



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. B. v Minister of Employment and Social Development*, 2018 SST 1226

Tribunal File Number: GP-17-2084

BETWEEN:

L. B.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Nicole Zwiers

Claimant represented by: Paul Sacco

Teleconference hearing on: October 9, 2018

Date of decision: October 29, 2018

DECISION

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

OVERVIEW

[2] The Claimant experienced a number of personal losses including the death of a close colleague and she stopped working in June 2012 due to depression and anxiety. The Minister received the Claimant's application for the disability pension on September 23, 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, 2015.

ISSUE(S)

[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, 2015?

[5] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2015?

ANALYSIS

[6] Disability is defined as a physical or mental disability that is severe and prolonged¹. 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.

¹ Paragraph 42(2)(a) *Canada Pension Plan*

Severe disability

The Claimant Stopped Working due to Depression and Anxiety in 2012

[7] By June 2012 the Claimant had experienced the loss of 3 close friends including her assistant branch manager at the Claimant's bank branch and she was transferred to another branch. The Claimant had a difficult summer in 2012 and she felt she could no longer work due to depression and anxiety by June 2012. The Claimant testified that she has never attempted to return to work since because she has been unable to re-enter the bank that employed her for many years.

[8] The Claimant has been treated with an anti-depressant and has been referred for counselling. The Claimant testified that group counselling did not benefit her and listening to other people's issues made her worse. Further, the Claimant testified that she did see 4 psychologists and a psychiatrist as well as her family doctor for treatment of her main medical conditions throughout 2013 through to mid-2015. The Claimant explained in her testimony that she did not find counselling helpful because all treatment providers wanted her to look back into her past as part of the treatment. The Claimant testified that she is not prepared to do that.

The Claimant has capacity to work as of her MQP

[9] The Claimant testified that she could not have returned to her employer bank or any branches of the bank as her employer represented too many unresolved issues for the Claimant. The Claimant testified that she would love to be able to return to working and contributing although she felt that she is not capable of working and could not make the commitment to work. I find that the Claimant did, as of December 31, 2015, have some capacity to engage in substantially gainful employment. To that end, I must assess the severe part of the test in a real world context². 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.

² *Villani v. Canada (A.G.)*, 2001 FCA 248

[10] In the within appeal, the Claimant was 62 years old at the time of her CPP application, she has a 3 year degree as well as a 1 year bachelor of education and many years' work experience – from 1989 to 2012 – working in a bank in a variety of roles. The Claimant is fluent in English and was responsible as branch manager for overseeing the operation of a branch. The Claimant testified that she had been a branch manager over 4 branches before she stopped working. There was no evidence of a significant physical impediment to working as of December 31, 2015. While the evidence before me demonstrates that the Claimant stopped working in 2012 due to depression and anxiety, the evidence does not establish that the Claimant was incapable of pursuing any substantially gainful employment as of her MQP.

[11] The Claimant's physician indicated that the Claimant has had a poor response to psychotherapy and was unable to cope with daily activities in June 2017. However, there is no evidence as of the Claimant's MQP of December 31, 2015 that shows the Claimant was incapable of any substantially gainful employment.³ Dr. Sampson indicated that she has treated the Claimant since August 2008 for depression and anxiety and she diagnosed the Claimant with supraventricular tachycardia with cardiac ablation, endometrial carcinoma, gambling addiction and non-insulin dependent diabetes.⁴ Dr. Sampson encouraged the Claimant to re-contact the psychiatrist who had treated her previously.⁵ Dr. Sampson further indicated that the Claimant's medications were Wellbutrin, 300 mg and Lipitor, 10 mg.⁶ Dr. Sampson provided that the Claimant had a poor response to psychotherapy.⁷ Dr. Sampson's prognosis for the Claimant was "guarded" noting that it had been 4 years and the Claimant was not recovered or in remission re: mood disorder.⁸

[12] Dr. Sampson provided the Tribunal with her clinical notes regarding the Claimant from January 2016 through to June 2017. While the notes reflect that the Claimant experienced depressive symptoms as well as anxiety, the notes also reflect times at which the Claimant indicated she felt better including notes from February 2016.⁹ A clinical note from May 8, 2017

³ GD2-86-90

⁴ GD2-86

⁵ GD2-89

⁶ *Ibid*

⁷ *Ibid*

⁸ GD2-90

⁹ GD2-92

reflects that the Claimant's mood was good with no gambling for 59 days.¹⁰ The evidence supports a finding that the Claimant has depression and anxiety but when considered in context of the Claimant's education and work experience, I find that she was a candidate for retraining for alternative sedentary employment as of her MQP. At that time the Claimant was 61 years old.

[13] The Claimant had participated in counselling as well as Christian based counselling and she testified that she did not want to pursue counselling that required her to revisit her past. I find that the Claimant did not follow all reasonably recommended treatment in her refusal to follow the advice of mental health care providers as to the most appropriate and effective approach to treating the Claimant's depression and anxiety.

[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 work¹¹. I accept the Claimant's testimony as supported in the medical documents that she felt unable to return to her bank employer because of the negative feelings and experiences she associated with her employer bank. However, the evidence does not show that the Claimant was precluded from all types of employment as of her MQP.

[15] 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 impairment¹². The Claimant's physician, Dr. Sampson, diagnosed the Claimant with other medical conditions including supraventricular tachycardia, endometrial carcinoma, gambling addiction and non-insulin diabetes. The medical documents filed with the Tribunal support that the Claimant has these conditions. However, the evidence, even with the other health conditions considered, does not show that the Claimant's health prevented her from pursuing any substantially gainful employment as of December 31, 2015.

¹⁰ GD2-101

¹¹ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

¹² *Bungay v. Canada (A.G.)*, 2011 FCA 47

[16] 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 condition¹³. As noted above, the Claimant's evidence is that she did not return to work or make attempts to return to any form of employment since she stopped working in 2012. Further, the Claimant's particular anxiety around returning to work appeared focused on returning to work within her employer bank and not in respect of working generally.

CONCLUSION

[17] The appeal is dismissed.

Nicole Zwiers
Member, General Division - Income Security

¹³ *Inclima v. Canada (A.G.)*, 2003 FCA 117