



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *DW v Minister of Employment and Social Development*, 2020 SST 1050

Tribunal File Number: GP-20-585

BETWEEN:

D. W.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Raymond Raphael

Date of decision: October 6, 2020

DECISION

[1] The Claimant is entitled to a *Canada Pension Plan* (CPP) disability pension to be paid as of November 2016.

OVERVIEW

[2] The Claimant was 41 years old when he applied for the CPP disability pension in October 2017. In November 2006, he suffered serious injuries in a car accident including liver and kidney lacerations, multiple bone fractures on the left side, and brain swelling. He eventually returned to work as a network administrator but stopped working in January 2016. In his disability questionnaire, he stated that he was unable to work because of chronic pain, depression, poor memory and concentration, lack of mobility, frequent falls, and diabetes.¹ The Minister denied the application initially and upon reconsideration, and the Claimant appealed to the Social Security Tribunal.

[3] In July 2019, the General Division dismissed his appeal. The Claimant appealed to the Appeal Division. In April 2020, the Appeal Division allowed the appeal and returned this matter to the General Division for reconsideration.

[4] This is the Claimant's second application for CPP disability. The Minister received his initial application for CPP disability in June 2012. The Minister denied the application in November 2012. The Claimant did not request a reconsideration of the denial decision.

[5] For the purposes of the CPP, a disability is a physical or mental impairment that is severe and prolonged.² The Claimant's disability is severe if it causes him to be incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration.

[6] For the Claimant to succeed, he must prove that it is more likely than not that he became disabled by the end of his Minimum Qualifying Period (MQP) and continues to be disabled.³ His

¹ GD2-154

² Paragraph 42(2)(a) *Canada Pension Plan*

³ Paragraph 44(1)(b) CPP

MQP – the date by which he has to prove he was disabled – is December 31, 2008. This is the last date when he had valid contributions to the CPP in four out the last six years.⁴

ISSUES

1. Did the Claimant's medical conditions result in his being incapable regularly of pursuing any substantially gainful employment by December 31, 2008?
2. If so, is his disability long continued and of indefinite duration?

ANALYSIS

[7] The Minister's initial position was that the Claimant was not entitled to a CPP disability pension. This was because the evidence did not establish that he had been continuously disabled in accordance with the CPP requirements since 2008.⁵ In September 2020, the Minister changed its position. It agreed that the Claimant is entitled to the CPP disability pension, with a date of onset of July 2016. This is the maximum period of retroactivity permitted by the CPP based on the October 2017 application date.

[8] The Claimant suffered severe injuries in the 2006 car accident. These injuries required about 40 surgeries. There is ample evidence in the hearing file to establish that the Claimant has been regularly unable to pursue substantially gainful employment since at least December 2008.

[9] The Claimant asked that the effective date of payment for his disability pension be based on his initial application in June 2012. However, the Minister denied that application and the Claimant did not request a reconsideration of the denial decision. Under the CPP, the effective payment date is based on the current application date, not a previous application that was denied.

[10] I am bound by the CPP provisions. The Tribunal is a statutory decision-maker and I am required to interpret and apply the provisions as they are set out in the CPP. I have no authority to make exceptions to the provisions of the CPP. Nor can I render decisions based on fairness, compassion, or extenuating circumstances.

⁴ Record of Contributions: GD2-4

⁵ GD4: Minister's submission for initial hearing.

CONCLUSION

[11] I find that the Claimant had a severe and prolonged disability by December 2008. For payment purposes, a person cannot be deemed disabled more than fifteen months before the Minister received the application for a disability pension.⁶ The Minister received the Claimant's application in October 2017; therefore, the Claimant is deemed disabled in July 2016. Payments start four months after the deemed date of disability.⁷ Payments will start as of November 2016.

[12] The appeal is allowed.

Raymond Raphael
Member, General Division - Income Security

⁶ Paragraph 42(2)(b) of the CPP

⁷ Section 69 of the CPP