



Citation: *DB v Minister of Employment and Social Development*, 2021 SST 902

**Social Security Tribunal of Canada
General Division – Income Security Section**

Decision

Appellant: D. B.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated June 2, 2020 (issued by
Service Canada)

Tribunal member: Jean Lazure

Type of hearing: Videoconference

Hearing date: October 1, 2021

Hearing participants: Appellant

Decision date: October 23, 2021

File number: GP-20-1225

Decision

[1] The appeal is dismissed.

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

Overview

[3] The Claimant was 50 years old at the date of the hearing. In terms of education, the Claimant completed high school. She also took a computer course in 1993 but indicated she has not been able to maintain those skills, as she has never had the opportunity to practice them.

[4] The Claimant testified about her work experience and her resume is also on file¹. Since joining the workforce after high school, she has worked as a prep cook in two restaurants, as a cleaner for a janitorial company, and as a sales clerk in a clothing store. The Claimant also testified she worked on a farm peeling onions. The Claimant last worked as a cashier in a grocery store.

[5] The Claimant was diagnosed with Crohn's in the early 1990s². She has also had to contend with hip and leg pain due to osteoarthritis, which has led to two hip replacements. The Claimant testified to sleeping difficulties, notably sleep apnea.

[6] The Claimant stopped working as a cashier in a grocery store there when the pandemic started in April 2020. The Claimant has not worked since then.

[7] The Claimant applied for a CPP disability pension on October 19, 2018, date the Minister received her application³. The Minister of Employment and Social Development

¹ This is found in the file on page GD2-53.

² A report by Dr. Oscar Koller, her gastroenterologist, dated October 10, 2018, indicates she was diagnosed in 1991 on page GD2-54, while a note from the Grand Falls General Hospital on page GD3-13 indicates a diagnosis in January or February 1990.

³ This is found in the file on page GD2-4.

(Minister) refused her application. The Claimant appealed the Minister's decision to the Social Security Tribunal's General Division.

[8] The Claimant believes "enough is enough" and that she is tired from years and years of pushing herself. The Claimant believes she can no longer work due to her various health issues – Crohn's, pain, and low energy.

[9] The Minister says the Claimant's Crohn's disease is stable, that there is no indication of significant psychological problems and that her level of functionality should have increased after her latest surgery to allow her to do some type of work, even part-time. The Minister contends the Claimant still has some work capacity.

What the Claimant must prove

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

[11] The *Canada Pension Plan* defines "severe" and "prolonged."

[12] A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.⁵

[13] 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 is not entitled to a disability pension.

⁴ 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 MQP is on page GD4-12. 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.

⁵ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

[14] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁶

[15] This means the Claimant's disability cannot have an expected recovery date. The disability must be expected to keep the Claimant out of the workforce for a long time.

[16] 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.

Reasons for my decision

[17] I find that the Claimant has not proven she has a severe and prolonged disability by the hearing.

Is the Claimant's disability severe?

[18] I find that the Claimant's disability is not severe. I reached this finding by considering several factors. I explain these factors below.

[19] The Claimant says she has Crohn's disease, pain due to osteoarthritis, and low energy. However, I cannot focus on the Claimant's diagnoses.⁷ Instead, I must focus on whether she has functional limitations that get in the way of her earning a living.⁸ 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.⁹

[20] I find that the Claimant does not have functional limitations that would make her incapable regularly of pursuing any substantial gainful occupation.

⁶ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

⁷ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁸ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁹ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

– **The Claimant believes she has functional limitations as a result of her health issues**

[21] The Claimant says that her medical conditions have resulted in functional limitations that affect her ability to work:

- She has had Crohn’s disease since her teenage years;
- Crohn’s is unpredictable as she can eat one thing one day and not be bothered, and the same the next day and have diarrhea;
- She cannot eat most fruits and vegetables, which means she is missing nutrients;
- She says her energy level is very low and that she is always wanting to sleep;
- She has to take time off from work due to being exhausted all the time;
- She has had osteoarthritis even longer than she has had Crohn’s, and through the years, she has had a lot of pain;
- She indicates she has sleep apnea and sleeping difficulties due to pain;
- She is burnt out from years and years of pushing herself – “it’s too much” and “enough is enough” - and believes she can no longer work.

– **I was not convinced that the Claimant’s health issues keep her from working and the medical evidence is not supportive of the Claimant’s claims**

[22] I was not convinced that the Claimant’s health issues indeed make her incapable regularly of pursuing any substantially gainful occupation.

[23] The Claimant must provide medical evidence that shows that her functional limitations affect her ability to work by the hearing date.

[24] As to the Claimant having Crohn’s disease, I note that the Claimant’s CPP contributions¹⁰ indicate that she has been working her entire life despite this diagnosis. I note that a report by Dr. Laurie Malenfant dated September 16, 2019, indicates that her Crohn’s is well controlled (“Son Crohn semble quand même bien contrôlé”¹¹). I did not

¹⁰ This is found in the file on page GD4-12.

¹¹ Page GD2-163.

see anything in the medical file to indicate that her Crohn's has gotten worse to the extent that it can now prevent her from working.

[25] As to the Claimant's osteoarthritis, the same comments above relative to her Crohn's also apply to her osteoarthritis. The Claimant has worked her entire life despite osteoarthritis – including a first hip replacement – and there is nothing in the medical file to indicate that her condition has gotten worse, to the extent that it can now prevent her from working. In fact, I note that the Claimant said at the hearing that her condition has improved since her second hip surgery.

[26] As to the Claimant's low energy, there is unfortunately nothing in the medical evidence to substantiate this. The Claimant pointed to not being able to eat fruits and vegetables due to her Crohn's and that she would be lacking nutrients. However, she is able to eat some fruits and vegetables, and there is no evidence of malnourishment or effects from this in the medical file.

[27] As to the Claimant's sleep, she admitted at the hearing that her sleep has improved since she has been using a CPAP machine.

[28] The Claimant did suffer mental health issues in the past – most notably, a suicide attempt in March 2019 – but indicated at the hearing, "I am not depressed". And there is indeed nothing in the medical evidence to indicate that depression is still an issue to this day.

[29] When asked at the hearing if she could do a more sedentary job, the Claimant replied: "I could but I don't trust my brain, I have a hard time concentrating, there's days I have a hard time functioning, like today...". Again, there is nothing in the medical evidence about the Claimant having any cognitive issues.

[30] Finally, what the Claimant said at the hearing about why she stopped working and why she is not working at present gave me pause. The Claimant testified she initially stopped working due to Covid, at the very beginning of the pandemic, because her employer would not let her work with a mask and she is immuno-suppressed. I

believe I can take judicial notice that this has passed and that employees are not only allowed to work with masks, but still encouraged to do so to this day.

[31] The Claimant then said that “by the time the Covid was getting better (...) my hip was too much, I had too much pain”. I also note that this testimony was around her second hip replacement and I believe that that pain was either just before or after this operation.

[32] Finally, the Claimant said that in May of this year, she was about to resume working and she tripped in a cemetery and hurt herself. The Claimant therefore could not return to work in May. However, in her testimony, the Claimant attributes not returning to work more recently to her lack of energy. As indicated above, there is no evidence of this in the medical file.

[33] Considering the above, I find that the evidence – notably, the medical evidence - does not show that the Claimant has functional limitations that affect her ability to work by the hearing date. As a result, she has not proven she has a severe disability.

[34] Finally, when I am deciding whether a disability is severe, I usually have to consider a claimant’s personal characteristics. This allows me to realistically assess a claimant’s ability to work.¹²

[35] I do not have to do that here because I do not believe the Claimant’s functional limitations make her incapable of regularly of pursuing any substantially gainful occupation. This means she did not prove her disability was severe by then.¹³

¹² See *Villani v Canada (Attorney General)*, 2001 FCA 248.

¹³ See *Giannaros v Minister of Social Development*, 2005 FCA 187.

Conclusion

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

[37] This means the appeal is dismissed.

Jean Lazure
Member, General Division – Income Security Section