



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. L. v Minister of Employment and Social Development*, 2019 SST 1661

Tribunal File Number: GP-18-2878

BETWEEN:

G. L.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: John F. L. Rose

Claimant represented by: Self-represented

Videoconference hearing on: June 4, 2019

Date of decision: June 15, 2019

DECISION

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

OVERVIEW

[2] The Claimant was completing her PhD in 2011 when she became ill with gastroesophageal reflux. She returned to the university when that illness improved, however, in 2013 leg pains required that she work from home. Those pains were later determined to be because of her hip and she is undergoing a hip replacement this month. The Minister received the Claimant's application for the disability pension on November 30, 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, 2012. In addition, the Claimant made contributions in early 2015 and under the CPP prorated provisions, if she cannot qualify at her MQP date, she must be found disabled in 2015 by April 2015.

PRELIMINARY MATTERS

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, 2012, and if not, by her prorated date of April 2015?

[5] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2012, and if not, by April 2015?

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.

Severe disability

Was the Appellant's disability severe by December 31, 2012?

[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's 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] The medical evidence from her family physician confirmed that the Claimant suffered from gastroesophageal reflux and related symptoms from February 2011. It also confirmed that by August 13, 2012 she was "quite well and able to perform the work required."³ As a result, by the MQP date of December 31, 2012, her gastroesophageal reflux was not severe as defined in the CPP. She does point to a referral in May 2013 to gastrointestinal specialist⁴ as evidence that her symptoms continued past her MQP, however, a second letter in September 2013 letter from her family physician confirmed her condition was not disabling⁵. The Claimant testified that she no longer suffers from this condition and stated in a letter to CPP that by September 2013, and after, her symptoms did not block her ability to work. The Claimant testified that the letters written by her family physician in August 2012 and August 2013 were to ensure that the university would not terminate her doctorate because of her past illness and suggested they did not reflect the actual extent of her illness at that time. While I accept that her doctor may wish

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

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

³ GD3-27 Letter from Dr. Nancy Overington

⁴ GD2-34

⁵ GD3-28 Letter from Dr. Nancy Overington

to assist by putting her condition in the best possible light, I give significant weight to Dr. Monroe's clear statement of her capacity to work in September 2012 and August 2013. In fact, she continued on working and defended her thesis in December 2013.

[9] 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 impairment⁶.

[10] The Claimant claims that she began having trouble with her legs in early 2013 including pain and discomfort in sitting in a desk chair. In May 2013, she began working from home full-time, on a computer in a reclined position⁷. There is no evidence before me of any medical consultations or treatments for her legs by December 2012. She continued to work in the office until May 2013. I find that her leg problems were not a significant contributing factor in preventing the Claimant from pursuing any gainful occupation at her MQP date.

Did the Claimant have a severe disability by her prorated date of April 2015?

[11] The Claimant's gastroesophageal reflux issues had resolved by April 2015 and were not disabling at that time, however, she testified that her leg issues increased. She went to the emergency department in October 2013 after complaining of shin pain while running. The emergency doctor diagnosed shin splints and referred her to a sports medical clinic⁸. The Claimant testified that she attended at the clinic to rule out any bony issue although she was unable to obtain a report from that clinic. From that appointment she understood it to be a soft-tissue injury.

[12] The Claimant testified that she continued to be completely unable to sit in a chair and her symptoms would return when she needed to be in the office. She worked from home after May 2013, going into the office as required. Dr. Overington makes no mention of these difficulties in her September 2013 letter. There is notably no medical evidence of leg or hip problems between the emergency report in October 2013 and a June 2016 medical note from her family physician referring her for a consultation⁹ due to left hip pain. She then attended with Dr. Jennifer

⁶ *Bungay v. Canada (A.G.)*, 2011 FCA 47

⁷ GD2-38

⁸ GD3-25

⁹ GD2-35

Hacking, a specialist in Sport and Exercise Medicine¹⁰. Dr. Hacking documents her exercise routine and difficulties, noting increased difficulties with walking and running and a recent injury to her thigh. Further investigations in the summer of 2016 lead to an MRI and diagnosis of a subcondral cyst. She told me that she was scheduled for a hip replacement on June 13, 2019 and she expected a three to six-month recovery period. She also testified to problems in her right hip that may also require further surgery in the future. A letter from her current family physician, Dr. Romith Naug in April 2019¹¹ comments on the status of her right hip, which she first brought to his attention in July 2017, and well after the latest date the Claimant could qualify.

[13] I had difficulty accepting the Claimant's testimony as to the extent of her limitations due to her leg and hip between late 2013 and 2016. She told me that she did not seek any treatment from her family physician or others for her leg conditions, which she claims to be disabling during this period. She felt it was a soft-tissue injury which could only be helped with stretching, which she did when she was able to do so. While I do not doubt that the Claimant continued to have some leg pain issues during this time, I find it hard to accept that she would not have continued to seek treatment if it was disabling to the extent of her testimony. It is more likely that the symptoms gradually increased over that time until she finally sought further treatment in early 2016, which is one year after the latest date she could qualify.

[14] She also gave evidence of her job search in 2015. Having completed her PhD, she was actively seeking work in her field in order to further her career. She completed one writing contract in March 2015¹², although she testified it took longer than it should have due to her leg difficulties. She told me that her left leg/hip was feeling somewhat better by April 2015 and she had created a plan to move her career forward. She applied for a number of scientific writing positions and also to positions in teaching, which she felt would help her career. She did say that attending appointments in 2015 were difficult for her but I do not accept that she would have made those efforts had she not felt capable, in 2015, of working, particularly when she was not seeking or receiving any treatment for her leg condition.

¹⁰ GD 3-29

¹¹ GD8-3

¹² GD2-142

[15] The Claimant relies on a December 2018 report from Dr. Naug¹³ who began treating her March 2017. Dr. Naug makes the link between her 2013 shin splints diagnosis and her hip problems. That may very well be the case, and even if so, it does not establish, on its own that her condition was disabling in April 2015. One indication that the condition was disabling would be to seek medical treatment, which she did not pursue until 2016 and well after her prorated date.

[16] I must assess the severe part of the test in a real world context¹⁴. 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 Claimant was 59 years old in April 2015 with a number of years before the usual retirement age in Canada. She speaks English and she is well educated and experienced in her field. I do not find that her personal circumstances, apart from her medical condition, would have affected her ability to work. In fact, she has much to offer an employer.

[17] The onus is on the Claimant to show, on a balance of probabilities, that she was incapable regularly of pursuing any substantially gainful occupation by her MQP date of December 31, 2012, and if not, by her prorated date of April 2015. I cannot find that she has done so. Her initial gastric reflux condition had substantially improved by her MQP date allowing her to work and has now completely resolved. She has not persuaded me that, without seeking medical treatment, her leg and hip conditions were severe by December 31, 2012 nor April 2015. While it may have been severe by June 2016 when she again sought medical treatment, that is well past the latest date she could qualify. It appears that she is now getting the treatment she requires and her prognosis is positive.

CONCLUSION

[18] The appeal is dismissed.

John F. L. Rose
Member, General Division - Income Security

¹³ GD1-45

¹⁴ *Villani v. Canada (A.G.)*, 2001 FCA 248