



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Y. F. v Minister of Employment and Social Development*, 2019 SST 1623

Tribunal File Number: GP-18-380

BETWEEN:

Y. F.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Lianne Byrne

Claimant represented by: Mary Ellen McIntyre

Videoconference hearing on: April 24, 2019

Date of decision: June 7, 2019

DECISION

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

OVERVIEW

[2] The Claimant is a 34 year old woman who stopped working in January 2017 due to complex partial seizures. The Minister received the Claimant's application for the disability pension on March 9, 2017. 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, 2018.

ISSUE(S)

[4] Did the Claimant's conditions result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2018?

[5] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2018?

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 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.

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

Severe disability

The Claimant did not have a severe disability by December 31, 2018.

[7] 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 work².

[8] I accept that the Claimant has been suffering from a longstanding seizure disorder. She testified at the hearing that her seizure disorder began at the age of 14, when she was still living in Columbia. At the age of 18, she experienced her first loss of consciousness with seizures. She then started to have what she described as “convulsions” 5-6 times per month.

[9] She moved to Canada in 2006 to be with her husband. She was prescribed several medications, which reduced the frequency of her seizures to 1-3 per month.

[10] Despite her health problems, she worked from November 2010 until January 2017 at X as a machine operator. She was able to do this work until January 18, 2017, when she had a seizure with loss of consciousness while waiting for the bus. She was taken to the hospital.

[11] Her doctor gave her a note to stay off work for three months. However, during her medical leave, she had another seizure. She was also diagnosed with thyroid cancer, requiring surgery, radiation and medication. She has not returned to work or looked for another job since then.

[12] Since March 2017, when she applied for CPP disability benefits, she has 2-3 daytime seizures per month. They can last up to 10 minutes. Afterward, she feels very bad with low energy and shaking legs, which lasts approximately three hours.

[13] In addition, she has headaches 5-6 times per month that last 3-7 days. When she has a headache. She disputed reference in the medical reports to having headaches 3-4 times per year. She stated that she has them 3-4 times per month and that the discrepancy is likely because she

² *Klabouch v. Canada (A.G.)*, 2008 FCA 33

did not have an interpreter present with her. She is taking Naprosyn, which provides very little relief.

[14] In addition, she has depression. She can be in a crowd for a maximum of two hours. Her motivation is very low. She stays in bed unless she has to go somewhere. Her memory is very bad. She is not receiving any treatment for her depression.

[15] She has not looked for any other work since January 2017 because she is afraid to fall down and hit her head. She would like to upgrade her English language skills.

[16] There are numerous medical reports on file, all of which were considered. Her family physician, Dr. Ferase Rammo, is supportive of her application for disability benefits. He completed the CPP Medical Report on February 3, 2017, noting diagnoses of complex partial seizure secondary to tuberous sclerosis/sub-ependyma/giant cell astrocytoma. She has multiple seizures, headaches, and depression. She has persistent breakthrough seizures. Dr. Rammo reported again on March 24, 2018 that she has a history of tuberous sclerosis, epilepsy, thyroid cancer and depression. The tuberous sclerosis involved the brain and led to headaches and multiple complex partial seizures. She had thyroid papillary cancer treated with total thyroidectomy and radiation. As a result of these conditions, she suffers from depression. The seizures have been intermittent with the last one in January 2017. He felt that her conditions are severe and that she would be unlikely to be able to pursue any type of employment for at least a year. Dr. Rammo reported on June 22, 2018 that the last seizure he is aware of was in January 2017. He feels that she is unable to pursue any type of employment.

[17] There are multiple reports on file from Dr. Betty Koo, neurologist, including a report dated January 19, 2017, which noted a seizure five days prior. She was noted to complain of intermittent headaches and two episodes of transient loss of consciousness. It was felt that the recent episode of seizure can be an episode of breakthrough seizure as she missed a dose of medication. On April 18, 2017, Dr. Koo noted that she is stable and can continue with her current medications. Dr. Koo explained on August 4, 2017 that she remained seizure-free until July 2013, when she reported intermittent aura. Her medication was increased and she remained seizure free until January 19, 2017, when she reported several episodes of generalized seizures with loss of consciousness. Another medication was added and her current combination of

medications was able to keep her seizure free when last seen. Her condition was stable and under control at that time. Her headaches were noted to be responsive to Tylenol. Dr. Koo did not see any changes in her neurological condition that would prevent her from working.

[18] Dr. Jose Martin Del Campo, Epilepsy Clinic, reported on March 2, 2017 that she has a history of epilepsy that has been largely controlled over the years. She has gradually become under better control, especially over the last year where the nocturnal episodes were completely eliminated. She was left with daytime episodes associated with palpitations and ill-described fuzziness in her head. In January, she had another episode. However, the addition of a new medication resulted in complete elimination of all spells. On August 24, 2017, Dr. Jerry Yeou-Wei Chen, in the service of Dr. Del Campo, reported that she has been overall stable. She has had about six episodes of daytime seizures lasting three minutes each. She has been otherwise well. Her medications were increased to improve her seizure control.

There is evidence of work capacity.

[19] I accept that the Claimant has a history of seizure disorder, headaches and depression. I also considered that Dr. Rammo is supportive of her application for disability benefits. However, I find that there is evidence of work capacity.

[20] I preferred the medical reports from her specialists, which are consistent with one another. In particular, I considered the medical reports from Dr. Del Campo and Dr. Koo to be highly persuasive. Both noted that her health problems were under good control. Dr. Koo stated on August 4, 2017 that her new combination of medications has kept her seizure free since she was last seen. Her condition was noted to be stable and her headaches were noted to respond to Tylenol. Dr. Koo did not see any changes in her neurological condition that prevent her from working.

[21] Similarly, Dr. Del Campo reported on March 2, 2017 that medication changes resulted in the complete elimination of nocturnal episodes. She is left with daytime episodes associated with palpitations and ill-described fuzziness in her head. On August 24, 2017, Dr. Chen, in the service of Dr. Del Campo, reported that her seizures are well-controlled with a plan to increase her medication to improve seizure control. Although the Claimant testified at the hearing that

her daytime seizures are frequent and ongoing, there are no further medical reports on file from her specialists to indicate a worsening of her health.

[22] It is evident from Dr. Koo, Dr. Del Campo and Dr. Rammo that she has not had a seizure with loss of consciousness since January 2017. While it is true that she continues to have daytime seizures, she was able to work for many years with these conditions. It was the seizures with loss of consciousness that led her to stop working and these appears to be under control with medication.

[23] Similarly, although she was diagnosed with depression, her treatment has been very conservative. There is also no evidence to indicate that she remains symptomatic from thyroid cancer.

[24] Therefore, I find that there is evidence of work capacity. 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 condition³. In this case, the Claimant has not made any attempts to return to work since she stopped working January 2017, look for alternate work, upgrade her English language skills or retrain.

[25] I must assess the severe part of the test in a real world context⁴. 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. In this case, in finding that the Claimant's disability is not severe, I considered that she is 34 years old with a grade 11 education. She has a limited ability to speak, read or write in English. Nonetheless, she was able to work in a variety of jobs in Canada, including as a presser in a commercial laundry business, sanding and taping in a body shop and, most recently, carpentry.

[26] Despite the Claimant's limited English language skills, she is very young with a reasonable education. She is capable of upgrading her English language skills and retraining for lighter work. In considering her personal characteristics, I do not find that she is unemployable in a real world context. While I can understand the Claimant's hesitation in returning to work as

³ *Inclima v. Canada (A.G.)*, 2003 FCA 117

⁴ *Villani v. Canada (A.G.)*, 2001 FCA 248

a carpenter, she would not be precluded from attempting alternate work within her limitations or retraining for such work. She has not made any attempt to look for another job, upgrade her English language skills or retrain. Therefore, she has not shown that her efforts at obtaining and maintaining employment have been unsuccessful because of her health condition.

[27] 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 impairment⁵. 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 she suffers from a severe disability.

CONCLUSION

[28] The appeal is dismissed.

Lianne Byrne
Member, General Division - Income Security

⁵ *Bungay v. Canada (A.G.)*, 2011 FCA 47