



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *GC v Minister of Employment and Social Development*, 2021 SST 283

Tribunal File Number: GP-19-1733

BETWEEN:

**G. C.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Adam Picotte

Date of decision: March 1, 2021

## **DECISION**

[1] The Claimant's disability benefit was correctly cancelled at the end of April 2015 when she no longer had a severe disability as defined in the Canada Pension Plan (CPP).

## **OVERVIEW**

[2] The Claimant worked as a seamstress. She applied for a CPP disability benefit in June 2011. The benefit was granted with an onset date of May 2011. On December 12, 2017, a reassessment was started when the Claimant's earnings in 2015 and 2016 showed substantially gainful earnings. As a result, her benefits were ceased with an effective date of May 1, 2015. This meant she had to repay \$29,138.61. The Claimant requested a reconsideration of the decision to cancel her benefit. The Minister denied the request for reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] In order to continue to qualify for a CPP disability benefit, the Claimant must continue to satisfy the criteria set out in the legislation. In the case of cancelling a benefit, it is the Minister's onus to prove on a balance of probabilities that a Claimant no longer qualifies.

## **ISSUE(S)**

[4] Did the Claimant's conditions continue to result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation on and after April 2015?

## **ANALYSIS**

[5] Disability is defined as a physical or mental disability that is severe and prolonged<sup>1</sup>. A person is considered to have a severe disability if incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death. A person must prove on a balance of probabilities their disability meets both parts of the test, which means if the Claimant meets only one part, the Claimant does not qualify for disability benefits.

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<sup>1</sup> Paragraph 42(2)(a) *Canada Pension Plan*

## Severe disability

*Did the Claimant return to substantially gainful work after April 2015?*

[6] I have determined that the Claimant did return to substantially gainful employment after April 2015. In large part, I have made this determination because the Claimant was working and earning wages comparable to what she had historically made as a seamstress.

[7] I must assess the severe part of the test in a real world context<sup>2</sup>. This means that when deciding whether a person's disability is severe, I must keep in mind factors such as age, level of education, language proficiency, and past work and life experience.

[8] I am mindful that the Claimant was in her late 50's when her benefit was cancelled and that she had only basic education.

[9] A review of the Claimant's earnings from 2012 – 2017 demonstrates that she made the following earnings during that time:

2012	\$5,179
2013	\$6,542
2014	\$8,163
2015	\$16,547
2016	\$22,444
2017	\$19,527 <sup>3</sup>

[10] From 2000 to 2010 the Claimant's earnings ranged from \$15,614 to \$25,056<sup>4</sup>

[11] Section 68.1 of the CPP Regulations provides a definition of substantially gainful earnings. This is a helpful gauge to assess whether a Claimant has been able to return to substantially gainful employment. I note this provision because in all 2015, 2016, and 2017, the Claimant made more than the amount set out in the CPP Regulations.<sup>5</sup>

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<sup>2</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

<sup>3</sup> GD2-50

<sup>4</sup> GD5-21

<sup>5</sup> The calculations of substantially gainful earnings is 12 times the maximum allowable amount for a CPP disability benefit.

[12] On the face of the earnings, I was satisfied given the criteria set out in section 68.1 of the CPP regulations and the Claimant's historical earnings that she had returned to substantially gainful employment as of the end of April 2015 and therefore no longer qualified for a disability benefit.

[13] However, I also wanted to consider whether her employer could be considered a benefit employer for the purpose of entitlement.

*Was X a benevolent employer?*

[14] If employed by a benevolent employer, the Claimant could still be considered to have a severe disability. This is because the test for severe is being incapable regularly of pursuing any substantially gainful occupation. In essence, a benevolent employer has accommodated a Claimant to the point that the work being performed can no longer be said to meet the criteria of severe.<sup>6</sup>

[15] A benevolent employer is an employer who will vary the conditions of the job and modify their expectations of the employee in keeping with his or her limitations. The performance, output, or product expected from the Claimant are considerably less than the usual performance output expected from other employees.<sup>7</sup>

[16] I asked the Claimant about working as a seamstress. She wrote that her job as a seamstress was to sew clothing for people at a custom tailoring shop.<sup>8</sup> She wrote that when she returned to work in 2015 she was working 26 hours a week. She was provided with a small stool and a new chair. These helped to reduce her back pain.

[17] I also asked the Claimant if she was provided with any assistance. She told me that other staff members would press garments. This was helpful for her because it meant she did not have to get up and down from her workspace during the course of the day.

[18] What I understood from the Claimant is that she worked part time, did not need to press garments, and was provided with some changes to her workstation. While it is clear these

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<sup>6</sup> *Chaisson v. MHRD* CP4821

<sup>7</sup> *Atkinson v. Canada (Attorney General)*, F.C.J. No. 840,

<sup>8</sup> GD7-2

improved her ability to work, I cannot say they resulted in a reduced production compared to other employees. Her primary function was to sew clothing. There was no reduction or change in this requirement for her employment. Given these facts, I have found that she was not working for a benevolent employer.

[19] For these reasons, I have determined that the Claimant was no longer disabled within the meaning of the CPP by the end of April 2015.

[20] While I have determined that the Claimant no longer qualified for a CPP disability benefit by the end of April 2015, she is not precluded from discussing a payment plan with the Minister. She is also not precluded from again applying for a disability benefit should she feel she again qualifies.

## **CONCLUSION**

[21] The appeal is dismissed.

Adam Picotte  
Member, General Division - Income Security