



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *W. N. v Minister of Employment and Social Development*, 2020 SST 695

Tribunal File Number: GP-19-31

BETWEEN:

W. N.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Carol Wilton

Claimant represented by: Tre'Vien Teer

Teleconference hearing on: March 9, 2020

Date of decision: March 16, 2020

DECISION

[1] The Claimant is not eligible for a *Canada Pension Plan* (CPP) disability pension.

OVERVIEW

[2] The Claimant was 58 years old when she applied for the CPP disability pension in January 2018. Her last job was as a team leader and personal support worker in a group home for disabled adults. She stated that she had been unable to work since October 2016, when she had rotator cuff surgery on her right shoulder. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] For the purposes of the CPP, a disability is a physical or mental impairment that is severe and prolonged.¹ A disability is severe if it causes a person to be incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration.

[4] For the Claimant to succeed, she must prove that it is more likely than not that she became disabled by the end of her Minimum Qualifying Period (MQP).² Her MQP – the date by which she has to prove she was disabled - is based on her contributions to the CPP.³ It ended on December 31, 2019.

ISSUES

[5] Did the Claimant's health conditions result in her having a severe disability, so that she was incapable regularly of pursuing any substantially gainful occupation by December 31, 2019?

[6] If so, was her disability long continued and of indefinite duration by that date?

¹ Paragraph 42(2)(a) *Canada Pension Plan*

² Paragraph 44(1)(b) CPP

³ CPP Record of Contributions: GD2-4

SEVERE DISABILITY

The Claimant's health conditions interfered with her ability to work by December 31, 2019

[7] When I am deciding whether the Claimant's condition is severe, I have to look at every health issue that might affect her employability.⁴ In this case, the only relevant health condition is a shoulder injury.

[8] In 2014, the Claimant first developed pain in her right shoulder. In February 2015, she first saw an orthopedic surgeon, Dr. M. Bischoff. She tried a cortisone injection without benefit. In October 2016, she had surgery for several right shoulder problems, including a rotator cuff tear and degenerative changes in her shoulder joint. Afterwards, she took physiotherapy, but continued to have ongoing aching and stiffness, as well as difficulties sleeping.⁵ In July 2018, an MRI showed several tendon tears in her right shoulder.⁶ The Claimant has not undergone further surgery.

[9] The Claimant testified that her pain is not severe or constant enough to require medication.

[10] At the hearing, the Claimant testified about the functional limitations that her shoulder condition causes:

- Driving a car long distances is exhausting because it hurts her right arm;
- She is able to shop for groceries with a cart, and uses many bags so the loads are light;
- She is able to do household chores for only half an hour a day;
- She has trouble dressing in anything that has to go over her head;
- If she "overdoes" it, for example by pulling weeds, she is in pain for several days; and
- She is very careful using her shoulder because of fear she will cause more damage to it.

[11] In September 2018, Dr. Bischoff stated that the Claimant would continue to have trouble sleeping. This was likely too pessimistic, since in June 2019, the Claimant told Dr. Janet Vickers,

⁴ *Bungay v. Canada (A.G.)*, 2011 FCA 47

⁵ GD2-54-55

⁶ GD2-56

family doctor, that she slept for seven to eight hours a night.⁷ Dr. Bischoff more accurately forecast that the Claimant would continue to have difficulty performing overhead activities, and tasks at or above shoulder level.⁸

[12] In July 2019, D. Diniz, physiotherapist, stated that the Claimant had no real limitations. She just had occasional shoulder stiffness with end range movements, especially putting her hands behind her back. In October 2019, Ms. Diniz stated that the Claimant had no real issues with her right shoulder. Her range of motion with within normal limits.⁹

[13] In November 2019, Dr. Vickers stated that the Claimant could do only occasional reaching, lifting, carrying, and pushing. She was not on any medication for her shoulder.¹⁰

[14] Although Ms. Diniz found that the Claimant's right shoulder condition was almost normal close in time to the MQP, I have taken into account that by that time she had been off work for about three years, so that her shoulder was rested. Her orthopedic surgeon predicted that she would continue to have difficulty with overhead or shoulder-level activities, and she testified that this was the case.

[15] The Claimant has difficulty with lifting, carrying, pulling, and overhead movements. As a personal support worker, she spent most of her time caring for patients. She dressed them, transferred them from their beds, and put wheelchairs into vans when transporting them. She had to hook up slings to the ceiling. It was physically demanding work. I find that the Claimant's shoulder condition interfered with her ability to be a personal support worker by December 31, 2019.

The Claimant failed to prove that she lacked a regular capacity for substantially gainful employment by December 31, 2019

[16] It is not the diagnosis of the disease, but the claimant's capacity to work, that "determines the severity of the disability under the CPP."¹¹

⁷ GD7-9

⁸ GD2-55

⁹ GD4-2

¹⁰ GD7-6-7

¹¹ *Klabouch v. Canada (Social Development)*, 2008 FCA 33

[17] I am satisfied that the Claimant is unable to continue her previous employment because of her right shoulder condition. However, I must also consider whether she is regularly able to pursue alternate sedentary work.

[18] In September 2018, Dr. Bischoff stated that although it was difficult for the Claimant to engage in physically laborious work, she was “best suited for a sedentary desk job.”¹²

[19] In addition, in November 2019, Dr. Vickers stated on a physical ability assessment for the insurer that the Claimant’s physical limitations permanently prevented her from returning to work. However, Dr. Vickers also reported that the Claimant had no limitations with sitting, standing, walking, grasping, balancing, or stooping.¹³ This supports a finding that the Claimant had retained work capacity by her MQP.

[20] In deciding whether the Claimant’s condition was severe, I must take a “real world” approach and consider factors such as her age, level of education, language proficiency, and past work and life experience.¹⁴

[21] The Claimant’s work history suggests that she was capable of doing a sedentary job. She testified that as a team leader at the group home, she was the liason between management and the facility’s nine employees. One of her roles was to make sure everyone had their paperwork done. She was also responsible for health and safety matters. She testified that she spent about an hour a day on administrative work of this nature. She used the facility’s in-house computer system. She had once learned to use Microsoft Office, although she stated that she would need a refresher course before using it again.

[22] The Claimant was 60 years old at her MQP and has a high school education. While these factors might have limited her employment options, she is English-speaking, has experience in sedentary work, and has transferable skills. Her personal characteristics would not have prevented her from earning a living at alternate employment.

¹² GD2-55

¹³ GD7-5-6

¹⁴ *Villani v. Canada (A.G.)*, 2001 FCA 248

[23] When a claimant has retained work capacity, the law says that she must show that she tried to find work, but was unable to find or keep a job because of her health conditions.¹⁵ At the hearing, the Claimant stated that she had not looked for work since leaving her job at the group home. She said she had no skills and would not qualify for any job. She would not know where to begin looking for another job.

[24] Since I have found that the Claimant had retained work capacity, but did not look for alternate employment, she failed to show that she was unable to find or keep a job because of her health condition. I am not satisfied that she lacked the regular capacity to pursue any substantially gainful occupation.

[25] I therefore find that the Claimant has not proven that it is more likely than not that her disability was severe by December 31, 2019.

PROLONGED DISABILITY

[26] As I found the disability was not severe, it is not necessary for me to make a finding on the prolonged criterion.

CONCLUSION

[27] The appeal is dismissed.

Carol Wilton
Member, General Division - Income Security

¹⁵ *Villani v. Canada (A.G.)*, 2001 FCA 248; and *Inclima v. Canada (A.G.)*, 2003 FCA 117