



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. B. v Minister of Employment and Social Development*, 2018 SST 1234

Tribunal File Number: GP-17-1732

BETWEEN:

D. B.

Appellant

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Virginia Saunders

Appellant represented by: Ian Bird

Date of decision: November 9, 2018

DECISION

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

OVERVIEW

[2] The Appellant applied for a CPP disability pension in July 2016¹. She claimed she had been disabled since March 2014, when she stopped working at a fast food restaurant because of severe and frequent panic attacks, anxiety, depression, migraines, and inability to leave the house². The Minister denied the application initially and on reconsideration; and the Appellant appealed to the Social Security Tribunal. The Appellant later submitted that although she stopped working in March 2014, her condition had limited her ability to pursue gainful employment for several years before that³.

[3] The Appellant must prove on a balance of probabilities that she became disabled on or before the end of her Minimum Qualifying Period (MQP), which is calculated based on her contributions to the CPP⁴. The Appellant's MQP ended on December 31, 2013⁵.

ISSUES

[4] Does the Appellant have a severe disability, meaning she was incapable regularly of pursuing any substantially gainful occupation by December 31, 2013?

[5] Was the disability likely to be long continued and of indefinite duration by December 31, 2013?

ANALYSIS

[6] A person is disabled under the CPP if she has a physical or mental disability that is severe and prolonged. A disability is severe if the person is incapable regularly of pursuing any

¹ GD2-64-68

² GD2-134-141

³ GD4-1-5

⁴ CPP paragraph 44(1)(b); subsections 44(2), 52(3)

⁵ GD2-70

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 death⁶.

[7] The Appellant's mental health condition clearly has a significant impact on her. However, the evidence does not support a conclusion that she was disabled as defined in the CPP by December 31, 2013.

Severe disability

The Appellant's condition

[8] The Appellant is now 30 years old. She stated she developed psychological symptoms as a child, and they gradually got worse⁷. In her disability questionnaire she described having severe social anxiety, obsessive compulsive disorder, panic attacks, stress-induced migraines, and depression. She had trouble speaking, concentrating, and remembering. She could not leave the house by herself, had insomnia, and was often bed-ridden. She was unable to pursue hobbies, sports, or volunteer activities; and she had stopped driving⁸. The Appellant filed other detailed descriptions of how her mental health condition has severely limited her functioning⁹.

[9] The Appellant's family doctor of many years, Dr. Bailey, diagnosed her with Generalized Anxiety Disorder and Obsessive Compulsive Disorder in February 2014¹⁰. Three months later, psychiatrist Dr. Thorpe diagnosed Anxiety Disorder with pervasive anxiety and obsessive compulsive disorder, and some depressive symptoms¹¹. More recently, the Appellant's current psychiatrist, Dr. Copen, described the diagnosis as Obsessive Compulsive Disorder and an associated tic disorder, social phobia, possible cluster B and C personality traits, possible Asperger's, and trichotillomania (hair-pulling disorder)¹².

[10] Since 2014 the Appellant has seen doctors regularly for her condition. She has tried several different medications and has attempted to have group and one-on-one counselling,

⁶ CPP paragraph 42(2)(a)

⁷ GD2-13

⁸ GD2-134-131

⁹ GD1-7-9; GD2-13-16, 19-20

¹⁰ GD3-26

¹¹ GD2-103

¹² GD2-121

which has been difficult because of her symptoms and personality traits¹³. Her recent evidence is that she has followed recommendations to the best of her ability, but she has not improved at all. She has difficulty leaving the house without her husband or her friend, regularly struggles with activities of daily living and personal care, is socially isolated, has cognitive deficits, lacks motivation, and has extremely low energy¹⁴. The most recent medical report is by Dr. Copen, who in July 2016 reported the Appellant's prognosis was poor, her condition was chronic and complex, and it was unclear if she would respond to treatment¹⁵.

The Appellant has demonstrated she had work capacity at her MQP

[11] I do not doubt the Appellant has struggled with mental health issues for many years. However, to qualify for CPP disability benefits, it is not enough for her to show she has significant impairments or a particular diagnosis. Her disability is "severe" if it prevents her from earning a living. She must be incapable regularly of pursuing any substantially gainful occupation; not just incapable of performing her usual job or her preferred occupation¹⁶. Enrollment in school or university may in some cases indicate that a person's condition is not severe. I find the Appellant's work efforts combined with her university experience show that, despite her symptoms and limitations, she had work capacity at December 31, 2013.

i. Work

[12] The Appellant described having full and part-time fast food and service jobs, beginning when she was in high school and continuing once she started university in 2007. She sometimes quit these jobs because she had panic attacks, or she would call in sick. She sometimes asked for time off to do school work, and while this was often true, it was also an excuse to avoid going to work if she was not feeling well mentally. Sometimes she did not work at all because she was too busy with school¹⁷.

¹³ GD2-90; GD6-5-6

¹⁴ GD3-13-16; GD6

¹⁵ GD2-124

¹⁶ *Klabouch v Canada (A.G.)*, 2008 FCA 33

¹⁷GD4-3; GD6-2-3

[13] The Appellant's earnings dropped significantly after 2009¹⁸. She stated this was because she quit her job at a fast food restaurant because of her anxiety, but also because her father died. After a few months she found another job, and held short term positions until January 2011 when she began working at aX's. Her duties included taking orders, making coffee, cleaning the lobby and washing dishes. She stated that as her mental health deteriorated she reduced her hours considerably, so that in her last year of work before she quit in March 2014, she was only working five hours each week¹⁹.

[14] The employer generally confirmed the Appellant's account of the hours she worked (25 hours a month in 2013, and 15 hours a month in 2014). However, the employer stated the Appellant's attendance was good, the quality of her work was satisfactory, and she could handle the demands of the job. As far as the employer knew, the Appellant quit because she went back to school²⁰. The Appellant explained the employer viewed her work this way because she had reduced her hours so much, and because she made the effort to call in sick rather than just not showing up²¹.

[15] By itself, the Appellant's ability to show up and perform reasonably well at work for five to seven hours a week does not persuade me that she was capable regularly of substantially gainful employment at the time. However, at least part of the reason she limited her hours was because she was also going to university. Had she not also been a student, she might have been able to work more hours despite her condition. It is also possible that she might have found work easier in a different job setting, or one with flexible hours.

ii. School

[16] The Appellant was at university between 2007, when she registered full-time at X University, and early 2017, when she graduated from the University of X with a Bachelor's degree in anthropology. She described having considerable difficulty throughout this period. During her first year, she was depressed and had poor grades. She completed the year, but then moved back to her hometown of X. She enrolled in X College, and studied there until September

¹⁸ GD2-70

¹⁹ GD2-131

²⁰ GD2-51-53

²¹ GD4-3

2012 when she enrolled at the University of X. She was able to transfer 27 units (each course was about 1.5 units) from X and X²².

[17] The Appellant's course load at University of X was sometimes full-time and sometimes part-time, depending on her mental health. She dropped courses if she thought her workload was going to affect her health or her grades too much, but did not think she dropped below three courses per semester, because she had to take that many courses to qualify for a student loan. She found school very stressful. She kept up with assignments and tests, but did not talk to anyone, and did not go to class often because she had anxiety and panic attacks. Occasionally she took an entire semester off, but usually made it up again in the summer²³.

[18] The Appellant stated she only succeeded at school because she was graded mostly on written papers and tests rather than group work or attendance in class. She was allowed to opt out of group assignments and class participation, and she could write tests in a private room²⁴. However, the evidence is that these accommodations were made for her long after her MQP, and that she managed without them until then.

[19] The Appellant stated she did not ask to have her disability accommodated for quite some time because she did not know such a thing was available, and then she was reluctant because she assumed she would have to get medical forms and she was afraid to go to a doctor. She finally went to the university's disability centre at the urging of another student who witnessed one of her panic attacks, and she made the necessary applications after that²⁵.

[20] In April 2014 the Appellant began seeing Dr. Gray, a GP she had been directed to so that she could be referred to mental health services through the university²⁶. Dr. Gray's notes show that at her first visit she told the Appellant to go to RCSD (Resource Centre for Students with a Disability), because she was failing as a result of being unable to go to class due to her social anxiety. It appears the Appellant applied for academic accommodation around August 2014²⁷.

²² GD6-3-4

²³ GD6-3-4

²⁴ GD4-1-4

²⁵ GD6-4

²⁶ GD6-5

²⁷ GD2-83-85

By December 2015 she was allowed to write her exams in an office²⁸; and by November 2016 and February 2017, she had been granted permission to get extensions, miss class, not participate in group discussions or make oral presentations, and write tests and exams in a room with reduced distractions²⁹. It is unclear when she applied for accommodations on this scale or when they were approved. Her application in August 2014 only suggested she would be helped by note-taking and distance-learning, because she was unable to be in a social situation. It also noted that at that time she was able to read a scholarly article and follow complex instructions, complete tasks on time, and make and keep appointments. Her biggest difficulties were with taking notes in class, interacting socially, managing external distractions, attending classes regularly, and managing stress³⁰.

[21] Dr. Gray's notes reveal that in 2014 – after her MQP ended - the Appellant struggled to attend class, but was able to participate in a group project, and considered taking a regular babysitting job, which Dr. Gray thought she would be good at³¹. In March 2015, Dr. Gray reported the Appellant had poor class attendance but had good grades³². It was late 2015 before the Appellant completed forms to apply for disability status with Canada Student Loans. She submitted them in January 2016, and was approved two months later³³. This allowed her to drop down to two courses per semester without losing her funding.

[22] The Appellant graduated in February 2017. She would like to continue in a Master's program, or get a second B.A. in psychology. However, she does not feel she is capable of defending a thesis, and she does not think a second undergraduate degree is worth the migraines, panic attacks, and additional debt³⁴

[23] I accept the Appellant had difficulty with many aspects of university, including attendance. However, she was able to continue with her education and successfully complete courses without any accommodation until months after her MQP ended. As difficult as this

²⁸ GD2-131

²⁹ GD2-17-18, 43-44

³⁰ GD2-84

³¹ GD2-95

³² GD2-93, 98

³³ GD2-23-28

³⁴ GD6-7

might have been, it suggests the Appellant had the capacity to pursue some type of work that did not require social interaction or participation in a class-like environment.

The Appellant's condition worsened after December 31, 2013

[24] All the descriptions of the Appellant's limitations, including by her doctors, were written after December 31, 2013. I appreciate that it is difficult for a person with a chronic condition to recall precisely when her symptoms began to significantly affect aspects of her life. From her perspective, they have always been an issue. However, I do not think these accounts of the Appellant's limitations accurately describe her circumstances on or before December 31, 2013. Although Dr. Gray speculated that the Appellant was likely fully dysfunctional in 2011³⁵, the Appellant was not her patient then, and Dr. Gray gave no evidence to support the statement. In fact, the Appellant's medical records from the months after her MQP ended show that it is more likely than not that her condition worsened after the end of her MQP.

[25] First, the Appellant did not seek medical help for her symptoms until February 2014. She stated she rarely went to doctors for any reason because she found them intimidating and she did not like talking to people³⁶. I understand this reluctance, but I note the Appellant saw a doctor for back pain in August 2012, but did not mention her mental health issues³⁷. This suggests that the Appellant did seek medical help when necessary, and that her mental health was not a significant concern for her in August 2012 but became so when it caused her to see Dr. Bailey in early 2014.

[26] Second, Dr. Baileys' notes suggest the Appellant's condition worsened after February 2014. In February, Dr. Bailey prescribed CipraleX, and advised relaxation techniques³⁸. When the Appellant did not improve by early March, he referred her to mental health services³⁹. It was later that month that he first noted she had agoraphobia with panic attacks, in addition to Generalized Anxiety Disorder. The Appellant also reported anxiety episodes where she could not

³⁵ GD2-26

³⁶ GD6-4

³⁷ GD3-26

³⁸ GD3-26

³⁹ GD3-27

speak at all⁴⁰. She had not reported agoraphobia or difficulty speaking until then. These are two of the limitations the Appellant claims prevent her from working.

[27] Third, in April 2014 the Appellant told Dr. Gray that her panic attacks had increased to “every other month or so”. Dr. Gray observed the Appellant made moderate eye contact and was fidgeting with her hands throughout the interview, but her speech and thought content were normal, she had full affect, and her mood was good⁴¹. Later that month the Appellant reported her panic attacks had increased in frequency since starting Cipralext, and that last month was the “worst month ever”⁴². In June and September 2014 she again told Dr. Gray that she felt she had worsened significantly since she first saw Dr. Bailey earlier that year⁴³.

The Appellant’s other conditions are not disabling

[28] In her disability questionnaire the Appellant noted she had sciatic pain because of a back injury and her weight⁴⁴. Although I must assess the Appellant’s condition in its totality⁴⁵, there is no evidence that sciatica or any other physical issue affected her ability to work. The only physical limitation the Appellant reported was an inability to lift more than 40 pounds, and that she had difficulty carrying that weight. She visited her family doctor’s office in August 2012 because of her pain⁴⁶, but there is no evidence she followed up for further investigation or treatment. Therefore, I cannot find these or any other physical issue contributed to a disability.

The Appellant’s personal attributes do not affect her work capacity

[29] When deciding if the Appellant’s disability is severe, I must keep in mind factors such as her age, level of education, language proficiency, and past work and life experience⁴⁷. These personal characteristics are to the Appellant’s advantage. She is intelligent. English is her native language. At her MQP she was 25 years old and she was pursuing a university degree which she has now obtained. Her work experience is in entry-level or unskilled jobs, but the only thing that

⁴⁰ GD3-27-28

⁴¹ GD2-98

⁴² GD2-97

⁴³ GD2-85, 92, 94

⁴⁴ GD2-136

⁴⁵ *Bungay v. Canada (A.G.)*, 2011 FCA 47

⁴⁶ GD3-26

⁴⁷ *Villani v. Canada (A.G.)*, 2001 FCA 248

might have prevented her from continuing with that type of work, or acquiring new skills, was her mental health condition. As discussed above, I find this condition did not leave the Appellant without work capacity at December 31, 2013. She has not established on a balance of probabilities that she was incapable regularly of pursuing any substantially gainful occupation at that time.

The Appellant's 2014 earnings cannot extend her contributory period

[30] In her Notice of Appeal, the Appellant submitted that because of her disability she could not work enough to make valid CPP contributions in 2014, so the months she did work should be included in her minimum qualifying period. The CPP allows pro-ration of earnings for the year the contributory period ends because of disability⁴⁸. The pro-rated amount is established by dividing the Year's Basic Exemption (YBE) by 12 months and using the monthly amount to determine when the MQP ends. The YBE for 2014 was \$5200.00: divided by 12 it gives a pro-rated monthly amount of \$433.00. This means that if the Appellant established that she became disabled in 2014, for every \$433.00 she earned that year, one month would be added to her MQP. However, according to the Appellant's T4 for 2014, she earned \$416.00⁴⁹. This was not enough to extend her MQP into 2014. In any case, the evidence does not support a conclusion that she was disabled under the CPP – if at all – until after the first few months of 2014.

Prolonged disability

[31] The Appellant must prove on a balance of probabilities that her disability is both severe and prolonged. Because I decided her disability was not severe at her MQP, I did not consider whether it was prolonged.

CONCLUSION

[32] The appeal is dismissed.

Virginia Saunders
Member, General Division - Income Security

⁴⁸ CPP section 19

⁴⁹ GD6-8