



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *AS v Minister of Employment and Social Development*, 2021 SST 43

Tribunal File Number: GP-20-820

BETWEEN:

A. 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: November 27, 2020

Date of decision: January 4, 2021

DECISION

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

OVERVIEW

[2] The Claimant last worked as a travel agent. His duties consisted of attending to incoming calls, booking flights, and issuing tickets. He stopped working in April 2019 because of problems with his left hand, including making mistakes.

[3] The Minister received the Claimant's application for the disability pension on May 6, 2019. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[4] 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 Claimant's MQP is in the future, I have only considered whether he became disabled on or before the date of the oral hearing, November 27, 2020.

ISSUE(S)

[5] Did the Claimant's conditions result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by November 27, 2020?

[6] If so, was the Claimant's disability also long continued and of indefinite duration by November 27, 2020?

ANALYSIS

[7] 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

¹ Paragraph 42(2)(a) *Canada Pension Plan*

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 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

Have the Claimant's functional impairments resulted in him being incapable regularly of pursuing any substantially gainful occupation?

[8] I have determined the Claimant has a severe disability. Below I will set out the position of the Minister and detail why the medical and other evidence has resulted in my acceptance of this claim.

[9] The Minister's position is that A. S. has not established a severe and prolonged disability within the meaning of the CPP, and is therefore not entitled to a disability pension under the CPP.² I have come to a different conclusion.

[10] The medical information demonstrates impairments that preclude the Claimant from continuing to work in any substantially gainful occupation.

[11] The Claimant's treating physician detailed that, A. S. has permanent damage to his left arm resulting in it being non-functional. The physician further detailed that the Claimant was not medically fit to work in any field that requires use of left arm. Moreover, his pain, weakness and difficulty remained in left arm associated with inability to hold and grip objects more than the size a coffee cup. His left forearm has significantly poor range of motion.³

[12] The Claimant was noted to have frozen shoulder, left osteoarthritis of wrist and first CMC joint, and left lateral epicondylitis.

[13] In a January 2018 consultation report, Dr. Kachooie, physiatrist, detailed that the Claimant was complaining of persistent pain in the hand wrist, and forearm. There was marked

² GD5-3

³ GD7-5

weakness in his grip and numbness in his fingers. The Claimant was noted to have difficulty with reaching, lifting, and carrying. He was dropping objects.⁴

[14] In chart notes from 2018 and 2019, his treating physician noted that he was having left hand pain; his fingers were getting stiff and his hand chook. He was unable to hold objects.

[15] The Claimant's physician completed a medical record in early 2019. The report detailed that the Claimant experienced shortness of breath with minimal exertion. He further noted the Claimant experienced pain when holding objects due to multiple left arm fractures. Also indicated were a poor range of motion and poor grip.⁵

[16] The Claimant's physician opined that the Claimant's left arm was essentially non-functional.⁶ He further indicated that because the Claimant had multiple cardiac events he was not able to walk or stand for prolonged periods.⁷

[17] The Claimant was noted to have moderate disc disease in his cervical spine.⁸

[18] I had an oral hearing with the Claimant and he told me about how his medical conditions affected his function. The Claimant told me that his left arm shakes very badly. He is often in pain and has little ability to do anything with the arm. He needs his son to massage his arm on a regular basis. The Claimant told me that he has problems eating food, putting on clothing, and toileting. He has trouble showering.

[19] The Claimant told me that he is unable to cook. His wife has to do all the cooking.

[20] He told me that his daughter drives him if he needs to go somewhere. He told me that he is afraid to drive because he cannot use his left arm.

[21] He is having trouble with sleeping because of his pain. The Claimant told me that his hand shakes very badly. He cannot hold items.

⁴ GD2-144

⁵ GD2-161

⁶ GD2-162

⁷ GD2-162

⁸ GD2-168

[22] The Claimant confirmed that his back pain is still bad. When he was working at X, he would sit for a couple of hours but then had to get up immediately. When he tries to get up his back hurts. When he walks 2-3 minutes, he feels better. Then after another 30 minute, he continues to have pain.

[23] He cannot do yard work because of back pain. His wife cuts the grass and picks up the grass. He cannot sit for a long time.

[24] What the medical and oral hearing testimony showed me was that the Claimant cannot do basic deskwork and has difficulty moving around. His back, pain, cardiac episodes and left hand disability have impaired him to such an extent that there is no work he is capable of completing.

[25] I must assess the severe part of the test in a real world context⁹. 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.

[26] The Claimant has some higher-level education from Pakistan. However, this did not transfer over in Canada. In any event, he has attempted to find alternative employment but this has failed. Given the extent of his disability coupled with his transferrable skill-sets and work experience, I find that he has a severe disability.

Prolonged disability

[27] Dr. Rahman opined that the Claimant had a poor prognosis.¹⁰ His other physicians have noted his conditions are prolonged. Further, the Claimant has indicated that he has not seen any reduction in his impairments. For these reasons, I find the Claimant has a prolonged disability.

CONCLUSION

⁹ *Villani v. Canada (A.G.)*, 2001 FCA 248

¹⁰ GD2-164

[28] The Claimant had a severe and prolonged disability in April 2019 when he had to stop working as a travel agent. Payments start four months after the deemed date of disability, as of August 2019¹¹.

[29] The appeal is allowed.

Adam Picotte
Member, General Division - Income Security

¹¹ Section 69 *Canada Pension Plan*