



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *AB v Minister of Employment and Social Development*, 2021 SST 808

Tribunal File Number: GP-18-2625

BETWEEN:

A. B.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Lianne Byrne

Claimant represented by: Charu Mehta

Teleconference hearing on: February 3, 2021

Date of decision: February 25, 2021

DECISION

[1] The Claimant is not entitled to a Canada Pension Plan (CPP) disability pension.

OVERVIEW

[2] The Claimant worked as a service technician until December 2016. He stopped working due to injuries sustained in a motor vehicle accident. He has pain in his lower back, left shoulder, left leg, and left foot. The Minister received the Claimant's application for the disability pension on October 27, 2017. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] To qualify for a CPP disability pension, the Claimant must meet the requirements that are set out in the CPP. More specifically, the Claimant must be found disabled as defined in the CPP on or before the end of the minimum qualifying period (MQP). The calculation of the MQP is based on the Claimant's contributions to the CPP. I find the Claimant's MQP to be December 31, 2019.

ISSUE(S)

[4] Did the Claimant's conditions result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2019?

[5] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2019?

ANALYSIS

[6] Disability is defined as a physical or mental disability that is severe and prolonged¹. A person is considered to have a severe disability if incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death. A person must prove on a balance of

¹ Paragraph 42(2)(a) *Canada Pension Plan*

probabilities their disability meets both parts of the test, which means if the Claimant meets only one part, the Claimant does not qualify for disability benefits.

Severe disability

[7] The Claimant worked at X as a service technician from October 27, 2008 until December 15, 2016. His duties included travelling to customer properties to troubleshoot, maintain, and repair water furnaces, water heaters, and boilers. This was a very physically-demanding job. It involved a lot of bending, squatting, lifting, and squeezing into small spaces. He also had to be mentally alert to perform his duties.

[8] He was able to do this job without difficulty until he was injured in a motor vehicle accident on May 11, 2016. He briefly lost consciousness in the accident. When he woke up, he was confused and his whole body was numb. He had pain in his neck, back, and left side (shoulder, knee, and ankle). He also had numbness on the left side with prolonged sitting.

[9] After 3-4 months, he tried to return to modified duties at work. For the first month, he worked in a warehouse. He would assist technicians that came to pick up their parts. He then tried to return to light maintenance work. This involved going to customer houses to check their furnaces. He was unable to do any of the repair work because he could not bend, lift, or fit into tight spaces.

[10] He would call another technician to do the service work, which frustrated the customers and his coworkers. His coworkers would not respond to his requests for assistance. The customers would get upset. He felt pressured to do the service work himself. His employer eventually let him go. He was devastated to lose his job.

[11] Since the motor vehicle accident, he has pain throughout his body, including constant back pain and pain in his knees. He has constant headaches, worse in the morning. He has numbness on the left side of his body. He feels dizzy. He has depression and anxiety with symptoms of sadness and irritability.

[12] As of December 31, 2019, he can sit for 30 minutes before he starts to feel numb. He cannot bend or lift anything heavy. He has difficulty focusing and concentrating. He is forgetful. He is easily angered. He does not feel capable of working.

[13] He attends physiotherapy once per week. He attended counselling, which he found helpful. He continues to do relaxation exercises. He is taking pain medications, which reduce his pain enough that he can walk around a bit. He is taking extra strength Tylenol for his headaches, which reduces his pain for 1-2 hours. He finds Venlafaxine helpful in improving his mood. He is taking sleeping pills and pills for his blood pressure.

[14] The CPP Medical Report was completed on October 24, 2017 by Dr. Shezad Tesani, family physician. The Claimant has post-motor vehicle accident lumbar strain and generalized left extremity myalgia. He also has post-traumatic stress disorder. Further improvement was expected.

[15] Dr. Tesani completed a Disability Certificate on March 6, 2017, noting the Claimant's back pain, left-sided shoulder pain, and left-sided lower leg pain. It is noted that he suffers a complete inability to carry on a normal life. The anticipated duration of disability was 9-12 weeks.

[16] Dr. Jack Hakoun, sports medicine, reported on April 3, 2017 that he has patellofemoral syndrome in the left knee and plantar fasciitis in the left foot.

[17] Ashad Mahmood, psychotherapist, Dr. Tony Toneatto, psychologist, reported on April 24, 2017 that his physical pain, stress, and anxiety continue to interfere with all areas of his functioning. He has acute pain in the neck, left shoulder, left knee, left ankle, chest, and lower back, adjustment disorder with mixed anxiety and depressed mood, and post-traumatic stress disorder. He also has a sleep disorder, anger, and irritability. In a progress note dated September 11, 2017, he was noted to have made some significant gains in therapy and feels that he is better able to manage his pain, depression, and anxiety. Additional treatment was recommended.

[18] On May 9, 2017, Mr. Fabio Salerno, clinical psychologist, reported that he has a mild adjustment disorder with mixed anxiety and depressed mood. From a purely psychological

perspective, he does not exhibit functional limitations with respect to mood and anxiety regulation.

[19] Mr. Salerno reported on May 29, 2018 that he continues to present with a constellation of psychological symptoms impairing his mood and anxiety regulation, sleep, and social functioning. He has a mild adjustment disorder with mixed anxiety and depressed mood.

[20] Dr. Kelly McCutcheon, psychologist, reported on May 31, 2019 that he meets the criteria for an adjustment disorder with mixed anxiety and a depressed mood as well as specific phobia regarding in-vehicle travel. He is experiencing some depression and anxious symptomatology in the context of his ongoing pain and physical concerns.

[21] I considered that the measure of whether a disability is “severe” is not whether the person suffers from severe impairments, but whether the disability prevents the person from earning a living. It is not a question of whether a person is unable to perform their regular job, but rather the person’s inability to perform any substantially gainful work².

[22] In this case, the Claimant testified that he does not feel capable of returning to work. His representative submitted that he is incapable regularly of pursuing any substantially gainful occupation that actually exists and is of real importance. It is pointed out that the Claimant suffers from both physical and psychological impairments and limitations.

[23] While I accept that the Claimant’s health problems prevent him from returning to his physically-demanding, full-time job as a service technician, I agree with the Minister that the Claimant is capable of attempting alternative work within his limitations.

[24] I considered that in a report dated April 2017, Mr. Mohmood and Dr. Toneatti noted that the Claimant made significant gains in therapy and felt better able to manage his pain, depression, and anxiety. There are no medical reports on file to indicate a worsening in his health after the date of this report.

[25] Dr. Tesani noted the Claimant’s lumbar strain, generalized left extremity myalgia, and PTSD in a report dated October 2017. There is no indication from Dr. Tesani’s report that the

² *Klabouch v. Canada (A.G.)*, 2008 FCA 33

Claimant's health problems would prevent him from attempting alternate work within his limitations.

[26] Mr. Salerno wrote in May 2018 that he has an adjustment disorder with mixed anxiety and depressed mood of mild severity. Dr. McCutcheon wrote in May 2019 that he is experiencing some symptoms of depression and anxiety in the context of ongoing pain. However, there is no indication that his limitations would prevent him from returning to alternative work within his limitations.

[27] I therefore find that there is evidence of work capacity. Where there is evidence of work capacity, a person must show that efforts at obtaining and maintaining employment have been unsuccessful because of the person's health condition.³ In this case, the Claimant returned to full-time light duties in approximately August or September 2016. He was initially capable of doing the work as it involved sitting on a chair all day while technicians came to pick up their parts. However, a month later, he returned to light maintenance work. He was being pressured to make repairs, which involves bending, squatting, lifting, and squeezing into tight spaces. He stopped working in December 2016. He has not attempted any other jobs or attempted to retrain since then.

[28] I must assess the severe part of the test in a real world context⁴. This means that when deciding whether a person's disability is severe, I must keep in mind factors such as age, level of education, language proficiency, and past work and life experience. In this case, I considered that he was 57 years old as of the MQP. He is able to speak and understand English. He has a university degree obtained in India. He also has an Appliance Technician Certificate and a Certificate of Qualification obtained in Canada. He has worked since 2008 as a service technician.

[29] Despite his age, he is very well-educated. He is fluent in the English language. In considering his personal characteristics, I do not find that he was unemployable in a real world context as of the MQP. While I accept that he was unable to return to a physically-demanding job, he would not be precluded from attempting lighter work within his restrictions. He has not

³ *Inclima v. Canada (A.G.)*, 2003 FCA 117

⁴ *Villani v. Canada (A.G.)*, 2001 FCA 248

attempted any other jobs since he stopped working at X. Therefore, he has not shown that his efforts at obtaining and maintaining employment have been unsuccessful because of his health condition.

[30] I must assess the Claimant's condition in its totality, which means I must consider all of the possible impairments, not just the biggest impairments or the main impairment⁵. Having considered the totality of the evidence and the cumulative effect of the Claimant's medical conditions, I am not satisfied on the balance of probabilities that he suffered from a severe disability as of the MQP.

CONCLUSION

[31] The appeal is dismissed.

Lianne Byrne
Member, General Division - Income Security

⁵ *Bungay v. Canada (A.G.)*, 2011 FCA 47