



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *RJ v Minister of Employment and Social Development*, 2020 SST 988

Tribunal File Number: GP-19-1248

BETWEEN:

R. J.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Pierre Vanderhout

Claimant represented by: Robert Spencer

Teleconference hearing on: September 16, 2020

Date of decision: October 1, 2020

DECISION

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

OVERVIEW

[2] The Claimant last worked as a production worker at a brewery. He was laid off on October 2017, for reasons unrelated to his health. However, in December 2017, he began to have vision concerns. He was soon diagnosed with a pituitary tumour. The tumour was partially removed in September 2018. His health concerns have expanded to include chronic headaches, fatigue, and depression. The Minister received the Claimant’s application for the disability pension on October 1, 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 the Claimant’s CPP contributions. I find the Claimant’s MQP to be December 31, 2020. To succeed in his appeal, he must be found disabled on or before the hearing date.

PRELIMINARY MATTER

[4] The Minister did not file GD4 until September 1, 2020, roughly two weeks before the hearing. However, the GD4 document was merely an updated version of the Claimant’s CPP contributions. It confirmed that the Claimant had made no new contributions and the Claimant’s MQP was unchanged. The Claimant had a chance to review GD4 before the hearing, and made no objections to it. As a result, I elected to receive GD4 into evidence.

ISSUES

[5] Did the Claimant have a severe disability on or before the hearing date?

[6] If so, was his disability also prolonged by the hearing date?

ANALYSIS

[7] Disability is defined as a physical or mental disability that is severe and prolonged.¹ The Claimant 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 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 March 2019.

[9] 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 This is important, because the Claimant has both physical and mental health concerns.

[10] I must also 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 remember factors such as his age, level of education, language proficiency, and past work and life experience. The Claimant was 57 years old at the hearing date. He has a Grade 12 education and speaks English fluently. He was a brewery production worker for nearly ten years. He had to ensure that the production lines were filled with empty bottles. Before that, he did physically demanding production line work at a truck wheel manufacturer for about 18 years, and six years of warehouse work for a clothing company. He also has some very distant experience cooking hamburgers at A&W and counting inventory at General Motors. Without considering his medical conditions, he would be suited for moderately demanding (but not highly skilled) production or warehouse work. As he finished school about forty years ago, he is not well suited for work that would require significant training.

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

The Claimant's current work capacity

[11] The Claimant said he has not looked for work because he cannot see properly, he has headaches, and his testosterone issues leave him fatigued.

[12] While the Claimant's right eye has been fine since the surgery, he can only see peripherally out of the left eye. As this makes his right eye work harder than his left eye, he gets headaches and head numbness. His headaches are constant, and can reach 5/10 in intensity. He is sensitive to light (especially LEDs) and wears sunglasses. Closing his eyes also helps with the headaches. When his pain escalates, he has trouble doing things. He loses his concentration and gets sidetracked. He regains focus when his pain fades.

[13] The Claimant's hormone issues leave him tired all the time, even though he gets weekly injections. In the past, he would feel good when he did things, but he no longer gets that feeling. He has no "get up and go". He can sleep for nine hours, but feels like he has not slept at all. He tries to stay awake and keep busy. It takes him longer to do things, and he may have to sit down before continuing. He thinks he has lost muscle, and everything feels heavy to him. He feels particular weakness in his hands and arms. Although he has lost 25 pounds since the surgery, he still weighs 325 pounds. His hands are swollen.

[14] The Claimant tries to help his wife with the housework, because she also works outside the home. He is slow, and cannot move things around to facilitate cleaning. He gets exhausted bringing laundry up or down the stairs. He sometimes goes shopping, but needs someone to help with lifting. Because of his constant fatigue, he cannot sustain tasks for long. He is tired after walking half a block. He is better with sitting, standing, or lying down. He finds it hard to get his mind into learning: he feels numbness and depression.

[15] Both Dr. Vo (Family Doctor) and Dr. Van Uum (Endocrinology) have recently suggested a psychiatric referral. The Claimant has not received any specialist counselling yet. He says depressive symptoms are always present, although he is not suicidal. He feels like he wants to cry. I found the Claimant quite sad and resigned at the hearing.

[16] The Claimant's complaints are consistent with the most recent medical reports. In May 2019, Dr. Vo said he still had chronic symptoms in his head, ears, mood (depression), vision

(loss), and overall health.⁴ In March 2019, Dr. Vo said he continued to feel “physically and emotionally suboptimal” after the surgery. He had ongoing problems in his left eye, left ear issues, hormone level concerns, headaches, and generally felt “off”. He was still concerned about his recent surgery. Dr. Vo found the Claimant functionally limited because of his chronic issues.⁵

[17] Also in March 2019, Dr. Ward (Neurosurgery) said the Claimant had blurry left eye vision, headaches, head numbness, and recent ear infections. He reported feeling tired and unwell most of the time. His testosterone level was still very low, despite hormonal treatment.⁶

[18] Based on the Claimant’s evidence and demeanour, and the most recent documentary evidence, I find that he did not have any work capacity from at least March 2019 until the date of the hearing. The combination of his fatigue, depressed mood, and headaches is incompatible with any sustained physical effort. However, he needs such effort in the work for which he is suited. In my view, given that he can still drive, his vision issues are less important. I will now consider when the Claimant lost his work capacity.

When did the Claimant lose his work capacity?

[19] The Claimant has not been without work capacity continuously since he stopped working in 2017. His termination appears unrelated to his health: the brewery laid him off before his vision problem first appeared.

[20] I note that the Claimant received regular Employment Insurance (“EI”) benefits from January 1, 2018, to September 19, 2018.⁷ At the hearing, he admitted looking for work during this period to be eligible for regular EI benefits. The EI legislation requires regular EI recipients to be “capable of and available for work”. While his receipt of regular EI benefits is not itself determinative, I can consider it together with the other evidence.⁸

[21] The Claimant’s reported conditions and symptoms at that time were not as extensive as they are now. In a questionnaire dated September 19, 2018, he said vision loss was the reason he

⁴ GD2-42

⁵ GD2-52

⁶ GD2-43

⁷ GD2-194

⁸ See subsection 18(1) of the *Employment Insurance Act* and *Rouleau v. Canada (Attorney General)*, 2017 FC 534.

could not work. At that time, his only functional limitations were seeing out of his left eye, lifting more than 9 kg, bending below the waist, and driving. He had no issues with sitting, standing, walking, hearing, speaking, remembering, reaching, concentrating, sleeping, personal needs, breathing, household maintenance, or using public transportation.⁹ He did not mention headaches, mood, or fatigue, which all contribute to his lack of work capacity now.

[22] The medical evidence around this time also suggests that the headaches, fatigue, and mood were less significant then. While the September 20, 2018, report from Dr. Saadaldeen (Family Doctor) refers to fatigue, it also refers to the September 7 surgery in the future tense.¹⁰ This suggests Dr. Saadaldeen's report was not completely current. October medical reports refer to improved vision, fatigue, and headaches.¹¹ In November, Dr. Proulx (Ophthalmology) remarked on a "remarkable recovery in vision" and thought the Claimant could resume driving.¹²

[23] While the Claimant reported symptoms between November 2018 and March 2019, I am not persuaded that he had a complete lack of work capacity. When questioned by the Minister in January 2019, his headaches were still only occasional and he made no reference to fatigue or mood issues. He reported vision issues and feeling "not well".¹³ In late February 2019, Dr. Rotenberg (Otolaryngology) mentioned "some difficulty in adjusting to his post-pituitary surgery status,"¹⁴ which suggests an evolution to his current state.

[24] The onus is on the Claimant to prove his disability on a balance of probabilities. However, he likely had at least some work capacity to the end of February 2019.¹⁵ This prevents a finding of severity before March 2019. When there is evidence of work capacity, he must show that efforts at obtaining and maintaining employment have been unsuccessful because of his health condition.¹⁶ The Claimant admitted he has not pursued work since his EI benefits ended. I find that he has had a severe disability only since March 2019.

⁹ GD2-194 to GD2-195

¹⁰ GD2-182 to GD2-184

¹¹ GD2-87 and GD2-138

¹² GD2-54

¹³ GD2-177

¹⁴ GD2-125

¹⁵ While he may not have been able to work full-time, work capacity can still exist on a part-time basis.

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

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

[25] Nobody has suggested that the Claimant's symptoms are likely to result in death. This means his disability is prolonged only if it is likely to be long continued and of indefinite duration.

[26] Some more recent medical evidence strongly supports a disability that is likely to be long continued and of indefinite duration. In August 2018, Dr. Duggal warned the Claimant that the upcoming surgery could lead to pituitary dysfunction. Dr. Duggal said that would require lifelong hormone supplements.¹⁷ In May 2019, Dr. Vo said the Claimant had chronic symptoms with his head, ears, vision, mood and overall health. Dr. Vo also referred to chronic issues in March 2019.¹⁸ The use of the word "chronic" is significant. This suggests that the symptoms will continue for a long time.¹⁹ This also mitigates the lack of medical documents after May 2019.

[27] I asked the Claimant whether his condition had improved since his 2018 surgery. He thought his condition had worsened. He said "day-to-day stuff" left him so exhausted that he often felt like crying. He said he still has the symptoms that Dr. Vo outlined in May 2019. He still gets weekly injections from Dr. Vo, and talks to Dr. Vo about how he is feeling. He said he wants to see a psychiatrist, although the COVID-19 pandemic affects the availability of specialists. As in many chronic pain cases, mental health and subjective pain symptoms can eventually supplant the main original symptom (vision loss, in this case). While specialized psychiatric treatment will hopefully help the Claimant in the future, any significant improvement is purely speculative at this time.

[28] Considering the above evidence, I am satisfied that the Claimant's disability is likely to be long continued and of indefinite duration. I also accept that it has been that way since March 2019, when Dr. Vo first referred to the chronic nature of the Claimant's conditions. This means the Claimant's disability has been prolonged since March 2019.

¹⁷ GD2-92

¹⁸ GD2-42 and GD2-52

¹⁹ See the online Cambridge Dictionary, at <https://dictionary.cambridge.org/dictionary/english/chronic>

CONCLUSION

[29] The Claimant has had a severe and prolonged disability since March 2019. Payments start four months after the date of disability, as of July 2019.²⁰

[30] The appeal is allowed.

Pierre Vanderhout
Member, General Division - Income Security

²⁰ Section 69 of the *Canada Pension Plan*.