



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *NG v Minister of Employment and Social Development*, 2020 SST 1001

Tribunal File Number: GP-19-678

BETWEEN:

**N. G.**

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: Gerry McCarthy

Claimant represented by: Paul Sacco

Teleconference hearing on: January 17, 2020

Date of decision: January 21, 2020

## **DECISION**

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

## **OVERVIEW**

[2] The Claimant worked as a receptionist and pharmacy assistant for “X” until April 24, 2018, and stopped this employment owing to health reasons. The Claimant has not worked at any other employment since April 24, 2018. The Claimant’s diagnosis includes right rotator cuff tendinitis, bilateral lateral epicondylitis (tennis elbow), mild osteoarthritis in her hips, and liver cirrhosis secondary to steatohepatitis. The Minister submitted there were no severe diagnostic findings on the Claimant. The Minister further submitted the Claimant had significant improvement with cortisone injections. The Claimant’s representative submitted the Claimant’s condition was stable, but not improving. The Claimant’s representative further submitted the Claimant had a severe and prolonged disability in April 2018.

### **The Calculation of the Claimant’s Minimum Qualifying Period (MQP)**

[3] The Minister received the Claimant’s application for the disability pension on August 1, 2018. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[4] 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, 2021.

## **ISSUES**

[5] 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 on January 17, 2020?

[6] If so, was the Claimant’s disability also long continued and of indefinite duration?

## ANALYSIS

[7] 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 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

[8] I must assess the severe part of the test in a real world context<sup>2</sup>. 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.

[9] 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 work<sup>3</sup>.

[10] 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 impairment<sup>4</sup>.

[11] 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>.

### **Did the Claimant have a severe disability by January 17, 2020?**

[12] I find on a balance of probabilities the Claimant did not have a severe disability by January 17, 2020, for the following reasons:

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<sup>1</sup> Paragraph 42(2)(a) *Canada Pension Plan*

<sup>2</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

<sup>3</sup> *Klabouch v. Canada (A.G.)*, 2008 FCA 33

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

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

[13] First: In a “real world” context, the Claimant’s employability was not adversely affected by her age, language proficiency, and past work experience. For example, the Claimant was only 50-years-old by the date of the hearing. Furthermore, the Claimant has good language proficiency along with an extensive background working as a receptionist and pharmacy assistant. In short, the Claimant has transferable skills for alternate work or more suitable employment. I realize the Claimant’s representative submitted the Claimant could not re-train for alternate work owing to pain and limitations with sitting. Nevertheless, the Claimant has not attempted any re-training or alternate employment.

[14] Second: The Claimant has not attempted more suitable work. I realize the Claimant testified she could no longer work as a pharmacy assistant and receptionist because of pain in her shoulders, elbows, and legs. However, the severity of the disability was not based upon the Claimant’s inability to perform her regular job, but rather any substantially gainful occupation.

[15] Third: There were no medical reports on file which identified any severe findings on the Claimant. For example, Dr. Khandwala’s report from March 2019 indicated the Claimant’s head and neck examination was “unremarkable.” The report from Dr. Khandwala further explained that a cardiovascular examination of the Claimant showed normal heart sounds with no edema. Dr. Khandwala also wrote there were no active complaints from the Claimant (GD2-61 and 76). Finally, Dr. Deol’s clinical report indicated the Claimant remained asymptomatic from a liver perspective (GD2-79). I recognize the Claimant’s representative submitted that Dr. Francisco’s report indicated the Claimant’s prognosis was guarded and she may require a liver transplant. Nevertheless, Dr. Francisco did not report that the Claimant was disabled from all work.

[16] Fourth: I have considered the Claimant’s condition in its totality. I realize the Claimant’s primary difficulties were with her shoulders, arms, neck, hips, and hands. However, I have also considered the Claimant’s liver cirrhosis which has remained asymptomatic. Furthermore, the Claimant’s diabetes was controlled and her previous problems with swallowing and abdominal pain have improved with treatment.

### **Additional Submissions from the Claimant and her Representative**

[17] During the hearing, the Claimant testified she could not work at any job because of pain and limitations with her shoulder, neck, hips, and elbow. However, the Claimant testified that she received relief from her symptoms with cortisone injections. The Claimant explained that depending on her movement the relief from cortisone injections would last from three-to-four months. Under the circumstances, I cannot conclude the Claimant was incapable regularly of pursuing any substantially gainful occupation.

[18] I further realize the Claimant's representative submitted the Claimant's pain was chronic and had become worse. The Claimant's representative did recognize the Claimant's cortisone treatment, but argued the treatment was temporary. Nevertheless, the Claimant confirmed her treatment with cortisone injections provided relief over a three-to-four month period.

[19] Finally, I realize the Claimant's representative submitted the Claimant's condition was stable but not stable enough to work. In short, the Claimant's representative argued the Claimant was unemployable. However, the Claimant has not attempted any alternate employment since leaving her job in 2018. Furthermore, the Claimant has demonstrated transferable skills for other more suitable work or alternate employment. I certainly recognize the Claimant had difficulties with her neck, shoulder, elbows and hips. Still, the Claimant confirmed that cortisone injections did provide relief over a three-to-four month period.

### **Prolonged disability**

[20] Since I have determined the Claimant did not have a severe disability, I am not required to make a finding on the prolonged criterion.

### **CONCLUSION**

[21] The appeal is dismissed.

*Gerry McCarthy*  
Member, General Division - Income Security