



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. E. v Minister of Employment and Social Development*, 2020 SST 630

Tribunal File Number: GP-19-643

BETWEEN:

S. E.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: George Tsakalis

Claimant represented by: Ashwin Krishnan

Teleconference hearing on: June 10, 2020

Date of decision: June 30, 2020

DECISION

[1] S. E. is the Claimant in this case. She applied for a Canada Pension Plan (CPP) disability pension in April 2018. The Minister of Employment and Social Development (the Minister) dismissed her application. The Claimant appealed the Minister's decision to the Social Security Tribunal (the Tribunal). I am allowing the Claimant's appeal. These reasons explain why.

OVERVIEW

[2] The Claimant was born in 1983. She graduated from high school in 2001. She received a business administration (accounting) diploma in 2004. She received a fourth class power engineering certificate in 2009. She received a life insurance licence certificate in 2012. She last worked at an oil refinery in June 2017. She stopped working because of anxiety, depression, post-traumatic stress disorder (PTSD), and back pain. The Claimant alleges that she cannot work at any job because of her medical condition.

ISSUES

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

[4] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2019?

ANALYSIS

[5] 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). The calculation of the MQP is based on the Claimant's contributions to the CPP. I find the Claimant's MQP to be December 31, 2019.

[6] Disability is defined as a physical or mental disability that is severe and prolonged¹. 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.

The Claimant had a severe disability by December 31, 2019

[7] The measure of whether a disability is “severe” is not whether the person suffers from severe impairments, but whether the disability prevents the person from earning a living. It is not a question of whether a person is unable to perform their regular job, but rather the person’s inability to perform any substantially gainful work².

[8] I am satisfied the evidence showed that the Claimant could not perform any type of substantially gainful work by December 31, 2019.

[9] The Claimant held numerous jobs throughout her working life. She worked as a parts clerk at an automotive store. She worked as a cleaning person and a fisherperson. She worked as a training, facilities, and document management coordinator for an oil producer from 2004 to 2009. She worked as a power engineer from 2009 to 2012. She then worked as an insurance and finance agent from 2012 to 2014. She last worked as a process operator at an oil refinery from June 2014 to June 2017.³

[10] Her job as a process operator had a physical component. She had to operate hydrogen compressors. She had to turn valves. But she could no longer perform her job because she could not focus.

[11] The Claimant testified that she was victim of a violent sexual assault at the age of 22. She became cautious around men and avoided social situations. She managed these symptoms. However, she experienced sexual harassment at her last job. She was subjected to crude sexist

¹ See paragraph 42(2)(a) *Canada Pension Plan*

² See *Klabouch v. Canada (A.G.)*, 2008 FCA 33

³ See GD4-416-417 and GD2-383

remarks. This triggered flashbacks and nightmares. Her mental health also worsened after her father suffered a massive stroke and died.

[12] The Claimant felt unsafe outside her home. She felt constant paranoia. She was in a constant state of panic. Her physicians told her that she would have anxiety and depression for the rest of her life. Her family doctor does not believe that she can return to any type of work. She feels like she is fighting for her life every day. Her PTSD makes her relive the sexual assault. She constantly fears having flashbacks. She lives in fear of being sexually assaulted. She cannot keep her thoughts straight. She suffers from back pain. But her mental health is the main obstacle to a return to work.

[13] The Claimant testified that she took several leaves of absence before she last worked in June 2017.

[14] The Claimant was in litigation with her private disability insurance company, Great West Life (GWL). She settled her dispute with GWL. GWL accepted that she had a disability under the terms of their policy.

[15] The Claimant testified that she wants to work, but she cannot do so. She let her life insurance certificate lapse. She has difficulty completing household tasks, let alone being able to work.

The medical evidence supports a finding that the Claimant had a severe disability by December 31, 2019.

[16] The medical evidence shows that the Claimant suffered from anxiety in 2015. She managed to return to work after taking one month off.⁴

[17] The medical evidence from 2016 shows that the Claimant continued to have problems with depression. She had low energy. She also suffered from poor focus and concentration. She received time off from work.⁵ She continued to suffer from lower back pain and received a chiropractic referral.⁶

⁴ See GD2-287

⁵ See GD2-90

⁶ See GD2-96

[18] The Claimant continued to suffer from lower back pain in 2017. But she was not a surgical candidate. Her family doctor believed by July 2017 that the Claimant could not perform labour intensive job duties. The Claimant had to lie down and rest after sitting and standing for long periods.⁷

[19] A physiotherapist in an August 15, 2017 report noted that the Claimant also had difficulty walking. The Claimant had significant pain. The physiotherapist doubted the Claimant's ability to tolerate her job duties even with restricted hours.⁸

[20] The Claimant's mental health remained an issue in 2017. The Claimant's inability to work frustrated her.⁹ She told her family doctor on August 23, 2017 that she knew she needed to consider a job change. But the Claimant was not sure what type of job she could perform.¹⁰

[21] The Claimant's family doctor wrote to GWL in August and September 2017. She advised GWL that the Claimant could not work. The Claimant's mental health was a major concern. The Claimant was told that she would have to return to light duties for four hours a day. But the Claimant expressed concerns about returning to any type of work.¹¹

[22] The Claimant's family doctor advised GWL in October 2017 that the Claimant suffered from stress and poor sleep. The Claimant's family doctor believed that the Claimant would benefit from a fit for work assessment when it came to consider a return to work.¹²

[23] The Claimant began receiving psychological counselling on October 19, 2017. The psychologist diagnosed the Claimant with major depressive disorder, generalized anxiety disorder, and PTSD. The Claimant had concerns about her physical safety at work because of her attention and concentration difficulties. The psychologist did not believe that the Claimant appeared ready to return to work.¹³

⁷ See GD2-142

⁸ See GD2-138

⁹ See GD2-101

¹⁰ See GD2-106

¹¹ See GD2-133

¹² See GD2-128

¹³ See GD2-272-274

[24] The Claimant told her family doctor on November 7, 2017 that she did not believe she could return to work at the refinery because of bank pain and anxiety. The sexual comments she had received at work brought back memories of the sexual assault.¹⁴

[25] A physician provided a report to the Claimant's employer on November 21, 2017. This physician provided an opinion that the Claimant was unfit for work. He also stated that the Claimant's recovery time was unknown.¹⁵

[26] The Claimant's health problems continued in 2018. The Claimant's family doctor noted issues with anxiety and poor focus.¹⁶ The Claimant had issues with paranoia.¹⁷ She continued to receive psychological counselling.¹⁸ She experienced panic attacks.¹⁹ Her anxiety led to exhaustion. She continued experiencing nightmares and flashbacks about past traumatic events.²⁰

[27] The Claimant's family doctor completed a medical report for the Minister on April 4, 2018. She advised the Minister that the Claimant's limitations were more physical than mental. The Claimant had poor coping skills in stressful situations. The family doctor noted that the Claimant's condition was stable at times, but she would have setbacks.²¹

[28] The Claimant's family doctor provided a report to the Claimant's legal representative on July 18, 2018. She did not believe that a real world employer would hire the Claimant.²²

[29] The Claimant began seeing a psychiatrist in 2018. The psychiatrist provided opinions that the Claimant was unfit to work. The psychiatrist did not believe that the Claimant could perform her regular duties because of her medical condition. He also did not believe that a real world employer would likely hire her.²³

¹⁴ See GD2-116

¹⁵ See GD2-315-316

¹⁶ See GD2-46

¹⁷ See GD2-47

¹⁸ See GD2-266

¹⁹ See GD2-48

²⁰ See GD2-50

²¹ See GD2-379-382

²² See GD2-73

²³ See GD2-40-42

[30] The Claimant's family doctor provided a report to her legal representative on May 15, 2019. She believe that the Claimant could not attend work on a consistent and reliable basis. The Claimant continued to receive treatment for depression, anxiety, and PTSD.²⁴

The Claimant had no work capacity by December 31, 2019

[31] I must assess the severe part of the test in a real world context²⁵. 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.

[32] I find that the Claimant could not work in a real world context at the time of her MQP. The Claimant was only 36 years old at the time of her MQP. She has post-secondary education and a good command of English. She has extensive experience working in the financial services and oil and gas industries. The Claimant's age, education, and work experience suggests that has significant labour market skills. But I am still satisfied that she was incapable regularly of pursuing any substantially gainful occupation by December 31, 2019.

[33] I do not believe that the Claimant could have handled any type of physical or sedentary work because of her impairments. In particular, I am satisfied that the Claimant could not have handled any type of work because of her severe difficulty with concentration that was brought about by her mental health disorders. The Claimant has severe anxiety in social situations. But I accept her hearing evidence that she would have been able to work from home because of her difficulty concentrating. I do not believe that she could have handled a driving job because of her anxiety. I accept that her ability to perform household tasks was impaired at the time of her MQP. I do not believe that the Claimant had the ability to work on a regular and reliable basis at any type of job at the time of her MQP.

[34] I do not believe that the Claimant has had work capacity since she last worked in June 2017. The Claimant testified that she last worked in July 2017. She completed a questionnaire in support of her disability application where she stated she stopped working in December 2017. But she explained at her hearing that December 2017 was when she started receiving long-term

²⁴ See GD3-2-3

²⁵ See *Villani v. Canada (A.G.)*, 2001 FCA 248

disability benefits from GWL. I am accepting June 2017 as the date of onset of her disability because her counsel submitted that is the date she stopped working.²⁶ I find the June 2017 date to be more accurate because the Claimant seemed nervous at her hearing. I also assume that the information she provided her counsel was verified by him and accurate.

The Claimant was a credible witness

[35] It is often difficult to measure the severity of a person's psychological distress. Many of these cases are fact specific and the credibility of a claimant is an important consideration.

[36] I found the Claimant to be a credible witness. I have no reason to disbelieve her hearing evidence. I accept that she suffers from severe depression, anxiety, and PTSD. I do not believe she exaggerated her symptoms. She testified that her back pain was not a significant component in her inability to work, even though the medical evidence suggested that she suffered from severe back pain in 2017 and 2018.

[37] I believe she would be able to work if she could do so. She earned a good income in a career that she enjoyed. She is also motivated to work because she has young children. She had an excellent work history and she continued trying to work despite her medical problems until June 2017.

The Claimant pursued and complied with treatment

[38] I find that the Claimant followed recommended treatment. The Claimant followed up with her family doctor. She tried physiotherapy. She tried anti-depressant medications. She saw a psychologist and psychiatrist. She continued to receive counselling at the time of her hearing.

Prolonged disability

[39] The Minister argued that the evidence did not support a conclusion that the Claimant's health conditions would render her incapable of all work indefinitely.²⁷

²⁶ See GD6-3

²⁷ See GD5-9

[40] I disagree.

[41] I find that the Claimant proved that she had a disability that is likely to be long continued and of indefinite duration.

[42] The Claimant's family doctor in her April 4, 2018 medical report to the Minister expressed hope that the Claimant could return to work.²⁸

[43] The Claimant's family doctor provided a report to the legal representative on May 4, 2019. She again expressed hope about a return to work. But she stated it was impossible to predict when this would happen. She felt that the Claimant's disability was of an indefinite duration.²⁹

[44] The Claimant's psychiatrist provided the Claimant with a poor prognosis for a return to work of any kind in a December 30, 2019 report to the Minister.³⁰

[45] The Claimant's psychologist provided the Minister with a report on January 10, 2020. The psychologist outlined the Claimant's treatment since 2017. She stated that it was very difficult to provide an estimate regarding the Claimant returning to any type of work because of her continuing symptoms.³¹

[46] I do not believe that the reports of the Claimant's treating physicians support that it is likely that the Claimant will return to substantially gainful employment. I believe that her physicians are focused on managing her symptoms, as opposed to trying to cure them.³²

CONCLUSION

[47] The Claimant had a severe and prolonged disability in June 2017, when she last worked. Payments start four months after the date of disability, as of October 2017³³.

²⁸ See GD2-382

²⁹ See GD3-2-3

³⁰ See GD5-11

³¹ See GD5-12

³² See GD5-13

³³ See section 69 *Canada Pension Plan*

[48] The appeal is allowed.

George Tsakalis
Member, General Division - Income Security