



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. A. v Minister of Employment and Social Development*, 2020 SST 624

Tribunal File Number: GP-19-1223

BETWEEN:

**A. 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: June 11, 2020

Date of decision: June 19, 2020

## **DECISION**

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

## **OVERVIEW**

[2] The Claimant worked as letter carrier with Canada Post from 2005 to 2015. He stopped working when he was injured in a motor vehicle accident. He then went onto long-term disability benefits. His benefit provider required him to apply for a CPP disability benefit and he did so.

[3] The Minister received the Claimant's application for the disability pension on September 19, 2018. 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, 2018.

## **ISSUE(S)**

[5] 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, 2018?

[6] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2018?

## **ANALYSIS**

[7] 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

---

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

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 functional impairments made him incapable regularly of pursuing any substantially gainful occupation by the end of December 2018**

[8] I have decided the Claimant has a severe disability. I am going to explain below the facts and medical evidence that have helped me to make that decision.

[9] The Claimant's orthopaedic surgeon, Dr. Shirali, detailed in early 2016 that the Claimant had a degenerative hip condition that would ultimately require a hip replacement. However, Dr. Shirali noted that it was appropriate to treat the Claimant with nonsteroidal anti-inflammatory drugs for pain relief. As well, the Claimant would benefit from stretching, strengthening exercises, avoidance of impact activities and a shoe raise on his shorter, left side.<sup>2</sup> Dr. Shirali concluded that the Claimant should avoid prolonged standing or walking and switch to a lighter job if possible.<sup>3</sup>

[10] On July 4, 2017, a functional capacity evaluation was completed of the Claimant.<sup>4</sup> The report detailed that the Claimant had significant impairments that clearly left him impaired and unable to work in any capacity. With respect to his general level of function, the Claimant demonstrated instability while standing, weight-bearing, and walking. He required the use of a cane for support and stability. The Claimant was advised to avoid tasks that require him to:

- sit for sustained periods longer than 10 minutes (80 minutes cumulatively),
- stand for sustained periods longer than 7 minutes (50 minutes cumulatively) (with use of a cane for support), and

---

<sup>2</sup> GD2-51

<sup>3</sup> GD2-51

<sup>4</sup> GD2-75

- walk for sustained periods longer than 5 minutes (with use of a cane for support:} due to reported left hip pain.

[11] The functional capacity evaluation also noted the Claimant to be unable to safely lift items of any weight from floor level due to being unable to safely assume a full crouching position due to observed loss of balance and reported left hip pain. The Claimant was advised to avoid lifting items weighing more than 15 pounds between knuckle and shoulder height, and more than 15 pounds to above shoulder level on more than an occasional basis. The Claimant was also advised to avoid carrying items weighing more than a few pounds on more than an occasional basis.

[12] During his functional ability evaluation, the Claimant was able to type between 6 and 11 words per minute. As such, his typing was quite slow. He had limitations with administrative tasks such as sorting/stapling because he constantly needed to stand to alleviate his left hip pain associated with sustained sitting.<sup>5</sup>

[13] In September 2018, Dr. Nag, family physician detailed that the Claimant suffered from a vascular necrosis of the hip.<sup>6</sup> Dr. Nag detailed that the Claimant's left leg was shorter by .75 centimeters than the right leg. As a result, he walked with an antalgic gait, and used a cane. He also had pain while walking and poor sleep because of aching at night.<sup>7</sup>

[14] I have put a lot of weight into the functional ability evaluation. The functional ability evaluation was used, by a private insurer, to extend the Claimant's entitlement to disability benefits from a period where he was insured for coverage under his own occupation to a period of coverage for any occupation. It was an objective analysis of his capabilities, completed by a third party provider. The testing was reliable. I am therefore able to accord it significant weight.

[15] I also heard from the Claimant about his daily activities and his level of function.

---

<sup>5</sup> GD2-77

<sup>6</sup> GD2-61

<sup>7</sup> GD2-63

[16] The Claimant told me that he has lots of pain in his hips. He is living on medications. He can only sit for a short period of time and his ability to walk, sit, and stand are all affected. He is constantly in pain and feels it day and night.

[17] The Claimant told me that he does not walk a lot because of his pain. He has his children assist with groceries and they carry the bags. His children do the dishes and washing. His wife helps him to take care of his activities of daily living including: showering, placing pillows under his legs to make his pain less. He told me that he can sit for short periods but then he has to stand up to help reduce his pain. He needs to repeatedly change positions to reduce his pain symptoms.

[18] The Claimant told me that he cannot do many activities with his kids. He cannot go for a walk, bike ride, or do other activities like other families. He cannot engage in normal activities because it causes him too much pain, suffering, and agony.

[19] I must assess the severe part of the test in a real world context<sup>8</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.

[20] The Claimant is still relatively young. However, he lacks many transferrable skills and has significant impairments that affect daily function. He cannot sit, stand, walk, or bend without constant breaks or changing in position. He has a limited ability to maintain working postures. He cannot do heavy work. The functional assessment demonstrated that he cannot engage in sedentary work.

[21] I also heard from the Claimant about his real estate practice. He told me that he had not made any sales over the last two years. I asked him why he bothered to keep his license if that was the case. He told me that it was so that when he sold his house he could make a little bit of money off the commission. I accepted that as being true.

[22] Given the Claimant's numerous functional impairments, confirmation of those impairments from his treating physician, and his testimony detailing his difficulties in his daily living, I find that he has a severe disability within the meaning of the CPP.

---

<sup>8</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

### **Prolonged disability**

[23] Dr. Nag provided an opinion that the Claimant's hip prognosis was poor because he would eventually require a total hip replacement and this could only be done twice in his lifetime.<sup>9</sup> Given his relatively young age this was not advisable. Moreover, the Claimant has had ongoing symptoms since at least 2015 when he was involved in a motor vehicle accident. Given the duration of symptoms and medical evidence, I find he also has a prolonged disability within the meaning of the CPP.

### **CONCLUSION**

[24] The Claimant had a severe and prolonged disability by the latest of July 2017 when he engaged in a functional capacity evaluation and it was determined that he had significant impairments that left him unable to return to any form of employment. Payments start four months after the date of disability, as of November 2017<sup>10</sup>.

[25] The appeal is allowed.

Adam Picotte  
Member, General Division - Income Security

---

<sup>9</sup> GD2-64

<sup>10</sup> Section 69 *Canada Pension Plan*