Citation: ***B. G. v. Minister of Employment and Social Development*****, 2015 SSTGDIS 67**

Date: July 2, 2015

File number: GT-122319

GENERAL DIVISION - Income Security Section

Between:

B. G.

Appellant

and

Minister of Employment and Social Development
(formerly Minister of Human Resources and Skills Development)

Respondent

Decision by: Jeffrey Steinberg, Member, General Division - Income Security

Section Heard by Videoconference on June 15, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

B. G., the Appellant

Jaswinder Johal, the Appellant's legal representative

Farhat Jamil, English/Punjabi interpreter

INTRODUCTION

[1] The Appellant's application for a *Canada Pension Plan* (CPP) disability pension was date stamped by the Respondent on September 14, 2011. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Office of the Commissioner of Review Tribunals (OCRT) and this appeal was transferred to the Tribunal in April 2013.

[2] The hearing of this appeal was by Videoconference for the following reasons:

a) Videoconferencing is available in the area where the Appellant lives; and

b) The form of hearing respects the requirement under the Social Security Tribunal and Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

THE LAW

[3] Section 257 of the *Jobs, Growth and Long-term Prosperity Act* of 2012 states that appeals filed with the OCRT before April 1, 2013 and not heard by the OCRT are deemed to have been filed with the General Division of the Tribunal.

[4] Paragraph 44(1)(b) of the CPP sets out the eligibility requirements for the CPP disability pension. To qualify for the disability pension, an applicant must:

a) be under 65 years of age;

b) not be in receipt of the CPP retirement pension;

c) be disabled; and

d) have made valid contributions to the CPP for not less than the minimum qualifying period (MQP).

[5] The calculation of the MQP is important because a person must establish a severe and prolonged disability on or before the end of the MQP.

[6] Paragraph 42(2)(a) of the CPP defines disability as a physical or mental disability that is severe and prolonged. A person is considered to have a severe disability if he or she is 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.

[7] There was no issue regarding the MQP because the parties agree and the Tribunal finds that the MQP date is December 31, 2010.

[8] In this case, the Tribunal must decide if it is more likely than not that the Appellant had a severe and prolonged disability on or before the MQP.

EVIDENCE

Documentary Evidence

[9] In the CPP Questionnaire dated August 29, 2011, the Appellant stated she completed Grade 10. She stopped working on September 14, 2007 due to sickness. She had worked as a packer at Silgan Plastic since April 19, 1989 packing 10-15 lbs. According to the Appellant, before she stopped working, she was in receipt of sick benefits and had tried to perform a light job.

[10] The Appellant described the illnesses or impairments that prevent her from working as anxiety, panic attacks, menopause, hypothyroid, high blood pressure, chest pain, sweating, shoulder pain, numbness in the 3rd and 4th fingers and depression. She stated she is unable to lift, bend, twist, stand or walk for a long period of time. She stated she cannot sit more than 10 or 15 minutes or stand more than 10 minutes. Due to shoulder and chest pain, she cannot walk

for a long period. She cannot perform any lifting due to shoulder, back and chest pain. She can sometimes perform household maintenance with her children's assistance. She is forgetful and has poor sleep. She is prescribed Atacand, Atenolol, Synthroid, Aspirin, Cyclobenzaprine and Lipitor.

[11] On August 3, 2011, Dr. Grewal, family physician, completed the CPP Medical Report. He stated he knew the Appellant since 1985. He diagnosed anxiety, panic, menopause, hypothyroid, hypertension Nov 2009, and left sided chest pain non- cardiac February 2011. According to Dr. Grewal, the Appellant had left chest pain on exertion however an angiogram was normal. She also had anxiety and sweating, pain in both shoulders and numbness in the left 3rd and 4th fingers. She was prescribed Hydrochlorothiazide, Atenolol, Eltroxin and Lipitor. Her blood pressure was controlled with medication. Under Prognosis, Dr. Grewal stated: "Guarded. Remains totally and permanently disabled to do any gainful employment all her life".

[12] On April 20, 2006, Dr. Dharmalingam, endocrinology/internal medicine, assessed the Appellant for her thyroid status. He stated she was diagnosed with hypothyroidism about a year earlier. She was on L-thyroxine replacement for several months but stopped it 3 months earlier. She then developed persistent hyperthyroidism. An ultrasound of the thyroid showed multiple nodules. Overall, she was feeling well except for occasional palpitations and heat intolerance. Her weight was stable and she did not have any tremulousness. She had occasional dysphagia. She was not on any medication at the time. Her blood pressure was 124/82. According to Dr. Dharmalingam, the Appellant had some mild hyperthyroidism. He indicated she would require a repeat ultrasound in about six months and stated he would reassess her in three months' time.

[13] On July 20, 2006, Dr. Dharmalingam reported that the Appellant felt better but still complained of fatigue. He stated she had no other symptoms of hyper or hypothyroidism and that the thyroid gland was normal to palpation. Her blood pressure was 120/70.

[14] On July 20, 2006, Dr. Dharmalingam reported that after the Appellant's last visit, he started her on L-thyroxine. She indicated she was feeling better but still complained of fatigue. She was on L-thyroxine 50 mcg od. Her blood pressure was 120/70. He increased her medication to 75 mcg od and stated he would reassess her in 4 months.

[15] Dr. Grewal provided Progress Notes which included the period January 20, 2010 to December 15, 2010. According to a May 2006 note, the Appellant had difficulty with her right shoulder, upper arm and neck pain. Dr. Grewal made passing reference to anxiety. He indicated the Appellant's blood pressure was 120/78. A January 20, 2010 clinical noted made reference to "nervous, anxious" and BP of 150/100, heart normal. A November 25, 2010 noted listed the Appellant's blood pressure at 120/78.

[16] On April 29, 2010, Dr. Dharmalingam reported that the Appellant was hypothyroid, currently on Levothyroxine and feeling well. She had no symptoms of hyper or hypothyroidism. Her blood pressure was 130/80. Her thyroid gland was normal to palpation and her thyroid nodules remained stable. He stated: "This lady with tiny thyroid nodules and hypothyroidism is quite stable from a thyroid point of view".

[17] On February 28, 2011, Dr. Qureshi, internal medicine, reported on the Appellant's chest pains. He stated the Appellant reported a 2-3 month history of upper left-sided chest pain**.** She reported the onset when she restarted an exercise regimen. The chest pain did not occur on a daily basis but when she was stressed or during some kind if exercise, such as going upstairs or walking at a rapid pace. She described the pain as squeezing/dull. On examination, her blood pressure was 132/80. Her EKG was essentially normal. According to Dr. Qureshi, the chest pains were suspicious of ischemic heart disease. He stated she required a stress test before her intended trip to India and he prescribed Nitro Spray.

[18] On March 30, 2011, Dr. Qureshi reported he previously advised the Appellant to have a stress test before she planned to go to India. He stated she developed chest pains after he last saw her. She went the hospital and was told following blood work that everything was okay and that she could travel to India. On her return home from India in March, she reported she was feeling better and having chest pains only once in a while. Dr. Qureshi still recommended and scheduled a stress test.

[19] According to an April 16, 2011 stress test, the results were suggestive of coronary artery disease. According to an April 26, 2011 Cardiac Perfusion, there was evidence of ischemia in the inferolateral segment.

[20] On May 3, 2011, Dr. Qureshi reported that the stress test was suggestive of coronary artery disease and that the Appellant was sent for Exercise Myoview. He indicated her nuclear cardiac scanning result was positive showing ischemia in the inferolateral segment of her heart. Therefore, she required coronary angiography.

[21] According to a May 11, 2011 Echocardiogram Report, the left ventricular systolic function was normal, with mild tricuspid regurgitation and mildly elevated pulmonary pressures.

[22] According to a May 11, 2011 Consultation Report, Dr. Raco reported he saw the Appellant with regard to her possible coronary artery disease. He stated her only chronic non-cardiovascular medical illness was hypothyroidism. He stated she had no known history of myocardial infarction or established coronary artery disease. He noted she recently complained of exertional chest discomfort and dyspnea but in retrospect, she had symptoms for the past year but tended to ignore the symptoms or rationalize them to diminished fitness. She had a positive myocardial perfusion study which suggested inferolateral ischemia. He noted her chest discomfort and dyspnea occur predictably with moderate levels of exertion. Her blood pressure was 132/84. Dr. Raco concluded the Appellant had symptoms consistent with Canadian Cardiovascular Society (CCS) class II angina[1]. Her myocardial perfusion study indicated inferolateral ischemia. He suggested she have a coronary angiogram to more objectively assess the extent of the coronary artery disease and assess her for risk of revascularization. He stated her only chronic non-cardiovascular medical illness was hypothyroidism.

[23] A March 13, 2012 hand and wrist x-ray revealed moderate soft tissue swelling about the PIP joints of the index and middle fingers bilaterally and slight osteoarthritis at the first carpometacarpal joints.

[24] On March 19, 2012, Dr. Grewal reported the Appellant complained of right shoulder pain after working on February 16, 2006. She was tender anterior to acromion with restricted elevations of the arm likely due to bursitis. On May 16, 2006, the pain started to radiate to the arm from the neck due to radiculopathy. On July 21, 2011, she complained of bilateral shoulder

[1] The Tribunal notes that Class II angina refers to slight limitation, with angina only during vigorous physical activity

pain and numbness left 3rd and 4th fingers due to carpal tunnel syndrome (CTS). She had longstanding anxiety and depression since August 1992. During her last visit on March 13, 2012, she complained of pain in shoulders, hand pain and numbness. She was also depressed, anxious and stressed, which Dr. Grewal described as longstanding since 1992. In Dr. Grewal's opinion, the Appellant's condition was of long duration and severe. He stated she remained totally and permanently disabled to perform any gainful employment "all her life".

[25] On April 3, 2012, Dr. Koponen, psychiatry/neurology reported the Appellant has right hand numbness at night and sometimes in the left hand. He diagnosed bilateral CTS which required wrist splints.

[26] On August 24, 2012, Dr. Grewal stated the Appellant continued to have hand and shoulder pain with numbness in both hands bilaterally along with anxiety and depression. He stated her condition was getting worse. She also complained of right knee and ankle pain on her last visit on August 15, 2012. He noted that Dr. Koponen diagnosed bilateral CTS and required wrist splints. He stated the Appellant had been prescribed Rivotril and Xanax for anxiety in the past off and on and was waiting to see Dr. Dhaliwal (psychiatrist). In his opinion, the Appellant's condition was severe and prolonged and she remained totally and permanently disabled to perform any gainful employment.

[27] On October 11, 2012, Dr. Dhaliwal, psychiatrist, reported that the Appellant presented with pain for 10 years with depression developing over time and getting worse for a few months. She reported seeing a specialist and being told she had arthritis of her arms, hands, shoulder, back and legs. She reported that every part of her body hurt. She described having decreased energy, feeling scared, anxiety in elevators, shopping and open spaces among people. She also described decreased concentration and focus. Dr. Dhaliwal diagnosed: pain, major depressive disorder, severe form, differential may include bipolar depression, unable to work and a GAF of 35 to 40. He prescribed Cymbalta, Risperdal and suggested Gabapentin.

[28] On May 2, 2013, Dr. Dhaliwal saw the Appellant in follow up. He indicated she was presenting with depression, anxiety and insomnia. Her mood was down most of the time. It would fluctuate as did her anxiety. She had trouble sleeping. Her pain was continuously hurting

her hand and she required help from family members. This would cause more depression. Therefore, she was unable to work at any job, part-time or full-time.

[29] On September 11, 2013, Dr. Koponen reported that the Appellant's EMG testing was normal. She had no lesion on examination. Her testing was better compared to 2012. She had some discomfort in her wrists in the rain and cold. He indicated there may be an arthritic component to her symptoms.

[30] On September 12, 2013, Dr. Grewal wrote to the Appellant's legal representative. He stated she complained of right shoulder pain which was work related to February 14, 2006 and that she was tender on the right shoulder anterior to the AC joint with painful and restricted elevation of right shoulder. He stated her condition slowly kept getting worse and complicated by depression and bilateral CTS. She is treated with pills, splints and is seen by a psychiatrist and neurologist. He stated she remains totally and permanently disabled to perform any gainful employment since February 14, 2006.

[31] In a report dated October 30, 2013, Dr. Dhaliwal stated the Appellant was still suffering from symptoms of depression with anxiety, panic attack, shortness of breath and dizziness. She was fearful even of taking the elevator and coming to his office. According to Dr. Dhaliwal, she had continuous chronic symptoms and remained under his care since October 10, 2012. He diagnosed Pain, Major Depressive Disorder, Depression severe and prolonged with anxiety and panic attack. He stated: "Because of anxiety, panic attacks, and chronic depression she is finding it very difficult to look for a job, being home because of anxiety, feeling very uncomfortable and fearful, and developed this social condition." He set out a GAF of 45 to 50.

[32] The Appellant provided copies of blood work from December 2014. She also provided copies of her medication print out for the period May 2013 to February 2015.

[33] On February 14, 2015, Dr. Dhaliwal provided an updated psychiatry report. He stated the Appellant was first referred to him October 30, 2013. She had been under his care since then. She was recently seen for a review of treatment on January 20, 2015. The first date of consultation was October 30, 2013 (query 2012). She was seen by him in-between those dates for follow up and treatment. He diagnosed Major Depressive Disorder and stated her

depression was severe and prolonged with anxiety attacks. Her anxiety, depression and anxiety attacks were affecting her functional capacity. She was stressed and unable to work and could not do her basic things at home properly. The GAF on last assessment was around 55 to 60. She was prescribed Effexor, Abilify, Clonazepam and Gabapentin. He stated her illness was fluctuating. The frequency of symptoms had not decreased and severity had not improved. The long-term prognosis was guarded.

[34] On February 20, 2015, Dr. Grewal stated the Appellant was suffering from Major Depression along with anxiety, panic attacks, myalgia, shortness of breath, HTN, Hypothyroidism and bilateral CTS. Her treatment included rest and medication. He stated: "She remains Totally and Permanently Disabled to do any gainful employment all her life". Dr. Grewal attached a summary of his clinical notes between August 2013 and November 2014 describing severe right knee pain; left lower rib pain; depressed sad low mood; sleep problem; restricted ROM on right knee; left ankle pain; chronic pain; hand numbness; hypothyroidism; ankle OA and heel pain; headaches, dizziness and hot flashes. According to a June 6, 2014 report, the Appellant was rear ended the previous day and complained of neck/shoulder pain, nervousness. She had a tender neck and both trapezius areas had painful range of motion.

Oral Testimony

[35] She is age 58.

[36] She was born and raised in India.

[37] She completed Grade 10 in India. She did not receive any English language training. She did not work in India.

[38] She arrived in Canada in 1977. She did not take any English training courses in Canada. She started working right away in 1978 performing assembly line factory work making chairs. She got pregnant the same year and went on maternity leave. She returned to work in 1979 with another employer doing packing. She worked there for eight or nine years until 1987.

[39] In 1988, she delivered another child but returned to work in 1989, where she worked until 2007 again doing packing. It was a standing job.

[40] In 2006, she went off on sick leave. She had problems with her knee and thyroid and was mentally disturbed. She also had problems with her hands.

[41] She returned to work briefly in 2007. She tried to work but could not do so. The job lasted for approximately several weeks. She cannot recall the hours but they were less than full-time (40 hour week). Sometimes she would work a full-shift and other times she would return home early.

[42] After she stopped working, she saw her family doctor. He told her she should rest. He sent her for physiotherapy. She cannot recall when she went. She also cannot recall how often she attended but it was approximately twice weekly. She would do some exercises and have massage of the wrists and knees. She was given some exercises to do at home. She would try to do them. Sometimes they helped; other times they did not.

[43] She had a problem with her breathing and would get out of breath. She also had anxiety and panic. She could not stay inside or in a closed room. She wanted to go out. She was scared to go in an elevator.

[44] She was referred to see specialists and saw Dr. Dhaliwal.

[45] She saw Dr. Koponen. She cannot recall when she started to see him for muscle damage in both hands. He gave her medicine to rub in her hands. It would help only when she applied it. She also wears wrist splints and cannot sleep at night without them. She has difficulty opening her hands and cannot open her medicine bottles. She experiences some numbness. She rubs and massages her fingers and hands. Dr. Koponen discussed surgery but she is afraid to pursue this. She still sees Dr. Koponen and will see next see him in September 2015.

[46] She saw Dr. Raco when she had anxiety, problems with her breathing and her heart. He performed tests. Her heartbeats skip. The doctor gave her medicine, which she takes. She does not see Dr. Raco any longer. She sees the family doctor and she takes medication for her heartbeat.

[47] She saw Dr. Qureshi for her thyroid. She saw him for 3-4 years. Now she takes medicine. If she wants an appointment, she can see him.

[48] She saw Dr. Dharmalingam for 4-5 years for her thyroid. He did tests. She takes medicine and the thyroid is now under control.

[49] Her family doctor treated her for her anxiety in 2007 and 2008. She was feeling down. He sent her to see a specialist, Dr. Dhaliwal. She cannot recall when she started to see him. She sees him once every three months for up to one half-hour. The sessions help a bit. They discuss her health and he prescribes her medication. He changes her medication and dosages. Some medications help.

[50] She tells her family doctor about her problems with anxiety and difficulty sleeping. He tells her to do some more exercises. She cannot go alone outside. She last saw Dr. Dhaliwal last month. He also told her to do some exercises, go outside and to relax. He changed her medications/dosages. She will next see him in July 2015.

[51] Her problem with anxiety started in 1992. She was young then. With age and time, she is now very weak. She had this problem in 2007 but was getting treated by the family doctor. He thought she had heart problems. She also had breathing problems. She also felt this way in December 2010. She did not feel that anything was good. She has not been able to sleep since 2006. She may be up at 4:00 am or 5:00 am. She is always tired and feels fatigued. She has low energy and cannot do anything.

[52] Since 2006 she has had pains in her shoulders, arms, legs and knee. There are days when the pain gets worse.

[53] In 2006, she had problems with concentration. It is getting worse with time. In 2006, her memory was weak. It has stayed the same since then.

[54] During a typical day in December 2010, she would get up around 9:00 am or 10:00 am. Her husband accompanies her downstairs. He helps her with breakfast. He drives a taxi and is home then until 3:30 when her son returns home. Her spouse then goes to work. Sometime her daughter makes breakfast. Four other people live with her: her two daughters, her son and her husband. After breakfast, she sits on the sofa and rests. Her husband asks her to sit with him in the backyard. She sits a while, feels tired and goes inside to rest. She watches some television but cannot sit for long. She sometimes listens to the radio. She does not go on the computer.

Sometimes she tries to read the paper but cannot do so. For lunch, her daughter and husband are at home. After lunch, she sits down and watches some television. Her husband asks her to go for a walk. She rests afterwards. The eldest daughter comes home and helps prepare supper. She goes to the kitchen and tries to do contribute such as cutting vegetables. After supper, she watches television and rests on the sofa. She does not sleep properly and walks inside the house.

[55] She cannot do any cleaning. She used to have a cleaning lady but could no longer afford one. She cannot recall how long she had a cleaning lady. The cleaning lady used to come to the house once a week. Now her daughters help with the cleaning.

[56] Her husband and son do the grocery shopping.

[57] She does not attend events outside the house.

[58] Her relationship with her husband and children is good. They try to take her outside the home, e.g., to the park or out to eat but she does not feel like going. She may go to temple but cannot sit for long.

[59] She does not drive. The last time she drove was many years ago. It was before the MQP. She does not go alone but goes outside with somebody.

[60] She has breathing problems if she goes for a long walk. If she stands after sitting, she feels dizzy. She also has problems going up and down the stairs due to breathing problems and knee pain.

[61] She cannot lift/carry objects. She can only pick up her food. She is not that strong.

[62] If she were able to return to work, she would do so. However, she cannot do anything.

[63] She goes to the bathroom frequently due to her medication for high blood pressure.

[64] Since 2006, she has had anxiety .She takes medicine which sometimes helps. Other times it does not. She still has panic attacks. She feels panic and wants to go into the light.

[65] At work, she mainly worked with Punjabi speaking co-employees. Her employers instructed her in Punjabi.

[66] She cannot take public transportation.

[67] She last saw her family doctor last week for knee pain.

[68] The Tribunal had some questions for the Appellant. She clarified she packaged plastic bottles in her factory jobs.

[69] In 2007, she returned to light work. Before light work, she had to break up plastic which bothered her wrists. In the lighter job, she packaged smaller sized bottles and did not have to stand while working.

[70] After the light job ended, she did not apply for Employment Insurance benefits or other financial assistance. She thought her health would get better and that she would return to work.

[71] At the time she went off work in 2006, she had problems with her knee, thyroid, hands, shoulder and anxiety.

[72] She had physiotherapy. She does not recall how long she attended. She performed exercises to strengthen her hands and knee.

[73] She goes to sleep at night at 9:00 pm or 10:00 pm but cannot sleep.

[74] Her three children are now age 32 (daughter), 31 (daughter) and 27 (son).

[75] She obtained her driver's license in or around 1983 or 1984. When she applied for the driver's license, she wrote a test in English and communicated with the driving tester in English.

[76] She learned English back home in India where English was taught in school. In Canada, she never received English language instruction. She started working right away.

[77] Her children attended school in Canada. She attended school to communicate with her children's' teachers. She would go along with her husband. At first she stated she never communicated with the teachers in English. She subsequently clarified she would attend parent/

teacher meeting along with her husband. She could understand a little bit and talk a little bit in English.

[78] The last time she ever drove her car alone was in 2008 or 2009. Now she feels “sick” about driving. Since that time, she has driven but someone accompanies her. The last time she drove was approximately two weeks ago. Her son was in the car with her. She went to visit her daughter who lives approximately seven minutes away. She drives to help get rid of her anxiety. In May 2015, she drove twice; in April 2015, she drove 2-3 times.

SUBMISSIONS

[79] The Appellant submitted that she qualifies for a disability pension because:

a) She is 58. She has Grade 10 from India and stopped working in 2006 when she went on sick leave. She tried to return to work at light duties in 2007, which she could not perform. She has sought treatment from numerous specialists and her family doctor.

b) She has pain in her shoulders, wrist (wrist splint), problems with her knees, is unable to bend, has anxiety/depression and sees her psychiatrist periodically. She has difficulty with daily functional limitations including lifting, carrying and reaching. She cannot do any house cleaning. She has problems falling asleep and is tired during the day with fatigue and low energy. She has difficulty with concentration and memory.

c) Her work experience is in packaging. Her education is limited to India. Her English skills are limited. She cannot drive by herself. She says she drives 2-3 times monthly. With all her conditions, she is incapable regularly of pursuing any substantially gainful occupation.

d) The medical record supports the appeal. The reports of the family doctor and psychiatrist state she cannot return to any work.

[80] The Respondent submitted that the Appellant does not qualify for a disability pension because:

a) According to the April 2010 endocrinology report, she was feeling well and had no symptoms of hyper or hypothyroidism. The ultrasound of the thyroid showed tiny nodules which were stable. He concluded she was stable from a thyroid point of view;

b) According to the May 2011 cardiology report, she was experiencing chest discomfort and shortness of breath with moderate exertion. The echocardiogram revealed normal heart function and the angiogram revealed no cardiac abnormalities. While she may not be able to perform physical work, the information does not support a finding she is unable to perform all types of work;

c) According to the family doctor's report, she had ongoing right shoulder pain since February 2006. He noted she had some tenderness and decreased range of motion of the shoulder likely due to bursitis. However, no severe physical findings were noted. While this may limit her ability to do some jobs, it should not stop her from performing all types of work;

d) According to the family doctor's March 2012 report, she has experienced anxiety and depression since 1992. There is no information on file to support that she has been treated with any medication or that she received any type of treatment. She was able to maintain gainful employment and there is no information on file to show her condition has worsened.

e) The additional reports submitted by the Appellant (GT6) were dated more than two years after the MQP. They do not necessarily reflect her medical condition at the MQP. The initial psychiatry consultation (Dr. Dhaliwal) took place in October 2012 almost 2 years after the MQP. She had not previously attended a psychiatrist nor had any history of psychiatric medication. The additional psychiatric information is dated almost 5 years after the MQP. Dr. Grewal's office notes dated August 2013 to November 2014, the pharmacy report (May

2013 to February 2015) and lab results (December 2014) are well after the MQP. Dr. Koponen's electromyography report (September 2013) did not support a severe disability but described improvement in nerve testing of the upper extremities since 2012.

f) While she may not be able to do her usual work, she should be able to perform some type of work.

ANALYSIS

[81] The Appellant must prove on a balance of probabilities that she had a severe and prolonged disability on or before December 31, 2010.

Severe

[82] The Tribunal is not satisfied that the Appellant's disability was severe on or before the MQP.

Anxiety/Depression

[83] The Tribunal is not satisfied that the Appellant suffered from a significantly disabling anxiety and depression on or before the MQP which rendered her incapable regularly of performing any substantially gainful occupation. Although Dr. Grewal states in his March 19, 2012 report that the Appellant had longstanding anxiety and depression since August 1992, the Tribunal notes she was able to work with these conditions until September 2007 (see Appellant's Questionnaire).

[84] Significantly, the Appellant only saw Dr. Dhaliwal, psychiatrist, for the first time in 2012. Although he stated she presented with pain for 10 years with depression developing over time, he did not see the Appellant at or around the MQP and was unable to provide a contemporaneous opinion as to the disabling nature of her psychological conditions(s).

[85] The Tribunal has considered the list of medications provided by the Appellant. She does not appear to have been prescribed medication for anxiety and depression at or around the

MQP. During the April 20, 2006 thyroid consultation, Dr. Dharmalingam reported she was not on any medication. According to his April 29, 2010 report, she was on Levothyroxine. In his February 28, 2011 report (issued just after the MQP), Dr. Qureshi reported that the Appellant was on Atenolol, Atacand, Synthroid and aspirin.

[86] The Tribunal has also considered Dr. Grewal's clinical notes and is not satisfied they support the existence of significantly disabling depressive or anxiolytic symptomatology on or around the MQP, which rendered the Appellant severely disabled as defined in the CPP. Although he noted she was anxious in a 2006 clinical note entry and also reported she was nervous and anxious in a January 20, 2010 entry, he did not report ongoing symptomatology between the date of these entries and the MQP or ongoing prescription of medication for these conditions.

[87] On balance, given the absence of active treatment, medication and psychiatric referral and consultation on or before the MQP, the Tribunal is not satisfied the Appellant's mental disability was severe as defined in the CPP on or before the MQP.

Menopause

[88] Dr. Grewal included menopause among the Appellant's diagnoses. The Tribunal has not been presented with evidence that this condition rendered the Appellant severely disabled as defined in the CPP on or before the MQP.

Hypothyroidism

[89] The Tribunal is not satisfied this condition rendered the Appellant incapable regularly of pursuing any substantially gainful occupation on or before the MQP.

[90] In his April 29, 2010 report, Dr. Dharmalingam, endocrinology, reported that the Appellant felt well and had no symptoms of hyper or hypothyroidism. An ultrasound of the thyroid gland showed tiny nodules which had remained stable for a number of years. He did not make a return appointment.

[91] The Tribunal has not been presented with medical evidence which supports a finding that this condition was not adequately controlled in or around the MQP. The Tribunal also accepts the Appellant's evidence that this condition is controlled with medication.

Hypertension

[92] The Tribunal is not satisfied this condition was severely disabling on or before the MQP. In his April 29, 2010 report, Dr. Dharmalingam reported that the Appellant's blood pressure was 130/80. In his November 25, 2010 clinical note, Dr. Grewal reported that the Appellant's blood pressure was 120/78. In his February 28, 2011 report, Dr. Qureshi, cardiology, reported her blood pressure was 132/80. On May 11, 2011, Dr. Raco reported her blood pressure was 132/84 with a heart rate of 66.

[93] The Tribunal has not been presented with medical evidence which would support a finding that this condition was not adequately controlled with medication on or before the MQP.

Left Sided Chest Pain on Exertion

[94] The Appellant was diagnosed with left sided chest pain on exertion. According to Dr. Raco, she had symptoms consistent with CCS class II angina. The Tribunal is not satisfied that symptoms consistent with class II angina would prevent the Appellant from performing non-strenuous light or sedentary work.

Bilateral Shoulder Pain/Left 3rd and 4th finger pain and numbness/ Pain in back/legs/entire body

[95] The Tribunal is not satisfied the Appellant experienced left shoulder pain or left 3rd and 4th finger pain and numbness on or before the MQP which rendered her severely disabled as defined in the CPP.

[96] According to Dr. Grewal in his March 19, 2012 report, the Appellant complained of bilateral shoulder pain and numbness in the left 3rd and 4th fingers due to CTS on July 21, 2011, which is after the MQP.

[97] On April 3, 2012, Dr. Koponen diagnosed bilateral CTS which required wrists splints. The Tribunal has not been presented with medical evidence or reports which support a finding that bilateral CTS rendered the Appellant severely disabled on or before the MQP. Also, in his September 2013 report, Dr. Koponen stated the Appellant had no lesion on examination, that her test results were much better compared to 2012 and that she had some discomfort in the rain and cold with perhaps an arthritic component to her symptoms. The Tribunal is not satisfied that Dr. Koponen's September 2013 description of the Appellant's bilateral CTS is that of a severe condition as defined in the CPP.

[98] In his October 11, 2012 report, which is after the MQP, Dr. Dhaliwal reported that the Appellant reported arthritis in her arms, hands, shoulder, back and legs and that every part of her body hurt.

[99] In his August 24, 2012 report, which is after the MQP, Dr. Grewal reported that the Appellant complained of right knee and ankle pain during her last visit on August 15, 2012.

[100] The Tribunal has not been presented with contemporaneous evidence, medical reports or test results at the time of the MQP, which would support a finding that the Appellant suffered disabling pain in her back, legs and throughout her body on or before the MQP.

[101] The Tribunal is satisfied, however, that the Appellant complained about right shoulder pain after working on February 16, 2006. According to Dr. Grewal's clinical notes, the Appellant indicated she was tender anterior to the acromion with restricted elevations of the arm, which Dr. Grewal stated was likely due to bursitis. The Appellant further reported on May 16, 2006 that the pain started to radiate to her arm from the neck, which, according to Dr. Grewal was due to a radiculopathy.

[102] The Tribunal notes it has not been provided with any specialist reports or consultations chronicling the right shoulder condition between the period when she stopped working and the MQP and describing functional limitations and treatment efforts. During her oral testimony, the Appellant generally described some physiotherapy after she stopped working but her description focused on her wrists and knees and not the right shoulder.

[103] Based on the strength of Dr. Grewal's clinical notes, which states the Appellant had difficulty back in February 2006 elevating her right shoulder and his March 2012 report attesting to bilateral shoulder pain (which would indicate ongoing right shoulder pain), the Tribunal is prepared to accept that the Appellant had ongoing right shoulder pain and that she would be incapable regularly of performing strenuous, repetitive or overhead work on or before the MQP.

[104] The Tribunal is not satisfied, however, that the cumulative impact of the Appellant's mild class II angina and restricted elevation of the right shoulder would prevent her from pursuing any substantially gainful occupation on or before the MQP, including light or sedentary work or retraining for work within her restrictions.

[105] The Tribunal notes that the modified work performed by the Appellant was still repetitive in nature. Although she could sit, she was still performing packaging, which required repetitive movement of her right upper limb, albeit with lighter inventory. The Tribunal is not satisfied this work effort rules out all light sedentary work, which does not require repetitive use of her upper right limb.

[106] The Tribunal is further satisfied, taking into her account her personal factors, including her age at the MQP (54), education (Grade 10 in India) and knowledge of some English, that the Appellant possessed residual capacity to pursue light work and or retraining, e.g. to improve her English language skills, to enable her to pursue lighter work within her physical restrictions.

[107] According to the decision of *Inclima v. Canada (Attorney General), 2003 FCA 117 (CanLII)* at paragraph [3]:

> Consequently, an applicant who seeks to bring himself within the definition of severe disability must not only show that he (or she) has a serious health problem but where, as here, there is evidence of work capacity, must also show that efforts at obtaining and maintaining employment have been unsuccessful by reason of that health condition."

[108] On the facts of this case, the Appellant has not satisfied the Tribunal that she made an attempt to try sedentary work or pursue retraining for suitable work within her physical restrictions and demonstrated that it failed because of her health condition.

[109] Although the Appellant testified as to her fatigue, pain, anxiety and functional limitations at the MQP, the Tribunal has serious reservations about the Appellant's credibility and is not prepared to find, on the basis of her oral testimony, that her symptoms and functional restrictions were such that she was rendered severely disabled as defined in the CPP on or before the MQP.

[110] The Tribunal notes that when the Appellant first testified, she stated she never received any English language training in India. However, when the Tribunal confirmed with the Appellant that she wrote a written driver's license test in English and performed her driver's license road examination in English, and asked her where she learned English, she stated she did so at school in India.

[111] The Tribunal finds that the Appellant was very evasive in answering the fairly simple question whether she communicated with her children's school teachers in English. At first she said she did not do so. However when the Tribunal pursued this line of inquiry, she conceded she could understand "a little bit" and speak "a little bit" in English, when she and her spouse attended at parent/child interviews.

[112] The Appellant also initially testified without any qualification that she does not drive. She stated the last time she drove was many years ago. However, she added, somewhat ambiguously, that she does not go alone but goes outside with somebody. She did not, testify, however, that someone accompanies her as a passenger in the car while she drives. She clearly intended to leave the Tribunal with the impression that she does not currently drive. Only upon questioning by the Tribunal did the Appellant clarify that she currently drives. She testified she last drove approximately two weeks prior to the hearing and may drive up to 2-3 times a month. She noted she requires a passenger due to her anxiety.

[113] The Tribunal finds that the inconsistencies between the Appellant's evidence given in chief and on questioning by the Tribunal, at worst, calls into question her candour and

truthfulness as a witness; at best, they call into question the accuracy and the reliability of her testimony. Her evidence that she can drive up to 2-3 times weekly, also raises questions concerning the nature, degree and severity of her problems with concentration, wrist and shoulder pain. Although the Tribunal appreciates the Appellant's evidence that her driving trips are of short duration and infrequent and that she requires a passenger in the car, nevertheless, the Tribunal notes the Appellant has capacity to drive, which requires her to be able to use her hands, wrists, arms and shoulders, and which further requires direct concentration on her part, passenger notwithstanding. The Tribunal further notes that the Appellant's explanation that she drove two weeks ago to visit a family member is at variance with the contents of Dr. Dhaliwal's February 14, 2015 report, in which he stated the Appellant avoids going out because of anxiety and is unable to socialize.

[114] In conclusion, the Tribunal is not persuaded upon careful consideration of the medical record and Appellant's evidence that her disability was severe as defined in the CPP on or before the MQP.

Prolonged

[115] Having found that the Appellant's disability is not severe, it is not necessary to make a determination on the prolonged criterion.

CONCLUSION

[116] The appeal is dismissed.

Jeffrey Steinberg

Member, General Division - Income Security