



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *DB v Minister of Employment and Social Development*, 2020 SST 1006

Tribunal File Number: GP-19-784

BETWEEN:

D. B.

Claimant

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Patrick O'Neil

Teleconference hearing on: July 29, 2020

Date of decision: August 4, 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 March 5, 2018. 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, 2014.

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, 2014?

[5] If so, was her disability also long continued and of indefinite duration by December 31, 2014?

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, 2014.

[7] The Claimant was fifty years old at her MQP. She has a grade twelve education. She has taken several computer courses. She characterized herself as "somewhat computer adept". She noted in the Questionnaire² that accompanied her 2016 application for disability benefits³, and the Questionnaire⁴ that accompanied her current 2018 application⁵, that she last worked in the pharmacy of a Walmart from May 2010 to November 2011. She claimed she could no longer work because of her medical condition since April 27, 2016. The Claimant characterized her work history prior to her December 31, 2014 MQP, and since, as customer service. Her skills, abilities, and work history are set out in her resume⁶. She always worked part time positions so that she was available to care for her children, born in 1989, 1997, and 1999.

[8] The impairments that have prevented her working since April 27, 2016 are bilateral wrist and right pelvis fractures, sustained when struck that day by an automobile. Breast cancer (2012) was the only other health related impairment noted in her 2016 Questionnaire. She reported in her 2018 Questionnaire, that her only other health related conditions/ impairments were breast cancer (a survivor) and hearing impairment. She has had a significant hearing impairment since birth. She has worn hearing aids since age six. Her hearing loss significantly worsened two years ago with the result she now has profound/complete left ear hearing loss⁷. The Claimant did not have significant difficulty hearing me during the hearing, as I spoke louder than I normal would.

[9] The Claimant underwent a partial right breast mastectomy due to ductal carcinoma in October 2012, followed by radiation, and chemotherapy. There has been no recurrence of cancer subsequent to the surgery. She described herself as a "cancer survivor".

² GD2 pages 247-253

³ GD2 pages 110-113

⁴ GD2 pages 214-220

⁵ GD2 pages 29-32

⁶ GD2 page 182

⁷ GD7 page 6

[10] The Claimant went to college for one year in 2016/2017. She attended class 3-4 hours a day, 5 days a week. She completed the 5-6 courses needed for her high school diploma. She obtained her high school diploma in June 2017. She worked from September 30, 2019 to January 7, 2020, 8-10 hours a day, 5 days a week, in sales/customer services in a jewellery store. She stopped working in January 2020 because of hip pain due to prolonged standing, and stress. She has not worked, or looked for work since. She intends to look for work in the future. She would like to attend a retraining program to become an esthetician, and will look for work after completing the program.

[11] The issue I must decide is whether the Claimant had a severe and prolonged disability by her MQP of December 31, 2014. The onset of the conditions she submits have rendered her disabled began April 27, 2016, the day she sustained injuries to her wrists and left pelvis, being subsequent to her MQP. The only medical conditions that predated her MQP were breast cancer in 2012, and a bilateral congenital hearing impairment. The evidence substantiates treatment for breast cancer was successful, with no recurrence subsequent to 2012. She worked at several jobs despite a hearing impairment. She did not claim in her applications, or at the hearing, that cancer and/or her hearing impairment prevented her working by December 31, 2014.

[12] The evidence substantiates the Claimant successfully attended an educational upgrading program in 2016/2017, worked in a jewellery store from September 2019 until January 2020, and intends to pursue a further retraining program, activities I find are evidence of work capacity subsequent to her MQP.

[13] I must assess the severe part of the test in a real world context⁸. 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 was fifty years old at her MQP, being years younger than the traditional retirement age in Canada. She is reasonably well educated and proficient in English. She has a variety of work experiences and transferable skills acquired from her education and work. I find her personal factors did not limit her residual capacity for sedentary or light duty positions by her MQP.

⁸ *Villani v. Canada (A.G.)*, 2001 FCA 248

[14] 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 impairment⁹. The conditions I must consider are those that existed by her MQP of December 31, 2014. She claims she has been unable to work since April 27, 2016, due to injuries sustained to her wrists and right pelvis in an accident on April 27, 2016. As she sustained the injuries after her MQP, the condition of her wrists and pelvis is not relevant as to the issue of whether she had a severe disability by December 31, 2014. The only conditions that predated her MQP are breast cancer and bilateral hearing loss. The evidence substantiates the Claimant has had no recurrence of cancer subsequent to surgery in 2012, and no significant worsening of her congenital hearing loss until 2018.

[15] The Claimant has had some issues with depression for years. She saw a psychiatrist once, years prior to her MQP, and another psychiatrist once, in 2018, years after her MQP, and none since. There is no medical evidence that she suffered from a significant mental condition by December 31, 2014. She did not/does not claim any such condition precluded her from working by December 31, 2014.

[16] The onus is on the Claimant to establish on the balance of probabilities her entitlement to CPP disability benefits. I acknowledge her hearing impairment limits her job opportunities. The evidence substantiates her hearing loss did not preclude working in suitable positions by her MQP, or upgrading her education after her MQP. The Claimant did not submit, and the evidence does not support, finding her condition severe prior to her sustaining injuries when struck by a car in April 2016, being after her MQP.

[17] I find the Claimant failed to establish on the balance of probabilities she was incapable regularly of pursuing any substantially gainful occupation by December 31, 2014. Accordingly, I find she did not have a severe disability by December 31, 2014.

Prolonged disability

⁹ *Bungay v. Canada (A.G.)*, 2011 FCA 47

[18] As I found that the Claimant's disability was not severe by December 31, 2014, it is not necessary to make a finding on the prolonged criterion.

CONCLUSION

[19] The appeal is dismissed.

Patrick O'Neil
Member, General Division – Income Security