



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *RS v Minister of Employment and Social Development*, 2021 SST 434

Tribunal File Number: GP-20-1447

BETWEEN:

R. S.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Jean Lazure

Claimant represented by:

Teleconference hearing on: April 1, 2021

Date of decision: April 21, 2021

Decision

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

Overview

[2] The Claimant was 52 years old as of the hearing. In terms of education, I note that he completed grade 12. The Claimant also completed a course as a carpenter. The Minister's submissions indicate the Claimant has a diploma as a marine facility security officer¹, but the Claimant did not mention this in his testimony.

[3] Upon entering the workforce, the Claimant worked as a carpenter for different contractors. He then spent most of his working life at the X Port: first as a dockworker, then in security, in maintenance, and finally as a director of operations. The Claimant ceased working in October 2018.

[4] The Claimant applied for a CPP disability pension on October 3, 2019. The application in the file does not seem to have the habitual stamp as to when the Minister of Employment and Social Development (Minister) received the application². The Minister refused his application because his health conditions were not disabling and the medical evidence did not support a finding of severe disability. The Claimant appealed that decision to the Social Security Tribunal's General Division.

What the Claimant must prove

[5] For the Claimant to succeed, he must prove he has a disability that was severe and prolonged by the date of the hearing.³

¹ This is found in the file on page GD5-10.

² This is found in the file on page GD2-4.

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

[6] 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

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

Reasons for my decision

[8] I find the Claimant has not proven he has a disability that was severe and prolonged by the date of the hearing on this matter. I reached this decision by considering the following issues.

The Claimant’s disability is not severe

- The Claimant believes his limitations affect his ability to work

[9] The Claimant has Crohn’s disease, heart palpitations and arrhythmias. He also indicated that he has cirrhosis of the liver and renal failure. The Claimant attributes these last two medical conditions to long-term use of the drug Remicade, which he takes for his Crohn’s disease.

[10] My focus though 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 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

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

[12] The Claimant says that his Crohn’s is his most problematic condition in his day-to-day life. He has bowel movements that are numerous, sudden and unpredictable, and often diarrhea.

Canada Pension Plan. The Claimant’s CPP contributions are on GD2-50. In this case, the Claimant’s coverage period ends December 31, 2021.

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.

The Claimant takes the drug Remicade to manage the symptoms of Crohn's, to harden his stool, minimize diarrhea, and decrease the inflammation.

[13] The Claimant focused in his testimony on Crohn's and its impact on the possibility of working. Its unpredictability would make him an unreliable employee. The Claimant would have to take time to go to the bathroom and then to apply the creams he needs to soothe his painful rectal area, or even possibly take a shower.

[14] The Claimant testified that his heart palpitations and arrhythmias were returning. These had largely subsided after an operation in December 2016. He indicated that he would likely need to have that operation again. I find it reasonable to infer from the Claimant's testimony that since this operation addressed his heart issues in December 2016, it would do so again. I find the Claimant implied this in his testimony.

- The medical evidence does not support what the Claimant says about his limitations

[15] I acknowledge that the Claimant genuinely believes his limitations affect his ability to work. However, the Claimant must provide objective medical evidence to support this.⁹

[16] I find that the medical evidence does not support what the Claimant says.

[17] There are seven reports on file¹⁰ from Dr. Fidelia Silva, gastroenterologist. They range from August 7, 2018, to April 28, 2020, for a period of almost two years. Of those reports, four speak of "remission" in speaking of the Claimant's Crohn's disease, and one speaks of "probable remission". The reports that speak of remission are dated August 7, 2018, December 10, 2018 ("probable remission"), June 13, 2019, and April 1, 2020.

[18] The Cambridge Dictionary defines "remission" as "a period of time when an illness is less severe or is not affecting someone". I find that reports that speak of remission are not in line with a severe disability.

⁹ The Federal Court of Appeal said this in *Warren v. Canada (Attorney General)*, 2008 FCA 377; the Federal Court repeated this in *Canada (Attorney General) v. Dean*, 2020 FC 206.

¹⁰ These are found in the file at pages GD2-64 to GD2-72 and GD2-87 to GD2-92.

[19] When I put this to the Claimant at the hearing, he said that “remission”, to him, is that his stools are not bloody, that he is not bleeding profusely when he has a bowel movement.

[20] However, other than the general definition of the word “remission” mentioned above, these reports that speak of remission also provide specific examples of what that looks like:

- August 7, 2018: stools are solid, and the Claimant is more tired but otherwise doing fairly well;
- December 10, 2018: no more loose stools since the fall;
- June 13, 2019: Claimant is doing well but has cramps a few weeks before taking Remicade, but he continues to drink soft drinks. Stools more solid than before;
- April 1, 2020: Stools are normal. No diarrhea except 2 days after Remicade. No symptoms from complications from cirrhosis and the Claimant has lost weight by stopping soft drinks;

[21] Of the three reports that do not mention remission, two are contemporary to one another, dated October 18 and October 21, 2019. Considering there were three reports prior that spoke of remission and one following (dated April 1, 2020), I find that these are outliers.

[22] However, I am struck by Dr. Silva’s final report, dated April 28, 2020. It comes less than a month after the progress report dated April 1, 2020 and seems to be well out of line with the preceding reports. I note that while all of the preceding reports were addressed to the Claimant’s family doctors, this last one is addressed to “To whom it may concern”, likely to be used in this case.

[23] Considering how much of an outlier this last report is, considering how much it deviates from the previous reports, considering that last report that spoke of remission was less than a month before this final report, I believe Dr. Silva was advocating for her client in her last report. I simply cannot give it much weight.

[24] There is also a report on file by Dr. Sylvie LePage, the Claimant's family doctor, dated June 12, 2020¹¹. It is addressed to the French equivalent of "To whom it may concern". It states the Claimant is under her care since 2016 and has numerous health issues that prevent him from working:

- The Claimant's Crohn's still causes frequent diarrhea;
- The Claimant has developed cirrhosis of the liver which causes extreme fatigue;
- Dr. LePage also speaks of renal insufficiency.

[25] This report is short and is short on specifics, contrary to Dr. Silva's progress reports. It mentions no limitations regarding the renal insufficiency. I find that there is not much evidence, in the file or in the Claimant's testimony, about the impact of fatigue on his ability to work. In fact, Dr. Silva's report dated April 1, 2020, states there are no symptoms from complications from cirrhosis.

[26] The numerous reports speaking of Crohn's remission are much more specific. They cover a significant period - almost two years - and the last one is contemporary to Dr. LePage's report. For these reasons, I choose to give greater weight to those progress reports by Dr. Silva.

[27] I find that the medical evidence does not support a finding of severe disability. As a result, I simply cannot find that the Claimant's disability is severe.

Conclusion

[28] 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.

[29] This means the appeal is dismissed.

Jean Lazure
Member, General Division - Income Security

¹¹ It is found in the file on page GD2-96.