



Citation: *KR v Minister of Employment and Social Development*, 2021 SST 859

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

## **Decision**

**Appellant:** K. R.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated May 12, 2021 (issued by  
Service Canada)

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**Tribunal member:** Adam Picotte

**Type of hearing:** On The Record

**Decision date:** December 23, 2021

**File number:** GP-21-1597

## Decision

[1] The appeal is dismissed.

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

## Overview

[3] The Claimant is 51 years old. She has suffered from polio since the age of 2. This causes her right leg weakness. She struggled with work and eventually resolved to use a brace for her legs and resulting fatigue. The Claimant first applied for a CPP disability benefit on December 2, 2005.<sup>1</sup> That decision was appealed to the Review Tribunal and dismissed. The Claimant made a second application on June 30, 2008.<sup>2</sup> The decision was again denied and appealed to the Review Tribunal. An oral hearing was held on and on August 4, 2011 the Review Tribunal again dismissed the appeal.<sup>3 4</sup>

[4] The Claimant says that she is severely disabled. She explained to me at a pre-hearing conference that she cannot work and needs help because of this. She told me that things are desperate for her and that she needs assistance.

[5] The Minister says that the Claimant's appeal is res judicata. This means that the matter has already been decided.

[6] As noted above, the Claimant took her earlier appeals to the Review Tribunal. The RT1 determined that the Claimant did not have a severe and prolonged disability as of August 15, 2007. The RT2 determined that the Claimant did not have a severe and prolonged disability between August 16, 2007 and December 31, 2009.<sup>5</sup>

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<sup>1</sup> GD2-267

<sup>2</sup> GD2-195

<sup>3</sup> GD2-143

<sup>4</sup> For ease of reference I will refer to the 2007 Review Tribunal at RT1 and the 2011 Review Tribunal as RT2

<sup>5</sup> GD2-143

[7] The Review Tribunal considered the Claimant's disability fully and paid particular attention to her diagnosis of polio. It noted that although the Claimant had polio at a young age, and continues to have significant restrictions to her ability to work she has not pursued any type of sedentary work.<sup>6</sup>

[8] The Review Tribunal also noted that although the Claimant had longstanding medical conditions, her conditions did not become severe from August 15, 2007 to December 31, 2009.<sup>7</sup>

[9] As a result of that decision, and her Minimum qualifying period ending in December 2009, she was not able to pursue a further appeal.

## **What the Claimant must prove**

[10] For the Claimant to succeed, she must prove that the matter has not been adjudicated already. This is also known as *res judicata*.

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

### **The Claim is *res judicata***

[11] In *Danyluk v. Ainsworth Technologies Inc.*, the Supreme Court of Canada affirmed that the doctrine of *res judicata* applies when considering issues previously decided by the Courts, including administrative officers and tribunals.<sup>8</sup> The Federal Court in *Belo-Alves v. Canada* stated that the doctrine specifically applied to decisions of the SST.<sup>9</sup>

[12] When *res judicata* applies, a litigant is prevented from re-litigating an issue by the decision in a previous proceeding. The Court in *Belo-Alves* stated that by applying the rule of *res judicata*, the question of disability cannot be re-litigated.<sup>10</sup>

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<sup>6</sup> GD2-150

<sup>7</sup> GD2-150

<sup>8</sup> *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460

<sup>9</sup> *Belo-Alves v. Canada (Attorney General)*, 2014 FC 1100

<sup>10</sup> *Ibid* at paragraph 96

[13] There is a two-step analysis involved in determining whether it is appropriate to apply the doctrine of *res judicata*.

[14] First, it must be determined if the three conditions set out in *Danyluk* are met:

(a) The issue must be the same as the one decided in the prior decision;

(b) The prior decision must have been final; and,

(c) The parties to both proceedings must be the same.

[15] The issues remain the same as they were decided in the prior decision. That is, whether the Claimant was disabled within the meaning of the CPP on or before December 31, 2009 and continuously thereafter.

[16] The RT2 decision was final. The appeal rights with respect to that application have been exhausted, as the Claimant did not proceed with an appeal to the Pension Appeal Board. As such, the decision of the RT2 is final on the issue of disability as of the December 31, 2009 MQP.

[17] The parties to the appeal remain the same.

[18] The Supreme Court of Canada case in *Danyluk* is instructive with respect to the doctrine of *res judicata* and law of estoppel generally. The doctrine of *res judicata* was developed as part of the law of the issue of estoppel to prevent abuse of the administrative decision making process as well as to prevent conflicting decisions on the same issue and set of facts.

[19] The goal is to balance fairness to the parties with the protection of the administrative decision-making process, whose integrity would be undermined by too readily permitting collateral attacks or re-litigation of issues once decided.<sup>11</sup>

[20] An injustice or issue of natural justice has not been raised nor is there one apparent with respect to this matter. The purposes and stakes of the two proceedings

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<sup>11</sup> *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] S.C.R. 460 at paras. 20 – 21.

are the same. The doctrine of *res judicata* exists to prevent exactly such attempts to re-litigate matters that have already been finally decided.

[21] A decision of the Review Tribunal and the Pension Appeals Board was final and binding except as provided in the CPP.<sup>12</sup>

[22] As a result, I have no authority to consider the issue of disability. Therefore, I am dismissing this appeal.

Adam Picotte

Member, General Division – Income Security Section

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<sup>12</sup> This is pursuant to section 84(1) of the CPP as it read prior to April 1, 2013.