



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. C. v Minister of Employment and Social Development*, 2020 SST 477

Tribunal File Number: GP-17-2547

BETWEEN:

L. C.

Claimant (Appellant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Kelley Sherwood

Teleconference hearing on: March 6, 2020

Date of decision: March 24, 2020

DECISION

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

OVERVIEW

[2] The Claimant is 64 years old. He worked for many years in the restaurant industry. After an arrangement with business partners soured in the late 1990s, the Claimant became depressed and stopped working. While he eventually recovered from his illness, he was injured in a car accident in March 2015. He sustained both physical and psychological impairments. He has not worked since the accident.

[3] The Minister received the Claimant's application for the disability pension on June 2, 2016. The Minister denied the application finding that the Claimant's medical condition was not severe when he last qualified for a pension. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[4] The purpose of disability benefits is to replace the incomes of Canadians with disabilities unable to work on a long-term basis. It is not a social welfare scheme; rather, it is a contributory plan in which Parliament has defined both the benefits and the terms of entitlement¹. Those terms state that to qualify for a CPP disability pension, the Claimant must be found disabled as defined in the CPP by the end of the minimum qualifying period (MQP). The calculation of the MQP is based on the Claimant's contributions to the CPP.

[5] The Claimant argued that his earnings in 2013, 2014 and 2015 should have been included in his contributions to the CPP². I put his appeal on hold while he applied to the Canada Revenue Agency (CRA) to ask for a revision to his record of earnings³. After a review, his record of earnings did not change⁴. The information supplied by the CRA is binding on me⁵.

[6] Accordingly, I find that the Claimant's MQP is December 31, 2000.

¹ *Granovsky v Canada (Minister of Employment and Immigration)*, 2000 SCC 28

² GD1 – 2

³ GD4 – 1

⁴ GD12

⁵ Subsection 97(2) of the *Canada Pension Plan*

ISSUES

[7] Did the Claimant's conditions result in him having a severe disability, meaning was he incapable regularly of pursuing any substantially gainful occupation by December 31, 2000?

[8] If so, was the Claimant's disability also long continued and of indefinite duration?

ANALYSIS

[9] Disability is defined as a physical or mental disability that is severe and prolonged⁶. 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

There is no medical evidence to support a severe disability by his MQP

[10] The law says that a Claimant must provide some objective medical evidence to support a disability claim⁷. Moreover, the medical evidence must demonstrate a disabling condition by the MQP⁸.

[11] I concluded that the medical evidence does not support a severe disability by December 31, 2000. In fairness, the Claimant has made so such claim instead arguing that he has been unable to work since March 2015. However, I am limited in my assessment to consider his medical condition up until December 31, 2000.

[12] The Claimant's evidence is that he was significantly depressed after a business arrangement with some investors broke down in the late 1990s. He lost his job. He said that his life spiraled and he was out of work for a while. He took a short course of anti-depressant

⁶ Paragraph 42(2)(a) *Canada Pension Plan*

⁷ *Warren v Canada (AG)*, 2008 FCA 377

⁸ *Canada (Attorney General) v. Dean*, 2020 FC 206

medications and recalls seeing a specialist. Eventually, he moved back to Turkey to be with family. He recovered from his depression and resumed his usual daily activity, including work as a retail sales consultant. He returned to Canada in 2011 to help his children who were dealing with their mother's illness. He found work again in the restaurant industry and had a plan to start his own business. However, his plans were halted when he was injured in a car accident in March 2015. He has not been able to return to work.

[13] I do not dispute the sincerity of the Claimant's evidence; however, he has not supplied any medical reports from the time he last qualified for a disability pension to support a severe disability.

[14] The only report that reliably addresses his condition at his MQP comes from Dr. Hayward, his family doctor who has seen the Claimant off-and-on for 30 years. In a letter to the Claimant's lawyer dated October 2016⁹, Dr. Hayward wrote that the Claimant was treated for depression by a specialist in 1999. But, Dr. Hayward's recollection was that he did not prescribe any medication and the Claimant did not have ongoing treatment. Dr. Hayward did not provide clinical notes or reports from that time, still I am satisfied that he was aware of the Claimant's condition. His comments, however, do not advance the Claimant's appeal, as beyond confirming a diagnosis, they do not reveal any impairments or functional limitations that would prevent the Claimant regularly from pursuing gainful employment¹⁰.

[15] Doctors who saw the Claimant after his accident prepared the other medical evidence on file. Their reports document his impairments and functional limitations stemming from the accident. While his history of depression is noted, the reports are not determinative of a severe disability by December 31, 2000. Were I allowed to consider the Claimant's condition since his accident, Dr. Chalifour's reports would have been persuasive; however, medical evidence dated after the MQP is irrelevant when a claimant fails to prove that they suffered from a severe disability prior to the MQP¹¹.

⁹ GD2 – 79 to 80

¹⁰ *Ferreira v Canada (AG)*, 2013 FCA 81

¹¹ *Canada (Attorney General) v. Dean*, 2020 FC 206

[16] Moreover, Dr. Chalifour's reports are inconsistent with the Claimant's own evidence of his history of depression. For example, Dr. Chalifour's reports seem to provide a different timeframe of his depression¹². Given the contradiction, I did not place much weight on these reports.

[17] Finally, since there is no evidence to establish that the Claimant suffered from a severe disability by December 31, 2000, it is not necessary for me to apply the "real world" approach¹³.

CONCLUSION

[18] I find that the medical evidence does not support that the Claimant had a severe disability by December 31, 2000.

[19] The appeal is dismissed.

Kelley Sherwood
Member, General Division - Income Security

¹² GD2 – 82 to 83

¹³ *Giannaros v. Canada (Minister of Social Development)*, 2005 FCA 187