



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *VL v Minister of Employment and Social Development*, 2020 SST 816

Tribunal File Number: GP-19-460

BETWEEN:

**V. L.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: George Tsakalis

Claimant represented by: Jamie Hildebrand

Teleconference hearing on: August 20, 2020

Date of decision: August 31, 2020

## **DECISION**

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

## **OVERVIEW**

[2] The Claimant was born in 1958. She finished Grade 12. She went to college and took a two-year course as an advocate for abused women. She also has a hair styling certificate. She last worked selling goods that others made at a farmer's market. She earned almost no income doing this. Her Record of Earnings (ROE) shows that the last time she earned income above the Year's Basic Exemption was in 2003.<sup>1</sup> The Claimant alleges that she cannot work at any type of job because of her medical condition. She suffers from carpal tunnel syndrome, tendonitis in her fingers, and shoulder and hand pain. She had a blood clot in her right leg. She had knee replacement surgery on both knees. She also suffers from bipolar disorder.

[3] The Minister received the Claimant's application for the disability pension on September 29, 2017. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[4] 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, 2006.

## **PRELIMINARY MATTERS**

[5] The Claimant previously applied for a CPP disability pension in August 2005. She had a hearing before the Office of the Commissioner of Review Tribunals (OCRT) on May 8, 2007.<sup>2</sup> The OCRT dismissed her appeal on July 27, 2007. The OCRT decided that the Claimant was not disabled under the CPP at the time of her then MQP of December 31, 2005.<sup>3</sup>

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<sup>1</sup> See GD6-2

<sup>2</sup> The OCRT was the predecessor to the Social Security tribunal

<sup>3</sup> See GD2-142-148

[6] I requested submissions on the issue of my jurisdiction.<sup>4</sup> I noted that the Claimant's MQP on this appeal was December 31, 2006, as opposed to December 31, 2005 at the time of her original hearing.<sup>5</sup> I asked the parties if my jurisdiction was limited to the issue of whether the Claimant became disabled under the CPP from January 1, 2006 to December 31, 2006.

[7] The Claimant's legal representative agreed that my jurisdiction was limited to the issue of whether the Claimant became disabled under the CPP from January 1, 2006 to December 31, 2006.<sup>6</sup>

## ISSUE

[8] Did the Claimant become disabled under the CPP from January 1, 2006 to December 31, 2006?

## ANALYSIS

[9] Disability is defined as a physical or mental disability that is severe and prolonged<sup>7</sup>. 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 failed to prove that she became disabled under the CPP from January 1, 2006 to December 31, 2006.**

[10] The Claimant testified that she suffered from severe osteoarthritis in her knees in 2006. She eventually required a right knee replacement in 2008 and a left knee replacement in 2009. She also suffered from bilateral carpal tunnel syndrome, osteoarthritis in both hands, and tendonitis in both fingers in 2006.

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<sup>4</sup> See GD5

<sup>5</sup> The Claimant has not reported earnings above the Year's Basic Exemption since 2003. The reason why her MQP before me was December 31, 2006 was because of the operation of a Division of Unadjusted Pensionable Earnings (DUPE) or credit split under the CPP.

<sup>6</sup> See GD7

<sup>7</sup> Paragraph 42(2)(a) *Canada Pension Plan*

[11] The Claimant testified that she could not complete basic activities of daily living, let alone work in 2006. She could not stand or walk in 2006. She could not clean her apartment. She received help with bathing from a community organization and her mother. She used paratransit and a scooter when she went out in public. She could not clean her apartment.

***I disagree with the argument of the Claimant's legal representative that the Claimant became disabled in 2006.***

[12] To receive a disability pension in this case, the Claimant must have become disabled under the CPP in 2006 because of the *res judicata* doctrine. *Res judicata* means that a matter cannot be decided again after it has already been finally decided. The OCRT already ruled that the Claimant was not disabled by her then MQP of December 31, 2005. This means that that an event must have taken place in 2006 that led to a change in the Claimant's circumstances that rendered her disabled under the CPP.<sup>8</sup>

[13] The Claimant's legal representative could not point out a specific triggering event in 2006, but he argued that she was certainly disabled by March 2006. He asked me to consider a disability assessment report drafted on March 28, 2006. This report stated that the Claimant had multiple restrictions. She had difficulty walking. She had difficulty pulling doors, turning knobs, pushing, and lifting heavy items. The Claimant had some difficulty dressing and taking care of her personal hygiene.<sup>9</sup> The legal representative argued that the Claimant may not have been disabled in 2005 because of the OCRT decision, but her condition worsened in 2006 to the point that she became disabled under the CPP.

[14] I disagree with this argument. The medical and hearing evidence does not support a finding that a disabling event took place in 2006.

***The medical evidence does not support a finding that the Claimant became disabled under the CPP in 2006.***

[15] The medical evidence showed that the Claimant had bilateral osteoarthritis in her knees in 2003.<sup>10</sup>

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<sup>8</sup> See *A.F. v. Minister of Employment and Social Development*, 2017 SSTADIS 677

<sup>9</sup> See GD3-54

<sup>10</sup> See GD2-198

[16] An occupational therapist drafted a report on November 24, 2004. The occupational therapist noted that the Claimant had difficulty with her activities of daily living because of osteoarthritis in both her upper and lower extremities. The occupational therapist believed that the Claimant was a fall risk. She recommended that the Claimant receive devices to help her complete her activities of daily living, such as a hand held shower, zipper puller, and a raised toilet seat.<sup>11</sup>

[17] The Claimant had physiotherapy in 2005 because of hand, knee and hip pain brought about by arthritis.<sup>12</sup> She was diagnosed with fibromyalgia in 2005.<sup>13</sup>

[18] A chiropractor completed a medical report for the Minister on August 22, 2005 in support of her previous disability application. The chiropractor noted that the Claimant had chronic health problems that included osteoarthritis in her hands and wrists. The Claimant had limitations with standing and walking.<sup>14</sup>

[19] The Claimant's family doctor completed a medical report for the Minister on December 7, 2005. Her family doctor stated that the Claimant could not perform repetitive or fine movements with her hands like typing and writing.<sup>15</sup>

[20] When I look at the medical evidence in 2006, I do not see any disabling event that changed the Claimant's medical condition. The March 28, 2006 disability assessment report that the legal representative relied upon referred to impairments that the Claimant already had before January 1, 2006.

[21] The Claimant's previous medical problems continued in 2006. She remained in physiotherapy.<sup>16</sup> She saw a psychiatrist in 2006. The psychiatrist diagnosed the Claimant with social anxiety disorder and low-grade depression. However, the psychiatrist noted that the Claimant had problems with her mental health since she was 17.<sup>17</sup>

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<sup>11</sup> See GD2-200

<sup>12</sup> See GD2-216

<sup>13</sup> See GD3-56

<sup>14</sup> See GD2-209-212

<sup>15</sup> See GD2-182-185

<sup>16</sup> See GD3-49

<sup>17</sup> See GD3-55-57

[22] The Claimant's health problems continued after 2006. She suffered from hand, hip, knee and foot pain. She continued to have difficulty walking and using her hands.<sup>18</sup> She was diagnosed with bilateral carpal tunnel syndrome in 2007.<sup>19</sup> She also developed deep vein thrombosis in 2007.<sup>20</sup> An orthopaedic surgeon noted that the Claimant was disabled by arthritis in 2008.<sup>21</sup> She had a right knee replacement in September 2008<sup>22</sup> and a left knee replacement in January 2009.<sup>23</sup> She was diagnosed with a bipolar and eating disorder in 2011.<sup>24</sup> She continued to suffer from bipolar disorder into 2017.<sup>25</sup> An internal medicine specialist drafted a report in 2017 that the Claimant still had physical and mental health problems that affected her functioning.<sup>26</sup> The internal medicine specialist provided an opinion that the Claimant's health had not improved since 2006.<sup>27</sup>

[23] I accept that the Claimant had medical problems before 2006 and these medical problems continue to affect her ability to work. But I do not see a triggering event in 2006 that rendered her disabled under the CPP.

***The Claimant's hearing evidence did not support a finding that she became disabled under the CPP in 2006.***

[24] The Claimant testified that she has not been able to maintain regular employment since 2003, when she worked as an online loan representative for a community college. She testified that her health problems began before 2006. She received help with bathing and housekeeping in 2005. She has not cleaned since 2003 or 2004.

[25] The Minister argued that the Claimant had work capacity in 2006 because she worked after her MQP. She worked as a self-employed salesperson from June 2014 to March 2016 on a seasonal part-time basis and as a support worker on a part-time basis from December 2014 to

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<sup>18</sup> See GD2-165

<sup>19</sup> See GD2-90

<sup>20</sup> See GD3-46

<sup>21</sup> See GD3-37

<sup>22</sup> See GD3-31

<sup>23</sup> See GD3-26-27

<sup>24</sup> See GD3-8-10

<sup>25</sup> See GD2-59-62

<sup>26</sup> See GD2-63-66

<sup>27</sup> See GD2-77-79

July 2016.<sup>28</sup> But I disagree with the Minister that the Claimant had work capacity in 2006. The work that she did after her MQP was not substantially gainful. She sold products that others made at a farmer's market. She made almost zero income performing this and other sales work after her MQP. She helped her sister as an assistant personal support worker, but she did not do any physical work.

[26] I find that the Claimant has had a severe disability under the CPP since 2003, when she last engaged in substantially gainful employment at a community college as an online loan representative. I am satisfied that the Claimant suffered from serious mental and physical health conditions that led to impairments in the areas of sitting, standing, walking, lifting, memory, and concentration. I am satisfied that she had limited use of her hands by 2003.

[27] However, my finding that the Claimant had a severe disability under the CPP in 2003 means that I must dismiss her appeal. The Minister properly pointed out that the previous OCRT decision is considered final on the issue of whether she had a disability under the CPP as of December 31, 2005.<sup>29</sup> In order for the Claimant to succeed on this appeal, she had to prove that she became disabled under the CPP in 2006, but the evidence does not support such a finding.

[28] In dismissing this appeal, I do not mean to minimize the Claimant's pain and suffering. She had an active life before her health deteriorated. She put herself through hairstyling school after a bipolar disorder diagnosis. She managed a hair salon and performed hairstyling work in the film industry. She also performed office work before 2003. But I am bound by the previous OCRT decision that said that she was not disabled under the CPP by December 31, 2005. The previous OCRT decision means that I must dismiss this appeal even though I found that she had a disability under the CPP in 2003.

## **CONCLUSION**

[29] The appeal is dismissed.

George Tsakalis  
Member, General Division - Income Security

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<sup>28</sup> See GD4-13

<sup>29</sup> See GD8-2