



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. V. v Minister of Employment and Social Development*, 2020 SST 833

Tribunal File Number: GP-19-478

BETWEEN:

D. V.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Antoinette Cardillo

Teleconference hearing on: January 9, 2020

Date of decision: February 17, 2020

DECISION

The Appellant is not entitled to a Canada Pension Plan (CPP) disability pension.

OVERVIEW

[1] The Minister received the Appellant's application for the disability pension on February 21, 2018¹. The Appellant is 54 years of age. He has a grade 6 education and completed a welding apprentice training in 2003. He stopped working in 2010 due to fatigue and pain. The Minister denied the application initially and on reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal.

[2] To qualify for a CPP disability pension, the Appellant must meet the requirements that are set out in the CPP. More specifically, the Appellant 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 Appellant's contributions to the CPP. I find the Appellant's MQP to be December 31, 2005.

ISSUES

[3] Did the Appellant's conditions result in the Appellant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2005?

[4] If so, was the Appellant's disability also long continued and of indefinite duration by December 31, 2005?

ANALYSIS

[5] Disability is defined as a physical or mental disability that is severe and prolonged². 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

¹ GD2-25

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

probabilities their disability meets both parts of the test, which means if the Appellant meets only one part, the Appellant does not qualify for disability benefits.

Severe disability

[6] I must assess the severe part of the test in a real world context³. 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.

[7] 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 work⁴.

[8] 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 condition⁵.

i. Medical conditions on or before MQP

[9] Based on the evidence, the Appellant injured his left wrist in 2001.

[10] The Appellant also had a history of alcohol abuse which dates back to 2004 and appeared to be ongoing in 2013⁶.

[11] He suffered from depression since 2004. He had moderate depression in 2004⁷ and mild depression in June 2008⁸.

ii. Medical conditions after MQP

[12] The Appellant had cardiac problems in 2016. He was diagnosed with cardiomyopathy and cardiac arrhythmia⁹.

³ *Villani v. Canada (A.G.)*, 2001 FCA 248

⁴ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

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

⁶ GD2-48 and GD2-170

⁷ GD5-44 and 65

⁸ GD5-49

[13] In 2017, the Appellant was diagnosed with moderate obstructive sleep apnea¹⁰.

iii. Residual capacity to work

[14] On the Questionnaire for disability benefits date stamped on February 21, 2018¹¹, the Appellant stated that he was self-employed as repairing vehicles from 2005 to 2010. He indicated that he was unable to work as of 2014 due to his medical condition.

[15] Based on the evidence, there is no doubt that since 2001, the Appellant suffers from many medical conditions¹². However, all of his conditions were diagnosed after his MQP of December 31, 2005, except for depression, alcohol abuse and injury to his left wrist. Still, the Appellant was able to return to work after his injury to his left wrist. His depression was not considered serious and there is no indication that the alcohol abuse impaired him for working.

[16] Furthermore, he was self-employed, repairing cars from 2005 to 2010. According to the evidence, he owned the business and did all of the work himself. He did however mention during his testimony that he had no earnings during those years.

[17] Unfortunately, I simply cannot conclude based on all of the evidence, that the Appellant had a severe disability on or before his MQP. He also showed capacity to work after his MQP from 2005 to 2010 and could be retrained.

Prolonged disability

[18] Since I found that the Appellant's disability was not severe, it is not necessary to make a finding on the prolonged criterion.

⁹ GD2-137 & 146

¹⁰ GD2-164 & 154

¹¹ GD2-186

¹² GD2-166 and GD2-148

CONCLUSION

[19] The appeal is dismissed.

Antoinette Cardillo
Member, General Division - Income Security