



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *SS v Minister of Employment and Social Development*, 2020 SST 936

Tribunal File Number: GP-20-56

BETWEEN:

**S. S.**

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: Pierre Vanderhout

Claimant represented by: Monique Long

Teleconference hearing on: September 14, 2020

Date of decision: September 17, 2020

## **DECISION**

[1] The Claimant is entitled to a Canada Pension Plan (“CPP”) disability pension, to be paid as of August 2018.

## **OVERVIEW**

[2] The Claimant is 55 years old. He has not worked since June 6, 2017, when he suffered a stroke. He had worked as a truck driver for more than twenty years before that. Before his stroke, he already had work limitations from a shoulder injury. The Minister received the Claimant’s application for the disability pension on November 14, 2018. 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 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, 2020. As this is in the future, he must be found disabled by the hearing date.

## **PRELIMINARY MATTERS**

[4] The Minister did not file GD7 and GD8 until August 21 and August 28 respectively. Both dates were less than one month before the hearing. However, the GD7 document was in response to the Claimant’s GD6 document (filed on July 22, 2020). The GD8 document was merely an updated version of the Claimant’s CPP contributions. It confirmed that he had made no new contributions and his MQP was unchanged. The Claimant made no objection to the admission of GD7 and GD8. As a result, I elected to receive both GD7 and GD8.

## **ISSUES**

[5] Did the Claimant have a severe disability by the hearing date?

[6] If so, was the Claimant’s disability also prolonged by the hearing date?

## ANALYSIS

[7] Disability is defined as a physical or mental disability that is severe and prolonged.<sup>1</sup> A person has 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 he meets only one part, he does not qualify for disability benefits.

### **Did the Claimant have a severe disability by the hearing date?**

[8] For the reasons set out in the following paragraphs, I find that the Claimant has been severely disabled since April 2018.

[9] I must assess the severe part of the test in a real-world context.<sup>2</sup> This means that when deciding whether the Claimant's disability is severe, I must consider factors such as his age, level of education, language proficiency, and past work and life experience. He was 55 years old at the hearing date. He speaks English fluently. He completed high school and a two-year college program in law and security administration. He also has an ACMZ driver's license. He drove a truck for roughly 21 years, although he also had some safety duties as part of his last job. He previously worked as a loss prevention supervisor. He also did some cleaning jobs. Without considering his medical conditions, the Claimant would be suited for driving and related "hands-on" jobs in the transportation and delivery sectors, loss prevention and security work, and moderately physical work such as cleaning. Given his education, he would likely be able to do some retraining for similar roles in other sectors.

[10] 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.<sup>3</sup> This is important in the Claimant's case, as he has both physical and cognitive limitations. He has residual impairments

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

<sup>2</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

<sup>3</sup> *Bungay v. Canada (A.G.)*, 2011 FCA 47

from his stroke, as well as pre-stroke issues. These issues included a left shoulder fracture and osteoarthritis. Even before the stroke, he was already on modified work duties.

*The Claimant's current limitations*

[11] At the hearing, the Claimant described extensive limitations. His short-term memory is “gone” and he relies heavily on a planner. He does not sleep well; he only had four hours of sleep the night before the hearing. However, sometimes he is out “like a light,” and he also has frequent “micro-sleeps” when doing passive activities such as watching TV. Fatigue is a serious concern: he always feels like he has run a marathon.

[12] The Claimant said his right hand dexterity never returned. It is affected by temperature. This could happen while washing dishes with warm water, or simply going outside. Sometimes, he drops dishes. On cold or rainy days, both his shoulders lock up. His right shoulder has bad “crunching”. His neck locks up too, if he watches TV, uses a computer, or sits for too long. Neck pain radiates up both sides of his head. His lower back pain sometimes drops him to his knees when he gets out of bed. When his back is bad, he cannot walk a city block. He also has leg issues, especially on the right: they have some numbness, and are bowed due to osteoarthritis. He also feels weakness if he gets up too fast. Doing too much exercise increases his pain.

[13] While the Claimant said he now needs both of his shoulders replaced, he is deferring surgery because of his young age and increased stroke risk. If they are replaced too soon, he might need surgery again later. He fears a second stroke, as it could leave him paralyzed. His orthopedic specialist told him to defer surgery until he couldn't stand it anymore.<sup>4</sup>

[14] The Claimant said he had to move into a city basement apartment, as he could not cut grass, shovel snow, or do heavy house chores. When he recently tried to replace his shower curtains, he could not lift them over his head. He used to type well, but the first three fingers on his right hand are numb and his ring finger only moves in certain ways. He is now a two-finger typist. He denied he could work even part-time, such as weekdays from 9:00 a.m. to 1:00 p.m.

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<sup>4</sup> This is consistent with his handwritten letter at GD2-44, as well as his orthopedic surgeon's letter at GD2-116.

[15] The Claimant's oral evidence was believable. It was consistent with the many functional limitations he reported when he applied for CPP disability benefits. At that time, his limitations also included sitting for less than one hour and lifting less than 10 pounds.<sup>5</sup> In my view, he also profoundly misses the social contact that work provided. He was very chatty during the hearing. He still tries to go for walks, and hopes he will have contact with people when he does. He spoke fondly of his limited social contact: to support this, he has started watching the hockey playoffs. He is always hopeful that somebody will call, and he has started reaching out to a cousin in Ottawa. The file documents also reveal a desire for contact. One assessor noted his chattiness.<sup>6</sup> His volunteer socializing with seniors seems to have been for his benefit as much as theirs.<sup>7</sup> He showed his desire to keep working by reinstating both of his driving licenses soon after his stroke.

[16] The Claimant's evidence is consistent with the objective medical documents. In July 2020, Mathew Shaw (Occupational Therapist) said the Claimant had significant instability (especially on the right) in the glenohumeral (shoulder) joints, with associated pain and apprehension. His stroke left him with right-sided weakness, numbness, and reduced coordination. Mr. Shaw said his symptoms would prevent him from returning to his normal work as a truck driver. Besides the gross physical limitations, Mr. Shaw said he would also struggle with tasks requiring fine motor coordination, focused attention, and kinesthetic sense (knowing the positions and movements of one's joints). Mr. Shaw made similar observations in July 2019, and also noted reduced left-hand dexterity and chronic shoulder pain that radiated into the jaw.<sup>8</sup>

[17] In December 2018 and February 2019, Dr. Agostino (Family Physician) supported the Claimant's Disability Tax Credit application. Dr. Agostino said the Claimant had deficits with short-term memory, post-stroke fatigue, and fine dexterity with the right hand.<sup>9</sup> He had severe short-term recall issues and had to write down names and appointment times.<sup>10</sup> These observations were consistent with Dr. Agostino's November 2018 report, when he said the Claimant's limitations included right-hand weakness, right facial numbness, chronic post-stroke

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<sup>5</sup> GD2-299

<sup>6</sup> GD2-146 and GD2-150

<sup>7</sup> GD2-118, GD2-120, and GD2-159.

<sup>8</sup> GD2-260 and GD6-3

<sup>9</sup> GD2-122 to GD2-125

<sup>10</sup> GD2-112 to GD2-115

fatigue, and short-term memory issues.<sup>11</sup> The Claimant's handwritten notes confirm his memory issues: at the hearing, he said he prepared these so he would remember what to tell his doctor.<sup>12</sup>

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<sup>11</sup> GD2-128

<sup>12</sup> GD2-26 and GD2-159, for example.

*The Claimant is severely disabled now*

[18] In a real-world context, I find that the Claimant had no work capacity at the hearing date. While Mr. Shaw's July 2020 report only addresses the Claimant's inability to work as a truck driver, the report focuses on his capacity for movement. His movement limitations would rule out truck driving, cleaning work, and active loss prevention work. Loss prevention work would be especially difficult, given the extensive standing, walking, and potential for physical confrontation. However, when I also consider the Claimant's documented difficulties with memory and fatigue, I cannot see how he could retrain for an alternate career or do less active work in loss prevention. Given his lack of work capacity, I find that the Claimant was severely disabled as of the hearing date. I will now determine when that severe disability began.

*The Claimant's severe disability started in April 2018*

[19] As noted, the Claimant's severe disability results from a combination of his stroke-related limitations and his pre-existing left shoulder and osteoarthritis issues. I accept that he was never able to return to his pre-stroke work. However, he was not incapable regularly of pursuing any substantially gainful occupation in early 2018.

[20] In January 2018, the Claimant mentioned possible work in a safety role. This contrasted with the problematic aspects of his pre-stroke job.<sup>13</sup> In February 2018, Dr. Agostino also noted job-specific issues such as long night shifts, stress, poor lifestyle, and high physical demands. Dr. Agostino suggested that the Claimant would need more routine hours in any future work, but could not return to his old job.<sup>14</sup> Similarly, Dr. Donaghy's neuropsychological assessment in February 2018 focused on the Claimant's previous truck driving work.<sup>15</sup> This distinction is important. When assessing severity, I do not assess whether a person is unable to perform his regular job. Instead, I assess whether he is unable to perform any substantially gainful work.<sup>16</sup>

[21] While I see some work capacity in early 2018, this soon changed. In July 2018, Dr. Agostino made a pain program referral and an MRI referral for the Claimant's right shoulder.

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<sup>13</sup> GD2-26

<sup>14</sup> GD2-14 to GD2-16

<sup>15</sup> This lengthy report begins at GD2-144.

<sup>16</sup> *Klabouch v. Canada (A.G.)*, 2008 FCA 33.

For the pain referral, Dr. Agostino said pain moderately impaired the Claimant's daily function. A moderate impairment means "ongoing difficulties at home/work, social activities, and psychological symptoms."<sup>17</sup> In November 2018, Mr. Shaw said the Claimant's shoulder functioning had not changed since April 2018.<sup>18</sup> That same month, based on the Claimant's condition in July 2018, Dr. Agostino said his condition was chronic and had plateaued.<sup>19</sup> Considering this evidence together, and the totality of his conditions, I find it likely that he had lost work capacity by the time he began seeing Mr. Shaw in April 2018.

[22] I see no significant improvement in the Claimant's overall work capacity since the November 2018 reports from Dr. Agostino and Mr. Shaw. At the hearing, he thought his hand had improved somewhat, but his shoulder, leg, hip, and knee had deteriorated. Later documents support this lack of improvement. In January 2019, Dr. Agostino said most symptoms were unchanged.<sup>20</sup> In April 2019, Mr. Shaw said the Claimant still had complex health issues.<sup>21</sup>

[23] One report is at odds with this conclusion. In February 2019, Dr. Kharazi (Cardiologist) saw the Claimant for lightheadedness. Dr. Kharazi said the Claimant had "minimal residual consequences" and "no obvious limitations" from his 2017 stroke. Dr. Kharazi added that the Claimant had "been doing perfectly well after [the] stroke."<sup>22</sup> This is very different from Mr. Shaw's April 2019 report, which listed multiple ongoing stroke consequences. Mr. Shaw said the Claimant's disabilities greatly affected his abilities to perform activities of daily living.<sup>23</sup>

[24] To reconcile this, I note that Mr. Shaw had already treated the Claimant on a frequent basis for a full year. Mr. Shaw's report was also consistent with his reports from November 2018 and July 2020. Furthermore, he prepared his April 2019 report specifically for CPP disability purposes. In contrast, Dr. Kharazi saw the Claimant once for a cardiology opinion. While Dr. Kharazi noted the Claimant's eventual shoulder replacements, they were otherwise not relevant

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<sup>17</sup> GD2-95 to GD2-96, and GD2-160

<sup>18</sup> GD2-41

<sup>19</sup> GD2-127 and GD2-130.

<sup>20</sup> GD2-97 to GD2-99

<sup>21</sup> GD2-260

<sup>22</sup> GD2-110

<sup>23</sup> GD2-260



to the cardiology assessment. In the circumstances, I find it more likely that Mr. Shaw's evidence accurately reflected the Claimant's overall work capacity in early 2019.

*Other issues raised by the Minister*

[25] Besides Dr. Kharazi's report, the Minister also cited the February 2019 report from Dr. Payandeh (Orthopedics). Dr. Payandeh said the Claimant's symptoms weren't yet severe enough to warrant surgical intervention.<sup>24</sup> However, when combined with the Claimant's other medical concerns, this does not establish work capacity. Shoulder replacement is an invasive procedure, even without a stroke history. Dr. Payandeh's opinion clearly considered the Claimant's increased risk of surgical complications, due to his stroke history. A finding of severity does not depend on a need for immediate surgical intervention.

[26] The Minister also remarked on the Claimant's volunteer activities. At the hearing, the Claimant explained that this consisted mostly of socializing for two hours per week. He once tried to help feed a patient, but was unsuccessful. Given the nature and extent of the volunteering, I find that it did not show any work capacity.

**Did the Claimant have a prolonged disability by the hearing date?**

[27] I see no suggestion that the Claimant's disability will result in his death. This means his disability is prolonged only if it is likely to be long continued and of indefinite duration.

[28] Recent medical reports confirm that the disability is likely to be prolonged. In April 2019, Mr. Shaw said the Claimant was on a maintenance program with lifelong implications. Mr. Shaw said his injuries, and the disease process which caused the stroke, would be permanent.<sup>25</sup> In February 2019, Dr. Agostino said the stroke had "likely long-term cognitive sequelae."<sup>26</sup> In November 2018, Dr. Agostino noted that the Claimant's condition was chronic and had

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<sup>24</sup> GD2-116

<sup>25</sup> GD2-260

<sup>26</sup> GD2-115, affirming GD2-125.

plateaued.<sup>27</sup> In July 2018, Dr. Agostino made a referral to a chronic pain management program and again described the shoulder pain as chronic. He said the onset date was “many years ago.”<sup>28</sup>

[29] As noted above, the Claimant appears to crave the social interaction that work would provide. However, he has had little progress since the June 2017 stroke, and his other pre-stroke conditions appear to have worsened. Given his persistent conditions, and the supporting medical evidence, I accept that his disability is likely to be long continued and of indefinite duration. This means his disability is prolonged. I also find that he likely had a prolonged disability since at least April 2018. By that time, Dr. Agostino had already said that the Claimant had achieved maximum medical recovery.<sup>29</sup>

## **CONCLUSION**

[30] The Claimant had a severe and prolonged disability in April 2018. Payments start four months after the date of disability, as of August 2018.<sup>30</sup>

[31] The appeal is allowed.

Pierre Vanderhout  
Member, General Division - Income Security

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<sup>27</sup> GD2-130

<sup>28</sup> GD2-160

<sup>29</sup> GD2-15

<sup>30</sup> Section 69 of the *Canada Pension Plan*.