



Citation: *DT v Minister of Employment and Social Development*, 2022 SST 834

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: D. T.
Representative: E. S.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated February 17, 2021 (issued by Service Canada)

Tribunal member: Sharon Buchanan
Type of hearing: Videoconference
Hearing date: June 21, 2022
Hearing participants: Appellant
Appellant's representative
Appellant's witness
Decision date: August 8, 2022
File number: GP-21-682

Decision

[1] The appeal is dismissed.

[2] The Appellant, D. T., isn't eligible for a Canada Pension Plan (CPP) disability pension. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant was 54 when he last worked and 56 by December 31, 2014. He has a grade 12 education. He worked as a commercial bus driver and last worked as a security guard for a company that provided protection for striking workers. He left his work with the security company in March 2013 because of sickness. He has not worked since. He wrote that he is disabled because of fatigue, persistent need to urinate and blurred vision caused by diabetes, pain from arthritis, and dizziness and blackouts from high blood pressure and heart problems.

[4] The Appellant applied for a CPP disability pension on March 2, 2020. The Appellant says he has been disabled since March 2013. He said that he has a lot of health problems, and that since he stopped working it has been very bad for him. He said that his health has just continued to get worse.

[5] The Minister of Employment and Social Development (Minister) refused his application. The Minister says that the medical evidence doesn't show that the Appellant was disabled by December 31, 2014 and continuously since then.

[6] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

What the Appellant must prove

[7] For the Appellant to succeed, he must prove he had a disability that was severe and prolonged by December 31, 2014. This date is based on his contributions to the CPP.¹

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

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

[10] This means I have to look at all of the Appellant’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 Appellant 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 Appellant’s disability can’t have an expected recovery date. The disability must be expected to keep the Appellant out of the workforce for a long time.

[13] The Appellant 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.

¹ Service Canada uses an appellant’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 Appellant’s CPP contributions are on page number GD2-11 of the file.

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.

Matters I have to consider first

I accepted documents sent in after the hearing

[14] At the end of the hearing the Appellant's representative asked for time to try and obtain additional medical evidence about the Appellant's health when he stopped working in 2013 and leading up to December 2014. I granted the request.

[15] The Appellant filed two packages of additional documents.⁴ The Minister replied by way of post hearing submissions.⁵ I have considered the Appellant's evidence and the Minister's submissions in reaching my decision.

Reasons for my decision

[16] I find that the Appellant hasn't proven he had a severe and prolonged disability by December 31, 2014.

Was the Appellant's disability severe?

[17] The medical evidence doesn't support that the Appellant's disability was severe. I reached this finding by considering several factors. I explain these factors below.

– The Appellant's functional limitations didn't affect his ability to work

[18] The Appellant's health conditions include High Blood Pressure, Diabetes, Diabetic Retinopathy, Chronic Pain, Arthritis, and Heart Problems. However, I can't focus on the Appellant's diagnoses.⁶ Instead, I must focus on whether he had functional limitations that got in the way of him earning a living.⁷ When I do this, I have to look at **all** of the Appellant's medical conditions (not just the main one) and think about how they affected his ability to work.⁸

⁴ See GD6 and GD8.

⁵ See GD7 and GD10.

⁶ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁷ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁸ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[19] I find that the evidence does not show that the Appellant had functional limitations by December 31, 2014.

– **What the Appellant says about his functional limitations**

[20] The Appellant had a serious stroke and heart attack in November 2020. As a result he has significant residual complications and symptoms that affected his ability to participate in the hearing. He struggles with aphasia. He was assisted in the hearing by two friends. He was able to recall some information about his life around the time he stopped working.

[21] The Appellant says he stopped working as a security guard in 2013 because he couldn't do the physically demanding work of protecting striking workers. He also had trouble because he couldn't leave his post if he needed the bathroom. He said that because of his medical conditions he just was not able to do the job. He said that he has had a bad time. His health has just gotten worse over the years.

[22] He says that his medical conditions resulted in functional limitations that affected his ability to do any work by December 31, 2014.

[23] In his written materials he said that his high blood pressure, heart problems, body pain and diabetes resulted in:

- A low heart beat, loss of breath and fatigue
- Fainting spells and dizziness
- An inability to lift or carry anything
- A moderately impacted ability to walk, sit or stand
- Difficulties with bending
- An inability to do any household maintenance or use public transit⁹

⁹ See GD2-76, 77

– **What the medical evidence says about the Appellant’s functional limitations**

[24] The Appellant must provide medical evidence that shows that his functional limitations affected his ability to work by December 31, 2014.¹⁰

[25] The medical evidence supports some of what the Appellant says. It supports that many of his medical conditions are long standing. An October 17, 2013 letter from his family practitioner, Dr. Mohamed, confirms that the Appellant was being treated for:

- Diabetes Type II since March 1999
- Hypertension since 1995
- Gout
- Hypercholesterolemia (high cholesterol)
- Cholelithiasis (gall stone disease).¹¹

[26] However the medical evidence does not confirm that he experienced functional limitations as a result of these conditions. For example:

- In a September 2013 Limitations to Participation report in support of the Appellant’s application for social assistance Dr. Mohamed said the Appellant had no medical limitations to participating in activities of daily living.¹²
- In October 2013 Dr. Mohamed says the Appellant’s multiple medical conditions were managed with medications and general lifestyle changes.¹³
- In a July 2014 medical report in support of the renewal of the Appellant’s Class B Driver’s license Dr. Mohamed said the Appellant was in good physical health and followed for medical management of his type II Diabetes.¹⁴

¹⁰ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹¹ See GD6-3

¹² See GD8-47

¹³ See GD6-3

¹⁴ See GD8-14

[27] Medical reports in the fall of 2014 noted that the Appellant had severe diabetic retinopathy and that he had experienced a vitreous hemorrhage and a retinal tear.¹⁵ This serious medical condition was diagnosed and present prior to December 2014. However I agree with the Minister that the medical evidence shows that the Appellant had laser surgery in late 2014 and since then the medical reports indicate he has maintained normal vision.¹⁶ His current family physician, Dr. Yakub, who completed the March 2020 Medical Report in support of the Appellant's CPP application, does not note any limitations related to this condition.¹⁷

[28] The Appellant points to a very serious stroke and heart attack in November 2020 as further proof of his deteriorating health and the severity of his condition. He submits that this is proof of the prolonged nature of his conditions. He has provided medical evidence of his heart attack and stroke.¹⁸ The Appellant was very sincere in this belief. Unfortunately his belief that his condition was severe by December 24, 2014 is not enough to satisfy the requirement for him to provide some medical evidence in support of this.

[29] The more recent medical evidence filed in support of his application dating from 2018 to 2021 mentions that many of his conditions are chronic and longstanding. Dr. Mohamed said in 2013 that the Appellant's medical conditions would be a long term risk on his cardiovascular system. However the medical evidence doesn't mention or confirm that he was experiencing limitations from these conditions by December 31, 2014. For example:

- Stress tests in January 2014 indicated that the Appellant's heart function was normal.¹⁹
- In a May 29, 2015 report an Endocrinologist reported that the Appellant's blood pressure and cholesterol were managed with medication and remained

¹⁵ See GD2-56 to 59

¹⁶ See GD8-7

¹⁷ See GD2-52

¹⁸ See GD3

¹⁹ See GD8-31

within goal ranges. The Endocrinologist recommended the Appellant continue with recommended lifestyle modifications and medication.²⁰

[30] With regard to the Appellant's physical pain and stiffness the medical evidence does not support the limitations that the Appellant described when he stopped working in March 2013.²¹

[31] I accept that the Appellant has had many of these conditions for a long time. I accept that his health has deteriorated. I accept that as his physician predicted, the conditions have indeed posed a long term risk to his cardiovascular system. He suffered a severe stroke in the fall of 2020.

[32] However the medical evidence doesn't show that the Appellant had functional limitations that affected his ability to work by December 31, 2014. As a result, he hasn't proven he had a severe disability.

[33] When I am deciding whether a disability is severe, I usually have to consider an Appellant's personal characteristics.

[34] This allows me to realistically assess an Appellant's ability to work.²²

[35] I don't have to do that here because the medical evidence doesn't support that the Appellant's functional limitations affected his ability to work by December 31, 2014. This means he didn't prove his disability was severe by then.²³

Conclusion

[36] I find that the Appellant isn't eligible for a CPP disability pension because his disability wasn't severe by December 31, 2014. Because I have found that his disability wasn't severe, I didn't have to consider whether it is prolonged.

²⁰ See GD8-62

²¹ See GD8-50, 55, 58

²² See *Villani v Canada (Attorney General)*, 2001 FCA 248.

²³ See *Giannaros v Minister of Social Development*, 2005 FCA 187.

[37] This means the appeal is dismissed.

Sharon Buchanan
Member, General Division – Income Security Section