



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *GL v Minister of Employment and Social Development*, 2020 SST 1031

Tribunal File Number: GP-18-2562

BETWEEN:

G. L.

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: Garry Hartle

Teleconference hearing on: April 7, 2020

Date of decision: April 17, 2020

DECISION

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

OVERVIEW

[2] The Claimant was 56 years old when she applied for the CPP disability pension in May 2017. Her last job was as a cook at a day care centre. She stated that she had been unable to work since August 2016 because of deep vein thrombosis (DVT) and arthritis in her right foot. 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). Her MQP – the date by which she has to prove she was disabled - is based on her contributions to the CPP.² It ended on December 31, 2018.

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, 2018?

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

SEVERE DISABILITY

[7] When I am deciding whether the Claimant's condition is severe, I must look at every health issue that might affect her employability.³

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

² CPP Record of Contributions: GD2-4

³ *Bungay v. Canada (A.G.)*, 2011 FCA 47

The Claimant's disability interfered with her ability to work by December 31, 2018

[8] The Claimant testified that in August 2016 she fell off a deck, turning her right ankle. An X-ray showed degenerative changes in her right knee and in the joints of her right mid-foot (lisfranc joints). In January 2017, an X-ray of her right ankle showed moderate degenerative change there, and at her mid-foot joints. In May 2018, an MRI of her ankle showed moderate to severe mid-foot osteoarthritis, and swelling around the ankle.⁴

[9] In August 2016, an ultrasound of the Claimant's right leg showed that she had a DVT. At the hearing, she testified she had been on blood thinners for this until about December 2016. The condition then resolved.

[10] The Claimant tried both physiotherapy and injections for her foot. Neither improved her condition.⁵ She testified that she takes at least two Extra Strength Tylenol a day for the pain, but no other painkillers. In March 2018, she discussed the possibility of surgery with Dr. B. LeRoux, orthopedic surgeon. He explained that the most common complications of surgery included persistent pain, stiffness, infection and neurological or vascular compromise.⁶ Given the risks, I find that the Claimant's decision to avoid surgery for her foot condition was reasonable.

[11] The Claimant stated that after her August 2016 injury, she was briefly unable to walk. Although she recovered considerable mobility, she testified that she experiences intermittent swelling and pain in her foot. If she spends the day sitting down, the pain is at a level of 5 or 6 out of 10, where 10 is the greatest pain imaginable. The pain is at this level three or four days a week. If she overdoes it, the pain is at a level of 9/10. She uses a three-footed cane when she goes out. She is able to drive,⁷ but testified that she does not have an accessible parking permit.

[12] The Claimant lives in a house, along with her husband and three adult children. The house has a basement. She rarely goes down there because she is unsteady on the stairs. She is able to grocery shop, but always with a family member. She cooks dinner for the family, but is able to

⁴ GD2-55-56; GD1-9

⁵ Dr. Nagel, July 2018: GD1-7

⁶ GD1-11

⁷ GD2-61

sit down if she needs to while preparing food. She gets help from her children with the laundry and the cleaning. For example, the children will give the laundry to her and she will fold it.

[13] In May 2017, Dr. M. Nagel, family doctor, stated that the Claimant was unable to stand for prolonged periods of time.⁸ In July 2018, he reported that she was unable to weight bear or walk for any prolonged period.⁹

[14] The Claimant's osteoarthritis in her right foot means that she is unable to stand or walk for long periods of time. I am satisfied that her health condition interfered with her ability to work.

The Claimant failed to prove that she lacked a regular capacity for substantially gainful employment by December 31, 2018

[15] Employability is the key measure of a severe disability under the CPP.¹⁰

[16] The Claimant has a long work history. She spent 21 years working in the hospitality industry in various positions, including kitchen, pantry, and front desk. Her last position in this field was as food and beverage co-ordinator for Sheraton Hotels in Niagara Falls. In that position, she answered the phone, responded to faxes, and used the company's computerized database to book meals for tours. That job ended in 1999 when her employer declared the position redundant.¹¹

[17] After working as a cook at a daycare from 2001 to 2013, the Claimant spent from October 2014 to February 2015 working at a call centre. There, she responded to consumer queries about appliances. She testified that she found this work stressful because she had to listen to complaints and input information on a computer at the same time. In addition, she had to walk back and forth from her desk to where the appliances were. That job ended because the employer discontinued selling appliances. Because she disliked the work, she did not apply for another call centre job.

⁸ GD2-54

⁹ GD1-7

¹⁰ *Canada (A.G.) v. Dean*, 2020 FC 206

¹¹ GD5-1-2

[18] In February 2016, the Claimant took another job as a cook in a daycare, one that served 50 children. She testified that this was a very demanding job. Twice a week, she did the grocery shopping for meals and snacks. She unloaded the groceries and prepared the food. She left this position because of the injury to her ankle. Her employer informed her that no modified duties were available. She has not worked since.

[19] The Claimant submitted that it was an “abuse of the system” to say that at her age she could be “reborn” as a scientist or an engineer. Moreover, being able to use a computer did not qualify her as an information technology specialist. However, it is not the law that a claimant qualifies for a CPP disability pension unless they are able to work as a professional or a specialist. What a claimant must be able to show that their disability makes them incapable regularly of pursuing any “substantially gainful” occupation. A “substantially gainful” occupation is one that provides an income equal to the maximum amount of the disability pension.¹² In 2018, that amount was approximately \$16,000.

[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.¹³ Although her age would limit her employment options, she has a college certificate and is a native English speaker. She can use a smart phone for emails and texts and she can do internet banking. In the past, she was able to use a computerized database. Her work as a food and beverage coordinator indicates that she has some clerical skills, as well as some organizing ability. Similarly, her most recent job at the daycare centre required considerable organizational expertise. The Claimant has transferable skills.

[21] In July 2018, Dr. Nagel stated that the Claimant was “unable to work in any capacity that would require any prolonged standing or walking.”¹⁴ However, there is no medical opinion that the Claimant lacks the capacity for sedentary work. This suggests that the Claimant had residual work capacity as of December 2018.

¹² Section 68.1 of the *CPP Regulations*

¹³ *Villani v. Canada (A.G.)*, 2001 FCA 248

¹⁴ GD1-7

[22] The Claimant submitted that the Minister had not identified a substantially gainful job that she could do. However, the law does not require the Minister to do this.¹⁵ On the contrary, where there is evidence of work capacity, it is the responsibility of a claimant to provide evidence of employment efforts. She must also be able to show that efforts at obtaining and maintaining employment have been unsuccessful because of her health condition.¹⁶

[23] The Claimant testified about her efforts to find alternate employment. She stated that she had looked intermittently at an employment website called “Indeed.” She stated that in January 2020, it listed 246 sedentary positions across Canada, none in her city.¹⁷ She did not view any other employment web sites, consult an employment agency, or consider retraining. When asked if she tried to find a job through personal contacts, she said she “kept her ears open.” I am not satisfied that the Claimant made reasonable efforts to find alternate employment.

[24] In the present case, the Claimant’s job search was limited to an irregular check of one apparently unpromising website. This fell short of reasonable efforts at obtaining and maintaining suitable employment.¹⁸ The Claimant has therefore failed to show that efforts at obtaining and maintaining employment were unsuccessful because of her health condition.¹⁹

[25] I am not satisfied that the Claimant lacked the regular capacity to pursue any substantially gainful occupation by December 31, 2018.

[26] Accordingly, I find that the Claimant has failed to establish that it is more likely than not that her disability was severe by that date.

Prolonged disability

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

CONCLUSION

¹⁵ *Kiraly v. Canada (A.G.)*, 2015 FCA 66

¹⁶ *Villani v. Canada (A.G.)*, 2001 FCA 248; *Inclima v. Canada (A.G.)*, 2003 FCA 117

¹⁷ The job listings for January 2020 are not relevant to the Claimant’s job search up to December 31, 2018.

¹⁸ *Yantzi v. Canada (A.G.)*, 2014 FCA 193

¹⁹ *Inclima v. Canada (A.G.)*, 2003 FCA 117

[28] The appeal is dismissed.

Carol Wilton
Member, General Division - Income Security