



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *LP v Minister of Employment and Social Development*, 2020 SST 1146

Tribunal File Number: GP-20-748

BETWEEN:

L. P.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Virginia Saunders

Videoconference hearing on: November 12, 2020

Date of decision: December 10, 2020

DECISION

[1] The Claimant, L. P., is not eligible for a *Canada Pension Plan* (CPP) disability pension. This decision explains why I am dismissing the appeal.

OVERVIEW

[2] The Claimant is 52 years old. She used to be a financial planner, but she has not worked in that field for any significant time since 2009. She applied for a CPP disability pension in February 2019. She said she has been unable to work since April 2009 because of psychosis and a severe mental disorder.¹

[3] The Minister of Employment and Social Development Canada (the Minister) refused her application. The Minister said the Claimant's limitations would not have continuously prevented her from doing some type of work when she last met the contribution requirements for a CPP disability pension.²

[4] The Claimant appealed to the General Division of the Social Security Tribunal. She argued that she has been unable to work since 2009 because of her mental condition and a knee condition. She said her employment attempts after that made her conditions worse.³

WHAT THE CLAIMANT MUST PROVE IN THIS APPEAL

[5] For the Claimant to succeed, she must prove that she has a disability that was severe and prolonged by December 31, 2012. This date is based on her contributions to the CPP.⁴ Her disability must have continued since then.⁵

¹ GD2-80-99

² GD2-7-10, 73-80

³ GD1-6-8

⁴ The *Canada Pension Plan* calls this date the "minimum qualifying period." See subsection 44(2). The Claimant's contributions can be found on page GD2-106.

⁵ In the decision *Attorney General of Canada v. Angell*, 2020 FC 1093, the Federal Court said a person has to show a severe and prolonged disability by the end of their minimum qualifying period and continuously thereafter. See also *Brennan v. Attorney General of Canada*, 2011 FCA 318.

[6] The CPP defines “severe” and “prolonged.” A disability is severe if it makes a person incapable regularly of pursuing any substantially gainful occupation. It is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death.⁶

[7] The Claimant has to prove it is more likely than not that she is disabled.

REASONS FOR MY DECISION

[8] I accept that the Claimant has a severe disability now. However, I cannot find that she had a severe and prolonged disability by December 31, 2012. That means she is not eligible for a CPP disability pension.

The Claimant’s medical condition

[9] The Claimant has episodic schizophrenia, including paranoid ideations, insomnia, disorganized speech and thought, and anxiety.⁷ She has been seeing her psychiatrist, Dr. Pityk, since June 2017.⁸ Dr. Pityk said the Claimant has persecutory delusions and auditory hallucinations. They had a significant impact on her functioning because she felt she had to hide from her enemies. She stayed inside her home, with blankets blocking the doors and windows.⁹ Dr. Pityk testified at the hearing. He explained that the Claimant’s schizophrenia is treatment-resistant. She is still affected by delusions and other symptoms. He is certain she cannot work.¹⁰

[10] At the hearing the Claimant told me that a big group of people has been after her for many years. That is why she has hardly worked since 2009.¹¹ She spends all her time hiding from the group. She is afraid to go outside. She has collected boxes of papers to document her problems. She had to move to a different town because the group found out where she was. She had a job in a coffee shop for six months in 2016-2017, but quit because she started to worry that the group had found her. Then she got a job with a bank. But by June 2017, the group was

⁶ The definition is found in paragraph 42(2)(a) of the *Canada Pension Plan*.

⁷ Dr. Pityk, April 3, 2020, GD7-2

⁸ GD2-34

⁹ Dr. Pityk, December 14, 2018, GD2-38-39

¹⁰ Dr. Pityk’s hearing testimony at 15:58

¹¹ The Claimant said in her application that she stopped in April 2009; however, both Dr. Koka and Dr. Joseph believed she had stopped in August 2008 (GD2-25,67). The exact date is not relevant to my decision.

getting worse. She had to tell somebody, but she did not trust the police. She went to the ER, where she first met Dr. Pityk. He told her to stop working. She has not worked since then.

The medical evidence does not show a severe disability by December 31, 2012

[11] It is obvious the Claimant has not been able to work since June 2017. However, I first have to focus on her condition up to December 31, 2012. There has to be objective medical evidence of her disability related to that date.¹² The medical evidence does not show the Claimant had a severe disability by December 31, 2012.

[12] First, the Claimant's knee condition did not cause or contribute to a disability by that time. I acknowledge that she injured her knee and had surgery many years ago. I also acknowledge that she now has some difficulty with knee pain. However, there is no evidence that knee problems prevented her from working by December 31, 2012.

[13] I have reached the same conclusion about the Claimant's mental health. I accept Dr. Pityk's evidence that the Claimant's schizophrenia likely started around 2009 despite not being diagnosed until 2017.¹³ But when a condition begins or is diagnosed is not my focus.¹⁴ I must focus on whether the Claimant had functional limitations that got in the way of her earning a living by December 31, 2012.¹⁵ Furthermore, I can't just rely on the Claimant's recollection. There has to be medical evidence of any limitation resulting from the disability.¹⁶

Reports by Dr. Koka and Dr. Joseph

[14] The only medical documentation of the Claimant's limitations before June 2017 is in reports by two psychiatrists who saw her in 2009: Dr. Joseph and Dr. Koka.

¹² The Federal Court said this in *Attorney General of Canada v. Angell*, 2020 FC 1093, and *Attorney General of Canada v. Dean*, 2020 FC 206.

¹³ Dr. Pityk's hearing testimony starting at 5:45

¹⁴ The Federal Court of Appeal said this in *Ferreira v. Canada (Attorney General)*, 2013 FCA 81.

¹⁵ The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

¹⁶ Paragraph 68(1)(a) of the *Canada Pension Plan Regulations*

[15] In January 2009, Dr. Joseph said the Claimant had no biological symptoms of depression, was not anxious, and did not have any psychotic features or cognitive impairment. He noted no functional limitations and said she was emotionally fit for a graduated return to work.¹⁷

[16] In July 2009, Dr. Koka found the Claimant was sad, depressed and angry. He did not see any evidence of a formal thought disorder, delusions or hallucinations. He did not do formal testing but observed that the Claimant's cognitive functions appeared intact. She had good insight and her judgment appeared normal. He acknowledged she had a significant major event in the loss of her business, with symptoms of depression related to that.¹⁸

[17] Both these reports show the Claimant was already feeling persecuted by others. However, neither doctor thought she was delusional. That does not mean she wasn't. It means that at that time she was not afraid of the group and was not hiding at home so they would not find her. This fear and need for social isolation is one of the main reasons she cannot work now. Since two psychiatrists did not observe this or any other significant limitation that would have prevented the Claimant from working in 2009, I think it is likely that there were none.

[18] I recognize the Claimant is not happy with these reports.¹⁹ However, I see no reason to question what Dr. Joseph and Dr. Koka observed about her. Although Dr. Pityk thinks the authors may have failed to recognize the Claimant had schizophrenia, he also said this was common.²⁰ He did not otherwise question their professionalism, their observations, or their conclusions. The reports are relevant because they describe the Claimant as someone who was still functioning and did not have any significant mental impairment in 2009.

[19] Dr. Pityk noted that the Claimant was told by her previous doctor in April 2009 that she should not work.²¹ He did not give the source of that information. I assume it was from the Claimant. Considering what Dr. Joseph and Dr. Koka reported in that period, it is unlikely they would have given this advice. The only other medical evidence from that time is from Dr.

¹⁷ GD2-21-32

¹⁸ GD2-67-68

¹⁹ See her comments at GD9-11 and GD9-42

²⁰ Dr. Pityk's hearing testimony starting at 5:45

²¹ GD7-2

Crichton, the Claimant's family doctor from 2000 to 2009. He did not say that he or anyone else told the Claimant not to work.²²

Dr. Pityk's evidence

[20] There is no medical evidence after July 2009 until June 2017, when Dr. Pityk first saw the Claimant. I cannot conclude from Dr. Pityk's evidence that the Claimant had functional limitations that prevented her from working at a suitable job by December 31, 2012.

[21] Dr. Pityk did not have personal knowledge of the Claimant's condition at that time, but his opinion is an objective one based on his observations of the Claimant and what he knows about schizophrenia. However, he was only prepared to say that by December 2012, the Claimant's behaviour was likely affected by psychosis, and this would have affected how she functioned in the workplace. She would have been disorganized, and her judgment would not have been optimal because of the illness.²³ Dr. Pityk thought the Claimant might have been able to work at a menial job such as stacking boxes at Wal-Mart, but would not have been able to cope with a job where she had to interact with customers or perform complex work.²⁴

The Claimant had some work capacity at December 31, 2012

[22] To be severe, the Claimant's limitations must prevent her from earning a living at any type of work, not just her usual job.²⁵ The test is whether she was capable regularly of pursuing any substantially gainful occupation. "Substantially gainful" is not defined by the Claimant's previous income, but by the law.²⁶

[23] When I am deciding if the Claimant could have worked, I don't just look at her medical condition. I must also look at her age, level of education, language ability, and past work and life

²² GD1-12

²³ Dr. Pityk's hearing testimony at 14:25

²⁴ Dr. Pityk's hearing testimony at 14:55

²⁵ The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

²⁶ Section 68.1 of the *Canada Pension Plan Regulations* says an occupation is "substantially gainful" if it pays a salary or wages equal to or greater than the maximum annual amount a person could receive as a disability pension. Before 2014, case law said that in order to be substantially gainful the employment must be real and remunerative, the person must be performing a useful function, and the compensation must reflect an appropriate award for the nature of the work performed (*Minister of Social Development v. Nicholson* (2007), CP 241430; *Boles v. Minister of Employment and Immigration* (1994), CP 2794 (PAB)).

experience.²⁷ These factors help me decide if the Claimant had any ability to work in the real world at December 31, 2012.

[24] In 2012 the Claimant was 44 years old. English is her first language. She has a university degree and years of experience in business. None of these would detract from her ability to regularly do some type of substantially gainful work.

[25] If the Claimant can work in the real world, she must show that she tried to find and keep a job. She must also show that her efforts weren't successful because of her health condition.²⁸ Finding and keeping a job includes retraining or looking for a job that accommodates her limitations.²⁹

[26] I recognize that the Claimant tried working in 2016 and 2017. She had a job in a coffee shop where she was dealing with customers all day, and then in a bank where she was a financial planner. These jobs made her condition worse. But this happened long after 2012. Furthermore, both jobs were unsuitable according to Dr. Pityk's criteria.

[27] I am not satisfied that by December 31, 2012, the Claimant could not have regularly performed a job that did not require interpersonal skills and was not mentally taxing. Therefore, I cannot find that she had a severe disability by that date.

CONCLUSION

[28] Since the Claimant's disability was not severe by December 31, 2012, I do not have to decide whether it was prolonged. The Claimant is not eligible for a CPP disability pension.

[29] The appeal is dismissed.

Virginia Saunders
Member, General Division - Income Security

²⁷ The Federal Court of Appeal said this in *Villani v. Canada (Attorney General)*, 2001 FCA 248.

²⁸ The Federal Court of Appeal said this in *Inclima v. Canada (Attorney General)*, 2003 FCA 117.

²⁹ The Federal Court of Appeal said this in *Janzen v. Canada (Attorney General)*, 2008 FCA 150.