



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MW v Minister of Employment and Social Development*, 2021 SST 56

Tribunal File Number: GP-19-2069

BETWEEN:

M. W.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Virginia Saunders

Teleconference hearing on: January 21, 2021

Date of decision: January 26, 2021

DECISION

[1] The Claimant, M. W., is not entitled to a Canada Pension Plan (CPP) disability pension. This decision explains why I am dismissing the appeal.

OVERVIEW

[2] The Claimant immigrated to Canada from Sri Lanka in 1979, when he was 21 years old. He trained to be an automotive technician, and then worked as one for many years. He stopped in November 2014, when he injured his right hand in a car accident. He then developed pain in his left hand from overuse. Eventually he had surgery on both hands. As a result of the surgery, he has lost strength in both hands. He says he has not been able to work since November 2014 because of this.

[3] The Claimant applied for a CPP disability pension in July 2018.¹ The Minister of Employment and Social Development (Minister) refused the application. The Minister said the Claimant should be able to do some type of work.² The Claimant appealed 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, 2018, and continuously thereafter. This date is based on his contributions to the CPP.³

¹ The Claimant's CPP disability application and questionnaire are at pages GD2-30-34 and GD2-207-214. He also applied in July 2017 (GD2-52-54 and GD2-251-257.) The Minister denied that application as well, but the Claimant did not appeal.

² The initial denial letter is at page GD2-22-24. The reconsideration decision is at page GD2-4-6.

³ The CPP 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 *Canada Pension Plan*. The Claimant's CPP contributions are at pages GD4-13-14. In the decision *Canada (Attorney General) v. Angell*, 2020 FC 1093, the Federal Court said a person has to show a severe and prolonged disability by the end of their minimum qualifying period and continuously thereafter. See also *Brennan v. Canada (Attorney General)*, 2011 FCA 318.

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

[6] The Claimant has to prove it is more likely than not that he is disabled as defined in the CPP.

THE REASONS FOR MY DECISION

[7] The Claimant has not proven he has a disability that was severe and prolonged by December 31, 2018. I reached this decision by considering the following issues.

The Claimant has some work capacity despite his functional limitations

[8] The Claimant gave evidence at the hearing. He was straightforward and honest. I believe what he told me. I accept that he cannot work as an automotive technician. However, at December 31, 2018, he was capable of doing a different job with lighter duties.

[9] My focus is not on the Claimant’s diagnosis.⁶ I must focus on whether he has functional limitations that get in the way of him earning a living.⁷

[10] The Claimant does have functional limitations. He has degenerative arthritis in both hands. This caused significant pain that was interfering with his daily activities and his ability to work. He had surgery to help with the pain. The operation on his right hand was in August 2016. He had the same operation on his left hand in October 2017. The surgeon, Dr. Ladak, said the surgery resolved the Claimant’s pain, but left him with weakness in both thumbs. He had decreased strength in grasping.⁸

[11] The Claimant told me he still has pain in his hands. But his main problem is that he has no strength in them. He cannot do the grasping, lifting or carrying that his previous job required.

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

⁵ Paragraph 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

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 GD2-150-151

However, to be severe, the Claimant's limitations must prevent him from earning a living at any type of work, not just his usual job.⁹

[12] The Claimant told Dr. Ladak he could perform light duties or desk duties.¹⁰ At the hearing, he told me he was probably capable of "flipping burgers" or working as a cashier.

[13] The medical evidence supports the Claimant's view that he can do some type of work. Dr. Ladak recommended he look for alternate work.¹¹ His family doctor, Dr. Datar, said in October 2019 that the Claimant was not able to work as a heavy-duty mechanic because of his chronic limitations in both hands.¹² He did not say the Claimant could not do other work.

Other medical conditions did not contribute to a severe disability by December 31, 2018

[14] I have to look at all the Claimant's medical conditions (not just the main one) and think about how they affect his ability to work.¹³ The Claimant has had other health issues. But they did not contribute to a severe disability by December 31, 2018.

[15] The Claimant has had knee problems, hearing issues, kidney stones, cysts, colonic polyps, and sleep apnea. He is stressed because he cannot work at the job he enjoyed which provided him with a very good income. However, he told me these concerns do not prevent him from working.

[16] At the hearing, the Claimant told me about a more recent health issue. He started to have uncontrollable abdominal pain in September 2018. The cause was something to do with his pancreas. He was scheduled to have a pancreatectomy in July 2019, but his doctors decided to try inserting a stent in his bile duct instead. The stent resolved the Claimant's pain.

[17] The stent was supposed to be replaced every three months. The Claimant told me he would have been fine if this had in fact happened. Unfortunately, when he went for a stent replacement in November 2019, the surgeons discovered his pancreas was pre-cancerous. He had

⁹ The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

¹⁰ GD2-151

¹¹ GD2-151

¹² GD2-71

¹³ The Federal Court of Appeal said this in *Bungay v. Canada (Attorney General)*, 2011 FCA 47.

to have his pancreas, his spleen, and his gall bladder removed. This took place in July 2020, after delays caused by the COVID19 pandemic. The Claimant is now diabetic. He still has stomach pain. When he is in pain, he takes medication and lies down with a heating pad. He does not know what the future holds for him.

[18] The Claimant's abdominal pain did not contribute to a severe disability at December 31, 2018. He had a history of pancreatitis going back several years.¹⁴ He did develop significant pain before December 2018. But it was resolved by insertion of a stent. It wasn't until November 2019 that doctors discovered the condition that led them to remove the Claimant's pancreas and other organs. Dr. Datar did not mention abdominal pain in his letter of October 2019.¹⁵

The Claimant can work in the real world

[19] At December 2018, the Claimant had limited use of both hands. This affected his ability to do some, but not all, types of work. When I am deciding if the Claimant could work, I must consider more than just his medical conditions and how they affected what he could do. I must also consider his age, level of education, language ability, and past work and life experience.¹⁶ These factors help me decide if the Claimant had any ability to work in the real world.

[20] The Claimant was capable of working in the real world at December 31, 2018. He was 54 years old when he stopped working. He was 60 years old at December 2018. He left school in Sri Lanka after Grade 10. He told me he is not very good at formal schooling, as his mind wanders. He did well in his automotive training and in his career because he is practical and he is very good with his hands. English is his second language, but he does not have any trouble with it.

[21] Because of his age and his work experience in just one field, the Claimant would not be an appropriate candidate for lengthy retraining or education. However, he could still learn a light job that only needed short-term hands-on training. Despite a lack of formal schooling, he is capable and intelligent. He succeeded for many years doing complicated work. He and his doctors think he is capable of light work with his hands. I think so too.

¹⁴ GD2-38

¹⁵ GD2-71

¹⁶ The Federal Court of Appeal said this in *Villani v. Canada (Attorney General)*, 2001 FCA 248.

The Claimant has not tried to work at a suitable job

[22] If the Claimant can work in the real world, he must show that he tried to find and keep a job. He must also show his efforts were not successful because of his medical condition.¹⁷ Finding and keeping a job includes retraining or looking for a job that accommodates his limitations.¹⁸

[23] The Claimant has not looked for work. He was candid in explaining why not. He is receiving long-term disability benefits. They pay 75% of his previous salary. If he returns to the workforce in any capacity, his benefits will be reduced. He will be much worse off financially, especially if he takes a minimum wage job. That is likely all that would be available to someone in his situation.

[24] I understand the Claimant's position. I do not blame him for not wanting to take a different job. Unfortunately, the law says he has to try. If he does not, I cannot find he had a severe disability at December 31, 2018.

CONCLUSION

[25] I find the Claimant is not eligible for a CPP disability pension because his disability is not severe. Because I found the disability is not severe, I did not have to consider if it is prolonged.

[26] The appeal is dismissed.

Virginia Saunders
Member, General Division - Income Security

¹⁷ The Federal Court of Appeal said this in *Inclima v. Canada (Attorney General)*, 2003 FCA 117.

¹⁸ The Federal Court of Appeal said this in *Janzen v. Canada (Attorney General)*, 2008 FCA 150.