



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. B. v Minister of Employment and Social Development*, 2018 SST 1341

Tribunal File Number: GP-18-318

BETWEEN:

B. B.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Kelly Temkin

Claimant represented by: Michael Brown

Teleconference hearing on: December 10, 2018

Date of decision: December 12, 2018

DECISION

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

OVERVIEW

[2] The Claimant was last employed as a nurse from 1980 until June 30, 2016 when she stopped due to difficulty walking as a result of pain, swelling and inflammation of her right knee secondary to an unstable knee cap. The Claimant felt she could no longer work as of June 30, 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, 2019. Since this date is in the future, I must decide if it is more likely than not that the Claimant had a severe and prolonged disability on or before the date of hearing, December 10, 2018.

ISSUES

1. Did the pain, swelling and inflammation of the Claimant's right knee result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 10, 2018?
2. If so, was the Claimant's disability also long continued and of indefinite duration by December 10, 2018?

ANALYSIS

Test for Disability

[4] Disability is defined as a physical or mental disability that is severe and prolonged.¹ A person is considered to have a severe disability if incapable regularly of pursuing any

¹ paragraph 42(2)(a) of the CPP

substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration. 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

The Claimant's medical condition was serious by December 10, 2018

[5] 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.

[6] I am satisfied the medical evidence and the Claimant's testimony demonstrates that the Claimant had a serious medical condition (pain, swelling and inflammation of her right knee secondary to a patellar subluxation) by December 10, 2018.

[7] The orthopedic surgeon reported the Claimant is relatively young and although a total knee replacement would provide for predictable pain relief, he offered an arthroscopy and lateral release to provide for offloading of the patellofemoral joint and to possibly provide for pain relief. In the future the Claimant will likely require a total knee replacement to provide for predictable pain relief for her severe arthritis.²

[8] The Claimant testified in a straightforward manner. I accept her testimony. She testified that in January 2018 she saw a neurologist for a single visit. He told her she had moderate sensory loss in her right knee and lower leg. She testified that on May 23, 2017 she underwent right knee surgery. She described her improvement since the surgery as "light and steady". She uses a cane and can walk short distances but stairs and long distance walking are difficult. She has experienced three falls since her surgery.

The Claimant has residual capacity for work

[9] The Claimant submitted that given her age and work experience, it is not reasonable to expect that she is capable of returning to any alternative occupation. The Minister submits that

² GD3-5

while the Claimant may have limitations she has residual capacity to return to work or alternative work. Based on the medical evidence and the Claimant's testimony, I agree with the Minister's submissions.

[10] The Claimant testified that she had a lengthy work history in virtually all areas of nursing. In 2016 she stopped working because of difficulty walking and pain related to her right knee. In 2017 she underwent surgery for her right knee. She described the job of a nurse as heavy work requiring lifting, running and pushing. In the summer of 2018 she tried to return to the hospital on modified nursing duties but instead of the deskwork she thought she was assigned she was required to perform work where she was constantly moving in and out of her chair to register patients. After three weeks she was unable to continue with this type of work. This year she completed two trainings required by her employer. The electronic medical records training lasted for three days and since this course was sedentary it was not a problem for her. She also completed four days of domestic abuse training in the fall of 2018. She testified that the classwork was okay but the job itself was too difficult. When she fell down the stairs and injured her left foot the training came to an end.

[11] The Claimant testified she spent her life dedicated to nursing which is a difficult job. Her doctors told her that sedentary work is okay for her. She testified that if computer or deskwork were available she was capable of doing these duties. She had not looked for other work since she was considered an employee of the hospital and the union was presently fighting for accommodations. She said was hoping to do some form of sedentary work for her employer. When I asked her if she had capacity for alternate work she said she did not think it was reasonable to look for alternate work outside her job given her age and disability. It was not fair to ask her to start over at a lower salary since pay rates and seniority were not transferable to another job.

[12] The key question in CPP disability cases is not the nature or name of the medical condition, but its effect on a Claimant's ability to work.³ I recognize that as a result of the Claimant's medical condition she has functional limitations; however, I find that they do not prevent her from pursuing substantially gainful employment. I acknowledge the Claimant's

³ Ferreira v. Attorney General of Canada, 2013 FCA 81

testimony that she cannot return to her nursing position and that her employer has not yet accommodated her with sedentary work. I also accept the Claimant's testimony that the work trial in the summer of 2018 was not suitable given her medical condition. However, the Claimant admitted that she was capable of computer or desk work and said her doctors agreed that sedentary work was suitable. I concluded from her testimony that while her preference is to continue working for her current employer with accommodations, she has capacity for substantially gainful employment within her limitations based on the medical evidence on file and her testimony.

[13] The severe criterion must be assessed in a real world context. 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. Since I am not persuaded that the Claimant suffered from a severe disability as of the hearing date, her personal circumstances are not relevant to the determination.

[14] I find that the Claimant has not established, on a balance of probabilities, a severe disability in accordance with the CPP requirements by December 10, 2018.

CONCLUSION

[15] The Claimant is not entitled to a CPP disability pension.

[16] The Appeal is dismissed.

Kelly Temkin
Member, General Division - Income Security