



Citation: *GP v Minister of Employment and Social Development*, 2022 SST 533

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

## Decision

**Appellant:** G. P.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated October 1, 2020 (issued by  
Service Canada)

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**Tribunal member:** Virginia Saunders

**Type of hearing:** Teleconference

**Hearing date:** May 4, 2022

**Hearing participants:** Appellant

**Decision date:** May 20, 2022

**File number:** GP-21-57

## Decision

[1] The appeal is dismissed.

[2] The Appellant, G. P., stopped being disabled in August 2016. He wasn't eligible to be paid a Canada Pension Plan (CPP) disability pension after that month. This decision explains why I am dismissing the appeal.

## Overview

[3] The Appellant used to work as a satellite technician. In 2006, he injured his right foot. He had to stop working. He developed complex regional pain syndrome (CRPS). He applied for a CPP disability pension. The Minister of Employment and Social Development (Minister) approved his application, and started paying him a disability pension as of March 2007.<sup>1</sup>

[4] In June 2018, the Canada Revenue Agency (CRA) informed the Minister that the Appellant had other income from 2014 to 2017. The Minister told the Appellant it was reviewing his file to see if he was still eligible to receive disability benefits.<sup>2</sup>

[5] In October 2019, the Minister decided the Appellant stopped being disabled in August 2016. That meant he wasn't eligible to continue receiving a disability pension. The Minister demanded the Appellant repay the \$44,176.40 he had received for the pension from September 2016 to October 2019.<sup>3</sup>

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

[7] The Appellant says CRPS affects him daily. He has constant pain and mobility issues. He also questions why the Minister didn't tell him about the income issue until

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<sup>1</sup> See GD2-25-29. The Minister manages the Canada Pension Plan for the Government of Canada.

<sup>2</sup> See GD2-109-111. The Appellant also said this at the hearing.

<sup>3</sup> The Minister's first decision about this is at GD2-20-24. The Appellant asked the Minister to reconsider. The Minister's reconsideration decision is at GD2-4-6.

June 2018, and continued paying his disability pension until October 2019. He is under great financial stress because of this.<sup>4</sup>

## **What the Minister must prove**

[8] The Minister has to prove the Appellant stopped being disabled.<sup>5</sup>

[9] The Minister's decision to grant the disability pension is presumed to be correct.<sup>6</sup> The Minister has to show the Appellant's circumstances changed after that, so that the Appellant was no longer eligible to receive the pension.<sup>7</sup>

[10] The Minister has to prove this on a balance of probabilities (that it is more likely than not).

## **Reasons for my decision**

[11] I find that the Appellant stopped being disabled in August 2016.

[12] I understand why the Appellant is upset about how Service Canada (the Minister) handled this matter. I accept that he didn't intend to deceive anyone or take money he wasn't entitled to. He assumed the Minister knew about his income and had decided he was still eligible for a disability pension.

[13] I know my decision will cause financial hardship and other problems for the Appellant. Unfortunately, I can't consider those factors when I make my decision. I can only decide if the Appellant stopped being disabled under the *Canada Pension Plan*.

[14] Here are the reasons for my decision.

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<sup>4</sup> See GD1-10.

<sup>5</sup> The Federal Court of Appeal said this in *Atkinson v Canada (Attorney General)*, 2014 FCA 187.

<sup>6</sup> The Federal Court of Appeal said this in *Kinney v Canada (Attorney General)*, 2009 FCA 158.

<sup>7</sup> The Pension Appeals Board said this in *Boudreau v Minister of Human Resources Development*, 2000 CP 11626.

## The test for disability under the *Canada Pension Plan*

[15] I have to follow what the *Canada Pension Plan* says about disability. It says a person is disabled if they have a physical or mental disability that is severe and prolonged.<sup>8</sup>

[16] A disability is severe if it makes a person “incapable regularly of pursuing any substantially gainful occupation.”<sup>9</sup>

[17] A substantially gainful occupation is one that pays as much or more than the maximum amount of a CPP disability pension.<sup>10</sup> In 2016 the amount was \$15,489.72. It goes up every year. In 2022 it is \$17,489.40.<sup>11</sup>

[18] A disability is prolonged if it is “likely to be long continued and of indefinite duration or is likely to result in death.”<sup>12</sup>

[19] The disability has to be **both** severe and prolonged. I accept that the Appellant’s disability is prolonged. But it stopped being severe in August 2016. This is because, by that time, the Appellant was working regularly at a rate that was above what the law calls “substantially gainful.”

## The Appellant’s work capacity improved in 2016

[20] The Appellant was straightforward and sincere when he spoke to me at the hearing. I believe him when he says he still has pain and mobility issues.

[21] The Minister didn’t provide any medical evidence to show the Appellant’s **medical condition** changed in 2016. He still had CRPS. It still affected him daily.

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<sup>8</sup> See section 42(2)(a) of the *Canada Pension Plan*.

<sup>9</sup> See section 42(2)(a)(i) of the *Canada Pension Plan*.

<sup>10</sup> See section 68.1 of the *Canada Pension Plan Regulations*.

<sup>11</sup> See Canada Pension Plan (CPP) Maximum Monthly Amounts of New Benefits <https://open.canada.ca/data/en/dataset/e547539b-7fc6-4879-be54-3d1f80ac9e9e>

<sup>12</sup> See section 42(2)(a)(ii) of the *Canada Pension Plan*.

[22] However, the Appellant's **work capacity** did improve. Before 2016, he couldn't regularly work enough to earn a substantially gainful income. The Minister proved that, by August 2016, he could.

[23] The Appellant's nurse practitioner confirmed in December 2021 that the Appellant has had CRPS since 2006. She said that, although he can work, the vascular changes to his right lower leg, ankle, and foot limit what he can do. This has had a major impact on his mental health, finances, job prospects, and his overall health. The Appellant may end up losing his lower right leg.<sup>13</sup>

[24] In deciding whether the Appellant's disability continued to be severe, I don't focus on his diagnosis or his impairments.<sup>14</sup> Instead, I look at whether his functional limitations kept him from working. If he had the regular capacity to do some kind of work where he could earn a substantially gainful income, then he wasn't entitled to a disability pension.<sup>15</sup>

[25] Despite his health problems, the Appellant tried to find work. For many years, the only job he could get was as a part-time supervisor for the local school district. The Appellant believes no one else would hire him because of his age (he is now 57 years old) and because of his obvious physical difficulties (he uses a cane and has to wear sandals year-round).

[26] The Appellant still works as a supervisor. By itself, this job doesn't prove he can regularly earn a substantially gainful income. He only earns between \$1,000.00 and \$3,300.00 per year. And he can only do the job because it is one hour a day.

– **The Appellant earns a substantially gainful income**

[27] However, the Appellant found a second job in 2014. Since 2016, it has paid him a substantially gainful income. His work effort shows he is capable regularly of working at this level.

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<sup>13</sup> See GD4-3.

<sup>14</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>15</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

[28] The Appellant works at an adventure park for eight hours a day, four days a week, from May to October. When he first started, he did light building and maintenance. It was difficult, and he didn't work many hours. But he discovered that working was good for his mood. So he persisted.

[29] In 2016, the Appellant started working more hours. He got a pay increase. He became the park manager. He runs the crew and does customer service. He also looks after one of the lower, smaller obstacle courses. By 3 p.m. he is worn out. He takes a lot of medication for his pain.

[30] The Appellant's records show what he earned from this job:

- In 2016, he earned \$17,508.78.<sup>16</sup>
- In 2017, he earned \$16,976.96.<sup>17</sup>
- In 2018, he earned \$15,947.36<sup>18</sup>

[31] The amount for 2018 is slightly below the "substantially gainful" amount of \$16,029.00 in the *Canada Pension Plan Regulations*. However, the amount in the Regulations is an annual amount. The Appellant earned this income in six months. It is likely he could have worked the extra hours that would have made up the difference. He also earned \$1,112.55 from his job with the school district.<sup>19</sup>

– **The Appellant didn't have a benevolent employer**

[32] If the Appellant had a benevolent employer, it could mean he wasn't actually capable of working at his job, despite what his income showed. The Appellant didn't claim this, but I considered it anyway. However, I decided he didn't have a benevolent employer.

[33] A benevolent employer will change working conditions and lower their expectations if an employee has limitations. They expect significantly less from the

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<sup>16</sup> See GD2-56.

<sup>17</sup> See GD2-52.

<sup>18</sup> See GD2-43.

<sup>19</sup> See GD2-49.

disabled employee than from other employees. They accept that the employee can't work at a competitive level.<sup>20</sup>

[34] This doesn't describe either of the Appellant's jobs. The principal of his children's school asked him to apply for the supervisor's job about 13 years ago. He does regular duties. He didn't know his employer at the adventure park before he was hired. After he was hired, he developed a good relationship with his boss because he was reliable. The park now has new owners, and they continue to employ him.

[35] The Appellant's jobs are suitable for a person with his limitations. But he works as hard as other employees. His employers expect as much from him, and he meets those expectations.

### **The Appellant stopped being disabled in August 2016**

[36] I agree with the Minister that the Appellant stopped being disabled in August 2016. His condition was no longer severe, because he was capable regularly of pursuing a substantially gainful occupation.

[37] In 2016, the Appellant's work capacity improved. Starting in May 2016, he was able to take on more hours.<sup>21</sup> By August 2016, he was capable **regularly** of working at this pace. His records of employment show that his hours were steady in each pay period after the first three, for the next three years.<sup>22</sup>

### **I can't cancel the overpayment**

[38] As I said above, I have a lot of sympathy for the Appellant. But I can't base my decision on how I feel about him or his situation.

[39] I will point out that the Minister didn't know about the Appellant's income until 2018. That's why it didn't stop paying him in 2016. The Appellant was supposed to tell

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<sup>20</sup> The Federal Court of Appeal said this in *Atkinson v Canada (Attorney General)*, 2014 FCA 187.

<sup>21</sup> He worked 1008 hours in 2016, compared to 535 hours in 2015. See GD2-56 and GD2-60.

<sup>22</sup> See GD2-43, GD2-52, and GD2-56.

Service Canada that he was working, not rely on the CRA to do it for him. The Appellant agreed to this when he signed his CPP disability application.<sup>23</sup>

[40] I don't know why the Minister continued to pay the Appellant after it started reviewing his file, or why it took over a year to make a decision. I can understand why the Appellant is now distressed at having to pay back a large sum of money, when he has already lost so much income after having to give up his regular job in 2006. But I can't reduce or erase what the Appellant owes.

[41] Unlike the Tribunal, the Minister **does** have that power. The Minister may forgive some or all of an overpayment, including where collecting it would cause undue hardship.<sup>24</sup> The Appellant may wish to contact Service Canada to talk about repayment or other options to avoid financial difficulties. The decision letter of October 2019 mentioned this possibility, and invited the Appellant to call a toll-free number to discuss this.<sup>25</sup>

## Conclusion

[42] I find that the Appellant stopped being disabled in August 2016. He wasn't eligible for a CPP disability pension after that.

[43] This means the appeal is dismissed.

Virginia Saunders  
Member, General Division – Income Security Section

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<sup>23</sup> See GD2-40.

<sup>24</sup> See section 66(3) of the *Canada Pension Plan*.

<sup>25</sup> See GD2-21.