



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *T. R. v Minister of Employment and Social Development*, 2018 SST 1421

Tribunal File Number: GP-17-1989

BETWEEN:

**T. R.**

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: David Somer

Claimant represented by: Calogera Linda Mancuso

Teleconference hearing on: November 19, 2018

Date of decision: November 22, 2018

## **DECISION**

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

## **OVERVIEW**

[2] The Claimant was 57 years of age at the time of her current application for CPP disability benefits in August 2016. She has a grade 12 education. She last worked from October 2015 until April 2016 in a school cafeteria on a part-time basis. She stopped work at that time because she was unable to lift and carry objects. She felt very weak and was unable to do her job. The Minister received the Claimant's application for the disability pension on August 16, 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, 2010.

## **PRELIMINARY MATTERS**

[4] This is the Claimant's third application for CPP disability benefits. She previously applied on November 15, 2010 and this application was denied at both the initial and reconsideration level. Her second application was dated January 30, 2014 I was denied at the initial and reconsideration level.

## **ISSUES**

[5] Did the Claimant's majored depressive disorder and fibromyalgia result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2010?

[6] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2010?

## 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

[8] 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>

*The Claimant did not have a serious health condition that limited her capacity to work on or before December 31, 2010*

[9] The Claimant described her main disabling conditions as major depressive disorder, fibromyalgia and severe pain in her arms and shoulders. The Claimant also testified that she had three attacks of Bell's palsy, one in 2005, then in 2012 and the last one in 2017.

- **Major depressive disorder**

In the medical report submitted with the current application dated August 15, 2016<sup>3</sup>, Dr. Ivan Petrov, Family Physician, diagnosed the Claimant with major depressive disorder and fibromyalgia. Dr. Petrov stated that the Claimant was unable to work since January 2009 due to symptoms of major depressive disorder and fibromyalgia. She experienced pain in all four quadrants, insomnia, anhedonia, poor concentration, poor memory and poor self-esteem. She was prescribed Venlafaxine and Aventyl. Dr. Petrov reported that there were no further consultations or medical investigations planned and that her prognosis was guarded. The Claimant was assessed by Dr. Enzo D' Alessandro,

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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

<sup>3</sup> GD2-69-72

Psychiatrist, on June 21, 2011<sup>4</sup>. Dr. D'Alessandro reported that the Claimant had a stopped work in June 2009 due to pain and poor sleep. She was diagnosed with fibromyalgia last year. She has symptoms of major depression, pain disorder and fibromyalgia. She was to continue Cymbalta, which was first prescribed by Dr. Petrov in 2010, amitriptyline and psychiatric care. The Psychiatrist advised that the Claimant should not work due to her condition. Later, on August 8, 2016,<sup>5</sup> Dr. D'Alessandro reported that the Claimant was unable to work at her job as a cafeteria helper from October 2015 until April 2016 due to pain, tiredness, dizziness, confusion, helplessness and anxiety. She is been followed by psychiatrist since June 2011 and trialed on various antidepressants. She is presently prescribed venlafaxine and Lorazepam as needed. She continues to see Dr. Alessandro every three months. The Claimant did not begin seeing a mental health care specialist until six months after the expiry of her MQP in December 2010. She was on the same medication, Cymbalta, for many years until she stopped about one year ago. I agree with the Minister's submission that no severely disabling psychiatric symptoms have been identified which would have rendered the Claimant disabled continuously from a major depressive disorder since December 31, 2010.

- **Fibromyalgia and Chronic pain**

The Claimant's family physician, Dr. Petrov first diagnosed the Claimant with fibromyalgia in January 2009 and started her on Cymbalta. Her early symptoms started with neck pain, headaches, fog and stiffness to the point that she could no longer go to work. The Claimant was examined on July 28, 2010<sup>6</sup> by Dr. S. Handelsman, Rheumatologist, who reported that the Claimant had difficulty working as a cashier at the family-owned bakery due to decreased energy and problems with repetitive use of her upper extremities. The symptoms began 3 to 4 years ago. She is able to cook, do light cleaning, carry light groceries and go for short walks. She does not exercise regularly. Dr. Handelsman encouraged more aerobic exercise and left ongoing management up to the family physician. The Claimant testified that she now takes only Advil for pain

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<sup>4</sup> GD2-139-141

<sup>5</sup> GD2-73-74

<sup>6</sup> GD2-143-144

management and stopped taking Cymbalta approximately year ago due to side effects. The Claimant testified that her limitations include sitting/standing for 30 minutes and walking for 15 minutes. She is able to lift/carry 1 kg for a few minutes. Reaching and bending at both difficult. She is able to look after her personal needs with some difficulty. She is able to do light household maintenance. She has some trouble with recall and some with concentrating. She sleeps only two hours. She drives a car for no more than one hour. I recognize that the Claimant has limitations due to her fibromyalgia but her medical conditions are managed with medication and I find that she does not have a severely disabling condition.

- **Bell's Palsy**

The Claimant testified that she had an attack of Bell's palsy in 2005 then again in 2012 and then in 2017. These attacks caused pain and paralysis in her face. Unfortunately, none of her physicians have mentioned Bell's palsy in their various reports and thus it is difficult to accurately assess the effect of the disease on her ability to work, especially at the time of her MQP of December 31, 2010.

***Although the Claimant did make an attempt to return to work many years after her MQP, it was a failed attempt, even on a part-time basis, because it was too physical for her. She did not make an attempt to return to work in a more suitable, less physical job***

[10] I must assess the severe part of the test in a real world context<sup>7</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. The Claimant was 57 years of age at the time of her current application in August 2016. However, should be noted that she stopped work in May 2009 when she would have been approximately 50 years of age. She has a grade 12 education. Her previous work experience was as a bakery assistant in the family business. The Claimant returned to the workforce in as a cafeteria helper on a part-time basis, four hours per day and five days per week in October 2015 and stopped in April 2016 because she was unable to do the job as it required a good deal lifting and carrying. This was many years

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<sup>7</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

past her MQP of December 31, 2010. I look at this as a failed attempt at returning to work as her income was far short of substantially gainful.

[11] 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>8</sup>.

[12] 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>9</sup>. The Claimant did attempt to return to work for a period of 6-7 months but had to stop due to her medical conditions many years after her MQP. Since then, she had made no attempt to return to work in a less physically demanding job.

[12] I find that the Claimant has not established, on a balance of probabilities, a severe disability in accordance with the CPP requirements before December 31, 2010.

## CONCLUSION

[13] The appeal is dismissed.

David Somer  
Member dismissed, General Division - Income Security

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<sup>8</sup> *Klabouch v. Canada (A.G.)*, 2008 FCA 33

<sup>9</sup> *Inclima v. Canada (A.G.)*, 2003 FCA 117

