



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. A. v Minister of Employment and Social Development*, 2020 SST 597

Tribunal File Number: GP-18-2664

BETWEEN:

**S. A.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

---

Decision by: Adam Picotte

Teleconference hearing on: May 29, 2020

Date of decision: May 31, 2020

## **DECISION**

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

## **OVERVIEW**

[2] The Claimant came to Canada in 2002. When he came, he could not work in his own profession of electrical engineering. As a result, he took a number of other employment opportunities including customer service and grocery store clerk. In 2017, he applied for a disability benefit.

[3] The Minister received the Claimant's application for the disability pension on December 12, 2017. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[4] 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, 2013.

## **PRELIMINARY MATTERS**

[5] The Claimant was joined by an interpreter for the hearing. Although the Claimant had a good understanding of the English language, he required some assistance with translation. The Interpreter made sure that happened.

## **ISSUE(S)**

[6] Did the Claimant's conditions result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2013?

[7] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2013?

## **ANALYSIS**

[8] 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 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**

#### ***The Claimant's ability to work after his MQP means he does not have a severe disability***

[9] I have decided the Claimant does not have a severe disability. I believe the Claimant that he experiencing a lot of pain and work is hard for him. I am going to explain why his work history shows he does not have a severe disability. In order to do that I am going to explain some law and review some facts.

[10] I understand that the Claimant experiences a lot of pain.

[11] In a February 27, 2017 consultation report, the Claimant reported having difficulty working at a Produce Department where he had been employed for a year at that time.<sup>2</sup>

[12] In a December 2017 medical report Dr. Shoukralla detailed he had know the Claimant since 2004 and had started to treat him for his primary medical conditions in August 2015.<sup>3</sup> Dr. Shoukralla noted the Claimant had severe bilateral knee arthritis. As a result, the Claimant limped, had knee swelling, joint line tenderness, and effusion.<sup>4</sup>

[13] Clearly, the Claimant has severe impairments. That is not the only thing I need to consider. I need to consider whether the Claimant's disability prevents him from earning a living.

[14] 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

---

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

<sup>2</sup> GD2-57

<sup>3</sup> GD2-53

<sup>4</sup> GD2-54

a question of whether a person is unable to perform their regular job, but rather the person's inability to perform any substantially gainful work<sup>5</sup>.

[15] I have to keep this in mind when making a decision. I want the Claimant to know that while I acknowledge and believe he is in pain the fact he has continued to work after his MQP means he cannot receive a benefit here.

[16] The Claimant detailed that he worked from October 2010 to February 2015 in Yemen.<sup>6</sup> The Claimant told me that he had returned to Yemen for cultural reasons. He stayed there until 2015. He left because there was a war. The Claimant told me that he worked for a business company in Yemen doing business work and acting as a translator. He worked for an import/export company of food products. He was exporting to Japan and America. He was working full time in that job.

[17] The Claimant told me that when he returned to Canada he started working at No Frills, a grocery store. He worked there until the end of 2017. In 2018, he started to work at Food Basic. He has worked there since that time.

[18] The Claimant told me that he is still working part time because his financial situation is bad. Rent is high and bills are high.

[19] He told me that he is currently working at Food Basic, a grocery store. His job is to stock shelves. Due to Covid19, he is also at the door cleaning buggies and ensuring hygiene.

[20] The Claimant told me that he is doing that work between 3 and 4 days a week. He is working on average 6 hours a day. He told me that he earns on average \$400 a week.

[21] I also asked the Claimant if his employer makes any special arrangements for him because of his disability. Sometimes when an employer goes above and beyond in accommodating a Claimant that might mean the Claimant is not doing substantially gainful employment. That is not the case here. The Claimant told me that the employer does not provide him with any accommodations.

---

<sup>5</sup> *Klabouch v. Canada (A.G.)*, 2008 FCA 33

<sup>6</sup> GD2-20

[22] Because the Claimant is able to continue earning a living as demonstrated by his work history from 2010 to present, I am satisfied that he does not have a severe disability as that term is understood under the CPP.

[23] I note that because the Claimant continues to work, he will likely have an MQP that extends into the future. Should he ever be unable to work in the future his MQP will likely extend to a date in the future. Because his MQP will likely be in the future, he may have another opportunity to apply for a CPP disability benefit.

### **CONCLUSION**

[24] The appeal is dismissed.

Adam Picotte  
Member, General Division - Income Security