



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *RL v Minister of Employment and Social Development*, 2020 SST 627

Tribunal File Number: GP-20-179

BETWEEN:

**R. L.**

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: Connie Dyck

Teleconference hearing on: June 3, 2020

Date of decision: June 11, 2020

## **DECISION**

[1] The Claimant (R. L.) is entitled to a *Canada Pension Plan* (CPP) disability pension to be paid as of November 2017.

### **Overview**

[2] The Claimant was 51 years old at the time of his MQP (December 31, 2017). He says he is unable to work because of an injury to his left hand, depression and anxiety. He stopped working in a recycled scrap store in March 2017. The Claimant applied for a CPP disability pension in September 2018. The Minister denied his application. He appealed to the Social Security Tribunal.

[3] To qualify for CPP disability benefits, 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 (called the “MQP”). The calculation of the MQP is based on the Claimant’s contributions to the CPP. I find the Claimant’s MQP is December 31, 2017.

### **Issues in this Appeal**

[4] There are two issues that I must decide in this appeal:

- i) Did the Claimant have a severe disability by December 31, 2017?
- ii) If so, was his disability also prolonged by December 31, 2017?

[5] The CPP defines disability as a physical or mental disability that is severe and prolonged<sup>1</sup>. The Claimant is considered to have a severe disability if he is 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. The Claimant must prove, on a balance of probabilities, that his disability meets both parts of the test. If the Claimant meets only one part, he does not qualify for disability benefits.

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<sup>1</sup> This is explained in paragraph 42(2)(a) of the *Canada Pension Plan*.

## **The Minister's Argument**

[6] The Minister submits that the Claimant's hand injury would not prevent him from suitable employment. Also, the Claimant's mental health including depression, anxiety and alcohol disorder are not 'severe' as defined in the CPP legislation. The Minister says that the evidence does not support a finding that the Claimant is disabled by December 31, 2017 and continuously onward. That is why his application was refused.

## **Analysis**

[7] I must assess the Claimant's condition in its totality. This means I must consider all of the possible impairments, not just the biggest impairments or the main impairment<sup>2</sup>. The Claimant has both physical and mental health conditions.

### **i) hand injury**

[8] The Claimant injured his left hand in an accident in August 2015. The Minister has submitted that although the Claimant has limitations with his left hand, he has capacity to work. They based this opinion on the evidence that the Claimant was able to perform modified or lighter work for his employer. This job ended because of a non-medical issue. I agree with the Minister. The Claimant told me that he wanted to return to work at the X, but this was not possible because of his hand. However, 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 work<sup>3</sup>. Although, the Claimant's injured hand prevented him from returning to work in the day program, he was able to work at X. He told me that he had no plans on quitting this job. His employer decided the Claimant had breached the Conflict of Interest and Confidentiality Policy<sup>4</sup>. This is why his job was terminated.

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<sup>2</sup> This is explained in a Federal Court of Appeal decision called *Bungay v. Canada (A.G.)*, 2011 FCA 47

<sup>3</sup> *Klabouch v. Canada (A.G.)*, 2008 FCA 33 is a Federal Court of Appeal decision that deals with this issue.

<sup>4</sup> The letter of termination is at GD 2-144.

**ii) mental health issues**

[9] The Minister has submitted that the medical evidence does not support that the Claimant is disabled because of any mental health condition. I disagree. I find that the evidence shows that although the Claimant struggled with mental health issues for many years, in July 2017, his condition became ‘severe’. This means that since July 2017, he has been incapable regularly of performing any substantially gainful employment because of his mental health. Following are the reasons why I made this decision.

[10] The Claimant’s depression increased after his second surgery in July 2016. However, he continued to work until March 2017. This shows me that although he had increasing symptoms, he retained capacity to work. He lost his job in March 2017, but not because of his mental health condition.

[11] The Claimant’s depression and anxiety increased after he was fired. A psychiatric referral was made in March 2017<sup>5</sup>. He continued to self medicate with alcohol and valium<sup>6</sup>. Sandy Sydor (Registered Social Worker) provided therapy to the Claimant starting in January 2017. She told me that “things were coming along well” until July 2017.

[12] In July 2017, the Claimant had an altercation with the police<sup>7</sup>. He explained that he was “beaten” by the police. After the beating, he had a seizure and went to the hospital. He was told there was bleeding in his head. He was admitted to the hospital, but he left. He was brought back and restrained. The Claimant said when he was released from the hospital, he went home and could not leave the house because of his anxiety. He called Sandy for support. After the police incident, the general self-regulation therapy which she provided became complicated. She explained that the Claimant had a traumatic incident reaction and his mental health continued to spiral downward leading to hospitalization in August 2018.

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<sup>5</sup> Dr. Dalling’s clinic note is at GD 2-200.

<sup>6</sup> The clinic notes are at GD 2-201.

<sup>7</sup> The police report is at GD 1-36.

[13] Dr. Dalling (family physician) agreed that the Claimant's condition "significantly worsened<sup>8</sup>" after the altercation with the police. He suffered a brain injury, which has resulted in headaches and continued worsening depression.

[14] Dr. Dalling said in July 2017 that the Claimant suffered from severe chronic anxiety and an alcohol use disorder<sup>9</sup>. At this time, the Claimant was still waiting for his psychiatric consultation. It was the hope of the family doctor that the Claimant would be able to return to work within 6-12 months "if treatment with psychiatry proceeds"<sup>10</sup>. I do not see this as an indication that the Claimant has capacity for work or will in the future. Dr. Dalling's opinion is reliant on what benefit the treatment and psychiatric care will have on the Claimant. The Claimant saw a psychiatrist the following month.

[15] The psychiatrist (Dr. Nepon) determined that the Claimant had an alcohol use disorder; substance induced mood and anxiety disorder and Major Depressive Disorder with anxious distress<sup>11</sup>. He recommended that the Claimant stop using alcohol and attend Dialectical Behaviour Therapy classes. The Claimant's wife said that he had attended these group sessions. Dr. Nepon also made several medication changes. The Claimant's family doctor prescribed the new medication and in September 2017, the Claimant said he was taking the new medication and felt "okay" but still had very anxious moods<sup>12</sup>. The Claimant's condition deteriorated until August 2018 when he had a mini stroke. He was hospitalized and stopped drinking alcohol<sup>13</sup>. I considered that the main recommendation of the psychiatrist was that the Claimant stop drinking alcohol. He eventually did follow this recommendation in August 2018. However, despite following the recommendations of the psychiatrist in August 2018, his condition has not improved.

[16] The Claimant said that the medication makes him not as "on edge and more relaxed". His wife explained that the medication stops him from "blowing off the handle". He has been alcohol free for 1 ½ years, but he continues to experience symptoms of depression and anxiety which

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<sup>8</sup> Dr. Dalling's report is at GD 2-141.

<sup>9</sup> The medical report begins at GD 2-188.

<sup>10</sup> The prognosis is at GD 2-191.

<sup>11</sup> The psychiatric report is at GD 2-205

<sup>12</sup> The clinic note is at GD 2-202.

<sup>13</sup> This is in a letter at GD 2-163. The letter is undated but it is after his hospitalization in 2018 and before April 2019 when he was to start a mental Health program.

impact his daily function. From July 2017 to the present, despite no longer drinking alcohol, the Claimant continues to have memory issues, cognitive issues and is reliant on his wife for all of his activities of daily living. At the hearing, his wife explained that she does “pretty much everything”. She helps the Claimant shower and bath, reminds him to take medication and eat. The Claimant’s anxiety continues to keep him housebound most of the time. From August 2017 to 2020, the Claimant was too anxious to drive at all.

[17] Although Dr. Dalling was initially hopeful that the Claimant would be able to return to work in 6-12 months after psychiatric treatment, in December 2018, he had a different opinion. The Claimant had stopped drinking 5 months prior to this report. However, his prognosis now was that “there is no indication that he (the Claimant) can recover to the point of meaningful work.” In May 2019, his opinion remained that the Claimant was unemployable because of the combination of his hand injury, anxiety and depression<sup>14</sup>.

### **The Claimant’s personal circumstances**

[18] I must assess the severe part of the test in a real world context<sup>15</sup>. 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.

[19] The Claimant was 51 years old at his MQP of December 31, 2017. He did not complete high school and has no other post-secondary training. He has a long and varied work history. He previously worked as a support worker in a day program for disabled. He also worked as a general labour in production for food companies. His age and work history would support that he has some transferable skills if not for his mental health condition which would not allow him to be employable in any of these jobs or any other occupation. His limited education and cognitive problems, including memory, would support that he is not a candidate to retrain.

[20] Based on his functional limitations, I find that the Claimant does not have work capacity or the capacity to retrain. His condition prevents him from returning to any type of gainful

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<sup>14</sup> This opinion is at GD 2-141.

<sup>15</sup> The Federal Court of Appeal case called *Villani v. Canada (A.G.)*, 2001 FCA 248 explains the ‘real world’ concept.

employment. I find that the evidence supports that the Claimant's disability is severe. The next question I must address is whether his disability is prolonged.

### **The Claimant's disability is prolonged**

[21] A disability is prolonged if it goes on for a long period of time and looks like it will continue indefinitely, or will result in the person dying<sup>16</sup>.

[22] I do not find any evidence that would reasonably lead me to assume that the Claimant's condition will be resolving in the foreseeable future. The Claimant continues to suffer from anxiety and major depression. This has been ongoing for many years, but worsened in July 2017 to the point he is no longer able to work. Dr. Dalling, who has been providing care to the Claimant for 13 years said 1 ½ years after the Claimant's MQP that he continued to be incapable of working due to anxiety and depression. This is despite ongoing treatment with Sandy, stopping the use of alcohol and taking his prescribed medications.

[23] The Claimant has done what his doctors told him to do, but he has not improved. This indicates to me that his condition will continue indefinitely. I conclude that his disability is prolonged, as well as severe.

### **CONCLUSION**

[24] The Claimant had a severe and prolonged disability in July 2017, when the Claimant no longer had capacity to work. Payments start four months after the date of disability, as of November 2017<sup>17</sup>.

[25] The appeal is allowed.

Connie Dyck  
Member, General Division - Income Security

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<sup>16</sup> This requirement is found at Section 54(2)(a)(ii) of the CPP.

<sup>17</sup> This is said in Section 69 *Canada Pension Plan*.