



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Y. B. v. Minister of Employment and Social Development*, 2017 SSTGDIS 145

Tribunal File Number: GP-16-2289

BETWEEN:

**Y. B.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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

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DECISION BY: Patrick O'Neil

HEARD ON: September 26, 2017

DATE OF DECISION: October 2, 2017

## REASONS AND DECISION

### OVERVIEW

[1] The Respondent received the Appellant's application for a *Canada Pension Plan* (CPP) disability pension on September 4, 2015. The Appellant claimed that she was disabled because of shoulder, elbow, left wrist carpal tunnel, low back and left hip pain. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[2] To be eligible for a CPP disability pension, the Appellant must meet the requirements that are set out in the CPP. More specifically, the Appellant 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 Appellant's contributions to the CPP. The Tribunal finds the Appellant's MQP to be December 31, 1998.

[3] This appeal was heard by Teleconference for the following reasons:

- a) The Appellant will be the only party attending the hearing.
- b) The issues under appeal are not complex.
- c) This method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

[4] The following people attended the hearing: The Appellant: Y. B.; the Appellant's Representative: Roderick Lesperance.

[5] The Tribunal has decided that the Appellant is not eligible for a CPP disability pension for the reasons set out below.

## **EVIDENCE**

### **Appellant's evidence**

[6] The Appellant testified on her own behalf. She was forty-one years old at her MQP and sixty years old at the hearing. She has a grade twelve education and an International Business college diploma. The Appellant noted in the Questionnaire for Disability Benefits (Questionnaire) dated July 26, 2015 she last worked at an automotive assembly factory from August 22, 1994, to October 11, 1995. The Appellant testified she last worked in canteens/cafeterias in various facilities for six months in 2002, and has not worked since. The Appellant's CPP Contributions Statement confirms the Appellant's last year of earnings and CPP contributions was 2002.

[7] The Appellant testified she worked as a labourer for General Motors (GM) initially at the company's X facility from September 1989 until the plant closed in 1991, then at a GM assembly facility in X until that facility closed in 1992. While laid off after the GM X plant closure, the Appellant worked as a waitress at Casino X until she transferred to a GM assembly plant in X in August 1994. Prior to acquiring employment at GM in 1989, the Appellant's work from 1980 to September 1989 included hospital housekeeper, waitress, and bartender.

[8] The Appellant noted in the Questionnaire she stopped working because of a workplace injury. She claimed she could no longer work because of her medical condition as at October 11, 1995, the date she last worked at the GM factory in X. She noted in the Questionnaire, and testified, the impairments that prevent her from working are shoulder, elbow, left wrist, back, and left hip pain. She indicated she had workplace injuries to her shoulders and elbows. She testified the impairments of her left wrist, back, and left hip began subsequent to her December 31, 1998 MQP. She acknowledged these conditions did not preclude her from working as at her MQP.

[9] The Appellant said she injured her shoulders and elbows in September 1994 and August 1995. She continued working after each injury, which she reported aggravated her condition resulting in her stopping work October 11, 1995. The Appellant characterized her duties in the GM facilities as physically demanding.

[10] The Appellant participated in a WSIB Labour Market Re-entry (LMR) education upgrading program from 1996 until 2001. She attended high school for one and one-half years beginning in 1996, and obtained a high school education general equivalency diploma (GED). She thereafter attended a six month college computer training program, and thereafter a three year college business program. She said she obtained an International Business college diploma following completion of the retraining program in 2001. The Appellant testified the high school upgrading component of the LMR program involved attending classes four hours a day, five days a week, and the college retraining program required attending classes five to six hours a day, five days a week. She said she attended classes whenever scheduled and on average did five to six hours homework each day after class.

[11] The Appellant testified she looked for work after completion of the college retraining program. She was unsuccessful in obtaining work in the field of International Business. She acquired a job with a company that operated canteens/cafeterias at various factories in 2002, and worked for that company at various cafeterias for six month in 2002. Her duties involved food preparation and clearing tables. She testified she was scheduled to work four 5-8 hour shifts each week. She testified she worked when scheduled, and worked extra shifts when available. She said was able to perform the duties of the job. She stopped working because of pending right shoulder surgery in October 2002, and has not worked since.

[12] The Appellant testified she has not looked for work subsequent to stopping work in the canteens/cafeterias in 2002. The Appellant's condition worsened after completing the retraining program in 2001, and subsequent to working in the canteens/cafeterias in 2002. In this regard, she had right shoulder surgery in October 2002, left shoulder surgery in November 2005, left elbow surgery in June 2008, left carpal tunnel surgery in 2011, and left shoulder surgery in September 2016. She said she had physiotherapy briefly following each surgery.

## **Medical evidence**

[13] Dr. Musgrove, the Appellant's family physician for thirty plus years, completed the medical report dated August 10, 2015, that accompanied the Appellant's benefit application. His diagnoses were left knee arthritis, left sided sciatica, lumbar disc disease and facet arthritis, dorsal myalgia, and chronic left shoulder tendinopathy. He noted the Appellant has suffered from chronic bilateral shoulder tendinopathy since 1994 despite two right shoulder surgeries, physiotherapy, cortisone injections, and anti-inflammatories. He noted the Appellant's history includes left carpal tunnel release in 2011 and lumbar disc disease with left sciatica since July 2012. Dr. Musgrove reported he first started treating the Appellant for her main medical condition in February 2012. He noted the Appellant has painful restrictive range of motion of her left shoulder and lumbar spine, with pain radiating into her left buttock and left leg consistent with sciatica. He indicated the Appellant was not currently on any prescription medication and may use over the counter Advil or Aleve prn. Dr. Musgrove, noting the Appellant's symptoms have persisted for many years despite interventions and treatments, reported it is unlikely she will have any dramatic improvement in her symptoms at this point in time. He opined he does not expect the Appellant to recover to the point she could return to any type of gainful employment.

[14] Dr. Stecko, orthopaedic surgeon, reported December 21, 1995, the Appellant was seen because of difficulties in her shoulders which began while working in September 1994, and right elbow pain. Dr. Stecko's clinical impression was bilateral impingement syndromes. He noted x-rays of the Appellant's right shoulder shows Type I acromion, and right elbow x-rays are normal.

[15] Dr. Stecko reported October 31, 1996 to Worker's Compensation Board that the Appellant still has persistent problems with the right upper extremity. He noted she is still impinging in the right shoulder mildly, and a percussion test about the elbow is positive. He noted he is going to repeat a nerve conduction study.

[16] Dr. Stecko reported February 10, 1997, the Appellant's nerve conduction study was normal. He noted she is having persistent problems with the right upper extremity, which he believes is due to overuse. He reported he will refer the Appellant to the Canadian Back Institute for therapy.

[17] Mr. Barrios, physiotherapist at the Canadian Back Institute, reported February 27, 1997, the Appellant was currently complaining of right shoulder pain which she reported began in 1994, and right elbow pain which she reported began in June 1996 after she underwent elbow surgery for ulnar nerve transposition. He reported the Appellant's current medication as Tylenol #3. He noted the Appellant's elbow and wrist range of motion were full and pain free. Mr. Barrios reported the Appellant's right shoulder pain is consistent with impingement syndrome, and her right elbow pain is likely post-surgical pain.

[18] Dr. Stecko reported further July 16, 1997 the Appellant is having persistent discomfort in the right upper extremity.

[19] Dr. Stecko reported further May 27, 1998 the Appellant was again seen regarding persistent problems in her right elbow. He noted she was first seen a number of years ago, had an exploration of the ulnar nerve at the elbow, and post-operatively continued to complain of pain. He indicated the Appellant had cortisone injections, and recent nerve conduction studies were normal. Dr. Stecko noted the Appellant's pain is localized to the medial epicondyle. Dr. Stecko's diagnosis was medial epicondylitis, and reported the Appellant has been booked for medial epicondylectomy.

[20] Dr. Stecko's operative report dated June 25, 1998, indicated the Appellant that day underwent right medial epicondylectomy.

[21] Dr. Stecko reported September 3, 1998 to WSIB the Appellant still has persistent elbow pain, continued local tenderness, and slight restriction of full extension. He noted the Appellant was going to go for therapy.

[22] There are no medical reports during the period subsequent to Dr. Stecko's report of September 3, 1998, and a report of Dr. Koppert dated August 3, 2004.

[23] Dr. Koppert, orthopaedic surgeon, reported August 3, 2004 the Appellant was seen regarding shoulder and arm pain. He noted she last worked in a canteen in August 2002. He indicated she underwent right shoulder surgery in October 2002 because of mild to moderate degenerate changes in the AC joint. He noted the Appellant is presently attending St. Clair College. He reported the Appellant's present medication as Extra Strength Tylenol. Subsequent

reports of Dr. Koppert note the Appellant complained of left shoulder pain, and was given cortisone injections with temporary improvement. He reported the Appellant underwent decompression acromioplasty-left shoulder November 7, 2005.

[24] Dr. Koppert reported February 13, 2006 the Appellant is making steady progress three months post left shoulder surgery.

[25] Dr. Koppert reported further October 24, 2006 the Appellant continues to experience discomfort one year post left shoulder surgery. He noted she has mild left ulnar neuritis with intermittent symptoms and no significant neurological deficit. He reported the Appellant has not worked for an extended period of time, and if she does return to work, she will require appropriate restrictions to protect her shoulders, left medial epicondylitis, and left ulnar neuritis. He noted the Appellant was discharged from care.

[26] There are various additional reports in the file subsequent to Dr. Koppert's report of October 24, 2006. The reports have all been reviewed. As the Appellant's MQP is December 31, 1998, the reports are relevant insofar as they relate to the issue of prolonged with regard to the Appellant's right shoulder and elbow complaints, which were present prior to her MQP. These additional reports insofar as they relate to back and knee pain, and left shoulder and left carpal tunnel syndrome are not relevant in that the onset of those conditions began after the Appellant's MQP.

[27] The Appellant's representative was asked if there are any medical reports in the file that address the Appellant's work capacity contemporaneous to her MQP, or at all. He noted there are reports contemporaneous to the Appellant's MQP that propose permanent restrictions relating to the Appellant's use of her right upper extremity. He acknowledged the only other report addressing the Appellant's work capacity is the report of her family physician dated August 10, 2015, being some seventeen years subsequent to the Appellant's MQP.

## **SUBMISSIONS**

[28] The Appellant submitted that she qualifies for a disability pension because her disability is both severe and prolonged. She submits she has suffered from shoulder and elbow pain prior to stopping work in a factory in October 1995, and left wrist, left hip, and low back pain, which

began subsequent to her MQP of December 31, 1998, making it impossible for her to work at any occupation on a regular basis since October 1995.

[29] The Respondent submitted that the Appellant does not qualify for a disability pension because she did not have a severe and prolonged disability on or before her MQP of December 31, 1998.

## **ANALYSIS**

### **Test for a Disability Pension**

[30] The Appellant must prove on a balance of probabilities, or that it is more likely than not, that she was disabled as defined in the CPP on or before the end of the MQP.

[31] 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 MQP.

[32] 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.

### **Severe**

[33] The Appellant stopped working in an automotive assembly factory in October 1995 because of right shoulder and elbow pain. She thereafter attended school regularly for five years from 1996 to 2001. The evidence of the Appellant is to the effect she attended school five to six hours a day, five days a week, and did five to six hours homework after class each day. She acquired a GED and a college business diploma.



[34] In *Stratton v. MSD* (October 17, 2006), CP 24370 (PAB), the Pension Appeals Board determined Mr. Stratton's attendance at school for two years is an indication that he is capable of sedentary and/or light work.

[35] After completing five years of educational upgrading, the Appellant acquired work as a labourer in cafeterias/canteens in 2002. She worked for six months at that job which she characterized as fast paced, involving cooking, cleaning, prolonged standing and lifting. The evidence of the Appellant is to the effect she was scheduled to work five to eight hour shifts four days a week in 2002, and worked whenever scheduled as well as overtime hours when available. She testified she was able to perform the duties of the cafeteria/canteen position. She stopped working because of pending shoulder surgery.

[36] The severe criterion must be assessed in a real world context (*Villani v. Canada (A.G.)*, 2001 FCA 248). This means that when deciding whether a person's disability is severe, the Tribunal must keep in mind factors such as age, level of education, language proficiency, and past work and life experience.

[37] The measure of whether a disability is "severe" is not whether the person suffers from severe impairments, but whether his or her disability prevents him or her from earning a living. The determination of the severity of the disability is not premised upon a person's inability to perform his or her regular job, but rather on his or her inability to perform any work, i.e. any substantially gainful occupation (*Klabouch v. Canada (Social Development)*, 2008 FCA 33).

[38] In *Watson v. MHRD* (September 29, 1999), CP 8040 (PAB), the Pension Appeals Board considered an appeal by Mr. Watson who suffered from a serious left knee injury which resulted in pain and instability. Mr. Watson worked as a labourer prior to his injury. The Pension Appeals Board stated: "Mr. Watson cannot be expected to be able to engage in strenuous physical activity. His mobility is subject to significant limitations. A defective knee joint hardly seems sufficient to exclude a person from all employment. Workers with a bad arm or a bad leg, and in some cases a limb that is of no use at all, find modified work." The Pension Appeals Board determined Mr. Watson's disability which they considered chronic and long term was not so severe as to amount to a disability as defined in the Canada Pension Plan.

[39] In *Butler v. MSD* (April 27, 2007), CP 21630 (PAB), the Pension Appeals Board considered an appeal by Mrs. Spencer who suffered from chronic neck, shoulder, and back pain. The Pension Appeals Board stated: “As the Board has often found in the past, chronic pain or fibromyalgia are not of themselves so debilitating that such diagnoses preclude any work. Indeed as has often been found, the vast majority of such sufferers are able to continue working, managing their pain through medication, passive treatment, active regular exercise and in some cases pain counseling”.

[40] The issue before the Tribunal is not whether the Appellant currently has a severe and prolonged disability, or whether she became disabled after her MQP of December 31, 1998. The issue is whether the Appellant had a severe and prolonged disability before the end of her MQP of December 31, 1998.

[41] There are no medical reports contemporaneous to the Appellant’s MQP of December 31, 1998, addressing the Appellant’s work capacity save that she has some functional restrictions/limitations with respect to her shoulders and right elbow.

[42] The Appellant successfully completed a lengthy educational upgrading program that began in 1996, being prior to her MQP of December 31, 1998, and continued for 5 ½ years, during which time she obtained her GED diploma and a college diploma in International Finance. The Appellant thereafter worked regularly for six months before she stopped because of pending surgery.

[43] The Tribunal determined the Appellant’s regular attendance and successful completion of a 5 ½ year educational upgrading program, and subsequent employment for six months as a labourer in a fast paced environment was evidence of work capacity contemporaneous to and subsequent to the Appellant’s MQP. The Tribunal determined the Appellant’s medical condition did not preclude sedentary or light duty type work on or before her MQP. The Tribunal concluded the Appellant did not have a severe disability on or before her MQP of December 31, 1998.

[44] A claimant's condition is to be assessed in its totality. All of the possible impairments are to be considered, not just the biggest impairments or the main impairment (*Bungay v. Canada (Attorney General)*, 2011 FCA 47).

[45] The Tribunal agrees a claimant's condition is to be assessed in its totality. However, the impairments that must be considered are impairments that existed on or before a claimant's MQP and not impairments that began subsequent to a claimant's MQP.

[46] The Tribunal, in determining the Appellant's disability was not severe, took into consideration the *Villani* factors, including the relatively young age of the Appellant at her MQP (41), her substantial work experience, her English language proficiency, and her significant education. As also noted in *Villani*, not everyone with a health problem is entitled to a disability pension. That decision reported that medical evidence will still be needed, as will evidence of employment efforts and possibilities. In this latter regard, the Appellant successfully completed a lengthy retraining program, which the Tribunal considers comparable to, and evidence of capacity for sedentary type employment, and worked regularly for several months thereafter. There is no evidence that obtaining and maintaining employment has been unsuccessful by reason of the Appellant's health condition contemporaneous to her MQP or since.

[47] The Tribunal acknowledges the Appellant's chronic pain results in some limitations. As noted in the *Watson v. HRSB* and *Butler v. MSD* decisions, the vast majority of persons who suffer from chronic pain, or a bad arm, find modified work and are able to continue working, managing their pain through medication, treatment, active regular exercises, and in some cases, pain counseling.

[48] The onus is on the Appellant to establish, on the balance of probabilities, her entitlement to CPP disability benefits. The Tribunal is of the opinion the Appellant failed to establish she was incapable regularly of pursuing any substantially gainful occupation on or before the end of her MQP of December 31, 1998. The Tribunal finds the Appellant did not have a severe disability on or before her MQP.

## **Prolonged**

[49] As the Tribunal found that the disability was not severe, it is not necessary to make a finding on the prolonged criterion.

## **CONCLUSION**

[50] The appeal is dismissed.

Patrick O'Neil  
Member, General Division - Income Security