



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *DS v Minister of Employment and Social Development*, 2020 SST 836

Tribunal File Number: GP-20-455

BETWEEN:

D. S.

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: August 13, 2020

Date of decision: August 14, 2020

DECISION

[1] The Claimant is entitled to a Canada Pension Plan (CPP) disability pension to be paid as of June 2019.

OVERVIEW

[2] The Claimant worked most of his as a food services porter. He did this work from 1992 until February 2019. He stopped doing that work because he had developed radiating back pain. He could no longer walk, let alone lift, bend and carry heavy loads of foodstuffs. Therefore, in early 2019 he stopped working and applied for a CPP disability benefit. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] 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, 2022. Because the MQP is in the future, I have limited my consideration of entitlement up to the date of the oral hearing, August 13, 2020.

ISSUE(S)

Did the Claimant's back pain result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by August 13, 2020?

[4] If so, was the Claimant's back pain also long continued and of indefinite duration by August 13, 2020?

ANALYSIS

[5] Disability is defined as a physical or mental disability that is severe and prolonged¹. 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

¹ 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

Was the Claimant's back pain severe?

[6] The short answer to this question is yes, the Claimant's back pain was severe. I am going to explain how I have come to this conclusion. I will set out some of the important facts with reference to medical evidence that has led me to this conclusion. I will also reference relevant case law and address the arguments from the Minister.

[7] The Claimant submitted an application for CPP disability benefits in September 2019. In his application, the Claimant wrote that he suffered from back pain that radiated into his legs. He wrote that he could not lift any weight or bend.²

[8] The Claimant wrote that he had a poor ability to do most basic activities. He had difficulties with kneeling, squatting, bending, picking up items while walking, standing, and sitting.³

[9] In a December 15, 2019 report, the Claimant's family physician opined that the Claimant was unable to work based on the nature of his work and severity of his pain.⁴

[10] The Claimant told me that he cannot stand on his feet for very long. He experiences back pain that travels into his lower limbs. It causes him so much pain that he cannot walk or lift. He does not know what to do about his pain. He told me that he has pain 24 hours a day. He told me that in 2018 he started to experience pain. He continued to attempt to work into 2019. He told me that he had seen his doctor and prescribed medication but it did not help him.

[11] The Claimant's family physician wrote a letter in February 2020 detailing that the Claimant had suffered from chronic back pain since mid-2018. The pain was now causing daily

² GD2-17

³ GD2-20

⁴ GD2-51

discomfort and limitations in almost all activities of daily living. The Claimant requires assistance with simple chores. He was limited in his ability to sit, stand, bend, turn, lift, push and pull.

[12] The family physician opined that the Claimant was unable to perform his previous heavy work but was also unable to work in a sedentary position given that he could not sit or stand. As such, the Claimant was unable to work in any capacity.⁵

[13] An MRI report from December 30, 2019 detailed that the Claimant had multilevel spondylitis changes with the most significant findings at the L3-4 level and focal disc extrusion deviates at the L3 nerve root.⁶

[14] The Claimant told me that he has seen paramedical professionals but they were not of assistance. He has run out of money and he does not know what to do.

[15] The Claimant told me that he gets up in the morning and he has a hard time getting ready. He has difficulty putting on his clothing.

[16] The Claimant told me that he never missed work. He used to be strong and could lift anything. He has lost the job that he loved. He feels like he is not healthy any longer. The Claimant told me that he is now hopeless.

[17] I must assess the severe part of the test in a real world context⁷. 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.

[18] The Claimant moved from Laos to Canada in 1989. He had not completed high school and had no further education or training. When he arrived in Canada, he worked short-term labour jobs until he was hired to be a food services porter. It is important in my analysis that the Claimant has demonstrated a strong motivation for employment. His continuity of employment for a single employer for 27 years shows a strong connection to employment and a willingness to work hard.

⁵ GD3-2

⁶ GD2-42

⁷ *Villani v. Canada (A.G.)*, 2001 FCA 248

[19] It is also clear to me that the Claimant lacks transferrable skills and knowledge that would allow him to succeed in another vocation. Also true, is that the Claimant is now 57 years old. In a real world context, he cannot work a non-labour job because he does not have any skills or training for that. He also, cannot work in labour because his back causes him too much pain and limitations. He is not employable in any function.

[20] As detailed above, the Minister made submission that the Claimant was not precluded from working in all forms of substantially gainful employment. I have come to a different conclusion. The Minister placed emphasis on the Claimant's physician recommending that the Claimant not stop working. It appears the Minister inferred this from the medical report completed for the Claimant's application.

[21] The specific question in the medical report is a multiple-choice question. The question asks did you recommend that the patient stop working. The question does not necessarily imply the doctor recommended the claimant continue to work as asserted by the Minister. The question is at best ambiguous. A Claimant may have stopped working and then seen their doctor. That does not make the Claimant any less disabled. Moreover, the medical letters written by the physician after the fact clearly demonstrate support for the Claimant's application. I place little weight on the ticked box of a doctor compared to his comprehensive letter setting out the Claimant's functional limitations.

[22] The Minister also suggested there were other treatment options available. However, the family physician also noted that he thought the Claimant's condition would remain the same. In any event, those options are speculative. Given the medical evidence available, I have determined that the Claimant has a severe disability.

[23] Given the extent of functional limitations, support of his family physician and approaching the matter from a real world perspective, I find the Claimant has a severe disability within the meaning of the CPP.

Prolonged disability

[24] I have determined the Claimant has a prolonged disability. He has been in consistent pain since 2018. His family physician opined that his condition was likely to remain the same and that he did not expect the condition to resolve in any foreseeable period.⁸ For these reasons, I find the Claimant has a prolonged disability.

CONCLUSION

[25] The Claimant had a severe and prolonged disability in February 2019, when he stopped working due to his back condition. Payments start four months after the date of disability, as of June 2019.⁹

[26] The appeal is allowed.

Adam Picotte
Member, General Division - Income Security

⁸ GD2-69

⁹ Section 69 *Canada Pension Plan*