



Citation: *GO v Minister of Employment and Social Development*, 2022 SST 821

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

## Decision

**Appellant:** G. O.  
**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated November 27, 2020 (issued  
by Service Canada)

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**Tribunal member:** Connie Dyck  
**Type of hearing:** Teleconference  
**Hearing date:** April 25, 2022  
**Hearing participants:** Appellant  
Appellant's wife  
**Decision date:** April 29, 2022  
**File number:** GP-21-544

## Decision

[1] The appeal is dismissed.

[2] The Appellant, G. O., 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 55 years old. He last worked as a truck driver in November 2016 when he was laid off. In May 2018, he fractured a rib resulting in severe pain. He fracture more ribs after that and continues to be in pain every day.

[4] The Appellant applied for a CPP disability pension on September 10, 2019.<sup>1</sup> The Minister of Employment and Social Development (Minister) refused his application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Appellant says anytime he does something like lift a bag of groceries or shovel for a few minutes, he is in extreme pain when his pain medication wears off. The pain prevents him from doing most activities.

[6] The Minister says the information as a whole does not support that the Appellant had a medical condition that would have rendered him incapable of performing any type of work at his MQP of December 31, 2017, and continuously thereafter.

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<sup>1</sup> The CPP disability application is at GD 2-33.

## What the Appellant must prove

[7] For the Appellant to succeed, he must prove he had a disability that was severe and prolonged by December 31, 2017. This date is based on his contributions to the CPP.<sup>2</sup>

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

[9] A disability is **severe** if it makes an Appellant incapable regularly of pursuing any substantially gainful occupation.<sup>3</sup>

[10] 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, 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 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.<sup>4</sup>

[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 he has a severe and prolonged disability. 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.

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<sup>2</sup> 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 GD 2-56.

<sup>3</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

<sup>4</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

## Reasons for my decision

[14] I find that the Appellant hasn't proven he had a severe and prolonged disability by December 31, 2017.

### Was the Appellant's disability severe?

[15] 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 didn't affect his ability to work by December 31, 2017**

[16] The Appellant must provide medical evidence that shows that his functional limitations affected his ability to work by December 31, 2017.<sup>5</sup>

#### **Medical conditions at December 31, 2017**

[17] The Appellant was diagnosed with depression/anxiety, back pain and atypical chest pain in 2017.<sup>6</sup> However, I can't focus on the Appellant's diagnoses.<sup>7</sup> Instead, I must focus on whether he had functional limitations that got in the way of him earning a living.<sup>8</sup> 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 his ability to work.<sup>9</sup>

[18] Clinic notes of Dr. Heibesh (family doctor) show the Appellant had depression in 2017.<sup>10</sup> The Appellant explained that his father passed away in April 2017 and family issues were causing him to feel depressed and anxious.<sup>11</sup> He decided to take some time and "get a grip emotionally".<sup>12</sup> Dr. Heibesh prescribed an anti-depressant, but it

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<sup>5</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>6</sup> This is at GD 4-3, GD 4-6 and GD 4-20.

<sup>7</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>8</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>9</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

<sup>10</sup> The clinic notes are at GD 4-3 and GD 4-4.

<sup>11</sup> The Appellant's notes are at GD 4-2.

<sup>12</sup> This is at GD 4-2.

made the Appellant feel worse, so it was stopped. In June 2017, Dr. Heibesh noted the Appellant had no mood concerns.<sup>13</sup> The Appellant testified that he did not attend any counselling, psychotherapy or therapy and did not try any other anti-depressant. The Appellant testified that by the spring of 2018, the family issues had settled down and he was no longer in contact with some family members. He started looking for and applying for truck driving jobs, but the companies told him it was too early in the season.<sup>14</sup> The Appellant told me that he is not in any treatment for depression.

[19] The Appellant also had atypical chest pain in 2017.<sup>15</sup> The Appellant told Dr. Bushidi (cardiologist) that he had chest pain for many years. Dr. Bushidi conducted a Myocardia perfusion imaging or stress test (MIBI) which was completely normal.<sup>16</sup> There was no evidence of myocardial ischemia. Dr. Bushidi believed the only thing that could be done to improve the Appellant's health was to stop smoking and stop alcohol. The Appellant testified that he had reduced the number of cigarettes he smoked in a day, but he continued to smoke. The Appellant testified that he has not seen a cardiologist since 2017 and there have been no further investigations, tests or treatments regarding his chest pain since 2017.

[20] In April 2017, the Appellant told Dr. Heibesh that he had "back pain for months".<sup>17</sup> There were no neurological symptoms and no shooting pain. The Appellant's range of motion was normal. The treatment plan was physiotherapy. There is no further medical evidence that the Appellant continued to have back pain or needed any further treatment.

[21] In June 2017, the Appellant was prescribed Trazadon for insomnia.<sup>18</sup> The Appellant testified that he continues to take a sleeping pill and is able to sleep at night. He sleeps about 12 hours in a 24 hour period.

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<sup>13</sup> Dr. Heibesh's clinic note is at GD 4-10.

<sup>14</sup> This was the Appellant's testimony and is also at GD 4-2.

<sup>15</sup> Dr. Bushidi's report is at GD 4-21.

<sup>16</sup> This information is at GD 4-22.

<sup>17</sup> Dr. Heibesh's clinic note is at GD 4-6.

<sup>18</sup> Dr. Heibesh's clinic note is at GD 4-10.

[22] The Appellant's chest pain, back pain and depression would not have prevented him from suitable work. In fact, he planned to return to work after December 31, 2017. He had chest and back pain for many years and worked with these conditions. There is no medical evidence that these conditions required any treatment or ongoing investigations by December 31, 2017. His depression was no longer being treated and he was not in any type of therapy or treatment. He testified that by the spring of May 2018, he had started to relax emotionally and was planning on returning to work.

[23] Although the Appellant had some health issues in 2017, either individually or collectively, these would not have prevented the Appellant from suitable work.

**Medical conditions after December 31, 2017**

[24] The Appellant has chronic rib fractures which causes severe rib cage pain.<sup>19</sup> This condition started suddenly on May 10, 2018.<sup>20</sup> He explained that he was relaxing on the sofa when he sneezed and he heard a loud "pop sound". He was immediately in extreme pain and collapsed onto the floor. He testified that the pain is taking over his life despite using pain medication. He explained that if he does any activity, he is in severe pain. I believe the Appellant.

[25] In July 2020, Dr. Heibesh reported that the Appellant hurt his ribs in May 2018 after vigorous sneezing. He pain remains severe. It was her opinion that with that much pain, he could not resume his work.<sup>21</sup>

[26] However, the test before me is whether he was disabled on or before December 31, 2017. This condition started suddenly on May 10, 2018.<sup>22</sup> The Appellant testified that until this date, he was looking for and applying for truck driving jobs. He also testified that the difference since May 10, 2018 is like "day and night". He said before the sneeze he was very active. Before the sneeze, he could cut the lawn, shovel snow, lift heavy items and was not in pain. He explained that after the sneeze and the cracked

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<sup>19</sup> The medical report is at GD 2-103.

<sup>20</sup> This information was given by the Appellant at GD 4-2.

<sup>21</sup> Dr. Heibesh's report is at GD 1-8.

<sup>22</sup> The Appellant's statement is at GD 4-2.

ribs, he cannot do any of these things without pain. His pain is what stops him from being able to do anything.

[27] I believe the Appellant that he is unable to work because of his pain. However, this was not the case before December 31, 2017, the date by which he must be found to be disabled.

[28] The evidence doesn't show that the Appellant had functional limitations that affected his ability to work by December 31, 2017. As a result, he hasn't proven he had a severe disability.

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

[30] This allows me to realistically assess an Appellant's ability to work.<sup>23</sup>

[31] I don't have to do that here because the Appellant's functional limitations didn't affect his ability to work by December 31, 2017. This means he didn't prove his disability was severe by then.<sup>24</sup>

## **Conclusion**

[32] I find that the Appellant isn't eligible for a CPP disability pension because his disability wasn't severe by December 31, 2017. Because I have found that his disability wasn't severe, I don't have to consider whether it is prolonged.

[33] This means the appeal is dismissed.

Connie Dyck  
Member, General Division – Income Security Section

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<sup>23</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

<sup>24</sup> See *Giannaros v Minister of Social Development*, 2005 FCA 187.