



Citation: *AP v Minister of Employment and Social Development*, 2022 SST 1135

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: A. P.
Representative: Claudia Kwok

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated October 8, 2020 (issued by
Service Canada)

Tribunal member: Lianne Byrne

Type of hearing: Teleconference

Hearing date: April 6, 2022

Hearing participants: Appellant
Appellant's representative

Decision date: July 17, 2022

File number: GP-20-2016

Decision

[1] The appeal is dismissed.

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

Overview

[3] The Claimant was 53 years old as of December 31, 2015. The Claimant worked full-time as a CNC operator from September 2013 until November 2014. He stopped working following a motor vehicle accident. He feels he could no longer work as of November 2014 due to his injuries, including distal radial fracture of the right wrist, ligamentous injury of the right wrist, right wrist tendinitis, median nerve compression of the right wrist, chronic complex regional pain syndrome, chronic right sympathetic dystrophy, tendonitis in the right shoulder, chronic pain syndrome, post-traumatic stress disorder, major depressive disorder, and somatic symptom disorder. He has not tried to return to any other type of work since the motor vehicle accident.

[4] The Claimant applied for a CPP disability pension on August 2, 2019. 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 that he has a severe and prolonged disability. The consensus of his doctors is that he is totally disabled and cannot return to work. The medical evidence is clear that the Claimant suffers from injuries that prevent him from performing the essential tasks of any occupation for which is qualified by way of experience, skills, training or education. The Claimant relies on the report from the vocational specialist, who concluded that the Claimant's disability prevents him from engaging in any occupation for wages or profit. No occupations were identified based on his skills and limitations.

[6] The Minister says that the evidence does not support a determination that the Claimant was disabled within the meaning of the CPP on or prior to December 31, 2015 or at the possible prorated date of July 2017. While he may have some limitations, the evidence does not show any serious pathology or impairment, which would have prevented him from performing suitable work when he last qualified for disability benefits. He was given an opportunity for a gradual return to work with accommodation in 2017, but declined. Furthermore, his family physician stated multiple times that he should accept his situation and move forward by seeking alternate employment. Based on the evidence, it was submitted that he retains his capacity for suitable work.

What the Claimant must prove

[7] For the Claimant to succeed, he must prove he had a disability that was severe and prolonged by December 31, 2015. This date is based on his contributions to the CPP.¹

[8] The Claimant had CPP contributions in 2017 that were below the minimum amount the CPP accepts. These contributions let the Claimant qualify for a pension if he became disabled between January 2017 and July 2017.²

[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.³

[11] 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

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 page GD3-25.

² This is based on sections 19 and 44(2.1) of the *Canada Pension Plan*.

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

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.

[12] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁴

[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 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

[15] I find that the Claimant hasn't proven he had a severe and prolonged disability by December 31, 2015 or in 2017 by July 31, 2017.

Was the Claimant's disability severe?

[16] The Claimant's disability wasn't 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

[17] The Claimant has numerous diagnoses, including:

- Distal radial fracture of the right wrist
- Tearing and rupture of the scapholunate ligament
- Ligamentous injury of the right wrist
- Right wrist tendinitis

⁴ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

- Right wrist nerve dysfunction
- Median nerve compression of the right wrist
- Complex regional pain syndrome
- Chronic reflex sympathetic dystrophy
- Tendonitis of the supraspinatus tendon of the right shoulder
- Chronic pain syndrome
- PTSD
- Major depressive disorder
- Somatic symptom disorder

[18] However, I can't focus on the Claimant's diagnoses.⁵ Instead, I must focus on whether he had functional limitations that got in the way of him earning a living.⁶ 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.⁷

[19] I find that the Claimant has functional limitations.

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

[20] The Claimant says that his medical conditions have resulted in functional limitations that affect his ability to work. He says that he was able to work full-time as a CNC Operator from September 2013 until November 2014. His duties included setting up and operating the machine. He had to stand throughout his 8 hour shift. He had to make 400 parts per shift. This involved the repetitive use of his right hand. It also involved lifting and handling 5-8 lb pieces. He found this job very stressful.

⁵ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁶ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁷ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[21] He was able to perform his duties until he was injured in a motor vehicle accident in October 2014. He explained that he was stopped at a red light when someone hit him from behind while he was holding the steering wheel with his right hand. Since then, he has had right-sided pain.

[22] After the accident, he returned to work for three days. He complained to his supervisor about his pain. His supervisor told him to go home and get treatment. He was not offered any modified duties. He has never returned to work since then.

[23] His current injuries include pain on the right side of his body, including his lower back, neck, shoulder, arm, and hand. Since 2021, he also has problems with his left hand, including frozen thumb. He sleeps poorly. He is depressed. His diabetes has worsened.

[24] He does not feel that he can return to work. He is taking strong pain medications and it would not be safe to operate equipment. He would not be able to stand for 8 hours, push, pull, and bend, as is required in his job. He cannot sit for too long. He cannot do any overhead activities.

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

[25] The Claimant must provide medical evidence that shows that his functional limitations affected his ability to work by December 31, 2015 or in 2017 by July 31, 2017.⁸ The medical evidence supports that the Claimant cannot return to his previous job as a CNC machine operator, which was physically-demanding, repetitive, and stressful.

[26] There are numerous medical reports on file, all of which were reviewed and considered. I will focus on those that are dated prior to or around December 31, 2015 or in 2017 by July 31, 2017.

⁸ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

[27] Dr. Kishore Singh, family physician, completed the CPP Medical Report on May 9, 2016. The Claimant was noted to have diagnoses of right wrist tendinitis, PTSD, right shoulder tendinitis, and non-insulin dependent diabetes mellitus. He has chronic right wrist tenderness. He cannot hold or drive. He also has anxiety.

[28] On June 26, 2017, Dr. Singh noted that he has chronic wrist tendinitis, right elbow tendinitis, and right shoulder tendinitis. He has undergone surgery to the right wrist with no resolution of his pain. He is right-handed and, since he does a lot of manual work, he cannot return to work in the near future.

[29] There are also numerous clinical notes on file from Dr. Singh, all of which were considered. I noted that, around December 31, 2015, the Claimant had right wrist tendinitis and pain. He was also noted to have right arm tendinitis and PTSD. His diabetes mellitus was stable. Around July 31, 2017, he was still noted to have tendinitis in his right wrist and shoulder. He had right wrist pain. He cannot lift or carry. His sugars were noted to be high.

[30] The Claimant has consulted multiple orthopedic surgeons. Dr. Douglas Armstrong, orthopedic surgeon, reported on September 7, 2015 that he complains of right wrist pain and has upper arm, shoulder, and back complaints. He has limitations of motion in the wrist. Mild reflex sympathetic dystrophy was suspected. On September 21, 2015, Dr. Armstrong noted his complex wrist pathology. There is MRI evidence of scapholunate disruption. He does have an element of chronic reflex sympathetic dystrophy. He continues to have significant restrictions related to his wrist injury. On February 13, 2019, he opted to proceed with surgery.

[31] There are also multiple reports on file from Dr. Benjamin Smith, orthopedic surgeon, including the following:

- On December 22, 2015, it is noted that his imaging reveals a scapholunate interosseous ligament disruption. He will likely require surgery.

- On January 20, 2016, he was noted to have right wrist pain. He has right scapholunate interosseous ligament disruption. He also has right shoulder mild tendinopathy. He received a cortisone injection.
- On April 20, 2016, he was noted to have right shoulder mild rotator cuff tendinopathy, and long head biceps tendinopathy. He has ongoing right shoulder pain, worse with most activities. A cortisone injections provided pain relief at rest, but pain continued with movement.
- On June 27, 2016, he was noted to have cervical/scapular myofascial pain, right rotator cuff tendinopathy, right SLIL tear, and mild bilateral carpal tunnel syndrome.
- On February 22, 2017, he was noted to have pain with overhead activity and lifting. He received a cortisone injection in the right shoulder.
- On May 24, 2017, it is noted that his symptoms did not improve with cortisone.
- On January 15, 2018, which is after the MQP and prorate period, he was noted to have received relief from cortisone for 2-3 weeks. He has right rotator cuff tendinosis and moderate tendinosis supraspinatus. He should get cortisone if he has a flare-up.

[32] There are also a number of reports on file from Dr. Wayne Fung, orthopedic surgeon, several of which are dated during the prorate period. These reports include:

- On March 24, 2016, it was noted that he appears to have scapholunate ligament rupture, nerve dysfunction type symptoms, and carpal tunnel syndrome.
- On July 25, 2016, he continues to have pain with difficulty grasping and squeezing.
- On December 1, 2016, the major cause of his pain was thought to be nerve dysfunction.

- On January 5, 2017, it was noted that most of his symptoms are caused by nerve dysfunction.
- On March 9, 2017, it was noted that he continues to have significant numbness, cold fingers, cold intolerance, and intermittent exacerbation in pain.

[33] Dr. Kirsty Clappison, chiropractor, completed a Disability Certificate on November 6, 2014. The Claimant was noted to be unable to perform the essential tasks of his employment. However, he was noted to be capable of returning to work on modified duties and hours.

[34] On January 20, 2015, Dr. Clappison reported that he reports little to no improvement in his pain levels and ability to perform activities of daily living. His diagnoses are whiplash, thoracic and lumbar sprain/strain, lumbar radiculopathy, and wrist sprain/strain. He has not been able to return to work as a machinist due to the inability to use his wrist and hand. He should remain off work until his pain levels and wrist strength have improved.

[35] Dr. Sanjay Dixit reported on October 1, 2015 that he continues to have wrist pain. On July 15, 2015, he was noted to have pain and stiffness on the right side of his body. He has a hard time sleeping and is getting daily headaches. His presentation is in keeping with inflammatory arthropathy. On October 6, 2016, he was noted to have increased shoulder pain.

[36] Dr. A. Freiberg, plastic surgeon, reported on December 1, 2015 that the Claimant has scapholunate injury to the right wrist. He suffers a substantial inability to perform the essential tasks of his pre-accident employment. His duties required lifting and transferring 5-7 lb heavy parts on an assembly line approximately 400 times per shift. He will likely require surgery.

[37] On November 21, 2016, Monique Costa El-Hage, psychologist, reports that he presents with some reactive depressive and anxious symptomatology as well as difficulty with sleep since the accident. He is not receiving any psychological treatment.

[38] On December 1, 2017, Dr. J. Pilowsky, psychologist, reported that he has PTSD, major depressive disorder, severe, single episode, and somatic symptom disorder, persistent, with predominant pain. He experiences significant physical pain as well as fatigue and cognitive deficits, which prevent him from returning to work. He needs psychological intervention.

[39] The medical evidence supports that the Claimant's difficulty using his right hand, doing overhead work, and lifting prevented him from doing repetitive work involving the use of his right hand and shoulder, including his work as a CNC machine operator by December 31, 2015 or in 2017 by July 31, 2017.

– **Evidence of Work Capacity**

[40] While I accept that the Claimant cannot return to his physically-demanding and stressful full-time job as a CNC machine operator, he would not be precluded from attempting alternate work within his abilities. 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 work.⁹

[41] I considered that there is evidence of work capacity. In particular, Dr. Singh wrote on numerous occasions throughout his clinical notes from September 2017 to November 2018 that the Claimant should accept his situation, move forward, and seek alternate employment or retraining.

[42] The Claimant pointed to the transferable skills analysis report in which the vocational rehabilitation specialist concluded that there were no alternate occupations identified. However, it is important to note that this conclusion was based on occupations that are commensurate with the Claimant's pre-disability employment history. Occupations that were not considered commensurate in status and reward were excluded as suitable options. I also note that the vocational rehabilitation

⁹ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

specialist found that there are no objective functional limitations to the use of the Claimant's right arm for sedentary duties if a wrist brace were used.

[43] Given Dr. Singh's recommendation that the Claimant should seek alternate employment or retraining and Mr. Landry's finding that the Claimant is capable of sedentary work, I find that there is evidence of work capacity.

[44] 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.¹⁰ In this case, the Claimant has not attempted to return to work in any capacity since he stopped working in November 2017. He also has not attempted to retrain.

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

[45] 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

[46] 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.¹¹

[47] In this case, the Claimant was 53 years old as of December 31, 2015 (and 54 years old as of July 31, 2017). He was educated up to grade 10 in India. He worked in India as a machine operator. He moved to Canada in 1984. He has worked for several employers in Canada as a machine operator. He has also worked in a woodworking

¹⁰ *Inclima v. Canada (A.G.)*, 2003 FCA 117

¹¹ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

shop as a supervisor/carpenter. He is able to speak and understand English. He can read and write a little bit in English.

[48] The Claimant was capable of doing sedentary work as of December 31, 2015 and in 2017 by July 31, 2017. His education level and work experience may present barriers to obtaining this type of work, however, he was young enough to pursue retraining. I therefore find that the Claimant can work in the real world.

[49] If the Claimant can work in the real world, he must show that he tried to find and keep a job. He must also show his efforts weren't successful because of his medical conditions.¹² 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).¹³

[50] In this case, as previously stated, the Claimant did not make any attempts to find and keep a job. He has not returned to any type of work since he stopped working in November 2014. He has not attempted to retrain for sedentary work.

[51] Therefore, he has not shown that his efforts at obtaining and maintaining employment have been unsuccessful because of his health condition.

[52] Therefore, I can't find he had a severe disability by December 31, 2015 or in 2017 by July 31, 2017.

¹² See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

¹³ See *Janzen v Canada (Attorney General)*, 2008 FCA 150.

Conclusion

[53] I find that the Claimant isn't eligible for a CPP disability pension 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.

[54] This means the appeal is dismissed.

Lianne Byrne
Member, General Division – Income Security Section