Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *V. N. v Minister of Employment and Social Development*, 2019 SST 1626

Tribunal File Number: GP-17-1598

BETWEEN:

V. N.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: John Eberhard

Claimant represented by: Steven Yormak

In person hearing on: March 27, 2019

Date of decision: March 28, 2019

DECISION

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

OVERVIEW

[2] The Claimant, V. N., applied for a CPP disability pension on September 13, 2016[1], stating that she had been unable to work because of pain in her back from degenerative disc disease (DDD). She has functional limitations and difficulties with activities of daily living. She is 48 years of age. The Respondent (Minister) denied the application initially and upon reconsideration. She appealed the reconsideration decision to the Social Security Tribunal (tribunal).

[3] The Claimant worked as a home-based customer service call-centre representative for X from November 2013 to April 2016. She worked eight-hour days on the telephone with two 10-minute breaks and 30 minutes off for lunch. She stopped working due to back pain. She has a grade 12 education. She has not returned to her employment. Psychotherapists diagnosed the Claimant with an adjustment disorder mixed with depression and anxiety, a major depressive disorder and a chronic pain disorder in the fall of 2018.

[4] To qualify for a CPP disability pension, the Claimant must meet the requirements that are set out in the CPP. The Claimant has to be disabled as defined in the CPP on or before the end of the minimum qualifying period (MQP). The Claimant's MQP is December 31, 2018[2]. I must decide if she had a severe and prolonged disability as of that date.

ISSUES

a) Do the Claimant's degenerative disc disease (DDD) and mental health problems result in her being incapable regularly of pursuing any substantially gainful occupation?

b) If so, is the disability long continued and of indefinite duration?

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[1] GD2-19
[2] GD7-7

ANALYSIS

[5] Disability is a physical or mental disability that is severe and prolonged[3]. 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.

[6] The Claimant described her main medical problem as DDD and depression. She testified about her background. She came from the Maritimes to Ottawa where she worked in the home-based call-centre business. She had back pain when working there. She moved to the London area in July of 2015 (Parkhill) and worked steadily from 2013 to 2016 with the same company. She stopped working with a doctor's note on April 22, 2016 because of back pain. She did not present the note as evidence nor is there any evidence as to who the doctor was. Dr. Akter (family doctor) started treating her in June 2016. She testified that she went on EI sick benefits. Her application states that she went on Regular EI benefits[4]. She described her pain on a scale of 8/10. She later wrote that she could no longer work as of April 2016[5].

[7] I find that the individual and combined impact of the Claimants medical issues do not meet the definition of a "severe" disability.

a) Severe disability

Initial Medical Report and Medical History

[8] The medical evidence is not sufficient to conclude that the Claimant had a severe disability in December of 2018. The case for the Claimant is based on medical evidence from doctors in the London area. She began to see Dr. Akter in June of 2016[6]. There are no medical reports from her Ottawa doctors. However, there are inconclusive notes from an Ottawa

[3] Paragraph 42(2)(a) *Canada Pension Plan*
[4] GD2-52 (May through August)
[5] GD2-52
[6] GD2-43

Chiropractor, (Dr. Moore[7]) dated February 20, 2014 - January 25, 2015. Dr. Akter diagnosed her with mechanical back pain in September 2016[8].

[9] Dr. Akter, according to the Claimant, did not follow her regularly. The physician did not mention any mental health problems in her initial medical report. She noted increasing pain medications as of the time of the report (Lyrica, Celebrex and Tylenol #3). She indicated her patient reported worsening pain that affected prolonged activity. Medications were being adjusted and a pain clinic was being considered. The physician did not expect a full recovery. The Claimant testified that she had not seen this doctor for two years. Given the medical report of Dr. Akter, it is more likely that the Claimant has seen her for considerably more than two years. She started seeing a walk-in clinic doctor (Dr. Campbell). She did not testify as to a date.

[10] The Claimant testified that Dr. J. Campbell (family physician) provided her information and did some testing on her blood sugars in the possibility of treating her for diabetes. He filed a report[9] in June 2017. According to the report, his patient was diagnosed with chronic back pain, diabetes, hypertension and asthma. From her testimony, the Claimant said that the latter three condition are now controlled by medications. Her medical history was reportedly unknown to this physician. Blood work results were provided but no clinical evidence of any disabling medical conditions was submitted. Investigations were pending. However, this doctor provided no additional evidence. He treated her only from April to June 2017.

[11] There is a medical evidence gap. Dr. Stacie Kling of the Middlesex Center Regional Medical Clinic provided clinical notes spanning October 2018 to February 2019. In October 2018, she discussed the issue of her back pain. She reduced her new patient's Celebrex and brought the diabetes under control with new medications. The reduction in the Celebrex also helped to bring down her blood level to an acceptable level (although there are no medical reports on this issue). She notes the Claimant was not under the care of any specialists at that time. She wrote that an MRI scan was to be arranged. There was no report on any recent scan[10].

[7] Chiropractic notes from Dr. Moore dated February 20, 2014- January 25, 2015: GD9-3
[8] GD2-43
[9] GD5-5
[10] There is an older MRI from 2016. It is found at GD2-48

The doctor noted that there was little meaningful information in her file regarding the back pain[11].

[12] In a report from Dr. King[12] shortly after the MQP[13], she noted chronic low back pain, as well as subacute right arm pain "likely related to DDD of the cervical and lumbar spine". She said that her patient would benefit from physiotherapy. No reports from Physiotherapy were presented to the tribunal. At the end the appointment, the Claimant asked about fibromyalgia because her lawyer has suggested that she may have this. There is no report from a specialist on this issue. The physician did note that there was no obvious deformity in her neck. The range of motion (ROM) was normal. There was no spinous process tenderness and the shoulder and elbow ROM was normal. She noted tenderness on palpation of medial epicondyle and surrounding area (no point tenderness). She recommended a future longer examination on the fibromyalgia suggestion. There are no further reports on this issue.

Mental Health Issues

[13] Dr. Kling saw the Claimant in December of 2018 and stated she became tearful when asked how her back pain affected her mood. He noted that she found it very stressful and it made her quite sad. She was referred to attend CBT (cognitive behavioural therapy) and they discussed the use of Cymbalta[14] as a next step. The Claimant said she did not want any more medication that day. She also said she could not get injections because of logistics. The physician advised her to try Tylenol Arthritis regularly. There is no evidence that she complied or not with this suggestion.

[14] Social worker, Daniela Rutherford on December 3, 2018 noted depression[15]. The Claimant testified that she sees her counsellor every 2 or 3 weeks for one-hour sessions. There is no report from this professional.

[11] GD14-6
[12] GD14-3 (by his Resident)
[13] GD14-5
[14] used to treat anxiety, depression and chronic pain
[15] GD14-31

[15] Sedi Mina Asrar and Sean Shahrokhnia[16] reported on Oct 29, 2018 that the Claimant has suffered from emotional sequela because of physical pain and disability since April 2016. The report says she requires support with psychological treatment of her emotional trauma that arose from a physical injury and resultant chronic pain ("severe back pain since April 2016") which affected her activities of daily living. The assessment interview was done shortly before her MQP. The conclusions are based on the self-reporting of the Claimant on a one-off visit. The report repeatedly refers to a back accident leading to injury. The Claimant more accurately testified that the back pain has been a progressive and chronic issue. The Professionals did not attempt to tie any clinical functionality studies to their conclusions for purposes of determining work capacity. The report concludes that

> "She is unable to return to her fulltime employment, due to physical disability on her lower back, chronic pain and emotional disturbance which are considered as secondary to her injury or April 01, 2016. Ms. V. N. has been suffering from physical incapacity and chronic pain and she has not adjusted to the changes that have brought about since the accident. She requires psychological treatment for her emotional reactions. In refer to her level of employability, we base our opinion on severity, extent and duration of injury. Considering the chronicity and severity of her condition, it's expected that she would be unemployable permanently"[17].

[16] There are no clinically based functional evaluations, vocational assessment or abilities testing that support this conclusion. The subjectively derived conclusions indicate no work capacity, a conclusion that I reject. The report refers to an educational and retraining plan that failed. No other evidence has been presented to the tribunal concerning her intentions, the plan or the reasons why it failed other than writing that it was because of her disability[18]. This does not assist me in applying the disability tests to the facts that I accept ion this case. In addition, the self-reported symptoms of disability[19] are inconsistent with the testimony at the hearing from the Claimant. In just two examples, I conclude that the credibility of the report is diminished by the answers given in testimony. In the report, she indicates that her physical and emotional problems have resulted in weight loss. In her testimony, she explained that she is having trouble with her weight gain (she has gone from 255 pounds to 275 pounds). In her statements to the assessors,

[16] Psychologists and Psychotherapists of Psychology Health Solutions GD14-17
[17] GD14-20
[18] GD12-5
[19] GD12-5

she notes that she has poor concentration. She testified that she has concentration problems only when her pain is severe. She said in her testimony that she is "used to the pain". The assessors have mistakenly referred to "trauma" and an "accident". There is no other evidence that either has contributed to her physical pain.

[17] The report does not give me confidence that its conclusion can be relied upon. I would have preferred to rely of the outcome of the cognitive behavioural therapy but there is no report from the social worker or Dr. King of the outcomes of these treatments. Consequently, I am unable to say that her mental health issues are conclusive as to a severe disability.

Effect of Treatments

[18] From her testimony, I am now aware that she experienced pain between her shoulder blades, her neck, left arm and elbow. She has been given a brace for her left wrist. I do not know what these medical issues are. There is no report. There have been no X-Ray, MRI, CAT scan or ultra-sound to provide a diagnosis or prognosis related to these issues. In any event, these ailments seem to have occurred at or after the MQP. The facts related to these are inconclusive of a severe condition.

[19] The Claimant stated that she uses medical marijuana. While acknowledged by Dr. King, there are no details provided by any physicians on this treatment or its impact on her conditions. She takes it in oil media.

[20] The Claimant submitted clinical notes of Dr. Moore (Chiropractor[20]) spanning February 20, 2014 to January 25, 2015. Some of the notes are illegible; however, what is legible does not describe a severe medical impairment or functional limitations that suggest she could not work. The notes are date in 2014 and 2015, when she was working. Clearly, her medical issues did not preclude her from employment. He notes that she got a sore back from sitting too long at her job at a call centre: "her chair was too high". I do not know the benefits received, if any, from the implementation of accommodations that would result from his recommendation.

[20] GD9-6

[21] Unfortunately, there are no reports related to her message therapy treatments or earlier physiotherapy. Indoor therapeutic swimming was recommended but she has not done an actual program of that kind. She uses her own swimming pool. I am not satisfied that the sedentary floating she described is not what is intended by an aqua-therapy program. She writes[21] that using the heating pad and ice on the back never helped at all. However, she testified that the heating pad did help her at one time with her back. This inconsistency in her evidence does not assist me in reaching a firm conclusion as to how serious a pain issue she has.

[22] Based on her testimony and medical reports, it is clear that she has limitations. What is not clear is that the evidence does not support the presence of any severely disabling physical condition by way of diagnoses, treatments, medications, specialist referrals or by a functional capacity evaluation that would render her disabled for all work activity[22]. However, it is necessary to determine how her activities of daily living may be affected by her conditions.

Was the Claimant Compliant with Medical Treatment Recommendations?

[23] The Claimant has an obligation to mitigate her situation[23]. The courts have emphasized the need for an applicant for disability entitlement to demonstrate good faith preparedness to follow appropriate medical advice. There is an exception for people who allegedly suffer from chronic pain[24] and all its associated conditions including depression (discussed below). A chronic pain analysis may depend on the credibility of the claimant.

[24] An Appellant must attempt mitigation of their health issues to be successful in an application for CPP disability benefits. An Appellant is obliged to make reasonable efforts to submit to programs and treatments recommended by treating and consulting physicians. If she is not compliant with professional recommendations, she should be prepared to explain why it was not done. Here, I do not accept the Claimant's explanations as to why she has not acted on the suggestions of several physician in appropriate ways[25]. The Minister points out that the Claimant's treatments have been conservative and non-exhaustive as of her MQP. When

[21] GD4-2
[22] GD2-53
[23] Lombardo v. MHRD (2001) CP 12731 (the Pension Appeals Board)
[24] Bulger v. MHRD, March 2000 (CP 9164)
[25] See also MHRD v. Mulek CP 4719 PAB

alternative treatments and medications aimed at improving her pain were suggested, she was reluctant to proceed.

[25] The Claimant has had physiotherapy, massage therapy and chiropractic. She uses medical marijuana for pain. There are no helpful reports dealing with compliance with recommendations. She was advised to take swimming therapy[26]. She did not do so. The psychologists discussed stress/pain reduction therapies. This may be happing through her social worker but there are no reports provided. She wrote that she cannot move as much, walk or do exercises. I am not persuaded that she has tried what has been recommended. Indeed, the lack of trying may be a factor in her weight control. There is no professional opinion expressed on this. She is now compliant with medications for the diabetes. This is to her credit.

[26] The Claimant testified that she did not resume the physiotherapy that she had been on in Ottawa. There, she had two sessions and stated they did not help her back pain, yet she continues to work. She testified that they "helped a little". There are no medical reports of the referral or the results of the therapy from Ottawa. Despite there being a physiotherapy clinic in her home town of Parkhill, she notes that she could not afford the treatments. She does have a $500 fund with her husband's benefit plan. She has not taken advantage of this to do the physio even though Dr. Kling made some suggestions as to how. Similarly, she has not continued with recommended treatments with a Psychologist because she does not have any money. The Claimant was on injections in the past but she declined to resume injections "due to the logistics" involved. The Claimant testified that there was no one at home and she could not drive herself back and forth from the location where the cortisone injections would be administered. There were no reports from the doctor concerning this and no indication that efforts were made to solve the logistics issue.

[27] On a visit to the Thames Valley Family Health clinic on February 26, 2019, it was recommended to the Claimant to consider enrolling in Chronic Pain Self-Management Group in Strathroy in March. She expressed an interest in attending but provided no evidence that she was attending or intended to enroll. The unnamed author of this report also indicated that she does stretching exercises to deal with her chronic pain. In her testimony, the Claimant stated that in

[26] GD14-5

2014, she did these exercises for a few months but they did not help. She does float on her back in her home pool but there was no report on the value of this activity.

[28] She has not done injections for "logistical" reasons. I do not accept this as a reasonable excuse when her pain is an issue. There is a legitimate reason for her not embarking on expensive interventions but she has not attempted even those for which there are minor or no expense at all. Her rejection of an anti-depressant (Cymbalta), without explanation, does not assist her case. I make an adverse finding that the negative responses to suggestions, for her benefit, amount to unreasonable non-compliance.

Her Activities of Daily Living do not suggest a serious medical condition

[29] The Claimant says[27] she struggles with maintaining position including seating, walking, standing, bending, twisting, lifting and pushing. She indicated that she has lost her functioning in maintaining and cleaning her house, providing self-care, ability to continue with her work and her social and recreational activities. She told the psychotherapist that she struggles with pain when washing a few dishes. She reported that she has limited support at home as her husband is always unavailable as he is a truck driver and he works six days a week. She hires workers to help her with cleaning and basic self-cares such as preparing meals, shower, doing dishes.

[30] The Psychologist reports[28] a GAF of 50 as of October 2018. This would indicate symptoms such as flat circumstantial speech, occasional panic attacks or moderate difficulty in social occupational or social functioning, impairment in occupational or school functioning. I accept these reports but subject to the obligations on the Claimant to satisfy me on a balance of probabilities that she has no work capacity I do not find the conclusions of the psychologists to be compelling.

[31] I listened carefully to the evidence on her functionality. She notes that she has to move all of the time to reduce the effect of her chronic pain. In her questionnaire, she states that her physical issues do not affect her personal needs (washing hair, dressing etc.). She wrote that she can do dishes and laundry if done in moderation. She sat, quite immobile, for over two hours in

[27] GD14-18 (reported from October 2018) and GD2-53 (reported from September 2016)
[28] Based on self-reporting and review of clinical testing

the hearing hall with little evidence of discomfort. Of course, I do not make a diagnosis based on my observations but this fact does focus on her believability. She stated that she avoids twisting and reaching although she does not mention these problems in her application. While she does not drive very often, she writes that she has to take breaks every 1 1/2 hours. She has trouble putting on her socks but no problem in having a bath. She testified that she prefers to sit in the house all day. She has no trouble reading or watching TV. She now has panic attacks that last for 5-10 minutes about 3 times a week. I noticed that she did not say she had the typical symptoms of debilitating attacks such as nausea, elevated heart rate and hyperventilation. She does get "shaky". She did not express any of these emotional responses when she goes shopping. She said that her husband does the sweeping mopping and vacuuming. She does some dusting and dishes and plays with the dog outside. This is inconsistent with the information she apparently provided to the Psychologists.

[32] I have the strong impression that she could perform sedentary work, if only on a part-time basis. She has much experience with call center work from home. She testified that she has not sought to go back to any form or work since she quit her job shortly after the move to the London area.

The totality of his medical conditions did not reveal a severe disability as of her MQP

[33] I must assess the Claimant's condition in its totality, which means I must consider all of the possible impairments, not just the main impairment[29] which is her back pain. On July 19, 2017, the Claimant wrote a letter to the Minister explaining why she should have a disability pension. She stated that she has been dealing with back pain for years. Diabetes from "lack of movement" is managed with medications. She stated that she "can't move as much, I can't walk or do exercises". She noted that her doctor has not referred her to a specialist because it (the back) has not advanced to the point where he feels surgery would help. The Minister agues that these limitations are not such as to preclude the ability for seeking gainful employment[30]. I agree.

[29] *Bungay v. Canada (A. .)*, 2011 FCA 47
[30] Ferreira v. Attorney General of Canada, 2013 FCA 81

[34] The Claimant testified that her neck shoulder and arm are dysfunctional with pain. Dr. Kling reports that[31] there is no obvious deformity in the neck (ROM normal), No spinous process tenderness, shoulder and elbow ROM normal, no spinous tenderness on palpation of medial epicondyle and surrounding area (no point tenderness). Nor is there on the shoulder. I am satisfied that with no objective evidence concerning these complaints has been presented. I do not believe the Claimant when she say that these would prevent her from doing any kind of work. Indeed, given that she verified that she has worked for years with her back pain, there was no satisfactory explanation why this determination to stay in the work force changed. I am satisfied that the medical conditions, cumulatively, do not disclose a serious limitation on her activities of daily living.

Objective vs. Subjective Evidence and Chronic Pain

[35] According to a *CPP*, initial medical report[32] completed on June 9, 2017 by Dr. Campbell his patient had chronic back pain, diabetes, hypertension and asthma. She did not come under the care of this physician until April 2017 and her medical history was reportedly unknown. General monitoring and medical management of her conditions was noted. Blood work results were provided. With the exception of chronic pain and the recent undiagnosed issues related to her neck, shoulder, left arm and elbow, all of her medical issues are now being monitored and managed.

[36] The MRI[33] scan of lumbar spine (dated July 27, 2016) revealed several levels of spondylotic changes. There was no evidence of significant disc protrusion, root compression, or stenosis. An X-Ray taken in June 2016 revealed moderate lumbar scoliosis convex to the left with mild to moderate disc space narrowing L3-4 and L4-5 associated with osteophyte formation. While these conditions are acknowledges, no physician has indicated that this objective evidence is debilitating such that it would preclude work capacity. I must decide if her chronic pain rises to the level of unexplained pain preventing her regularly from seeking gainful employment. Based on the inconsistencies in her evidence, I am unable to reach that conclusion.

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[31] GD15-5
[32] GD5-2
[33] GD2-48

[37] The very nature and credibility of subjective evidence can outweigh the absence of any objective clinical medical evidence[34]. It is argued that the April 2016 MRI report is not supportive of a serious medical problem. There are several level facet degenerative changes seen. There is much subjective evidence of pain and dysfunction from the Claimant. I do conclude that the subjective evidence provided by her is not sufficiently compelling to overcome the lack of objective evidence. She described in detail the nature of the occasional stabbing low back pain but not the impact on her functionality. Her daily pain is not explained by objective evidence. It is real but it is not reasonable to conclude that an employer could not accommodate any form of work for which she is capable that is within her restrictions as self-reported. It must be established that the pain prevented the Claimant from pursuing any substantially gainful occupation. It does no rise to that level of severity.

[38] I have listened carefully to the arguments of Mr. Yormak. I agree that chronic pain is not a function of the mental health issues described. I also agree that the provisions of the CPP must be interpreted fairly and liberally. Any ambiguity of evidence should be resolved in favour of the applicant. I also agree that impecuniosity should not be held against his client. I do not find the evidence to be ambiguous. I do find that his client had access through her husband's benefits to try physiotherapy and even to go back to the psychologists. The evidence is not clear as to how much treatment this would buy but it does illustrate an attitude that amounts to lack of motivation to try to get better. By not doing so, it also reflects on her credibility. I do not find her to be sufficiently candid as to make me believe that she has the kind of pain, chronic though it my be, to prevent her from taking self-determinate steps such as home exercise, injection and adherence to diet and exercise programs that would help her with her pain issues. The pain does not rise to the level that precludes an ability regularly to seek work.

The severe criterion must be assessed in a "real world" analysis

[39] I have assessed the severe part of the test in a real world context[35]. 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 capacity to perform

[34] Smallwood v. MHRD (July 1999), CP 9274, PAB and MHRD v. Chase (November 1998), CP 6540, PAB
[35] *Villani v. Canada (A.G.),* 2001 FCA 248

part-time work, modified activities, sedentary occupations or attend school can preclude a finding of disability, as it is an indication of capacity to work. She reported that after the educational/retraining plan failed due to her disability, she has also lost all the treatment and financial supports. There is no evidence as to what this plan was or why it failed[36]. She indicated that the financial crisis after her disability has put pressure on her husband and family. The Claimant is now only 48 years of age with a grade 12 education. The Minister argues that she has many more years left until the standard age of retirement. Retraining for work that is suitable could be considered. Her English language skills are satisfactory. She has transferable skills using the telephone and computer. She reported she had worked from home for a call centre which involved sitting "for hours". She described her limitations with prolonged standing and walking but this would not preclude a continuation of the sedentary work (part time or full time) that she did for many years. I find that she had this work capacity as of her MQP.

Efforts at Finding Employment

[40] Where there is evidence of work capacity, she must show that efforts at obtaining and maintaining employment have been unsuccessful because of her health condition[37]. I am mindful that a finding of residual capacity must be made before undertaking an investigation into whether a claimant made a sufficient effort to mitigate her impairments by looking for work. Indeed, because she went on Regular Employment in benefits (May 2016), she acknowledged the requirement for continuously looking for work. She did not do that. The court has said that a Claimant receiving Regular EI benefits is telling against her credibility[38].

[41] The Minister argues that she was diagnosed with mechanical back pain. Investigations were initially completed the year she stopped working and did not reveal severe pathology or impairment. I find that not all types of suitable work would be precluded. She certainly was not prevented regularly from looking for work.

[42] The key question in these CPP cases is not the nature or name of the medical condition, but its functional effect on a claimant's ability to work[39]. She testified that a doctor signed notes

[36] GD12-5
[37] *Inclima v. Canada (A.G.)*, 2003 FCA 117
[38] B.R. v MHRSD (December 12, 2011) CP 27675 (PAB)
[39] Ferreira v. Attorney General of Canada, 2013 FCA 81

to “put her off work” but she did not produce a note, medical report or report as to her condition before or after the three-month absence from work (from April 2016). It could not have been Dr. Akter because he only started treating her in June. Strangely, this physician prepared the CPP medical report in September 2016, the month she ceased to be the family doctor for the Claimant. This was also one month after the Claimant declared she could no longer work (August 2016) and after her EI benefits ended. Follow-up at this important time in the progress of her condition does not assist her.

[43] Here, there is little objective medical evidence that would preclude work capacity. Since I did not find her a credible witness for purpose of the chronic pain analysis, I need to explore why the Claimant did not seek alternative work. She simply said that she has ongoing pain. There must be some medical evidence of disability[40]. She had ongoing pain for years and she worked! I do accept that she feels pain. I do accept that she sometimes feels depressed and has anxiety moments. I do not accept that her limitations prevent her from the pursuit of gainful employment. Since she has not tried to work, I cannot find that maintaining employment has been unsuccessful because of her health condition. She has an obligation to seek work because of her residual capacity. She has not provided evidence that she has made the attempt. This finding has an adverse affect on her application for benefits.

The Onus is on the Claimant to prove disability

[44] The Claimant has not met the onus of proof on a balance of probabilities. Her treatments have been conservative yet non-exhaustive. They are currently managed by her family physician. In order to qualify for a *CPP* disability benefit, the onus of proving she suffered from a severe and prolonged disability prior to the expiry of her MQP rests with the Claimant. Medical evidence is required as is evidence of employment efforts and possibilities. In the absence of any severe pathology or supportive evidence, there is no basis to conclude this relatively young woman was incapable of some type of suitable work as of December 31, 2018.

[45] I am not satisfied that she had a severe disability as of her MQP.

[40] Brent Warren v. Attorney General of Canada (2008 FCA 377

b) Prolonged disability

[46] Since I find that the Appellant did not suffer a disability within the meaning of the CPP as of December MQP 31, 2018 I do not need to address the issue of whether his disability was prolonged.

CONCLUSION

[47] The appeal is dismissed.

John Eberhard
Member, General Division - Income Security