



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. V. v Minister of Employment and Social Development*, 2019 SST 631

Tribunal File Number: GP-16-4166

BETWEEN:

D. V.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Raymond Raphael

Teleconference hearing on: June 3, 2019

Date of decision: June 7, 2019

DECISION

[1] The Claimant is not eligible for a *Canada Pension Plan* (CPP) disability pension.

OVERVIEW

[2] The Claimant was 48 years old when she applied for a CPP disability pension in May 2016. She last worked as a medical claims analyst for an insurance company. She stated that she had been unable to work because of several conditions including carpal tunnel syndrome, degenerative disc disease, nerve impingement in her neck, right rotator cuff tear, depression, anxiety, and post-traumatic stress disorder. The Claimant also suffers from long-standing complex generic arrhythmia (irregular heartbeat) for which an implantable cardiac defibrillator (pacemaker) has been inserted, and Raynauds syndrome (a condition involving limited blood circulation causing feelings of numbness and cold).

[3] The Minister denied the application initially and upon reconsideration, and the Claimant appealed to the Social Security Tribunal.

[4] The Minister acknowledges that the Claimant suffers from multiple conditions. However, it takes the position that the medical evidence does not support that she has a severely disabling physical or mental health condition that prevents her from returning to all forms of work activity. Although she may not be able to return to her previous employment, her medical conditions do not preclude her from pursuing alternative work suitable to her limitations.

ISSUES

1. Did the Claimant's medical conditions result in her being incapable regularly of pursuing any substantially gainful employment as of the date of the hearing?
2. If so, is her disability long continued and of indefinite duration?

ANALYSIS

Test for a Disability Pension

[5] A qualifying disability must be severe and prolonged.¹ A disability is severe if it causes a person to be incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration.

[6] The Claimant must prove that it is more likely than not that she became disabled on or before the end of her Minimum Qualifying Period (MQP), which is calculated based on her contributions to the CPP. Her MQP ends on December 31, 2019.² Since this date is in the future, I must determine whether she is disabled as of the date of the hearing.

Severe Disability

The Claimant has the regular capacity to pursue substantially gainful employment

[7] There is no dispute that the Claimant suffers from multiple conditions. However, the measure of whether her disability is “severe” is not whether she suffers from severe impairments, but by whether her disability “prevents her from earning a living.”³ It is her capacity to work and not the diagnoses of her conditions that determines the severity of her disability under the CPP.⁴

[8] I accept that the Claimant cannot return to her previous employment as a medical claims analyst. Her work was “100% computer based.” She was timed and was not allowed to stand or stretch because this would affect her productivity statistics. Because she was required to remain continually seated, she felt as if she had a “knife in her back.”

[9] In January 2017, Dr. Bulanski, the Claimant’s longstanding family doctor, reported to the Claimant’s insurer that she could not return to her previous position because the requisite level of productivity was too physically taxing and she was unable to achieve the required level of mental proficiency. Dr. Bulanski stated that the Claimant was better suited for less sedentary employment that allowed more movement.

¹ Subsection 42(2) of the CPP

² Record of Contributions: GD5-5

³ *Granovsky v. Canada (Minister of Employment and Immigration)*, [2000] 1 S.C.R. 703

⁴ *Klabouch, above*

[10] The Claimant testified that she believes she could have done a different job, but her employer would not accommodate her.

[11] The Claimant was diagnosed with breast cancer in January 2018, which delayed her return to work and recovery. She did not require chemotherapy or radiation, but underwent three surgeries. She will require reconstructive surgery because she underwent a mastectomy. She has recovered from the breast cancer and stated that her having had breast cancer no longer affects her ability to work.

[12] She has had two jobs since she last worked as a medical claims analyst in September 2015. She trained election workers about using new computerized election equipment for the June 2018 provincial election. This involved three weeks of work, spread over six weeks. She was able to do this because it was not “desk based.” She was able to move around and show people how to use the equipment. She has also worked as a sampler in liquor stores. She worked 3-4 times a month, on four-hour shifts. She could not do this every day because it requires too much standing.

[13] She is considering going back to school in the fall for a 2-year casualty insurance course. She thinks she could assess casualty insurance claims since she would not be “desk bound.” She would be going out to different houses and locations to assess the claims. She has held off paying the deposit for the course, because she thinks there might be other jobs available that would not require her to sit continually at a desk. She has sent out close to 100 applications and gone for some interviews, but she put her job search on hold because of her surgeries. She started looking again after she recovered from her last surgery, which was in January 2019. She thought she would get an offer after an interview for an administrative assistant position for a real estate office and they had agreed on terms. However, the company hasn’t called her back after the interview.

[14] She is confident that she could return to work as long as the work meets her requirements. She cannot be tied permanently to a desk, and has to be allowed to get up and move around. She is now able to manage her conditions, and believes she could cope with her chronic pain as long as she was allowed to get up and stretch, when necessary. She is planning to

start an eight-week chronic pain management program in the summer to help her better manage her pain.

[15] The Claimant has the burden of proof. Having regard to her oral evidence I am not satisfied that it is more likely than not that she lacks the regular capacity to pursue substantially gainful employment.

The Claimant has failed to establish a severe disability

[16] A disability is severe if it renders a Claimant incapable of pursuing with consistent frequency any truly remunerative occupation. I should assess the severity requirement in a “real world context” and consider such factors as the Claimant’s age, education level, language proficiency, and past work and life experiences when determining her "employability".⁵

[17] The Claimant is 51 years old. She is well educated with both a B.A degree and a diploma in medical office administration. She has an extensive work history involving advertising, marketing, and office administration. She has many transferable skills and has testified that she is regularly capable of doing office work such as reception, answering phones, and paper work provided she allowed to move around, when required.

[18] I find that the Claimant has failed to establish that it is more likely than not that she has a severe disability in accordance with the CPP requirements.

CONCLUSION

[19] The appeal is dismissed.

Raymond Raphael
Member, General Division - Income Security

⁵ *Villani* 2001 FCA 248