



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *JR v Minister of Employment and Social Development*, 2021 SST 427

Tribunal File Number: GP-20-1528

BETWEEN:

J. R.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Antoinette Cardillo

Teleconference hearing on: March 2, 2021

Date of decision: March 22, 2021

DECISION

[1] The Claimant, J. R., 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 34 years old. She has a university degree in chemistry. She was last employed as a customer service representative for the City of Toronto from July 2002 to January 2019, as well as a teacher's assistant from May 2015 to April 2019 when she stopped working due to her medical condition. The Appellant indicated on her application she felt she could no longer work as of January 2019. She bases her disability claim on difficulty using her right arm efficiently for typing, lifting and reaching as well as difficulty bending, twisting, turning and sitting for more than five (5) minutes. She also indicated she suffers from nerve pain in her right hand.

[3] The Claimant applied for a CPP disability pension on June 17, 2019¹. The Minister of Employment and Social Development (Minister) refused her application. Although, the Minister acknowledged her back and right upper extremity symptoms, the Minister submitted that the medical reports provided revealed no severe pathological findings or functional limitations, rather symptom improvement. While the Claimant's family physician reported depression, no severe psychiatric symptoms were identified nor participation in regular psychological or psychiatric based treatments and therapies, that would render her disabled. The Minister added that it was reasonable to expect, given the Claimant's age, education and work experience that she would be capable of alternate types of work, including suitable part-time employment. Thus, the severe and prolonged CPP disability benefit legislative criteria had not been satisfied. The Claimant appealed that decision to the Social Security Tribunal's General Division.

¹ GD2-18

What the Claimant must prove

[4] For the Claimant to succeed, she must prove she has a disability that was severe and prolonged by the date of the hearing.²

[5] The CPP defines “severe” and “prolonged”. A disability is severe if it makes a person incapable regularly of pursuing any substantially gainful occupation.³ It is prolonged if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁴

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

Reasons for my decision

[7] I find the Claimant has not proven she has a disability that was severe and prolonged by the hearing date. I reached this decision by considering the following issues.

The Claimant’s disability is not severe

- The Claimant’s limitations do not affect her ability to work

[8] The Claimant submitted that she has difficulty using her right arm efficiently for typing, lifting and reaching as well as difficulty bending, twisting, turning and sitting for more than five (5) minutes. She also reported nerve pain in her right hand. My focus though is not on the Claimant’s diagnosis.⁵ I must focus on whether she has functional limitations that get in the way of her earning a living.⁶ This means I have to look at **all** the Claimant’s medical conditions (not just the main one) and think about how her conditions affect her ability to work.⁷

[9] I find the Claimant does not have functional limitations. Here is what I considered.

² Service Canada uses a person’s years of CPP contributions to calculate their coverage period, or “minimum qualifying period” (MQP). The end of the coverage period is called the MQP date. See subsection 44(2) of the *Canada Pension Plan*. The Claimant’s CPP contributions are on GD2-5. In this case, the Claimant’s coverage period ends on the hearing date.

³ Paragraph 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

⁴ Paragraph 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

⁵ The Federal Court of Appeal said this in *Ferreira v. Canada (Attorney General)*, 2013 FCA 81.

⁶ The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

⁷ The Federal Court of Appeal said this in *Bungay v. Canada (Attorney General)*, 2011 FCA 47.

- **What the Claimant says about her limitations**

[10] The Claimant says she has limitations from her medical conditions that affect her ability to work in the following ways.

[11] In December 2018, she slipped and fell on stairs, and subsequently started having back pain and right arm pain as well as weakness. Her pain got progressively worse. Ultrasounds and x-rays of the shoulder did not show anything. She was taking Tylenol 3 for pain. She said that the more she did the more pain she felt. She also started having difficulty walking. She said that if she physically overexerts herself, she spends the next day in bed. Therapy and medication does not help. The infusion treatments help to reduce 50% of the nerve pain not the muscle pain. She has the infusion injection every eight (8) weeks. She explained that she feels pain in her right shoulder and back doing tasks like washing dishes, doing laundry or vacuuming. She can only do one task per day because of pain and fatigue. Her pain level is 5/10.

[12] The infusion treatment is still ongoing, she also takes medication (Gabapentin and two others) that help a little to reduce the pain.

[13] She tried physiotherapy and she also saw a chiropractor but the pain got worse. The treatments did however improve her range of motion.

[14] She also tried acupuncture and massage therapy but her sense of touch was too sensitive that she could not continue. She tried medical cannabis but it did not help.

[15] She explained that she started feeling depressed in May 2020. She began seeing Dr. Phillips for anxiety and depression.

[16] She said that she moved to British Columbia in January 2020 to try to do her Master. She however had difficulty focusing and remembering things. She returned home in March 2020 because of the pandemic and continued her courses on-line until July 2020. She returned to British Columbia but struggles with her studies, she does not think she can continue. It takes her longer to do her homework and laboratory work. She is fearful of walking and going up and down stairs. She forces her self to drive or takes the bus but it aggravates the pain.

[17] She does not think she can maintain a job because of the pain and because of her mental health. She is not reliable.

- **What the medical evidence says about the Claimant's limitations**

[18] The Claimant gave a genuine recount of her limitations and stated that they affected her ability to work. However, the Claimant must provide objective medical evidence that shows her functional limitations affect her ability to work by the hearing date.⁸ The medical evidence does not support what the Claimant says.

[19] An x-ray of her lumbar and thoracic spine dated January 2, 2019⁹ showed no abnormalities and an MRI scan dated January 7, 2019¹⁰ revealed slight scoliosis.

[20] On January 25, 2019¹¹, Dr. Ganty, stated the Appellant's symptoms were a combination of myofascial and facetogenic pain in the thoracic region on the right side, with features consistent with neuropathic pain when it radiates up towards her right shoulder. She declined nerve blocks, but consented to a trial of Lidocaine and Ketamine infusions to help control the neuropathic component to her pain. Dr. Ganty noted tenderness of her right shoulder and low back with decreased range of motion however, described her gait as normal, as well as her posture, and normal range of motion of the cervical spine.

[21] The clinical notes of Dr. Dunston, family physician, from January 2019 to March 2019¹² show some improvements of the Claimant's pain. She had bouts however with sadness and issues with low mood and fatigue.

[22] On April 4, 2019¹³, Dr. Dunston reported that the Claimant could not sit for prolonged periods without changing position but her condition had 70% improved from the onset; in May

⁸ The Federal Court of Appeal said this in *Warren v. Canada (Attorney General)*, 2008 FCA 377.

⁹ GD2-103

¹⁰ GD2-124

¹¹ GD2-109

¹² GD2-112 to 114

¹³ GD2-122

2019¹⁴, the infusion treatment helped; and on June 13, 2019¹⁵, she noted that Gabapentin also appeared to be helping.

[23] An MRI scan of the neck dated April 13, 2019¹⁶ showed mild spondylosis and on May 3, 2019¹⁷, an ultrasound report of the right shoulder showed mild to moderate tendinopathy.

[24] A report dated June 13, 2019¹⁸ from Dr. Dunston in support of the Claimant's disability application, indicated that the Claimant was diagnosed with pain in her back, right shoulder and right arm, as well as depression. She was unable to sit or walk for prolonged periods, or bend to lift objects, unable to type for prolonged periods, lie on her right side, reach overhead, lift or carry objects with her right arm because of her right shoulder and arm pain. She was prescribed a muscle relaxant, she was also prescribed medication for chronic pain, which were effective in decreasing her pain. Dr. Dunston also indicated that physiotherapy and chiropractic treatments reduced her pain. She tried medical cannabis but was unable to tolerate it. She benefited from Lidocaine and Ketamine infusions (anesthetics, used to treat neuropathic pain). She also reported that the Claimant was not able to drive, was sometimes unable to leave her house or socialize and she could not focus on tasks because of depression. Treatment included antidepressants and psychotherapy, which were all effective. Dr. Dunston recommended that she stop work on January 15, 2019, and noted that she would be able to return to work in the future to management/supervisory work that was not physical in nature.

[25] A letter from Dr. Dunston dated April 27, 2020¹⁹, stated that the Appellant was diagnosed with fibromyalgia in August 2019, by Dr. Mittal, Psychiatrist. The diagnosis was supported by Dr. Shamis, Rheumatologist. Dr. Dunston stated that the Claimant was unable to work at that time despite numerous trials of medication and therapies.

¹⁴ GD2-130

¹⁵ GD2-65

¹⁶ GD2-124

¹⁷ GD2-126

¹⁸ GD2-48

¹⁹ GD2-57

[26] On September 11, 2020, Robert Phillips, counsellor, stated in a letter that in his opinion, the Claimant's psychological symptoms were a direct result of her fibromyalgia. Activities like riding the bus, exercising, or fulfilling her academic responsibilities were either avoided or endured with severe pain. The Claimant reported feeling hopeless often. In sessions, she was anxious and overwhelmed. However, Mr. Phillips stated that diagnosing psychological conditions was outside the scope of his counselling practice.

[27] Then on September 25, 2020²⁰, Dr. Dusnton stated that the Claimant had experienced (and continued to experience) a significant decline in her ability to function because of her chronic pain and fibromyalgia. Her chronic pain impeded her ability to function. The fatigue as a result of her constant daily pain further impeded her ability to function. This was all compounded by her understandable depression, exacerbated by her chronic pain.

[28] However, in October 2, 2020, Dr. Ganty's report showed that the infusion treatment provided significant improvement of the pain and that the Claimant was on Effexor, which had helped with her mood. Dr. Ganty's previous report dated May 22, 2019²¹ noted that the infusion initially provided no improvement of pain but Gabapentin appeared to be helping with the pain. Then, October 2, 2019²², the infusion provided modest improvement of pain and from November 27, 2019²³ to October 2020, significant improvement was consistently noted.

[29] The evidence shows that Claimant's pain improved from her fall with medication, infusion treatment and therapies. In addition, regarding her depression, Dr. Dunston reported that treatment with antidepressants had been effective as well as psychotherapy. Dr. Ganty also reported that taking Effexor had helped with her mood.

[30] The medical evidence does not show the Claimant has functional limitations that affect her ability to work by the date of the hearing date. As a result, she has not proven that she has a severe disability.

²⁰ GD1-12

²¹ GD1-28

²² GD1-26

²³ GD1-16 to GD1-24

[31] When I am deciding if a disability is severe, I sometimes have to think about a person's age, level of education, language ability, and past work and life experience. This allows a realistic assessment of their work capacity.²⁴ I do not have to do that here because the Claimant's functional limitations did not affect her ability to work by the date of the hearing. This means she did not prove her disability was severe by then.²⁵

Conclusion

[32] I find the Claimant is not eligible for a CPP disability pension because her disability is not severe. Because I found the disability is not severe, I did not have to consider if it is prolonged.

[33] This means the appeal is dismissed.

Antoinette Cardillo
Member, General Division - Income Security

²⁴ The Federal Court of Appeal said this in *Villani v. Canada (Attorney General)*, 2001 FCA 248.

²⁵ The Federal Court of Appeal said this in *Giannaros v. Minister of Social Development*, 2005 FCA 187.