



Citation: *TC v Minister of Employment and Social Development*, 2021 SST 995

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

## **Decision**

**Appellant (Claimant):** T. C.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated June 24, 2020 (issued by  
Service Canada)

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**Tribunal member:** Pierre Vanderhout

**Type of hearing:** Teleconference

**Hearing date:** December 20, 2021

**Hearing participants:** Appellant  
Appellant's witness

**Decision date:** December 31, 2021

**File number:** GP-20-1419

## Decision

[1] The appeal is dismissed.

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

## Overview

[3] The Claimant is 51 years old. She worked as a legal secretary until October 2015. She stopped working then due to workload and stress issues that affected her mental and physical health.<sup>1</sup> However, in 2020 and 2021, she was a seasonal receptionist at X. This appeal arises from her second application for a CPP disability pension. The Minister of Employment and Social Development ("Minister") denied her first application in August 2016, but the Claimant did not ask the Minister to reconsider that decision.

[4] The Claimant applied for a CPP disability pension again on January 8, 2019. Her conditions included depression, anxiety, leg pain, irritable bowel, obesity, poorly controlled diabetes, high blood pressure, and pain and swelling in her arms and hands.<sup>2</sup> The Minister again refused her application. However, she appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] In her Notice of Appeal, the Claimant said her health issues prevent her from finding full-time employment that will provide enough income to look after her basic needs. She says I must consider her conditions both individually and together. When she is working, she does not have the time or capacity to look after herself. She also lives in an area with few suitable employment options.

[6] The Claimant says anxiety compromises her ability to work. Her concerns include COVID-19, an inability to travel far from her home, and her profound fear of vomit and vomiting. Her anxiety also interferes with getting proper treatment. She reports

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<sup>1</sup> GD2-302

<sup>2</sup> GD2-219

significant depression that leads her to do things such as ripping out her hair. Her badly broken leg continues to affect her ability to do physical work. She says swelling and pain further affect her ability to do office work. Irritable bowel syndrome also affects her ability to work in certain settings. Finally, she reports problems with cognitive issues such as focus and memory.<sup>3</sup>

[7] The Minister says the Claimant has residual capacity for regular gainful work, despite her limitations, and did seasonal work in both 2020 and 2021. She also received regular employment insurance (“EI”) benefits in 2021, which require a recipient to be capable of and available for work. The Minister says her right knee limitations would not preclude her from sedentary or light work. Her mental health concerns were connected to her previous stressful work as a legal secretary. The Minister says several conditions were not adequately documented. Socio-economic factors such as local labour market conditions are not relevant for assessing disability. Finally, the Minister says the Claimant worked for many years despite her longstanding anxiety.<sup>4</sup>

## What the Claimant must prove

[8] For the Claimant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2018. This date is based on her CPP contributions.<sup>5</sup> Her disability must also continue to be severe and prolonged up to the hearing date.

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

[10] A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.<sup>6</sup>

[11] This means I have to look at all of the Claimant’s medical conditions together to see what effect they have on her ability to work. I also have to look at her background,

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<sup>3</sup> The reasons in these two paragraphs are from the Claimant’s appeal reasons at page GD1-12.

<sup>4</sup> See GD5 and GD8.

<sup>5</sup> Service Canada uses a claimant’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 s. 44(2) of the *Canada Pension Plan*. The Claimant’s CPP contributions are on GD3-1 to GD3-2.

<sup>6</sup> S. 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

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 Claimant can regularly do some type of work from which she could earn a living, then she isn’t entitled to a disability pension.

[12] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.<sup>7</sup>

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

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

## Reasons for my decision

[15] I find that the Claimant hasn’t proven she had a severe and prolonged disability by December 31, 2018.

### Was the Claimant’s disability severe?

[16] The Claimant’s disability wasn’t severe. I reached this finding by considering several factors. I explain these factors below.

#### – The Claimant’s functional limitations do affect her ability to work

[17] According to Dr. McFarlane (Family Doctor), the Claimant has osteoarthritis, major depression, and a 2016 significant right leg fracture that causes chronic pain. She also has multiple comorbidities, such as obesity and uncontrolled diabetes.<sup>8</sup> However, I can’t focus on the Claimant’s diagnoses.<sup>9</sup> Instead, I must focus on whether she had functional limitations that interfered with earning a living.<sup>10</sup> When I do this, I have to look

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<sup>7</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

<sup>8</sup> GD2-213

<sup>9</sup> See *Ferreira v. Canada (Attorney General)*, 2013 FCA 81.

<sup>10</sup> See *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

at **all** of the Claimant's medical conditions (not just the main one) and think about how they affect her ability to work.<sup>11</sup>

[18] I find that the Claimant has functional limitations.

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

[19] The Claimant said her medical conditions resulted in functional limitations that affected her ability to work. When she applied for the CPP disability pension in 2019, she could not handle the stress of working in the legal field. She had trouble with making decisions, follow-through, and concentration. Her chronic leg pain affected her walking and prevented her from standing for long periods (more than an hour). She could not sit for more than a couple of hours. She could only drive for about an hour. Her swollen fingers affected her ability to grasp, pull, turn, carry, and hold on to items. Obesity affected her ability to bend and reach.<sup>12</sup>

[20] At the hearing, the Claimant said she could not type day after day, if it were the main part of her job. She also has problems with repetitive shoulder movements.

- **What the medical evidence says about the Claimant's functional limitations**

[21] The Claimant must provide medical evidence that shows that her functional limitations affected her ability to work by December 31, 2018.<sup>13</sup>

[22] The medical evidence supports what the Claimant says. In December 2018, Dr. McFarlane said that the Claimant's swollen hands impacted her ability to do tasks such as typing and writing. Dr. McFarlane noted trouble with opening, pulling, lifting, and holding on to things. Dr. McFarlane said that mental health issues affected the Claimant's concentration, motivation, and ability to make decisions. Her chronic pain left

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<sup>11</sup> See *Bungay v. Canada (Attorney General)*, 2011 FCA 47.

<sup>12</sup> GD2-219, GD2-220, and GD2-224 to GD2-232.

<sup>13</sup> See *Warren v. Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v. Dean*, 2020 FC 206.

her unable to tolerate prolonged activity or ambulation. Dr. McFarlane also noted the disabling impact of obesity, diabetes, and irritable bowel syndrome.<sup>14</sup>

[23] The medical evidence supports that the Claimant's limited physical stamina, trouble with repetitive physical movements, and limitations from depression and anxiety stopped her from doing repetitive and/or physically demanding work by December 31, 2018.

[24] I now have to decide whether the Claimant can regularly do other types of work. To be severe, her functional limitations must prevent her from earning a living at any type of work, not just her usual job.<sup>15</sup>

– **The Claimant can work in the real world**

[25] When I am deciding whether the Claimant can work, I can't just look at her medical conditions and how they affect what she can do. I must also consider factors such as her:

- age
- level of education
- language ability
- past work and life experience

[26] These factors help me decide whether the Claimant can work in the real world - in other words, whether it is realistic to say that she can work.<sup>16</sup>

[27] I find that the Claimant can work in the real world.

[28] The Claimant was 48 years old at the end of 2018. She speaks English fluently. She finished high school and a one-year secretarial program at college. She also completed a medical transcription course, although she says she required accommodations to pass. She worked for many years as a legal secretary. She also worked on a census for Statistics Canada. Most recently, she worked seasonally for

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<sup>14</sup> GD2-214 and GD2-216.

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

<sup>16</sup> See *Villani v. Canada (Attorney General)*, 2001 FCA 248.

H&R Block during “tax season” in 2020 and 2021. She did this from January 12 to April 30 in 2021.<sup>17</sup> She is clearly suited to and qualified for sedentary office work.

[29] I find that the Claimant retains the ability to work in the real world. She actually demonstrated this in an office setting for the past two years. Not only was she asked to return after her first stint in 2020, but H&R Block asked her to take some training in the fall of 2021. It is reasonable to expect that she will return to that seasonal work early in 2022.

– **The Claimant tried to find and keep a suitable job**

[30] If the Claimant can work in the real world, she must show that she tried to find and keep a job. She must also show her efforts weren’t successful because of her medical conditions.<sup>18</sup> The Federal Court of Appeal established this principle. Decisions of that court are binding on the Tribunal. Finding and keeping a job includes retraining or looking for a job that accommodates her functional limitations (in other words, a job with special arrangements).<sup>19</sup>

[31] The Claimant made efforts to work. But these efforts don’t show that her disability gets in the way of earning a living.

[32] The Claimant’s work at H&R Block was successful. In 2021, in just over 3½ months, she worked 508 hours. This is almost full-time employment, although the hours were likely skewed towards the busiest tax months of March and April. She earned \$7,242.21 during that period. Her employer said her job ended because the tax season was over. I see no reference to disability on her record of employment.<sup>20</sup>

[33] I cannot conclude that the Claimant’s disability got in the way of earning a living for that nearly four-month period. Nor can I conclude that her performance was unsatisfactory. She worked right up to the end of tax season. She was also asked to

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<sup>17</sup> GD4-1. (Two documents are labelled as GD4-1. This one is from June 29, 2021, and contains a Record of Employment.)

<sup>18</sup> See *Inclima v. Canada (Attorney General)*, 2003 FCA 117.

<sup>19</sup> See *Janzen v. Canada (Attorney General)*, 2008 FCA 150.

<sup>20</sup> GD4-1 (Record of Employment: see footnote 17).

take additional training in the fall of 2021. At the hearing, she said she went to bed after returning from work each day. However, she said she did not miss any work at H&R Block due to disability. Nor did she turn down any additional hours. In fact, she spent some extra unpaid hours helping out her co-workers.<sup>21</sup> She appears to have been a reliable and valued employee.

[34] Nor can I conclude that the Claimant was incapable of working after April 2021. I see abundant evidence that she was capable of more work in 2021.

[35] In June 2021, the Claimant reported that she could perform full-time work “for the time required” (i.e., the busy tax season), but “would not be able to maintain it on a permanent basis.” She felt that “part-time work would be more manageable.”<sup>22</sup> This points to continued work capacity after April 2021. At the hearing, she thought she might be able to do something online, where she was mostly answering phones. She would try to work part-time first, to see how she made out. While she suggested that technical barriers in her small community might interfere with or prevent such work, this would not be a relevant factor in assessing disability.<sup>23</sup>

[36] I also note that the Claimant applied for and started to get regular EI benefits in May 2021. She said those benefits were approved for a full year. EI benefits require the applicant to be “capable of and available to work.”<sup>24</sup> Getting regular EI benefits does not automatically disqualify a person from CPP disability benefits. However, in this case, it further supports the conclusion that her disability did not make her work attempts unsuccessful.<sup>25</sup>

[37] The Claimant suggested that declaring herself capable and available for work (with respect to regular EI benefits) was not problematic, as the Minister maintained that she could work (with respect to CPP disability benefits). She even suggested it would

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<sup>21</sup> GD1-13 and GD9-2

<sup>22</sup> GD4-1. (This is the “other” GD4 document. It consists of a Telephone Contact Record. It was filed on June 22, 2021. See also footnote 17.)

<sup>23</sup> *Canada (MHRD) v. Rice*, 2002 FCA 47.

<sup>24</sup> S. 18(1) of the *Employment Insurance Act*.

<sup>25</sup> See *Rouleau v. Canada (Attorney General)*, 2017 FC 534.



be dishonest to claim otherwise, as she would then contradict what a government authority told her.<sup>26</sup> As noted, receiving regular EI benefits is not necessarily fatal to her claim for CPP disability benefits. But it could still affect her credibility.<sup>27</sup> In this case, it does not help show that her disability made her work attempt unsuccessful.

[38] I further note that the Claimant was still looking for suitable work after she started getting regular EI benefits. However, she said she had not been successful because the job opportunities were limited in her area.<sup>28</sup> This is different from being unsuccessful due to her disability. In any case, socio-economic factors such as local labour market conditions are irrelevant in determining whether an applicant is disabled.<sup>29</sup>

[39] Finally, I see no objective medical evidence since January 21, 2020.<sup>30</sup> At the hearing, the Claimant said she received no medical care at all from January 2020 to October 2021. This may partly be due to her family doctor leaving in early 2021, although she has now started seeing a nurse practitioner. The COVID-19 pandemic has also had an impact on medical care. However, not getting any treatment at all over that extended period is consistent with concluding that her return to work was successful.

[40] I can't find that the Claimant had a severe disability by December 31, 2018, that continued through to the hearing date. The evidence shows that she no longer had a severe disability by the hearing date. While she may have been temporarily disabled for a time, CPP disability benefits are not intended to be available in cases of temporary disability.<sup>31</sup>

## Conclusion

[41] I find that the Claimant isn't eligible for a CPP disability pension, because her disability wasn't severe since at least December 31, 2018. In particular, it is not severe

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<sup>26</sup> GD9-3

<sup>27</sup> See the non-binding decision of the Pension Appeals Board in *B.R. v. Canada (MHRSD)*, (2011) CP 27675.

<sup>28</sup> GD4-1 (Telephone Contact Record: see footnote 22).

<sup>29</sup> *Canada (MHRD) v. Rice*, 2002 FCA 47.

<sup>30</sup> GD6-13

<sup>31</sup> *Litke v. MHRSDC*, 2008 FCA 366.

now. Because I have found that her disability wasn't severe, I didn't have to consider whether it was prolonged.

[42] This means the appeal is dismissed.

Pierre Vanderhout  
Member, General Division – Income Security Section