



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. B. v Minister of Employment and Social Development*, 2020 SST 777

Tribunal File Number: GP-18-2739

BETWEEN:

**J. B.**

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: Adam Picotte

Teleconference hearing on: February 6, 2020

Date of decision: February 12, 2020

## **DECISION**

[1] The Claimant is not entitled to a Canada Pension Plan (CPP) disability pension. The Claimant is also not entitled to a CPP post-retirement disability benefit.

## **OVERVIEW**

[2] The Claimant worked most of her life in a retail setting as a cashier. She eventually developed bilateral knee pain that resulted in her being unable to continue working. The Minister received the Claimant's application for the disability pension in February 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). In this case, the Claimant commenced receipt of a retirement benefit in December 2016. A person cannot receive both a retirement and disability benefit at the same time.<sup>1</sup> In fact, a person who applies and starts to receive a retirement benefit has only a limited amount of time to cancel that retirement benefit in favour of a disability benefit.<sup>2</sup> That time is 15 month from the month prior to when they start to be paid a retirement benefit. In the Claimant's case, that is November 2016. She just made the cut-off for consideration of a cancellation. That means in order for her to receive a disability benefit she must have had a severe and prolonged disability in November 2016. The calculation of the MQP is based on the Claimant's contributions to the CPP. I find the Claimant's MQP to be November 2016.

[4] The Claimant also applied for a post-retirement disability benefit. To receive a post-retirement disability benefit a person must have made contributions to the CPP for a certain minimum period of time. The threshold for the Claimant is that she must have had sufficient

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<sup>1</sup> Section 70(3) CPP

<sup>2</sup> Section 66.1(1) CPP and Section 42(2)(b) CPP

contributions for an MQP into January 2019.<sup>3</sup> She did not. As a result, there is no possibility of a finding in favour of granting a post-retirement disability benefit. Therefore, this benefit is denied.

### **ISSUE(S)**

[5] Did the Claimant's conditions result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by November 2016?

[6] If so, was the Claimant's disability also long continued and of indefinite duration by November 2016?

### **ANALYSIS**

[7] Disability is defined as a physical or mental disability that is severe and prolonged<sup>4</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 have decided that the Claimant did not have a severe disability by November 2016. I am going to explain my reasons below.

[9] The reason I must deny this claim is because the Claimant continued working after her MQP ended. The worker described her main disabling condition as her knees. She explained that both knees are arthritic and would remain the same until she had bilateral knee replacement. Dr. Van Heerden confirmed that the Claimant had osteoarthritis in both knees.

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<sup>3</sup> Section 70.01 CPP and Section 44(4) CPP

<sup>4</sup> Paragraph 42(2)(a) *Canada Pension Plan*

[10] I asked the Claimant when she stopped working. She told me that she stopped in approximately July 2017. This was after her MQP expired. This was also confirmed in her file materials.<sup>5</sup>

[11] I asked the Claimant about her work in 2017. She told me that she worked her regular duties as a cashier. She slowed down to part-time. However, she was not provided with any accommodation, or any change in her employment requirements that may have suggested a severe disability around that time.

[12] It was also clear that the reason she stopped working in 2017 was that she had developed skin cancer that required surgical treatment. When she had recovered from her surgery, she was unable to return to work. However, by this time several months had passed since her MQP had ended.

[13] It is for these specific reasons that I am denying her appeal to cancel her retirement benefit in favour of a disability benefit.

## **CONCLUSION**

[14] Both the disability benefit and the post-retirement disability benefit appeals are dismissed.

Adam Picotte  
Member, General Division - Income Security

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<sup>5</sup> GD2-63