



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. B. v Minister of Employment and Social Development*, 2019 SST 1510

Tribunal File Number: GP-18-575

BETWEEN:

M. B.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Brisette Lucas

Claimant represented by: Farhan Raouf

Teleconference hearing on: May 7, 2019

Date of decision: July 29, 2019

DECISION

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

OVERVIEW

[2] The Claimant was 41 years old with a personal care worker (PCW) diploma when she applied for benefits in June 2017. She claimed that she was disabled because of back and neck pain. The Claimant was last employed as a unit aide from August 2003 to June 2015, but claimed she could not continue working due to limitations.

[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, 2017. The Respondent denied the application initially and upon reconsideration because the Claimant did not have a severe and prolonged disability as of her MQP.

PRELIMINARY MATTERS

ISSUES

- a) Whether the limitations caused by neck and back pain resulted in the Claimant being incapable regularly of pursuing any substantially gainful occupation, on or before December 31, 2017; and
- b) If so, whether the disability was likely to be long continued and of indefinite duration.

ANALYSIS

[4] A person is considered to have a severe disability if he or she is 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 death¹. A person must prove on a

¹ Paragraph 42(2)(a) of the CPP

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

The Claimant did not have a serious health condition that limited her capacity to work as of December 31, 2017

[5] The medical evidence confirms that the Claimant had been suffering from low back and right leg pain and had to stop working as a hospital unit aide due to pain. I must assess the Appellant's condition as a whole and consider all of her impairments that affect employability, not just her biggest impairments or her main impairment.² I reviewed all of the medical evidence³ and found the following the most relevant in relation to the Claimant's impairments as of her MQP:

- a) In an MRI dated March 30, 2017 of the right knee no significant of joint abnormalities were identified and no joint effusion of periarticular soft tissue calcifications were seen. An MRI of the lumbar spine revealed that the alignment was within normal limits and disc spaces were preserved, and no osseous abnormality was identified.⁴
- b) In the CPP Medical Report dated May 23, 2017 Dr. Malik noted the Claimant's diagnoses of varicose veins, bursitis and mechanical back pain for more than four years. Dr. Malik stated that the prognosis of the Claimant's main medical condition was good.⁵
- c) In July 2015, Dr. Varma noted that the Claimant had been off work and wanted more time to care for her sick mother.⁶
- d) In February 2017, Dr. Malik stated that the Claimant's degree of impairment was mild and the duration of the condition was temporary.⁷

² *Bungay* 2011 FCA 47

³ I reviewed, but did not reference, medical evidence dated after the Claimant's MQO because it was not relevant to her ability to work as of her MQP.

⁴ GD2-52

⁵ GD2-48

⁶ GD4-144, 145

⁷ GD8-47

- e) In a note dated May 30, 2017 Dr. Malik noted that he injected the Claimant's right foot with a cortisone injection due to an episode of acute bursitis.⁸

[6] The Claimant has an honest belief that she has severe medical conditions. She noted the following limitations⁹ as of June 2017:

- a. Excruciating pain in her lower back;
- b. Varicose veins protruding from her right leg;
- c. Instability in her knees and ankle;
- d. Inability to lift over 80 pounds;
- e. Inability to stand on her feet for 12 hours; and
- f. Inability to stock boxes.

[7] The Claimant also explained the impact of her health on her activities of daily living. She stated that she requires help from her friends to meet some personal needs. The Claimant has not looked for work since she stopped working and did not feel she could work as of June 2015.

[8] Although the Claimant had a sincere belief that she was severely disabled, there must be medical evidence of the Claimant's health conditions.¹⁰ Although the Claimant experienced limitations and may not been able to work in her usual occupation, I find the evidence regarding the Claimant's medical conditions do not support a finding of a severe disability as of December 31, 2017. In February 2017, Dr. Malik stated that the Claimant should be able to be employed by July 2018 and she would be able to participate in employability enhancing activities, e.g., training or career counselling.¹¹ Dr. Malik restated the same in November 2017.¹² I find that the Claimant's limitations related to her usual occupation; however, the limitations that affected her do not extend to sedentary work.

⁸ GD4-64

⁹ GD2-56

¹⁰ *Villani v. Canada (A.G.)*, 2001 FCA 248

¹¹ GD2-47

¹² GD2-45

The Claimant has not shown that efforts at obtaining and maintaining employment have been unsuccessful due to her health conditions

[9] 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 condition.¹³ The evidence reveals that the Claimant has the capacity to seek and retain sedentary employment as of her MQP. In July 2018, Dr. Malik stated that if the Claimant could not tolerate a job involving significant physical activity, she could consider a job that was less strenuous. However, the Claimant had still not pursued vocational rehabilitation of her MQP. She did not work in any type of job since she stopped working. I find that the Claimant has not proven on a balance of probabilities that efforts at obtaining and maintaining employment have been unsuccessful because of her health condition since she did not pursue work within her limitations. I place significant weight on Dr. Malik's conclusions made in February and November 2017 that indicate the Claimant has a capacity for alternate work.

[10] The Claimant submitted school records on May 7, 2019.¹⁴ The records indicate that she attended two high schools and did not have marks recorded for her grade 10 year as she did not complete that year. Although I did consider this document, I assign no weight to it as both the Claimant¹⁵ and her representative¹⁶ made submissions that she has attained a grade 12 education.

[11] I must assess the severe part of the test in a real world context.¹⁷ 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 42 years old as of her MQP. Her primary work experience has been as a PCW and unit aide. Even though she has worked primarily in non-sedentary work, she was relatively young as of December 2017 and does not have a language or learning barriers. Despite her personal circumstances and medical conditions, she was determined to have capacity for alternate work as of her MQP.

¹³ *Inclima v. Canada (A.G.)*, 2003 FCA 117

¹⁴ GD9

¹⁵ GD2-53

¹⁶ GD8-4

¹⁷ *Villani*

[12] The Claimant feels she is totally disabled; however, the medical evidence does not support a conclusion that she is unable to do any kind of work. It is clear from the doctor's reports that she cannot do her usual job. It is also clear that the Claimant's limited education, along with restriction of heavy work, would limit the types of work she could do. However, the Claimant did have the capacity to do other type of work or be retrained to so do.

[13] I find that the Claimant's disability is not severe because she has some work capacity and did not make efforts to find work. There is no need for me to consider whether the disability is prolonged, because I have found that the disability is not severe.

CONCLUSION

[14] I find that the Claimant did not have a severe and prolonged disability. The appeal is dismissed.

Brisette Lucas
Member, General Division - Income Security