



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *GG v Minister of Employment and Social Development*, 2020 SST 328

Tribunal File Number: GP-19-1318

BETWEEN:

**G. G.**

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: Tyler Moore

Teleconference hearing on: February 12, 2020

Date of decision: February 14, 2020

## **DECISION**

[1] The Claimant is entitled to a Canada Pension Plan (CPP) disability pension to be paid as of November 2018. My reasons are as follows.

## **OVERVIEW**

[2] The Claimant last worked as a full-time airplane maintenance technician for about 27 years. He stopped working in July 2018. He indicated that he could no longer work as of that time because of back, right wrist, and knee pain. The Minister received the Claimant's application for the disability pension on August 27, 2018. 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, 2021. As that is a date in the future, the Claimant must be found disabled by the time of the hearing.

## **ISSUES**

[4] Did the Claimant's conditions result in him having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by the time of the hearing?

[5] If so, was the Claimant's disability also long continued and of indefinite duration by the time of the hearing?

## **ANALYSIS**

[6] 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**

**i. The combination of objective and subjective findings support a significant health condition.**

[7] I must assess the Claimant's condition in its totality. That means considering all of the possible impairments, not just the biggest impairment or the main impairment<sup>2</sup>.

[8] Dr. Anderson corroborated the Claimant's testimony that he has been suffering from worsening back pain for many years. February 2018, however, is the time that it got much worse for no specific reason. The Claimant was written off work in February 2018 for 8 weeks because of it.

[9] The Claimant's pain did not improve while he was off work and going to physiotherapy and massage. He returned to work in March 2018, but was missing at least 1 day each week because of his pain. He also had to leave work early 3 days a week.

[10] In July 2018, Dr. Anderson recommended that he avoid any heavy lifting and repetitive pushing or pulling. Dr. Anderson was also the one who put him off work indefinitely. He was of the opinion that the Claimant's condition would get worse and that his job was a big contributing factor.

[11] In September 2018, Dr. Anderson reported that the Claimant had daily severe low back pain and decreased lower back range of motion. He felt that the Claimant was not able to do his previous job. He also indicated that the Claimant was not trained for any alternate work.

[12] In 2018 the Claimant had X-rays and an MRI. X-rays of the knees showed only mild arthritis. An MRI of the low back showed scoliosis, multiple bulging discs and multiple small

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<sup>2</sup> *Bungay v. Canada (A.G.)*, 2011 FCA 47

disc herniations. According to Dr. Lipson, physiatrist, the MRI findings did not really account for the Claimant's symptoms.

[13] The Claimant attended additional physiotherapy and a work hardening at the Canadian Back Institute between December 2018 and February 2019. He attended that program at the request of his insurer. According to Ms. Chisamore, from the Canadian Back Institute, the Claimant was not able to meet the key demands of his job. He could only stand/walk with breaks for 1 hour 30 minutes and could only lift 10 lbs. He also demonstrated pain focused behaviours.

[14] The Claimant's current treatment includes Vimovo and Diclofenac medication. He has been prescribed a TENS unit for home use and a back brace. He uses a Diclofenac rub for pain over his knees. According to the Claimant, nothing really helps. He last attended physiotherapy in February 2019, but he continues to see a chiropractor for acupuncture and massage over his wrist/knees/back a few times a month. He can't afford to go more often. He sees his family doctor monthly. Dr. Anderson has reportedly told him that he will not get better, and no additional treatment has been recommended. I find that the Claimant has been compliant with treatment to date.

[15] At face value, the objective diagnostic evidence is underwhelming. But, I recognize that the experience of pain is highly subjective and it varies a great deal from one person to the next. Objective findings do not necessarily correlate with the subjective pain a person perceives. Pain is also not something that cannot be measured empirically. It is for that reason that I have placed considerable weight on the Claimant's credible testimony in assessing all of his impairments. His subjective testimony is supported by his treating practitioners who agree that he could not return to the only type of work he has known, or is qualified to do.

**ii. The Claimant's day-to-day life is impacted by his limitations.**

[16] The measure of whether a disability is "severe" is not whether the 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 work<sup>3</sup>.

[17] The Claimant lives in a main floor apartment with his adult son. He relies on his son and former spouse to help him with things like cooking, cleaning, doing the laundry, and grocery shopping. The Claimant has a car, but is not able to drive far. He spends most of his time trying to get comfortable, going for short 15-minute walks, stretching, and watching television. He is only comfortable when he is laying down. Sitting, standing, and walking for more than a few minutes causes more pain in his back and knees. He often needs his son to help him just to stand up from a seated position or get out of bed in the morning. Sudden movements cause his back to 'go out', and much of the time his back appears 'crooked'. His wrist pain also limits his ability to open bottles or jars.

[18] I accept that the Claimant's daily pain has a big impact on his daily life and limits what he can do. His ability to be active and contribute is greatly limited, he relies on others for regular support, and the only posture he can sustain is laying down.

**iii. The Claimant is not realistically employable.**

[19] I also have to assess the severe part of the test in a real world context<sup>4</sup>. That means considering factors such as age, level of education, language proficiency, and past work and life experience.

[20] The Claimant is 60 years old and has made over 30 years of consistent CPP contributions. I find that he has a strong work ethic. He finished grade 11 in Canada and has no high school diploma. Although English is not his first language, he was able to participate in the hearing without interpretation. In terms of jobs, the Claimant has only really worked as a physical labourer. He last worked for 27 years as an airplane maintenance technician refuelling airplanes.

[21] While I recognize that the Claimant's job was physically demanding and a big contributor to his current condition, he has no transferable skills, no computer skills, a very limited education, poor English reading and writing skills, and is 60 years old. He also has

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<sup>3</sup> *Klabouch v. Canada (A.G.)*, 2008 FCA 33

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

functional limitations that include a very limited ability to lift/carry, and a limited tolerance for any sustained walking/standing/sitting.

[22] The Claimant has not looked for other work since July 2018. I accept his reasons for not doing so. For one thing, his symptoms have not improved. He also understandably questioned what employer would hire someone who has so many things working against them. I have to agree with the Claimant. I find that it is not realistic to think that an employer in a competitive job market would hire him and accommodate him indefinitely. The Claimant is also a poor candidate for any type of re-training.

[23] When the Claimant's health condition is weighed with the Villani factors, I conclude that it is more likely than not that he was suffering from a severe disability, as defined in the CPP, by the time of the hearing. The Claimant has been precluded regularly from any substantially gainful work for which he is qualified based on his age, education, and work experience.

### **Prolonged disability**

[24] I find that the Claimant's disability was also long continued and of indefinite duration by the time of the hearing. His health condition is degenerative in nature and has been getting progressively worse for the last 20 years. Despite consulting with specialists, participating in physiotherapy/chiropractic/acupuncture/massage treatment, and taking prescribed medications, there has not been any big improvement. Based on the nature of his condition and lack of improvement to date, I find little prospect that he will improve to the point that he could regularly return to any substantially gainful work.

### **CONCLUSION**

[25] The Claimant had a severe and prolonged disability in July 2018, when he stopped working. Payments start four months after the deemed date of disability, as of November 2018<sup>5</sup>.

[26] The appeal is allowed.

Tyler Moore

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<sup>5</sup> Section 69 *Canada Pension Plan*

Member, General Division - Income Security