



Citation: *BP v Minister of Employment and Social Development*, 2023 SST 1281

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: B. P.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated May 12, 2022 (issued by Service Canada)

Tribunal member: Connie Dyck

Type of hearing: Teleconference

Hearing date: August 29, 2023

Hearing participant: Appellant

Decision date: September 14, 2023

File number: GP-22-1423

Decision

[1] The appeal is dismissed.

[2] The Appellant, B. P., 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 32 years old when he stopped working in October 2014 as a machine operator plating coins. He says he can't work because of pain in his back and left wrist.

[4] The Appellant applied for a CPP disability pension in June 2021.¹ The Minister of Employment and Social Development (Minister) refused his application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Appellant says his disability is long-term and ongoing. There is no guarantee that any future surgery will be successful. He says he is unable to do any type of work, not only his previous job.

[6] The Minister says the medical evidence does not support that the Appellant was disabled by December 31, 2016.

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, 2016. This date is based on his contributions to the CPP.²

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

¹ GD2-26 to 49

² 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 GD2-60.

[9] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.³

[10] This means I must look at all the Appellant's medical conditions together to see what effect they have on his ability to work. I also must 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 regularly able to 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.⁴

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

Reasons for my decision

[14] I find that the Appellant hasn't proven he had a severe and prolonged disability by December 31, 2016.

Was the Appellant's disability severe?

[15] The Appellant's disability wasn't severe. I reached this finding by considering several factors. I explain these factors below.

– The Appellant's functional limitations do affect his ability to work

[16] The Appellant has non-specific chronic low back pain.⁵

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

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

⁵ GD2-104

[17] However, I can't focus on the Appellant's diagnosis.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 must look at all the Appellant's medical conditions (not just the main one) and think about how they affect his ability to work.⁸

[18] I find that the Appellant has functional limitations that affect his ability to work at some occupations.

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

[19] The Appellant says that his medical conditions have resulted in functional limitations that affect his ability to work. He says:

- It is uncomfortable and painful to bend, stand or walk for long periods
- He sits or lies down often to reduce the pain in his lower back
- If he does household chores, he will need to take pain medication
- He doesn't have cognitive difficulties unless he is experiencing strong pain
- The pain makes him tire more easily

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

[20] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work by December 31, 2016.⁹

[21] The Appellant injured his back while working on a plating machine at X. An MRI of the Appellant's lumbar spine was taken December 2016 and was compared with previous MRIs of February 2013 and 2015.¹⁰ It concluded that in the last 2-3 years, there was only a slight progression of degenerative changes at the L5-S1 levels. There was no definite contact with nerve roots. This remained the case in May 2015 and July 2020.¹¹ I recognize that in June 2023, Dr. Berrington (neurologist) suggested the

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

⁷ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

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

⁹ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹⁰ GD2-87

¹¹ GD2-89 and GD2-141

Appellant may have nerve root impingement, but this is more than six years after the Appellant's MQP.¹² The evidence shows there was no nerve root impingement by December 31, 2016.

[22] In May 2015, Dr. Cristante (neurosurgeon) said the Appellant was experiencing on-going chronic lumbosacral pain.¹³ He said the Appellant should avoid activities involving repetitive bending or lifting more than 15 - 20lbs. He would also need to change posture positions frequently. It was Dr. Cristante's opinion that the Appellant could work full-time with these few restrictions.

[23] The Appellant said Dr. Cristante's opinions were "skewed" because he was hired by the insurance company. However, Dr. Cristante's findings are supported by other medical professionals and functional evaluations.

[24] A functional ability evaluation was conducted over three days in November and December 2015.¹⁴ It noted, as did Dr. Cristante, that the Appellant had limitations with lifting more than 20lbs, bending forward, and crouching. The evaluation also said the Appellant would have limitations with prolonged standing. However, the Appellant showed little to no limitations with sitting.¹⁵ I note that in May 2017, the Appellant said he could sit for two hours.¹⁶ The evaluation also showed little to no limitations with completing sitting tasks, handling tasks and seated administrative activities. He demonstrated the ability to type and perform keyboard at the occasional level and the seated administrative task at the frequent level. He has limited typing skills of 24 wpm.¹⁷ He told the examiner that he spends his days at the computer researching potential career options.¹⁸ In November 2017, Dr. Hoy also noted the Appellant said he entertained and educated himself by spending time on the computer.¹⁹ The functional ability evaluation showed the Appellant had the ability to sort and complete sheets of

¹² GD5-4 to 5

¹³ GD2-149

¹⁴ GD2-119

¹⁵ GD2-123 to 124

¹⁶ GD2-94

¹⁷ GD2-124

¹⁸ GD2-126

¹⁹ GD2-172

paper at a moderate and consistent pace with minimal difficulty. I recognize the Appellant did report lower back pain following completion of both administrative tasks. However, as noted by Dr. Hoy, the Appellant's function would likely increase with a return-to-work program.²⁰

[25] Almost one year after the Appellant's MQP, he was examined by Dr. Hoy (physiatrist).²¹ The functional restrictions noted by Dr. Hoy in November 2017 are essentially the same as those identified by Dr. Cristante in May 2015. Dr. Hoy said to reduce re-injuring or increasing symptoms, the Appellant should avoid lifting more than 50lbs, no lifting in the squatted position and avoid bending forward. It was Dr. Hoy's opinion there were no contra-indications to the Appellant starting a return-to-work program either on a graduated basis or full-time.²²

[26] In November 2020, now almost four years after the Appellant's MQP, his family doctor noted the Appellant had chronic low back pain.²³ This condition limited his ability to bend, twist, lift, push or pull heavy loads. Again, these are essentially the same functional limitations as identified by Dr. Cristante and Dr. Hoy.

[27] The medical evidence doesn't show that the Appellant had functional limitations that affected his ability for suitable work by December 31, 2016. As a result, he hasn't proven he had a severe disability.

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

[28] When I am deciding whether the Appellant can work, I can't just look at his medical condition and how it affects what he can do. I must also consider factors such as his:

- age
- level of education
- language abilities

²⁰ GD2-106

²¹ GD2-105

²² GD2-106

²³ GD2-246

- past work and life experience

[29] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say that he can work.²⁴

[30] In December 2016, the Appellant was only 34 years old. He has a Grade 12 education with two years of college, is fluent in English and has computer skills. All of these are favourable factors to him finding employment.

[31] I recognize the Appellant has a limited work history which was a physically demanding job. However, his age, education and computer skills would make him a candidate for retraining. It was the opinion of several doctors that the Appellant had capacity to return to work.

[32] I find that the Appellant can work in the real world.

[33] I now must decide whether the Appellant can regularly do other types of work. To be severe, the Appellant's functional limitations must prevent him from earning a living at any type of work, **not just his usual job**.²⁵

– **The Appellant didn't try to find and keep a suitable job**

[34] If the Appellant 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 condition.²⁶ Finding and keeping a job includes retraining or looking for a job he can do with his functional limitations.²⁷

[35] I realize the Appellant did return to work for his employer at X for a short period in 2014. But these efforts don't show that his disability gets in the way of earning a living at a suitable job. Although his duties were slightly modified from his regular job, these were still physically demanding. He said they involved lifting and bending which he couldn't do. He also had to walk a fair distance. It is expected that he wouldn't be able

²⁴ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

²⁵ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

²⁶ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

²⁷ See *Janzen v Canada (Attorney General)*, 2008 FCA 150.

to do these tasks as these were functional limitations identified by Dr. Cristante and Dr. Hoy.

[36] The Appellant said he tried applying at a few jobs like a call centre or a site supervisor. He thinks he wasn't hired because the employer didn't want to take a chance on him because of his injury. However, the Appellant has made no attempts to volunteer or retrain. There is no evidence that his medical condition would make retraining or suitable work unsuccessful.

[37] Therefore, I can't find he had a severe disability by December 31, 2016.

Conclusion

[38] I find that the Appellant isn't eligible for a CPP disability pension because his disability wasn't severe by December 31, 2016. Because I have found that his disability wasn't severe, I didn't have to consider whether it was prolonged.

[39] This means the appeal is dismissed.

Connie Dyck
Member, General Division – Income Security Section