



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *JB v Minister of Employment and Social Development*, 2021 SST 125

Tribunal File Number: GP-19-1884

BETWEEN:

J. B.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Virginia Saunders

Claimant represented by: Jesse Guenther

Teleconference hearing on: January 28, 2021

Date of decision: February 24, 2021

Decision

[1] The Claimant, J. B., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of January 2018. This decision explains why I am allowing the appeal.

Overview

[2] The Claimant was born and raised in India. He went to a village school as far as Grade 10. He moved to Canada in 1994, when he was 21 years old. He worked as a labourer. In 2004 he started a job in a mill, working as a shingle sawyer. He worked there until January 2017, when he fell on some ice in the workplace parking lot and fractured his left wrist.

[3] A few weeks later, the Claimant had surgery to repair his wrist. But even after the surgery, he still had significant pain and limited motion. The fall also aggravated back pain from a car accident in 2011. The Claimant became depressed. Although he had extensive treatment and rehabilitation through workers' compensation, he has never returned to the workforce except for a brief, failed work attempt.

[4] The Claimant applied for a CPP disability pension in December 2018. He said he has chronic pain in his left wrist, shoulder and neck. He cannot use his left arm. His physical problems have caused anxiety, stress and depression. He said the combination of his health problems have left him unable to work at any job since January 2017.¹

[5] The Minister of Employment and Social Development (Minister) refused his application. The Minister said the Claimant's conditions do not prevent him from all employment, and that his wrist might improve with further treatment.² The Claimant appealed the Minister's decision to the Social Security Tribunal's General Division.

¹ The Claimant's application and questionnaire are at GD2-36-41 and GD2-217-223.

² The Minister's initial and reconsideration decisions are at pages GD2-25-26 and GD2-4-6.

What the Claimant must prove

[6] For the Claimant to succeed, he must prove he has a disability that was severe and prolonged by December 31, 2019. This date is based on his contributions to the CPP.³

[7] 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

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

Reasons for my decision

[9] I find the Claimant has a disability that was severe and prolonged by December 31, 2019. I reached this decision by considering the following issues.

The Claimant’s disability is severe

The Claimant’s limitations affect his ability to work

[10] I cannot focus 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 This means I have to look at all his medical conditions (not just the main one) and think about how they affect his ability to work.⁸

[11] I find the Claimant does have functional limitations. Here is what I looked at:

What the Claimant says about his limitations

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

³ 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 *Canada Pension Plan*. The Claimant’s CPP contributions are on page GD2-44.

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

- He has itching, tingling, pain and numbness in his left wrist and hand. He cannot use his left arm so he cannot lift anything heavy. Any use of his left arm and hand, such as washing dishes or doing many household chores, increases his pain. He can only do minor things at home.
- His back pain makes it hard to sit or stand for more than half an hour.
- Three or four times a month he gets leg pain in addition to the back pain. This adds to his difficulties.
- He is depressed because he can't do the job he used to have, and can't find other work. This affects his memory and concentration.⁹

[13] The Claimant's testimony at the hearing was spontaneous and genuine. I believe what he said about how his pain affects him physically and mentally.

What the medical evidence says about the Claimant's limitations

[14] I can't base my decision only on what the Claimant told me. He has to provide objective medical evidence that shows his limitations affected his ability to work by December 31, 2019.¹⁰ The medical evidence supports what the Claimant says.

[15] Dr. Jaffri has been the Claimant's family doctor since 2005. In November 2019 he said the Claimant had the following conditions related to his disability:

- Chronic low back pain since 2005, made worse by car accidents and workplace injuries.
- Chronic left knee pain since 2007.
- Chronic left shoulder and neck pain since a car accident in 2011.
- Chronic left wrist pain, radiating to the left hand and forearm and arm, since 2017.
- Severe depression and anxiety that came on gradually starting in 2013, as his increased injuries led to a decreased capacity to work and residual pain.¹¹

⁹ GD2-219-220; Claimant's testimony at the hearing

¹⁰ The Federal Court of Appeal said this in *Warren v. Canada (Attorney General)*, 2008 FCA 377

¹¹ GD4-8-11

[16] Dr. Jaffri's opinion is confirmed by other medical evidence showing the Claimant repeatedly saw specialists for poorly-controlled pain, anger management and mood issues.¹² He was in hospital several times because of mental health crises.¹³

The Claimant's chronic pain affects his ability to work

[17] The evidence shows the Claimant has chronic pain in multiple areas. It got worse over the years, particularly after he fell in January 2017. The Minister says the objective findings do not show the Claimant's condition is severe.¹⁴ But chronic pain is recognized as a potentially disabling medical condition, even if is not entirely supported by objective findings.¹⁵ In this case, imaging shows some damage to the Claimant's back and left wrist.¹⁶ His family doctor reported he had knee, neck and shoulder pain as well. The health care providers who saw the Claimant accept his complaints of pain as genuine. So do I. Back and arm pain limit his ability to use his left arm and hand, and to sit or stand.

[18] Overall pain contributes to the Claimant's depression and affects his concentration. But even without mental health and cognitive issues, I find the Claimant's pain prevents him from performing manual labour as well as sedentary jobs or jobs where he can change his position. That has been the case since January 2017, when he fell and broke his left wrist.

The Claimant has followed medical advice

[19] To receive a disability pension, a person must follow medical advice.¹⁷ If he does not, he must have a reasonable explanation.¹⁸

[20] The Claimant has followed medical advice as much as possible. I believe him when he tells me that to his knowledge he has done everything that has been suggested that he can afford and can get to. He takes medication and has treatment when it is made available to him. He

¹² GD2-126-141, 148-151, 152-157, 164-166, 172, 189, 203-208

¹³ GD2-161-163, 167-170, 178-186

¹⁴ GD3-7-9

¹⁵ *Nova Scotia (Worker's Compensation Board) v Martin*, [2003] SCC 54

¹⁶ GD2-209-215

¹⁷ The Federal Court of Appeal said this in *Sharma v. Canada (Attorney General)*, 2018 FCA 48.

¹⁸ The Federal Court of Appeal said this in *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

stopped smoking marijuana when his doctors explained how it was not helping him. He does not remember anyone mentioning further surgery to him.¹⁹

[21] Dr. Jaffri said the Claimant followed up on any treatment prescribed by a health professional.²⁰ At times this was difficult because his mental condition made it hard for him to accept medical advice and caused him to make some bad choices.²¹ This is a reasonable explanation for not following medical advice. The Claimant was otherwise motivated to get better and return to work.

The Claimant can't work in the real world

[22] To be severe, the Claimant's limitations must prevent him from earning a living at any type of work, not just his usual job as a shingle sawyer.²² So I have to decide if the Claimant can regularly do other types of work.

[23] When I am deciding if the Claimant can work, I must consider more than just his medical conditions and how they affect what he can do. I must also consider his age, level of education, language ability, and past work and life experience.²³ These factors help me decide if he has any ability to work in the real world.

[24] I find the Claimant cannot work in the real world. He has barely any work capacity as it is. A person who can only work with one hand, and can't sit or stand for more than 30 minutes, has significant limitations. The Claimant's situation is even more difficult because of his background and work experience. He has only a basic education from India. He has only worked doing physical labour. Most significantly, he has limited English despite living in Canada for over 25 years and taking ESL instruction. He cannot speak, read or write in English. That means he could only work in jobs where he did not have to speak to the public or to anyone else who

¹⁹ Dr. Wickham suggested this as a possibility in 2017 (page GD2-207-208.) The Claimant testified his family doctor told him nothing could be done because he has arthritis.

²⁰ GD4-9

²¹ GD2-167-169, GD4-9

²² The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

²³ The Federal Court of Appeal said this in *Villani v. Canada (Attorney General)*, 2001 FCA 248.

does not speak his native language, Urdu. Those jobs do not exist in the real world, for someone with the Claimant's physical limitations.

[25] My conclusion is reinforced by the fact that the Claimant did try to work as a security guard shortly after his hand injury. However, he was let go because of his poor English and his inability to write or use a computer.²⁴ Later in 2017 he was discharged from a rehabilitation program as fit to return to work with limitations involving the use of his left wrist and hand.²⁵ He was told he could work as a light duty cleaner.²⁶ That decision was overturned by a Work Safe BC review in 2019.²⁷ Even if it had not been, I do not agree that the Claimant, with his personal characteristics and chronic pain, could have performed a light-duty job with one hand in a competitive work environment.

[26] As a result, I find the Claimant's disability was severe by January 2017, when he injured his hand and had to stop work.

The Claimant's disability is prolonged

[27] The Claimant's conditions have continued since January 2017, without any lasting improvement. In theory, some treatments are still available to him. In reality, they are not. He has not been referred to a chronic pain clinic since he was refused entry in 2017 because of his mental health issues. His family doctor has not pursued surgery for him. It is not the Claimant's job to navigate the medical system on his own, especially given his language abilities. There is no treatment on the horizon that is likely to lead to significant improvement. His condition is therefore long continued and will likely continue indefinitely.

When payment begins

[28] The Claimant had a severe and prolonged disability in January 2017, when he injured his wrist and had to stop working. The injury limited the use of his left hand and made his back pain

²⁴ Claimant's testimony

²⁵ GD2-152-157

²⁶ GD2-161-163

²⁷ GD2-8-14

worse. It combined with chronic pain from earlier injuries. He has not been able to work since then.

[29] However, the CPP says a person cannot be considered disabled more than 15 months before the Minister receives their disability application. After that, there is a four-month waiting period before payments start.²⁸ The Minister received the Claimant's application in December 2018. That means he is considered to have become disabled in September 2017. Payment of his pension starts as of January 2018.

Conclusion

[30] The Claimant is eligible for a CPP disability pension because his disability is severe and prolonged.

[31] The appeal is allowed.

Virginia Saunders
Member, General Division—Income Security

²⁸ Section 69 of the *Canada Pension Plan* sets out this rule.