



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. D. v Minister of Employment and Social Development*, 2019 SST 1533

Tribunal File Number: GP-17-2971

BETWEEN:

L. D.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: David Somer

Date of decision: January 8, 2019

DECISION

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

OVERVIEW

[2] The Claimant was 24 years of age at the time of her MQP. She stopped work as a cleaner in March 2001, after her MQP, due to a back injury. She reports a claim date of March 23, 2001. The Minister received the Claimant's application for the disability pension on November 8, 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, 1997.

ISSUES

[4] Did the Claimant's workplace injuries result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 1997?

[5] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 1997?

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

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

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 did not have a serious health condition that limited her capacity to work at the time of her MQP

[7] 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.²

[8] In the questionnaire dated November 8, 2016, submitted with her application, the Claimant stated that her main disabling condition is a back injury with bulging and degenerative discs, chronic pain and myofascial pain syndrome, muscle spasm and mechanical low back pain. She listed her limitations as constant pain in her back and being unable to do basic everyday things. She has limitations with sitting, standing, walking, lifting, reaching, bending, personal needs and household maintenance. Her breathing is shallow due to pain and her memory, concentration and sleep are our poor. She limits her driving to 5-15 miles. Her family doctor has prescribed naproxen, amitriptyline, pantoprazole and tramacet. She continues to see a chiropractor.

[9] In the initial medical report dated October 28, 2016,³ Dr. Adams, Family Physician, wrote that the Claimant had work related back injuries in February 1992, December 1996 and March 2001 and has had quite long and protracted issues with chronic back pain and muscle spasm resulting from these injuries. She has not worked since her last injury in 2001. She has been treated with conservative management including physiotherapy, chiropractic therapy and massage.

- **Back Injuries**

² Bungay v. Canada (A.G.), 2011 FCA 47

³ GD2-381-384

On March 21, 1997,⁴ Sandra Gosse, Physiotherapist, recommended that the Claimant return to work in an ease back capacity within the next week if the workplace would accommodate her. If this is not available, a work hardening program may be commenced. On January 5, 1998, Dr. Jacobs, Neurologist, wrote that the Claimant had no clinically detectable neurologic deficit. She had a chronic symptom disorder compounded by one year of unemployment. There is no medical contraindication to full-time employment. On the same date, Dr. Maroun, Neurosurgeon, examined the Claimant and noted a normal musculoskeletal and neurological examination. She is overweight with increased lordosis but no evidence of disc or SI joint dysfunction. A Functional Capacity Evaluation (FCE) performed on January 16, 1998 showed that her level of strenuousness is classified as light work. The report concluded that she is capable of standing frequently and sitting frequently. She is capable of a 4-hour workday. Another FCE conducted on February 16, 1998 reported that the Claimant was feeling very good and her pain was not constant or intense. She demonstrated tolerance for an 8 hour workday at the light degree of strenuousness. It was recommended that she is able to return to work as a dental assistant. On October 12, 2001⁵, Dr. Rod Martin, Orthopedic Surgeon, reported that a CT scan showed a small disc herniation at the L5-S1 level but he did not think there was significant nerve root compromise or anything to suggest that she has a surgical lesion. The Claimant stated to Dr. Martin that her symptoms have much improved but not to the extent that she could return to work. Dr. Martin suggested that the Claimant should have some therapy and work hardening and then an ease back program. None of this information suggests a severe medical condition regarding the condition of the Claimant's back that would have prevented her from returning to work on or before her MPP date of December 31, 1997. In fact, Functional Capacity Examinations have concluded that she is capable of light work.

The Claimant again injured her back in March 2001 when working as a cleaner, after the expiry of her MQP. An FCE on October 23, 2001 showed that her bone scan and x-rays were normal and predicted a work place tolerance of 8 hours at a sedentary to light level.

⁴ GD2-72

⁵ GD2-175

This information supports that the Claimant retained the capacity for work activity past her MQP and after her workplace injury in March 2001. I acknowledge the Claimant's physical limitations; however, the medical information provided did not support a severe medical condition on or before December 31, 1997 that would have precluded all work indefinitely. I have concluded that the Claimant did not have a severe medical condition as of her MQP date. This decision is supported by the reports of both the neurosurgeon and neurologist who both encouraged her to return to full-time work activity as well as the 2 FCE's which also supported a capacity for light work. In addition, the Claimant was able to work in 2001 which is beyond the date of her MQP.

The Claimant has not made efforts to find or maintain suitable work

[10] I must assess the severe part of the test in a real world context⁶. 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 only 24 years of age at the time of her MQP. She had a post secondary education and good proficiency in English. She completed a dental assistant program, was able to type 30 words a minute and was certified in both CPR and first aid. I am of the view that she developed transferable skills from her work experience. Keeping in mind the Claimant's personal circumstance, along with her medical condition, I have concluded that her personal circumstances would not negatively impact on her ability to seek and, if necessary, retrain for part-time or full-time employment. The FCE's show that she has the ability to work an 8-hour day at a light or sedentary level.

[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 is 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 work⁷. I have concluded that the Claimant had the

⁶ *Villani v. Canada (A.G.)*, 2001 FCA 248

⁷ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

residual capacity to seek and maintain substantially gainful employment on or before December 31, 1997.

[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 condition⁸. The Claimant returned to work for several months in 2001 after the expiration of her MQP. She reportedly stopped work in March 2001 due to another workplace injury. There is no indication that the Claimant attempted to return to work or look for alternative employment after March 2001. Therefore, I cannot determine from the evidence before me that the Claimant was unsuccessful in obtaining or maintaining employment because of her health condition if she never attempted to look for alternative employment.

[13] The Claimant has the burden of proof, and after careful review of the evidence, I have found that the Claimant has not established, on the balance of probabilities, a severe disability in accordance with the CPP criteria.

[14] The appeal is dismissed.

David Somer
Member, General Division - Income Security

⁸ *Inclima v. Canada (A.G.)*, 2003 FCA 117