



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *RP v Minister of Employment and Social Development*, 2021 SST 409

Tribunal File Number: GP-20-1248

BETWEEN:

**R. P.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Jackie Laidlaw

Teleconference hearing on: February 9, 2021

Date of decision: February 22, 2021

## **Decision**

[1] The Claimant, R. P., is not eligible for a Canada Pension Plan (CPP) disability pension. This decision explains why I am dismissing the appeal.

## **Overview**

[2] The Claimant is 47 years old and worked on the family fruit farm since 2002. It was a seasonal job. He was responsible for training the foreign workers, spraying the fruit and acting as lead hand. There were four non-family employees. He was the only family member who worked there, along with his father. In July 2018, he had a workplace accident, which amputated the tip of two fingers on his right hand. By December 2018, when the farm work ended, he stopped working and went on Employment Insurance (EI) as was his usual custom every year. He claims he is unable to work as of May 2019, due to the pain with his right hand and depression. He has returned to helping on the farm, driving around during the day to check on the farm, but has not returned to his usual position.

[3] The Claimant applied for a CPP disability pension on May 1, 2019. The Minister of Employment and Social Development (Minister) refused his application because not all forms of treatment have been exhausted, and there is no severe symptomology described for his depression. 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, 2020. This date is based on his contributions to the CPP.<sup>1</sup>

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<sup>1</sup> 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 GD 2 4.

[5] The CPP defines “severe” and “prolonged”. A disability is severe if it makes a person incapable regularly of pursuing any substantially gainful occupation.<sup>2</sup> It is prolonged if it is likely to be long continued and of indefinite duration.<sup>3</sup>

[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, 2020. 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 amputations of the tip two fingers in his right hand causing chronic phantom pain. He also claims the accident caused depression. My focus though is not on the Claimant’s diagnosis.<sup>4</sup> I must focus on whether he had functional limitations that got in the way of him earning a living.<sup>5</sup> 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.<sup>6</sup>

[9] I find the Claimant does not have functional limitations. 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] He sleeps all day due to depression. He is unable physically to farm as he used to. He cannot handle tools, such as a screwdriver, the same way as before the accident.

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<sup>2</sup> Paragraph 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

<sup>3</sup> Paragraph 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

<sup>4</sup> The Federal Court of Appeal said this in *Ferreira v. Canada (Attorney General)*, 2013 FCA 81.

<sup>5</sup> The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

<sup>6</sup> The Federal Court of Appeal said this in *Bungay v. Canada (Attorney General)*, 2011 FCA 47.

[12] He states that he lives alone. His parents look after him and give him money. In the hearing, he stated that he has lived alone for years and manages his own home. His mother will help him with laundry.

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

[13] The medical evidence is conflicted on his limitations. His family physician of many years does not find any disability. The psychiatrist, Dr. Surapaneni, has been advocating a severe disability since the day he met him, despite only having treated him nine to ten times since May 2019. An upper extremity specialist, consulted in September 2020 indicated he was capable of managing his current sedentary work duties on the farm despite significant hypersensitivity of the two fingers.

[14] The Claimant's family physician of 15 or 20 years, Dr. Ghesquiere, noted that the last time he saw the Claimant was December 21, 2017 for insomnia. Which means the Claimant had issues with sleep problems while working, and well before his accident. The doctor noted that he has no knowledge of the disability claim and cannot make comments, as there is no disability noted in his charts.<sup>7</sup>

[15] The Claimant did not see his family physician after the accident and explained he rarely consults with him. It would be reasonable that if the Claimant had severe problems physically and mentally, his first stop would be his family physician to refer him to specialists for treatment and consultations. Dr. Ghesquiere's notes do not show any urgent need for interventions either mentally or physically. Dr. Ghesquiere did send the Claimant for a psychiatric consultation to Dr. Surapaneni in May 2019<sup>8</sup>, almost one year after the accident. In addition, presumably he sent him to the plastic surgeon at the upper extremity program in September 2020, two years after the accident.

[16] Dr. Surapaneni, psychiatrist, was consulted on May 6, 2019 for complaints of numbness, trouble sleeping and nightmares since 2015, and phantom pain in his right hand. Since then, the Claimant has seen Dr. Surapaneni nine or ten times, for up to 30 minute each time. They discuss

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<sup>7</sup> GD 2 100 April 1 2020

<sup>8</sup> GD 2 107 May 14, 2019

his anxiety, depression and pain. The doctor monitors his medications: Percocet and Gabapentin for the pain; and, Nortriptyline for depression. The Claimant testified he takes a half a Percocet two or three a week if the weather is bad. Dr. Surapaneni has never referred him for formal therapy.

[17] Dr. Surapaneni's evidence indicates he is a supporter of the Claimant's disability. He has declared the Claimant unfit to work in any job due to his state of physical and psychological issues.<sup>9</sup> He found that no improvement is possible due to constant pain and phantom phenomenon<sup>10</sup>. He noted there is no possibility of improving his condition and, by June 2020, he had run out of all the resources possible to help him.<sup>11</sup>

[18] I put very little weight on Dr. Surapaneni's opinions for a number of reasons. First, he wrote the medical report for the CPP disability benefit on the day he first met him, May 6, 2019<sup>12</sup>. In that report, he diagnosed major affective disorder and depression. He noted that his prognosis was poor due to chronic pain and he recommended he be allowed the CPP disability benefit. Neither Dr. Surapaneni, nor any other specialist had been treating the Claimant for any depression or anxiety. Dr. Surapaneni did not consult any medical notes from any physicians treating his amputations. Dr. Surapaneni was not treating the Claimant's physical condition and is not a specialist qualified to opine on his physical ability to work. It has already been established that he was not under any regular care with his family physician. There is no indication he was receiving regular care by any physician or specialist at the time.

[19] In his initial assessment<sup>13</sup>, it is clear Dr. Surapaneni thought the accident happened several years earlier. In fact, it had happened ten months earlier and the Claimant was still in recovery from the amputations. I will discuss the future physical treatments later. The doctor also noted that the Claimant had been suffering from nightmares for four years and not coping well. The Claimant testified that he never had depression before December 2018. Years earlier, he did have a period of depression when his sister died, but that was situational. As the doctor

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<sup>9</sup> GD 5 2 October 27, 2020

<sup>10</sup> GD 2 94 May 4, 2020

<sup>11</sup> GD 2 8 June 23, 2020

<sup>12</sup> GD 2 124

<sup>13</sup> GD 2 66 May 6, 2019

thought the accident was years in the past, and his nightmares lasting four years, that would alter his prognosis.

[20] As well, in the initial assessment, Dr. Surapaneni noted no history of smoking, drinking or drug abuse. This information is completely counter to the clinical notes from his longstanding family physician Dr. Ghesquires. Dr. Ghesquires notes the Claimant was a past cocaine abuser in 2008, went to BC for rehab, and was likely an alcohol abuser.<sup>14</sup>

[21] At the initial consultation, Dr. Surapaneni found his cognitive functions mildly affected and advised Nortriptyline, and to review him from time to time. The next visit was in June 2019 to fill out the Workplace Safety and Insurance Board (WSIB) forms. After that, October 2019.<sup>15</sup>

[22] By June 2020, a year after the initial consultation, and with appointments every three months or so, Dr. Surapaneni indicates his treatments have failed and there is no possibility of improving his condition.<sup>16</sup> The minimal intervention by Dr. Surapaneni does not indicate a severe condition, nor does it indicate a condition that has no possibility of improving as there has been no ongoing, in-depth treatment provided other than the medication. Finally, Dr. Surapaneni indicated to WSIB that the Claimant takes his medications, specifically Percocet twice daily<sup>17</sup> without improvement. The Claimant himself noted the Nortriptyline, which was increased in October 2020, helped him, the Gabapentin worked sometimes, and he only takes half a Percocet two or three times a week. The Claimant testified that he is getting better with the medications and appointments with Dr. Surapaneni four to six times a year.

[23] As stated, I do not put much weight on Dr. Surapaneni's opinions. He has misleading information on the Claimant's history. He is advocating for a disability by stating all possible treatment have been tried and failed, though there is no evidence of any therapies tried unsuccessfully, nor have there been numerous trials of medications. According to the Claimant, the medications and the minimal supportive therapy from Dr. Surapaneni helps him.

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<sup>14</sup> GD 2 101 clinical notes

<sup>15</sup> GD 2 69, June 27, 2019 and GD 2 95 October 28, 2019

<sup>16</sup> GD 2 8 June 23, 2020

<sup>17</sup> GD 5 2 October 27 2020

[24] I agree with the Minister that the minimal treatment of medications and supportive therapy does not indicate a severe symptomology, despite Dr. Surapaneni's assertions that he is mentally and physically unfit to work in any job.

[25] Physically, the Claimant struggled with significant pain and sensitivity two week post surgery, but managed to return to work.<sup>18</sup> The only indication of physical treatment received was a community treatment program of care from July 31, 2018 to August 20 2018, three times a week with moderate recovery.<sup>19</sup> It is not disputed the Claimant began to have phantom pain in his fingertips.

[26] Two years later, in September 2020, the Claimant was seen by Dr. Levis, a plastic surgeon and Maija McKibbon, an occupational therapist, at the upper extremity program.<sup>20</sup> Dr. Levis diagnosed significant hypersensitivity of the dominant index and long fingers post-amputation. Full functional recovery would not be likely given the length of time since the accident, however further recovery over the next 12 weeks was possible with a hand therapist for desensitization, two to three times a week for one or two six-week blocks.

[27] The Claimant never attended the hand therapy.

[28] To receive a disability pension, a person must follow medical advice.<sup>21</sup> If a person does not do this, then he must have a reasonable explanation for not following the advice. I must also consider what effect, if any, the advice would have had on the person's disability.<sup>22</sup>

[29] The Claimant has not followed medical advice and did not give a reasonable explanation for not following the advice. He stated it was not for him. He stated he cancelled the appointment due to anxiety, and that he only saw Dr. Surapaneni for treatment. Dr. Surapaneni is not qualified to treat the Claimant's physical hand therapy. As well, there are no notes from

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<sup>18</sup> GD 2 76 according to a consultation with Dr. Doherty at St. Josephs London Hospital July 30, 2018.

<sup>19</sup> GD 5 3 September 11, 2020 consultation with dr. Levis, plastic surgeon with the upper extremity program  
<sup>20</sup> *ibid*

<sup>21</sup> The Federal Court of Appeal said this in *Sharma v. Canada (Attorney General)*, 2018 FCA 48.

<sup>22</sup> The Federal Court of Appeal said this in *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

Dr. Surapaneni that he was treating the Claimant for severe anxiety that prevented him from following through with necessary treatment.

[30] I must now consider if following medical advice might have affected the Claimant's disability. I find medical advice might have made a difference to the Claimant's disability.

[31] He is claiming an inability to work due, in part due to the functioning of his hands with the loss of the tips of two fingers. This treatment would have been very important to his functioning. It is also noted as be very important to providing further functional improvement.

[32] Therefore, as the Minister has submitted, there are still treatments left to try which may improve his condition.

**The medical information on his physical ability shows he is capable of working**

[33] Once again, the medical evidence and the testimony from the Claimant are in conflict.

[34] The Claimant testified, as did his uncle G. S., that he continued to work after the amputation until the end of the season, in December 2018. As he did every year, he went on EI from December 31, 2018 to April 2019 because he was a seasonal worker. He always worked May to December and took EI in between. He did not go on EI sick benefits in December 2018.

[35] After the accident in July 2018, he worked for another five to six months on the farm. I accept he would have struggled with pain and sensitivity after the surgery as noted by Dr. Doherty.<sup>23</sup> The Claimant stated that he returned to work after the surgery because he is a workaholic.

[36] The farm is actually six properties, in a 10-mile radius. He returned to working the family farm in 2002 full time as the lead hand. His father had become ill, but was capable of taking all the meetings, turning over the running of the farm to the Claimant. The Claimant would train and help the foreign workers with spraying and labour. There were four other employees. He was the supervisor.

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<sup>23</sup> GD 2 76 July 30, 2018



[37] After the accident, he stated he did light duties, and was unable to do the welding or mechanical work he used to do. He also stated that no one else could run the farm but him. He testified that he taught the Jamaican workers how to run the farm, and they did start running the farm in 2019.

[38] Dr. Surapaneni noted that he had made several attempts to return to work without any success.<sup>24</sup> When questioned about the unsuccessful attempts at returning to work, the Claimant testified that he had to go back to work after the accident, but it was not the same duties. Given his injuries, I accept this to be the case however; there is no corroborating evidence that he was unable to do the job. He did not go on EI sick benefits. While on EI, he did try to find work through the employment centre and online. He was looking for a job as a local labourer but there was not much work out there. The type of job he was looking for indicates he felt he could still do work with his hands, despite the amputations.

[39] He stated that after the EI ended, in May 2019, he felt he could not go back to work. The Claimant testified that he did not try to go back to work after May 2019. He also testified that he tried to drive around the farms during the week to see if things were going well, but just to get out of the house. He stated he could only do this for two weeks.

[40] Again, I cannot put weight on Dr. Surapaneni's claim that he had many failed attempts at returning to work. The evidence does not support this.

[41] Dr. Levis noted in 2020<sup>25</sup> that the Claimant was working on the farm in a supervisory role. He was limited in labour tasks due to his right hand. His tasks were driving along the six properties, checking in on the labourers needs at the harvest sites, with occasional administrative tasks. He worked 14 to 15 hours, seven days a week and was managing his current duties.

[42] The Claimant testified that he never told the doctor that, and the doctor is confused. He then stated that he has driven around a few times, but not in a supervisory role.

[43] Dr. Levis' description of his work day and duties is too specific to be a misunderstanding. He also has no reason to fabricate this information. Dr. Levis also noted that the Claimant feels

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<sup>24</sup> GD 6 2 November 19 2020

<sup>25</sup> GD 5 3 September 11 ,2020

useless working on the farm as he cannot work how he used to; he enjoys being on the farm and continues to serve in a supervisory capacity for the workers. The duties described, which are mainly sedentary, are within the Claimant's capacity. It is reasonable that a family member would have to have some supervisory role. Dr. Levis' consultation also noted they discussed a return to work specialist involvement, the hand therapy, presumably in order to get the Claimant to some physical functioning of the farm that he missed. It was clear he was already managing well as a supervisor, but wanted to return to his previous physical duties. As previously discussed, he unreasonably refused the treatment recommended by Dr. Levis.

[44] 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.<sup>26</sup> I don't have to do that here because the Claimant did not follow medical advice and did not give a reasonable explanation for not following the advice. This means he did not prove his disability was severe by December 31, 2020.<sup>27</sup>

## **Conclusion**

[45] 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.

[46] This means the appeal is dismissed.

Jackie Laidlaw  
Member, General Division – Income Security Section

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<sup>26</sup> The Federal Court of Appeal said this in *Villani v. Canada (Attorney General)*, 2001 FCA 248.

<sup>27</sup> The Federal Court of Appeal said this in *Sharma v. Canada (Attorney General)*, 2018 FCA 48.