



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. E. v Minister of Employment and Social Development*, 2020 SST 625

Tribunal File Number: GP-19-597

BETWEEN:

G. E.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Pierre Vanderhout

Date of decision: June 16, 2020

DECISION

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

OVERVIEW

[2] The Claimant lives with his wife in X. His most recent full-time job was as a call centre supervisor. His last day at that job was on August 5, 2015. He said he could no longer work because of anxiety and panic attacks.¹ The Minister received the Claimant’s application for the disability pension on June 27, 2018. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal. I conducted the hearing by written questions and answers. Due to his anxiety, the Claimant did not want to proceed by teleconference.

[3] To qualify for a CPP disability pension, the Claimant must meet the requirements set out in the CPP. More specifically, he must be found disabled (as defined in the CPP) on or before the end of the minimum qualifying period (“MQP”). The MQP calculation is based on his CPP contributions. I find the Claimant’s MQP to be December 31, 2018.

ISSUES

[4] Did the Claimant have a severe disability by December 31, 2018?

[5] If so, was the Claimant’s disability also prolonged by December 31, 2018?

ANALYSIS

[6] For CPP purposes, “disability” means a physical or mental disability that is severe and prolonged.² A person 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

¹ GD2-265 and GD2-267

² Paragraph 42(2)(a) of the *Canada Pension Plan*.

balance of probabilities, that his disability meets both parts of the test. If he meets only one part, he does not qualify for disability benefits.

Did the Claimant have a severe disability by December 31, 2018?

[7] For the reasons set out below, I find that the Claimant did not have a severe disability by December 31, 2018.

[8] I must assess the severe part of the test in a real-world context.³ This means that when deciding whether the Claimant's disability is severe, I must keep in mind factors such as age, level of education, language proficiency, and past work and life experience. The Claimant was only 42 years old at his MQP date. He speaks English fluently. He completed a three-year college program in computer science. He has worked as a call centre supervisor, an operations monitor, software installer, and programmer. He also worked at computer help desks. Without considering his medical conditions, I find that he would be suited to a broad range of jobs in customer service and information technology. Given his schooling, he would also be able to complete a reasonable amount of training to perform specialized roles in those areas.

[9] I must also assess the Claimant's condition in its totality. This means I must consider all his possible impairments, not just the biggest or main impairment.⁴ His main concern now is with anxiety and panic attacks. He has Asperger's Syndrome, which is part of a broader category called Autism Spectrum Disorder. He also reports sleep apnea and depression.⁵ While he had many physical concerns when he applied for CPP disability benefits in June 2018⁶, he had bariatric surgery in August 2018. His weight fell from 400 pounds to 235 pounds. This has had major physical benefits. He no longer has back and knee pain while walking. However, the surgery did not have any noticeable effect on his anxiety or depression. He still has difficulty being in public places or handling even minor stressors. He no longer has a driver's license. It is hard for him to take public transit, or go to his doctor or the grocery store.⁷

³ *Villani v. Canada (A.G.)*, 2001 FCA 248

⁴ *Bungay v. Canada (A.G.)*, 2011 FCA 47

⁵ GD2-195, GD2-256, GD2-267, and GD9-1

⁶ GD2-268

⁷ GD6-2 and GD9-1 to GD9-4

[10] The medical documents affirm that the Claimant cannot return to his job as a call centre supervisor.⁸ The demands of that role, even on a part-time basis, far exceed his current abilities. I conducted the hearing in writing because of his telephone anxiety.⁹ However, the measure of whether a disability is “severe” is not whether a person suffers from severe impairments, but whether the disability prevents him from earning a living. It is not a question of whether he is unable to perform his regular job, but rather his inability to perform any substantially gainful work.¹⁰ I will now consider whether the Claimant has any work capacity.

Does the Claimant have work capacity?

[11] The Claimant engaged in part-time work from June 1, 2017, to March 1, 2018. For roughly one day each month, he edited videos for a friend.¹¹ He earned \$200.00 per video, which took 8–10 hours of work. This is an hourly rate of \$20.00 to \$25.00 per hour. While he only worked for one day each month, he would have worked weekly if more work had been available. He stopped working in March 2018 because his friend no longer needed his services.¹²

[12] In response to my written questions, the Claimant said he could probably handle work similar to the video editing he did up to March 2018. He thought he could do that for 10–15 hours per week, as it was low stress and had “near zero human contact”. In fact, with training, he said he could handle “any computer job” that had extremely limited human interaction and “no stressful deadlines”.¹³ I note that the Claimant is not precluded from contact with others. He occasionally uses social media such as Facebook and Twitter to stay in contact with people. Before the COVID-19 pandemic, he attended the gym several times a week during off-peak hours.¹⁴ However, he does not like using the telephone.

[13] Based on his video editing hours and earnings, I can estimate the Claimant’s earning capacity. By working 15 hours per week, at \$25.00 per hour, he could earn \$18,750.00 per year if he worked 50 weeks per year. This suggests he may be capable regularly of pursuing a

⁸ See, for example, GD2-94, GD2-97, GD2-118 to GD2-119, and GD2-195 to GD2-196.

⁹ GD8-1

¹⁰ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

¹¹ GD2-266

¹² GD9-3

¹³ GD9-4

¹⁴ GD9-4 and GD9-5

substantially gainful occupation. A “substantially gainful” occupation pays a salary equal to or greater than the maximum annual CPP disability pension.¹⁵ In 2019, that amount was \$16,347.60. In 2020, that amount is \$16,651.92. On the other hand, his self-assessed capacity might only be 10 hours per week, at \$20.00 per hour. This would yield an income of only \$10,000.00 per year, if he worked for 50 weeks. While this is clearly below the threshold of “substantially gainful”, it still shows some non-trivial capacity for paid work.

[14] The Claimant admits that he uses a computer all day. He would not be physically precluded from doing computer-based work, particularly if he could do it from home. However, limited stress and human contact are extremely important to him.¹⁶ Dr. Higgs (Family Physician) affirmed in October 2019 that the Claimant might be able to work from home.¹⁷ As noted, before the pandemic, he left his home several times a week to attend the gym during off-peak hours.

[15] I conclude that the Claimant has had some home-based work capacity, with little social contact, since at least the start of his video editing work in June 2017. This capacity includes computer-based work similar to his video editing work. While that work ended in March 2018, it did not end because of his medical condition. He still had work capacity at that time, and he said he could have done more than he actually did. He retains that capacity today. As the current pandemic has shown, working from home is a valid form of employment. This is particularly true in the information technology sector, where the work location is often irrelevant.

Does the Claimant’s work capacity prevent a finding of severity?

[16] The finding of work capacity is critical because, where there is evidence of work capacity, a person must show that efforts at obtaining and maintaining employment have been unsuccessful because of his health condition.¹⁸ The Federal Court of Appeal set this requirement. It is binding on the Tribunal.

[17] Despite having work capacity for at least the past three years, the Claimant has not applied for any jobs or pursued any work since March 2018. Nor did he try to find extra work

¹⁵ Subsection 68.1(1) of the *Canada Pension Plan Regulations*.

¹⁶ GD9-4 to GD9-5

¹⁷ GD6-2

¹⁸ *Inclima v. Canada (A.G.)*, 2003 FCA 117

when he only worked one day a month for his friend. The only work he pursued since August 2015 was working for his friend.¹⁹ The Claimant said he had not applied for any jobs because he feared that his anxiety would leave him unable to perform his job adequately. He did not think this would be fair to a new employer.²⁰

[18] As the Claimant has not tried to pursue any other work since March 2018, he cannot show that efforts at obtaining and maintaining employment have been unsuccessful because of his health condition. His fear that applying for jobs might be unfair to an employer does not remove the requirement set by the Federal Court of Appeal. This means I cannot find him severely disabled from at least March 2018 to the present day. The Federal Court of Appeal has also said that Parliament did not intend CPP disability benefits to be available in cases of temporary disability.²¹ As a result, his appeal cannot succeed. I will now briefly address the Claimant's reasons for appealing to the Tribunal.

The reasons for the Claimant's appeal

[19] In his April 2019 Notice of Appeal, the Claimant said he appealed because his condition had gotten worse and medication was not helping him much anymore. In his May 2020 written responses, he confirmed that this decline had continued right up to the hearing.²² Nonetheless, the Claimant admitted in May 2020 that he could probably handle 10–15 hours of work per week.²³ When combined with his evidence about his declining condition, this suggests he may have had even more work capacity by his MQP date of December 31, 2018. This does not help the Claimant's appeal.

Was the Claimant's disability also prolonged by December 31, 2018?

[20] I do not need to answer this question, as the Claimant's disability was not severe by his MQP date.

CONCLUSION

¹⁹ GD9-3

²⁰ GD9-4

²¹ *Litke v. MHRSDC*, 2008 FCA 366.

²² GD1-3 and GD9-1

²³ GD9-4

[21] The appeal is dismissed.

Pierre Vanderhout
Member, General Division - Income Security