



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *KG v Minister of Employment and Social Development*, 2020 SST 1149

Tribunal File Number: GP-19-1695

BETWEEN:

K. G.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Gerry McCarthy

Videoconference hearing on: December 15, 2020

Date of decision: December 16, 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 November 6, 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, 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, 2018. I also find the Claimant's pro-rated MQP date to be January 31, 2019.

PRELIMINARY MATTERS

[4] Before the commencement of the hearing, the Claimant's mother (M. G.) indicated she wished to represent the Claimant and provide oral testimony as a Witness. M. G. subsequently decided to provide only oral testimony as a Witness.

ISSUES

Issue 1

[5] 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, 2018?

[6] If so, was the Claimant's disability also long continued and of indefinite duration?

Issue 2

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

[8] If so, was the Claimant's disability also long continued and of indefinite duration?

ANALYSIS

[9] 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.

Severe disability

[10] I must assess the severe part of the test in a real world context². 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.

[11] 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 work³.

[12] 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 impairment⁴.

[13] 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 condition⁵.

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

² *Villani v. Canada (A.G.)*, 2001 FCA 248

³ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

⁴ *Bungay v. Canada (A.G.)*, 2011 FCA 47

⁵ *Inclima v. Canada (A.G.)*, 2003 FCA 117

Issue #1

Did the Claimant have a severe disability by December 31, 2018?

[14] I find the Claimant did not have a severe disability by December 31, 2018, for the following reasons:

[15] First: The Claimant was only 24-years-old by the end of December 2018 with excellent language proficiency in English and two-years of university education. Furthermore, the Claimant had previous work experience in retail employment and last worked as a waiter in June 2018. The Claimant also completed a yoga teacher-training course in 2018. In short, the Claimant has many transferable skills for work. I recognize the Claimant has long-standing mental health issues that include anorexia nervosa, chronic depression, anxiety disorder, Post-Traumatic Stress Disorder, (PTSD) borderline personality, and Obsessive Compulsive Disorder (OCD). Nevertheless, the Claimant has demonstrated that she has transferable skills for various types of work.

[16] Second: The Claimant was currently enrolled full-time at the "X." Specifically, the Claimant started full-time courses in September 2020 and confirmed she had completed the first semester. The Claimant explained that despite the pandemic she was able to attend one class in a studio setting with six-other students. Furthermore, the Claimant was able to meet in-person with her mentor at the college. I realize the Claimant's full-time enrolment was approximately 20-months after her MQP date. Still, the Claimant's full-time college enrolment shows she has the ability to assimilate course work, finish assignments, function with a computer, and interact in-person with a college mentor. The Claimant also confirmed she would be returning for the second semester in January 2021.

[17] Third: The Claimant's medical condition appears to be improving. The Claimant herself testified that her condition was better than it used to be. Furthermore, the Claimant continues with counselling, therapy, and regularly takes the medications prescribed by her doctor. I realize Dr. Barry wrote in September 2019 that the Claimant was unable to work for the "foreseeable" future due to medical reasons. Nevertheless, Dr. Barry indicated on the CPP Medical Report (dated November 11, 2018) that he expected the Claimant to return to modified work in 12-to-24

months (GD2-85). In my view, the Claimant's ability to manage full-time courses at college would support that her health condition has improved.

Additional Submissions from the Claimant

[18] The Claimant explained during the hearing that because of the pandemic she was allowed to take 50 percent of her courses online. Nevertheless, the Claimant testified she did attend one class in a studio setting. The Claimant also indicated she was able to meet in-person with her college mentor. Furthermore, the Claimant has been able to complete the first semester of her college courses.

[19] I realize the Claimant was hospitalized because of eating disorders in 2018 and 2019. I also recognize the Claimant explained that her doctors told her in August and September 2019 that they did not want her working or going to school. Still, I cannot conclude the Claimant had a severe disability by her MQP date because she had a number of transferable skills for various types of work. Furthermore, the Claimant enrolled full-time at "X" in September 2020 and has successfully complete her first semester.

Oral Testimony from the Witness

[20] During the hearing, the Witness testified that the Claimant continues with counselling and therapy. I realize the Witness indicated that the Claimant depended on her parents for financial support for the cost of therapy, insurance, and groceries. I also recognize the Witness spoke about how the Claimant was not the same person after a traumatic sexual assault in Spain in 2014. The Witness also emphasized that it was a long road for the Claimant to recover. Nevertheless, considering the Claimant's young age, university education, language proficiency, work experience –and ability to manage full-time courses successfully at college– I simply cannot conclude the Claimant had a severe disability by her MQP date.

Prolonged disability

[21] Since I have determined the Claimant did not have a severe disability by her MQP date of December 31, 2018, I am not required to make a finding on the prolonged criterion.

Issue #2

Did the Claimant have a severe disability by January 31, 2019?

[22] I find the Claimant did not have a severe disability by January 31, 2019, for the following reasons:

[23] First: The Claimant was only 24-years-old by the end of December 2018 with excellent language proficiency in English and two-years of university education. Furthermore, the Claimant had previous work experience in retail employment and last worked as a waiter in June 2018. The Claimant also completed a yoga teacher-training course in 2018. In short, the Claimant has many transferable skills for work. I recognize the Claimant has long-standing mental health issues that include anorexia nervosa, chronic depression, anxiety disorder, Post-Traumatic Stress Disorder, (PTSD) borderline personality, and Obsessive Compulsive Disorder (OCD). Nevertheless, the Claimant has demonstrated that she has transferable skills for various types of work.

[24] Second: The Claimant was currently enrolled full-time at the "X." Specifically, the Claimant started full-time courses in September 2020 and confirmed she had completed the first semester. The Claimant explained that despite the pandemic she was able to attend one class in a studio setting with six-other students. Furthermore, the Claimant was able to meet in-person with her mentor at the college. I realize the Claimant's full-time enrolment was approximately 20-months after her MQP date. Still, the Claimant's college enrolment shows she has the ability to assimilate course work, finish assignments, function with a computer, and interact in-person with a college mentor. The Claimant also confirmed she would be returning for the second semester in January 2021.

[25] Third: The Claimant's medical condition appears to be improving. The Claimant herself testified that her condition was better than it used to be. Furthermore, the Claimant continues with counselling, therapy, and regularly takes the medications prescribed by her doctor. I realize Dr. Barry wrote in September 2019 that the Claimant was unable to work for the "foreseeable" future due to medical reasons. Nevertheless, Dr. Barry indicated on the CPP Medical Report (dated November 11, 2018) that he expected the Claimant to return to modified work in 12-to-24

months (GD2-85). In my view, the Claimant's ability to manage full-time courses at college would support that her health condition has improved.

Prolonged disability

[26] Since I have determined the Claimant did not have a severe disability by her pro-rated MQP date of January 31, 2019, I am not required to make a finding on the prolonged criterion.

CONCLUSION

Issue #1

[27] The appeal is dismissed.

Issue #2

[28] The appeal is dismissed.

Gerry McCarthy
Member, General Division - Income Security