



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *B. B. v. Minister of Employment and Social Development*, 2018 SST 911

Tribunal File Number: GP-17-1468

BETWEEN:

**B. B.**

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: Adam Picotte

Date of decision: August 27, 2018

## **DECISION**

[1] The Claimant is not entitled to a Canada Pension Plan (CPP) disability pension.

## **OVERVIEW**

[2] The Claimant had a long history of fibromyalgia. She had worked for approximately 20 years as a care aide and practical nurse at Vancouver Island Health Authority. She eventually stopped working and went onto long term disability benefits through her employer. The Minister received the Claimant's application for the disability pension on June 15, 2016. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] 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, 2019. As the MQP is in the future I have limited my decision to entitlement up to the date of my decision, August 27, 2018.

## **PRELIMINARY MATTERS**

[4] The form of hearing was scheduled as a teleconference. This was completed in accordance with the request of the Claimant in her notice of appeal. She advised the SST that she would prefer that form as it was difficult for her to travel. Two days prior to the hearing, the Claimant wrote to the Tribunal advising that she could not believe that a decision was going to be made after a telephone hearing. It was evident that the Claimant knew and understood that her hearing was to proceed on August 24, 2018. On August 24, 2018, the Claimant did not attend the telephone conference. I waited for 30 minutes for her to call in. The Claimant did not contact the SST to advise of any issues or emergency situations that would have resulted in her inability to attend the previously scheduled hearing. Moreover, the Claimant has not indicated in any way that she wishes to abandon the present appeal. As a result and in accordance with the SST Regulations, I have determined that the Claimant intended not to appear and that it is appropriate to proceed on the record.

## ISSUE(S)

[5] Did the Claimant's conditions fibromyalgia, depression, anxiety, and recurrent abdominal pain result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by August 27, 2018?

[6] If so, was the Claimant's disability also long continued and of indefinite duration by August 27, 2018?

## 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**

*Do the Claimant's functional impairments result in her inability to regularly engage in substantially gainful employment?*

[8] I must assess the severe part of the test in a real world context<sup>2</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.

[9] 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's 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<sup>3</sup>.

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

<sup>2</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

<sup>3</sup> *Klabouch v. Canada (A.G.)*, 2008 FCA 33

[10] The Claimant detailed that she had a grade 10 education and had completed coursework to become a practical nurse.<sup>4</sup>

[11] She most recently worked at Vancouver Island Health Authority in long term care but stopped due to a chronic illness.<sup>5</sup>

[12] Dr. Blackburn completed a medical report supporting the Claimant's application for a disability benefit. He detailed that he had known the Claimant since March 2016 and that she had fibromyalgia, depression and anxiety, and recurrent abdominal pain.<sup>6</sup>

[13] Dr. Blackburn also noted that the Claimant was unable to work in her current employment due to her pain and the negative impact on her mood.<sup>7</sup>

[14] It is evident from Dr. Blackburn's report that while the Claimant is unable to work in her own occupation she may be able to work in less physically and mentally demanding employment. With her long and stable work history it is likely that the Claimant, if she attempted to find more suitable employment would be successful. This does not support a finding of severe.

[15] The Claimant endorsed a number of functional limitations in her application. These included an inability to sit longer than 45 minutes or stand for more than 30 minutes. She could walk for 20 minutes. She could do some amount of lifting, carrying and reaching. She had difficulties with personal needs and home maintenance. However, there is a lack of specific information about how her symptoms can be controlled with pain medication and whether this may result in an increased capacity for work. Further there is no indication that her conditions have progressed such that she has a reduced capacity now compared to when she was most recently working. This does not support a finding of severe.

[16] The Claimant engaged in a self-directed coaching program known as Bounceback. Her scores upon completion detail improved mental health and quality of life. This supports that since going off work her psychological wellbeing has improved. This evidences increased residual capacity for dealing with work stressors and makes it likely that she may be able to

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<sup>4</sup> GD2-183

<sup>5</sup> GD2-183

<sup>6</sup> GD2-166

<sup>7</sup> GD2-167

engage in some form of substantially gainful employment. This does not support a finding of severe.

[17] In an occupational fitness assessment in December 2016 by A. H. it was noted that the Claimant was able to work at a highly competitive level.<sup>8</sup> This supports that the Claimant had some residual capacity for continued employment and that she did not have a severe disability within the meaning of the CPP.

[18] In December 2016 the Claimant engaged in a functional capacity evaluation.<sup>9</sup> The evaluation determined that the Claimant had the capacity to work a full day. The evaluation noted some impairment and that these impairments likely prevented her from working as a care aide. This is in keeping with Dr. Blackburn`s findings. However, it is also evident that she had residual capacity with computer skills and other core competencies that would likely allow her to continue to work in a sedentary form of employment. This again does not support a finding of severe within the meaning of the CPP.

[19] For the reasons set out above I have determined that the Claimant does not have a severe disability within the meaning of the CPP.

## **CONCLUSION**

[20] The appeal is dismissed.

Adam Picotte  
Member, General Division - Income Security

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<sup>8</sup> GD2-137

<sup>9</sup> GD2-125