



Citation: *PN v Minister of Employment and Social Development*, 2022 SST 235

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

# Decision

**Appellant:** P. N.  
**Representative:** Rajinder Johal

**Respondent:** Minister of Employment and Social Development

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

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**Tribunal member:** Jean Lazure

**Type of hearing:** Teleconference

**Hearing date:** October 22, 2021

**Hearing participants:** Appellant  
Appellant's representative

**Decision date:** November 11, 2021

**File number:** GP-20-1129

## Decision

[1] The appeal is dismissed.

[2] The Claimant, P. N., 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 61 years old at the date of the hearing. In terms of education, the Claimant completed grade 10. The Claimant immigrated to Canada in 1990.

[4] In terms of work experience, since coming to Canada, the Claimant has held various jobs as a CNC (computer numerical control) machine operator.

[5] The Claimant was diagnosed with coronary artery disease in June 2018. He stopped working at that time and has not worked since then.

[6] The Claimant applied for a CPP disability pension on December 13, 2019, date the Minister received his application<sup>1</sup>. The Minister of Employment and Social Development (Minister) refused his application. The Claimant appealed the Minister's decision to the Social Security Tribunal's General Division.

[7] The Claimant submits that based on his physical condition, his condition is severe, prolonged, indefinite, and that he is incapable of working.

[8] The Minister says the Claimant's cardiac status has been stable and that the evidence does not reveal any significant cardiac disease. The Minister argues that while it "is recognized that Mr. N. has some functional limitations; however, in the absence of severe pathology, engaging in suitable work activities is not medically contraindicated."<sup>2</sup>

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<sup>1</sup> This is found in the file on page GD2-31.

<sup>2</sup> This is found in the Minister's submissions on page GD4-6.

## What the Claimant must prove

[9] For the Claimant to succeed, he must prove he has a disability that is severe and prolonged by the hearing date.<sup>3</sup>

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

[11] A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.<sup>4</sup>

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

[13] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.<sup>5</sup>

[14] 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.

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

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<sup>3</sup> 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 he was disabled by the hearing date.

<sup>4</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

<sup>5</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

## Reasons for my decision

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

### Is the Claimant's disability severe?

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

[18] The Claimant says he has coronary artery disease. However, I cannot focus on the Claimant's diagnoses.<sup>6</sup> Instead, I must focus on whether he has functional limitations that get in the way of his earning a living.<sup>7</sup> 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 his ability to work.<sup>8</sup>

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

#### – The Claimant says he cannot work

[20] At the hearing, the Claimant testified to the following as to why he cannot work:

- He stopped working in June 2018 because he had pain;
- He had surgery around that same time – angioplasty – and had stents put in;
- He has not worked since June 2018;
- He was not offered any light duties by his employer because none were available;
- He would not have been able to perform light duties if asked;
- He can just walk a bit because then he feels tired;
- When asked who does the household chores at home, he indicated he can just do light work and just helps his wife;

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<sup>6</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>7</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>8</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- He cannot lift or carry any objects, saying that if he lifts anything he has headaches, he has pain;
- He can drive, but that he does not drive for longer periods;
- He has regular appointments with both his family physician and his cardiologist;
- His earnings of \$18,776 were a severance package, he never worked in 2019.

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

[21] I was not convinced that the Claimant's health issues indeed make him incapable regularly of pursuing any substantially gainful occupation.

[22] I did not find the Claimant's testimony particularly exhaustive or compelling as to whether he can work or not. I simply did not find the Claimant put enough out there in his testimony to convince me that he cannot work and why that would be.

[23] Furthermore, the Claimant must provide medical evidence that shows that his functional limitations affect his ability to work by the hearing date. I do not find the medical evidence convincing to this effect.

[24] The Claimant's family doctor, Dr. Y.J. Lin, filed a report dated December 13, 2019<sup>9</sup>. He indicated the Claimant's diagnosis was coronary artery disease. He recommended the Claimant stop working as of June 2018. He was unsure whether the Claimant could return to any type of work in the future.

[25] The reports on file by his cardiologist, Dr. Ram Aggarwal, all seem to speak to a stable cardiac condition and of atypical discomfort that occurs not during exertion, but the next day or days after exertion. The following are excerpts from the different reports by Dr. Aggarwal:

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<sup>9</sup> This is found in the file on page GD2-73.

- On August 22, 2019, Dr. Aggarwal wrote “Since his last clinic visit, he is symptomatically stable and continues to have some bouts of atypical chest discomfort that can last several days at a time. He only has occasional exertional component, but is mainly atypical in nature. He also describes occasional shortness of breath with climbing stairs.”<sup>10</sup>;
- On October 13, 2020, Dr. Aggarwal wrote “P. N. states that with respect to functional capacity, he can walk 30 minutes at a time without any overt complaints of chest pain or dyspnea. He states the next day after his exercise, he feels some discomfort but it is clearly not related to any exertional component.”<sup>11</sup>;
- In that same report dated October 13, 2020, Dr. Aggarwal wrote “In summary, P. N. appears to be relatively stable from a cardiac perspective without any overt symptoms of ischemia, heart failure or arrhythmia. He has atypical chest discomfort that is not related to exertion.”<sup>12</sup>;
- On June 11, 2011, Dr. Aggarwal wrote “Over the last year or two he has had bouts of atypical discomfort. He states while doing activity, he has no real discomfort. However, the next day, he will have a bout of chest discomfort and headache and then his symptoms will last for a week at a time. There is no clear-cut exertional exacerbation with this. I once again strongly advised him that his symptoms are quite atypical in the sense that it happens the next day and not during exertion.”<sup>13</sup>;
- Dr. Aggarwal filed a final report after having the Claimant undergo a stress echo, on July 15, 2021: “He complains of atypical discomfort, usually occurring next day after exerting himself. It does not at the time of exertion. At

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<sup>10</sup> This is found in the file on page GD5-24.

<sup>11</sup> This is found in the file on page GD5-16.

<sup>12</sup> Page GD5-16.

<sup>13</sup> This is found in the file on page GD7-5.

the present time I advised him that his symptoms are atypical and his stress echo was relatively nonfocal at the level of stress obtained.”<sup>14</sup>

[26] It is difficult for me to reconcile these reports with being incapable regularly of pursuing any substantially gainful occupation. I find that the words used by Dr. Aggarwal simply fall short of words one would usually use to describe a person so disabled that they essentially cannot work.

[27] For example, I note that Dr. Aggarwal does not speak of pain, he speaks of discomfort, even saying “some discomfort”. Words are important, and I believe there to be a difference between pain and discomfort. Dr. Aggarwal also notes that the Claimant’s condition is stable.

[28] And when I compare this medical evidence with the Claimant’s testimony, it is difficult for me to conclude he is disabled. There was little evidence about how often this discomfort or pain occurs, what its effects are on the Claimant, how the Claimant copes with it, and why exactly he cannot work despite this discomfort or pain.

[29] Also, I note that this discomfort occurs only after exertion, and not during. There are many jobs that would not have the Claimant exert himself and provoke the discomfort. The Claimant, in his testimony, indicated he is capable of light work: “I can just do light work”.

[30] Considering the above, I find that the evidence – notably, the medical evidence - falls short of proving that the Claimant has functional limitations that affect his ability to work by the hearing date. As a result, he has not proven he has a severe disability.

[31] 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.<sup>15</sup>

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<sup>14</sup> This is found in the file on page GD7-2.

<sup>15</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[32] I do not have to do that here because I do not believe the Claimant's functional limitations make him incapable of regularly of pursuing any substantially gainful occupation. This means he did not prove his disability was severe by then.<sup>16</sup>

## **Conclusion**

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

[34] This means the appeal is dismissed.

Jean Lazure  
Member, General Division – Income Security Section

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<sup>16</sup> See *Giannaros v Minister of Social Development*, 2005 FCA 187.