



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. O. v Minister of Employment and Social Development*, 2020 SST 325

Tribunal File Number: GP-18-2805

BETWEEN:

A. O.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Virginia Saunders

Teleconference hearing on: January 14, 2020

Date of decision: February 25, 2020

DECISION

[1] I have decided the Claimant, A. O., is not entitled to a *Canada Pension Plan* (CPP) disability pension.

OVERVIEW

[2] The Claimant worked as a care aide for many years. She stopped in 2008 because of multiple symptoms including headaches, muscle weakness and fatigue. She was off until July 2011, when she began working as a ward aide. She held this job until February 2012. She has not worked since then.

[3] In August 2017 the Claimant applied for a CPP disability pension. She said she could not work as of February 29, 2012, because she had lower back pain. The pain caused stiffness and prevented her from bending, lifting, walking, climbing stairs, or sitting for extended amounts of time.¹ The Minister denied the application. The Claimant appealed to the Social Security Tribunal.

[4] The Claimant is entitled to a CPP disability pension if she meets these conditions:

1. she must have contributed to the CPP within a time frame called the minimum qualifying period or MQP;
2. she must have a disability that is severe and prolonged, and
3. she must have become disabled on or before the end of her MQP.²

[5] The Claimant's MQP ended on December 31, 2012.³

THE ISSUE IN THIS APPEAL

[6] I have to decide if the Claimant has a severe and prolonged disability, and if she was disabled by December 31, 2012.

¹ The Claimant's 2017 CPP application and disability questionnaire are at pages GD2-29-33 and GD2-106-113. She also applied in 2009 but was turned down. Her 2009 CPP application and questionnaire are at pages GD2-42-45 and GD2-214-220.

² The MQP is explained at paragraph 44(1)(b), and subsections 44(2), and 52(3) of the *Canada Pension Plan*.

³ The Claimant's CPP contributions are at page GD2-49-50.

DID THE CLAIMANT HAVE A SEVERE DISABILITY AT DECEMBER 31, 2012?

[7] The Claimant's disability is severe if she is incapable regularly of pursuing any substantially gainful occupation.⁴ I accept that the Claimant now has chronic back pain and headaches that likely prevent her from working.⁵ However, I do not think she had a severe disability at December 31, 2012. That is because the objective evidence shows her medical concerns were resolved or under control by 2011, and did not get worse again until several years later. This was well after the end of her MQP, when she last qualified for CPP disability benefits.

What the Claimant and the witnesses said about her condition up to December 31, 2012

[8] The Claimant, her husband, and her friend L. O. testified at the hearing. They said the Claimant has had significant health issues since before December 2012. These include back pain, headaches, dizziness, weakness, and nausea. They said the combination of these have affected the Claimant's daily activities and her ability to work.

[9] The Claimant told me that in 1986 she started working as a care aide at an intermediate care facility in Lillooet, B.C. Her job was a heavy one and included bathing, lifting and transferring patients with mobility issues. She often had back pain because of injuries at work. In 2007 or early 2008 she started having heart palpitations and general weakness. Then she got "thunderclap" headaches. She went to a neurologist, Dr. Woolfenden. He diagnosed her with hyperthyroidism and sent her to an endocrinologist, Dr. Bebb. He prescribed Tapazole. The Claimant said her headaches improved but she was still weak and shaky. She went off work on short term disability in March 2008.

[10] The Claimant told me that after this she had an assessment and started rehabilitation through her employer's disability insurer, Great West Life. She began having trouble with her right arm, so she went to physiotherapy. She was unhappy with the physiotherapy and rehabilitation program. No one listened to her or helped her. She was told to just work through her pain. She did not improve, so she did not go back to her job.

⁴ Paragraph 42(2)(a) of the *Canada Pension Plan*.

⁵ Dr. Phillips, November 10, 2017, GD2-115-118; June 5, 2018, GD2-97

[11] The Claimant's long term disability coverage stopped in February 2011. Her union and her employer would not let her return to her job as a care aide. She felt she had to find some type of work, so a few months later she took a position as a ward aide at a hospital in North Vancouver. This job paid less, because it was part-time rather than full-time and had a slightly lower hourly rate.⁶ Her duties included picking up medications, dropping off lab orders, stocking nursing supplies, moving boxes and furniture around, and moving patients. The only difference from the care aide job in terms of physical requirements was that she did not have to do any heavy transfers.

[12] The Claimant told me that when she started this job her back felt a bit better. But she had agonizing foot pain from walking on hard floors all day. Then the pain spread throughout her body. She recalled missing work or going home early, but she did not know how often this happened. She used up all her sick time. Her husband told me her doctors were more focused on her headaches and her thyroid, so the Claimant did not see any specialists for her back and did not get any treatment. She took ibuprofen for her pain.

[13] The Claimant worked as a ward aide until the end of February 2012, when her employer terminated the position. She could have taken a different job, but the only ones available had heavier duties. She did not think she could manage these. She decided her health was more important, so she took early retirement. She told me she did not consider looking for a lighter job, but she doubted she would have been able to go to any job consistently.

[14] The Claimant and her husband moved back to Lillooet in 2012. Because of the Claimant's limitations they immediately hired household help. The Claimant was able to do the pruning and weeding in her garden for a time, but then started getting her cousin to help her.

What the medical evidence said about the Claimant's condition up to December 31, 2012

[15] When I am deciding if the Claimant's condition is severe, I have to look at every health issue that might affect her employability.⁷ I accept that she has had numerous health issues over the years. But I can't base my decision only on what the Claimant and the witnesses remember

⁶ This is contrary to what the Claimant said in her CPP disability questionnaire (GD2-106). In that document she said she worked 40 hours per week. However, her Record of Employment (GD3-19) shows she worked part-time.

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

about her condition. I have to look at the objective evidence. And I have to focus on her condition up to December 31, 2012. That is because if she did not have a severe disability at that time, it does not matter what her condition is now.

[16] The objective medical evidence about the Claimant's condition before December 31, 2012 consists of reports from Dr. Woolfenden, Dr. Bebb and his locum, and Dr. Phillips, who has been the Claimant's family doctor since 2008. That evidence shows that in 2008 the Claimant reported and was investigated for generalized headaches with associated neck myalgias (muscle pain), "thunderclap" headaches, muscle weakness, tremor, heat intolerance, sweating, a gritty sensation and inflammation in her eyes, and heart palpitations. She was diagnosed with hyperthyroidism or Grave's disease in late 2008. She started taking Tapazole. By December her "anxious feeling, tremor and palpitations" had significantly improved. She felt her muscle strength was better though not normal. She still had occasional morning headaches. By January she was "much improved" and Dr. Bebb asked her to cut back on the Tapazole.⁸

[17] In August 2009 the Claimant was "reasonably well" although she was bothered by redness and dryness in her eyes. She had some musculoskeletal injuries and was in a program to try to get herself back to work. She had no other symptoms of hyperthyroidism.⁹ She had no eye signs in December 2009 and was "euthyroid" (meaning she had normal thyroid function).¹⁰ In July 2010 she told Dr. Bebb she felt reasonably well except for palpitations; however, these had been investigated and there was no underlying cardiac problem. She had no symptoms suggesting hyperthyroidism except for dry eyes. Dr. Bebb suggested she stop using Tapazole.¹¹ In March 2011 Dr. Bebb reported the Claimant had been off the medication for 8-1/2 months and was clinically and biochemically euthyroid. Except for some background orbitopathy, she was doing well. He suggested she avoid excessive salt, exercise regularly, and try to keep her stress level down.¹²

⁸ Dr. Phillips, September 1, 2008, GD2-203-206; Dr. Woolfenden, October 2008 and December 2008, GD2-59-63 and GD2-75-76; Dr. Bebb, November 2008 and January 2009, GD2-72-74

⁹ Dr. White, August 25, 2009, GD2-70

¹⁰ Dr. Bebb, December 8, 2009, GD2-69

¹¹ Dr. Bebb, July 19, 2010, GD2-68

¹² Dr. Bebb, March 31, 2011, GD2-67

[18] In June 2011 Dr. Woolfenden saw the Claimant again. Although her tremor, weight loss, mild muscle weakness and hyperthyroidism had resolved, she continued to have daily headaches. To treat them she took about four Advil per day and one Demerol per month. After examining the Claimant, Dr. Woolfenden determined her headaches were caused by overuse of analgesics. He suggested changes to her medication. After doing this, the Claimant's daily headaches stopped. By August she only had fleeting headaches once a week that did not require analgesics.¹³

[19] After that, there is very little evidence to suggest any of these were ongoing issues. In January 2012 the Claimant told Dr. Phillips she took Demerol for occasional headaches. In July 2012 she reported she still had daily headaches and was still shaky, but there is nothing to show when those symptoms had reappeared. The Claimant had not mentioned them when she saw Dr. Phillips three months earlier. Dr. Phillips attributed the Claimant's symptoms to hypothyroidism, for which he prescribed Synthroid. The Claimant saw Dr. Phillips twice in the next year, and she did not say anything about headaches or shakiness. On those visits her concerns were a rash, and swelling in her throat.¹⁴

[20] Nor does the medical evidence show the Claimant had significant pain in her back, feet, or anywhere else until long after December 2012. In October 2008 Dr. Woolfenden noted that apart from neck discomfort the Claimant had no other myalgias.¹⁵ The neck discomfort was associated with her headaches, and there is no evidence it persisted once the headaches went away. It was barely mentioned. In November 2008 Dr. Bebb reported the Claimant had no other medical concerns except the symptoms noted above that were related to hyperthyroidism. She was not taking any medications.¹⁶ In June 2011 Dr. Woolfenden said the Claimant's hyperthyroidism symptoms of tremor, weight loss, and mild muscle weakness had resolved with treatment. She was still having headaches but had "no interim health concerns". Her balance, gait and limb strength were fine. She had no cognitive decline.¹⁷ In her visits to Dr. Phillips in 2012 and 2013 the Claimant only mentioned "fatigue and back pain and myalgias" once.¹⁸ Dr. Phillips

¹³ Dr. Woolfenden, June and August 2011, GD2-64-66

¹⁴ Dr. Phillips, January 2012 to June 2013, GD1-15-17

¹⁵ GD2-59-62

¹⁶ GD2-73-74

¹⁷ GD2-65-66

¹⁸ Dr. Phillips, April 3, 2012, GD1-16

did not suggest treatment or referral to a specialist. There is no evidence the Claimant saw Dr. Phillips or anyone else about these or any similar symptoms for the rest of 2012 or in 2013.

[21] I asked the Claimant why she did not report her back pain to a doctor during this period, except for the one time in April 2012. She told me that Great West Life was overseeing her rehabilitation, not Dr. Phillips. But Great West Life would not have been involved in the Claimant's care after February 2011 when her disability benefits ended. Furthermore, I would have expected Dr. Bebb or Dr. Woolfenden to have at least mentioned a debilitating back issue in passing, rather than commenting that the Claimant looked well.

[22] The Claimant's husband told me that starting in 2012 the Claimant saw doctors in Lillooet for back pain and stiffness, in between her visits to Dr. Phillips. I gave the Claimant some time after the hearing to get her records from the Lillooet clinic and anywhere else she might find evidence to support her claim that she was disabled by December 2012.

[23] The Claimant filed more documents, but they do not help her case. The earliest is from May 2013, when she went to the Lillooet clinic for lower backache. She told the doctor she had this pain for a number of years but it seemed to be getting worse. He sent her for an x-ray and told her to continue with over-the-counter medication. Her next visit for back pain was over a year later, when she reported "on and off" pain that was recently getting more severe. In April 2015 she reported "chronic aches and pains all over her body" for the past year.¹⁹ That does not persuade me the Claimant's back was a major problem for her in 2012.

[24] The Claimant's medical records show she had headaches and thyroid issues in 2008, when she stopped working as a care aide. She had some neck pain associated with her headaches. Her thyroid symptoms were mostly resolved in 2009, and her headaches in 2011. She may have had occasional problems with those and other conditions after that, but for the next several years she barely mentioned them to her family doctor. She had regular access to medical care but has no record of repeated visits, investigations, treatment, or follow-up of any debilitating health issues until well after December 31, 2012.

¹⁹ Dr. Routley, May 2013 to April 2015, GD6-8-9

[25] I know the Claimant, her husband and L. O. genuinely believe the Claimant has been disabled for many years. However, I think the objective medical records are more reliable than their memories. The medical records were written at the relevant time. There is no reason to think they are incomplete or inaccurate. No matter what the witnesses now remember about the Claimant's health between 2008 and 2012, her medical records from those years show she did not have persistent and significant back pain, or indeed any medical issue, that would have regularly kept her from working up to December 31, 2012.

The Claimant had work capacity at December 31, 2012

[26] A severe disability is one that prevents a person from earning a living at any type of job.²⁰ When I decide this, I don't just look at the Claimant's medical condition. I also look at things like her age, level of education, language skill, and past work and life experience.²¹

[27] As I said above, the medical evidence does not persuade me the Claimant could not work. Her personal characteristics do appear to limit her somewhat. She did not complete high school. Before becoming a care aide she worked in low-skilled labouring jobs. She spent most of her working life as a care aide. When she stopped working in 2008 she was 52 years old. Arguably, these factors would have affected her employability. But in reality, they did not. The Claimant found a job as a ward aide in 2011 and kept it for almost a year. It did not end because of her health, but because the position was terminated.

[28] I considered the Claimant's testimony that she often missed work at her last job because of her health. Her Record of Employment shows that in 32 weeks she worked just over 11 hours per week on average.²² At \$21.26 per hour,²³ that is less than what she would have received had she been getting a CPP disability pension. That was not the test for what was "substantially gainful" in 2012,²⁴ but it is useful as a rough measure. The Claimant earned just \$7014.54 from

²⁰ *Klabouch v. Canada (A.G.)*, 2008 FCA 33; *Ferreira v. Canada (A.G.)*, 2013 FCA 81

²¹ *Villani v. Canada (A.G.)*, 2001 FCA 248

²² GD3-19

²³ This is what the Claimant said her hourly wage was (GD2-106).

²⁴ GD3-19

July 2011 to February 2012. By itself, her income does not show she was capable regularly of substantially gainful employment.

[29] But I considered other things as well. First, as discussed above, there is very little evidence to show the Claimant's medical condition was debilitating in this period. That means that even if she missed work I am not persuaded that she was forced to because of her health. Second, the Claimant did not see any doctor for the conditions she says were troubling her during the time she held this job. A person who is claiming to be disabled has to show they have sought medical advice and reasonably followed any recommendations made. If they do not, their condition is not severe.²⁵

[30] The Claimant has to prove she was incapable regularly of pursuing any substantially gainful occupation by December 31, 2012.²⁶ She has not done so. Her medical records simply do not support what she and her witnesses told me about her condition up to that date and for some time afterward. As a result, I cannot find her condition was severe.

CONCLUSION

[31] Because I found the Claimant's condition was not severe, I did not consider whether it was prolonged.

[32] The appeal is dismissed.

Virginia Saunders
Member, General Division - Income Security

²⁵ *Sharma v. Canada (Attorney General)*, 2018 FCA 48

²⁶ The legal test is that the Claimant must prove she is disabled on a balance of probabilities; in other words, she must show it is more likely than not that she is disabled.