



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *Y. G. v Minister of Employment and Social Development*, 2020 SST 723

Tribunal File Number: GP-18-2685

BETWEEN:

Y. G.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Jean Lazure

HEARD ON: January 3, 2020

DATE OF DECISION: April 5, 2020

DECISION

[1] On July 12, 2017, the Appellant applied for a *Canada Pension Plan* (CPP) disability pension. The Minister of Employment and Social Development refused his application. He appealed that decision.

[2] The Appellant is not eligible to receive a disability pension under the CPP, and the appeal is dismissed for the following reasons.

OVERVIEW

[3] At the time of the hearing, the Appellant was 63 years old. He has completed grade 6, but he does not know how to read or write.

[4] The Appellant started working at age 16. He has always worked in manual jobs: from harvesting potatoes, to labour, to construction, to various factory jobs. The Appellant last worked doing maintenance at a factory until 2015. He said that he could no longer work because his head spun too much; it hurt him too much.

[5] Finally, the Appellant has been receiving a CPP retirement benefit since June 2016.

ISSUE

[6] To qualify for a CPP disability pension, a person must have been found to be disabled under the CPP at or before the end of the minimum qualifying period (MQP).¹ The calculation of the MQP is based on the Appellant's contributions to the CPP. I find that the Appellant's MQP ended on December 31, 2018.

[7] Secondly, to be considered disabled, a person must have a severe and prolonged mental or physical disability. 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.²

¹ *Canada Pension Plan* (CPP), s 42(1)(b)(i).

² CPP, s 42(2)(a).

[8] However, to qualify for a disability pension, a person cannot be receiving a retirement pension, like the Appellant since June 2016. A person can replace the retirement pension with a disability pension if they are deemed to have become disabled before the month the retirement pension became payable.³

[9] Because the Appellant has been receiving a retirement pension since June 2016, he must be deemed disabled before that month to be able to replace his retirement pension with a disability pension.

[10] Therefore, the issue is whether the Appellant's disability was severe and prolonged before June 2016. The Appellant has the burden of proving this.⁴

Was the Appellant's disability severe and prolonged before June 2016?

Appellant's Testimony

[11] In his June 17, 2017, questionnaire, the Appellant stated that his medical conditions are vertigo and leg pain. He cannot bend over and has difficulty walking more than three minutes or 100 feet. He cannot sit for more than 10 minutes or stand for more than 15 minutes at a time.

[12] The Appellant testified that he has dizzy spells that started shortly after he had surgery for thyroid cancer seven years ago. He cannot bend over for more than a few seconds or look up or to the side. He also cannot stand up straight; his head goes numb and hurts him. He testified that, every afternoon, he has to lie down and close his eyes to relieve the pressure in his head. He said that he has been doing that (closing his eyes for 60 to 90 minutes) for two or three years and that it helps.

[13] The Appellant also testified that he has numb legs, which cause him pain. He is unable to walk for more than 5 to 10 minutes. He testified that his leg pain started about two years [translation] "before today."

³ *Canada Pension Plan (CPP)*, s 66.1(1.1); *Canada Pension Plan Regulations*, s 46.2(2).

⁴ The Applicant must prove, on a balance of probabilities, that his disability is severe and prolonged.

[14] The Appellant also testified that he has had chronic major depression since 2013, after a separation. He says he is discouraged and cries all the time. He says he has had ups and downs since 2013, that [translation] “it comes and goes.”

[15] The Appellant also testified that he has type 2 diabetes. His diabetes developed after he stopped working, but the Appellant testified that it is possible he was diagnosed less than three years ago. Finally, he is receiving treatment for his pressure and has been taking medication for this for about a year.

[16] The Appellant says he has been seeing a new family doctor every three months after his former family doctor retired. He says that he has tried several medications for a long time for his dizzy spells and that nothing has worked. He also takes medication for his depression, although he does not know the name of the medications he takes.

[17] The Appellant said that he saw Dr. Diane Morissette in June 2016 for his depression, that he saw her for several months, and that he stopped everything at some point because it was worse after leaving the doctor’s office. As for the Canadian Mental Health Association, he says he refused to go because [translation] “in his mind,” it is crazy people who go there and that, in his mind, he was not crazy. He does not remember discussing the Centre l’Horizon [Horizon centre] and WRAP group. The Appellant thinks he remembers that Dr. Morissette wanted him to return to work.

[18] Finally, when I asked the Appellant why he could not work in May 2016, he said he had asked his employer to reduce his working days, but the employer had not wanted to. He also wanted [translation] “to be put on another job,” but his employer told him it did not have anything for him. And finally, he did not try to find another job because [translation] “there are no jobs where you work with your head always straight.”

[19] I must also weigh the objective medical evidence in support of the Appellant’s claims.

Medical Evidence

[20] The medical evidence of the Appellant's disability and limitations is the following, and I will summarize the various medical reports below.

July 9, 2017, report by Dr. Claude Lajoie, family doctor

[21] In terms of diagnosis, Dr. Lajoie finds probable Meniere's disease and chronic major depression. He says that the Appellant's thyroid cancer is in complete remission after surgery. He notes that the Appellant experiences recurrent, debilitating, and unpredictable episodes of vertigo for which there is no permanent solution—only medication to alleviate the symptoms. His chronic major depression is stable but not resolved. Medication and psychotherapy have prevented decompensation. The prognosis is guarded.

May 3, 2016, report by Dr. Claude Maranda, cardiologist

[22] Dr. Maranda saw the Appellant on March 30, 2016. He says that the Appellant has had lypothymia (faintness) for a year and dizzy spells that last 10 to 15 minutes around two to three times a month. After an assessment, he found that the Appellant has no signs of heart disease and that his dizzy spells are unexplained. He suggested that the Appellant buy a device to take his pressure and heartrate when he has dizzy spells.

June 10, 2016, report by Dr. Diane Morissette, psychiatrist

[23] Dr. Morissette saw the Appellant on June 6, 2016. She finds it probable that the Appellant has moderate major depression and generalized anxiety disorder and possible that he has panic disorder. In the three cases, she first wanted to eliminate a physical anomaly for her diagnosis. She suggested Canadian Mental Health Association services to the Appellant, but he allegedly refused. She also suggested activities at the Horizon centre and referred him to the WRAP group to manage his symptoms. She also explained to the Appellant that it is important that he is active, does physical and intellectual activity, and socializes. Dr. Morissette believes that the Appellant needed some encouragement to return to work and that, if he did not feel ready

for a gradual return to work with his current medication, it was possible to modify his medication.

October 25, 2016, diagnostic imaging report

[24] This brain scan, intended to eliminate a brain injury as the reason for the Appellant's vertigo, shows no hemorrhage, injury, or mass. The assessment was therefore normal.

May 3, 2017, report by Dr. Lajoie

[25] As a diagnosis, Dr. Lajoie indicates major depression and positional vertigo. He also indicates that the Appellant is not motivated to engage in activities of daily living, that he is more isolated, that his concentration and mood are lacking, that he has less ambition and physical endurance, and that he has poor balance. Under the heading [translation] "Return to Work," he says he brought up returning to work several times with the Appellant, but the Appellant says he is incapable because his vertigo and depression. He recommends complete rest and the medication the Appellant is already taking. He also recommends psychotherapy and group sessions at a help centre.

October 2, 2018, medical certificate from Dr. Lajoie

[26] Dr. Lajoie indicates that, due to chronic vertigo and chronic major depression, the Appellant cannot return to work indefinitely for medical reasons.

ANALYSIS

Severe Disability

[27] 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. The determination of the severity of the disability is not based on the person's inability to perform

their regular job, but rather on their inability to perform any work, that is, “any substantially gainful occupation.”⁵

[28] Furthermore, the Appellant must prove, on a balance of probabilities, or that it is more likely than not, that he was disabled under the CPP before June 2016, when he started receiving a CPP retirement pension.

[29] I find that the Appellant has not met his burden of proof and that there is not enough evidence to make a finding of severe disability before June 2016, for the following reasons.

[30] First, the Appellant’s testimony about his medical condition and limitations was not particularly specific to the period before June 2016. Although I had indicated to the Appellant that it was necessary, I note that vague testimony about specific periods is not necessarily unusual. In this case, the medical evidence can often enlighten us.

[31] However, I note that, in this file, there is not a lot of medical evidence, especially taking into account the date of May 31, 2016. The report by Dr. Lajoie, family doctor, is dated July 2017. He says that he started treating the Appellant for his main medical condition in November 2013, but I note that the Appellant did not see a specialist for either his dizzy spells or his depression before 2016.

[32] The first specialist he saw was Dr. Maranda, cardiologist. He was the only one the Appellant saw before June 2016. His report indicates that the Appellant had had lypothymia (faintness) for a year, but had dizzy spells that lasted 10 to 15 minutes around two to three times a month. I cannot find that these dizzy spells, which I qualify as sporadic, made the Appellant incapable regularly of pursuing any substantial gainful occupation before June 2016.

[33] The report by Dr. Morissette, psychiatrist, is dated June 10, 2016. I note that, even in June 2016, nearly three years after the Appellant’s depression started, Dr. Morissette talked about encouraging the Appellant to return to work.

⁵ *Klabouch v Canada (Social Development)*, 2008 FCA 33.

[34] Furthermore, several treatments, like the services at the Centre Horizon [Horizon centre], the WRAP group, and the Canadian Mental Health Association were not considered until now. Dr. Lajoie also includes some of these recommendations in his May 2017 report for psychotherapy and group sessions at a help centre.

[35] Finally, it is odd that the Appellant's July 12, 2017, questionnaire makes no mention of having chronic depression since 2013.

[36] Therefore, since Dr. Morissette wanted to encourage the Appellant to return to work in June 2016, several treatments for depression were not considered until 2016–2017 when it started in 2013, and the Appellant made no mention of his depression in his July 2017 questionnaire, I also cannot find that the Appellant's depression made him incapable regularly of pursuing any substantially gainful occupation before June 2016.

[37] Furthermore, the October 2, 2018, medical certificate in [*sic*] Dr. Lajoie cannot help the Appellant because it was written nearly two and a half years after the May 31, 2016, deadline.

[38] As for the leg problems the Appellant mentioned in his testimony, which make it difficult for him to walk, Dr. Lajoie's July 2017 report does not mention it. The same is true for his diabetes. I therefore find that these problems developed after July 2017. The Appellant essentially confirmed this in his testimony.

[39] Finally, the severity requirement must be assessed in a real-world context.⁶ 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. It is true that the Appellant was 60 years old on May 31, 1956 [*sic*], that he has little education, and that he does not know how to read or write. He worked in manual jobs. However, the Appellant has been able to do these jobs his whole life, and I cannot find from the evidence before, especially the medical evidence, that he was incapable regularly of pursuing any substantially gainful occupation before June 2016.

⁶ *Villani v Canada (Attorney General)*, 2001 FCA 248.

Prolonged Disability

[40] Because I have found that the Appellant's disability was not severe before June 2016, I do not need to make a finding on the prolonged criterion.

CONCLUSION

[41] The Appellant is not eligible to receive a disability pension under the CPP. The appeal is dismissed.

Jean Lazure
Member, General Division – Income Security