



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *K. B. v Minister of Employment and Social Development*, 2019 SST 1578

Tribunal File Number: GP-18-771

BETWEEN:

**K. B.**

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: Connie Dyck

Videoconference hearing on: May 9, 2019

Date of decision: May 10, 2019

## DECISION

### DECISION

[1] K. B. is the Claimant in this case. In December 2015 she applied for a Canada Pension Plan (CPP) disability pension. Her application was refused by the Minister of Employment and Social Development Canada (the Minister). She appealed. I am dismissing her appeal. These reasons explain why.

### ISSUE

[2] A person who applies for a disability pension has to meet the requirements that are set out in the law that deals with CPP disability benefits. First, you have to meet the contribution requirements. The legal term for this is the “minimum qualifying period”<sup>1</sup>. That is not a problem in this appeal. The Claimant’s minimum qualifying period is December 31, 1995.

[3] Second, you have to have a disability that is “severe and prolonged”<sup>2</sup>. You have to have that disability on or before the date of the minimum qualifying period. The Minister says that her disability is not so severe that she could not do some type of suitable work. That is why her application was refused.

[4] The issue that I have to decide is whether the Claimant’s disability is severe and prolonged on or before December 31, 1995. It is up to the Claimant to prove<sup>3</sup> this.

[5] To decide if her disability is severe, I have to look at all of the Claimant’s medical conditions together to see what effect they have on her capacity to work. I also have to look at her background (including her age, level of education and past work and life experience). This is so I can get a realistic or “real world” picture of whether her disability is severe<sup>4</sup>. If the Claimant

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<sup>1</sup> It is found at s.44(1)(b) of the Canada Pension Plan (CPP)

<sup>2</sup> This requirement is found at s.42(2)(a) of the CPP.

<sup>3</sup> The legal test for proof in this case is that the Claimant has to show it is more likely than not that her disability is severe and prolonged

<sup>4</sup> In a decision called *Villani v. Canada (A.G.)*, 2001 FCA 248, the Federal Court of Appeal explains how to understand the concept of a “severe” disability

is able to regularly do some kind of work that is substantially gainful<sup>5</sup>, then she is not entitled to a disability pension.

### **IS THE CLAIMANT'S DISABILITY SEVERE AND PROLONGED?**

[6] The Tribunal's file indicates that the Claimant has anxiety disorder, fibromyalgia, COPD, osteoporosis, generalized osteoarthritis, hypothyroidism, hearing loss, chronic headaches, lumber spondylosis and GERD<sup>6</sup>. 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>7</sup>.

[7] In making my decision, I considered how the Claimant feels about the impact her condition has on her capacity to work. This is what we call subjective evidence. I also considered what her doctors and other medical professionals say about her condition, including such things as the results of medical tests. This is objective evidence.

#### ***The Claimant has an honest belief that she is severely disabled***

[8] The Claimant explained how she sees her medical condition. She stated that:

- Dr. Daniel's contradicted himself in several documents regarding her capacity to work;
- Her condition has continued to deteriorate;
- She has several motor vehicle accidents causing her various injuries including one in 1988 while on her way to work;
- On four occasions between February 2016 and September 2016, technicians from Shaw came to her apartment to set up a landline phone. The only way to get it to work was to wack it with their cell phone. One time when she went to pick up the phone, she got a voltage shock around the neck. She was

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<sup>5</sup> This is explained in a Federal Court of Appeal decision called *Klabouch v. Canada (A.G.)*, 2008 FCA 33

<sup>6</sup> The report is at GD 1-11

<sup>7</sup> *Bungay v Canada (AG)*, 2011 FCA 47

concerned about her thyroid problem and went to the hospital. Her thyroid medication had to be adjusted. Prior to this she had been on the same pill for many years.

- Documents in GD 2 of the appeal file were compromised.
- She had a fall in 2000, which resulted in a shoulder, ankle and back injury. She explained that she has been unable to work since this time because her of the pain and the numbness in her hips, pelvis and legs.
- For the past two years, she has had inner ear infections and needs to see the doctor every two months to have the infection removed.

[9] I believe that the Claimant was telling the truth when she gave her evidence. Her answers to questions at the hearing were mostly consistent with what she was telling her doctors on different occasions in the past. When a person's story is consistent over a period of time, this can indicate that they are being truthful. She did not hesitate in answering questions and seemed to be making an honest effort to answer accurately. I conclude that she is credible.

[10] I considered the Claimant's submission that documents in GD 2 of the appeal file were compromised and "whited out". I asked her to specify which documents. She directed my attention to GD 2-275. Although, this document is difficult to read, it is legible. Further, Dr. Melenchuck refers to this x-ray and its findings in GD 2-73. I agree with the Claimant that due to the age of several documents, they are difficult to read. However, I find that they are legible and information has not been "whited out" or compromised.

[11] Also, I do not just look at how the Claimant feels that her disability has an impact on her ability to work. She also needs to support her case with objective evidence. I have to consider what she says, along with what the doctors and other medical professionals say. I have to look at how consistent her evidence is with what is in the medical reports.

***The Claimant's story is not supported by the medical evidence.***

[12] Dr. Daniels has been the Claimant's family physician since September 2008. He stated that the Claimant had anxiety disorder, fibromyalgia, COPD, osteoporosis, generalized osteoarthritis, hypothyroidism, hearing loss, chronic headaches, lumber spondylosis and GERD<sup>8</sup>. Although it was his opinion in April 2017 that the Claimant was significantly symptomatic and unable to work, he did report in December 2015 and July 2017, that despite her functional limitations, the Claimant retained capacity to work in light physical labour as well as sedentary or any supervisory type work. However, she could not perform hard physical labour.<sup>9</sup> I gave more weight to the reports of December 2015 and July 2017 for the following reasons:

- These reports (December 2015<sup>10</sup> and July 2017<sup>11</sup>) provide more detail and explanation of the Claimant's conditions and limitations, which support his opinion. The report of April 2017 for the Saskatchewan government was primarily a "yes or no" questionnaire. Further, in this report Dr. Daniels does not provide any information regarding the Claimant's limitations or function ability. He simply says, "she remains significantly symptomatic and unable to work<sup>12</sup>".
- Also, Dr. Daniels' opinion that the Claimant retains capacity to work is in agreement with the medical evidence and other caregivers. Even if I were to disregard Dr. Daniels opinion that the Claimant had capacity to work at December 2015 and July 2017, the Claimant's family physician, Dr. Melenchuk, who was her family doctor at the time of her MQP, stated in November 1996 that the Claimant was capable of light duty work, although she was recovering from a wrist fracture.<sup>13</sup>

[13] Although the Claimant has been diagnosed with numerous conditions, I find that individually or collectively these conditions would not be considered severe. In fact, many of

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<sup>8</sup> The report is at GD 1-11

<sup>9</sup> Dr. Daniels' July 2017 report is at GD 2-179

<sup>10</sup> Dr. Daniels' December 2015 report is at GD 2-213

<sup>11</sup> Dr. Daniels' July 2017 report is at GD 2-179

<sup>12</sup> The report for the Saskatchewan government (Income assistance) is found at GD 1-12

<sup>13</sup> The X-ray result for the Claimant's left wrist is at GD 2-276

them were not present or affecting the Claimant by December 31, 1995. I considered all of the conditions identified by the Claimant's family physician in April 2017 as well as those reported by her.

***i) fibromyalgia, COPD and hearing loss***

[14] Dr. Daniels stated that the Claimant developed fibromyalgia after sustaining soft tissue injuries in a motor vehicle accident in April 2009. She was also diagnosed with COPD in 2015/2016<sup>14</sup>. She was prescribed hearing aids in March 2015 after an audio logical assessment. The Claimant described a progressive bilateral hearing loss with tinnitus in both ears.<sup>15</sup> Dr. Daniels noted in April 2017, the Claimant continued to respond well to medications, that she received physiotherapy on an iterant basis with varying results overall and that she was supposed to wear hearing aids, which she did not.<sup>16</sup> She advised me at the hearing that she does not wear her hearing aids. She explained that she has had an inner ear infection for the past two years and has to see the doctor every two months for him to remove the infection with a 4" metal instrument. These conditions all began after December 31, 1995 and there is no evidence that the Claimant was experiencing any related symptoms at the time of her MQP.

***ii) osteoporosis, generalized osteoarthritis, lumber spondylosis***

[15] The Claimant was seen by Dr. Mark Ernst, (sports medicine) for right shoulder issues which began in May 2013. It was also noted that the Claimant had left shoulder issues related to a fracture in 2002. An MRI did not show any significant full thickness rotator cuff tears and no significant chronic degeneration around the rotator cuff tendons. Dr. Ernst recommended that the Claimant continue with conservative management.<sup>17</sup> The Claimant had a fracture in 2006. She was seen by Dr. Lee Kolla for left ankle pain and a surgery to remove the hardware was performed in May 2014<sup>18</sup>. Again, these conditions all began after December 31, 1995 and there is no evidence that the Claimant was experiencing any related symptoms at the time of her MQP.

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<sup>14</sup> Dr. Daniels' report is at GD 2-178

<sup>15</sup> Report is at GD 2-216

<sup>16</sup> This is in GD 2-180 and GD 2-214

<sup>17</sup> Dr. Ernst's report is at GD 2-219 – GD 2-221

<sup>18</sup> This information is in the appeal file at GD 2-222 – GD 2-224

[16] The Claimant explained that she had fallen in 2000, which resulted in a shoulder, ankle and back injury. She explained that she has been unable to work since this time because her of the pain and the numbness in her hips, pelvis and legs. However, the injuries sustained by the Claimant were the result of a specific incident that happened several years after her MQP and therefore would not have prevented her from working at December 31, 1995.

[17] In October 1995, the Claimant was given analgesic medication for mechanical low back pain<sup>19</sup>. However, there is no further mention of these symptoms by Dr. Melenchuk and there is no evidence to support that they would have affected her capacity to work.

*iv) medical conditions around the time of the Claimant's MQP – December 1995*

[18] The Claimant was seen by Dr. Ron Melenchuk in July 1995 for a fracture to her left wrist and a cast was applied. By January 1996, there was a small fracture line but it was healing satisfactorily.<sup>20</sup>

[19] In August 1995, the Claimant had complaints of nausea, vomiting and diarrhea. It was thought to be on the basis of an irritable bowel syndrome and the Claimant was prescribed medication.<sup>21</sup> Dr. Melenchuk makes no further mention of these symptoms and there is no evidence to support that they would have impacted her capacity to work.

[20] In September 1995, the Claimant was given cream for hemorrhoids and leg cramps<sup>22</sup>. Again, Dr. Melenchuk makes no further mention of these symptoms and there is no evidence to support that they would have impacted her capacity to work

[21] In November 1995, the Claimant was given medication for chronic bronchitis. It was noted that she had a congested chest and cough, although she continued to smoke approximately one package of cigarettes per day.<sup>23</sup> In December 1996, x-rays of the Claimant's chest showed her heart size was normal and her lungs were clear.<sup>24</sup>

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<sup>19</sup> Dr. Melenchuk's report is at GD 2-273

<sup>20</sup> Also at GD 2-273

<sup>21</sup> In GD 2-273

<sup>22</sup> Also reported by Dr. Melenchuk in GD 2-273

<sup>23</sup> This information is also in GD 2-273

<sup>24</sup> X-ray results are at GD 2-300

[22] These conditions reported by Dr. Melenchuk in 1995 were treated and there is no further information that they required investigations or additional treatment. In fact, it was Dr. Melenchuk's opinion in November 1996 that the Claimant was capable of light duty work, although she was recovering from a wrist fracture.<sup>25</sup>

*iii) hypothyroidism*

[23] Although the Claimant has a medical history of hypothyroidism for which she uses medication, in April 2009, Dr. Sharma examined the Claimant and concluded that there was no indication of any hyperparathyroidism<sup>26</sup>. Further, in January 2015, an examination showed no palpable lymphadenopathy or thyroid gland enlargement.<sup>27</sup> The Claimant testified that prior to 2016, her thyroid had been stable and she had been on the same medication and dosage for many years. In August 2012, her thyroid eye disease was stable.<sup>28</sup> There is no evidence that this condition would have interfered with the Claimant's capacity to work or that she was experiencing any related symptoms at the time of her MQP.

*iv) anxiety disorder*

[24] The Claimant has been receiving psychiatric care from Dr. Kukha-Mohamad since May 1999 for treatment of anxiety, depression and insomnia.<sup>29</sup> At that time, he was of the opinion that the Claimant's prognosis was poor and she had depressed mood, loss of interest in activities, low energy and poor coping skills<sup>30</sup>. By May 2011 and after 12 years of ongoing treatment, his opinion changed. He stated that after trying numerous medications, the Claimant was doing quite well from a psychiatric point of view on the combination of Zoloft and Clonazepam and that she was able to tolerate these medications and she lived by herself. The Claimant advised the psychiatrist in May 2011, that her mental state was good and her mood was stable and well. She described her sleep, appetite and concentration as good as well. The Claimant stated that she went out every day and spent time with her mother. It was Dr. Kukha-Mohamad's opinion that

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<sup>25</sup> The X-ray result for the Claimant's left wrist is at GD 2-276

<sup>26</sup> Consultation report of Dr. Sharma is at GD 2-256

<sup>27</sup> Consultation report of Dr. Messiha is at GD 2-218

<sup>28</sup> Report of Dr. Mia is at GD 2-247

<sup>29</sup> Dr. Kukha-Mohamad's report is at GD 2-191

<sup>30</sup> Dr. Kukha-Mohamad's report of 1999 is at GD 2-306



the Claimant showed no psychotic features and her cognitive functions were intact. He recommended that the Claimant's medications of Zoloft and Clonazepam remain the same. Dr. Kukha-Mohamad closed his practice in June 2011 and suggested that Dr. Daniels refer the Claimant to another psychiatrist if the need should arise. There is no evidence of file that there was a need for a psychiatric referral after June 2011.

*v) chronic headaches and GERD*

[25] There is no medical evidence to support that the Claimant had these conditions or any symptoms related to them at the time of her MQP, which would have prevented her from suitable work.

*vi) electric shock*

[26] The Claimant indicated that in 2016 she received an "electric shock" to her neck from a phone. Although this is an incident that happened decades after the Claimant's MQP of December 31, 1995, there is no evidence to support that this incident affects the Claimant's capacity to work. The cardiologist stated in May 2017 that the Claimant had a normal echocardiogram and no evidence that the electric shock affected her heart.<sup>31</sup> Dr. Kundapur (internal medicine specialist) stated that the Claimant did not have any palpitations and her ECG test looked normal<sup>32</sup>. Although the Claimant believed this affected her thyroid function, as she needed a change in her thyroid medication in December 2016, again, this is many years past her MQP of December 31, 1995.

[27] There is no doubt that the Claimant has had numerous conditions at various times over the past 24 years. However, I find that at the time of the Claimant's MQP of December 31, 1995, she retained capacity to work. Although, she may be unable to work today, that is not the issue before me.

[28] Where there is evidence of work capacity, the Claimant must show that efforts at obtaining and maintaining employment have been unsuccessful because of his/her health

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<sup>31</sup> The cardiologist's report is at GD 2-183

<sup>32</sup> Dr. Kundapur's report is in the appeal file at GD 2-188 – GD 2-189

condition<sup>33</sup>. The Claimant submitted that she worked from June to August 1998 as a meat packer when she was laid off. The Claimant stated she was unable to do her work properly due to pain. Unfortunately, there is no information from the employer as to the Claimant's quality of work. However, even if the Claimant was laid off because she was unable to do this job, I do not find that this is evidence that the Claimant does not have capacity to work. Dr. Melenchuck and Dr. Daniels have both stated that the Claimant would not be capable of doing heavy physical labour, but rather only light duties or sedentary work. Packing meat on a fast paced assembly line would be considered heavy physical labour. The Claimant has not made efforts to find suitable work. I considered the minimal earnings recorded in 1997 – 2000. The Claimant advised me that she has no recollection from what these earnings would be or from which employer, if any. Therefore, there is no evidence to support that these work efforts were unsuccessful because of the Claimant's health condition. She does however, recall that her full-time employment of approximately two years as a cashier/merchandiser in a drug store ended because the store was purchased by Shopper's Drug Mart and different staff were hired by the new owners. However, the Claimant could not recall the year in which this happened. Nonetheless, the reason the Claimant stopped working was due to a change in the organization and not because of any medical condition.

***The Claimant's conditions in combination with her personal circumstances do not prevent her from working***

[29] I must assess the severe part of the test in a real world context<sup>34</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. She was 40 years old at her MQP of December 31, 1995, has a grade 12 education, a hairdressing certificate, and experience working as a hairdresser, cashier/merchandiser, bartender, waitress and meat packer. Although the Claimant's work experience is limited, she would have transferable skills, even to a lighter duty or more sedentary type job as recommended by her physicians. She has customer service skills as well as skills operating a cash register, and retail work experience. Further, she has a grade 12 education, is fluent in English and has obtained a post-secondary diploma in

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<sup>33</sup> *Inclima v Canada (AG)*, 2003 FCA 117

<sup>34</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

hairdressing. These skills would support that she would be a candidate to retrain. I have previously concluded that the medical evidence supports that the Claimant has work capacity and although she has limitations, these would not have prevented her from gainful employment at the time of her MQP.

*The Claimant's disability is not severe*

[30] Having considered the totality of the evidence and the cumulative effect of the Claimant's medical conditions, I am not satisfied on the balance of probabilities that the Claimant suffers from a severe disability in accordance with the CPP criteria. There is no need for me to consider whether the disability is prolonged, because I have decided that the disability is not severe.

**OTHER MATTERS**

**Post-Retirement Disability Benefit**

[31] Although the Claimant did not apply for a CPP Post-Retirement Disability Benefit, I considered whether she would be eligible for it. The Government of Canada introduced the Canada Pension Plan post-retirement disability benefit (PRDB) to give disability protection to CPP retirement pensioners. The PRDB benefit came into effect on January 1, 2019.

[32] I will assume, unless a party argues otherwise, that I have the authority to decide the Claimant's eligibility for the PRDB.

[33] To qualify for this benefit, the Claimant must be in receipt of a CPP retirement pension, which she has been since June 2017. Secondly, she must be under 65 years of age, which she is.

[34] Thirdly, the Claimant must have a qualifying period of January 2019 or later. The information on file shows that the Claimant's minimum qualifying period (MQP) is December

31, 1995. To qualify for the PRDB, she must have a MQP in 2019 or later. Since her MQP is not in 2019 or later, the Claimant is not eligible for the new Post-Retirement Disability Benefit.

## **CONCLUSION**

[35] The Claimant does not have a severe and prolonged disability as defined by the CPP legislation. The result is that her appeal is dismissed.

Connie Dyck  
Member, General Division - Income Security