



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *B. A. v Minister of Employment and Social Development*, 2019 SST 1640

Tribunal File Number: GP-18-2177

BETWEEN:

**B. A.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Jane Galbraith

Claimant represented by: Yanid Castellon

Teleconference hearing on: October 30, 2019

Date of decision: November 4, 2019

## **DECISION**

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

## **OVERVIEW**

[2] The Minister received the Claimant's application for the disability pension on September 26, 2017. The Claimant stated that she stopped working due to hearing loss and increased vertigo. 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.

## **ISSUE(S)**

[4] Did the Claimant's medical condition result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by the date of the hearing, as the MQP is in the future?

[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 prolonged<sup>1</sup>. 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

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<sup>1</sup> 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**

[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 work<sup>2</sup>.

### ***The Claimant’s medical condition***

[8] For most of the Claimant’s life she has suffered from vertigo/dizziness and had more than 20 surgeries on her ears starting as an infant. She states that she has been able to lip read for years. Her symptoms started to increase in 2016.

[9] The Claimant stopped working due to hearing loss in both ears and increased vertigo. She indicates that her employer understood and before she left her work, they allowed her to increase the volume on telephone calls, increase her use of email and her assistant to get her work completed. Occasionally they would allow her to work from home. The employer did not generally allow working from home but they made some exceptions on a few occasions. This could only continue for a short time.

[10] In March 2018 she received treatment for the hearing loss in the right ear. The vertigo she experiences had caused her to fall multiple times. She was not able to drive on a regular basis due to the ringing in her ears as well as dizziness.<sup>3</sup> Several different movements can trigger the vertigo but she has been conscientiously continuing with the exercises she was taught at the Vestibular Rehabilitation centre. She says that she does them more frequently than recommended. Dr. Archibald felt that it was reasonable to continue with these exercises as she was reporting some improvement with the symptoms.

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<sup>2</sup> *Klabouch v. Canada (Social Development)*, 2008 FCA 33

<sup>3</sup> GD2-19

[11] Dr. Strang, family physician, indicated that if the Claimant was able to have her hearing restored, she may be able to return to work. The documents and the testimony of the Claimant confirm that she is able to hear in her right ear. She is on a wait list to have the same implant performed in her left ear. Her physicians indicate that they believe she will have less symptoms of vertigo once this second implant occurs. It likely will not happen until next year.

[12] In March 2018, the Claimant had an external hearing aid placed in her right ear successfully. She reports that after receiving the implant she has started to suffer from migraine headaches if there is excessive noise or flashing lights occurring when she has the hearing aid in place. Once the migraine starts, she cannot use a computer or watch a TV. Removing the hearing aid stops the migraine. She can only manage a couple of hours outside the house because the noise and stimuli will trigger a migraine.

[13] A specialist, Dr. Armstrong in March 2018, evaluated the Claimant. She reported to him that she had dizziness all of her life probably due to many ear infections. It had become worse since 2016. At that time, she had one fall in the last six months and is able to drive in the day and if there is no rain or busy traffic. He encouraged her to continue the vestibular exercises she has been doing at home. He was encouraged that her symptoms seem to be improving.

[14] The Claimant states that she still has vertigo, which occurs without warning on occasion. This is the main reason she is not able to work. It prevents her from driving more than 20 minutes as per her doctor's direction. Her job is 45 minutes from her home and she drives as part of her job.

[15] It is clear from the medical consultation notes that the Claimant has been managing vertigo for decades. In 2018, she reports to health professionals that her dizziness had increased but is usually in the morning 2-3 times a week. The length of time she remains dizzy has been reported differently. She has managed her vertigo by knowing the triggers most likely to cause it to occur. She also avoids driving in the rain or snow.

[16] Neither the medical evidence nor the oral testimony has satisfied me that her medical condition in its totality has demonstrated to be a severe medical condition by the legislative definition.<sup>4</sup>

***The Claimant's functional limitations***

[17] The Claimant stated on her CPP questionnaire in September 2017, that she had difficulty meeting with families or individuals by the time she stopped working. She says there are many things she is not able to do independently and she is not able to interact with people as she is unable to hear them. The vertigo will occur if she stands too quickly or bends and she sometimes falls when walking. In March 2018 she had reported one fall in the last 6 months.

[18] Dr. Lin, ENT specialist, indicated that the Claimant would have to take some time and effort to hear with only the right ear. He suggested a work environment should be quiet to address her limitations. This would also be beneficial so that she does not develop migraines with excessive noise.

[19] She has been able to adapt to her hearing loss in the past and understands what triggers her vertigo and headaches. I do not find that her functional limitations would preclude her from all alternate and suitable work for her condition. She takes someone with her to her doctor's office so that they can hear her name be called for her appointment.

***The Claimant's work capacity***

[20] She submits that she would not be a reliable employee as her vertigo comes without warning. The frequency of her vertigo does appear to be irregular. The length of time she is affected by it is also not consistent. She has developed strategies to cope with it and also understands the triggers. She has been dealing with this condition for years. She has not put herself to the test of a different type of employment.

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<sup>4</sup> *Bungay v. Canada (Attorney General)*, 2011 FCA 47

[21] I am satisfied that despite these functional limitations caused by the Appellant's condition, she does have work capacity and is capable regularly of pursuing any substantially gainful occupation.

[22] 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<sup>5</sup>.

[23] The Claimant acknowledges that she has made no efforts to pursue any alternative employment that suits her condition. When asked why she hadn't, she indicated that she was on long term disability (LTD) and she was working with them. She states she would love to return to work but her employer will not allow her to work from home. She has not looked into any other alternative employment that would be more suitable to her limitations.

[24] I find that the Appellant has some residual capacity to work. I place significant weight on the fact that she has failed to make any reasonable efforts to find alternative and more suitable employment. She is obligated to show that efforts to obtain and maintain employment have been unsuccessful due to her condition, which she has not done.

### ***Personal Characteristics***

[25] In combination with her health condition, I have to look at the Claimant's background (including age, level of education, language and past work and life experience) so I can get a realistic or "real world" picture of whether her disability is severe.<sup>6</sup>

[26] The Claimant was 51 years old at the hearing. I recognize the Claimant has well over 10 years to the usual retirement age. She was working at X from 2009 to 2016 in a management position. She is proficient in English and has computer skills. She completed high school and two post-secondary programs. Through her recent work experience as a manager, she has developed many transferrable skills. I am very satisfied that she does have the skills to learn a new skill or job, on a part-time or a full-time basis. There has been no evidence presented to suggest that she is unable to learn a new job.

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<sup>5</sup> *Inclima v. Canada (A.G.)*, 2003 FCA 117

<sup>6</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

[27] I have considered the Claimant in a real-world context taking into consideration her personal characteristics. It does not appear to me that her personal characteristics would significantly limit her ability to obtain or maintain appropriate employment. The skills she has developed would be helpful to her to find suitable employment.

[28] The Appellant has the burden of proof and I find that she has failed to establish, on the balance of probabilities, a severe disability in accordance with the legislation.

## **CONCLUSION**

[29] The appeal is dismissed.

Jane Galbraith  
Member, General Division - Income Security