



Citation: *VC v Minister of Employment and Social Development*, 2023 SST 450

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: V. C.
Representative: S. C.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated August 24, 2021 (issued by
Service Canada)

Tribunal member: Lianne Byrne

Type of hearing: Teleconference

Hearing date: January 19, 2023

Hearing participants: Appellant
Appellant's representative

Decision date: February 23, 2023

File number: GP-21-1894

Decision

[1] The appeal is dismissed.

[2] The Appellant, V. C., isn't eligible for a Canada Pension Plan (CPP) disability pension. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant was 51 years old as of December 31, 2015. She worked as a short order cook. She wrote in her application for CPP disability benefits that she could no longer work as of June 2017 due to back pain caused by severe nerve root pressure, bilateral knee replacement, end stage arthritis, tear in her right shoulder, severe obesity, urine incontinence, bilateral carpal tunnel syndrome, depression, and anxiety.

[4] The Appellant applied for a CPP disability pension on February 25, 2021. The Minister of Employment and Social Development (Minister) refused her application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Appellant says that she has multiple health problems that rendered her totally disabled as of December 31, 2015. The medical reports on file indicate that all of her health problems existed at some level of severity before December 31, 2015. She worked as a short order cook for many years. She stopped working in early 2015 due to her health problems. She attempted to return to work in 2017 without success. She did not complete high school and does not have transferrable skills.

[6] The Minister says that she has multiple medical conditions, which have progressed over the years. However, the evidence provided does not support the presence of any severely disabling physical or mental health condition by way of diagnoses, treatments, medications, specialist referrals, or functional capacity evaluations that would render her disabled indefinitely for any and all kinds of work activity prior to December 31, 2015. In fact, she worked until June 2017.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2015. This date is based on her contributions to the CPP.¹

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

[9] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.²

[10] This means I have to look at all of the Appellant’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 Appellant 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.

[11] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.³

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

[13] The Appellant 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.

¹ Service Canada uses an appellant’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 Appellant’s CPP contributions are on page GD3-6.

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

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

Reasons for my decision

[14] I find that the Appellant hasn't proven she had a severe and prolonged disability by December 31, 2015.

Was the Appellant's disability severe?

[15] The Appellant's disability wasn't severe. I reached this finding by considering several factors. I explain these factors below.

– The Appellant's functional limitations didn't affect her ability to work as of December 31, 2015

[16] The Appellant's diagnoses include:

- Chronic pain, especially in her back and knees
- Bilateral carpal tunnel syndrome
- Obesity
- Urine incontinence
- Depression
- Anxiety

[17] However, I can't focus on the Appellant's diagnoses.⁴ Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.⁵ When I do this, I have to look at **all** of the Appellant's medical conditions (not just the main one) and think about how they affect her ability to work.⁶

[18] I find that the Appellant didn't have functional limitations that prevented her from suitable as of December 31, 2015.

⁴ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁵ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

⁶ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

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

[19] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work. She says that she has had health problems for many years.

[20] She worked (7:30-1:00 from Monday to Friday) from 2012 to 2017 as a short order cook in a high school cafeteria. Her duties included prepping, cooking, and serving food and preparing hot tables. Starting in about 2013 or 2014, she had pain in her knees, shoulders, and hands. Her fingers would go numb, causing her to drop things. In early 2015, she took some time off from work to try to focus on her health.

[21] She returned to light duties as a cashier in 2017. This was a sitting job, but she still had to get up every now and then. Her back was hurting. Her knees were locking up. Her fingers were going numb. She could not handle the money. She does not remember how long she tried to work, but thinks it was only a few weeks. She stopped working and has not returned to any type of work since then.

[22] She feels that she could no longer work as of 2015 due to the combination of her medical conditions. These include severe back pain, torn right rotator cuff, bilateral carpal tunnel syndrome (since 2012), knee pain, and asthma (for over 15 years).

[23] Her pain is constant and increases with activity. She cannot sit, stand or walk for long. Her knees often lock up, causing her to fall. She fractured her right knee in a fall. She had to have surgery to fix this. She is unable to bend or lift. She relies on her family to cook and clean.

[24] In February 2018, she had right knee surgery. She had left knee surgery in October 2018. Her knee pain did not improve. Her whole life has changed due to her health problems. She now suffers from anxiety and depression.

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

[25] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 2015.⁷

[26] The medical evidence does not support that the Appellant’s functional limitations affected her ability to work by December 31, 2015. Although I accept that some of her medical problems began prior to December 31, 2015, she remained capable of pursuing suitable work withing her limitations. The Appellant’s health deteriorated significantly after December 31, 2015.

[27] Dr. Sarah Rizk, family physician, reported on November 28, 2020 that she has been treating the Appellant’s primary medical condition since February 2007. She has lumbar spine pain with severe nerve root pressure, bilateral knee end stage arthritis, COPD, urine incontinence, and obesity. She has acute attacks of difficulty breathing. She has difficulty walking. Dr. Rizk did not recommend that she stop working because she retired on her own. Dr. Rizk does not indicate when each of these health problems began or how they were affecting her as of December 31, 2015.

[28] There are numerous medical reports on file from Dr. James Seligman, including the following:

- On November 23, 2017, she underwent a surgery to repair a meniscal tear. She was noted to have osteoarthritis in both knees.
- On December 8, 2017, she was noted to have significant arthritis in both knees. The meniscal tears were dealt with, but the arthritic pain is severe. She will have right total knee arthroplasty.
- On March 13, 2018, it is noted that she had right total knee replacement in February 2018. She is doing physiotherapy.

⁷ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

- On April 9, 2018, she was noted to be doing well.
- On May 28, 2018, she was doing very well. She wants the left side done.
- On October 16, 2018, she had left total knee arthroplasty.
- On October 29, 2018, she was noted to be doing physiotherapy.
- On November 26, 2018, her range of motion was good. She is doing activities as tolerated.
- On January 6, 2019, she was noted to have fractured her patella.
- On January 7, 2019, she was noted to be doing activities as tolerated.
- On June 8, 2019, she had right patella excision after fracturing it. Her pain has improved.
- On March 5, 2020, she was noted to have increased pain in the right knee.
- On May 11, 2020, her right knee continues to be painful. She is functioning well with occasional pain that comes and goes.
- On June 1, 2020, she was noted to have right knee pain. She may need a cortisone injection.

[29] It is evident from these reports that the Appellant has been struggling with her knee problems since at least 2017. However, these reports do not provide any insight into how her knees were affecting her as of December 31, 2015. They also show that her pain improved following surgery, however, worsened again after she fractured her right knee.

[30] On February 1, 2018 and September 18, 2018, Dr. Beham Kashanian noted that she has a history of bilateral carpal tunnel syndrome. On February 1, 2018, Dr. Golsa Sheykholeslami noted that she has mild asthma. However, there is no indication of how these conditions were affecting her as of December 31, 2015.

[31] On October 26, 2020, Dr. Vivek Panchapakesan reported that she sustained an injury to her right finger about a month ago. This injury occurred many years after December 31, 2015.

[32] There are also multiple reports regarding her mental health that are dated well-passed December 31, 2015. These include the following:

- On November 23, 2021, it is noted that she was referred for support with symptoms of chronic anxiety.
- On January 6, 2022, she had an initial assessment in which she reported exacerbations in anxiety and depressive symptoms. She had been able to manage her symptoms until recently. It is suspected that the impacts of COVID-19 contributed to a deterioration in her mood.
- On February 16, 2022, she reported some improvement in her mood.
- On March 16, 2022, she wanted to start a mild anxiety medication.
- On April 29, 2022, she is feeling better with the good weather.

[33] These reports indicate that the Appellant's mental health worsened many years after December 31, 2015. However, they do not offer any insight into how her mental health was affecting her ability to work as of December 31, 2015.

[34] There is also a diagnostic report dated June 4, 2012, showing that she has bilateral suprapatellar effusion/bursitis. However, she was able to work for many years after the date of this report despite this condition.

[35] The medical evidence does not support that the Appellant's functional limitations prevented her from doing light work, including her work as a short order cook, as of December 31, 2015.

[36] Given the lack of medical evidence dated prior to December 31, 2015, I find that there is evidence of work capacity. I now have to decide whether the Appellant can

regularly do other types of work. To be severe, the Appellant's functional limitations must prevent her from earning a living at any type of work, not just her usual job.⁸

– **The Appellant could work in the real world as of December 31, 2015**

[37] When I am deciding whether the Appellant 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 Appellant can work in the real world—in other words, whether it is realistic to say that she can work.⁹

[39] The Appellant was 51 years old as of December 31, 2015. She is fluent in the English language. She did not complete high school. She worked as an assistant to a teacher in a X school. She then worked as a short order cook.

[40] I find that the Appellant could work in the real world as of December 31, 2015. Despite her level of education and work experience, she is fluent in the English language and young enough to upgrade her education or retrain for another job. Her functional limitations did not prevent her from pursuing light or sedentary work as of December 31, 2015.

– **The Appellant didn't try to find and keep a suitable job**

[41] If the Appellant can work in the real world, she must show that she tried to find and keep a job. She must also show her efforts weren't successful because of her

⁸ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

⁹ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

medical conditions.¹⁰ Finding and keeping a job includes retraining or looking for a job she can do with her functional limitations.¹¹

[42] The Appellant stopped working in early 2015. She didn't make any effort to return to this job or look for another job that did not involve so much standing prior to December 31, 2015. She tried to return to work in 2017, but her health had worsened by that point.

[43] Therefore, I can't find she had a severe disability by December 31, 2015.

Conclusion

[44] I find that the Appellant isn't eligible for a CPP disability pension because her disability wasn't severe. Because I have found that her disability wasn't severe, I didn't have to consider whether it was prolonged.

[45] This means the appeal is dismissed.

Lianne Byrne
Member, General Division – Income Security Section

¹⁰ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

¹¹ See *Janzen v Canada (Attorney General)*, 2008 FCA 150.