



Citation: *TC v Minister of Employment and Social Development*, 2021 SST 977

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

Decision

Appellant: T. C.

Respondent: Minister of Employment and Social Development

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

Tribunal member: Shannon Russell

Type of hearing: Videoconference

Hearing date: December 7, 2021

Hearing participant: Appellant

Decision date: December 27, 2021

File number: GP-20-1551

Decision

[1] The appeal is dismissed.

[2] The Appellant, T. C., is not eligible for Canada Pension Plan (CPP) disability benefits. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant is a 59-year-old man who has chronic pain. The pain is primarily in his feet, ankles and shoulders. His foot and ankle pain are likely due to severe pes planus and mechanical deconditioning.¹ His shoulder difficulties started years ago and began with his right shoulder. He had surgery with pin insertion about 30 years ago. In 2011, the Appellant fractured his left shoulder.²

[4] The Appellant used to work as an electrician (foreman). He stopped working in February 2018. He stopped working because the job was “killing” him.³ His job was demanding. It required a lot of walking (more than 15 km a day) and a lot of climbing. His job also required long hours. The Appellant worked 10 hours a day (14 days on and 7 days off).⁴

[5] The Appellant applied for CPP disability benefits in May 2019. In his application, he reported that he is unable to work because of problems with his feet, ankles and shoulders as well as depression and anxiety. The Appellant explained that he is unable to walk or stand for any length of time and is unable to perform work above shoulder height.⁵

[6] The Minister of Employment and Social Development (Minister) denied his application. The Minister determined that the Appellant has the ability to work within his

¹ Page GD6-30

² Pages GD2R-121, GD2R-666, GD2R-676, GD6-26 and GD6-41

³ The Appellant told me this at the hearing.

⁴ Page GD2R-254

⁵ Page GD2R-246

limitations, as evidenced by the medical records and the Appellant's day-to-day activities.⁶

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

What the Appellant must prove

[8] For the Appellant to succeed with his appeal, he must show he has a disability that is severe and prolonged by the hearing date.⁷

[9] The *Canada Pension Plan* defines "severe" and "prolonged."

[10] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.⁸

[11] This means I have to look at all of the Appellant'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, language abilities, 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 Appellant is able to regularly do some kind of work that he could earn a living from, then he is not entitled to disability benefits.

[12] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁹

⁶ Pages GD2R-4 to GD2R-6

⁷ 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 CPP. The Appellant's CPP contributions are on pages GD2R-313 to GD2R-315 and GD2R-319 to GD2R-335. In this case, the Appellant's coverage period ends after the hearing date, so I have to decide whether he was disabled by the hearing date.

⁸ The definition of "severe" is set out in subparagraph 42(2)(a)(i) of the *Canada Pension Plan*.

⁹ The definition of "prolonged" is set out in subparagraph 42(2)(a)(ii) of the *Canada Pension Plan*.

[13] This means the Appellant's disability cannot have an expected recovery date. The disability must be expected to keep the Appellant out of the workforce for a long time.

[14] The onus is on the Appellant to prove he has a disability that is severe and prolonged. 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.

My findings

The Appellant's disability is not severe

[15] I accept that the Appellant has functional limitations that affect his ability to work. However, despite having limitations, the Appellant has not proven that his disability is severe. This is because there is evidence of work capacity, and the Appellant has not made efforts to find and keep a job.

The Appellant has functional limitations that affect his ability to work

[16] Again, I accept that the Appellant has functional limitations that affect his ability to work. I know this because the Appellant has had his functional abilities formally assessed.

[17] By way of background, the Appellant saw Dr. Nulliah at the Bone and Joint Clinic in October 2020. The Appellant told me that when he attended the clinic he asked to have a formal assessment done of his functional abilities. He wanted to know what he could and could not do, given his ankle and shoulder conditions. He was told that he could not have that kind of assessment done at the clinic, and that he would have to go to a private clinic to be assessed.

[18] The Appellant then went to Active Physio Works and paid out of his own pocket to have a formal assessment done. The assessment was done by Erin Williams. Ms. Williams assessed the Appellant on two occasions. The first assessment was on April

27, 2021 and involved an assessment of the Appellant's ankle functioning. The second assessment was on May 4, 2021 and involved an assessment of the Appellant's shoulder functioning as well as overall functional abilities.

[19] Ms. Williams determined that the Appellant has limitations – namely, he is unable to:¹⁰

- lift his arms above shoulder height / overhead reach;
- push / pull more than 12 pounds;
- walk for a prolonged period of time;
- lift (no weight specified); and
- press more than 50 pounds through his lower extremity.

[20] The Appellant's family physician (Dr. El-Hajj) has also identified some functional limitations. Dr. El-Hajj filled out a CPP medical report shortly after Ms. Williams' assessment.¹¹ In that report, Dr. El-Hajj said that the Appellant's foot and ankle pain prevent him from prolonged standing or walking; kneeling or bending.¹² Dr. El-Hajj also said that the Appellant's shoulders are such that he is unable to lift his arms above shoulder height or do heavy lifting.¹³

[21] I accept that the Appellant has the above-noted limitations. However, I do not accept that the Appellant has all of the limitations he claims.

[22] The Appellant reports, for example, that he is unable to carry items for any type of distance.¹⁴ He also says he cannot sit for prolonged periods of time. I do not have medical evidence supporting these limitations. Moreover, I have evidence that contradicts some of the Appellant's reported limitations. For example, it was April 2019

¹⁰ Pages GD4-2 to GD4-4

¹¹ Dr. El-Hajj completed the medical report on May 21, 2021 (pages GD6-20 to GD6-28).

¹² Pages GD6-24 and GD6-27

¹³ Page GD6-26

¹⁴ Page GD2R-249

when the Appellant reported an inability to carry items for any distance. However in September 2019, the Appellant wrote a journal entry indicating he loaded yard garbage for three hours and this involved lifting, walking, loading **and carrying**.¹⁵

The Appellant's mental health has improved

[23] I accept that the Appellant has had a difficult time with mental health issues in the past.

[24] In March 2020, the Appellant saw a psychiatrist (Dr. Ijaz). Dr. Ijaz reported that the Appellant was bothered by unwanted images or thoughts. He saw himself hurting others and he was bothered by compulsions such as excessive exercises. Dr. Ijaz diagnosed obsessive compulsive disorder and adjustment disorder, depression and anxiety. He also said the Appellant had a past history of alcohol-use disorder (severe), but had been sober for the last four years.¹⁶

[25] In May 2021, Dr. El-Hajj reported the Appellant had severe depression and anxiety. Dr. El-Hajj said the Appellant was unable to cope at work or home, was not sleeping well, had feelings of sadness, depressed mood, a lack of energy, decreased motivation and no focus.¹⁷

[26] Fortunately, the Appellant's mental health has improved. The Appellant acknowledged this at the hearing. He explained that he does not put himself in a lot social situations and he cannot deal with a lot of people. However, his mental health is "okay" now. He is no longer taking any medication for his mental health, and he is no longer having the terrible thoughts or dreams he used to have.

[27] In October 2021, Dr. El-Hajj completed a form for the Appellant's application for the Disability Tax Credit. In that form, Dr. El-Hajj reported that the Appellant is

¹⁵ Page GD2R-552

¹⁶ Pages GD6-32 to GD6-35

¹⁷ Page GD6-25

significantly restricted with respect to the mental functions necessary for everyday life (as well as with walking). I did not place too much weight on this evidence.

[28] First, as I said above, the Appellant told me that his mental health has improved and he is “okay” now. I acknowledge the Appellant likely still has limitations from his mental health conditions. He told me, for example, that he does not do well in large groups. However, it does not appear that his mental health is such that it would prevent him from working at a job within his limitations.

[29] Second, Dr. El-Hajj’s description of the mental health impairments is quite brief. He simply said the Appellant has more stress and anxiety and is not able to finish tasks.¹⁸ Without more, this evidence is difficult to reconcile with the Appellant’s testimony. It is also difficult to reconcile with the Appellant’s journal entries describing all of the tasks he is able to complete.

There is evidence of work capacity

[30] Despite having limitations, there is evidence that the Appellant has work capacity.

[31] First, the doctors who saw the Appellant at the Bone and Joint Clinic in October 2020 did not say the Appellant could not work. Instead, they said the Appellant would benefit from an occupational health / return to work assessment.¹⁹

[32] Second, in the spring of 2021 the Appellant had a professional assessment done of his functional abilities, and the assessor concluded that the Appellant has the capacity for work. The assessor (Ms. Williams) reported that the Appellant is unable to continue working in his profession as an industrial electrician. However, she said the Appellant has the potential to have success in an alternative occupation such as a management or human relations position in his designated field.²⁰

¹⁸ The handwriting is difficult to read, but I believe this is what it says (page GD9-4).

¹⁹ Page GD6-30

²⁰ Pages GD4-2 to GD4-4

[33] Third, in May 2021, Dr. El-Hajj reported that the Appellant's physical conditions prevent him from doing any physical work.²¹ Dr. El-Hajj did not say those conditions prevent the Appellant from doing sedentary or non-physical work.

[34] Fourth, the Appellant appears to be relatively active. In March 2020 (almost a year after the Appellant applied for disability benefits), the Appellant told a psychiatrist that he was exercising obsessively. He was exercising 2-3 hours a day, 3 days a week.²² Also, the Appellant lives with his mother and he is her caregiver. Finally, the Appellant lives on a farm that is owned by his mother and brother, and he performs a number of chores on the farm, as detailed by the journal entries on file. These chores include moving cattle²³, lawn mowing (walking and riding)²⁴, trimming branches²⁵, weeding²⁶, cleaning²⁷, and equipment maintenance²⁸.

[35] Fifth, the Appellant is employable in the real world. When I am deciding whether the Appellant can work, I cannot 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, and past work and life experience. 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.²⁹

[36] I acknowledge that the Appellant is 59 years of age and thus only has a few years left until the standard age of retirement. However, he has many favourable employability attributes. He is proficient in the English language. He is well educated (grade 12 plus he is a journeyman electrician), and he has years of work experience in the industry including work as a foreman and inspector.

²¹ Page GD6-27

²² Page GD6-32

²³ Page GD2R-560

²⁴ Page GD2R-563

²⁵ Page GD2R-570

²⁶ Page GD2R-578

²⁷ Pages GD2R-584 and GD2R-588

²⁸ Page GD2R-565

²⁹ The Federal Court of Appeal said this in *Villani v Canada (Attorney General)*, 2001 FCA 248.

[37] The Appellant says that he is unable to do a desk job because he is not intelligent enough to be retrained and he is not mentally stable enough to get back into a stressful work environment.³⁰ I accept that the Appellant may not be able to work in a stressful environment. However, I do not accept that he lacks the intelligence to retrain or to do a different type of job. The medical evidence does not show the Appellant has intellectual deficiencies. The most I have is a brief statement by Dr. Ijaz saying the Appellant **may** have underlying cognitive problems related to chronic alcohol use.³¹ This comment is too speculative to be helpful.

The Appellant has not tried to find and keep a job

[38] If the Appellant can work in the real world, he must show that he tried to find and keep a job. He must also show that his efforts were not successful because of his medical conditions.³² Finding and keeping a job includes retraining or looking for a job that accommodates his limitations.³³

[39] The Appellant has not made these efforts. He told me that he has not worked since he left his electrician job in 2018. He said he has applied to Walmart and to Home Depot, but they did not get back to him.

[40] The Appellant has not tried working or retraining since 2018. He therefore has not shown that efforts to find and keep a job were unsuccessful by reason of disability. As a result, I am unable to find that the Appellant's disability is severe.

Conclusion

[41] The Appellant is not eligible for CPP disability benefits because his disability is not severe. As I have found that his disability is not severe, there is no need for me to assess whether his disability is prolonged.

³⁰ Page GD4-1

³¹ Page GD6-34

³² The Federal Court of Appeal said this in *Inclima v. Canada (Attorney General)*, 2003 FCA 117.

³³ The Federal Court of Appeal said this in *Janzen v. Canada (Attorney General)*, 2008 FCA 150.

[42] The appeal is dismissed.

Shannon Russell
Member, General Division – Income Security Section