



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *CT v Minister of Employment and Social Development*, 2019 SST 1692

Tribunal File Number: GP-18-2703

BETWEEN:

**C. T.**

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: Katherine Wallocha

Teleconference hearing on: May 15, 2019

Date of decision: May 28, 2019

## DECISION

[1] I have decided the Claimant is not eligible for the Canada Pension Plan (CPP) disability pension, so I am dismissing her appeal. Here are the reasons why.

## OVERVIEW

[2] The Claimant stopped working in December 2007, due to a layoff. She applied for a CPP disability pension on October 20, 2017. The Minister refused her application. She appealed to the Social Security Tribunal stating that she is disabled and unable to work.

## THERE IS ONE ISSUE IN THIS APPEAL

[3] 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> (MQP). The Claimant’s MQP date is December 31, 2009.

[4] 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 MQP date.

[5] The issue I have to decide is whether the Claimant’s disability was severe and prolonged by December 31, 2009. It is up to the Claimant to prove<sup>3</sup> this.

## WAS THE CLAIMANT’S DISABILITY SEVERE AND PROLONGED?

[6] If the Claimant is incapable regularly of pursuing any substantially gainful occupation because of her disability, that is a severe<sup>4</sup> disability. If the Claimant’s disability is likely to be long continued and of indefinite duration, that is a prolonged<sup>5</sup>

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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** her disability is severe and prolonged.

<sup>4</sup> The legal definition of “severe” is found at s.42(2)(a)(i) of the CPP.

<sup>5</sup> The legal definition of “prolonged” is found at s.42(2)(a)(ii) of the CPP.

disability. The Claimant's disability must be both severe and prolonged for the Claimant to receive a disability pension.

**The Claimant had a residual capacity to work before December 31, 2009**

[7] To decide if the Claimant's 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.<sup>6</sup> I have to look at the Claimant's background (including age, level of education, language and past work and life experience) so I can get a realistic or "real world" picture of whether her disability is severe.<sup>7</sup>

[8] I have to consider how the Claimant feels about the impact her conditions have on her capacity to work. This is what we call subjective evidence. I also have to consider what doctors and other medical professionals say about her condition, including such things as the results of medical tests. This is objective evidence. The Claimant must provide some objective medical evidence to support her claim.<sup>8</sup>

[9] The Claimant explained the evolution of her medical condition. She stated that:

- She was diagnosed with epilepsy when she was in her early 20s;
- She had carpal tunnel surgery in 2007, and was then let go from her employment in December 2007;
- She collected both regular employment insurance (EI) benefits and sickness EI benefits throughout 2008. She started having back issues at that time;
- In 2009, she and her common-law husband received custody of his children in an emergency situation. Since she was having medical problems, they decided she would stay home with the children;

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<sup>6</sup> The Federal Court of Appeal explains this in a case called *Bungay v Canada (Attorney General)*, 2011 FCA 47.

<sup>7</sup> The Federal Court of Appeal explains how to understand the concept of a "severe" disability in a case called *Villani v Canada (Attorney General)*, 2001 FCA 248.

<sup>8</sup> The Federal Court of Appeal explains this in a case called *Warren v Canada (Attorney General)*, 2008 FCA 377.

- She started seeing her doctor for sciatic nerve pain in 2010; she does not think she could have worked when it first hit because when it flared up, she was doubled over for months in pain;
- She was admitted to hospital in September and October 2014, with chronic hyponatremia and avascular necrosis in the right hip;
- She underwent hip replacement surgery in January 2015, but then she started to have troubles with her left hip. She also developed drop foot on the right side. She was never able to stop using the walking aids;
- She had her left hip replaced in March 2019;
- She believes her problems all started after the carpal tunnel surgery and snowballed from there. The necrosis in her hip did not just happen overnight. She believes she was misdiagnosed until she was admitted into the hospital.

[10] I find that the medical evidence shows that the Claimant had a residual capacity to work at the time of her MQP. The Claimant was diagnosed with epilepsy in 1988, when she was 24 years old. The medical evidence indicates that while the Claimant continued to have the occasional seizure, her seizure disorder did not prevent her from working and is reported throughout the medical evidence as being under control with medication. Further, while the Claimant was diagnosed with carpal tunnel syndrome, this was resolved through surgery in 2007, and she was able to return to work.

[11] The Claimant testified that her sciatic issues began in 2010, and this is confirmed by the medical evidence of an MRI dated November 8, 2010. A neurology report dated April 27, 2011, indicates that the Claimant reported her lumbar pain is so infrequent that she rarely takes any pharmaceutical agents. The Claimant informed the Minister in a telephone call on March 7, 2018, that the worst of her disabilities occurred following her hospitalizations in 2014.

[12] I understand that the Claimant believes her medical issues started to snowball after her carpal tunnel surgery. However, the medical evidence does not support that these issues had progressed to the point that she was unable to do any substantially gainful employment.

[13] The Claimant was 45 years old at the time of her MQP. She reported that she has a grade 12 education. She testified that she worked on a punch press and drove a forklift during her last employment. Prior to working as a labourer, she worked as a waitress and bartender. I recognize the Claimant's labour based work experience; however, the evidence shows that the Claimant could have done lighter labour type work or more sedentary work. Given the Claimant's age, education and work experience, I find that the Claimant maintained some capacity to work at the time of her MQP of December 31, 2009.

**The Claimant did not show that she made efforts to work**

[14] If there is evidence that a person has some capacity to work, then the law requires that they have to show some efforts to work.<sup>9</sup>

[15] I find that the Claimant did not attempt to find any work after she was laid off in December 2007. In 2008, the Claimant was receiving regular EI benefits from January 27, to July 26, 2008. She received sickness EI benefits from July 27, to November 8, 2008. She then collected regular EI benefits until November 29, 2008. I note that there is no medical evidence to explain why the Claimant was receiving sickness EI benefits. The Claimant testified that she believes she started having sciatic back issues at that time. However, to collect regular EI benefits following her sickness benefits, her doctor would have to clear her to return to work. She is also required to affirm that she was ready, willing and capable of working.

[16] After receiving custody of her husband's children in 2009, the Claimant decided not to return to work so she could be there for the children who were in grade 5 and grade 8 at the time.

[17] The Claimant argued that she disagrees with the Minister's decision because she does not feel she should be punished financially for decisions made when her stepchildren needed a parent at home. Following that, she was unable to work and

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<sup>9</sup> The Federal Court of Appeal explains this in the case called *Inclima v Canada (Attorney General)*, 2003 FCA 117.

contribute to CPP due to her disability. While I respect the Claimant's arguments, the law requires that she be able to prove that she had a disability that was severe and prolonged by her MQP date. I conclude that the Claimant's disability was not severe because she had some capacity to work at the time of her MQP of December 31, 2009, and because she did not make efforts to find work.

[18] Since I have decided that the Claimant's disability was not severe by December 31, 2009, there is no need for me to consider whether the disability is prolonged.

### **CONCLUSION**

[19] The Claimant did not have a severe and prolonged disability on or before December 31, 2009. The result is that her appeal is dismissed.

*K. Wallocha*  
Member, General Division - Income Security