



Citation: *AT v Minister of Employment and Social Development*, 2021 SST 631

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant (Claimant): A. T.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated November 4, 2020 (issued
by Service Canada)

Tribunal member: Virginia Saunders

Type of hearing: Teleconference

Hearing date: September 9, 2021

Hearing participants: Claimant

Decision date: September 26, 2021

File number: GP-21-3

Decision

[1] The appeal is dismissed.

[2] The Claimant, A. T., isn't eligible for a Canada Pension Plan (CPP) disability pension or a post-retirement disability benefit. This decision explains why I am dismissing the appeal.

Overview

[3] The Claimant is 61 years old. He was born and raised in India. He moved to Canada in 2003. He has a Bachelor of Commerce degree, and many years of business experience in India, Canada, and the Middle East. In 2013, he started working as an accountant for a company in British Columbia.

[4] The Claimant had a stroke in June 2019. He was in hospital for a week. He applied for a CPP disability pension later that month. He said he couldn't work because he had pain and weakness as a result of the stroke. He also had worsening abdominal pain, depression, and difficulty sleeping.

[5] The Minister of Employment and Social Development (Minister) refused the application. The Claimant appealed the Minister's decision to the Social Security Tribunal's General Division.

What the Claimant must prove

[6] For the Claimant to receive a regular CPP disability pension, he must prove he has a disability that was severe and prolonged by September 30, 2019. This is because he began receiving a CPP retirement pension in October 2019.¹

¹ Service Canada uses a claimant's years of CPP contributions to calculate their coverage period, or "minimum qualifying period" (MQP). They have to be disabled by the end of their coverage period. See section 44(2) of the *Canada Pension Plan*. However, a claimant can't receive a CPP disability pension if they are already getting a CPP retirement pension. They can apply to cancel the retirement pension, but only if they became disabled on or before the month they started getting the retirement pension. See sections 66.1(1) and 66.1(1.1) of the *Canada Pension Plan*. The Claimant's CPP contributions are on GD3-22-23.

[7] If the Claimant was not disabled by September 30, 2019, he may qualify for the post-retirement disability benefit (PRDB). The PRDB is paid to a disabled claimant under age 65 who is receiving a CPP retirement pension.

[8] For the Claimant to receive a PRDB, he must prove he has a severe and prolonged disability that started after September 30, 2019.

What is a severe and prolonged disability?

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

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

[11] This means that if the Claimant is regularly able to do some kind of work that he could earn a living from, then he isn’t entitled to a disability pension.

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

[13] 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.

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

Reasons for my decision

[15] The Claimant has not proven that he has a disability that was severe and prolonged, either before or after September 30, 2019. I reached this decision by considering the following issues.

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?

[16] The Claimant's disability isn't severe. I accept that he has functional limitations that affect his ability to work. However, he has been working part-time since March 2020. Although this employment might end if he doesn't start working full-time, the Claimant is still able to earn a living if he works somewhere else. I have explained this in more detail below.

– The Claimant has functional limitations that affect his ability to work

[17] The Claimant has functional limitations that affect his ability to work.

[18] The Claimant gave evidence at the hearing. He was straightforward and honest. He told me he hasn't fully recovered from the stroke, or from his abdominal issues. He said he has limitations that affect his ability to work in the following ways:

- He gets neck and shoulder pain when he works at a computer.
- He can't sleep because of his neck pain, so he sleeps in and gets up late. This means he can't keep to a schedule.
- Sometimes, he takes longer to get ready because he spends more time in the washroom.
- He can't hear very well, so he has to use a speaker phone. He has difficulty listening and understanding what people are saying.
- He is taking many different medications that upset his system. He can't focus on tasks. He is forgetful. He can't remember computer passwords. He isn't productive.

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

[19] The medical evidence shows the Claimant has functional limitations.⁴

[20] Five months after the stroke, the Claimant's family doctor, Dr. Parhar, said the Claimant still had weakness in his left arm and leg. He had trouble with things like

⁴ The Claimant must provide medical evidence that shows that his functional limitations affect his ability to work. See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

dressing, bathing, and grooming. His medications caused worsening acid reflux, abdominal pain, and nausea. His loss of independence affected his mood. He was depressed. He also had chronic anemia, which contributed to his weakness and fatigue.⁵

[21] In January 2020, Dr. Parhar said the Claimant had completed his rehabilitation program and continued to improve. He still had mild coordination deficits, as well as trouble with concentration, focus, short-term memory, and chronic fatigue. His abdominal problems were the side effect of medication he was taking. He was going to take steps to minimize these.⁶

[22] Dr. Parhar's notes show the Claimant's different symptoms flared up throughout 2020. He had abdominal pain; head, neck, shoulder, and back pain; chest tightness, poor sleep, left-sided weakness, dizziness, and stress.⁷

[23] In October 2020, Dr. Parhar wrote that the Claimant was limited by chronic fatigue, poor sleep, cognitive concerns, decrease in short-term memory, brain fog, residual left-side weakness, and intermittent abdominal pain. These limited his ability to work at the computer, do paperwork, manage a daily commute, sit for long periods, or be efficient at work.⁸

[24] In August 2021, Dr. Parhar said he didn't expect the Claimant to have any further improvement of his cognition, left-side weakness, cervical pain, or hearing loss.⁹

– **The Claimant can work despite his functional limitations**

[25] The Claimant can work despite his functional limitations.

[26] To be severe, the Claimant's functional limitations must regularly prevent him from working at **any** substantially gainful occupation, not just his usual job.¹⁰ The

⁵ See GD1-17-30.

⁶ See GD2-107.

⁷ See GD2-82-95.

⁸ See GD2-58.

⁹ See GD6-2.

¹⁰ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

Canada Pension Plan says a substantially gainful occupation is one that pays a salary or wages equal to or more than the maximum annual amount a person could receive as a disability pension.¹¹ The maximum CPP disability pension is about \$16,000.00 per year.¹²

[27] The evidence shows the Claimant is regularly able to work enough to earn that much. He has been doing so since March 2020.

[28] In January 2020, Dr. Parhar said it wasn't clear if the Claimant would return to his pre-existing function. But he expected the Claimant would be able to return to work within the next 12 to 24 months.¹³ Later that month, a neurologist, Dr. Chen, recommended the Claimant return to work, despite having some weakness in his left arm, and significant problems with reflux.¹⁴

[29] In March 2020, the Claimant started a graduated return to work. He worked four hours a day, four days a week. The following month, he complained of low back pain. Dr. Parhar advised him to start working three days a week instead of four.¹⁵ By the end of May 2020, the Claimant was ready to go back to working four days a week.¹⁶

[30] The Claimant is still working for the same company. He works from home. For many months all the employees did this because of the pandemic. Now everyone has had to return to the office, except the Claimant. His employer has let him continue working from home, although he goes to the office one day a week to exchange paperwork. He works 25 to 30 hours a week. He is paid \$25.00 per hour. His hours are flexible, and he can take breaks when he needs to.

¹¹ See section 68.1 of the *Canada Pension Plan Regulations*.

¹² In 2019 it was \$16,347.60, in 2020 it was \$16,651.92, and in 2021 it is \$16,963.92. See [Canada Pension Plan \(CPP\) Maximum Monthly Amounts of New Benefits - Open Government Portal](#).

¹³ See GD2-107.

¹⁴ See GD2-59.

¹⁵ See GD2-87

¹⁶ See GD2-89.

[31] In 2020, the Claimant earned \$24,900.00.¹⁷ Working at his current pace, he will likely earn at least that much in 2021. The Claimant told me his employer keeps track of his hours by monitoring his computer use. He is only paid for time he actually works.

[32] The Claimant told me his employer has accommodated him because he has been a faithful, good worker. But there are problems with his work arrangement. It has caused tension with the staff who have to be in the office. The Claimant doesn't feel productive. In addition, his employer wants him to start working full-time in the office, because there is a new computer system. He hasn't been given a deadline to start doing this, but he is feeling pressure to agree to the new arrangement. So far, he has resisted. He doesn't think he will be able to manage, because he can't keep to a schedule.

[33] The evidence shows the Claimant is capable of pursuing a substantially gainful occupation. It also shows the Claimant is capable **regularly** of working this much.

[34] I recognize that working has become more difficult for the Claimant. He may not be as efficient or as productive as he would like. Despite this, he has managed to continue working in his job for a year and a half. As for keeping to a schedule, the exact times that the Claimant works may change from day to day, depending on how he feels. But he is able to work a predictable number of hours each week.

[35] The Claimant's employer is likely satisfied with his performance and his reliability, because they continue to employ him. They want him to work more. Because the Claimant is paid by the hour, working full time will cost his employer more money. It is unlikely the employer would ask the Claimant to return to full-time employment if they weren't satisfied with the current pace and quality of his work.

[36] I recognize that the Claimant may not be able to keep his job if he doesn't start working full-time. But there is no medical evidence suggesting he can't do a similar job

¹⁷ See GD3-23.

working part-time for a different employer. His doctors cleared him to return to work, and there is no evidence they have changed their minds.

– **The Claimant doesn't have a benevolent employer**

[37] A person who works for a benevolent employer can be found to have a severe disability, even if they are capable regularly of working at substantially gainful employment. But the Claimant doesn't have a benevolent employer.

[38] A benevolent employer will change work conditions and lower their expectations, in keeping with an employee's limitations. They will expect considerably lower performance than they do from other employees. A benevolent employer accepts that the employee can't perform at a competitive level.¹⁸

[39] This doesn't describe the Claimant's situation. His employer has accommodated his wish to work from home, to work part time, to have flexible start times, and to take breaks. But the Claimant is still expected to produce. He is only paid for the hours he actually works. There isn't any evidence that his employer is unhappy with his performance, or has experienced hardship because of the accommodations. Instead, the accommodations are a way for the employer to keep an employee whose work they value.

– **The Claimant can work in the real world**

[40] 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 ability, and past work and life experience. These factors help me decide if he has any ability to work in the real world.¹⁹

[41] I recognize the Claimant's age (61) would make it harder for him to find employment if he lost his current job. But his education and years of experience would be assets. Although English isn't his first language, he has been able to function in

¹⁸ See *Atkinson v Canada (Attorney General)*, 2014 FCA 187.

¹⁹ The Federal Court of Appeal said this in *Villani v. Canada (Attorney General)*, 2001 FCA 248.

English in the workplace for many years. There is no evidence that language ability affects his employability.

[42] Furthermore, the Claimant is already working in the real world. His work schedule, his productivity, and his income show he is capable regularly of pursuing a substantially gainful occupation.

Conclusion

[43] I find that the Claimant isn't eligible for a CPP disability pension or a post-retirement disability benefit because his disability isn't severe. Because I have found that his disability isn't severe, I didn't have to consider whether it is prolonged.

[44] This means the appeal is dismissed.

Virginia Saunders
Member, General Division – Income Security Section