



Citation: *RP v Minister of Employment and Social Development*, 2022 SST 393

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: R. P.
Representative: George Santos

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated August 25, 2020 (issued by
Service Canada)

Tribunal member: Shannon Russell

Type of hearing: Videoconference

Hearing date: April 22, 2022

Hearing participants: Appellant
Appellant's representative

Decision date: May 12, 2022

File number: GP-21-1781

Decision

[1] The appeal is dismissed.

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

Overview

[3] The Appellant is a 48-year-old man who injured two fingers while working on his family farm in July 2018. He caught the fingers (the index and middle fingers of his right hand) between a chain and a sprocket on his forklift.¹ He had surgery the day of the injury, and the tips of the two fingers were amputated.²

[4] The Appellant returned to work within a few days of the accident and he kept working for the remainder of the farming season in 2018. When the farming season ended in late 2018, the Appellant began receiving regular EI benefits. He received those benefits until March or April 2019.³

[5] The Appellant applied for CPP disability benefits in May 2019. In his application, he reported that he is unable to work because of depression and pain in his hand. He explained he has difficulty with concentrating and focusing on issues.⁴

[6] The Minister of Employment and Social Development (Minister) denied his application at the initial and reconsideration levels of adjudication.

[7] The Appellant appealed the Minister's reconsideration decision to the Social Security Tribunal's General Division.

¹ Page GD2-71

² Page GD2-76

³ The Appellant's application says his EI benefits ended in March 2019. At the hearing, the Appellant said the benefits ended in April 2019.

⁴ Page GD2-28

[8] The Appellant's appeal was heard by a member of the General Division in February 2021. That member decided that the Appellant was not eligible for disability benefits because his disability was not severe by December 31, 2020.

[9] The Appellant appealed the decision to the Tribunal's Appeal Division. In August 2021, a member of the Appeal Division allowed the appeal because that member determined that the General Division made some mistakes in its decision. The Appeal Division said the General Division overlooked the Appellant's mental health issues when it assessed if the Appellant's disability was severe. The General Division also overlooked some of the evidence when it assessed the reasonableness of the Appellant's failure to seek appropriate medical treatment. As a remedy, the Appeal Division returned the matter to the General Division for a reconsideration.⁵

[10] The Appellant says that his injury of July 2018 caused a disability that is severe and prolonged. He says he can't work because of severe depression, anxiety, PTSD, chronic pain, difficulties with sleep, and tingling and numbness in his fingers.

[11] The Minister says that the evidence does not show any severe pathology or impairment that would prevent the Appellant from performing suitable work within his limitations. Also, there is no indication he has attempted alternate work.

What the Appellant must prove

[12] For the Appellant to succeed with his appeal, he must prove he had a disability that was severe and prolonged by December 31, 2020. This date is based on his contributions to the CPP.⁶

[13] The *Canada Pension Plan* defines the terms "severe" and "prolonged."

⁵ The decision of the Appeal Division is dated August 13, 2021.

⁶ Service Canada uses an appellant'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 subsection 44(2) of the *Canada Pension Plan*. The Appellant's CPP contributions are on pages GD8-6 to GD8-7.

[14] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.⁷

[15] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁸

[16] The Appellant has to prove his case on a balance of probabilities. This means he has to show that it is more likely than not he had a severe and prolonged disability by December 31, 2020.

Matters I have to consider first

The Minister was not represented at the hearing

[17] On the morning of the hearing, the Minister's office sent an email to the Tribunal saying "the Minister is no longer available to attend the hearing". Other than apologizing for the short notice, the message did not say anything else.⁹

[18] When I read the email, it wasn't clear to me whether the Minister was asking for an adjournment or if the Minister was of the position the hearing could proceed in the Minister's absence. With this concern in mind, I wrote to the Minister and asked for clarification. I explained that in the absence of a formal request for an adjournment, made before or at the hearing, I would assume that the Minister does not object to the appeal proceeding in the Minister's absence.¹⁰

[19] The Minister did not reply to my letter. The Minister also did not send a representative to the hearing to ask for an adjournment.

[20] At the outset of the hearing, I explained what had happened to the Appellant and to his representative. The Appellant's representative asked for the hearing to proceed. He pointed out that I had previously granted the Minister an adjournment, and he said

⁷ The term "severe" is defined in subparagraph 42(2)(a)(i) of the *Canada Pension Plan*.

⁸ The term "prolonged" is defined in subparagraph 42(2)(a)(ii) of the *Canada Pension Plan*.

⁹ The Minister's email is at page IS17-1.

¹⁰ My letter is at page IS18-1.

another adjournment would be stressful for the Appellant. He added that the Minister had filed written submissions setting out their position in the appeal.

[21] I decided to proceed with the hearing in the absence of the Minister's representative.

[22] First, I can proceed with a hearing in the absence of a party so long as I am satisfied that the party got the notice of hearing.¹¹ I know the Minister received the notice of hearing because the Minister referred to the hearing date and time in its email of April 22, 2022.

[23] Second, I am required to proceed with a hearing in a party's absence if I had previously granted that party an adjournment.¹² I had previously granted the Minister an adjournment in March 2022.¹³

Reasons for my decision

[24] I turn now to the merits of this appeal. I find that the Appellant hasn't proven he had a severe and prolonged disability by December 31, 2020.

The Appellant's disability was not severe by December 31, 2020

[25] I accept that the Appellant had a significant injury in July 2018. I also accept that the Appellant had functional limitations that affected his ability to work by December 31, 2020. However, I am unable to find that the Appellant's disability was severe by December 31, 2020. Here are the reasons why.

¹¹ This rule is set out in subsection 12(1) of the *Social Security Tribunal Regulations*.

¹² This rule is set out in subsection 12(2) of the *Social Security Tribunal Regulations*.

¹³ I adjourned the hearing in March 2022 because the Minister's representative was ill. The reasons for the adjournment are at page IS0A-1.

The medical evidence does not support all of the functional limitations the Appellant says he had by December 31, 2020

– What the Appellant says about his functional limitations

[26] When the Appellant applied for disability benefits, he reported that he has difficulty with concentration and focusing on issues.¹⁴ He said he has a “fair” ability to concentrate and focus his attention for at least 30 minutes.¹⁵ He also said that, on most days, he has a poor ability to do things like think of words to use while talking to someone; find his way to a familiar place; keep track of what he is doing; read a short message; write an email, and add and subtract numbers.¹⁶

[27] The Appellant also reported that, on most days, he has a poor ability to perform a number of physical activities including sitting for at least 20 minutes in a straight back chair; driving a car; bending down to pick up coins from the floor; pulling or pushing a heavy door to open it; opening a can with a manual can opener; and using his index finger to press the keys on a computer keyboard.¹⁷

[28] In September 2020, the Appellant underwent a comprehensive assessment at the Upper Extremity Specialty Program (UESP) in Hamilton. During the assessment, the Appellant said he was unable to cope with cold temperatures outside, hold certain tools, or lift things safely due to hypersensitivity at the site of the injury.¹⁸

– What the medical evidence says about the Appellant’s functional imitations

[29] The Appellant must provide medical evidence that shows that his functional limitations affected his ability to work by December 31, 2020.¹⁹

[30] The medical evidence supports some of what the Appellant says.

¹⁴ Page GD2-20

¹⁵ Page GD2-40

¹⁶ Page GD2-40

¹⁷ Page GD2-38

¹⁸ Page GD5-6

¹⁹ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

[31] In May 2019, the Appellant's psychiatrist (Dr. Surapaneni) reported that the Appellant's concentration and attention span appear to be poor. He also said his memory seems to be poor. Otherwise, his cognitive functions were mildly affected.²⁰ Dr. Surapaneni did not explain how he assessed the Appellant's concentration, attention and memory or what he meant by "appear to be poor" and "seems to be poor". He also did not identify the other cognitive functions that were mildly affected.

[32] In September 2020, the assessors at the UESP said the Appellant had no restrictions with respect to his tolerances for sitting, standing, walking or climbing stairs.²¹ However, he had limitations with these activities:²²

Activity	Limitation
Lifting from floor to waist	Medium (10-20 kg), occasionally
Lifting from waist to shoulder	Light (5-10 kg), occasionally
Lifting above shoulder	Light (5-10 kg), occasionally
Pushing / pulling	Medium (10-20 kg), occasionally
Repetitive bending / twisting	Occasional with right hand
Gripping and Pinching	Occasional with right hand
Environmental Exposure	Cold
Vibration Exposure	Right arm

[33] In October 2020, Dr. Surapaneni said the Appellant was complaining of memory difficulties and having a tendency to misplace things.²³

[34] Usually an appellant's family physician has helpful information about an appellant's functional limitations. That is not the case here. In April 2020, the Appellant's

²⁰ Page GD2-67

²¹ Page GD5-7

²² Page GD5-15

²³ Page GD5-2

family physician (Dr. Ghesquiere) wrote that he last saw the Appellant in December 2017 for an issue about insomnia. Dr. Ghesquiere said he reviewed the Appellant's chart, and saw nothing in it about disability and so he had no recommendations for treatment or knowledge of the disability claim.²⁴ Curiously, Dr. Ghesquiere did not mention the referral he made for the Appellant to see Dr. Surapaneni in 2019.

Inconsistencies in the evidence and the effect on credibility

[35] The Appellant has, at times, provided inconsistent evidence, and this causes me to question the reliability of his statements. I will give two examples.

[36] First, the Appellant has been inconsistent about when his depression began. When the Appellant applied for disability benefits in 2019, he reported that he has had severe major depression "for many years".²⁵ He also said he first saw Dr. Surapaneni in 2013.²⁶ In March 2021, the Appellant told his assessors at the UESP that he was seeing Dr. Surapaneni before his injury for personal reasons.²⁷ However, at the hearing, the Appellant said he was "an ox" before his injury of July 2018 and that he had no health issues. When he was asked specifically about depression, he said there was a time many years ago when he was depressed following his sister's death, but he said that only lasted a week or two, and he got better. He emphasized that he was "very healthy" before his accident. He also explained that his depression started slowly after his accident. He thinks he became depressed and anxious because he couldn't do the things he used to be able to do on the farm. The Appellant said his depression continued to worsen until March 2019 when he asked his family doctor for help.

[37] The CPP disability benefit program is not concerned with causation, and so it does not matter, from an eligibility perspective, whether the Appellant's depression started before or after his accident of July 2018. However, my example is not about

²⁴ Page GD2-100

²⁵ Pages GD2-20 and GD2-35

²⁶ Pages GD2-30 and GD2-42

²⁷ Page IS9-60

what caused the depression. Instead, it's about the inconsistency in the Appellant's evidence about when the depression began.

[38] Second, the Appellant has given inconsistent information about some of his limitations. I will focus on sleeping, driving and attending medical appointments.

Sleeping: In September 2020, the Appellant told his assessors at the UESP that he had difficulties with sleep before his injury and he continued to have disturbed sleep. He was unable to give an average number of hours he was sleeping in September 2020, but he said that before his injury he slept on average 6-7 hours a night.²⁸ At the hearing, however, the Appellant testified that after he stopped working he slept all the time. When the Appellant was asked what he did with his time in 2019, he again said he slept most of the day.

Driving: In June 2019, the Appellant said he had a "poor" ability to drive.²⁹ However, in September 2020, the Appellant told his assessors at the UESP that he has had no difficulties with driving since his injury.³⁰

Medical Appointments: In September 2020, the Appellant denied having issues with attending medical appointments.³¹ The next month, however, the Appellant told Dr. Surapaneni that he was confusing his appointment dates.³²

Dr. Surapaneni's reports are not very helpful

[39] There is no question that Dr. Surapaneni is supportive of the Appellant's application for benefits. He has said things like the Appellant is physically and mentally disabled and not fit to work in any job.³³ In November 2020, he said the Appellant has a severe and prolonged disability as a result of his very serious accident of July 2018.³⁴

²⁸ Page GD5-6

²⁹ Page GD2-38

³⁰ Page GD5-6

³¹ Page GD5-7

³² Page GD5-2

³³ Page GD2-94

³⁴ Page GD6-3

[40] Despite Dr. Surapaneni's strong opinions, I don't find his reports to be very helpful.

[41] First, Dr. Surapaneni's reports seem to focus on diagnoses. I can't focus on the Appellant's diagnoses.³⁵ Instead, I must focus on whether the Appellant had functional limitations that got in the way of him earning a living by December 31, 2020.³⁶ Except for saying the Appellant has difficulties with concentration, attention and memory, Dr. Surapaneni has rarely explained what the Appellant's functional limitations are, or why the Appellant's diagnoses render him unable to work. In the CPP medical report of May 2019, Dr. Surapaneni simply said the Appellant's functional limitations are amputated fingers (right hand).³⁷ At other times, Dr. Surapaneni has spoken of symptoms, such as numbness in the fingertips and pain, but he has not identified what effect these symptoms have on the Appellant's functionality. This makes it difficult for me to understand Dr. Surapaneni's reasons for concluding the Appellant is unable to work.

[42] Second, Dr. Surapaneni's initial assessment report of May 2019 included some information that is not correct, and I don't know if this affected his opinions about diagnoses and treatment. For example, in May 2019 (not quite one year after the accident) Dr. Surapaneni reported that the Appellant's accident happened "several years ago" and that "over the last four years", the Appellant has complained of numbness, difficulty with sleep and nightmares.³⁸ As another example, Dr. Surapaneni reported that the Appellant does not have a history of drug abuse.³⁹ However, Dr. Ghesquire's clinic notes say the Appellant has a history of cocaine use (2008) and that the Appellant went to British Columbia for rehab.⁴⁰ Dr. Ghesquire also mentioned the cocaine use in his referral letter to Dr. Surapaneni.⁴¹ The Appellant confirmed during the hearing that he has a history of cocaine use, though he said he went to rehab in 2010 (not 2008).

³⁵ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

³⁶ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

³⁷ Page GD2-125

³⁸ Pages GD2-66 and GD2-67

³⁹ Page GD2-67

⁴⁰ Page GD2-101

⁴¹ Page GD2-107

[43] Third, some of Dr. Surapaneni's opinions are not consistent with the opinions of other doctors. For example, in May 2020, Dr. Surapaneni said no improvement was possible and he explained that this was because of the Appellant's constant pain in the fingertips and the phantom phenomenon.⁴² Similarly, in October 2020, Dr. Surapaneni said the Appellant had reached maximum medical recovery, though he also said only time would tell when the Appellant might improve.⁴³ However, in September 2020 the assessors at the UESP thought that further recovery was possible, though they acknowledged that full functional recovery was not likely given the amount of time that had passed since the injury. To assist with further improvement, the assessors recommended a functional treatment program with a hand therapist for desensitization.⁴⁴ It's difficult for me to prefer the opinion of Dr. Surapaneni over the opinion of the assessors at the UESP, as the latter are specialists in upper extremity disorders and appear to have done a comprehensive assessment of the Appellant's hand condition and overall functionality.

The Appellant's physical limitations would not have prevented him from working by December 31, 2020

[44] I acknowledge that the Appellant has physical limitations that would have affected the types of jobs he could have done by December 31, 2020. However, I am unable to find that his limitations were so extensive as to have prevented him regularly from pursuing any substantially gainful occupation. The limitations set out in the UESP report are consistent with an ability to work. Even the assessors at the UESP recommended a return to work, though not at the physically demanding type of work the Appellant was doing before his injury.

[45] When I am deciding whether an appellant 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, education, language abilities and past work and life experience.

⁴² Page GD2-94

⁴³ Page GD5-2

⁴⁴ Pages GD5-13 to GD5-14

[46] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say that he can work.⁴⁵

[47] The Appellant's personal characteristics are not indicative of an inability to work in the real world. In December 2020, the Appellant was only 47 years of age. He thus had several years ahead of him before the standard age of retirement. The Appellant also has a good level of education, having completed a two-year program in electrical engineering at the DeVry Institute of Technology (1994 to 1996). The Appellant is proficient in at least one of Canada's two official languages. As for work experience, I acknowledge that most of his jobs have required lifting, repetitive use of his right hand and, at times, work in cold temperatures. His job history includes installation of security systems for ADT; electrical work; and heavy farm work. However, not all of the Appellant's job responsibilities have been laborious. In other words, his jobs have necessarily required skills in lighter duties, such as customer relations, answering the phone (which the Appellant says he still does sometimes at the farm), and training and supervising staff. Moreover, retraining remains an option, especially given the Appellant's relatively young age.

The Appellant's mental health has prevented him from completing the physical treatment recommended by the UESP

[48] The Appellant was assessed by the UESP again in November 2020 and March 2021. In November 2020, the UESP again recommended treatment with a hand therapist for desensitization. The Appellant started the program on November 12, 2020 but stopped after only two sessions for reasons relating to his anxiety and depression.⁴⁶

[49] In March 2021, the assessors at the UESP said there was no clinically appreciable change since the assessment of September 2020 as it relates to the Appellant's range of motion, strength, or perceived pain or abilities. They again said they anticipated change with treatment and they encouraged the Appellant to pursue

⁴⁵ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

⁴⁶ Pages IS9-50 and IS9-51

the desensitization program.⁴⁷ However, they also said that the Appellant's mental health conditions were limiting his recovery and so they recommended a psychological assessment to determine treatment needs. Until then, they deferred the physical treatment.⁴⁸

I have insufficient information about the Appellant's mental health assessments

[50] I know that by December 31, 2020, the Appellant's mental health conditions were affecting his functionality and efforts at treatment with hand therapy. However, I don't have enough information about the Appellant's mental health condition to properly assess the impact these conditions have on his capacity to work. There are a few reasons for this.

[51] First, as I've already explained, I don't find Dr. Surapaneni's reports to be very helpful.

[52] Second, at the request of the WSIB, the Appellant underwent a psychological assessment, and that report seems to suggest that treatment might help. I don't have a copy of the report, and when I asked the Appellant's representative about this he said he tried to get a copy of the report but he was not successful. In any event, I have **some** information about what the report says because the WSIB wrote to Dr. Surapaneni about it, and in reply Dr. Surapaneni quoted what the WSIB had said. The quote reads as follows:⁴⁹

...as part of the medical follow up, R. P. underwent a psychological assessment at the WSIB Specialty Clinic. The clinic provided a diagnosis of adjustment disorder but indicated that he did not meet the full criteria for major depressive disorder, PTSD, or somatic symptom disorder. In order to address the adjustment disorder, the specialty clinic provided treatment recommendations to help improve R. P.'s psychological functioning. Because he is currently attending treatment with you and prefers to continue attending only with you, I am writing to provide you with the treatment recommendations to determine if you are able to

⁴⁷ Page IS9-60

⁴⁸ Pages IS9-60 to IS9-62

⁴⁹ Page IS12-5

provide the recommended service. If you are not, please advise me at your earliest convenience, so that I may make arrangements for an alternate provider to be activated.

[53] Third, Dr. Surapaneni declined to provide the requested treatment as he believes treatment is hopeless.⁵⁰ However, the Appellant has recently begun treatment with another mental health specialist – a psychologist. The Appellant says he began one-hour sessions with the psychologist (whose full name he could not remember)⁵¹ in December 2021 and he continues with these sessions on a bi-weekly basis.

[54] I do not have any reports from the psychologist, and so it is difficult for me to know what gains, if any, the Appellant is making with this treatment. However, I have reason to believe the treatment is helping. The Appellant acknowledged in his testimony that his sessions with the psychologist help a lot. Also, when I asked the Appellant if the psychologist has given him any indication as to how he is progressing in treatment, the Appellant said the psychologist told him he is getting better and that he has seen a lot of change in the Appellant since the first session.

[55] The Appellant's representative submits that the sessions with the psychologist are a band aid solution. I don't know that this is true. I simply don't have the medical evidence to support it.

Conclusion

[56] The Appellant isn't eligible for CPP disability benefits because his disability wasn't severe by December 31, 2020. Because I have found that his disability wasn't severe, I didn't have to consider whether it was prolonged.

[57] The appeal is dismissed.

Shannon Russell
Member, General Division – Income Security Section

⁵⁰ Page IS12-6

⁵¹ The Appellant said he could only remember the psychologist's first name – Kent.