



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *T. W. v Minister of Employment and Social Development*, 2020 SST 537

Tribunal File Number: GP-19-529

BETWEEN:

**T. W.**

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: Carol Wilton

Claimant represented by: Katie Conrad

Teleconference hearing on: May 26, 2020

Date of decision: May 28, 2020

## **DECISION**

[1] The Claimant is eligible for a *Canada Pension Plan* (CPP) disability pension with payment beginning in August 2017.

## **OVERVIEW**

[2] The Claimant was 39 years old when he applied for the CPP disability pension in July 2018. He stated that he had been unable to work since August 2016 because of pain and numbness in both arms, as well as back and neck pain. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] The Minister submitted that while the Claimant might have some limitations related to his health condition, the medical evidence did not suggest that these would prevent all forms of work.

[4] For the purposes of the CPP, a disability is a physical or mental impairment that is severe and prolonged.<sup>1</sup> A disability is severe if it causes a person to be incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration.

[5] For the Claimant to succeed, he must prove that it is more likely than not that he became disabled by the end of his Minimum Qualifying Period (MQP). His MQP – the date by which he has to prove that he was disabled - is based on his contributions to the CPP.<sup>2</sup> It ended on December 31, 2018.

## **ISSUES**

[6] Did the Claimant's health conditions result in his having a severe disability, so that he was incapable regularly of pursuing any substantially gainful occupation by the end of December 2018?

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<sup>1</sup> Paragraph 42(2)(a) *Canada Pension Plan*

<sup>2</sup> CPP Record of Contributions: GD2-4

[7] If so, was his disability long continued and of indefinite duration by that date?

### **SEVERE DISABILITY**

[8] When I am deciding whether the Claimant's condition is severe, I must look at every health issue that might affect his employability.<sup>3</sup>

#### ***The Claimant's health conditions interfered with his ability to work by December 31, 2018***

##### ***The Claimant's testimony about his condition***

[9] At the hearing, the Claimant stated that his health conditions are about the same as in December 2018.

[10] The Claimant testified that his major health problem is neck pain. This began in about 2007 and gradually got worse. It is always at a level of 8-9/10, where 10 is the greatest pain imaginable. It sometimes flares to 10/10. The pain travels down his arms to his hands, causing them to shake. In 2018, the Claimant testified, he had several hospital visits because of neck pain. In 2018, he was taking Percocet (opioid painkiller), occasionally topped up with morphine for periods of acute pain.

[11] A second serious health problems is renal colic. He always has kidney stones, and they cause excruciating back pain. Sometimes this condition flares. When that happens, he takes an ambulance to the hospital for very strong painkillers. He is currently taking Oxycontin and Toradol for pain. After a flare, he has to spend weeks mostly lying on the floor because the pain is so intense.

[12] With regard to his possible Meniere's disease, the Claimant testified that he has had ringing in his ears since the age of ten, but it is getting louder. He had seen Dr. J. Poirier, otolaryngologist, two or three times. Dr. Poirier suggested injections in his ears, but the Claimant wanted to try medication first. Also associated with Meniere's disease is dizziness. About one day a week, the Claimant feels as if the world is spinning. He puts his head between his legs and takes Gravol for this.

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<sup>3</sup> *Bungay v. Canada (A.G.)*, 2011 FCA 47

[13] The Claimant testified that he suffered a minor heart attack at age 33. About once a month, he has chest pain and needs to take nitroglycerine spray. He also has high blood pressure and is on several medications for this and for high cholesterol.

[14] The Claimant stated that he has to spend an hour in the shower to get moving in the morning. Then he needs help getting dressed. Sometimes he requires assistance to get around the house. He can't even get himself a glass of water. He spends the day in a chair or lying down. When he goes up the stairs, his teenaged son walks behind him in case he falls. Family members do most of the household chores, although for some years the grocery store has delivered food supplies to the household.

[15] The Claimant testified that he is unable to sit for more than ten or fifteen minutes. He can't stand for long. He has "medicine head" (brain fog) from all the medication he takes. He can't help his son with his homework because brain fog means he can't do even simple math. He is dizzy all the time. In spite of taking strong sleeping pills, he only sleeps two to four hours a night. However, he is drowsy during the day and spends about 16 to 20 hours a day resting.

[16] The Claimant stated that he had tried physiotherapy and massage therapy, but they only made his condition worse. He received a referral to a chronic pain management clinic, but there is only one in his province. The pain doctor there only sees two or three patients a week. The waiting list is five to ten years, and the Claimant has been on it for five years.

***The medical evidence supports the Claimant's account***

[17] In August 2016, Dr. Omar Ezzat, family doctor, reported that the Claimant had a long history of chronic neck pain. In addition, he had coronary artery disease and had suffered a heart attack five years before. It was not clear that his high blood pressure and high cholesterol were under control.<sup>4</sup>

[18] In March 2017, an MRI of the Claimant's cervical spine showed mild central canal stenosis at C3-C4 due to degenerative changes, and minor degenerative changes at two other levels.<sup>5</sup>

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<sup>4</sup> GD2-66

<sup>5</sup> GD2-214

[19] In October 2016, Dr. Ezzat referred the Claimant to a chronic pain clinic.<sup>6</sup> Throughout monthly appointments over the following three years, Dr. Ezzat routinely reported seeing the Claimant for “chronic pain.” In September 2018, Dr. Ezzat stated that the Claimant’s pain was severe and he was unable to perform any daily activities.<sup>7</sup>

[20] In November 2017, Dr. Ezzat diagnosed the Claimant with renal colic.<sup>8</sup> In February 2018, the Claimant complained of blood in his urine and back pain that had been ongoing for some time. In spite of the use of an opioid painkiller and an anti-inflammatory, his pain level was 6/10.<sup>9</sup> In March 2018, the Claimant went to the emergency department; Dr. Ezzat provided a prescription for morphine.<sup>10</sup> In April 2018, the Claimant twice visited the hospital for renal colic. The pain was moving down from his right flank to the right side of his abdomen. He had been taking morphine at home but the prescription had run out.<sup>11</sup> A CT of his abdomen and pelvis showed that he had kidney stones.<sup>12</sup> In May 2018, Dr. Spurrell, urologist, performed surgery for this, but the largest kidney stone had passed.<sup>13</sup> Three months later, the Claimant was complaining again of flank pain and blood in his urine.<sup>14</sup> In September 2018, a further CT showed that he continued to have kidney stones.<sup>15</sup> In March 2019, Dr. Ezzat stated that the Claimant’s renal colic was still bothersome.<sup>16</sup>

[21] From August 2016, Dr. Ezzat tried the Claimant on a series of painkillers, including Tramacet, Torodol, Lyrica, Tylenol 3, Tylenol 4, Flexeril, Percocet, MS Contin, morphine, Naproxen, and Celebrex.<sup>17</sup> The most effective of these was Percocet, which the Claimant began taking in August 2017. In December 2017, his Percocet dosage was increased.<sup>18</sup>

[22] The Minister cast doubt on the severity of the Claimant’s pain, observing that Dr. Ezzat had periodically reported that Percocet helped control his chronic pain. The Minister did not

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<sup>6</sup> GD2-69

<sup>7</sup> GD2-133

<sup>8</sup> GD2-88

<sup>9</sup> GD2-100, 102

<sup>10</sup> GD2-59

<sup>11</sup> GD2-57, 61

<sup>12</sup> GD2-194

<sup>13</sup> GD2-147

<sup>14</sup> GD2-130

<sup>15</sup> GD2-209

<sup>16</sup> GD4-10

<sup>17</sup> GD2-69-136

<sup>18</sup> GD2-83-90

point to any statement by Dr. Ezzat that Percocet provided full pain relief. The Claimant's testimony indicated that it certainly did not. Moreover, the Minister's submission does not take account of the "brain fog" brought on by the Claimant's medication.

[23] From at least May 2017, the Claimant reported to Dr. Ezzat that he suffered from insomnia. He tried several medications for this, including Triazolam, Temazepam, and Zopiclone.<sup>19</sup>

[24] In August 2017, the Claimant reported symptoms of dizziness and vertigo, with ringing in his ears and decreased hearing. Dr. Ezzat put him on medication for these conditions.<sup>20</sup> In March 2019, the Claimant saw Dr. Poirier, who suspected that he had Meniere's disease in his left ear. The Claimant had some mild hearing loss, but in Dr. Poirier's opinion this did not require hearing aids. If the symptoms flared, Dr. Poirier would offer injections.<sup>21</sup>

[25] The Claimant has other medical conditions, including depression, high blood pressure, and high cholesterol. The medical evidence also shows that he experienced some acute mental health symptoms in January 2017. For this, he was given two antidepressants.<sup>22</sup> He has continued on medication. Dr. Ezzat consistently reported that his mental health was stable. In June 2019, Dr. Ezzat stated that the Claimant's blood pressure was under good control.<sup>23</sup>

### ***My findings***

[26] By December 2018, the Claimant suffered from chronic neck pain, renal colic, persistent insomnia, and symptoms of Meniere's disease. Treatment failed to control his health conditions. He suffered from high pain levels due to his neck condition, and intermittent severe flares of his renal colic. Because of insomnia, he had to rest most of the day. Because of brain fog, he had trouble doing even simple math. He was unable regularly to perform his activities of daily living.

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<sup>19</sup> GD2-79-119

<sup>20</sup> GD2-128

<sup>21</sup> GD3-4

<sup>22</sup> GD2-72

<sup>23</sup> GD4-7

[27] I find that the Claimant's health conditions interfered with his ability to work by the end of December 2018.

***The Claimant lacked a regular capacity for substantially gainful employment by December 31, 2018***

[28] Employability is the key measure of a severe disability under the CPP.<sup>24</sup>

[29] The Claimant testified that in 2013-2014 he worked for an Alberta firm in the oil and gas industry. In that job, he worked in a variety of capacities, including human resources, information technology, and quality control. As the firm expanded, he found himself working 20 hours a day, six days a week, with no overtime pay. He did not have the energy to continue in that job. Not long after he stopped work, there was a slump in the industry and jobs dried up.

[30] In August 2015, the Claimant took a job at a call centre in St. John's, Newfoundland. He left after five months because it was too painful for him to sit at a desk. From January to July 2016, he tried working part time as a security guard, which he thought would be less demanding. However, even moving his head to check the monitors caused too much neck pain. He tried working fewer hours, but was still unable to do the job. He has not worked since.

[31] The Claimant testified that once he realized he was unable to work, he and his family moved to a small town in central Newfoundland where he had family connections. It was too expensive to live in St. John's without any income. In addition, he was unable to find a family doctor in St. John's. However, he knew that there was a family doctor he could go to in the town where he relocated.

[32] The Claimant testified that in about August 2016 Dr. Ezzat told him that he was unable to work. It was Dr. Ezzat who encouraged him to apply for CPP disability.

[33] I find that it is more likely than not that the Claimant lacked residual work capacity by the end of December 2018.

[34] In deciding whether the Claimant's condition was severe, I must take a "real world" approach and consider factors such as his age, level of education, language proficiency, and past

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<sup>24</sup> *Canada (A.G.) v. Dean*, 2020 FC 206

work and life experience.<sup>25</sup> The Claimant was only 40 years old in December 2018, and might have expected to spend another 25 years in the workforce. In addition, he has some college education and is English-speaking. He has experience in office work as well as other sedentary occupations. None of these personal characteristics would have interfered with his employment prospects. However, the Claimant has difficulty sitting, standing, and moving his neck. He suffers from brain fog. He testified that he is no longer able to use a computer because of pain and shaking in his hands. Because of intermittent flares of renal colic, he would be unable regularly to attend at a workplace. He could not be a reliable employee.

[35] I am satisfied that it is more likely than not that because of his health conditions the Claimant was unable regularly to pursue any substantially gainful occupation by the end of December 2018. I recognize that it is unusual for a person to suffer a disability like the Claimant's at such a young age; however, this in itself is not a reason for disqualifying him from CPP disability.<sup>26</sup>

[36] I therefore find that it is more likely than not that his disability was severe by December 31, 2018.

### **PROLONGED DISABILITY**

[37] The Claimant has suffered from chronic neck pain for more than a decade. He has had renal colic since and insomnia 2017, and Meniere's disease since 2018. Dr. Ezzat stated that the Claimant's chronic pain was unlikely to improve.<sup>27</sup>

[38] The Claimant's disability is both long continued and of indefinite duration. I therefore find that it is prolonged.

### **CONCLUSION**

[39] The Claimant had a severe and prolonged disability in July 2016, when he stopped working. However, to calculate the date of payment of the pension, a person cannot be deemed

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<sup>25</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

<sup>26</sup> *Lewis v. MHRD* (September 3, 2002), CP 18177 (PAB). This decision is not binding but I find it to be persuasive.

<sup>27</sup> GD2-233



disabled more than fifteen months before the Minister received the application for the pension.<sup>28</sup>  
The Minister received the application in July 2018, so the deemed date of disability is April  
2017. Payments start four months after the deemed date of disability, as of August 2017.<sup>29</sup>

[40] The appeal is allowed.

Carol Wilton  
Member, General Division - Income Security

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<sup>28</sup> Paragraph 42(2)(b) *Canada Pension Plan*

<sup>29</sup> Section 69 *Canada Pension Plan*