



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. W. v Minister of Employment and Social Development*, 2019 SST 1657

Tribunal File Number: GP-19-45

BETWEEN:

C. W.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Connie Dyck

Teleconference hearing on: December 11, 2019

Date of decision: December 24, 2019

DECISION

[1] C. W. is the Claimant. I have decided that she is not entitled to a *Canada Pension Plan* (CPP) disability pension. This decision may be disappointing to the Claimant, but I have outlined my reasons below why I made this decision.

OVERVIEW

[2] The Claimant was 58 years old when she stopped working as a grocery cashier in May 2017. She says she can no longer work because of pain in her neck, back, arms and legs from Osteoporosis. She said she cannot lift items or stand for long periods of time. She applied for a CPP disability pension in November 2017. Her application was denied. She appealed to the Social Security Tribunal (Tribunal). I am the Tribunal member who heard her appeal.

[3] A person who applies for a disability pension has to meet the requirements that are set out in the law that deals with CPP disability benefits. First, you have to meet the contribution requirements. The legal term for this is the “minimum qualifying period”¹. That is not a problem in this appeal. The Claimant’s minimum qualifying period is December 31, 2018.

[4] Second, you have to have a disability that is “severe and prolonged”². You have to have that disability on or before the date of the minimum qualifying period.

[5] For most people “severe” means something that is “really bad” or “really significant”. Similarly, most people think of prolonged as something that takes a long time, or a longer time than expected. But, the words “severe” and “prolonged” have special meanings in this area of law. This can be confusing. I will explain what the terms severe and prolonged mean when it comes to CPP Disability Pension decisions.

What Does Severe Mean?

¹ It is found at Section 44(1)(b) of the *Canada Pension Plan* (CPP).

² This requirement is found at Section 42(2)(a) of the CPP.

[6] The law says that if a person is unable regularly to pursue any substantially gainful occupation because of their disability then they are severely³ disabled.

[7] Severely disabled is not about the nature of a disability. Severely disabled is about whether the disability impacts a person's capacity to work. This means if a disability is so severe that it prevents a person regularly from working at a job that gives some income then they are severely disabled. It is important to note that this does not mean a former job or a job with a comparable wage; it is any job that is substantially gainful, even if the pay is lower than previous jobs.

What Does Prolonged Mean?

[8] Prolonged means that a disability is "long continued" and is "of indefinite duration" or "is likely to result in death"⁴. For a disability to be "prolonged" the disability must be almost permanent in nature. So if a person has a reasonable chance to regain the ability to work at some time in the near future then their disability is not prolonged.

[9] The Minister says that the evidence does not support her condition is so severe that she could not do some type of work. That is why her application was refused.

[10] To decide if her disability is severe, I have to look at all of the Claimant's medical conditions together to see what effect they have on her capacity to work. I also have to look at her background (including her level of education and past work and life experience). This is so I can get a realistic or "real world" picture of whether her disability is severe⁵. If the Claimant is able to regularly do some kind of work that is substantially gainful⁶, then she is not entitled to a disability pension.

IS THE CLAIMANT'S DISABILITY SEVERE AND PROLONGED?

³ The legal definition of "severe" is found at s 42(2)(a)(i) of the *Canada Pension Plan*

⁴ The legal definition of "prolonged" is found at s 42(2)(a)(ii) of the *Canada Pension Plan*.

⁵ In a decision called *Villani v Canada (AG)*, 2001 FCA 248, the Federal Court of Appeal explains how to understand the concept of a "severe" disability.

⁶ This is explained in a Federal Court of Appeal decision called *Klabouch v Canada (MSD)*, 2008 FCA 33

[11] The Tribunal's file indicates that the Claimant has back and neck pain, osteoarthritis and Barrett esophagus. 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 impairment⁷. The Claimant testified that she is unable to work because of her neck and back pain.

The Claimant has an honest belief that she is severely disabled

[12] The Claimant explained how she sees her medical condition and the impact of her health on her activities of daily living. She stated that she:

- is disabled and cannot work.
- could not work an 8 hour shift at X and there were no other shorter shifts available for her.
- would be unable to stand for 4 hours, even if there was a shorter shift available.
- cannot lift or bend.
- did attempt to return to work in May 2016 for two 8 hour shifts. This was in the floral department which was supposed to be lighter duties. However, it was not. She did not return to work after this.
- needs her daughter to help her with housework because her back is painful after a few minutes of doing tasks such as vacuuming.
- does not believe anyone would hire her because she is now 60 years old. She worked at X for 40 years and except for maternity leave, she never went on Employment Insurance or disability.

[13] I believe that the Claimant was telling the truth when she gave her evidence. Her answers to questions at the hearing were mostly consistent with what she was telling her doctors on different occasions in the past. When a person's story is consistent over a period, this can

⁷ *Bungay v. Canada (A.G.)*, 2011 FCA 47

indicate that they are being truthful. She did not hesitate in answering questions and seemed to be making an honest effort to answer accurately. I conclude that she is credible.

[14] However, I do not just look at how she feels that her disability has an impact on her ability to work. She also needs to support her case with objective evidence. I have to consider what she says, along with what the doctors and other medical professionals say. I have to look at how consistent her evidence is with what is in the medical reports.

The medical evidence does not support that the Claimant is disabled

[15] 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 work⁸. Although the Claimant may not be able to return to her job working 8 hour shifts as a grocery store cashier, the test before me is whether she is incapable regularly of pursuing any substantially gainful employment.

[16] I understand that the Claimant feels that 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 doctors’ reports that she has physical limitations. Still, the Claimant does have some capacity to work.

[17] She told me that she is unable to work because of her back and neck pain. She says: with her job, she is standing, lifting and bending for long periods of time. This irritates her back and neck. In September 2017, the family doctor noted the Claimant was applying for a CPP disability benefit because she was having increased back pain for 7 months which was affecting her ability to work doing manual labour as a cashier. She was unable to lift, twist and bend.⁹

⁸ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

⁹ Clinic note of family doctor is at GD 2-13

[18] An image of the Claimant's cervical spine was taken in September 2017.¹⁰ It found mild degenerative changes with mild kyphosis. There was no evidence of instability, but limited range of motion. There was mild spondylosis and early facet joint osteoarthritis.

[19] The Claimant's family doctor (Dr. Spiers) reported in December 2018 that the Claimant was diagnosed with severe osteoporosis with associated fragility fractures and chronic back pain.¹¹ I must consider the Claimant's capacity to work and not just the diagnosis of her disease to determine whether her disability meets the definition of severe.¹² It is the functional effect of the Claimant's health condition on her ability to work that is key, not the nature of name of the health condition.¹³

[20] Dr. Spiers explained that the Claimant started on an oral bisphosphonate in 2016. Repeat bone density showed further deterioration, and she was started on Prolia injection in March 2018. This would be reassessed in 2020. The prognosis was poor because there was only so much that medications can do to recover bone density. Despite this, it was Dr. Spiers opinion that the Claimant retained some capacity to work.

[21] Dr. Spiers explained the physical limitations and function ability of the Claimant. She said the Claimant had pain in her back which limits bending forward, bending backward, twisting and side bending. She cannot stand or sit for longer than 60 minutes consecutively, and total 50% of her shift. The Claimant said her regular shifts were 8 hours. Walking is limited to 800 meters and no more than 25% of her shift. She has restrictions for climbing ladders and walking on uneven ground due to risk of fall and fragility fractures. She is limited to lifting from floor 10kg, from waist to shoulder 5kg, and less than 2.5kg above shoulder. Pushing and pulling limited to 10kg, and carrying no more than 5kg. These limitations are expected to be permanent. The Claimant's pain has not significantly improved on osteoporosis medication, however some of this could be secondary to deconditioning as well. Her risk fracture however may decrease with appropriate medications. Despite these limitations, it was the family doctor's opinion that the Claimant's current limitations did not prevent her from doing all types of work, however they

¹⁰ Cervical spine x-ray findings at GD 2-21

¹¹ The family doctor's report is at GD 2-9

¹² *Klabouch v Canada (MSD)*, 2008 FCA 33

¹³ *Ferreira v Canada (AG)*, 2013 FCA 81

have proved extremely difficult to find appropriate work. The Claimant testified that she had not attempted to find any other work. She did return to X for two 8 hour shifts working in the floral department but quit after two days. It is reasonable that returning to work for an 8 hour shift would be unsuccessful because Dr. Spiers says the Claimant is limited to standing or sitting for no more than a 4 hour shift. She is partially limited in some of her independent ADLs such as cleaning, however she is still able to wash and dress herself, feed herself, and toilet independently. She continues to drive and cook for herself. She has no cognitive or mental limitations.

[22] Based on her limitations as described by Dr. Spiers, the Claimant would not be able to return to work as a cashier at X. This is because she cannot lift the heavy grocery items and cannot stand for more than one hour without needing to change positions or have a short break. Also, she cannot stand or sit for more than a 4 hour shift and X did not have shorter shifts available for her. However, the medical evidence including that of Dr. Spiers shows the Claimant retains capacity for part-time work, or less than a full daily 8 hour shift.

[23] If a person has some capacity to work, then the law requires that they have to show some efforts to find work¹⁴. The Claimant in this case did not make efforts to find suitable work.

The Claimant's personal circumstances in combination with her medical condition do not prevent her from returning to any type of work

[24] I must assess the severe part of the test in a real world context¹⁵. This means that I consider the Claimant's personal circumstances such as age, level of education, language proficiency, and past work and life experience in combination with the health condition and resulting limitations.¹⁶

[25] The Claimant was 59 years old at the time of her MQP. She has a grade 11 education. Her work history consists of basically one job. She worked part-time as a grocery store cashier

¹⁴ The Federal Court of Appeal explains this at paragraph 3 in a case called *Inclima v Canada (AG)*, 2003 FCA 117

¹⁵ *Villani v Canada (AG)*, 2001 FCA 248

¹⁶ *Bungay v Canada (AG)*, 2011 FCA 47

for 38 years. This would provide transferable skills including customer services skills and retail work.

[26] Also, the Claimant testified that she does have basic computer skills. Dr. Spiers said that the Claimant had no cognitive or mental limitations. This further supports that the Claimant would be a candidate to retrain.

[27] The Claimant has submitted that her age of 60 years old makes her unemployable. While her age may be a detriment, there is no evidence that it had any impact on her obtaining employment. This is because she did not apply for any jobs. Further, age is only one factor that I must consider.

[28] Along with the Claimant's personal circumstances and her medical condition, it would appear that her personal circumstances would not prevent her from obtaining employment and if necessary, retrain for part-time employment. 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 suitable gainful employment.

[29] As I mention above, a person needs to have a disability that is severe and prolonged to get benefits. I conclude that the Claimant's disability is not severe. This is because she has some work capacity and because she did not make efforts to find work.

[30] There is no need for me to consider whether the disability is prolonged, because I have decided that the disability is not severe.

CONCLUSION

[31] The Claimant does not have a severe and prolonged disability. The result is that her appeal is dismissed.

Connie Dyck
Member, General Division - Income Security

ANNEX

After the hearing, the Claimant submitted a post-hearing documents (3 pages) marked as GD 7.

I have decided to accept these documents as evidence. I considered the findings of the ultrasounds. The Claimant advised me at the hearing that she had a colonoscopy scheduled in January 2020. GD 7-3 is confirmation of her scheduled appointment.