Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *SS v Minister of Employment and Social Development*, 2020 SST 1160

Tribunal File Number: GP-19-999

BETWEEN:

S. S.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Income Security Section

Decision by: Jackie Laidlaw

Claimant represented by: Frank Van Dyke

Videoconference hearing on: September 22, 2020

Date of decision: October 5, 2020

Canada

DECISION

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

OVERVIEW

[2] The Claimant worked as an administrative assistant for Fisheries and Oceans Canada from June 2014 until she stopped in February 2016. She stopped working because she collapsed at work twice and was taken by ambulance to hospital. She also stopped because she was having difficulties with an abusive boss and became anxious and depressed. She has never returned to any work since due to a fast heart rate and problems with tachycardia and depression. The Claimant is highly educated with numerous degrees and speaks five languages.

[3] 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.

ISSUE(S)

[4] Did the Claimant's conditions of tachycardia, angina, sleep apnea, mental health issues and depression result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2019?

[5] If so, was the Claimant's 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 prolonged[1]. 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

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

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.

Severe disability

The evidence does not support any severe condition

[7] The Claimant has listed a number of issues that have made her unable to work. However, the voluminous evidence provided does not show that any of these conditions are significantly disabling either individually or when viewed as a total picture of the Claimant's health.

[8] She has mild sleep apnea.[2] Respirologist, Dr. Dales, did a sleep study in December 2018 and noted the Claimant did not tolerate the CPAP, however, her sleepiness scale was normal, the apnea was mild and therapy was not indicated. He recommended she not gain weight. This is not a severe condition.

[9] She reported asthma; however, she had been completely asymptomatic from a respiratory standpoint in 2009[3] when investigated for possible mild intermittent versus persistent asthma. She was found to have mild intermittent asthma and completely asymptomatic between the infrequent asthma episodes. There were no follow up appointments necessary. She has not provided any further evidence that her asthma worsened over the years to prevent her from working.

[10] She reports having hypothyroidism. Cardiologist Dr. Grewal found in 2017[4] that it was chemically normally functioning (euthyroid) based on her blood test of December 2016. There is no indication or evidence to show that the hypothyroidism interferes with her ability to work, or interferes with any other conditions.

[11] The main physical condition claimed by the Claimant is tachycardia, and, at the hearing, a suggestion of angina. At the hearing, she agreed there is no diagnosis of angina and meant it

[2] GD 2 102 as reported by cardiopulmonary physician Dr. Dales in December 12, 2018 report.
[3] GD 2 341 a consultation with Dr. Onofre Moran-Medoza, January 21, 2009
[4] GD 2 308 a consultation with Dr. Grewal August 28, 2017

was the chest pains. The chest pains have consistently been referred to as a symptom of her tachycardia. Therefore, I will address the symptom as part of the tachycardia assessment.

[12] The Claimant has referred to her tachycardia as life threatening. This was noted by Dr. O'Donnell, a family physician she had seen from February 2018 to 2019. He was not her family physician at the time she left work. In Dr. O'Donnell's letter of July 16, 2018[5], he notes that she has uncontrollable outbursts of tachycardia, then went on to state the underlying pathology is still under investigation, two years after leaving work. I find his reference to the tachycardia being a severe potentially life threatening condition was a generic comment on tachycardia itself. She had never been diagnosed with severe tachycardia. As such, I cannot accept the Claimant's submission that she has severe tachycardia. In the following paragraphs I will outline the medicals regarding the condition at the time she left work and to date.

[13] The Claimant states that she stopped working in February 2016 because she passed out at work twice and was sent to hospital. She stated that she has not passed out since requiring her to go to hospital, though she did fall a few times a few weeks ago and once last year. The first time she fell was in September 2015 on a Friday and returned to work on the Monday. The second time was in January 2016. She states that her family physician at the time, Dr. Ritsma, told her to stay off work for a few weeks. Apparently, Dr. Ritsma told her to go on sick leave in February 2016. The Claimant testified that the employer refused two medical notes from Dr. Ritsma. There are no notes from Dr. Ritsma or from her employer to that affect. I find it unlikely that her employer, the Government of Canada, in a unionized environment, would reject two sick leave notes from a doctor.

[14] She consulted with a cardiologist, Dr. Jean-Francois Marquis in November 2015[6] after her first collapse. Dr. Marquis found she had two episodes of chest pain that occurred at rest and all her tests were normal. He tested her three times for a fast heart rate, which was normal. He performed two EGC's and a stress echo and she did not have any evidence of tachycardia.

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[5] GD 2 146 a letter to SunLife from Dr. O'Donnell July 16, 2018.
[6] GD 2 260 November 5,2015 cardiology consultation

[15] In January 2016, she had another cardiology study with Dr. Dighe[7] that found she had sinus tachycardia. This is an intermittent rapid heartbeat. She continued to have tests on her heart and lungs, which were normal.[8]

[16] She consulted with another cardiologist Dr. Anand in September 2016.[9] The Claimant described symptoms that have a profound impact on her quality of life but there was no objective evidence of arrhythmia (fluttering or racing heart), heart disease or exercise-induced ischemia (reduced blood flow to the heart).

[17] In a follow up in March 2017[10] for symptoms of tachycardia, the Claimant wanted Dr. Anand to authorize a work extension. While he did find she had sinus tachycardia with no organic causes, he refused her request, as he could not find any cause to prevent her from working. He notes the Claimant denying any fainting episodes; the very reason she states she left work. Dr. Anand also noted that she denied beta-blockers.

[18] Currently, the Claimant is on beta-blockers and testified that a cardiologist, who is controlling the tachycardia, has more recently seen her. The Claimant testified, as did her husband Mr. Hamand, that she does nothing, sleeps poorly and she is unable to assert herself. While she may feel tired, there is no evidence of a heart condition other than sinus tachycardia, which she herself claims is under control.

[19] At the same time as her last consultation with Dr. Anand in 2017, she went to a psychiatrist for the first time. She had been referred by Dr. Ritsma and had an appointment with Dr. Abdul Kahn, psychiatrist, on March 27, 2017.[11] To Dr. Khan she stated the reason for leaving work was an abusive, mean and insulting director, which caused her to become anxious, depressed, suicidal and frightened requiring her to go on sick leave. She made little mention of a heart condition for which she is seeing a cardiologist. Dr. Khan notes a completely different reason for being on sick leave. There is no evidence from Dr. Ritsma that the reason for leaving

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[7] GD 2 252
[8] GD 2 233 stress echo August 25,2 016 no evidence of ischemia; GD 2 288 November 7, 2016 holter test normal; GD 225 November 28, 206 no significant non-cardiac findings of the lungs; GD 2 211 February 28, 2017 Persantine nuclear report ECG normal and no ischemia by perfusion criteria. No significant arrhythmias.
[9] GD 2 235 cardiology consultation September 12, 2016
[10] GD 2196 March 29, 2017 Dr. Preeti Anand, Cardiologist
[11] GD 2 199 March 27, 2017 consultation with psychiatrist Dr. Abdul Khan

work was depression or anxiety. Nor was there any mention of depression in the medical reports from Dr. O'Donnell for the application of the disability benefit.[12]

[20] She only saw Dr. Khan the one time in 2017. He did not feel she needed a follow up appointment, as she reported not feeling depressed and his diagnosis was a depressive reaction. He recommended psychotherapy. She did not get any. She stated she did get ten sessions of counselling, but not therapy, from two separate EAP counsellors in 2018 and 2019. She tried an anti-depressant at a low does five years ago, which would be either before or just after she stopped working. She did not take them long, and does not take any medication for depression now.

[21] She attempted again to have another cardiologist, Dr. Higginson, approve a disability claim due to tachycardia and other cardiac abnormalities in 2018[13]. He with found she only had sinus tachycardia; no fainting episodes; was never diagnosed with myocardial infarction; and, found her normal upon examination. He could not find anything to suggest a significant cardiac abnormality to explain her symptoms. Dr. Higginson did not find any evidence, by history or stress testing, to suggest she needed a coronary angiography in August 2018[14], the last time he saw her. She has never required a coronary angiography.

[22] I find there is no supporting evidence at the time she left work, or while working, that she was suffering from any mental health condition that affected her ability to work. Dr. Khan's report is based upon her oral history. It is not supported by any other documentation at the time from any mental health professional. She stated she is sad and cries easily, however she is only consulting every one or two months with her new family physician, Dr. Chukho, who she said was "a good listenener". She is not currently depressed, or taking any medications, or receiving any treatment either currently or at the time of her MQP. The evidence does not support a mental health condition that prevents her from working.

[23] The Claimant is relying upon the medical report from Dr. O'Donnell[15], along with the letter to SunLife in July 2018, which has already been discussed in this decision. I find his

[12] GD 2 78 medical report of May 28 2019 and GD 2 446 December 20 2018
[13] GD 2 151 cardiology referral March 22, 2018 Dr. Higginson
[14] GD 2 142 August 9, 2018 Dr. Higginson
[15] GD 2 78 the medical report of May 28, 2019; GD 2 81

medical report is misleading. He notes that he recommended she stop working as of February 2016, however he was not her family physician at the time. He notes at the time she is fully disabled from working, however the volumes of evidence from the specialists over the years does not support this opinion. As well, he stated that "should a procedure form a cardiac standpoint be successful, we will advise the CPP". The Claimant testified that her tachycardia is under control with medications now due to a new treating cardiologist, whom she has been seeing since Dr. Higginson in 2018. Therefore, at the time of his writing in 2018, there were still treatments left to provide which have proved to stabilize the condition around the time of her MQP.

The Claimant has failed to prove she cannot work at any suitable occupation

[24] There seems to be two different versions as to why the Claimant went on sick leave in February 2016. The first is noted by the Claimant in both her testimony and a letter to Dr. O'Donnell[16] that Dr. Ritsma put her on medical leave after leaving work twice by ambulance.

[25] She did go on medical leave, despite stating that her employer would not accept Dr. Ritsma's letters. The medical leave was not extended when Dr. Anand would not agree to extend her work leave in March 2017. She has never since then experienced the same situation of collapsing which sent her to the hospital twice. She had many tests done, none of which proved she had a condition which would prevent her from working. The most important report is that of Dr. Anand of March 29, 2017, where he specifically stated that he had not found any cause to prevent her from working.

[26] The evidence from Dr. Khan, in March 2017, specifically outlines that the reason the Claimant went on sick leave was due to poor relations with her boss causing anxiety, depression and suicidal thoughts. There is no note from Dr. Ritsma at the time indicating she needed to leave work due to these conditions. She was not receiving any mental health treatment, nor consulting with any specialists. When asked about this at the hearing she stated that she became depressed when she realized her heart rate was going up and the tests could not find anything. I accept that this would cause anxiety and concern; however, the evidence shows she was being

[16] GD 2 147

treated by many cardiologists and no mental health professionals. If she left due to bad relations at work, this would presumably prevent her from working at her usual place of employment and would not prevent working elsewhere. As well, by the time she consulted with Dr. Khan, she was no longer depressed. Dr. Khan diagnosed a depressive reaction to her workplace. Therefore, if the reason she left was due to poor working relations at that particular office causing depression and anxiety, the condition had resolved by 2017. As well, she would be capable of working elsewhere as the condition was specific to that workplace.

[27] I am relying upon by Dr. Anand's opinion that there was no physical cause to prevent her from working. I also rely upon Dr. Khan's opinion that she was no longer depressed in March 2017, which indicates there was no mental health reason she would be prevented from working.

[28] The Claimant is relying upon the psychiatric assessment of Dr. Vania on November 2019[17], and on a letter from Dr. Adel Kyrollos[18], internal medicine specialist, in June 2020. The Claimant also relies upon the opinions of Dr. O'Donnell, of which I have already discussed.

[29] The Claimant's representative acknowledged that Dr. Mariam Vania's assessment was produced for litigation. Dr. Vania was not a treating physician. She was not being treated at the time by any specialist for her mental health. Despite this, Dr. Vania found that she had medical and psychological problems that make it impossible for her to work. However, the report does not note any current symptoms that are severe. The tachycardia is treated with propranolol. The doctor found her moderately depressed. Her assessment was mainly based upon her oral history of her treatment at work and her physical conditions. The report is clearly written for the litigations between the Claimant and her employer. The recommendation was for ongoing psychotherapy, however she had never received any nor has she to date. She is also not taking any medication for depression now or at the time of the assessment. I do not put much weight on this report as Dr. Vania is not her treating physician, nor was she receiving any psychological counselling or psychiatric intervention at the time. The lack of treatment indicates her mental health was, as noted by Dr. Vania, moderate, and that it was managed without any medications or treatment.

[17] GD 4 Psychiatry Assessment Dr. Vania November 13, 2019
[18] GD 7 2 Dr. Adel Kyrollos, internal medicine, either June 3, 2020

[30] Dr. Kyrollos' letter is a "to whom it may concern" and therefore I assume it too was written for the litigation. The Claimant relies upon Dr. Kyrollos' opinion that she cannot tolerate medications. His letter specifically notes that they tried multiple medications for better controlling her tachycardia. There was only one medication she could not tolerate. I do not accept this to be an issue. Dr. Kyrollos also noted that her tachycardia is better, though her heart rate is still above 100. He initially saw her in January 2020, well after she stopped work. She has never worked while he was treating her, so he cannot state she cannot tolerate work, as it has not been proved at that time. He only recently saw her for her tachycardia, which he noted after medication trials, is better. He does not specialize in psychiatry or psychology and therefore not in a position to make an opinion on her mental health. I do not put much weight on his opinion that she cannot tolerate the physical and emotional stress of work due to her current conditions.

[31] 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 condition[19].

[32] There is mention in Dr. Khan's report of March 2017 that the union was looking for another job for her. I find this to be evidence of work capacity. When questioned as to what happened with the job she stated she had no idea. She has not attempted to work at any job, even though by 2017 Dr. Anand did not find any reason she would be prevented from working, and Dr. Khan found she was not depressed.

[33] I find the opinion of Dr. Anand, and the mention that the union was looking for another job for her, was evidence of a capacity to work. The Claimant has failed to show an effort at obtaining and maintaining employment and that she was unsuccessful because of her health conditions.

[34] I must assess the severe part of the test in a real world context[20]. 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.

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[19] *Inclima v. Canada (A.G.)*, 2003 FCA 117
[20] *Villani v. Canada (A.G.)*, 2001 FCA 248

[35] The Claimant was 57 at the time of her MQP. While her age may be a factor in finding work, her education and language skills would far outweigh that condition. She speaks over five languages: English and French, the two official Canadian languages, along with Spanish, Italian, German and Arabic. She has numerous degrees: a B.A. in psychology; an Honours BA in psychology and English literature; a Masters in criminology; and, she almost finished her PhD in psychology. Her previous jobs include working for Children's Aid Society while at university. She also worked for the University of Ottawa laboratory for neuroanatomy and animal behaviour. She worked for the Elizabeth Fry Society and for Ontario Probation & Parole. She was employed in the Solicitor General Secretariat's research department and did a clinical internship in the psychology department of the Provincial Prison in Ottawa. She has taught French for a private company. She has also done secretarial work for different places. She has been a translator on contracts. She has had numerous consulting jobs. Her final job was the administrative assistant to the Director of Operations for the Canadian Coast Guard.[21] The Claimant has a variety of transferable skills.

[36] She would not prevented from working because of her high education, various language skills and past work and life experiences.

[37] I do not dispute that the Claimant has tachycardia. However, it is not life threatening. Nor does it prevent her from working according to Dr. Anand. She has never experiences the collapses that led to her to the hospital since 2016. Her tachycardia is now managed well with medications. She still has not received any therapy, nor is she currently on any medication for depression. She has not attempted to return to any occupation, and she is qualified for many different occupations.

[38] I find the Claimant has failed to prove a severe disability that renders her incapable regularly of pursuing any substantially gainful occupation.

CONCLUSION

[39] The appeal is dismissed.

[21] GD 4 Dr. Vania's assessment along with the testimony of the Claimant

Jackie Laidlaw
Member, General Division - Income Security