



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. L. v Minister of Employment and Social Development*, 2019 SST 1073

Tribunal File Number: GP-18-2253

BETWEEN:

E. L.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Heather Hamilton

Teleconference hearing on: December 3, 2019

Date of decision: December 12, 2019

DECISION

[1] The Claimant made an application for CPP disability in July 2017.¹ The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal. I am dismissing the appeal. The Claimant is not entitled to a Canada Pension Plan (CPP) disability pension. These are my written reasons why.

OVERVIEW

[2] The Claimant is 59 years old with a grade 12 education. She graduated with a medical office assistant program from Vancouver Community College in 1992. She has worked as a medical office secretary since 1993 in various places and offices. She stopped working in June 2016 because she was unable to carry out her job duties because of anxiety and depression. The Claimant cannot manage her time, multitask, or provide confident medical support to teams, patients and their families. She listed poor memory during stressful situations and irritability, as other health related conditions. She feels she is unable to work in any capacity.

[3] A person who applies for a CPP disability pension the Claimant has to meet the requirements that are set out in the law. First, a person has to pay contributions into the Canada Pension Plan that meet minimum requirements. The legal term for this is the “minimum qualifying period.”² The Claimant’s minimum qualifying period or MQP ends on December 31, 2019. Second, the disability must be both “severe” and “prolonged” by the end of the minimum qualifying period.³ In the Claimant’s case, this date is in the future, which means the Claimant’s disability must be both severe and prolonged by the date of the hearing on December 3, 2019. The law defines what “severe” and “prolonged mean.”

Preliminary Matters

[4] At the beginning of the hearing the Claimant remarked that she had a binder with all her paperwork from the past in it and she could not locate it today. She acknowledged that she had all the information from the Tribunal but had misplaced her binder. I impressed upon her that at any time she could ask for an adjournment. Even if we were three quarters of the way into the

¹ Application for CPP disability July 2017 GD2-17-20

² Found in 44(1)(b) of the *Canada Pension Plan*

³ This requirement is in s 42(2)(a) of the *Canada Pension Plan*

hearing, if she was uncomfortable, we could adjourn for a week and then continue. The Claimant did not ask for an adjournment any time during the hearing. I saw no reason for suggesting one.

The issues in this appeal

[5] The Minister refused the application because she may not be able to return to her work as a medical secretary the evidence does not rule out other more suitable employment, including part-time. There is no information that the Claimant attempted other work.

[6] I must decide if the Claimant's conditions resulted in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 3, 2019.

[7] I must decide if the Claimant's disability was long continued and of indefinite duration.

[8] The Claimant has argued that the disability was both severe and prolonged by December 3, 2019. I have to decide if that is more likely than not.⁴

Was the claimant's disability both severe and prolonged?

[9] First I have to decide if the Claimant's disability was severe. Canada Pension says "severe" means that a claimant cannot regularly work in any "substantially gainful" job because of the disability.⁵

[10] If the Claimant is able to regularly do some kind of work that is substantially gainful, then he is not entitled to a disability pension.⁶

[11] To decide on this, I have to look at the effect of the Claimant's medical conditions on his capacity to work.⁷ I also have to look at the Claimant's background. This includes factors such

⁴ This is paraphrase of the legal requirement to decide "on a balance of probabilities."

⁵ The legal definition of "severe"

⁶ This is explained in a Federal Court of Appeal(FCA) decision called *Klabouch*.

⁷ This is explained in FCA *Bungay v Canada (A.G.)*, 2011 FCA 47.

as age, level of education, language proficiency, and past work and life experience. This is so I can get a “real world” picture of whether the disability is severe.⁸

[12] I have to think about two things: How the Claimant believes his health problems affect his capacity to work. This is the Claimant’s personal evidence. What doctors and other medical professionals say about the Claimant’s conditions. This includes evidence such as what a doctor has to say about the results of the medical tests.

Was the Claimant’s disability severe?

[13] I have to look at whether the Claimant’s disability prevents her from earning a living. The question is not whether the Claimant is unable to perform her regular job. I need to decide whether or not the Claimant can do any substantially gainful work.⁹ This is called the Claimant’s “capacity to work.” I cannot just look at the diagnosis.¹⁰ The key is how the Claimant’s health affects daily functioning and capacity to work.¹¹

The Claimant’s condition

[14] When she was in her late teens and early twenties the Claimant spent time in and out of the psychiatric ward in the hospital because of anorexia. She only weighed 58 pounds and almost died. She still has concerns about body issues today and she has concerns about addictions. The Claimant started on anti-depressants in 1979 when she was in and out of St. Paul’s hospital. She was diagnosed with psychosis and was on “heavy drugs.” She was then taken off the drugs with no consideration to tapering them. The Claimant told me she weaned herself off the drugs.

[15] The Claimant graduated with a medical office assistant program from Vancouver Community College in 1992. She has worked as a medical office secretary since 1993 in various places and offices. She started her career by working full time with X for four years. In 1997 she worked full time in the oncology surgical department reviewing administrative statistics for the province of BC. In 2001 her son was born when she was 41 years old. At this time her

⁸ The concept of a “severe” disability is explained in *Villani v. Canada (A.G.)*, 2001 FCA 248

⁹ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

¹⁰ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

¹¹ Explained in *Ferreira v. Canada (A.G.)*, 2013 FCA 81

manager “bullied” her after she returned from her maternity leave. Fortunately, this person left and she remained there until 2011 when her job was eliminated.

[16] She obtained a four day per week job in nutrition but both her husband and her son were quite ill while she was working. The Claimant worked in a very small department and she felt that the staff were unkind to her. Whenever lunches were organized she was not invited to them even though she spent the time organizing them. Her union representative was unable to help her and she left after one year in 2012.

[17] She was off work for five to six months and she used her vacation and sick pay to be away. The Claimant then was given an integrated parking service job three days per week at Vancouver General Hospital. Then her fourth position was at Children’s Hospital where she worked in the Complex Pain Clinic three days per week. This was her fourth job in five years. The Claimant was hired and she had training under pressure with no manuals to follow. She was under stress not able to cope or concentrate. Both her husband’s and son’s health was declining. The care of the home was her responsibility and she could not handle the house, cooking, and paying the bills. Her son was calling her while she was work and she would have to take him to emergency. Work and her manager were not sympathetic or reasonable with understanding her personal life. She was sleep deprived and getting to the point where she could not eat and look after herself.

[18] Psychiatrist Dr. Marcus recommended cognitive behavioural therapy as a positive way to support her. She told me he did not recommend treating her with medications. She has not refused to take any medication for her depression because Dr. Marcus has not recommended any medication. Family physician Dr. Beveridge has not recommended she take any medication. Her mother was an alcoholic and because of her issues with anorexia in her late teens, and her addictive personality, she would prefer not to take medication that would be addictive. She provided me with a reasonable explanation for preferring no medication.

[19] She told me that although her family physician in his clinical notes documented a graduated return to work that was less stressful that is “hear say” evidence. She did have a discussion with her family physician and he was suggesting this at that particular time; however, in his letter in September 2019 notes that she has not been well enough in all of 2018 and 2019 to return to work in any capacity.

[20] There have been no attempts at any work since she stopped as a medical secretary in June 2016. She thought there was a possibility of returning to one of her previous jobs as a medical secretary in 2018 and she did become excited about that possibility, but it did not come to fruition. She told me that she knew she was becoming anxious, not sleeping, and having panic attacks just thinking about this possibility. She knew she could not return to work even before she found out the position was not available.

[21] She has more bad days than good days. On a bad day she cannot clean or organize anything. She is stressed and overwhelmed and cannot interact with anyone. Her sleep patterns are disturbed and she wakes up all night. She does not want to wake up on time but she needs to. On a bad day she may have conflict with her son first thing in the morning. She mentioned she has a history of severe anxiety and it is only manageable if she has less stress in her life. A bad day is when she has no appetite and she cannot eat. A bad day is when she goes to the gym and cannot find parking quickly.

[22] A good day is when she can have dinner with her husband and son and interact and have a conversation. It is also when she can take time for herself and have some personal care. She told me she is able to drive and go to her fitness classes. On a good day she manages to find parking and get to the fitness class without feeling tense. She told me she does not go to her fitness class every day of the week. But she does go often. A good day is when she can forget about her to do list and her responsibilities. There are no conflicts.

[23] The Claimant explained it would be harder to be in a job where everything was new and a challenge for her. She would not be able to meet that challenge and she knows it. "New" would be more of a challenge for her. She told me she is not re-trainable and has not made any attempts in alternate employment because she cannot focus. The Claimant told me she knows she could not even pour coffee as a job. Because of her depression and anxiety; she cannot make deadlines and cannot organize anything.

Medical evidence tells me she has capacity for work

[24] Occupational Psychiatrist Dr. Buchanan saw Claimant for assessment in December 2016. He noted she had mild to moderate depressive symptoms and anxiety. He indicated that the decision to leave work was not directly related to work. Claimant explained that there were

numerous precipitating factors including issues with her son and husband. She stated her prognosis was good once she was on an effective anti-depressant. Felt her symptoms were moderately treated, she would return to work within 2-4 months.

[25] Dr. K. Solomons, Psychiatrist, assessed the Claimant in January 2017 and had met her in November 2016. The mainstay of her treatment was counselling. Dr. Solomons felt this provided her with more effective coping and stress management tools; although she reported her therapy had not been consistent due to financial restraints. Psychotropic medications had not been helpful in the past. Dr. Solomon felt that short-term use, particularly tranquilizers may be helpful at times. She does not need long term psychotropic medications and does not need to be under the care of a psychiatrist and he made no further plans to see her.

[26] Psychologist Dr. King completed a progress report in May 2017. She attended 5 sessions of CBT. Her attendance was perfect. She was quite depressed at times due to interpersonal stressors of husband, son or strata. He noted her anxiety was lifelong and she needed to acquire coping skills and manage.

[27] The Medical Report June 2017 from family physician Dr. Beveridge, noted in the prognosis that the Claimant should have gradual improvement with ongoing psychotherapy. No medication is recommended at this time. The Claimant was diagnosed with generalized anxiety disorder, triggered and aggravated by external stresses including work, money, marriage and child health problems.¹²

[28] Psychiatrist Dr. Marcus noted in January 2019 a Global Assessment of Functioning (GAF) of 60. She went on medical leave two and a half years ago because of stress and anxiety as well as elements of depression. She is on LTD with Great West Life. He noted that Psychologist Russel Keen wrote a report for her to return to that preferred position when her health improved, but that position was not available at that time. The Claimant is unwilling to take medications for her symptoms. Thankfully her mood state was not inclusive of suicidal thinking. Her main presentation has been that of anxiety symptoms with accompanying low

¹² Medical Report to CPP from Dr. Beveridge June 2017 GD2-65-68

mood. She was hoping for support through this venue and to strengthen her ability to deal with main stressors.¹³

[29] Dr. Beveridge in his letter of September 2019 noted the Claimant has chronic and severe anxiety and depression. She is receiving psychotherapy from both a clinical psychologist and psychiatrist on an ongoing basis. She has not been well enough in all of 2018 and 2019 to return to work in any capacity.¹⁴

[30] Psychiatrist Dr. Marcus noted in May 2019 the Claimant has a generalized anxiety disorder with symptoms of depression. Stressors, including those of her mental health as well as issues related to the well-being of her husband and son have a notable impact on her mental state and functioning. She is making a full effort to manage her activities of daily living in addition to balancing responsibilities within the home and family. Her efforts in obtaining adequate rest and self-care are also relevant. Medications are not being used. She incorporates exercise into her daily routine on most days. She attends weekly group therapy and employer-funded program at Homewood Health. She is maintaining this level of function.¹⁵

[31] I find the objective evidence does not support disability for all work activity. The objective evidence measures how these conditions affect her, and her description of how she manages her daily life, tells me she has the capacity to work in employment that is not as demanding or stressful as working in her previous employment as a medical office secretary, even on a part-time basis in alternate employment.

[32] I acknowledge that Dr. Marcus and Dr. Beveridge are supportive of the Claimant not being capable of working. However, Dr. Marcus noted that the Claimant incorporates exercise into her daily routine on most days. I find that the Claimant drives herself to her fitness class and is organized to get herself there for 9:30 am on most days.¹⁶ She had perfect attendance with her CBT sessions.¹⁷ She has demonstrated a capacity to work on a part-time basis. The medical evidence from Dr. Marcus tells me she is able to look after her personal care and manage her activities of daily living in addition to balancing responsibilities within the home and family. Dr.

¹³ Report from psychiatrist Dr. Marcus G2-32-35

¹⁴ Letter Dr. Beveridge September 2019 GD4-28

¹⁵ Report Dr. Marcus GD2A pages 3 & 4

¹⁶ GD2-44

¹⁷ GD2-71

Marcus noted that the Claimant is maintaining this level of function. This tells me the Claimant has capacity to work.

[33] I recognize the Claimant has situational stressors with both her son and husband being ill. However, she is not on any medication for her generalized anxiety disorder and depression. This suggests she is being managed without medication. The medical evidence does not support the Claimant was incapable regularly of substantially gainful employment. She may not be able to return to her previous job, but I find she has capacity to work at December 3, 2019. I find the Claimant was not severe on or before December 3, 2019.

[34] I acknowledge the Claimant has mental health struggles and has limitations with focussing, organization, completion of tasks, multi-tasking, handling conflict, and working under pressure. She had to leave her previous employment because she could not complete her job duties as a MOA. I find that not all employment requires these skills. There are jobs in the real world that do not require these skills. Her medical conditions and personal characteristics do not leave her without any work capacity.

Did the Claimant make an effort to do some other kind of work?

[35] 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 condition¹⁸.

[36] The problem is that the Claimant made no attempts in alternate employment either full time or part-time. I acknowledge the Claimant stated "that she would not even be able to pour coffee." If the Claimant had made an attempt and failed I could rely on that as evidence. However, she made no attempts in alternate employment. She has not showed me that she was unable to obtain or maintain employment because of her health condition. I acknowledge that the Claimant feels she is totally disabled. I find the Claimant has work capacity, and although she has limitations, these would not have prevented her from gainful employment in alternate employment on a part-time basis. The onus is on the Claimant to show that it is more likely than not that she lacked the regular capacity to pursue substantially gainful employment. I find she

¹⁸ *Inclima v. Canada (A.G.)*, 2003 FCA 117

has failed to discharge this onus. She may not be able to return to her previous employment as a medical office secretary, but I find she has a capacity to work.

[37] I must assess the severe part of the test in a real world context¹⁹. 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.

[38] The claimant was 59 years old at the time of the hearing. She has a grade 12 education and completed a MOA (Medical Office Secretary) course. The Claimant's work history has consisted of working in this field. Although this work history is specific to medical office secretary, I find it would provide transferable skills. Technology and changes are constant in the Claimant's job as a MOA. She has had to learn and continue training throughout her working career. She would have some computer skills and she owns and uses a cell phone. This along with her post-secondary education, supports her ability to retrain. There is no language barrier that would prevent her from finding employment.

[39] The one barrier to the Claimant is her age as she is past her mid 50's. However, there must still be medical evidence demonstrating lack of capacity to work. I have concluded that the medical evidence supports that the Claimant has work capacity and although she has limitations, these would not have prevented her from gainful employment. Her education, work and life experience should provide the basic requirement for direct entry into some type of employment or job retraining.

Prolonged disability

[40] Because I do not find her severe, I do not have to make a decision on prolonged.

CONCLUSION

[41] The appeal is dismissed.

Heather Hamilton
Member, General Division - Income Security

¹⁹ *Villani v. Canada (A.G.)*, 2001 FCA 248