



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *LD v Minister of Employment and Social Development*, 2021 SST 156

Tribunal File Number: GP-19-1616

BETWEEN:

L. D.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Antoinette Cardillo

Claimant represented by: Andre Bourdon

Videoconference hearing on: January 13, 2021

Date of decision: February 2, 2021

Decision

The Claimant, L. D., is not eligible for a Canada Pension Plan (CPP) disability pension. This decision explains why I am dismissing the appeal.

Overview

[1] The Claimant is 54 years old. He suffers from bilateral knee pain, osteoporosis, osteoarthritis, fibromyalgia, neck pain, back pain, bilateral heel spurs, chest hernia, reflux and loss of a digit on the left hand. He stopped working on January 6, 2011.

[2] The Claimant applied for a CPP disability pension on December 17, 2018¹.

[3] The Minister of Employment and Social Development (Minister) refused his application because the Claimant did not have enough valid earnings and contributions to meet the minimum contributory requirements under the CPP. Therefore, he was not eligible for a disability benefit. In addition, the Minister stated that he had four (4) years of valid earnings and contributions after his minimum qualifying period of December 1997, which demonstrated capacity to work as determined by productivity, performance and profitability. The Claimant appealed that decision to the Social Security Tribunal's General Division.

What the Claimant must prove

[4] For the Claimant to succeed, he must prove he has a disability that was severe and prolonged by December 31, 1997. This date is based on his contributions to the CPP.²

[5] The CPP defines "severe" and "prolonged". A disability is severe if it makes a person incapable regularly of pursuing any substantially gainful occupation.³ It is prolonged if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁴

¹ GD2-24

² Service Canada uses a person's years of CPP contributions to calculate their coverage period, or "minimum qualifying period" (MQP). The end of the coverage period is called the MQP date. See subsection 44(2) of the CPP. The Claimant's CPP contributions are on GD2-48.

³ Paragraph 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

⁴ Paragraph 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

[6] The Claimant has to prove it is more likely than not he is disabled.

Reasons for my decision

[7] I find the Claimant has not proven he has a disability that was severe and prolonged by December 31, 1997. I reached this decision by considering the following issues.

The Claimant's disability was not severe

- The Claimant's limitations do not affect his ability to work

[8] The Claimant has chronic pain, right knee pain, fibromyalgia and early onset of osteoporosis⁵. My focus though is not on the Claimant's diagnosis.⁶ I must focus on whether he had functional limitations that got in the way of him earning a living.⁷ This means I have to look at **all** the Claimant's medical conditions (not just the main one) and think about how his conditions affect his ability to work.⁸

[9] I find the Claimant does not have functional limitations by December 1997. Here is what I considered.

- What the Claimant says about his limitations

[10] The Claimant says he has limitations from his medical conditions that affect his ability to work in the following ways.

[11] The Appellant has a college degree and a diploma for camera and alarm installations. In the early 1990s, he worked on Vancouver Island for an alarm company. Afterwards, he worked in construction and other manual labour type jobs. He explained that from 1984, when he turned 18, to 1996, he went where there was work.

[12] During that period, he was in good health other than having knee problems, which he has had since he was a child. He went to high school on crutches and using knee braces. He testified that he has had several orthoscopic surgeries and eventually he had both knees replaced.

⁵ GD2- 52 Report from Dr. Lebel

⁶ The Federal Court of Appeal said this in *Ferreira v. Canada (Attorney General)*, 2013 FCA 81.

⁷ The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

⁸ The Federal Court of Appeal said this in *Bungay v. Canada (Attorney General)*, 2011 FCA 47.

[13] Despite the surgeries, he continued to be in pain and eventually became unable to perform tasks he use to do because of his bad knees.

[14] He explained that he also has had ongoing problems with his neck and back since a motor vehicle accident in 2011. He is still attending physiotherapy sessions.

[15] He added that he was not able to keep working since the accident because there were tasks he could not do because of his physical condition.

- **What the medical evidence says about the Claimant's limitations**

[16] Although I recognize that the Claimant genuinely believes his limitations affect his ability to work, he must provide objective medical evidence that shows his functional limitations by December 31, 1997.⁹ Unfortunately, the medical evidence does not support what the Claimant says by that period.

[17] An orthopedic assessment report from Dr. Cisa dated June 29, 2011 indicated that the Claimant was involved in a car accident in January 2011. He has been unable to engage in the essential tasks of his pre-accident employment. At that point in time, even though there were no impairments, because of his reported ongoing complaints of spasm and contractures, Dr. Cisa preferred to wait to make a return to work plan, until the Claimant had participated in further physiotherapy to increase his level of conditioning.

[18] X-ray reports of the right and left knees dated October 22, 2013 and November 20, 2014¹⁰ indicated that there was a severe amount of medial compartmental joint space narrowing within the right knee; moderate to severe medial compartment degenerative change with narrowing and sclerosis; and bipartite patella, left knee.

⁹ The Federal Court of Appeal said this in *Warren v. Canada (Attorney General)*, 2008 FCA 377.

¹⁰ GD2-64 to 66

[19] On November 26, 2013, a report from Dr. Lafontaine¹¹, Orthopedic clinic, indicated that the Claimant was a good candidate to try an intra-articular injection and that the x-ray showed severe medial compartment osteoarthritis.

[20] On May 29, 2014 Dr. Quadri¹², Physiotherapist, stated that the Claimant had minimal relief with the injections. He was having difficulty with walking including pain and giving out of his right lower extremity. On physical examination, there was a significant limp on the right. His impression was that the Claimant suffered from severe right knee osteoarthritis. Then on July 18, 2014, Dr. Quadri¹³ noted that he had a good response with the synvisc injections and on November 20, 2014¹⁴, Dr. Quadri referred him to Dr. Mahmoudi, orthopedic surgeon.

[21] On February 4, 2015¹⁵, Dr. Mahmoudi noted that the Claimant had been in a car accident about four (4) years prior resulting in leg and lower back pain. He had not been employed since. He had been having right knee pain for 10 years. The pain had exacerbated during this time to the point where he could only walk 10 minutes. He had a history of arthroscopy of the left knee in the past therefore he did not recommend any arthroscopy and he had synvisc injections and cortisone which he did not recommend either.

[22] On November 16, 2015, Dr. Mahmoudi¹⁶ stated that the Claimant had total knee arthroplasty in August 2015. He never had any relief from pain and recently had swelling and effusion of the knee. He had pain and discomfort almost everywhere in his body. He had positive trigger points.

[23] In a report dated November 2, 2017¹⁷, Dr. Gollish, Orthopedic surgeon, indicated that the Claimant's knee was not functioning well, and he was having significant pain, disability and recurrent effusions.

¹¹ GD2-68

¹² GD2-69

¹³ GD2-70

¹⁴ GD2-60

¹⁵ GD2-61

¹⁶ GD2-62

¹⁷ GD1-48

[24] There is no question that the Claimant has functional limitations. However, as stated, he must provide objective medical evidence that shows his functional limitations by December 31, 1997.¹⁸ If the medical evidence does not prove that his functional limitations affected his ability to work by December 31, 1997, medical evidence dated after is irrelevant. Reports written afterward must be based on clinical observations or assessments by December 1997.¹⁹

[25] The file contains no medical evidence prior to December 1997, or for some years afterwards. There is reference in Dr. Mahmoudi's report dated February 4, 2015²⁰ that the Claimant had been having right knee pain for 10 years, however, that is still after December 1997. The medical evidence does not show the Claimant had functional limitations that affected his ability to work by December 31, 1997. The Claimant provided medical evidence of serious health conditions from well after December 1997. As a result, he has not proven that he had a severe disability.

[26] When I am deciding if a disability is severe, I sometimes have to think about a person's age, level of education, language ability, and past work and life experience. This allows a realistic assessment of their work capacity.²¹ I do not have to do that here because the Claimant's functional limitations did not affect his ability to work by December 1997. This means he did not prove his disability was severe by then.²²

Conclusion

[27] I find the Claimant is not eligible for a CPP disability pension because his disability was not severe by December 1997. Because I found the disability is not severe, I did not have to consider if it is prolonged. This means the appeal is dismissed.

Antoinette Cardillo
Member, General Division - Income Security

¹⁸ The Federal Court of Appeal said this in *Warren v. Canada (Attorney General)*, 2008 FCA 377.

¹⁹ The Federal Court said this in *Canada (Attorney General) v. Angell*, 2020 FC 1093.

²⁰ GD2-61

²¹ The Federal Court of Appeal said this in *Villani v. Canada (Attorney General)*, 2001 FCA 248.

²² The Federal Court of Appeal said this in *Giannaros v. Minister of Social Development*, 2005 FCA 187.