



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Tribunal File Number: GP-17-2169

BETWEEN:

**Bradley Ashworth**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Brian Rodenhurst

Claimant represented by: Nick de Konig, Barrister and Solicitor

Videoconference hearing on: September 13, 2018

Date of decision: September 27, 2018

## **DECISION**

[1] The Claimant is entitled to a Canada Pension Plan (CPP) disability pension to be paid as of December 2015.

## **OVERVIEW**

[2] The Claimant worked in a number of occupations including a Pizza franchise, roofing, and operating a forklift truck at a warehouse distribution centre. He was injured in a car accident in 2013 and continued to work until July 2014. He maintains that due to injuries sustained in the accident that progressively got worse he has been unable to work in any capacity since July 2014. He maintains his physical injuries and pain has resulted in anxiety and depression.

[3] The Minister received the Claimant's application for the disability pension on November 8, 2016. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[4] 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, 2016.

## **ISSUE(S)**

[5] 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, 2016?

[6] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2016?

## **ANALYSIS**

[7] Disability is defined as a physical or mental disability that is severe and prolonged<sup>1</sup>. 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 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**

#### ***Oral Evidence of Claimant and Witness***

[8] The Claimant and his friend Chris McCrea testified at the oral hearing. The oral testimony of the Claimant and his witness can be, and very often is, material to the resolution of the matter. If deemed credible, it is entitled to due weight and serious consideration<sup>2</sup>. The Claimant appeared to give his evidence in a straight forward manner without exaggeration and with a view to accuracy. He described daily constant severe pain that never allows him a pain free day. He indicated the pain has resulted in a feeling of depression and exhaustion. He further testified that he attended physiotherapy without significant results and has continued with home exercises. He uses a stationary bike in the winter to try and improve his physical condition. He attends a pain management clinic which gives him a brief time period of relief after receiving the injections. He testified that there are some days which are not predictable that his pain is 9/10 and he spends the day in bed. He estimates these days occur about once a week and can last one to two days.

[9] Mr. MacRae (Chris) testified on behalf of his friend. He stated he has known the Claimant for about 10 years as they worked together at a Pizza franchise. He noted the Claimant has been very depressed and will not socialize except in a rare basis. He used to be outgoing but now there are days when he will not even answer his phone. He believes the Claimant is very depressed. Chris further testified that he used to go for walks with his friend and the Claimant was very slow, had to take numerous breaks and appeared to be an elderly man. Chris stated that

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<sup>1</sup> Paragraph 42(2)(a) *Canada Pension Plan*

<sup>2</sup> *Pettit v. MHRD* (April 1998), CP 4855 CEB & PG 8711 non-binding but of some guidance given the facts of this Appeal

he hardly sees the Claimant now as he does not appear to want to be around people. Chris testified that in his opinion he cannot think of a job the Claimant would be capable of doing. I found the testimony of Chris to be credible. Although a friend of the Claimant, Chris appeared to be honest and as objective as possible in his description of the Claimant's condition.

[10] I find the oral evidence of the Claimant and Mr. MacRae to be credible and give it due consideration and significant weight.

### ***Totality of Impairments***

[11] 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 impairment<sup>3</sup>. The Claimant maintains that in addition to his physical condition he experiences significant impairments due to his psychological issues. The Claimant's Representative submitted that the Evaluation of Dr. Patel should be given considerable weight. I note the Doctor was retained by the insurer. Dr. Patel concluded that due to his psychological inability to cope with chronic pain, and related dysfunction, the Claimant does suffer a complete inability to engage in any employment or self-employment for which he is reasonably suited by education, training or experience.<sup>4</sup> Dr. Patel did note that the Claimant had a good prognosis if he engaged in therapy. The Claimant testified he attends with a Psychologist every second week and he continues to experience psychological symptoms.

[12] Chronic pain has been recognized as a compensable disability and there is no doubt the chronic pain patients are suffering and in distress and the disability they experience is real.<sup>5</sup> Dr. Patel noted the Claimant experienced chronic pain. The Claimant's credible oral testimony described his daily struggle with chronic pain. He stated his pain was constant and results in fatigue and inability to focus.

[13] 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<sup>6</sup>.

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<sup>3</sup> *Bungay v. Canada (A.G.)*, 2011 FCA 47

<sup>4</sup> *GD2-122*

<sup>5</sup> *Nova Scotia (Workers' Compensation Board) v. Martin*, [2003] 2S.C.R. 504

<sup>6</sup> *Inclima v. Canada (A.G.)*, 2003 FCA 117

The Claimant experienced a car accident in August 2013 and continued to work despite pain in his neck and lower back. He continued to work until July 17, 2014 when he found he was unable to continue to fulfill the duties of his employment due to increased back pain. I find the Claimant made all reasonable attempts to maintain his employment and was not able to continue due to his health condition.

[14] The Claimant has been encouraged to return to school and the work force. I note the Claimant's age would indicate normally he would work for another thirty or more years. I find the Claimant to be credible and I find there is sufficient objective medical evidence to support his credible evidence. I acknowledge the submissions of the Minister concerning the young age and conflicting medical evidence, and the observations of the Family Physician. It is not only the diagnosis of the medical condition but also the effect of the medical condition on the capacity of the Claimant to engage in any substantially gainful occupation. I find there is sufficient oral and documentary evidence on file to prove the Claimant experienced a severe disability as defined in the CPP.

### ***Real World Analysis***

[15] I must assess the severe part of the test in a real world context<sup>7</sup>. 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. Medical evidence will still be required as will evidence of employment efforts and possibilities.

[16] Dr. Patel<sup>8</sup> indicated in his Psychiatric Evaluation that the Claimant had a good working knowledge of the English language. The credible evidence of the Claimant was he attempted to upgrade his education at St. Louis an adult education facility but found it overwhelming. He stated he was unable to complete courses to upgrade his English and Math skills. The Claimant is only 29 years of age at the time of the MQP. He has some work experience giving him some transferable skills. Despite the advantages of the Claimant I find he experiences a severe disability when assessed in a real world context. His chronic pain and resultant psychological symptoms renders him an unreliable employee who could not adhere to a schedule. There is

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<sup>7</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

<sup>8</sup> *GD2-120*

sufficient medical evidence to prove on a balance of probabilities the Claimant experienced a severe disability as defined in the CPP at the time of the MQP and continuously since.

### **Prolonged disability**

[17] The Claimant's condition has not improved with treatment. Dr. Patel a specialist retained by the insurer was of the opinion the Claimant was not capable of any employment or self-employment. He expressed some optimism his condition would improve with treatment. This has not occurred. Despite treatment and the Claimant's compliance with medical treatment his condition has worsened. There is not any indication in the oral evidence of the Claimant, his witness, and the medical evidence on file that his condition will likely to improve in the foreseeable future.

[18] I find the Claimant proved on a balance of probabilities he experienced a severe and prolonged disability as defined in the CPP at the time of the MQP and continuously since.

### **CONCLUSION**

[19] The Claimant had a severe and prolonged disability in July 2014, when he could no longer continue to work at this regular occupation and was incapable regularly of pursuing any substantially gainful occupation. However, to calculate the date of payment of the pension, a person cannot be deemed disabled more than fifteen months before the Minister received the application for the pension<sup>9</sup>. The application was received in November 2016 so the deemed date of disability is August 2015. Payments start four months after the deemed date of disability, as of December 2015<sup>10</sup>.

[20] The appeal is allowed.

Brian Rodenhurst  
Member, General Division - Income Security

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<sup>9</sup> Paragraph 42(2)(b) *Canada Pension Plan*

<sup>10</sup> Section 69 *Canada Pension Plan*