



Citation: *KA v Minister of Employment and Social Development*, 2022 SST 906

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

Decision

Appellant: K. A.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated March 31, 2021 (issued by Service Canada)

Tribunal member: James Beaton
Type of hearing: Teleconference
Hearing date: July 19, 2022
Hearing participant: Appellant
Decision date: July 19, 2022
File number: GP-21-914

Decision

[1] The appeal is dismissed.

[2] The Appellant, K. A., 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 52 years old. He has a degree in civil engineering. His work history is unclear. However, the last time he reported earnings in Canada was for the year 2008.¹

[4] The Appellant doesn't claim to be disabled by a medical condition. Instead, he claims that he can't work because he is being tortured and persecuted by various government agencies and public institutions in Canada and Pakistan. (He has lived in Pakistan before, and currently lives in Canada.)²

[5] The Appellant applied for a CPP disability pension on August 7, 2019. 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 (Tribunal).

[6] The Minister says the Appellant might be disabled now. But there is no medical evidence that he was disabled by the last date that he could qualify for a CPP disability pension.³

[7] I agree with the Minister.

¹ See GD10-15.

² The Appellant's submissions are located throughout GD1, GD2, GD3, GD4, GD5, GD6, GD7, GD8, GD9, GD11, GD13, GD15, and GD17.

³ The Minister's submissions are at GD10, GD14, and GD16.

What the Appellant must prove

[8] For the Appellant to succeed, he must prove he has a disability that was severe and prolonged by March 31, 2008. This date is explained below.

[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.⁴

[11] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁵

[12] The Appellant must prove that he has a severe and prolonged disability. He must prove this on a balance of probabilities. This means he must show that it is more likely than not he is disabled.

Where the date of March 31, 2008, comes from

[13] The last date the Appellant could become disabled in order to qualify for a CPP disability pension was March 31, 2008. This deadline is based on his contributions to the CPP.⁶

[14] The Appellant had CPP contributions in 2008 that were below the minimum amount the CPP accepts. These contributions let the Appellant qualify for a pension if he became disabled between January 1, 2008, and March 31, 2008.⁷

[15] Sometimes, if an appellant works in another country, their earnings in that country can extend their deadline just as if they had worked in Canada during that time. For this rule to apply, there must be a social security agreement between Canada and the country where the appellant worked. In this case, the Appellant worked in Pakistan

⁴ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

⁵ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

⁶ 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 at GD10-15.

⁷ This is based on sections 19 and 44(2.1) of the *Canada Pension Plan*.

and possibly in Qatar after 2008, but Canada doesn't have a social security agreement with Pakistan or Qatar. So his earnings there can't extend his deadline beyond March 31, 2008.

[16] The Appellant argued that his deadline should be extended because he was prevented from contributing to the CPP after 2008. He said he was being tortured and persecuted, so he could not work. He believes that he should not be disadvantaged by something that was beyond his control.

[17] The *Canada Pension Plan* doesn't allow me to consider the Appellant's argument in order to extend his deadline. His deadline is established by his contributions. I can't consider his argument for why he didn't make contributions after 2008.

Matters I have to consider first

The Appellant said the Tribunal is biased

[18] In his written submissions, the Appellant said the Tribunal is being blackmailed. This suggests that the Tribunal is biased and can't make a fair decision.

[19] At the hearing, I asked the Appellant if he believed that I was impartial and could fairly decide his appeal. He said yes.

The Tribunal can't gather evidence or summon witnesses

[20] The Appellant said the Tribunal should gather evidence from other government agencies and public institutions. He also said the Tribunal should summon witnesses to testify about how he is being tortured and persecuted.⁸

[21] At the hearing, I told the Appellant that the Tribunal doesn't have the authority to gather evidence or summon witnesses. I asked him if he needed more time to provide more evidence or to call witnesses himself, and he said no. He said he wanted to proceed with the hearing as scheduled.

⁸ See GD15.

The Tribunal can't review the actions of government agencies

[22] In his written submissions, the Appellant asked the Tribunal to review the actions of government agencies and public institutions. He made many claims about how they are torturing and persecuting him. He wants the Tribunal to hold them accountable.

[23] On June 1, 2022, I sent the Appellant a letter.⁹ In it, I explained: "The Tribunal can't make decisions about the actions of other government agencies. The only thing the Tribunal can make a decision about is whether you are entitled to a Canada Pension Plan disability pension ..." I explained this again at the hearing.

The Charter isn't part of this appeal

[24] In his written submissions, the Appellant talked about the *Canadian Charter of Rights and Freedoms* (Charter). He suggested that his Charter rights had been breached.

[25] In my letter on June 1, I told the Appellant: "... you will need to tell me which specific section of the Canada Pension Plan legislation breaches the Charter. The Tribunal can't consider arguments that the Minister or other government agencies have breached the Charter through their actions."¹⁰ He replied that he didn't want to rely on the Charter as part of his appeal.¹¹

Reasons for my decision

[26] I find that the Appellant hasn't proven he had a severe and prolonged disability by March 31, 2008.

Was the Appellant's disability severe?

[27] The Appellant's disability wasn't severe by March 31, 2008.

⁹ See GD12.

¹⁰ See GD12.

¹¹ See GD13.

– **The Appellant doesn't claim to have a mental or physical disability**

[28] A CPP disability pension is only payable to a person who is disabled according to the *Canada Pension Plan* and the *Canada Pension Plan Regulations*. This means the person must have a mental or physical disability.¹²

[29] The Appellant doesn't claim to have a mental or physical disability.¹³ He didn't list any functional limitations in his application, either.¹⁴ Instead, he claims that he is disabled because he is being tortured and persecuted by various government agencies and public institutions in Canada and Pakistan.

[30] Even though the Appellant doesn't claim to have a mental or physical disability, the Minister accepts that the Appellant might have a disability now.¹⁵ However, the Minister says there is no medical evidence that he had a disability at the relevant time. I will address this next.

– **What the medical evidence says**

[31] The Appellant must provide some medical evidence that supports that he has functional limitations due to a mental or physical disability. He must also show that they affected his ability to work by March 31, 2008.¹⁶

[32] The medical evidence doesn't support that the Appellant had functional limitations that affected his ability to work by March 31, 2008. He provided no medical evidence dated earlier than 2018. And none of the medical evidence he did provide relates to his condition in 2008 or earlier.¹⁷

¹² See sections 42(2) and 44(1)(b) of the *Canada Pension Plan*. See also section 68(1) of the *Canada Pension Plan Regulations*.

¹³ See GD2-181.

¹⁴ The Appellant's application (excluding attachments) is at GD2-162 to 180.

¹⁵ There is medical evidence that the Appellant is currently experiencing a paranoid delusional disorder or schizophrenia, although the Appellant disagrees with this assessment. See, for example, GD2-263.

¹⁶ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹⁷ There is medical evidence at GD1-203 and GD2-236 to 292.

[33] The Appellant argued that he can't provide earlier medical evidence because he was unlawfully removed from Canada and Pakistan multiple times since 2007. So he could not get a doctor or seek medical treatment until 2018.

[34] The fact remains that the Appellant hasn't provided any medical evidence from or about the relevant time period. The law is clear that an appellant must provide at least **some** medical evidence to support that they were disabled at the relevant time.¹⁸

[35] As a result, he hasn't proven that he had a severe disability by March 31, 2008.

[36] I acknowledge that the Appellant is receiving social assistance and that he says this isn't enough money to live off of. However, an appellant isn't entitled to a CPP disability pension just because they are receiving another benefit or because they need the money.

– **The Appellant's personal characteristics**

[37] When I am deciding whether a disability is severe, I usually have to consider an appellant's personal characteristics. This allows me to realistically assess an appellant's ability to work.¹⁹

[38] I don't have to do that here because the Appellant's functional limitations didn't affect his ability to work by March 31, 2008. This means he hasn't proven that his disability was severe by then.²⁰

Conclusion

[39] I find that the Appellant isn't eligible for a CPP disability pension because his disability wasn't severe by March 31, 2008. Because I found that his disability wasn't severe, I didn't have to consider whether it was prolonged.

¹⁸ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹⁹ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

²⁰ See *Giannaros v Minister (Social Development)*, 2005 FCA 187.

[40] This means the appeal is dismissed.

James Beaton
Member, General Division – Income Security Section