



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *KL v Minister of Employment and Social Development*, 2021 SST 243

Tribunal File Number: GP-19-2053

BETWEEN:

K. L.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Gerry McCarthy

Claimant represented by: Kerry Duggan

Teleconference hearing on: April 13, 2021

Date of decision: April 15, 2021

DECISION

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

OVERVIEW

[2] The Claimant was employed as a customer service representative when she stopped working in early March 2018 owing to chronic pain and anxiety. The Claimant subsequently started her own dog walking business in April 2019, but reduced the number of clients she had by the summer of 2019.

[3] The Minister received the Claimant's application for the disability pension on April 10, 2018. 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, 2020.

ISSUES

[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, 2020?

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

ANALYSIS

[7] 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

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

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

[8] 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.

[9] 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.

[10] 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.

[11] 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.

Did the Claimant have a severe disability by December 31, 2020?

[12] I find on a balance of probabilities the Claimant did not have a severe disability by December 31, 2020, for the following reasons:

[13] First: The Claimant started a self-employed dog walking business in April 2019 and earned income from that business. Specifically, the Claimant earned approximately \$6,000.00 from her business in 2019. I realize the Claimant testified that she reduced the number of clients she had to three by the summer of 2019 owing to her anxiety. The Claimant also explained that her income from the business dropped to approximately \$1,000.00 in 2020. Nevertheless, the Claimant explained she was still connecting by Zoom with potential clients for her business in

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

2021. Furthermore, the Claimant's efforts at self-employment would show a capacity for gainful work despite the drop in earnings in 2020.

[14] Second: The Claimant was only 27-years-old by her MQP date with a college education, transferable skills for various types of work, computer literacy, and good language proficiency. I recognize the Claimant has some limitations owing to her chronic pain, anxiety, and mental health issues. Still, the Claimant has a college education and previous employment experience in restaurant work. Furthermore, the Claimant confirmed she used Zoom technology for her self-employed business and had computer skills for online banking.

[15] Third: The medical reports on file do not indicate the Claimant was incapable of work. I realize Dr. MacDougall reported in February 2021 that the most likely diagnosis for the Claimant was fibromyalgia (GD6). However, Dr. MacDougall recommended "Eye Movement Desensitization and Reprocessing" (EMDR) therapy for the Claimant. Furthermore, Dr. Cronin (Psychiatrist) reported in March 2018 that the Claimant indicated her condition had improved on Lyrica. Dr. Cronin further wrote that the Claimant indicated her treatment with Lyrica made her pain manageable (GD2-54). Finally, Dr. Cooke wrote in May 2018 that the Claimant's condition had stabilized with medications (GD2-87).

[16] Fourth: The Claimant completed a "Pet First-Aid" course in 2020 and received a certificate when she passed the examination. The Claimant also audited some online pet care courses in 2018. I realize the Claimant explained that it took her a year-and-a-half to complete these audited courses. Nevertheless, the Claimant demonstrated a capacity to analyze information and successfully completed an examination on "Pet First-Aid" in 2020.

[17] Fifth: I have considered the Claimant's condition in its totality. For example, I have considered the Claimant's chronic pain, depression, anxiety, and underlying borderline personality disorder. Nevertheless, I find the Claimant showed a capacity for gainful work by December 31, 2020, for the reasons cited above.

Additional Testimony from the Claimant

[18] I recognize the Claimant testified during the hearing that she had difficulty obtaining medical reports. The Claimant specifically explained she could not obtain reports from a Dr.

Stewart or further reports from Dr. Cooke. I realize the Claimant has faced difficulties obtaining additional medical reports. However, I can only address the medical reports on the file.

Furthermore, the Claimant's representative requested an 8-week postponement of the hearing in February 2021 in order to obtain additional documents. That request from the Claimant's representative was granted at the time.

[19] I also recognize the Claimant referred to Dr. Cronin's "Progress Notes" where he explained the Claimant was comfortable with the status quo and did not seem motivated to change (GD2-46). The Claimant emphasized that she disagreed with this assessment from Dr. Cronin and referred to numerous treatments she had attempted in the past. I realize the Claimant has attempted a number of treatments for her condition. I also realize the Claimant takes her prescribed medications for anxiety and pain. However, I must decide whether the Claimant was incapable regularly of pursuing any substantially gainful occupation by December 31, 2020. As cited above, I find the Claimant has shown a capacity for gainful employment based on her young age, college education, transferable skills for other work, computer literacy, good language proficiency, and launching her own business in 2019.

Submissions from the Claimant's representative

[20] In her oral submissions, the Claimant's representative explained that the Claimant had tried numerous times to access medical reports. The Claimant's representative expressed the view that medical practitioners failed the Claimant on this matter. Nevertheless, I can only address the medical reports on file. I do recognize the Claimant was frustrated with being unable to have additional medical reports on her condition. Still, I can only address the medical reports the Claimant provided.

Prolonged disability

[21] Since I have determined the Claimant did not have a severe disability by her MQP date of December 31, 2020, I am not required to make a finding on the prolonged criterion

CONCLUSION

[22] The appeal is dismissed.

Gerry McCarthy
Member, General Division - Income Security