



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *PC v Minister of Employment and Social Development*, 2020 SST 1209

Tribunal File Number: GP-19-801

BETWEEN:

P. C.

Claimant

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Patrick O'Neil

Claimant represented by: Jennifer Langille

Teleconference hearing on: June 9, 2020

Date of decision: June 12, 2020

DECISION

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

OVERVIEW

[2] The Minister received the Claimant's application for the disability pension on November 20, 2017. 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, she must be found disabled as defined in the CPP on or before the end of her minimum qualifying period (MQP). The calculation of the MQP is based on her contributions to the CPP. I find her MQP to be December 31, 2019.

ISSUE(S)

[4] Did the Claimant's conditions result in her having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2019?

[5] If so, was her disability also long continued and of indefinite duration by December 31, 2019?

ANALYSIS

[6] Disability is defined as a physical or mental disability that is severe and prolonged¹. The Claimant 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. She must prove on a balance of probabilities her disability meets both parts of the test, which means if she meets only one part, she does not qualify for disability benefits.

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

Severe disability

The Claimant's disability was not severe by December 31, 2019.

[7] The Claimant was fifty-six years old at her MQP. She has a grade ten education, and certification as a Continuing Care Assistant (CCA). She worked as a CCA in a long-term care facility from October 2000 until June 15, 2016, and has not worked since. Prior to 2000, she worked in restaurants as a cook and/or server. She characterized her duties as a CCA as physically demanding, including cleaning, bathing, and feeding bedridden residents. Her CPP Earnings Details Statement² confirms earnings and contributions to the CPP from 2001-2017 inclusive. The statement shows earnings of \$7,017 in 2017. That amount include wages paid to February 11, 2017³ and payout of banked sick leave.

[8] The Claimant injured her left arm June 17, 2016. She has suffered from chronic left arm/wrist pain since. She noted in the Questionnaire for Disability Benefits dated October 11, 2017⁴ she stopped working due to a left arm injury. The illnesses/impairments that prevented her from working since June 17, 2016 are left arm/wrist pain, and depression. Her job required lifting residents, which she is unable to do because of left arm/wrist pain. She is right handed. She has had diabetes for the past four years. No medical condition rendered her unable to work prior to the injury to her left arm in June 2016. She currently suffers some right arm pain that she attributed to overuse due to the inability to use her left arm.

[9] The Claimant's treatment for her left arm injury has consisted of physiotherapy briefly in July 2016⁵, from November 17, 2017 to December 5, 2017⁶, and not since. She tried prescription pain medications briefly in 2016/7, which made her high. She occasionally takes Tylenol for wrist/arm pain. Treatment for Type II diabetes was initially oral medication, and currently is

² GD2 page 26

³ GD1 page 52

⁴ GD2 pages 208-214

⁵ GD1 page 68

⁶ GD1 page 90

insulin. She takes medication for high blood pressure. She attributes being tired to diabetes and high blood pressure.

[10] The Claimant saw a social worker regarding her mental issues five times between April 18, 2018 and July 17, 2018. She did not attend an appointment scheduled for September 7, 2018, or since⁷. She has not seen a psychiatrist, psychologist, or other mental healthcare provider for treatment of any mental condition, or taken medication for any mental condition. There is no report or reference to a mental health issue in the clinical notes of her long-time family physician during the period June 2016 to April 2019. There is no report or indication in his clinical notes that diabetes and high blood pressure is not adequately controlled, or affects her work capacity.

[11] The Claimant has not worked since she injured her left arm in June 2016. Her employer offers modified duties only to employees injured at work. She has not looked for work since June 2016. She has not done so due to left arm/wrist pain, right arm pain attributed to overuse, diabetes and high blood pressure with resultant fatigue.

[12] Dr. Kirk, the Claimant's family physician since 1976, completed the initial medical report dated November 13, 2017⁸. His diagnosis was chronic regional pain syndrome (CRPS) secondary to a left wrist ligament injury sustained in June 2016. She has movement limitations of her left wrist and fingers. Current medication is Nortriptyline. She previously tried Gabapentin and analgesics. She has diabetes Type II and hypertension.

[13] Dr. Kirk completed an Initial Attending Physician's Report dated February 6, 2017⁹ for Intact Insurance. His diagnosis is left arm injury that has rendered her unable to work at her own occupation since June 17, 2016, due to pain, limitation of movement, and loss of strength. He has referred her to an orthopaedic surgeon. Current medication is Tylenol/Advil. Subjective complaints are pain and weakness in her left arm and wrist.

[14] Mr. Atkinson, physiotherapist, reported July 12, 2016¹⁰ he saw the Claimant regarding her left arm/hand injury. She has limited wrist range of motion, and weakness in her left elbow

⁷ GD2 page 77

⁸ GD2 pages 198-201

⁹ GD2 pages 65-67

¹⁰ GD2 page 166

and hand. He noted she requested a letter stating if she could return to work. He noted, based on ROM and strength, it would be difficult for her to work, unless light duties were available.

[15] Dr. Sequeira, orthopaedic surgeon, reported October 18, 2016¹¹ that he saw the Claimant with left upper extremity symptoms. He discussed harm versus hurt in regards to her work. He recommended she discuss with her employer whether they can make accommodations where she could work in a capacity where she has less exertion on her injured area. The Claimant did not request accommodations/modified work as her employer only provides accommodations to employees injured on the job. A MRI arthrogram showed a tear in her TFCC complex and a scapholunate ligament disruption, consistent with presenting symptoms. He referred her to Dr. Johnston May 8, 2017¹². The Claimant has not seen Dr. Sequeira since.

[16] Dr. Johnston, orthopaedic surgeon, reported June 20, 2017¹³ that he saw the Claimant for a left wrist injury she sustained in June 2016. His diagnosis was CRPS. He referred her to a pain clinic for treatment. She saw Dr. Johnston once, and no other orthopaedic surgeon since.

[17] Dr. Clark, anaesthesiologist, reported August 10, 2017¹⁴ he saw the Claimant in the Pain Management Clinic for chronic left wrist pain that she reported is now involving her forearm, arm, and shoulder. Her sleep is disturbed. Diagnosis is wrist pain with some features consistent with CRPS. He recommended Gabapentin. Failing response to Gabapentin, a number of other medications are available, including Nortriptyline. The Claimant did not retry Gabapentin due to past side effects. She has not taken any prescription medications for at least the past year. Dr. Clark recommended aggressive physiotherapy. She attended physiotherapy briefly in November/December 2017, and not since. He referred her to a pain clinic in X, close to where she lives. She has not attended the pain clinic in X. The clinic never called her to arrange an appointment, and she never called the clinic for an appointment. She has not seen any specialist regarding her left arm, wrist, or shoulder symptoms since August 2017.

¹¹ GD2 page 168

¹² GD2 page 172

¹³ GD2 pages 190-191

¹⁴ GD2 pages 192-195

[18] Mr. McIntyre, physiotherapist, conducted a Functional Capacity Evaluation (FCE) November 6/7, 2018¹⁵. He concluded the Claimant is not capable of performing the essential duties of her pre-injury CCA position, as she is unable to meet the lifting, handling, pushing, and pulling demands. He noted she has had little in the way of physiotherapeutic or rehabilitative measures since the accident. Functional testing shows, based upon the dysfunction of her left forearm and hand, she is not safely capable of completing tasks involving lifting, crawling, and ladder use. Any return to work would ideally be to a position that avoids these tasks. The FCE concluded the Claimant retains the capacity for suitable work that is light in nature, limited in lifting, and more sedentary, involving predominantly the right upper extremity.

[19] I must assess the severe part of the test in a real world context¹⁶. 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. The Claimant is fifty-six years old, being several years younger than the traditional age of retirement in Canada. Although she has just a grade ten education, she is proficient in English, has an extensive work history, and transferable skills acquired from her employment and life experiences. I find her personal factors did not affect her residual capacity to pursue suitable sedentary work.

[20] 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 impairment¹⁷. The Claimant stopped working in June 2016 due to left arm and wrist pain. She claims she has been unable to work since due to chronic pain, depression, diabetes Type II, and high blood pressure. There is no medical evidence that diabetes and high blood pressure are not stable with medication. There is no evidence she suffers from any significant mental condition. The family physician's reports/clinical records do not show any diagnosis of depression. She saw a social worker briefly regarding her mood in 2018. She has never seen any other mental healthcare provider, or been prescribed medication for any mental condition. I find no evidence of any significant impairment save a left upper extremity injury.

¹⁵ GD2 pages 120-144

¹⁶ *Villani v. Canada (A.G.)*, 2001 FCA 248

¹⁷ *Bungay v. Canada (A.G.)*, 2011 FCA 47

[21] 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 condition¹⁸. Mr. Atkinson, physiotherapist, reported it would be difficult for the Claimant to return to work unless light duties were available¹⁹. Dr. Sequeira reported she should ask her employer if she could work in a position where she has less exertion on her left upper extremity²⁰. A FCE concluded the Claimant retains capacity for suitable work that is light in nature, limited in lifting, and more sedentary than her pre-injury position²¹. I find the noted reports evidence of work capacity subject to left arm limitations. I find the Claimant has not shown that efforts at obtaining and maintaining employment have been unsuccessful due to her health condition. As she has not shown that efforts at obtaining and maintaining employment have been unsuccessful because of her health condition, I am unable to find her disability severe by December 31, 2019.

[22] I acknowledge the Claimant's left upper extremity condition results in limitations. Many people continue to work despite chronic pain that limits their work capacity²². The loss of the full use of one hand by a person who is otherwise able bodied does not prevent that person from seeking and obtaining employment in the real world²³. Chronic pain is not so debilitating that such diagnosis precludes any work. The vast majority of such sufferers are able to continue working, managing their pain through medication, treatment, exercise, and in some cases, counseling²⁴, treatment modalities she has not pursued with consistency, if at all, despite recommendations.

[23] The onus is on the Claimant to establish on the balance of probabilities her entitlement to CPP disability benefits. I find she failed to establish she was incapable regularly of pursuing any substantially gainful occupation by December 31, 2019. Accordingly, I find she did not have a severe disability by December 31, 2019.

Prolonged disability

¹⁸ *Inclima v. Canada (A.G.)*, 2003 FCA 117

¹⁹ *supra* GD2 page 166

²⁰ *supra* GD1 page 26

²¹ *supra* GD2 pages 120-130

²² *M.O. v. HRSD*, CP 24738 (PAB) (This decision is not binding on me, but I find it persuasive)

²³ *Bines v. MHRD*, CP 14261 (PAB) (This decision is not binding on me, but I find it persuasive.)

²⁴ *Butler v. MSD*, CP 21630 (PAB) (This decision is not binding on me, but I find it persuasive.)

[24] As I found that the Claimant's disability was not severe by December 31, 2019, it is not necessary to make a finding on the prolonged criterion.

CONCLUSION

[25] The appeal is dismissed.

Patrick O'Neil
Member, General Division - Income Security