



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. J. v Minister of Employment and Social Development*, 2019 SST 1535

Tribunal File Number: GP-18-458

BETWEEN:

A. J.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Jackie Laidlaw

Teleconference hearing on: June 24, 2019

Date of decision: July 8, 2019

DECISION

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

OVERVIEW

[2] The Claimant fractured her ankle while visiting India in 2015. The injury required screws to be placed in her ankle. She was working at the time as a clerk on the computer. She was off work until August 2016 when she returned to modified days until February 2018 when she stopped work completely. The Minister received the Claimant's application for the disability pension on January 11, 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, 2019. As the MQP is in the future, the Claimant must be found disabled as of the date of the hearing.

PRELIMINARY ISSUES

[4] The Claimant referred to a letter from Dr. Haider from January 2018 at the hearing. I allowed her to submit this post-hearing. She did, along with another document from Dr. Haider dated October 13, 2016.

[5] I accepted both documents and shared them with the Respondent without an opportunity to respond as I did not feel they would alter the Minister's decision as they were similar to documents already on file.

[6] The Claimant continued to submit further documents which had not been referred to at the hearing and which I did not feel were new information. I did not accept those documents.

ISSUE(S)

[7] Did the Claimant's conditions of swelling in the right ankle and ankle pain result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by the date of the hearing?

[8] If so, was the Claimant's disability also long continued and of indefinite duration by the date of the hearing?

ANALYSIS

Severe disability

There is no evidence to correlate the increased symptomology

[9] The Minister has submitted the above and I agree.

[10] The Claimant was healthy until she fractured her right ankle in March 2015. She went to India in February 6, 2015 and was to return March 13, 2015. She fractured her ankle March 11, 2015 and had to stay in hospital for surgery to put a screw in her ankle. The doctors in India told her to stay there and elevate her leg for a month. The X-ray taken in India on April 26, 2015 showed soft tissue swelling but the alignment at the fracture site was satisfactory.

[11] She returned to Canada on May 22, 2015 accompanied by an Indian doctor paid for by insurance.

[12] When she returned to Canada she went to the hospital and had her cast removed by Dr. Kao. Dr. Kao noted she did not have any infection but only an ulcer on her foot. The Claimant stated it was treated with cream.

[13] She did not have a family doctor in Canada as her previous doctor had passed while in India. She started seeing Dr. Rahman as her family physician after returning to Canada.

[14] In May 2015 she first consulted with orthoped Dr. Haider in May 2015, and continued to see him every six months. He prescribed Tylenol and naproxen for the pain and swelling of the ankle she was experiencing. She stated that he has consistently told her she has arthritis and the swelling will not go away. He recommended she elevate her foot.

[15] She continues to elevate her foot for one or two hours and ice it when the swelling occurs. After the icing the swelling will come down. She has not changed this routine, or the Tylenol and Naproxen since 2015.

[16] In September 2015 Dr. Haider wrote a note she should stay on a 4-hour work day for three more weeks.

[17] She stated that she went to work for one day and Dr. Haider sent her home. There is no letter from Dr. Haider that she should leave work.

[18] In October 2015 she had a second opinion from orthopaedic surgeon Dr. Sue-A-Quan. Dr. Sue-A-Quan re-assured her all is well. He noted she walks normally and is able to hop on her leg. Moderate swelling was noted around the ankle and the doctor stated that it can take a full year for all symptoms and signs to subside. He noted that her clinical pictures do not reveal any problems with motion or stability and returned her to the care of Dr. Haider.¹

[19] The next X-ray of January 14, 2016 showed the hardware unchanged with no evidence of interval complications and no new abnormalities. Subsequent X-rays of April 2016 and October 2016 showed no change. The final X-ray of January 18, 2018 compared to the last X-ray of October 13, 2016 showed no significant interval change or change in the hardware. It did indicate mild narrowing of the ankle. Dr. Rahman stated this is an indication of arthritis.

[20] The Claimant had physiotherapy for six months post-surgery and Dr. Haider noted in December 2016 that she had improved moderately with the physiotherapy treatment.² In the report he notes that she may require further consultation in the future and that osteoarthritis of the ankle will likely gradually progress and may require future treatment/intervention.

¹ GD 5 8 Dr. Su-A-Quan consultation October 21, 2015

² GD 2 55 medical report of Dr. Haider December 16, 2016

[21] As the diagnostic images up to 2018 show, there were no changes in her progression nor was any further consultation required other than check ups.

[22] The only change noted was that the Claimant had plantar fasciitis and leg vein issues in 2017, which would not be related to the ankle condition. She was prescribed compression stocking and orthotics and both issues resolved. She does continue to wear the orthotics, which I recognize as common for many people as they age and does not indicate a severe condition. She does not use the compression stockings on her right ankle because it is always swollen.

[23] The most recent letter from Dr. Rahman is in March 2019 where he notes she continues to use Naproxen 500 mg and Tylenol 500 mg, self massages, heating pads and elevates her legs. She discontinued physiotherapy after one year, though that was recognized by Dr. Haider as providing moderate improvement.

[24] All of her treatments are conventional and do not indicate any severe pathology. The medications and treatments have not changed since 2015. I accept that there is swelling and pain but the narrowing of her ankle (as noted by Dr. Rahman as suggestive of arthritis) is mild.

[25] Therefore, I agree with the Minister that there is no evidence to correlate the significance of her increased symptomatology, the X-rays show no changes and the medications are minimal.

[26] In his letter of March 31, 2019, Dr. Rahman notes that she is comorbid with hyperlipidemia, hypertension and hypertensive heart disease, however she has failed to prove the severity of these conditions or that they have prevented her from working.

[27] I cannot accept Dr. Rahman's opinion that she is "a genuine case of pain and suffering and not fit to work in any work environment"³ as the accompanying medical evidence does not indicate any such condition. I accept she has pain, however she has never been referred to any pain clinic and the only recommendations since 2015 by both Dr. Rahman and orthoped Dr. Haider has been to elevate her foot.

³ GD 5 1 letter March 31, 2019 Dr. Rahman

The Claimant worked for over a year

[28] The Minister has submitted that part time work is an indication of capacity to work. I agree.

[29] 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 condition⁴.

[30] When she returned to work in August 2016 she was still on long-term disability and worked three days a week for four hours a day, as suggested by Dr. Haider a year earlier for a period of three weeks. There was no further note from either Dr. Haider or Dr. Rahman that she should stay on modified hours permanently.

[31] She continued to do the same job she had always done, which was sedentary and sitting on the computer. She was given accommodations where she could elevate her leg. It is important to note this is the only recommendation by both physicians, Dr. Haider and Dr. Rahman, that she elevate her foot.

[32] The Claimant worked until February 2018 and stated she stopped because the cold weather was making her leg swell more. She stated there were no other modified duties or jobs for her at her company, however, the only modification she required was to elevate her foot.

[33] Dr. Haider wrote a note⁵ for her insurance provider in January 2018 stating that she would not be able to return to work standing or sitting for the unforeseeable future due to osteoarthritis. The note does not indicate she is unable to work at any occupation. It did not provide any supporting documentation which would indicate the severity of the osteoarthritis.

[34] Dr. Haider still has not changed his only recommendation that she elevate her foot, despite his note she could not sit. The X-rays of 2018 did not indicate anything more than mild osteoarthritis. He had not changed her medications. Nothing had changed since 2015 to warrant his note of January 2018 other than the cold weather affecting her leg.

⁴ *Inclima v. Canada (A.G.)*, 2003 FCA 117

⁵ GD 7 post hearing document from Dr. Haider January 18, 2018

[35] She was accommodated with the only recommendation of elevating her foot. It is not reasonable that if the elevating of her foot increased her swelling and pain for over a year at work both her doctors would continue to recommend it. She testified they have continued to make this recommendation. It is more reasonable that the seasonal cold weather, as testified, would affect her condition, however there was no further intervention required.

[36] . The clinical and investigative findings in 2016 to 2018 did not reveal a worsening of her condition or a change in her treatment during the 16 to 17 months she worked. Because of this I do not put weight on Dr. Haider's note of January 18, 2018 that she is unable to work for the unforeseeable future due to osteoarthritis.

[37] The Claimant has shown a capacity to work for over a year and has failed to prove she is incapable of maintaining employment by reason of her health condition.

[38] I must assess the severe part of the test in a real world context⁶. 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.

[39] Despite the Claimant requiring an interpreter at the hearing, she moved to Canada at age 14 and completed high school in Vancouver after which she received a college diploma in computerized special program. She is fluent in English, Punjabi and Hindi and lives in a very multicultural city where her many language skills may be an asset. She is 55 years-old with 10 years before retirement. She would not be prevented from retraining or finding suitable employment by reason of her age, language skills and education.

[40] Over the years the Claimant worked in a variety of jobs such as: Canada Post; assembly line for a car parts company; a clerk for a landscaping company and since 2001 as a clerk sorting and posting information on a computer. As such, she has multiple transferable skills. She was working in a sedentary position. She is quite capable of using a computer and there is no indication her ankle affects her ability to use the computer. Her condition is a swollen and

⁶ *Villani v. Canada (A.G.)*, 2001 FCA 248

painful ankle which requires elevation. This can be accommodated, and was, in a number of employment positions for which she would be suited.

[41] In a real world sense, the Claimant would not be prevented from suitable employment by reason of her age, education, language skills or past work and life experiences despite the limitations due to her swollen and painful ankle.

[42] I agree with Dr. Haider⁷ who opined she has a permanent disability due to right ankle osteoarthritis as a result of the fracture. I also agree with Dr. Rahman⁸ that she has suffered for would continue to suffer for an indefinite period. While the osteoarthritis, and most likely the swelling of her ankle are permanent, the doctors and the Claimant have failed to prove the condition to be severe. Her medications have not changed since 2015 and the only recommendation is to elevate her foot, which is quite conservative and easily accommodated. She worked for over one year with accommodations and she failed to show supporting evidence of the osteoarthritis progression or why it caused her to leave work.

[43] I find the Claimant has failed to prove a severe condition that renders her incapable regularly of pursuing any substantially gainful occupation.

CONCLUSION

[44] The appeal is dismissed.

Jackie Laidlaw
Member, General Division - Income Security

⁷ GD 9 post hearing document dated October 13, 2016 from Dr. Haider

⁸ GD 2 65 July 24, 2017 Dr. Rahman