



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *B. L. v Minister of Employment and Social Development*, 2018 SST 1040

Tribunal File Number: GP-17-1780

BETWEEN:

**B. L.**

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: George Tsakalis

Teleconference hearing on: September 6, 2018

Date of decision: September 17, 2018

## **DECISION**

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

## **OVERVIEW**

[2] The Claimant was born in 1957. She has a Grade 10 education. She last worked as a machine operator from December 1997 to February 2014. She stopped working because of a tear in the plantar fascia of her left foot. The Minister received the Claimant's application for the disability pension on October 27, 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, 2017.

## **ISSUES**

[4] 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, 2017?

[5] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2017?

## **ANALYSIS**

[6] 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

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

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.

**The Claimant's disability was severe by December 31, 2017**

[7] 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>2</sup>.

[8] I am satisfied that the evidence shows that the Claimant was unable to perform any substantially gainful work at the time of her MQP because of her medical condition.

[9] The Claimant in her Questionnaire for Disability Benefits stated that she could not work because of her medical condition as of February 14, 2014 because of the plantar fascia tear in her left foot.<sup>3</sup>

[10] The Claimant stated in a March 22, 2017 letter to the Minister that she continued to suffer from left foot pain. She had pain on a daily basis and walking any distance caused her foot to swell. She also reported that sitting for a prolonged period of time was problematic for her.<sup>4</sup>

[11] The Claimant testified that she stopped working because her left foot was in so much pain that she could not stand or walk. Her pain was unbearable. She began experiencing left foot pain in 2011 or 2012. She worked as a machine operator with a meat packaging company. Her job required standing and lifting. Her employer became aware of her medical condition in 2013. They offered her modified duties away from her assembly line position on a periodic basis. She worked in the laundry room, but she could not tolerate this position because she had to lift heavy laboratory coats and this placed pressure on her foot. They gave her cleaning duties. She was able to tolerate her cleaning duties, but this before her foot pain became unbearable. She

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<sup>2</sup> *Klabouch v. Canada (A.G.)*, 2008 FCA 33

<sup>3</sup> GD2-72

<sup>4</sup> GD2-10

eventually reached the point where she left her job because of her medical condition in February 2014. She has not worked or had any type of retraining since then.

[12] The Claimant testified that her foot pain persisted up to the date of her MQP and continued to the date of her hearing. She reported problems with memory and concentration prior to the expiry of her MQP. She reported difficulties with prolonged sitting. She testified that she had disrupted sleep because of her foot pain. She testified that she had problems with lifting. She indicated that she cannot drive long distances because of her medical. She testified that she has severe difficulties with walking and standing. She had severe difficulty with housekeeping tasks. She could only perform activities for 20 minutes at the most before having to take a break for 5 to 10 minutes at the time of her MQP.

***The medical conditions and impairments that the Claimant referred to at the hearing and in her Questionnaire for Disability Benefits are supported by the medical evidence***

[13] The medical evidence confirms that the Claimant had problems with her left foot prior to going off work in 2014. A left foot ultrasound taken on January 10, 2013 showed a small plantar spur.<sup>5</sup>

[14] The Claimant was treated in 2013 by Dr. G.M. Vincent, Orthopaedic Surgeon. Dr. Vincent provided her with cortisone injections that did not provide the Claimant with much relief. The Claimant also tried physiotherapy and orthotics, but these treatments were not helpful. Dr. Vincent was of the opinion that the Claimant's symptoms were consistent with plantar fasciitis.<sup>6</sup>

[15] Dr. Vincent referred the Claimant to Dr. R. Gordon, Orthopaedic Surgeon. A MRI of the Claimant's left ankle taken on May 12, 2014 showed a rupture of the plantar fascia.<sup>7</sup>

[16] Dr. Gordon completed an Attending Physician's Statement of Disability for the Claimant's private disability insurer, Sun Life on June 6, 2014. Dr. Gordon confirmed that the Claimant had a torn plantar fascia. She had pain and difficulty with walking and standing for more than five minutes. He was of the opinion that future treatment would not provide a good

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<sup>5</sup> GD2-63

<sup>6</sup> GD2-67

<sup>7</sup> GD1-16

solution for the Claimant's impairments. He concluded that the Claimant had a permanent disability.<sup>8</sup>

[17] Dr. Gordon referred the Claimant to another Orthopaedic Surgeon, Dr. A. Quinn. Dr. Quinn in a December 16, 2014 report confirmed that the Claimant had left sided heel pain and a documented plantar fascia rupture. The Claimant began experiencing heel pain in 2012 and tried multiple treatments that included an air cast walking boot, casting with crutches, and shockwave therapy. However, the Claimant continued to have debilitating pain and was on long-term disability. Dr. Quinn described the Claimant's medical condition as an "unusual problem". He reviewed the medical literature and found that the Claimant had appropriate treatment for her condition. Dr. Quinn stated that he had never performed a plantar fascia repair and he was not able to find a report of one in the medical literature. Dr. Quinn did not have any additional therapy to offer the Claimant.<sup>9</sup>

[18] Shelly Walkerly, Nurse Practitioner in a Medical Report to the Minister dated October 24, 2016, confirmed that the Claimant continued to have physiotherapy and chiropractic treatments, but had no improvement. The Claimant had limited mobility and was taking Celebrex. She was of the opinion that the Claimant had a permanent disability.<sup>10</sup>

[19] Dr. Gordon was of the opinion that the Claimant would have difficulty working as a machine operator in a March 22, 2017 Medical Report to the Minister.<sup>11</sup>

[20] The medical evidence also showed that the Claimant had chiropractic treatments with Dr. C. Carter in 2016 and 2017.<sup>12</sup>

**The Claimant had no work capacity prior to the expiry of her MQP**

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<sup>8</sup> GD1-18-19

<sup>9</sup> GD1-17

<sup>10</sup> GD2-52-56

<sup>11</sup> GD2-41

<sup>12</sup> GD1-10

[21] I must assess the severe part of the test in a real world context<sup>13</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.

[22] I disagree with the Minister's submission that the Claimant was capable of performing sedentary of part-time employment.<sup>14</sup>

[23] After considering all of the evidence, I accept that the Claimant was not employable in a real world context prior to her MQP. The Claimant was only 60 years old at the time of her MQP. She did not manage to finish Grade 10. She testified that she did poorly in school and has always had difficulty concentrating. She understands English, but her work experience has consisted of working as a machine operator, baker, and gas station attendant. She does not know how to use a computer.

[24] I do not believe that the Claimant could handle lighter duty work and any type of sedentary occupation because of her impairments, which include concentration difficulties. She performed some light duty work at her employer that included cleaning duties, but cleaning is not a realistic option for her because of her problems with standing. As stated by Dr. Quinn, the Claimant has a rare medical condition that cannot be treated. Her plantar fascia tear is not something that happens frequently and there is no cure for her condition. I do not believe that a classroom setting to upgrade the Claimant's education is a realistic option. She has impaired concentration and prolonged sitting is a problem. I do not believe that she could handle a job keyboarding because of her severe pain levels. Even keyboarding can involve putting pressure on your foot and this would cause the Claimant pain. I do not believe that the Claimant can handle a driving job because she cannot drive long distances without pain. I accept that her ability to perform her housekeeping tasks was impaired at the time of her MQP, and that it took her longer time to complete these tasks. I accept her evidence that she can only sustain activities for about 20 minutes before having to stop and take a break. I am satisfied that the Claimant cannot sustain activities for a long enough period of time to be employable in a real world context. I am also

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<sup>13</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

<sup>14</sup> GD6-9

satisfied that her pain levels are severe and unpredictable enough that she would not be able to guarantee reliable attendance at any type of job.

[25] I found the Claimant's hearing evidence to be persuasive. I do not find that she was exaggerating her symptoms. In fact, her treating doctors confirmed that she had a severe medical condition that caused her severe pain and functional impairments. She had a good work ethic. She worked with the same employer from 1997 to 2014. She worked at physical jobs that were suitable for her level of education. Her torn plantar fascia made stand up work an impossibility for her, and I am satisfied that her pain and functional impairments also ruled out sedentary work prior to her MQP. The medical records confirm that she had health problems since at least 2012, but she continued to work with difficulty until February 2014, when her medical condition made work intolerable. She testified that she has not looked for work since February 2014 because of her health problems, and I accept that she could not work at any substantially gainful occupation after February 2014.

***The Claimant pursued and complied with reasonable treatment options***

[26] I am satisfied that the Claimant did all that she could to seek and follow all reasonable recommended treatment options. The Claimant has seen three orthopaedic surgeons. She tried multiple treatments that include physiotherapy and injections. She tried shockwave therapy. She tried pain medications. She tried orthotics. She tried pool therapy to relieve her pain. She tries to walk around the block for exercise, but she experiences severe pain and walks with a limp. She has been supplied with a walker when her foot pain becomes unbearable. She is still in physiotherapy and she continues to see a chiropractor. She has been advised that she will need treatment on a continuous basis to manage her pain levels.

**Prolonged disability**

[27] I find that the Claimant has proven on a balance of probabilities that she has a disability that is likely to be long continued and of indefinite duration.

[28] The Claimant continues to suffer from the tear to the plantar fascia in her left foot. She remains under the care of Dr. Carter and continues with treatment. Dr. Gordon has stated that the

Claimant has a permanent disability and that there is no good solution to her medical condition.<sup>15</sup> Her treating doctors are simply managing her pain, as opposed to trying to find a cure.

## **CONCLUSION**

[29] The Claimant had a severe and prolonged disability in February 2014, when she last worked. 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>16</sup>. The application was received in October 2016 so the deemed date of disability is July 2015. Payments start four months after the deemed date of disability, as of November 2015<sup>17</sup>.

[30] The appeal is allowed.

George Tsakalis  
Member, General Division - Income Security

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<sup>15</sup> GD1-18

<sup>16</sup> Paragraph 42(2)(b) *Canada Pension Plan*

<sup>17</sup> Section 69 *Canada Pension Plan*