



Citation: *EL v Minister of Employment and Social Development*, 2021 SST 705

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

**Decision**

**Claimant:** E. L.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated July 17, 2020 (issued by  
Service Canada)

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**Tribunal member:** Antoinette Cardillo

**Type of hearing:** Teleconference

**Hearing date:** October 5, 2021

**Hearing participants:** Claimant

**Decision date:** October 25, 2021

**File number:** GP-21-355

## Decision

[1] The appeal is dismissed.

[2] The Claimant's current application for the Canada Pension Plan (CPP) disability benefits submitted in February 2020 is *res judicata* meaning that the issue of disability has already been determined, there is a final and binding decision dated August 27, 2012. This decision explains why I am dismissing the appeal.

## Overview

[3] In her notice of appeal date stamped on February 10, 2021<sup>1</sup>, the Claimant says that she has been fighting for her CPP disability benefits for over 13 years. She has provided all required medical reports and income tax statement of remuneration for all the years required, namely 2001 to 2004. She was an active contributor at the jobs that she held. At the onset, she was told that she did not have sufficient personal information to qualify, which she submitted. Afterwards, she was advised that there was not sufficient medical information, which she submitted. She was again denied. She feels that she does have sufficient contributions to qualify.

[4] At the hearing, the Claimant stated that she is asking for the CPP disability benefits as she did 13 years ago and that she was disabled. Although a decision was rendered on this issue, she feels that her condition has deteriorated. She has tried to work during the past few years but cannot keep a job because of her condition. The medical evidence she submitted was not new medical evidence that she did not submit at the time of her first application, it is medical evidence to support that her condition has gotten worse during the last few years.

[5] The Minister says that the issue of disability, when the Claimant last met the contributory requirements to qualify for a benefit, has already been decided by a Pension Appeals Board (PAB). Following a hearing held on July 18, 2012, the PAB determined the Claimant did not have a severe and prolonged disability on or before December 31, 2007, when her minimum qualifying period (MQP) ended. The Board

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<sup>1</sup> GD1

found that the medical evidence and submissions did not show that she had a disability that was severe and prolonged and the appeal was dismissed on August 27, 2012. A decision by a PAB is final. Therefore, the Tribunal does not have the jurisdiction to consider the issue of disability on or before December 31, 2007 when the Claimant's MQP ended.

[6] I have to decide whether or not the issue of disability has been determined and if there is a final and binding decision making the matter *res judicata*.

### **Reasons for my decision**

[7] The Claimant's MQP is December 31, 2007<sup>2</sup>. Although the Claimant had valid contributions in 2012 and 2013, her MQP did not change<sup>3</sup>.

[8] The Claimant filed her first application for CPP disability benefits on June 13, 2008<sup>4</sup>. Her MQP was December 31, 2007. The application was denied and the Respondent maintained its decision on reconsideration. The Claimant appealed the denial to the Review Tribunal, which dismissed the appeal on January 25, 2010<sup>5</sup>. The Claimant appealed the Review Tribunal's decision to the PAB. The Board dismissed her appeal on August 27, 2012<sup>6</sup>.

[9] On April 4, 2014<sup>7</sup>, the Claimant submitted a second application for disability benefits. The Respondent denied the second application on the ground that the issues were *res judicata*, as her minimum qualifying period of December 31, 2007 remained unchanged, it considered that a determination had already been made with respect to disability and all appeal rights had been exhausted. The Claimant appealed the reconsideration decision to the Tribunal's General Division and on September 25, 2015<sup>8</sup>, the General Division summarily dismissed her appeal as it found the appeal had

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<sup>2</sup> GD2-4

<sup>3</sup> GD6 & GD7-11

<sup>4</sup> GD2-579

<sup>5</sup> GD2-492

<sup>6</sup> GD2-192

<sup>7</sup> GD2-187

<sup>8</sup> GD2-158

no reasonable chance of success. On December 22, 2015, the Claimant filed an appeal of the decision before the Tribunal's Appeal Division. On June 17, 2016<sup>9</sup>, the Appeal Division dismissed the appeal.

[10] On February 21, 2020<sup>10</sup>, the Claimant submitted a third application for disability benefits. Her MQP remains December 31, 2007. This application was denied initially and on reconsideration because the Respondent determined that the application was *res judicata*, the matter had already been finally determined by the PAB on August 27, 2012.

[11] The Claimant appealed the reconsideration decision to the General Division of the Tribunal on February 10, 2021. She feels that she has sufficient contributions to qualify, that she has been disabled for the past 13 years and that her condition has deteriorated.

[12] As I mentioned, I have to decide whether or not the issue of disability has been determined and if there is a final and binding decision making the matter *res judicata*. If a matter is *res judicata*, it precludes the rehearing or re-litigation of matters that have been previously determined.

[13] The Supreme Court of Canada<sup>11</sup> listed the following three (3) preconditions to determine if a matter is *res judicata*:

- (a) the same question had been decided;
- (b) the judicial decision which is said to create the estoppel (*res judicata*) was final; and
- (c) the parties to the judicial decision were the same person as the parties to the proceedings in which the estoppel (*res judicata*) is raised.

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<sup>9</sup> GD2-138

<sup>10</sup> GD2-42

<sup>11</sup> *Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 S.C.R. 460 (*Danyluk*)

[14] The Supreme Court of Canada also provided in *Danyluk* that there is a two-step analysis in determining if a matter is *res judicata*. The first step involves determining whether the three (3) preconditions have been established, if they are met, the second step is to determine whether, as a matter of discretion, *res judicata* ought to be applied.

[15] The Supreme Court of Canada listed seven (7) relevant factors to exercise the discretion, including:

1. the wording of the statute from which the power to issue the administrative order derives;
2. the purpose of the legislation;
3. the availability of an appeal;
4. the safeguards available to the parties in the administrative procedure;
5. the expertise of the administrative decision-maker;
6. the circumstances giving rise to the prior administrative proceedings; and
7. the potential injustice.

### **1<sup>st</sup> step - Are the three (3) pre-conditions met?**

#### **- First pre-condition: Has the same question been decided?**

[16] The Claimant filed two (2) applications for disability benefits under the CPP. The Claimant's third and current disability application of February 2020 is based on the same question that the two (2) previous applications were based on which is whether or not she suffers from a severe and prolonged disability on or before her MQP of December 2007.

#### **- Second pre-condition: Was the judicial decision which is said to create the estoppel (*res judicata*) final?**

[17] The matter of whether or not the Claimant suffers from a severe and prolonged disability on or before her MQP of December 2007 has already been finally determined by the PAB on August 27, 2012. The PAB's decision was final as there was no right of appeal.

- **Third pre-condition: Are the parties to the judicial decision the same person as the parties to the proceedings in which the doctrine of res judicata is raised?**

[18] The parties in the first two (2) applications are the same parties in the current application: the Claimant and the Respondent.

[19] I find that all the same elements are present in this appeal. The PAB decided the same issue (namely, whether the Claimant had a severe and prolonged disability as of December 31, 2007) in 2012; the PAB's decision was final as there was no right of appeal; and the parties to the previous decision are the same, although the Respondent's name has changed since 2012.

### **2<sup>nd</sup> step – Should I exercise discretion to apply the doctrine of *res judicata*?**

[20] I have considered the factors listed in *Danyluk* and found that the wording of the statute pursuant to which the first decision was made is the same wording in the current appeal; the purpose of the legislation is the same; the appeal process was available to the Claimant in the two (2) previous applications and she availed herself of the appeal process several times; the decision makers had the same expertise as in the current appeal since the issues were heard by administrative Tribunals having expertise in CPP legislation; there is no potential injustice to the Claimant given that the Claimant knew the test she had to meet (the disability must be severe and prolonged on or before December 2007) and she had been given a reasonable opportunity to meet the test and to submit evidence and make submissions. It cannot be said that the Claimant has been deprived of the opportunity to have her claim to a CPP disability pension properly assessed and adjudicated.

[21] Therefore, in considering the relevant factors listed in *Danyluk*, I am satisfied that the three (3) preconditions have been established and that I ought to exercise my discretion and apply the doctrine of *res judicata* to the circumstances of this case. The Claimant cannot re-litigate an issue that was decided with finality in a previous proceeding.

[22] The Claimant's current application for CPP disability benefits submitted in February 2020 is *res judicata* because the issue of disability has been determined and there is a final and binding decision by the PAB dated August 27, 2012.

## **Conclusion**

[23] This means the appeal is dismissed.

Antoinette Cardillo  
Member, General Division – Income Security Section