



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *The Estate of GC v Minister of Employment and Social Development*, 2020 SST 838

Tribunal File Number: GP-20-742

BETWEEN:

The Estate of G. C.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Pierre Vanderhout

Teleconference hearing on: August 6, 2020

Date of decision: August 10, 2020

DECISION

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

OVERVIEW

[2] After many years of working for others, the Claimant had been self-employed since May 2014. He operated a pool installation and repair business. He had a blood clot in his left leg in March 2019. In May 2019, he was hospitalized for chest pain associated with a heart attack. He was then found to have lung cancer. He stopped working in June 2019 and had both chemotherapy and radiation treatment. However, when those treatments ended in August 2019, a stroke paralyzed his left side. He suffered a further stroke on June 21, 2020, and passed away on June 22, 2020. He was only 51 years old.

[3] The Minister received the Claimant’s application for the disability pension on October 22, 2019. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal. After his death, his wife L. C. continued this appeal on behalf of his estate.

[4] 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, 2016.

PRELIMINARY MATTER

[5] The Minister filed submissions (“GD3”) on July 30, 2020, just one week before the hearing. The GD3 document was immediately sent to L. C. . At the start of the hearing, L. C. confirmed that she had read the GD3 document and was willing to proceed.

ISSUES

[6] Did the Claimant have a severe disability by December 31, 2016?

[7] If so, was the Claimant’s disability also prolonged by December 31, 2016?

ANALYSIS

[8] Disability is defined as a physical or mental disability that is severe and prolonged.¹ 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. A person 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.

Did the Claimant have a severe disability by December 31, 2016?

[9] I accept that the Claimant was severely disabled by the time he stopped working in 2019. However, I find that he was not severely disabled by December 31, 2016.

[10] I must assess the Claimant's condition in its totality, which means I must consider all the possible impairments, not just the biggest or main impairment.²

[11] I must also assess severity in a real-world context.³ This means that when deciding whether the Claimant's disability was severe, I must keep in mind factors such as his age, level of education, language ability, and past work and life experience. In this case, the Claimant was 48 years old at his MQP date. He completed less than two years of high school, but completed a tractor-trailer course. His first language was French⁴, but he also appeared to speak English fluently. He installed and repaired pools for 23 years. He had also worked as a truck driver and a construction flagman. Without considering his medical conditions, I find that his background would have prepared him for pool installation and repair, unskilled labour, construction, and driving-based jobs. I will now look at how his medical conditions affected his work capacity.

Did the Claimant have any work capacity at his MQP date?

[12] The evidence strongly supports extensive real-world work capacity on December 31, 2016. The evidence also strongly suggests that his work capacity decreased in March 2019 and

¹ Paragraph 42(2)(a) of the *Canada Pension Plan*.

² *Bungay v. Canada (A.G.)*, 2011 FCA 47

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

⁴ GD2-107

likely disappeared altogether by May 2019. I will now summarize the evidence in support of these findings.

[13] The Claimant worked as an installer for X until September 2013. After X went out of business, he started his own pool installation and repair business in May 2014. The pool business is usually only active in the warmer months. At the hearing, L. C. suggested that this would be between June and September of each year.

[14] During the cooler months, the Claimant would plan for the following pool season. He also did some snow removal. He would cook dinner for L. C. when she worked during the day. I asked L. C. if he could have worked at another job during the colder months. She said that was possible: he was a real “go-getter”, but she agreed that the area had few job opportunities. L. C. also worked full-time as a manager at Wal-Mart.

[15] When he applied for CPP disability benefits, the Claimant said he had worked 15 hours per day and 7 days per week.⁵ At the hearing, L. C. said he was “on call” all the time, but the actual hours worked could be considerably less. She said he worked an average of 30-40 hours per week during the warmer months. There could be “spikes” when he worked more, but sometimes he would not have any work at all. His workload was higher when he started his business. It lessened because people started buying pools online rather than from him. However, he still installed pools that people bought elsewhere.

[16] I see no medical evidence before February 9, 2018. That was when the Claimant became a patient of Dr. Nadeau (Family Doctor). The Claimant had been a patient of Dr. Dugas (Family Doctor) for many years, until she retired in 2016.⁶ The Claimant was without a family doctor for about a year. He was on a waiting list until he was assigned to Dr. Nadeau in early 2018. No records from Dr. Dugas were available.

[17] Even in 2018, more than a year after his MQP date, the Claimant’s conditions did not appear to be having any significant effect on his work capacity. In February 2018, he said he had “no complaints to date” and had “good health in general”. I see references to high blood pressure

⁵ GD2-15

⁶ GD2-168

and occasional abdominal pain, but these do not appear to have been disabling. He was also doing well in March and April.⁷ In June 2018, he was still doing well: he was very busy and had a lot of work. While his blood pressure was high, he attributed this to stress and he did not have any other symptoms. His upper right quadrant pain had been less frequent.⁸

[18] In September 2018, the Claimant was still doing well when he attended the clinic for a blood pressure check.⁹ After this visit, I see no further medical visits until March 26, 2019. At that time, he reported left leg pain. Driving a tractor made the pain worse. This led to a diagnosis of deep vein thrombosis.¹⁰ Unfortunately, he had a heart attack in May and discovered he had lung cancer later that month. He said he was unable to work because of his medical conditions in May 2019.¹¹ I find that reasonable. He had chemotherapy and radiation therapy, and suffered a paralyzing stroke at the end of those treatments in August 2019. His limitations included memory loss and speaking difficulties. He could not care for himself. He required assistance with showering and toileting. He could not sit for more than 10 minutes. He said it felt like spiders were crawling over his whole body.

[19] Later evidence also supports the loss of work capacity by early to mid-2019. In October 2019, Dr. El-Sherbini (Physiatry) did not expect the Claimant to return to work, and recommended that he stop working as of August 16, 2019.¹² In January 2020, Dr. Nadeau said the sequence of disabling events began with deep vein thrombosis in March 2019, and affirmed that the Claimant would not be able to work again.¹³ In February 2020, L. C. confirmed that the initial event was the March 2019 blood clot. She said he had no disabling medical problems before then. He only had high blood pressure, until the other problems emerged in March 2019.¹⁴

No finding of severity before 2019

⁷ GD2-165 to GD2-168

⁸ GD2-164

⁹ GD2-163

¹⁰ GD2-154 to GD2-157 and GD2-162

¹¹ GD2-7

¹² GD2-70

¹³ GD2-84

¹⁴ GD2-87 to GD2-88

[20] The Claimant had extensive work capacity until at least early 2019, when he experienced a dramatic loss of capacity. I find that this work capacity was particularly obvious during the warmer months, when he might work much more than 40 hours per week. His work was valuable, as he charged \$60.00 per hour for repairs, and \$1,500.00 for installations. However, his planning activities, snow removal, and household tasks (such as cooking) suggest considerable work capacity during the colder months as well. He was driving a tractor in March 2019, when his blood clot issue first emerged.¹⁵

[21] When there is evidence of work capacity, a person must show that efforts at obtaining and maintaining employment have been unsuccessful because of the person's health condition.¹⁶ However, the Claimant was successfully self-employed until 2019. This means he cannot establish a severe disability before 2019. As his MQP date is December 31, 2016, his appeal cannot succeed. I will now briefly address the onset date of his conditions.

Did the Claimant's conditions start before 2019?

[22] The Claimant's lung cancer was already at Stage 3 in May 2019. L. C. said the cancer would have been present before then, and might even have existed by December 2016. She said he would sometimes go to hospital with pains in his chest. She thought this started happening around 2014. He missed the occasional day of work, as a result. However, the diagnosis at that time was acid reflux. He received pills for that, but they do not appear to have helped him.

[23] I accept that the Claimant's underlying conditions may have existed before 2019, and maybe even in 2016. However, the measure of whether a disability is "severe" is not whether the person suffers from severe impairments, but whether the disability prevents him from earning a living.¹⁷ The Claimant's medical evidence only started in 2018 but, even then, his medical concerns did not stop him from earning a living. That only happened in 2019. I will now briefly address the personal circumstances in this case.

The personal circumstances in this case

¹⁵ GD2-162

¹⁶ *Inclima v. Canada (A.G.)*, 2003 FCA 117

¹⁷ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

[24] I felt considerable sympathy for both L. C. and the Claimant. Before 2019, the Claimant could do physically demanding work. He was only 50 years old when his medical problems quickly multiplied. As he was self-employed, much of his “income” may have been through dividends rather than a salary. This affected his ability to contribute to the CPP. Even after consulting his accountant, he did not have enough income to create a later MQP.¹⁸ I saw several references to financial strife, once he was unable to work.¹⁹

[25] I accept L. C.’s evidence that the Claimant was very hard-working and respectful. She said he was always smiling and loved to help people out. Sometimes, he wouldn’t charge for his time, especially if the problem had an easy solution. His doctors found him pleasant as well.²⁰ L. C. clearly misses him very much. It must have been very difficult when his illnesses developed so suddenly and so seriously. L. C. appears to be a very hard worker too, as she has been a full-time manager for many years. She also helped out with the pool business.

[26] However, despite that evidence about the family’s circumstances, I cannot ignore the provisions of the *Canada Pension Plan*. The Tribunal was created by legislation. This means that the Tribunal only has the powers granted to it by its governing statute. As a Tribunal member, I have to interpret and apply the provisions as they appear in the *Canada Pension Plan*. I cannot change or waive them, even if they seem unfair in this particular case. I cannot contradict Parliament’s intent.²¹ Nor can I make decisions on a compassionate basis. The Claimant’s MQP date is December 31, 2016, and the evidence simply does not support a severe disability by then. As a result, the appeal cannot succeed.

Was the Claimant’s disability also prolonged by December 31, 2016?

[27] As the Claimant did not have a severe disability by December 31, 2016, I do not need to answer this question.

CONCLUSION

¹⁸ GD2-87 and GD2-170

¹⁹ See GD2-83 and GD2-87, for example.

²⁰ GD2-104, GD2-110 and GD2-149.

²¹ See *R. v. Conway*, 2010 SCC 22, at paragraph 101.

[28] The appeal is dismissed.

Pierre Vanderhout
Member, General Division—Income Security