



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. F. v Minister of Employment and Social Development*, 2019 SST 1655

Tribunal File Number: GP-19-213

BETWEEN:

C. F.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Lianne Byrne

Claimant represented by: Allison Schmidt

Teleconference hearing on: October 17, 2019

Date of decision: October 31, 2019

DECISION

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

OVERVIEW

[2] The Claimant is a young woman who stopped working as a customer service representative due to chronic dermatitis of the hands. The Minister received the Claimant's application for the disability pension on June 11, 2018. 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, 2025.

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 the date of the hearing?

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

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

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

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 does not have a severe disability.

[7] The Claimant testified that she was working part-time in a nursing home as a dietary aid beginning in approximately 2011. Her job involved, among other things, washing dishes. In late 2012, her employer changed the chemicals used to wash dishes. About a month later, she noticed her hands were swollen, bleeding and covered in pimple-like bumps. Her supervisor ordered her a pair of latex gloves to use while washing the dishes. She found him to be very understanding of her situation.

[8] When management was changed, she found that they were much less understanding. She was calling in sick. She was having difficulty grasping the dishes. Her gloves were causing her hands to sweat and break out in blisters, which would ooze, crack, then dry out. She stopped doing this work in 2014.

[9] She decided to try a new job that would not involve wetting her hands. She worked part-time at X as a cashier and customer service representative beginning in 2014. She had to use a barrier cream 8-10 times throughout her shift to prevent rashes. Her hands would become immune to the barrier cream after consecutive days of use, making it much less effective. Her hands would crack, bleed and dry out. She had difficulty sleeping at night due to hand pain.

[10] Her duties at work were changed to accommodate her hands. She was allowed to work in a management role. She stood at the end of the cash registers with a clip board, sent her coworkers on breaks, ensured sufficient cashiers to support the lines and made sure her coworkers left on time. She also worked at the customer service desk, which involved processing returns. She alphabetized pay stubs, which would dry out her hands. No matter what job she tried, she still required frequent use of the barrier cream.

[11] In approximately 2016, she tried to work in a home business selling X products. She was able to work from home and at her own pace. She handed out flyers to friends and family. She

would order products and deliver them to her customers. She found it difficult to place orders because it involved typing. She stopped doing this work after one year because it was not profitable. She earned less than \$500.

[12] She decided to look for another job. In October 2016, she began working as a customer service representative and sales associate at X. Her duties included typing and talking on the phone using a headset. She stopped doing this job in February 2017 because she could not type and found it very stressful. Stress would cause her hands to break out. At that time, her hands were swollen, sore, red and covered in blisters. She tried working in a bakery, but did not make it through the first day of training due to her hands.

[13] She received regular employment insurance benefits from March 5, 2017 to August 12, 2017. She acknowledges stating that she was able to work in order to receive these benefits. She thinks her hand condition has worsened since then.

[14] In December 2017, she gave birth to her daughter. Since then, she has been a stay-at-home mother. Her husband typically leaves the house for work at 6:00 a.m. The Claimant's mother comes over to help her at 4:30 p.m. She finds it difficult to keep up with her young daughter at home. She has only given her daughter one bath since she was born because she cannot get her hands wet. Two weeks ago, she could not give her daughter her medication. She finds that diapers stick to her dry hands. She cannot hold her daughter for very long. She cannot grasp the pages to read her a book. Approximately 1-2 times per months, when the Claimant's pain increases, her mother will miss work to watch her granddaughter.

[15] The Claimant was also diagnosed with depression. She finds that anti-depressant medications help quite a bit. She wakes up multiple times at night due to pain in her hands.

[16] The Claimant's mother, K. B., testified at the hearing. She stated that the Claimant's problems with her hands began in 2012. She was diagnosed with dermatitis. She was told to wear a barrier cream and gloves. She would sleep with the gloves, but the new skin that was forming would come off with her gloves in the morning. She had swelling, cracking and stinging in her hands. She had difficulty bending her fingers and grasping objects.

[17] She underwent patch and environmental tests. She saw 8 dermatologists. Eventually, her family physician told her she is out of luck and does not know what else to do for her.

[18] K. B. will get telephone calls from the Claimant at 5:30 a.m. asking her to take the day off from work to watch her granddaughter because she was up all night due to her hands. K. B. has taken many days off from work to help. The Claimant often calls K. B. crying due to depression. She does not like to be around other people.

[19] K. B. confirmed that the Claimant watches her own daughter regularly. However, 1-2 times per month, K. B. will call in sick to work in order to watch her granddaughter because the Claimant's hands are blistered and sore.

[20] The CPP Medical Report was completed on June 1, 2018 by Dr. Benjamin McNaull, family physician. He noted that the Claimant has hand dermatitis that has worsened progressively since her diagnosis. She requires barriers, such as gloves, which are helpful. On December 10, 2018, Dr. McNaull reported that she has had hand dermatitis since October 2012 with bilateral hand erythema, desquamation, tenderness and pain. Her symptoms seem worse following exposure to chemicals and soaps.

[21] Dr. Stephanie Cote, dermatologist, reported on November 23, 2016 that she has hand dermatitis. She should avoid fragranced products and wear cotton gloves under her rubber for wet work. She should also apply a barrier cream multiple times per day.

[22] Dr. Khaled Abdel-Razek, gynecologist, reported on September 17, 2017 that she is in general good health and not on any regular medications. She was subsequently noted on December 14, 2017 to have gestational hypertension and gestational diabetes. There were no other reports on file and no oral evidence to indicate that these health problems continued after the birth of her child.

[23] With respect to her depression, the clinical notes on file indicate on November 27, 2018 that she is doing okay with a slight improvement in her mood following the initiation of medication. There are no medical reports on file to indicate a worsening of her depression.

There is evidence of work capacity.

[24] I accept that the Claimant has ongoing problems with dermatitis and depression. However, I considered that 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 is 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.

[25] Her family physician and the specialists that she has seen confirm her diagnoses and indicate that she is unable to perform certain activities that would aggravate her symptoms, such as frequent hand washing and exposure to soaps and chemicals. However, I agree with the Minister, that none of her doctors have stated that she is unable to work. The Claimant herself was in receipt of regular employment insurance benefits from March 2017 to August 2017. She acknowledges stating that she was able to work at that time. There is no credible evidence to indicate a significant worsening in her health since then. In fact, she is able to care for her young daughter on a full-time basis, albeit with some assistance from her mother.

[26] I find that there is evidence of work capacity. 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 condition³. In this case, prior to her receipt of regular employment insurance, the Claimant tried to work in a business from home, but found it difficult to type and was unsuccessful in making it profitable.

[27] She also tried to work as a baker, but did not make it through the first training session due to her hands. This is not surprising as it is a job that would require hand washing, latex gloves and heavy use of her hands. She has not tried any other work within her restrictions. She has not attempted to upgrade her education.

[28] I must assess the severe part of the test in a real world context⁴. 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. In this case, in finding that that the Claimant’s disability is not severe, I considered that she is 26 years old with a grade 12

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

³ *Inclima v. Canada (A.G.)*, 2003 FCA 117

⁴ *Villani v. Canada (A.G.)*, 2001 FCA 248

education. She is fluent in the English language. She has worked mainly in customer service, as a cashier, and as a dietary aid.

[29] She is very young and reasonably well-educated. In considering her personal characteristics, I do not find that she is unemployable in a real world context. While I acknowledge that she would have difficulty with jobs that would require frequent hand washing and exposure to soaps and chemicals, she would not be precluded from attempting other jobs within her restrictions. She also would not be precluded from retraining for alternate work. She has made very few attempts at finding alternate work and has not attempted to retrain. Therefore, she has not shown that her efforts at obtaining and maintaining employment have been unsuccessful because of her health condition.

[30] 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 impairment⁵. Having considered the totality of the evidence and the cumulative effect of the Claimant's medical conditions, I am not satisfied on the balance of probabilities that she suffers from a severe disability.

CONCLUSION

[31] The appeal is dismissed.

Lianne Byrne
Member, General Division - Income Security

⁵ *Bungay v. Canada (A.G.)*, 2011 FCA 47