



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *NE v Minister of Employment and Social Development*, 2020 SST 1183

Tribunal File Number: GP-20-808

BETWEEN:

N. E.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Adam Picotte

Teleconference hearing on: October 22, 2020

Date of decision: October 26, 2020

DECISION

[1] The Claimant's Canada Pension Plan (CPP) disability pension is terminated as of April 2014.

OVERVIEW

[2] The Claimant was granted a disability benefit in February 2012 with an effective date of June 2012. The Minister determined that she returned to gainful work in January 2014. Allowing for a four-month retraining period the Minister determined that the Claimant was no longer disabled as of April 2014.¹ As a result the Claimant now has a repayment obligation of \$39,697.24²

[3] The Claimant appealed the reconsideration decision to the Social Security Tribunal.

ISSUE(S)

[4] Did the Claimant no longer having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by April 2014?

ANALYSIS

[5] Disability is defined as a physical or mental disability that is severe and prolonged³. 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. Because the Claimant was already in receipt of a disability benefit the Minister must prove that the Claimant no longer meets the test for severe or prolonged.

Severe disability

The Claimant was no longer disabled as of January 2014

¹ GD2-7

² GD2-22

³ Paragraph 42(2)(a) *Canada Pension Plan*

[6] I have determined that the Claimant was no longer disabled as of January 2014. Below, I will set out the facts that have assisted me in arriving at that conclusion.

[7] On February 4, 2013 the Claimant obtained a casual job as a medical office assistant working 10 hours a week. In a return to work report, the Claimant detailed that she had returned to work in October 2013 as a medical receptionist. At that time she was working 2 days a week for 5-8 hours and earning 500 – 900 a month.⁴

[8] The Minister felt the Claimant had not returned to substantially gainful employment at that time.⁵

[9] Canada Revenue Agency information showed earnings for the following amounts:

- a) 2014 \$17,240
- b) 2015 \$19,836
- c) 2016 \$16,955
- d) 2017 \$16,776
- e) 2018 \$17,687⁶

[10] In January 2019, a trigger list showed that N. E. had employment earnings of \$17,240 from 2014, \$19,836 from 2015, \$16,955 from 2016, and \$16,776 from 2017 that required investigation.

[11] In a March 4, 2019 response to the Minister's investigation the Claimant wrote that she had stopped working in 2012 due to her breast cancer diagnosis but had returned working 2-3 days per week for 8 hours a day. During this time she was earnings \$17.00 an hour.⁷

⁴ GD2-306

⁵ GD2- 322

⁶ GD2-263

⁷ GD2-282

[12] In a March 6, 2020 employer questionnaire, X detailed that the Claimant worked part-time as a medical assistant. She was an excellent worker. Her job duties included reception, and assisting patients and physicians. Her attendance was described as good. Her quality of work was described as satisfactory. She was noted to work independently and did not require supervision. She was not provided with any accommodations or assistance from co-workers.⁸

[13] In an employer questionnaire from X, the Claimant`s work activity was described in similar terms. She had good attendance worked well, did not require accommodation or supervision and did not require assistance from co-workers. She was noted to work regularly on a part-time basis from 2014-2016.⁹

[14] The Claimant told me that the decision to return to work was to improve her mental condition. She told me that she pushed herself to keep working. She wanted to have a positive impact on her life.

[15] The Claimant confirmed she returned to work with X in approximately January 2014. When she returned she was working part time. She would work there two days a week. She would work approximately 6 hours a day.

[16] She told me that she started at X in January 2014. She started working there two days a week. She would work approximately 6 hours a day.

[17] 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’s 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 work¹⁰.

[18] The evidence from her employer’s and from the Claimant is clear that she was able to return to full time hours as of January 2014. At that time, she was not being provided with

⁸ GD2-64-66

⁹ GD2-69-71

¹⁰ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

accommodations, her work attendance was good, and she was able to work the hours she was provided with.

[19] It is unfortunate that it took the Minister some number of years to follow up with the Claimant because it is clear to me from the material on file that she tried to advise the Minister of her work status. In fact, when she first returned to work in 2013 the Minister felt she had not returned to substantially gainful employment.

[20] I do find, however, that by January 2014 she was no longer disabled given her ability to work. It was therefore appropriate for the Minister to allow a four month return to work period and cancel her CPP disability benefit effective April 2014.

[21] I told the Claimant during the hearing that she may wish to contact the Minister to set up a repayment program that was within her means as the Minister has some discretion in this respect.

CONCLUSION

[22] The appeal is dismissed.

Adam Picotte
Member, General Division - Income Security