



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. O. v Minister of Employment and Social Development*, 2018 SST 1209

Tribunal File Number: GP-18-1

BETWEEN:

**S. O.**

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: Tyler Moore

Claimant represented by: Andrew Bolter

Teleconference hearing on: September 6, 2018

Date of decision: October 9, 2018

## **DECISION**

[1] The Claimant is entitled to a Canada Pension Plan (CPP) disability pension to be paid as of January 2013.

## **OVERVIEW**

[2] The Claimant last worked as a full-time office administrator at X from January 2010 until October 2012. She indicated that she could no longer work as of that time due to a repetitive injury to her right arm/hand/shoulder, chronic fatigue, chronic pain, depression, and anxiety. The Minister received the Claimant's application for the disability pension on December 11, 2013. 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, 2014.

[4] On October 21, 2016 the Social Security Tribunal – General Division rendered a decision finding that the Claimant was not entitled to a CPP disability pension. The Claimant requested leave to appeal to the Appeal Division which was subsequently granted on November 1, 2017. On December 20, 2017 the Appeal Division concluded that the appeal should be allowed, and the matter referred back to be heard by a different member of the General Division.

## **ISSUES**

[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 2014?

[6] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2014?

## **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.

[8] I found the Claimant and Witness to be credible. They testified in a forthright fashion answering questions related to the Claimant's work and health history as well as the impact that the Claimant's condition has had on her day to day life.

**i. The Claimant suffers from a serious health condition that has not been amenable to treatment.**

[9] 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>2</sup>.

[10] The Claimant testified that since she stopped working her symptoms have included constant leg/foot pain, hand pain/weakness, irritable bowels, shoulder pain, an inability to concentrate or remember, as well as depression/anxiety. She has been formally diagnosed with fibromyalgia, depression, anxiety, irritable bowel syndrome, and in 2010 Dr. Banner reported that she was suffering from complex regional pain syndrome.

[11] Though she is not presently taking any prescription medication, the Claimant testified that she has attempted lengthy trials of Gabapentin, CipraleX, Effexor, and Cymbalta medication. She has also had various pain clinic injections and participated in physiotherapy, chiropractic, massage therapy, and osteopathy treatments. Unfortunately, no treatment has provided the Claimant with any lasting relief. She has consulted with a psychiatrist and attended regular treatment with a psychologist in 2012 but had to discontinue treatment because of the associated out of pocket cost. The Claimant last attended counseling in 2016 when she participated in a

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

<sup>2</sup> *Bungay v. Canada (A.G.)*, 2011 FCA 47

chronic pain management program through the VON. She testified that she recently began consulting with the Canadian Mental Health Association after waiting over a year for treatment.

[12] According to the Claimant's treating pain specialist, Dr. Lena, the Claimant received no benefit from the multiple pain management therapies trialed and for that reason she was discharged from care. Dr. Lena had no other treatment options for the Claimant. The Claimant's family physician, Dr. Mather, has also expressed her support with regards to the Claimant's application. On August 15, 2012 she indicated that the Claimant was unable to continue her job as an office administrator. Dr. Mather also expressed in October 2014 that the Claimant's prognosis was not good and that she was unable to work at all. The Claimant reportedly struggled with completing activities of daily living at home and her anxiety was so severe that she would not be able to handle the stress of interacting with people.

[13] I find that the Claimant has been compliant with all recommended treatment. She currently takes no medication because all attempted therapies have failed, and no novel treatment options have been presented to her. I find that it is the combination of the Claimant's physical and psychological symptoms that preclude her regularly from substantially gainful work.

**ii. The Claimant's health condition impacts all aspects of her day to day life.**

[14] 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>.

[15] The Claimant testified that she has had to modify everything in her life to accommodate her condition and to be able to continue functioning. Since 2012 she has slept in a make-shift bedroom on the main floor of her home, she has re-arranged her kitchen appliances for ease of use, and she has removed all of the carpeting from her home and had it replaced with hard floors that are more manageable. She has had to install a bench in the shower as well as a raised toilet seat. She only wears pants that have no buttons or zippers and avoids wearing buttoned shirts

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

because of the limited dexterity she has in her hands. She also stopped wearing make-up in 2012, again because of her limited hand strength.

[16] The Claimant submitted that at the time of her MQP the majority of her days involved constant pain. That pain was subjectively rated as 10/10. She was often confined to a reclining chair or lying down in bed. Fortunately, her extended family only lives a few blocks away and she has relied on them to assist her on a daily basis. They cook meals, do the grocery shopping, help with laundry, and do basic cleaning. Neighbours cut the Claimant's grass and shovel her snow. Fortunately, her teenage daughter has always been independent and helps out in any way possible. Any increased activity only increases her pain, especially in her hands.

[17] The Claimant described that she is always moody, emotional, and has difficulty just being around others because of both her pain and anxiety. She wakes up from pain nightly and never feels rested.

[18] I find that the Claimant's daily life revolves around pain management and trying to minimize her symptoms to the best of her ability. She is very fortunate to have such a strong network of support and she relies on them heavily to assist her. The Claimant struggles with even menial tasks at home. Given the impact the Claimant's symptoms have on all aspects of her day to day life, I find that she could not regularly perform any substantially gainful work.

**iii. The Claimant has attempted to return to sedentary work unsuccessfully.**

[19] 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>4</sup>.

[20] The Claimant has suffered multiple work-related injuries since 2007. At that time she was diagnosed with a compensable bilateral repetitive hand strain injury. In 2010 she was awarded a compensable right shoulder injury, again due to repetitive strain working in an administrative role. In early 2012, the Claimant also suffered a left knee injury while running. Since around that time, the Claimant submitted that her overall pain has only increased, especially in her hands.

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<sup>4</sup> *Inclima v. Canada (A.G.)*, 2003 FCA 117

[21] The Claimant participated in some re-training through WSIB prior to 2010. She obtained her GED diploma, completed some college courses in accounting, and was trained on voice activated computer software to minimize the use of her hands. Her last job was completely sedentary and involved booking patients and taking care of files. She was also able to sit or stand as needed.

[22] The Claimant testified she initially stopped working in August 2012 due to complete physical and mental exhaustion. She was having great difficulty performing simple tasks at home. Towards the end of September 2012 she did try to return to work at her previous employer. She performed modified hours and duties, but could only do so for one or two shifts before having to stop work completely. Dr. Mather corroborated the Claimant's testimony in November 2012 when she reported that the Claimant tried returning to work for 4 hours twice a week, but had trouble coping.

[23] The Claimant has not looked for or attempted any other work since October 2012. She submitted that her constant physical pain, exhaustion, and depression have prevented her from being able to do so. I accept that the Claimant would return to work if she could. She has demonstrated an inability to continue working in what was already a sedentary and accommodated role. Since she stopped working her condition has not improved. I find that since the Claimant stopped working, she has been unable to obtain and maintain any employment as a direct result of her health condition.

**iv. The Claimant is not realistically employable.**

[24] I must assess the severe part of the test in a real world context<sup>5</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.

[25] The Claimant was 36 years of age at the time of her MQP. She has completed a high school equivalency diploma as well as a few additional accounting courses. The Claimant is fluent in English, but possesses few transferable skills given the uniformity of her work experience primarily as an administrative assistant and labourer. Though she was relatively

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<sup>5</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

young at the time of her MQP, I find that her limited formal education, lack of transferable skills, and numerous functional limitations precluded her from any successful re-training or from accommodated work within her limitations.

[26] I conclude that on a balance of probabilities the Claimant was suffering from a severe disability, as defined by the CPP, prior to December 31, 2014.

### **Prolonged disability**

[27] I find that the Claimant also suffers from a disability that was long continued and of indefinite duration by December 31, 2014. She has been suffering from chronic pain, anxiety, depression, and fibromyalgia since at least 2012. Despite her participation in multiple modalities of both physical and psychological treatment, the Claimant's condition has not improved. Given the chronicity of her symptoms and lack of improvement to date, I find little prospect that her condition will improve to the point that she could regularly resume any substantially gainful work.

### **CONCLUSION**

[28] The Claimant had a severe and prolonged disability in August 2012, when she stopped working. 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>6</sup>. The application was received in December 2013 so the deemed date of disability is September 2012. Payments start four months after the deemed date of disability, as of January 2013<sup>7</sup>.

[29] The appeal is allowed.

Tyler Moore  
Member, General Division - Income Security

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<sup>6</sup> Paragraph 42(2)(b) *Canada Pension Plan*

<sup>7</sup> Section 69 *Canada Pension Plan*