



Citation: *BB v Minister of Employment and Social Development*, 2022 SST 1606

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

Decision

Appellant: B. B.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated April 21, 2021 (issued by
Service Canada)

Tribunal member: Sharon Buchanan

Type of hearing: Teleconference

Hearing date: October 18, 2022

Hearing participants: Appellant
Appellant's Witness

Decision date: November 16, 2022

File number: GP-21-1239

Decision

[1] The appeal is dismissed.

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

Overview

[3] The Appellant is 41 years old. She graduated from college in 2007 as a medical laboratory technologist. Since then the Appellant has worked as a lab technician in quality control labs in private industry and in hospitals. The Appellant has a history of anxiety and various fears that have interfered with her work situations.¹ The Appellant's work was modified in 2019 to help her manage her mental health symptoms. In March 2020 the Appellant stopped working so that symptoms related to her acute chronic generalized anxiety disorder and PTSD could be assessed and treated. She was anxious all of the time, nervous, afraid to leave her home and having panic attacks. The Appellant began a gradual return to modified work in July 2022. She says that working is making her health deteriorate again.

[4] The Appellant applied for a CPP disability pension on July 6, 2020. 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 only feels safe at home. She says that she can't work. She is constantly waiting for the next trigger that will send her spiraling into another panic attack. She doesn't know when this will happen, just that it will.

[6] The Minister says that while the medical reports indicate some limitations, with ongoing treatment further improvement would be expected, likely resulting in her ability to return to work.

¹ See GD2-181

What the Appellant must prove

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

[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.³

[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.⁴

[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.

² 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 pages GD2-41. In this case, the Appellant’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.

Reasons for my decision

[14] I find that the Appellant hasn't proven that she had a severe and prolonged disability as of the hearing date.

– The Appellant's disability isn't severe

[15] The Appellant's disability isn't severe. I recognize that she has struggled with her health, and at times it is hard for her to work. But her recent work efforts show that she can regularly work part-time at substantially gainful employment.

[16] I reached this finding by considering several factors. I explain these factors below.

– The Appellant's functional limitations do affect her ability to work

[17] The Appellant has acute chronic generalized anxiety disorder, major depressive disorder, mood disorder, post traumatic stress disorder (PTSD) and agoraphobia.

[18] However, I can't focus on the Appellant's diagnoses.⁵ Instead, I must focus on whether she has functional limitations that get in the way of her earning a living.⁶ 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 affected her ability to work.⁷

[19] The Appellant has functional limitations that affect her ability to work.

– What the Appellant says about her functional limitations

[20] The Appellant's job as a lab technician required her to take samples, and to analyze and report on the outcomes. She was struggling and her mental health was declining due to incidents at work and in her personal life with the accident of a loved one.⁸ She said that she has struggled with anxiety and depression for a long time, and these events turned out to be very traumatic for her. She says she can't work. She says:

⁵ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁶ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁷ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

⁸ See GD2-165

- She sweats profusely with the slightest activity.
- She says she is constantly waiting for the next stressor that will push her over the edge.
- It's difficult some days just to get up out of bed. It's difficult to drive. It's difficult to answer the door. It's difficult to maintain a relationship with her partner.
- She used to be really active. She swam, camped, and walked. She enjoyed her family and friends, read and knit. She no longer enjoys or participates in these activities.
- She drives only when there is no other option, and then frequently has a panic attack and has to pull over and call her partner to come and get her.
- She often lacks the interest or energy for regular activities of daily living. For example, she sometimes ignores basic personal care like showering and washing her hair.
- She said when she is working she cannot manage anything else. She doesn't cook or feel like she can manage cleaning the house.
- She only feels safe at home. She doesn't like being around people. She avoids grocery shopping and goes with her partner.

– **What the Appellant's Witness says about her Limitations**

[21] The Appellant's partner of 12 years described how the Appellant's symptoms affect her. He said the Appellant is a total wreck when she drives. He is afraid for her when she drives. He said she has panic attacks, pulls over and calls him to come and get her – most recently the week before the hearing. He said her health is deteriorating again since she has returned to work.

[22] The Appellant's partner said he is lucky that he has a good employer because he has been called away from work so often. He drives the Appellant to most of her medical appointments, and to get groceries. He doesn't go to their cabin very often any more because the Appellant doesn't want to go. He doesn't trust her to be on her own. He said that this has been going on for years.

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

[23] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by the hearing date.⁹

[24] The medical evidence supports some of what the Appellant says.

[25] In early 2019 the Appellant was experiencing panic attacks and symptoms related to her chronic anxiety and mood disorder. Longstanding depression had been triggered by work incidents.

[26] The Appellant began a modified work schedule in May 2019 to accommodate her symptoms. She was working .5 to .6 of a full-time schedule, and was not doing any sample collections. From May 2019 until March 2020 the Appellant’s family physician and her therapists continued to support this modified work schedule. For example:

- In September 2019 Dr. Booth said that the Appellant’s symptoms had been worse since April/May 2019. He was optimistic that the Appellant would improve, but said he didn’t know what the expected duration of her restrictions would be.¹⁰
- In September 2019 psychologist Sonya MacDonald said the Appellant’s anxiety and depressive symptoms fell in the moderate range.¹¹
- In October 2019 Sonya Macdonald said that the Appellant was tolerating the .6 FTE modified work schedule and recommended the employer put a temporary accommodation for this modified schedule in place for six months.¹²

[27] This treatment plan changed in March 2020 when the Appellant saw a new psychologist, Kate Tompkins. The psychologist diagnosed the Appellant with PTSD. Ms. Tompkins said that most, if not all of the Appellant’s symptoms of depression and

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

¹⁰ See GD2-66

¹¹ See GD2-71

¹² See GD2-87

anxiety were signs of PTSD.¹³ The Appellant has an approved WCB claim for PTSD related to one of these incidents.¹⁴

[28] The psychologist recommended that the Appellant not work, even on a part-time basis, until she had been assessed and completed treatment.

[29] The Appellant stopped working in March 2020.

[30] The Appellant has participated in a broad range of treatments with a goal of her returning to work. There were setbacks, but the medical evidence also documents gradual improvements.

[31] The Appellant's family physician said in July 2020 that he expected the Appellant would return to part or full-time work in one to two years.¹⁵ Her psychologists have expressed similar opinions and were hopeful that she would return to her job.

[32] In April 2021 the Appellant's psychologist Glenn Gray responded to a series of questions from the Worker's Compensation Board (WCB). The psychologist said that he believed that the Appellant had the potential to return to her pre-injury work, however not initially at full capacity. He said the Appellant was seeking an accommodation where she could continue to work primarily as a technician in the hospital lab where her interactions with patients would be minimized.¹⁶

[33] In July 2022 the Appellant began a graduated return to her work as a lab technician at the hospital. At the time of the hearing she was still attempting to work a reduced and modified workload of four hour shifts, four days a week. She works in the lab and her contact with patients is minimized.

¹³ See GD2-164

¹⁴ See GD1-24

¹⁵ See GD2-200

¹⁶ See GD1-11

[34] The medical evidence supports that the Appellant has functional limitations that affect her ability to perform her full-time duties at her job as a lab technician in the hospital. Her limitations prevent her from working more than 16 hours a week.

– **The Appellant can work despite her functional limitations**

[35] The Appellant can work despite her functional limitations.

[36] In July 2022 the Appellant began a graduated return to her former job. The work is modified so that she is not required to take sample collections and she works in the lab. Her hours of work are reduced. She said that she started working three days a week. She said that the plan was that she would be working a full schedule by the end of July. She said she has not been able to manage this and since mid August she is trying to work 4 hour shifts, 4 days a week.

[37] The Appellant and her partner both describe the Appellant's condition deteriorating with her current return to work. The Appellant said that she is unable to do the work. She describes being caught up in the same turmoil as before.

[38] She said:

- She can't think or remember things any more, and it takes her four times longer for her to complete work tasks.
- She takes breaks all of the time – more than the regularly scheduled breaks that are allowed.
- She said her health is deteriorating. Her dread and panic are increasing, she is losing hair and not sleeping.
- She said she was able to do her housework when she wasn't working but now she can't.
- She said that she only works four hour shifts but stresses 24 hours.

[39] I acknowledge that the Appellant's condition is longstanding. She has been away from work before because of an escalation of her mental health symptoms. For example, in 2016 the Appellant was on leave from her work in a private lab.

Psychologist Doreen Smith said then that the Appellant was struggling to adjust to her employer's expectations. That she was in conflict knowing she couldn't accommodate her fears to meet the requirements of her workplace. Her symptoms then were depression with crying, lethargy, multiple fears and spiraling down into agoraphobia.¹⁷

[40] However the Appellant did eventually return to the workplace. She worked for her present employer from November 2017 until March 2020. Her physicians and therapists thought she could return to work again this time. And in July she did began a gradual return to modified duties at her job.

[41] Although the Appellant said she has been missing one or two days every week due to panic attacks, when she looked at her calendar she was unable to recall more than a few of the dates when this happened. And she also said that some of the missed time was for medical appointments. I am not persuaded that she was consistently missing one and two days every week.

[42] The Appellant said she cannot do the job. However there is no evidence other than from the Appellant and her partner that she is unable to do this work for reasons related to her disability. There is no medical evidence to show that the Appellant can't do this work.

[43] The last medical opinion about the Appellant's ability to work is from psychiatrist Dr. Mulhall on March 13, 2021. Dr. Mulhall reported that the Appellant was engaged in treatment and keen to return to work – hopeful that the impact was temporary. He said the Appellant was to continue with her psychological treatment. He said the Appellant hoped to return to work in the previous .5/.6 full time equivalent position with the reorganization of her duties focused on laboratory work that did not involve direct patient contact.

[44] In April 2021 the Appellant's psychologist Glenn Gray said he believed the Appellant had the potential to return to her pre-injury work. He said at that time she lacked the confidence in her own emotional stability, and believed that her ideal job

¹⁷ See GD2-181

would involve minimal patient contact, although she was willing to work on her coping in this area. Mr. Gray suggested a trial of a graduated return to work with accommodation to build the Appellant's confidence and adaptability. He said that he along with the OT would continue to work with the Appellant to develop personal coping strategies.¹⁸

[45] The Appellant has returned to modified work as contemplated by her medical team. There is no medical information about her health condition since she has returned to work. There is also no evidence from the Appellant's employer about her job performance or to show that she is unsuccessful for reasons related to her disability.

[46] As noted in Glenn Gray's return to work plan, the Appellant's current employment is supported by ongoing counselling. She continues to receive counselling from her psychologist and sees her OT twice a week.¹⁹

– **The Appellant is capable of regularly working at a substantially gainful rate**

[47] The Appellant is capable regularly of working at a substantially gainful rate. By working 16 hours a week on average, the Appellant is earning a substantially gainful income of \$4,000 per month since July 2022.²⁰ She missed some days, and takes breaks, but didn't miss significant amounts of time because of her medical condition.

– **The Appellant doesn't have a benevolent employer**

[48] The Appellant doesn't have a benevolent employer.

[49] If the Appellant had a benevolent employer, it could mean that she wasn't actually capable of working at her job, despite what her income showed.

[50] A benevolent employer will change working conditions and lower their expectations if an employee has limitations. They expect significantly less from the

¹⁸ See GD1-11

¹⁹ She said this at the hearing

²⁰ She said this at the hearing

disabled employee than from other employees. They accept that the employee can't work at a competitive level.²¹

[51] This doesn't describe the Appellant's work with the hospital.

[52] While her work was modified to remove the responsibility for collecting samples, she continues to work in the lab. She said that she believes analysis, and working in the lab are her strengths. The fact that she takes breaks as needed, and that her work schedules were modified means the job was flexible, not that she had a benevolent employer. That kind of accommodation is expected in a competitive job market. It is the same accommodation that was in place for her from May 2019 until March 2020.

– **The Appellant can work in the real world**

[53] 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 ability, and past work and life experience. These factors help me to decide if she has any ability to work in the real world.²²

[54] The Appellant is young. She is 41 and has a college education. Her years of experience working would be an asset if she lost her current job. She is young enough that she could retrain. Her positive characteristics would help her in the real world.

[55] I also note that the Appellant hasn't attempted to work anywhere other than as a lab technician, most recently in the hospital. The Appellant said that her triggers are everywhere, so it wouldn't matter where she works. She doesn't want to leave her house for any reason.

[56] The medical evidence however supports that her current workplace may pose particular challenges for the Appellant that she would not find in another job. Dr. Booth said that factors contributing to the Appellant's condition were workplace stress and shift

²¹ *Atkinson v Canada (Attorney General)*, 2014 FCA 187

²² *Villani v. Canada (Attorney General)*, 2001 FCA 248

work.²³ Dr. Mulhall said that the Appellant's PTSD is specific to her workplace injury.²⁴ Psychologist Kate Tompkins said that in her opinion most, if not all, of the Appellant's depression and anxiety symptoms were actually signs of PTSD.

[57] The Appellant is capable regularly of working at a substantially gainful rate, and is earning a substantially gainful income. I therefore find that her disability isn't severe.

Conclusion

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

[59] This means the appeal is dismissed.

Sharon Buchanan
Member, General Division – Income Security Section

²³ See GD2-64

²⁴ See GD1-24