefit is God wants him to take care of his children.

[3] The Minister received the Claimant's application for the disability pension on December 21, 2016. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[4] 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.

## **ISSUE(S)**

[5] 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, 2012?

[6] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2012?

## **ANALYSIS**

[7] 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

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<sup>1</sup> 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**

#### ***Oral Evidence***

[8] The Claimant testified at the oral hearing. He stated it was difficult for him to remember events way back in 2011 to 2015. He could not remember when he stopped working and the details of his landscape/snow removal occupation. I questioned him whether he believed the answers he gave on his Questionnaire were accurate and truthful. His evidence was he believed his answers were truthful. I place significant weight on the information provided by the Claimant on the Questionnaire. He testified he has problems remembering details “way back” in 2012 - 2015. I note the Questionnaire dated October 27, 2016 was completed relatively soon after the MQP. His memory and recollection in October 2016 concerning his work and medical history should be accurate. The Questionnaire indicates the Claimant was self-employed from 2011 to April 11, 2015. The Question: Why did you stop working? He answered – I helped with the family at home wife suffers with depression, then two surgeries. He wrote the reason he stopped working in the business was he changed to staying home taking care of family.

[9] The Claimant testified that he experienced a severe disability. He stated he qualifies for a disability benefit because God wants children especially his children to be taught about Jesus. His evidence was God cares so much that God wants him to be home teaching them (children) as his wife cannot. He testified he is entitled to a disability benefit because it has been signed off by Dr. Wassif, and a servant of the Lord - Brian Ross. He insisted the main reason he should be granted a disability benefit is he is a servant of the Lord. It was opinion he was medically disabled due to immobility of the right big toe and pain associated with it. He has problems with his eyesight. This is a recent problem and only affects things that are close to his eyes such as reading. The Claimant also noted back pain. He was not able to clarify when this condition was first present. His oral evidence does not establish either his eye- sight issue or back were interfering with his ability to work at the time of the MQP.

### *Objective Medical Evidence*

[10] The medical evidence does not substantiate a severe disability. I must consider the totality of the impairments. I must also consider whether the medical condition and impairments were in existence at the time of the MQP. The Claimant testified he experienced back pain but was not able to state a date when his back condition started. A Report dated March 5, 2015, specified there was no back pain or discomfort<sup>2</sup>. The Standard Medical Report authored on November 3, 2016, diagnosed back pain, noting the Doctor started treating the main medical condition in August 2015. I must consider the totality of impairments and the functional affect on the medical condition/impairment on the Claimant's ability to work<sup>3</sup>. I find that there is insufficient oral evidence and insufficient medical evidence to establish<sup>4</sup> the Claimant experienced back pain at the time of the MQP. There is evidence of back pain in October 2017. In November 2018, chronic lower back pain was reported. The Claimant was not interested in medication. The medical reports do not relate his back condition to the time of the MQP. The reports do not indicate any severe findings.

[11] There is no medical evidence to indicate a problem with his eyesight at the time of the MQP and his evidence indicates it is a recent development. When considering the totality of impairments the condition at the time of the MQP and continuously since his big toe is the impairment in issue.

[12] His big toe is the condition he relies upon to qualify for a disability benefit. His oral evidence was not clear as to why a painful fused big toe renders him incapable of any substantially gainful occupation. He maintained his big toe was disabled forever medically, and this results in a right for disability payments. His evidence was he has undergone two surgeries on his big toe, the first one at a walk-in clinic. He was not able to remember the date of the first surgery. He testified it is his choice whether to work and this is not a healthy choice for him. His big toe is painful some days worse than others are. On a good day, he does missionary work. This is outdoors so he finds it difficult in cold weather.

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<sup>2</sup> GD2 - 103

<sup>3</sup> Capable regularly of pursuing any substantially gainful occupation

<sup>4</sup> On a balance of probabilities

[13] The Family Doctor noted functional limitations of loss of range of motion in right big toe, antalgic gait and using a cane. Dr. Hamour wrote the Claimant claimed he had restricted movement due to ingrown toenail that the Doctor had surgically removed. The Claimant attended to get a measurement of the restriction of movement of the big toe. Dr. Hamour noted measurement had nothing to do with the restriction of his joint. He was of the opinion an ingrown toenail could not cause deformity in the joint or limitation of the movement needed to have disability approval. I agree. The medical condition of a fused joint right toe and associated limitations would not result in the Claimant being incapable<sup>5</sup> of all types of work.

[14] I must assess the severe part of the test in a real world context<sup>6</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. Medical evidence will still be required as will evidence of employment efforts and possibilities.

[15] The Claimant was only 38 years of age at the time of the MQP. He has a Grade 12 education with one year of university. He is proficient in English. The Claimant testified that he could go back to school/retrain and that he can learn. There is insufficient medical evidence and insufficient evidence of employment efforts. His focus appears to be on missionary work and raising his children. Both of these pursuits are within his capabilities. The Claimant is capable of working when assessed in a real world context. The Claimant testified it was his choice whether to work and whether this was a healthy choice. I agree it is his choice whether to work or not. The test to be granted a disability benefit is not whether he chooses to work but if he is able to work. He is able. The fusion of his right big toe is not a medical condition that renders him incapable of employment in a real world context.

## **CONCLUSION**

[16] The appeal is dismissed.

Brian Rodenhurst  
Member, General Division - Income Security

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<sup>5</sup> Incapable regularly of pursuing any substantially gainful occupation.

<sup>6</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248