



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. R. v Minister of Employment and Social Development*, 2019 SST 1227

Tribunal File Number: GP-18-1386

BETWEEN:

N. R.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Brisette Lucas

Date of decision: September 4, 2019

DECISION

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

OVERVIEW

[2] The Claimant applied for benefits in October 2016. She claimed that she was disabled because of fibromyalgia, hearing impairment, chronic fatigue, ADHD and BPD. The Claimant works as a X since April 2015 on a part-time basis.

[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). Based on her record of earnings the Claimant must be found disabled as defined in the CPP as of December 31, 2020. Since the MQP is in the future, she must be found disabled as defined in the CPP as of August 31, 2019, the date of this decision.

PRELIMINARY ISSUES

[4] The Minister sent in submissions after the notice of readiness, but before the decision was issued, on August 16, 2019 and August 19, 2019. I accepted the submissions because they are relevant to whether the Claimant had a severe disability as of the date of the decision.

[5] The decision was made on the record because no further information was required to make the decision; credibility is not a prevailing issue; and there is no contradictory evidence of relevance to the issue.

ISSUES

- a) Whether the limitations caused by fibromyalgia, hearing impairment, chronic fatigue, ADHD and BPD resulted in the Claimant being incapable regularly of pursuing any substantially gainful occupation, on or before August 31, 2019; and
- b) If so, whether the disability was likely to be long continued and of indefinite duration.

ANALYSIS

[6] 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 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 has an honest belief that she is severely disabled

[7] 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 The Claimant explained how she sees her medical condition in writing.³ She stated that fibromyalgia and chronic fatigue causes her body to shut down if she works for two days and she is only able to do part-time work four to six hours at a time. The Claimant claimed she sought treatment as soon as she was able to and does not take medication because it worsens her condition and upsets her stomach.

[8] I think the Claimant was telling the truth when she made submissions; however, I must also look at the objective evidence on file to determine whether it supports the Claimant's submissions and how consistent they are with what was said.

[9] The measure of whether a disability is "severe" is not whether the person suffers from severe impairments, but whether his or her disability prevents him or her from earning a living. Severity of the disability is not premised upon a person's inability to perform his or her regular job, but rather on his or her inability to perform any gainful occupation⁴. I found the following medical evidence relevant to the Claimant's limitations:

¹ Paragraph 42(2)(a) of the CPP

² *Bungay* 2011 FCA 47

³ GD7

⁴ *Klabouch* 2008 FCA 33

- a) In a report dated October 23, 2014, Dr. Pedvis stated that the Claimant had chronic pain and fibromyalgia.⁵
- b) In the CPP Medical Report dated September 28, 2016, Dr. Poldes noted the Claimant's diagnoses as chronic pain, fatigue and mood disorder.⁶
- c) In a report dated March 8, 20, 2018, Dr. Geleff stated that the Claimant had been diagnosed with chronic pain syndrome, severe chronic fatigue, mixed personality disorder, anxiety ADHD, myofascial pain, osteoarthritis of the knees, degenerative disc disease and scoliosis.⁷
- d) There are several recent reports on file detailing the Claimant's psychiatric care.⁸

The Claimant's functional limitations do not prevent her from performing any substantially gainful occupation

[10] The Claimant's work history does not support a finding of a severe disability. The Claimant submitted that she can only work part-time and is entitled to a CPP disability pension. Even though the Claimant's income may only be a portion of what she would have earned had she not had any limitations, her income is substantially gainful. The Claimant's Record of Employment (ROE) shows earnings of \$19, 833 in 2018⁹. This employment changed her MQP from December 2020 to December 2021. The Claimant confirmed that as of June 2019 she was still working on a part-time basis for the same employer. I find that the Claimant's earnings show that, despite her diagnoses and limitations, she is able to pursue and continue substantially gainful employment.

[11] I did not merely look at her earnings, but also what the Claimant's employer stated about her work and attendance. In an Employer Questionnaire dated April 7, 2017 the Claimant's employer stated that she began working in July 2015 interacting and providing key messages to

⁵ GD4-3

⁶ GD2-109

⁷ GD2-8

⁸ GD4; GD5

⁹ GD8

customers¹⁰. She worked 50 hours a month and was given all the work that was available. Her work was satisfactory, she did not require help from co-workers, and she did not take time off to attend to her medical conditions and had the ability to handle the demands of the job. I find that the employer's questionnaire supports the conclusion that despite her limitations she was able to see and maintain substantially gainful employment. There is no indication that the Claimant works for a benevolent employer who is accommodating her limitations beyond what would reasonably be expected.

[12] The Claimant feels she is disabled from working; however, her work activities do not support that conclusion. Even if I accept that she may not be able to work full-time, I find the Claimant had the capacity to work part-time. If a person has some capacity to work, they must show efforts to find work¹¹. The Claimant made efforts to find work and was successful. She has not established her efforts to obtain and maintain employment were unsuccessful because of her health conditions.

[13] I also find that while the medical evidence on file confirm that the Claimant has several limitations, the reports do not indicate that they are severe. In March 2018, Dr. Geleff stated that the Claimant's prognosis was "unknown at the moment".¹² In October 2016, Dr. Poldes stated that the Claimant's prognosis was "guarded due to lack of insight".¹³ I have considered the February 2019 report from Women's College Hospital that details that the Claimant has symptoms consistent with ADHD, a possible learning disability and impaired cognitive abilities.¹⁴ However, despite these limitations, the Claimant was able to continue part-time work in a job that she has held for several years¹⁵.

[14] I must also consider factors such the Claimant's age, education level, language proficiency, and past work and life experiences when determining her employability¹⁶. The Claimant was 58 years old with a university education as of August 31, 2019. She has solid work experience and no language barriers. I find that the Claimant's personal factors did not limit her

¹⁰ GD2-82

¹¹ *Inclima v. Canada (A.G.)*, 2003 FCA 117

¹² GD2-8

¹³ GD2-112

¹⁴ GD4-9

¹⁵ GD9-2

¹⁶ *Villani* 2001 FCA 248

ability to seek and retain alternate employment even when I consider her relatively older age. She has transferable skills and a level of education that she has used to find substantially gainful work as of the date of the decision.

[15] I find that the Claimant has not established on the balance of probabilities, a severe disability as defined in the CPP. There is no need for me to consider whether the disability is prolonged, because I have found that it is not severe.

CONCLUSION

[16] The appeal is dismissed.

Brisette Lucas
Member, General Division - Income Security