



Citation: *KF v Minister of Employment and Social Development*, 2021 SST 672

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: K. F.
Representative: Lauren Edwards

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated April 30, 2020 (issued by Service Canada)

Tribunal member: Adam Picotte

Type of hearing: Videoconference

Hearing date: September 15, 2021

Hearing participants: Appellant
Appellant's representative

Decision date: October 16, 2021

File number: GP-20-986

Decision

[1] The appeal is allowed.

[2] The Claimant, K. F., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of August 2018. This decision explains why I am allowing the appeal.

Overview

[3] The Claimant was a dedicated and hard working individual all her life. She continuously worked full time, complex work until her husband was involved in a motor vehicle accident in May 2016. At that time, she took six months off work to care for him. When she returned to work, her husband became dependent and clingy to the point that the Claimant became stressed and overwhelmed. She stopped working in January 2018 due to exhaustion.

[4] The Claimant applied for a CPP disability pension on July 29, 2019. The Minister of Employment and Social Development (Minister) refused her application. The Claimant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Claimant says she has been diagnosed with major depressive disorder and generalized anxiety disorder. She suffers migraine headaches, lacks ambition, eats poorly and has insomnia. Because of these conditions, she lives a sedentary life and does not do anything around her house or to care for herself.

[6] The Minister says the Claimant was able to work as a manager until January 2018, when she stopped work to become her husband's primary caregiver. This does not support an incapacity to work.

[7] The Minister further said that the Claimant did not require any aggressive medical interventions, as would be expected with a severe physiological or psychological condition. Further, information from the mental health professionals treating the Claimant did not describe any severe psychiatric symptoms. Finally, the

Claimant took early retirement, and this supported that she had capacity to perform some type of work.¹

What the Claimant must prove

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

[9] The *Canada Pension Plan* defines “severe” and “prolonged.”

[10] A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.³

[11] This means I have to look at all of the Claimant’s medical conditions together to see what effect they have on her ability to work. I also have to look at her background (including her age, level of education, and past work and life experience). This is so I can get a realistic or “real world” picture of whether her disability is severe. If the Claimant is able to regularly do some kind of work that she could earn a living from, then she isn’t entitled to a disability pension.

[12] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁴

[13] This means the Claimant’s disability can’t have an expected recovery date. The disability must be expected to keep the Claimant out of the workforce for a long time.

¹ GD6 Minister’s submissions

² Service Canada uses a claimant’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 section 44(2) of the *Canada Pension Plan*. The Claimant’s CPP contributions are on GD2-4-5. In this case, the Claimant’s coverage period ends after the hearing date, so I have to decide whether she was disabled by the hearing date.

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

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

[14] The Claimant has to prove she has a severe and prolonged disability. She has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not she is disabled.

Matters I have to consider first

I accepted the documents sent in after the hearing

[15] At the hearing, the Claimant indicated that she had not voluntarily retired from Shoppers Drug Mark but had rather gone onto long term disability benefits. I provided the Claimant with an opportunity to send in proof of receipt of long term disability benefits. She did that by submitting a July 9, 2019 letter confirm approval of benefits.⁵

[16] I then provided the Minister with an opportunity to respond to these documents. The Minister responded by indicating that receipt of the long term disability benefits did not impact it's assessment of the Claimant's denial of benefits.

[17] I have accepted the document as it is relevant to the appeal. I am also satisfied that both parties had an opportunity to make submissions on the document and that I can now proceed to making a decision.

Reasons for my decision

[18] I find that the Claimant has a severe and prolonged disability by September 15, 2021. I reached this decision by considering the following issues:

- Is the Claimant's disability severe?
- Is the Claimant's disability prolonged?

Is the Claimant's disability severe?

[19] The Claimant's disability is severe. I reached this finding by considering several factors. I explain these factors below.

⁵ GD9

– **The Claimant's functional limitations to work**

[20] The Claimant has diagnoses of major depressive disorder and generalized anxiety disorder. However, I can't focus on the Claimant's diagnoses.⁶ Instead, I must focus on whether she has functional limitations that get in the way of her earning a living.⁷ When I do this, I have to look at **all** of the Claimant's medical conditions (not just the main one) and think about how they affect her ability to work.⁸

[21] I find that the Claimant has functional limitations.

– **What the Claimant says about her functional limitations**

[22] The Claimant says that her medical conditions have resulted in functional limitations that affect her ability to work. She says that she has the following functional limitations:

- Being emotional;
- Not eating properly;
- Lacking any drive or ambition;
- Suffering from migraine headaches;
- An inability to care for her house;
- Feeling zombie-like;
- She can easily become emotional;
- Prone to losing her temper;
- Easily starts to shake and become anxious;

⁶ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁷ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁸ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- Difficulty keeping things in order; and
- An inability to commit to a schedule.

– **What the medical evidence says about the Claimant’s functional limitations**

[23] The Claimant must provide medical evidence that shows that her functional limitations affected her ability to work by September 15, 2021.⁹

[24] The medical evidence supports what the Claimant says.

[25] On October 1, 2019, Dr. Luczak completed a psychiatric examination of the Claimant.¹⁰ Dr. Luczak detailed that the Claimant felt helpless and hopeless and that she was finding little pleasure in life. Her life revolved her husband and caring for him. Her sleep was broken and as a result she was fatigued during the day. She found it difficult to concentrate.¹¹

[26] Dr. Luczak detailed that the Claimant’s impairments included disturbed sleep, energy, concentration, persistence, pace and mood.¹² Dr. Luczak detailed that the Claimant found it difficult to leave the home without her husband to socialize with friends.¹³

[27] Dr. Luczak opined that due to the Claimant’s depression, anxiety, disturbed sleep, diminished concentration, persistence, and pace, limited energy, difficulties making decisions, and constant worrying and fretting caused her to have a complete inability to engage in any employment or self-employment.¹⁴

[28] Ms. Katherine Geer completed an occupational therapy assessment of the Claimant on September 19, 2019. She detailed that the Claimant was noted to be

⁹ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹⁰ GD2-21

¹¹ GD2-26

¹² GD2-28

¹³ GD2-29

¹⁴ GD2-31

able to complete her daily activities from a physical standpoint. Although she reported neck and back pain. However, she was unable to deal with stress and resigned from her position as a manager with Shoppers Drug Mark.¹⁵

[29] Ms. Jamieson, nurse practitioner, relayed K. F. exhibited symptoms of anxiety and depression including frequent migraines, poor sleep, fatigue, weight gain and difficulty with memory and word finding.

[30] On December 3, 2019, she indicated that the Claimant suffered from major depression and generalized anxiety. She noted that the Claimant was experiencing many effects of depression and anxiety. These included frequent migraines, hair loss, memory loss both short and long term, significant sleep disruption, fatigue, weight gain, and muscle tension.¹⁶

[31] The medical evidence supports that the Claimant's major depressive disorder and generalized anxiety disorder prevented her from doing her usual job by September 15, 2021.

[32] Next, I will look at whether the Claimant followed medical advice.

– **The Claimant has followed medical advice**

[33] The Claimant has followed medical advice.

[34] To receive a disability pension, a claimant must follow medical advice.¹⁷ If a claimant doesn't follow medical advice, then she must have a reasonable explanation for not doing so. I must also consider what effect, if any, the medical advice might have had on her disability.¹⁸

¹⁵ GD2-49

¹⁶ GD2-132

¹⁷ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁸ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

[35] The Claimant has followed medical advice.¹⁹ The Claimant has continued to see an OT and a psychologist.²⁰ Moreover, her nurse practitioner indicated that there were no further tests, investigations or consultations pending that may assist in her recovery.²¹ I took this to mean that the Claimant had followed medical advice and that nothing further could be done to assist her.

[36] I now have to decide whether the Claimant can regularly do other types of work. To be severe, the Claimant's functional limitations must prevent her from earning a living at any type of work, not just her usual job.²²

– **The Claimant can't work in the real world**

[37] When I am deciding whether the Claimant can work, I can't just look at her medical conditions and how they affect what she can do. I must also consider factors such as her:

- age
- level of education
- language abilities
- past work and life experience

[38] These factors help me decide whether the Claimant can work in the real world—in other words, whether it is realistic to say that she can work.²³

[39] I find that the Claimant can't work in the real world.

[40] The Claimant is older. She was 57 at the time she stopped working entirely. However, she also benefits from a number of traits. She has an excellent work history, having most recently been employed as a manager at a Shoppers Drug Mark. She speaks English fluently and has many transferrable skills. When I think about her

¹⁹ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

²⁰ GD2-132

²¹ GD2-133

²² See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

²³ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

functional limitations though, I am left with finding her incapable of working in any capacity. Dr. Luczak was clear in her opinion that the Claimant was not able to engage in any employment or self-employment.²⁴ She could not concentrate, was constantly worrying and fretting, and had a diminished capacity for decision-making. These impairments are significant and would preclude the Claimant for any type of employment that she would otherwise be qualified for.

[41] Even with significant work experience, her age coupled with her anxiety and depression leave her unable to find work in the real world. I am also mindful that the Claimant has constant headaches, memory loss, and suffers from significant sleep disruption. While much of this is attributable to her husband's ongoing disability, I must consider the Claimant in a real world context. In that real world context, she is not able to function in a meaningful way that could allow her to be employed.

[42] I find that the Claimant's disability was severe by September 15, 2021.

Is the Claimant's disability prolonged?

The Claimant's disability is prolonged.

[43] The Claimant's conditions began in May 2016 when her husband was involved in a significant motor vehicle accident. She returned to work following an absence but ultimately left her employment in January 2018. At that time she was diagnosed with major depressive disorder and generalized anxiety disorder. These conditions have continued since then, and they will more than likely continue indefinitely.²⁵

[44] I note as well that the Claimant's nurse practitioner, Ms. Jamieson has recommended that the Claimant remain off work permanently. She did not think the Claimant was likely to see further improvement in the foreseeable future.²⁶

²⁴ GD2-31

²⁵ In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that a claimant has to show a severe and prolonged disability by the end of their minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

²⁶ GD2-134

[45] Given the duration of time involved as well as the nurse practitioner`s opinion, I am satisfied that the Claimant`s disability is also prolonged.

[46] I find that the Claimant`s disability was prolonged by September 15, 2021.

When payments start

[47] The Claimant had a severe and prolonged disability in January 2018 when she stopped working at Shoppers Drug Mart.

[48] However, the *Canada Pension Plan* says a claimant can't be considered disabled more than 15 months before the Minister receives their disability pension application. After that, there is a four-month waiting period before payments start.²⁷

[49] The Minister received the Claimant's application in July 2019. That means she is considered to have become disabled in April 2018.

[50] Payment of her pension starts as of August 2018.

Conclusion

[51] I find that the Claimant is eligible for a CPP disability pension because her disability is severe and prolonged.

[52] This means the appeal is allowed.

Adam Picotte
Member, General Division – Income Security Section

²⁷ Section 69 of the *Canada Pension Plan* sets out this rule. This means that payments can't start more than 11 months before the application date.