



Citation: *GT v Minister of Employment and Social Development*, 2022 SST 720

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: G. T.
Representative: Allison Schmidt

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated August 12, 2020 (issued by
Service Canada)

Tribunal member: Pierre Vanderhout

Type of hearing: Teleconference

Hearing date: June 13, 2022

Hearing participants: Appellant
Appellant's representative

Decision date: July 15, 2022

File number: GP-20-1550

Decision

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

Overview

[2] The Claimant is nearly 59 years old. He was 34 years old at the end of 1997. This date is important for his appeal.

[3] The Claimant has filed four applications for the CPP disability pension. His longest period of work was as a line worker at X ("X") in Scarborough. He actively worked there, with some interruptions, from 1984 to at least 1994.¹ When he filed his third application for a CPP disability pension in 2011, he said he worked at X until 1999.²

[4] In 1990, when the Claimant filed his first application, he said he was disabled by carpal tunnel syndrome. He had problems with pain, lifting, and carrying.³ He has worked periodically since then. His latest job was a 5-month stint in 2018 as an automotive clerk at X.⁴

[5] This appeal flows from the Claimant's fourth application for a CPP disability pension. He filed that application on April 25, 2019. However, this is the first time he appealed the Minister's decision to the Tribunal. In his fourth application, he said his main medical conditions were Klippel-Feil Syndrome (an abnormal fusion of cervical bones), carpal tunnel syndrome, and sciatica.⁵ He said he was affected in many ways, although pain seems to have been the primary impact. His sleep was also significantly affected.⁶ He remained vulnerable to substance abuse and mental health concerns.

¹ GD2-298 and GD2-300.

² GD2-172 and GD2-185.

³ GD2-327 and GD2-328.

⁴ GD2-49

⁵ GD2-40

⁶ GD2-44 to GD2-47

[6] The Minister of Employment and Social Development (“Minister”) refused the Claimant’s application. The Claimant appealed the Minister’s decision to the Tribunal.

[7] The Claimant says the combination of his pain, limited physical functioning, inability to work, and declining mental health has resulted in a long struggle with drug and alcohol addiction. He says his multiple medical conditions have made it impossible to obtain and maintain any type of employment. At best, his ability to work is intermittent, and he cannot commit to a work schedule. He also submits that many attempts to return to work, or to retrain, have failed because of his multiple medical conditions. His recent earnings have been well below the “substantially gainful” level. Finally, he says that his disability is prolonged because he hasn’t been able to maintain substantially gainful employment since 1991.⁷

[8] The Minister says much of the medical information was from after 1997, and is therefore of limited relevance in establishing a disability by then. The Minister says the Claimant showed work capacity after 1997, and suggests that his many short-term jobs did not end due to a lack of work capacity. The Minister further notes that the Claimant collected regular employment insurance (“EI”) benefits in 2017 and 2018, which required him to be ready, willing and able to work. This capacity was consistent with the Claimant’s statement that he was no longer able to work in November 2018. The Minister also suggests that the medical evidence does not support a continuous disability since the end of 1997.

What the Claimant must prove

[9] For the Claimant to succeed, he must prove he had a disability that was severe and prolonged by December 31, 1997. This date is based on his CPP contributions.⁸ He must also prove his disability was continuously severe and prolonged up to the hearing date.

⁷ See GD6-17 to GD6-23 for a more detailed account of the Claimant’s position.

⁸ 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 s. 44(2) of the *Canada Pension Plan*. The Claimant’s CPP contributions are on pages GD3-18 to GD3-19.

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

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

[12] This means I must look at all of the Claimant’s medical conditions together to see their effect on his ability to work. I must also 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 he can regularly do some type of work from which he could earn a living, then he isn’t entitled to a disability pension.

[13] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.¹⁰

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

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

Reasons for my decision

[16] I find that the Claimant hasn’t proven he had a severe and prolonged disability by December 31, 1997, that continued through the hearing date.

Was the Claimant’s disability severe by the end of 1997 and continuously after?

[17] The Claimant’s disability wasn’t severe by the end of 1997 and continuously after. I reached this finding by considering several factors. I explain these factors below.

⁹ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

¹⁰ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

– **The Claimant’s functional limitations did affect his ability to work by the end of 1997**

[18] By the end of 1997, the Claimant had chronic intermittent leg and low back pain.¹¹ He also had problems with his right arm, including a history of carpal tunnel issues.¹² However, I can’t focus on the Claimant’s diagnoses.¹³ Instead, I must focus on whether he had functional limitations that interfered with earning a living.¹⁴ When I do this, I must look at **all** of his medical conditions (not just the main one) and think about how they affect his ability to work.¹⁵

[19] I find that the Claimant had functional limitations by the end of 1997.

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

[20] The Claimant says his medical conditions resulted in functional limitations that affected his ability to work by the end of 1997.

[21] At the hearing, the Claimant said he was in jail from May 1997 to September 1997, although this is not mentioned in the medical documents from that period. He said he returned to school in September 1997, but was unable to do the course work unless he was taking painkillers and antidepressants to deal with his pain. He said his conditions were accommodated at school. For example, he received an elevator pass.

[22] The Claimant said he started using alcohol and street drugs before the first semester ended. He said he “started breaking down again” and could not sleep at night. He began to miss school and drop classes. He increased his use of painkillers and alcohol to keep going. Around Christmas 1997, he said he fell and went through a window. By early 1998, he said his addiction was full-blown and his grades were dropping. He said that by the summer of 1998, he tried to hang himself. He also drove a car into a brick house, which resulted in further jail time.

¹¹ GD4-776 and GD4-777.

¹² GD4-489, GD4-549, and GD4-777.

¹³ See *Ferreira v. Canada (Attorney General)*, 2013 FCA 81.

¹⁴ See *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

¹⁵ See *Bungay v. Canada (Attorney General)*, 2011 FCA 47.

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

[23] The Claimant must provide medical evidence that shows that his functional limitations affected his ability to work by December 31, 1997.¹⁶

[24] The medical evidence partly supports what the Claimant says, about his right arm problems and his leg and lower back pain.

[25] In July 1997, Dr. Ali (Orthopedics) affirmed that the Claimant had chronic intermittent low back and left leg pain. The pain radiated from his back to his leg. This prevented the Claimant from sitting for more than two hours. Dr. Ali also noted a history of right carpal tunnel concerns. That same month, Dr. Chan (Family Doctor) reported that the Claimant had a lower back pain flare-up, with restrictions on heavy lifting and repetitive bending.¹⁷ Later in 1997, Dr. Chan noted the need for lower back and wrist braces, although the Claimant should use the back brace only when he had a flare-up.¹⁸

[26] I see no references to any suicide attempts in the 1998 medical documents. Nor do I see any references to antidepressants or addiction issues in the medical documents from March 1997 through to the end of 1998.

[27] The medical evidence supports that the Claimant’s back and arm limitations prevented him from engaging in heavy lifting, repetitive bending, and prolonged sitting by December 31, 1997. This likely precluded him from doing his usual job at GM, or the sedentary AutoCAD (computer-aided design) work for which he was being retrained.

[28] 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.¹⁹

¹⁶ See *Warren v. Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v. Dean*, 2020 FC 206.

¹⁷ GD4-776 and GD4-777

¹⁸ GD4-489 and GD4-819.

¹⁹ See *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

– **The Claimant could have worked in the real world after 1997**

[29] I find that the Claimant could have worked in the real world after 1997.

[30] 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.

[31] 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.²⁰

[32] The Claimant completed Grade 8 but left school during Grade 9. By 1997, he had started academic upgrading at college and completed courses such as Grade 10 Physics.²¹ A few years later, he completed a college-level course in AutoCAD.²²

[33] The Claimant has worked as a yardman at GMC, where his duties included moving and cleaning cars. He then worked as a packer in a dish factory, and later made deliveries for a coffee company. Finally, he found work as an assembly line worker at GM.²³ He was still employed by GM, although not actively working, at the end of 1997.

[34] The Claimant had several short-term jobs after 1997. He was a newspaper field rep at the beginning of 2011.²⁴ This job involved handing out newspapers at subway stations. Starting in 2016, he was a produce clerk at Metro.²⁵ He was a sales associate at Home Depot from November 2017 to May 2018.²⁶ Finally, he was an automotive associate at X from July 2018 to November 2018.²⁷ While the Claimant's record of CPP

²⁰ See *Villani v. Canada (Attorney General)*, 2001 FCA 248.

²¹ GD4-809

²² GD4-506

²³ GD4-809

²⁴ GD2-229

²⁵ GD2-49

²⁶ GD2-114

²⁷ GD2-120

contributions shows many post-1997 years with nominal earnings²⁸, the Claimant said he could not recall any other jobs.

[35] I do not place much weight on the Claimant's 2018 work at X. His employer said he struggled with several aspects of the job.²⁹ This can be distinguished, however, from his 2018 work at Home Depot. There, his work was satisfactory, his attendance was good, and he could handle the job demands.³⁰

[36] Without considering his medical conditions, I find that in 1997 the Claimant would have been able to do assembly line work, work that primarily involved driving, and retail work that did not require significant training. This would include the jobs he later had at Home Depot and the Metro grocery store, as he clearly had the skills to do them 20 years later. However, it would not include the work he later did at X, as it had additional demands that were too much for him.

[37] I will now consider what type of work, if any, he could have done in the real world when his medical conditions are considered.

Considering his medical conditions, what could the Claimant have done in the real world after 1997?

[38] It appears that the Claimant had capacity to work in the real world by the end of 1997. While his old GM job may have been precluded, Dr. Chan said in July 1997 and February 1998 that the Claimant had no restrictions on operating a motor vehicle.³¹ Dr. Sproule (Specialist) confirmed this in April 1998. While the Claimant had issues with prolonged writing at this time, neither doctor saw driving as a problem. I note that Dr. Dalglish found no medical restrictions on driving either in May 2003.³²

[39] However, even if the Claimant could not have worked in the real world by the end of 1997, he would still have to demonstrate that was true continuously from the end of

²⁸ GD3-18 to GD3-19.

²⁹ GD2-121 to GD2-122.

³⁰ GD2-115 to GD2-116.

³¹ GD4-549, GD4-550, and GD4-776.

³² GD4-682

1997 to the date of the hearing. I find that he did not prove this on a balance of probabilities. A significant component of this is the lack of medical documents.

Lack of medical documents between March 2012 and November 2017

[40] I see no medical reports in the Tribunal file between March 7, 2012, and November 20, 2017.³³ The March 7, 2012, letter from Dr. Lubczynski (Family Doctor) only affirms that the Claimant wore a back brace 6-8 hours per day to prevent flare-ups, improve his posture, and improve his gait. However, the last documented treatment was from September 2011.³⁴

[41] For some appellants, document gaps carry less importance due to the nature of the condition. However, the Claimant's pain was described as intermittent³⁵, and I see several references to improvements in his condition.

[42] For example, in May 2003, the Claimant reported that his lower back problem recurred in December 2002.³⁶ I saw no medical documents between October 1, 2001, and December 17, 2002.³⁷ In August 2006, Dr. Bertolo (Family Doctor) said the Claimant could work in February or March of that year, but was not on appropriate duties.³⁸ In March 2008, Dr. Ho (WSIB) said he was fit for moderate activity.³⁹ I place little weight on this, as Dr. Ho was not a treating physician. However, in April 2010, Laura Apps (Physiotherapy) said he had re-aggravated a previous back and wrist injury.⁴⁰ I saw no medical documents between March 31, 2008, and April 23, 2010.⁴¹

[43] Given the pattern of intermittent recurrence, the complete lack of medical documents for more than five years becomes more important.

³³ See GD4-643 and GD4-46.

³⁴ See GD4-643 and GD4-646.

³⁵ See, for example, GD4-777.

³⁶ GD4-506 and GD4-685.

³⁷ GD4-20 and GD4-698.

³⁸ GD4-666

³⁹ GD4-365

⁴⁰ GD4-648

⁴¹ GD4-365 and GD4-484.

[44] At the hearing, I asked the Claimant about this period. He said he had “a sober patch for about four years.” He said he was close to his family. Living near his sister helped. His mother also helped him. He was very active with Alcoholics Anonymous, and had lots of support from various agencies. He said a psychiatrist was involved. He said he was managing his pain and mental situation, and eventually could try working. He said he was taking pain medication during this period. He said he would also have been taking something for his mental health and to help him sleep. He said it was hard to carry on, with the pain that he was in. He said he reverts to old behaviour.

[45] When asked why he had no documents from this period, he said he wasn’t sure. He said he was trying to maintain his medication regime and his sobriety. He added that he was dealing with Hepatitis C then and “wasn’t well.”

[46] The Claimant also had some regular employment during this long period without medical documents. He worked from 2016 to 2017 at Metro. He could not provide any firm dates, but suggested that it was warm when he started and cold when he left. As most of his income was in 2016, he likely worked from the summer of 2016 to early 2017.⁴² He said he resigned from this job because he “couldn’t keep up with their demands,” but then said Metro wanted to cut him down to 8-10 hours per week, and he was unable to live on that. He said he managed this work by taking narcotics, and explained this by saying that “I present well” when he first starts something. He also said that Metro originally gave him 40 hours per week when he only wanted 25.

[47] The Claimant worked at Home Depot from November 30, 2017, to May 13, 2018. I note that he resigned from that position too.⁴³ He said he resigned so he could work at X. According to Home Depot, his attendance was good, his work was satisfactory, and he could handle the demands of the job. He did not require help from his co-workers. He didn’t need any special services, equipment, or arrangements.⁴⁴

⁴² GD3-19 shows that his income in 2016 was much higher than in 2017.

⁴³ GD2-114

⁴⁴ GD2-114 to GD2-116

[48] This differs from the Claimant's oral evidence that he had trouble with the physical parts of the Home Depot job and was taking pain medication. He also said he was drinking, although not heavily, and started taking opiates again. However, the medical documents from this period mostly refer to treating neck pain by cortisone injections, ice, and stretching.⁴⁵ It is only in June 2018 that I see references to more serious medications earlier that spring.⁴⁶

[49] I will now comment briefly on some other post-1997 periods, before concluding my analysis.

Documents and capacity during other post-1997 periods

[50] As noted, I saw no medical documents between March 31, 2008, and April 23, 2010. This period wasn't as long as the period that began in March 2012. However, at the hearing, the Claimant said little about that 2008-2010 period. He said his family rescued him from a criminal and drug-dependent lifestyle in 2008. He said his father tried to get him off drugs, and he was living in Alpha House (a "safe house") in 2010.

[51] The Claimant reported few jobs after 1997. He had the newspaper job (started by January 2011), the grocery clerk job (started 2016), the Home Depot job (started 2017), and the X job (started 2018). However, several care providers refer to work after 1997 that do not correspond to one of his admitted work periods. In May 2001, Dr. Sproule said the Claimant's mild carpal tunnel syndrome had improved as he had "been performing lighter work."⁴⁷ At the hearing, the Claimant said he wasn't working at that time and suggested that he was merely working around the home.

[52] In February 2006, Dr. Singh (Family Doctor) said the Claimant had "been off work for 3 years now." This implies work until early 2003, but the Claimant denied any such work at the hearing. He was shocked by the suggestion, and thought Dr. Singh might have been talking about the retraining program.

⁴⁵ GD4-91, GD4-92, and GD4-355.

⁴⁶ GD2-161

⁴⁷ GD4-128

[53] In August 2006, Dr. Bertolo suggested that the Claimant could have worked in February or March of 2006, but was not on appropriate duties.⁴⁸ At the hearing, the Claimant said he did not recall this doctor. However, the Claimant had at least three visits with Dr. Bertolo in 2006.⁴⁹ Also in August 2006, Dr. Young (Ambulatory Care) suggested that the Claimant's job should have been modified in June 2006.⁵⁰ When asked about this, the Claimant said he was not working in June 2006, but thought this might have been related to rehab through the Workers' Compensation Board.

[54] While not every job triggers CPP contributions, the Claimant still had CPP contributions in many years. Nominal contributions outside his admitted jobs occurred in 1999, 2003, 2004, 2005, 2006, 2007 and 2015. His contributions in 2011, 2012, 2013, 2016, 2017, and 2018 are presumed to flow from his admitted periods of employment.⁵¹

[55] I accept that the Claimant may genuinely not remember all periods of employment. It has been nearly 25 years since the end of 1997. The Claimant said he had many struggles with substance abuse, which could affect what he can recall. However, the passage of such a long period also makes it harder to accept oral assertions about work capacity that are not supported by documents.

Conclusion regarding ability to work in the real world

[56] The evidence suggests that the Claimant had some real world work capacity for a period lasting at least five years. This period started by March 2012 and lasted at least until Dr. Singh saw him in November 2017. However, he started working at Home Depot later that month, and only left in May 2018 to take another job. I note that medication issues may have existed around the spring of 2018. Although I do not need to rely on them, other periods also leave me with substantial doubt about his inability to work in the real world. The period from March 2008 to April 2010 is but one example.

⁴⁸ GD4-666

⁴⁹ GD4-661, GD4-663, and GD4-666.

⁵⁰ GD4-32

⁵¹ GD3-18 to GD3-19

- **The Claimant did not make efforts to find and keep a suitable job throughout his extended period of work capacity.**

[57] If the Claimant can work in the real world, he must show he tried to find and keep a job. He must also show his efforts weren't successful due to his medical conditions.⁵² Finding and keeping a job includes retraining or looking for a job that accommodates his functional limitations (in other words, a job with special arrangements).⁵³

[58] For part of the period starting in March 2012, the Claimant didn't make efforts to work. For the rest of the period, he tried to work but I am not satisfied that his medical conditions prevented him from succeeding. If his conditions interfered with his job success, that only started around the spring of 2018. I will now explain these findings.

[59] The Claimant denied working at all after his newspaper distribution job ended (likely at some point in 2012⁵⁴) and before becoming a produce clerk in Metro in the summer of 2016. Nor did he describe any attempts to find work during that time. While his history of CPP contributions shows some nominal activity during that time, I am not persuaded that this resulted from failed employment.⁵⁵

[60] Starting in mid-2016, the Claimant made efforts to work. But these efforts don't show that his disability got in the way of earning a living.

[61] The Claimant said he wanted to work 25 hours/week at Metro when he started there in the summer of 2016. Despite this, Metro first gave him 40 hours/week. Later, Metro only gave him 8-10 hours/week. At the hearing, he said he resigned because he could not live on such minimal hours. I conclude that he could have worked around 25 hours/week. Resigning because the hours offered were not enough to live on is different from resigning because he could not do even that minimal amount of work.

[62] I note that working 25 hours per week can give rise to substantially gainful earnings. Allowing two weeks of holidays, this amounts to 1250 hours per year. In 2016

⁵² See *Inclima v. Canada (Attorney General)*, 2003 FCA 117.

⁵³ See *Janzen v. Canada (Attorney General)*, 2008 FCA 150.

⁵⁴ His only substantial income around this time was in 2012, and he admits no other work around that time. See GD3-19.

⁵⁵ See GD3-18 to GD3-19.

and 2017, the thresholds for substantially gainful earnings were \$15,489.72 and \$15,763.92 respectively.⁵⁶ Over 1250 hours of work, he would have reached those thresholds with hourly earnings of \$12.39 and \$12.61 respectively. This was likely well within the range of salaries for a produce clerk, or even a driver, at those times.

[63] The Claimant found other work in November 2017 at Home Depot. He earned \$14.00 per hour. While he was only working 20 hours per week, which would put him just slightly below the “substantially gainful” threshold, the evidence shows that he could do the work.⁵⁷ He left because of the job at X, where he was offered 25 hours per week at the same wage.⁵⁸ It is therefore likely that he could have worked 25 hours per week at Home Depot, where his annual earnings would have been around \$17,500.00 (above the “substantially gainful” threshold).

[64] I accept that the Claimant may not have been able to do the automotive associate job at X for 25 hours per week. However, the employer explained that the Claimant disagreed with customers, worked slowly, and could not grasp the workplace computer program.⁵⁹ Home Depot did not report such issues.

[65] I find it likely that the issues reported by X emerged just before or during the Claimant’s employment there. This is consistent with what he said in his latest application for CPP disability benefits. He claimed that he was no longer able to work in November 2018.⁶⁰ This supports his ability to work in the real world until at least his voluntary departure from Home Depot in May 2018. While he claimed to have received regular EI benefits from December 2017 to March 2018⁶¹, I cannot rely on this in making my decision. He was working for Home Depot throughout that period.

[66] I find that the Claimant had real world work capacity from at least March 2012 to May 2018. I also find that he didn’t make sufficient efforts to find or retain work until he

⁵⁶ See s. 68.1 of the *Canada Pension Plan Regulations*.

⁵⁷ GD2-114

⁵⁸ GD2-120

⁵⁹ GD2-121 to GD2-122

⁶⁰ GD2-40

⁶¹ GD2-50

was hired at Metro in 2016. Nor did his disability stop him from earning a living after Metro hired him. This means I cannot find that he was severely disabled between March 2012 and May 2018. Therefore, I can't find that the Claimant had a severe disability by December 31, 1997, that continued up to the date of the hearing.

[67] This is in addition to my finding that the Claimant had capacity to work in the real world by the end of 1997. At that time, he likely could have done work like the coffee delivery job he had before starting at GM. But even if the Claimant could not have worked in the real world at the end of 1997, he did not demonstrate that was true continuously from the end of 1997 to the date of the hearing.

The Claimant's submissions about addictions and intermittent capacity

[68] The Claimant said that the combination of his multiple conditions, resulting in a long struggle with addictions, stopped him from getting and keeping work. He said any work capacity was short-lived and unpredictable. I agree that a severe disability can exist when a person has brief periods of work capacity, as long as he is "incapable regularly of pursuing a substantially gainful occupation." For example, some 2011 documents refer to addiction issues. Such issues might overcome the lack of medical documents from March 2008 to April 2010. However, I cannot say that for the much longer period starting in March 2012.

Conclusion

[69] I find that the Claimant isn't eligible for a CPP disability pension because his disability wasn't continuously severe since the end of 1997. Because I found that his disability wasn't continuously severe, I don't need to consider whether it is prolonged.

[70] This means the appeal is dismissed.

Pierre Vanderhout
Member, General Division – Income Security Section