



Citation: *DP v Minister of Employment and Social Development*, 2021 SST 843

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

## Decision

**Appellant:** D. P.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated September 18, 2020  
(issued by Service Canada)

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**Tribunal member:** Jackie Laidlaw

**Type of hearing:** Teleconference

**Hearing date:** November 2, 2021

**Hearing participants:** Appellant  
Witness, T. G.

**Decision date:** ~~November 8, 2021~~

**Corrigendum:** December 10, 2021

**File number:** GP-20-1755

## Decision

[1] The appeal is allowed in part.

[2] The Claimant, D. P., is not eligible for a Canada Pension Plan (CPP) disability pension as of December 31, 2013.

[3] The Claimant, D. P. is eligible for a CPP disability pension as of the pro-rated minimum qualifying period (MQP) of ~~April 2019~~ March 31, 2020. Payments start as of ~~August 2019~~ July 2020. This decision explains why I am allowing the appeal.

## Overview

[4] The Claimant is a 58-year old man. He has worked in a variety of jobs. His last job was as an on-call courier for Canada Post from September 2017 to April 2019. He stopped working due to severe back pain. He had previously applied for a CPP disability benefit on November 17, 2016 for a disability of bilateral carpal tunnel syndrome. He was denied in April 2017 and did not request an appeal.

[5] The Claimant applied for a CPP disability pension on December 3, 2019. 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.

[6] The Claimant says he has had 13 injuries to his back since age 16. He has tried nerve pain medication but cannot take it due to allergies. He has worked in pain most of his life but is now unable to work because he cannot stand, has pins and needles in his feet and legs and is unable to drive. He is on the wait list for surgery, and is optimistic he will be able to return to work after.

[7] The Minister says the family physician recommended he stop working in April 2019, and expected him to return to work. There was no evidence of a triggering event.

## What the Claimant must prove

[8] For the Claimant to succeed, he must prove he had a disability that was severe and prolonged by December 31, 2013. This date is based on his contributions to the CPP.<sup>1</sup>

[9] The Claimant had CPP contributions in 2018 and 2019 **and 2020**. These contributions let the Claimant qualify for a pension if he became disabled between January 2014 2020 and March 31, 2020.<sup>2</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>3</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 isn’t 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>4</sup>

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

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<sup>1</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 CPP contributions are GD 2 61.

<sup>2</sup> This is based on sections 19 and 44(2.1) of the *Canada Pension Plan*.

<sup>3</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

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

[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.

## **Matters I have to consider first**

### **The Minister asked me to adjourn the hearing**

[16] The Minister asked me to adjourn the hearing (that is, change the hearing date) because there was a change in the pro-rated MQP, and the Minister required more time to make submissions on the new date.

[17] I allowed an adjournment.

## **Reasons for my decision**

[18] I find that the Claimant hasn't proven he had a severe and prolonged disability by December 31, 2013

### **Was the Claimant's disability severe and prolonged by December 31, 2013?**

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

[20] The Claimant's medical report in the first application<sup>5</sup>, on November 23, 2016, three years post-MQP, indicates a diagnosis of bilateral carpal tunnel syndrome. The Claimant was referred to a plastic surgeon, Dr. Carleton<sup>6</sup>. Dr. Carleton noted that other than gout and his carpal tunnel syndrome, he was in good health.

[21] In that application, the Claimant noted that he stopped working in August 29, 2016 because of numbness in his hands<sup>7</sup>. I note that he stopped working almost three years after his MQP.

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<sup>5</sup> GD 2 126 Dr. Melissa Franksy, November 23, 2016

<sup>6</sup> GD 2 120 Dr. Carleton, September 24, 2016

<sup>7</sup> GD 2 132 questionnaire January 9, 2017

[22] The Claimant stated he received carpal tunnel surgery on his left hand in September 2017, and immediately went to work at Canada Post. He stated his hands are now fine, though he did not have surgery yet on his right hand.

[23] The Claimant's wife stated that he was not disabled in 2013.

[24] The Claimant's record of earnings<sup>8</sup> shows that he made substantially gainful income<sup>9</sup> in both 2018 and 2019.

[25] I find the Claimant did not have a severe disability that rendered him incapable regularly of pursuing any substantially gainful occupation by December 31, 2013. As I have found he did not have a severe disability, I do not have to determine if he had a prolonged disability by December 31, 2013.

[26] I now must determine if the Claimant had a severe and prolonged disability by March 31, 2020.

### **Was the Claimant's disability severe and prolonged by March 31, 2020?**

[27] The Claimant's disability was severe. I reached this finding by considering several factors. I explain these factors below.

#### **– The Claimant's functional limitations do affect his ability to work**

[28] The Claimant has chronic low back pain with nerve impingement and central canal stenosis<sup>10</sup>. However, I can't focus on the Claimant's diagnosis.<sup>11</sup> Instead, I must focus on whether he had functional limitations that got in the way of him earning a

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<sup>8</sup> GD 2 7

<sup>9</sup> In May 2014, section 68.1 of the CPP Regulations was added to provide a formula to determine a threshold for "substantially gainful occupation" which is essentially 12 times the maximum monthly retirement benefit.

<sup>10</sup> GD 2 84 Dr. Fransky December 3, 2019 diagnosis

<sup>11</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

living.<sup>12</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>13</sup>

[29] I find that the Claimant has functional limitations.

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

[30] The Claimant says that his medical condition has resulted in functional limitations that affect his ability to work. He says he has worked his whole life with back pain due to a number of injuries.

[31] He stated he first spoke to his family physician, Dr. Melissa Fransky, about his back in 2017. She told him to take six weeks off work. After he went for a second MRI in 2019, Dr. Fransky told him to stay off work in April 2019.

[32] He stopped working April 8, 2019 as a letter carrier for Canada Post.

[33] He is now on the list waiting for decompression surgery. He stated it will be a six and a half month wait. In 2019, neurologist Dr. Cook told him he needed surgery, but could not do it himself as he was moving. The Claimant was then sent to another neurosurgeon, Dr. Haji was also stated he needed surgery, but wanted to try spinal injections first. They did not work. He called Dr. Fransky to find another surgeon. In has recently been referred to neurosurgeon Dr. Stiver.

[34] The Claimant stated Dr. Stiver has said she is optimistic that decompression surgery will work. He will require at least six to eight weeks for a recovery period.

[35] While he waits for surgery he takes two Tylenol 3 in the morning and two in the afternoon. He tries to do as much as he can. He takes the dog for walks. His doctors want him to keep active and he is trying. Since April 2019, he uses a walker and a cane depending on where he is going.

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<sup>12</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>13</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[36] After surgery he is hopeful he will return to work. Dr. Cook told him he could. Dr. Fransky as told him he cannot.

[37] He does not have any benefits from Canada Post. After leaving work he went on EI sick benefits. One month ago, Canada Post asked him to resign. He told them he will be returning after surgery, and they said they would welcome him back.

– **What the medical evidence says about the Claimant's functional limitations**

[38] The Claimant must provide medical evidence that shows that his functional limitations affected his ability to work by March 31, 2020.<sup>14</sup>

[39] The medical evidence supports what the Claimant says.

[40] Dr. Franksy notes she recommended he stop working in April 2019 and found it unknown if he could return to work in the future.<sup>15</sup>

[41] Neurologist Dr. Cook found he would benefit from spinal decompression. He advised the Claimant to stay active and use a walker.<sup>16</sup>

[42] The MRI of 2108 showed bulged disc and severe central canal stenosis with impingement.<sup>17</sup> An MRI in 2019<sup>18</sup> found persistent multilevel degeneration and persistent spinal canal stenosis with neural foraminal narrowing.

[43] Dr. Haji<sup>19</sup>, neurosurgeon, found his back had worsened over the past years with constant pain. He thought the Claimant would benefit from physiotherapy, pool therapy and cortisone injections. Surgery was a possibility if he wanted.

[44] Dr. Shirley Stiver, neurosurgeon, confirmed in 2021 that he still had spinal stenosis and lateral stenosis and recommended he consider a surgical laminectomy

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<sup>14</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>15</sup> GD 1 84 December 3, 2019

<sup>16</sup> GD 2 95 September 11, 2019

<sup>17</sup> GD 2 93 March 24, 2018

<sup>18</sup> GD 2 94 June 22, 2019

<sup>19</sup> GD 2 96

decompression.<sup>20</sup> Dr. Stiver did not make an opinion that he should return to work while he waits for surgery.

[45] The medical evidence supports that the Claimant's back condition prevented him from working by March 31, 2020.

[46] I now have to decide whether the Claimant can regularly do other types of work. To be severe, the Claimant's functional limitations must prevent him from earning a living at any type of work, not just his usual job.<sup>21</sup>

– **The Claimant can't work in the real world**

[47] When I am deciding whether the Claimant can work, I can't just look at his medical conditions and how they affect what he can do. I must also consider factors such as his:

- age
- level of education
- language abilities
- past work and life experience

[48] These factors help me decide whether the Claimant can work in the real world—in other words, whether it is realistic to say that he can work.<sup>22</sup>

[49] I find that the Claimant can't work in the real world.

[50] The Claimant is 58 years old. Should he have surgery in the next year, and if it is successful, he will be into his 60's after a period of recovery. By that point, he will have been out of the workforce for three or four years, with a few years remaining before retirement age. While his employer recently has said he will have a job to return to, they also asked him recently to retire. It is unlikely he will have the job, or be able to

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<sup>20</sup> GD 4 3 May 29, 2021

<sup>21</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>22</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.



perform the physical job of carrying mail after his recovery from surgery in a year or more from now.

[51] Due to his age, it is unlikely he will be able to find a suitable job.

[52] I find that the Claimant's disability was severe by March 31, 2020.

### **Was the Claimant's disability prolonged?**

[53] The Claimant's disability is prolonged.

[54] The Claimant states his condition began with his first back injury at age 16. He finally discussed his limitations and pain with his family physician in 2017. By 2019 surgery was suggested.

[55] He still has not received the surgery. While the hope for the surgery is that it will successfully resolve his back pain, as of March 31, 2020 it had not yet happened, and his back has worsened.

[56] I find that the Claimant's disability was prolonged by March 31, 2020.

### **When payments start**

[57] The Claimant's disability became severe and prolonged in April 2019 when he stopped working on the advice of his doctor. **By March 2020 he was still unable to return to work and awaiting surgery and his condition had worsened. His disability was severe and prolonged in March 2020.**

[58] There is a four-month waiting period before payments start.<sup>23</sup> This means that payments start as of ~~August 2019~~ July 2020.

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<sup>23</sup> Section 69 of the *Canada Pension Plan* sets out this rule.

## Conclusion

[59] I find that the Claimant did not have a severe and prolonged disability as of December 31, 2013. However, I find that the Claimant is eligible for a CPP disability pension because his disability was severe and prolonged in March 31, 2020 at his pro-rated MQP.

[60] This means the appeal is allowed in part.

Jackie Laidlaw

Member, General Division – Income Security Section