



Citation: *TW v Minister of Employment and Social Development*, 2021 SST 548

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: (Claimant) T. W.

Representative: Chantelle Yang

Respondent (Minister): Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated May 27, 2020 (issued by Service Canada)

Tribunal member: Gerry McCarthy

Type of hearing: Teleconference

Hearing date: August 17, 2021

Hearing participants: Appellant
Appellant's representative

Decision date: August 18, 2021

File number: GP-20-898

Decision

[1] The appeal is allowed.

[2] The Claimant, T. W., 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

[3] The Claimant suffered a heart attack on August 19, 2015. The Claimant returned to his job as a controller at X five-days later. However, the Claimant stopped working at his job on October 28, 2015, owing to chest pain, fatigue, and concentration difficulties. The Claimant has not returned to any employment since October 28, 2015.

[4] The Claimant's current application for a CPP disability pension was received by the Minister on December 17, 2018. The Minister of Employment and Social Development (Minister) refused his application. The Claimant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Claimant says he cannot work at any employment owing to his congestive heart failure which causes fatigue, concentration difficulties, memory problems, and chest pain.

[6] The Minister says the medical evidence did not support the Claimant's limitations were of the severity that they would preclude him from suitable light and low stress employment within his capacity.

What the Claimant must prove

[7] For the Claimant to succeed, he must prove he had a disability that was severe and prolonged by the hearing date.¹

¹ Service Canada uses a claimant'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 section 44(2) of the *Canada Pension Plan*. The Claimant's CPP contributions are on GD6. In this case, the Claimant's coverage period ends after the hearing date, so I have to decide whether he was disabled by the hearing date.

[8] The *Canada Pension Plan* defines “severe” and “prolonged.”

[9] A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.²

[10] This means I have to look at all of the Claimant’s medical conditions together to see what effect they have on his ability to work. I also have to look at his background (including his age, level of education, and past work and life experience). This is so I can get a realistic or “real world” picture of whether his disability is severe. If the Claimant is able to regularly do some kind of work that he could earn a living from, then he isn’t entitled to a disability pension.

[11] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.³

[12] This means the Claimant’s disability can’t have an expected recovery date. The disability must be expected to keep the Claimant out of the workforce for a long time.

[13] The Claimant has to prove he has a severe and prolonged disability. He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not he is disabled.

Reasons for my decision

[14] I find that the Claimant has a severe and prolonged disability by the hearing date. I reached this decision by considering the following issues:

- Is the Claimant’s disability severe?
- Is the Claimant’s disability prolonged?

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

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

Is the Claimant's disability severe?

[15] The Claimant's disability is severe. I reached this finding by considering several factors. I explain these factors below.

The Claimant's functional limitations do affect his ability to work

[16] The Claimant has congestive heart failure and an apical aneurysm. However, I can't focus on the Claimant's diagnoses.⁴ Instead, I must focus on whether he has functional limitations that get in the way of him earning a living.⁵ When I do this, I have to look at all of the Claimant's medical conditions (not just the main one) and think about how they affect his ability to work.⁶

[17] I find the Claimant has functional limitations.

What the Claimant says about his functional limitations

[18] The Claimant says his medical condition has resulted in functional limitations that affect his ability to work. Specifically, the Claimant says his congestive heart failure causes him to have concentration difficulties, memory problems, fatigue, chest pain, anxiety and numbness in his fingers. The Claimant also says his cognitive impairments cause him to have stress which increases his blood pressure.

[19] I accept the Claimant's testimony on his functional limitations, because his statements were detailed, reasonably consistent, and forthright.

What the medical evidence says about the Claimant's functional limitations

[20] The Claimant must provide medical evidence that shows that his functional limitations affected his ability to work by the hearing date.⁷

[21] The medical evidence supports what the Claimant says. For example, Dr. Chao recommended in November 2015 that the Claimant "not attend work" owing to the

⁴ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁵ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁶ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

⁷ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

increased stress and pressure on his heart (GD2-269). Dr. Chao further reported in August 2016 that the Claimant experienced chronic fatigue and shortness of breath on exertion (GD2-236).

[22] There was further medical evidence that supports what the Claimant says. For example, Dr. Burns reported in August 2017 that the Claimant suffered from fatigue (with exertion), cold limbs, cold sensitivity, and chest pain. Specifically, Dr. Burns did not recommend a gradual return to work for the Claimant (GD2-313).

[23] Finally, Dr. Greiner wrote in June 2017 that the Claimant had to be off work to keep his heart rate and blood pressure low. Dr. Greiner explained that work was “very stressful” for the Claimant which made keeping his heart rate and blood pressure down impossible to achieve (GD2-298). I realize the Minister submitted that the medical evidence on file did not support the Claimant had severe ongoing limitations that precluded any work. Nevertheless, I place more weight on the report from Dr. Greiner that working at employment for the Claimant would make keeping his heart rate and blood pressure down “impossible to achieve.”

[24] The medical evidence supports that the Claimant’s concentration difficulties, memory problems, fatigue, chest pain, anxiety, and finger numbness prevented him from performing his usual job by the hearing date.

[25] Next, I will look at whether the Claimant followed medical advice.

The Claimant has followed medical advice

[26] The Claimant has followed medical advice.⁸ For example, Dr. Burns reported the Claimant’s compliance with all treatment and lifestyle modifications was excellent (GD2-315). Furthermore, I accept the Claimant’s testimony that he takes his prescribed medications regularly because his statements were forthright and supported by the report from Dr. Burns.

⁸ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

[27] I now have to decide whether the Claimant can regularly do other types of work. To be severe, the Claimant's functional limitations must prevent him from earning a living at any type of work, not just his usual job.⁹

The Claimant can't work in the real world

[28] When I am deciding whether the Claimant can work, I can't just look at his medical conditions and how they affect what he can do. I must also consider factors such as his:

- age
- level of education
- language abilities
- past work and life experience

[29] These factors help me decide whether the Claimant can work in the real world—in other words, whether it is realistic to say that he can work.¹⁰

[30] I find the Claimant can't work in the real world for the following reasons:

[31] First: The Claimant has tried volunteer work, but had to stop one effort two-years ago because his medical condition prevented him from working additional hours. Specifically, the Claimant stopped his volunteer efforts at the "Rotary Club" because the volunteer work began to increase from two-hours per month to 10-hours per month. I realize the Minister submitted that that Claimant's activities (including his volunteering) suggested that he maintained some capacity for employment within his limitations. However, the Claimant's decision to stop his volunteer hours with the "Rotary Club" showed that his functional limitations were such that he could only cope with minimal volunteer hours per month.

[32] Second: The Claimant's life experience with congestive heart failure since August 2015 simply cannot be ignored. For example, the Claimant did try to return to his job a week after his heart attack in August 2015. However, the Claimant's experience over

⁹ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

¹⁰ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

the following two-months was that his heart disease affected his memory and concentration which in turn increased his stress on the job. I realize the Minister submitted that the Claimant's education and work experience would support he had transferable skills to adjust to other work. However, the Claimant's functional limitations were such that he would become stressed in any employment. In short, the Claimant's stress at trying some employment would increase his blood pressure and potentially lead to a cardiac event or a stroke.

[33] I find that the Claimant's disability was severe by the hearing date.

Is the Claimant's disability prolonged?

[34] The Claimant's disability is prolonged.

[35] The Claimant's conditions began in August 2015 when he suffered a heart attack. These conditions have continued since then, and they will more than likely continue indefinitely.¹¹ I find the Claimant's disability was prolonged by the hearing date for the following reasons:

[36] First: The report from Dr. Chao's cited Dr. Takhar who advised that the Claimant's condition was "unlikely to improve" (GD2-236).

[37] Second: Dr. Greiner reported that the Claimant's congestive heart failure was likely in gradual decline (GD2-298).

[38] Third: The Claimant's oral testimony on his disability persuaded me his condition was not improving and likely to continue indefinitely.

When payments start

[39] The Claimant had a severe and prolonged disability in November 2015 when Dr. Chao wrote the Claimant could not attend work. However, the *Canada Pension Plan* says a claimant can't be considered disabled more than 15-months before the Minister

¹¹ In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that a claimant has to show a severe and prolonged disability by the end of their minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

receives their disability pension application. After that, there is a four-month waiting period before payments start.¹²

[40] The Minister received the Claimant's current application in December 2018. That means he is considered to have become disabled in September 2017.

[41] Payment of his pension starts as of January 2018.

Conclusion

[42] I find that the Claimant is eligible for a CPP disability pension because his disability is severe and prolonged.

[43] This means the appeal is allowed.

Gerry McCarthy

Member, General Division – Income Security Section

¹² Section 69 of the *Canada Pension Plan* sets out this rule. This means that payments can't start more than 11 months before the application date.