



Citation: *DG v Minister of Employment and Social Development*, 2022 SST 369

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

Decision

Appellant: D. G.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated October 20, 2020 (issued
by Service Canada)

Tribunal member: Sarah Sheaves

Type of hearing: Teleconference

Hearing date: March 18, 2022

Hearing participant: None

Decision date: April 12, 2022

File number: GP-21-129

Decision

[1] The appeal is dismissed.

[2] The Appellant, D. G., isn't eligible for a *Canada Pension Plan* (CPP) disability pension. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant is 57 years old and worked as a customer service agent for X. She was diagnosed with tenosynovitis in her right wrist in June 2016. Her condition causes pain and stiffness from her wrist to her elbow. She also had symptoms of depression.

[4] The Appellant applied for a CPP disability pension on September 18, 2018. The Minister of Employment and Social Development (Minister) refused her application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Appellant says she has a disability that is severe and prolonged because she was unable to use her right arm at work.

[6] The Minister says that the medical opinions confirm there is work capacity and that the Appellant is capable of doing alternate work. As a result, her condition can't be considered severe.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2020. This date is based on her contributions to the CPP.¹

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

¹ 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 section 44(2) of the *Canada Pension Plan*. The Appellant's CPP contributions are on page GD2-56.

[9] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.²

[10] This means I have to look at all of the Appellant's medical conditions together to see what effect they have on her ability to work. I also have to look at her background (including her age, level of education, and past work and life experience). This is so I can get a realistic or "real world" picture of whether her disability is severe. If the Appellant is able to regularly do some kind of work that she could earn a living from, then she isn't entitled to a disability pension.

[11] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.³

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

[13] The Appellant has to prove she has a severe and prolonged disability. She has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not she is disabled.

Matters I have to consider first

The Appellant wasn't at the hearing

[14] A hearing can go ahead without the Appellant if she got the notice of hearing.⁴

[15] The original hearing date was March 3, 2022. The Appellant didn't attend the hearing. The tribunal left messages for the Appellant on her personal voicemail. Her voicemail has a personal greeting confirming her identity. I adjourned the hearing to give the Appellant another opportunity to attend and participate.

² Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

³ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

⁴ Section 12 of the *Social Security Tribunal Regulations* sets out this rule.

[16] The Appellant didn't attend the second scheduled hearing on March 18, 2022. The tribunal once again left messages for her on her personal voicemail. Messages were also left to remind the Appellant prior to both hearing dates.

[17] I decided that the Appellant got the notice of hearing because documents sent to the Appellant by regular mail are deemed to have been communicated to a party 10 days after they have been mailed.⁵ The Notice of Hearing for the second hearing in this matter was sent by regular mail on March 3, 2022.

[18] The tribunal has sent regular mail to the Appellant at various stages of the proceedings prior to the hearing dates and none of that mail has been returned.

[19] So, the hearing took place when it was scheduled, but without the Appellant.

Reasons for my decision

[20] I find that the Appellant hasn't proven she had a severe and prolonged disability by December 31, 2020.

Was the Appellant's disability severe?

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

– The Appellant's functional limitations do affect her ability to work

[22] The Appellant has right wrist tenosynovitis and depression. However, I can't focus on the Appellant's diagnoses.⁶ Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.⁷ When I do this, I have to look at **all** of the Appellant's medical conditions (not just the main one) and think about how they affect her ability to work.⁸

⁵ Section 19 of the *Social Security Tribunal Regulations* sets out this rule.

⁶ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁷ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁸ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[23] I find that the Appellant had functional limitations.

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

[24] The Appellant says that her physical medical condition has resulted in functional limitations that affect her ability to work. She reported the following based on her medical records and application:

- She doesn't have the strength to lift a pot from the stove using her right hand.
- She isn't capable of repetitive use of her right hand.
- She isn't able to type or write with her right hand for more than 2 to 3 minutes.
- She isn't able to carry out the garbage or clean her bathrooms.

– **What the medical evidence says about the Appellant's functional limitations and work capacity**

[25] The Appellant must provide medical evidence that shows that her functional limitations affected her ability to work at her prior job by December 31, 2020.⁹

[26] The medical evidence supports what the Appellant says.

[27] The Appellant was treated by Dr. Handelsman, a rheumatologist, from January to June 2017. He noted that her symptoms improved with physiotherapy and medication but she was still having pain with right thumb movements. He suggested a gradual return to work on modified duties.¹⁰

[28] On a functional abilities form dated February 10, 2018, Dr. Silverberg, an internal medicine specialist confirmed severe limitations in the right hand for repetitive use, grasping and fine motor skills.¹¹

[29] Dr. Silverberg said the Appellant could return to her job on modified duties that did not require repetitive use of her right hand.

⁹ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹⁰ See GD2-84 to GD2-86.

¹¹ See GD2-89.

[30] In the medical report for CPP, Dr. Chiang, the family doctor, said the condition in the right wrist should improve, but it needs time. He said the Appellant was extremely depressed and would need a psychological consult, but didn't indicate any functional limitations related to that condition.¹²

[31] Dr. Chiang said there should be jobs the Appellant can handle that don't involve excessive typing or use of the right wrist.

[32] In a medical report dated May 25, 2018, Dr. Chiang said the Appellant has pain from her right wrist to her elbow as a result of her condition. He said she could work at a job that didn't require excessive use of her right hand or wrist.¹³

[33] The medical evidence supports that by December 31, 2020, the Appellant's right wrist and forearm pain likely affected her ability to do the keyboarding tasks required at her prior job.

[34] I do note that the last medical information in the file is dated more than two years before December 31, 2020.

[35] The medical evidence and the opinions of all the Appellant's medical doctors also confirm that she could return to other work that would not require repetitive use of her right hand and that she has some work capacity.

[36] There was no medical evidence submitted to the tribunal that indicates the Appellant wouldn't be able to work at a job where she could make a living. This suggests to me that the condition wasn't severe.

[37] Next, I will look at whether the Appellant followed medical advice.

– **The Appellant hasn't followed medical advice**

[38] The Appellant hasn't followed medical advice.

¹² See GD2-76.

¹³ See GD2-80.

[39] To receive a disability pension, an Appellant must follow medical advice.¹⁴ If an Appellant doesn't follow medical advice, then she must have a reasonable explanation for not doing so. I must also consider what effect, if any, the medical advice might have had on her disability.¹⁵

[40] The Appellant hasn't followed medical advice. She didn't give a reasonable explanation for not following the advice. I note the following:

- Dr. Handelsman suggested cortisone injections for the Appellant's right wrist pain and swelling in 2017.¹⁶
- Dr. Silverberg also recommended cortisone injections and notes the Appellant refused the treatment in 2018. He said the injection would not fully resolve the condition, but it would reduce pain and inflammation.¹⁷
- Dr. Chiang suggests there is a discrepancy as to whether the Appellant refused the treatment in his report dated May 25, 2018.¹⁸ However, Dr. Silverberg's report clearly confirms that she did.
- No reason for the refusal to follow medical advice was available in the medical records.

[41] I must now consider whether following this medical advice might have affected the Appellant's disability. I find that following the medical advice might have made a difference to the Appellant's disability.

[42] At times, the Appellant's symptoms are described as mild.¹⁹ I find that taking the injections may have had considerable impact on addressing mild pain and inflammation. Pain was the Appellant's primary symptom and complaint.

[43] I also note that the Appellant had sought a second opinion from Dr. Silverberg, after being treated by Dr. Handelsman. Both of these specialists recommended the

¹⁴ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁵ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

¹⁶ See GD2-85.

¹⁷ See GD2-89.

¹⁸ See GD2-82.

¹⁹ See GD2-86 and GD2-82.

same treatment. This tells me they both believed it would have a positive impact on the Appellant's condition. Just because a treatment won't fully eliminate a condition, doesn't mean it should not be pursued.

[44] The Appellant didn't follow medical advice that might have affected her disability. This means that her disability wasn't severe.

[45] When I am deciding whether a disability is severe, I usually have to consider an Appellant's personal characteristics.

[46] This allows me to realistically assess an Appellant's ability to work.²⁰

[47] I don't have to do that here because the Appellant didn't follow medical advice and there is no reasonable explanation for not following the advice in her file.

[48] When I consider this together with the evidence of her capacity to work as confirmed by all of her treating doctors, I find that her disability wasn't severe by December 31, 2020.²¹

Conclusion

[49] I find that the Appellant isn't eligible for a CPP disability pension because her disability isn't severe. Because I have found that her disability isn't severe, I didn't have to consider whether it is prolonged.

[50] This means the appeal is dismissed.

Sarah Sheaves
Member, General Division – Income Security Section

²⁰ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

²¹ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.