



Citation: *DA v Minister of Employment and Social Development*, 2022 SST 724

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

Decision

Appellant: D. A.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated October 23, 2020 (issued by Service Canada)

Tribunal member: Virginia Saunders

Type of hearing: Videoconference

Hearing date: March 31, 2022

Hearing participants: Appellant

Decision date: July 22, 2022

File number: GP-21-108

Decision

[1] The appeal is dismissed.

[2] The Appellant, D. 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 59 years old. In her last job, she was an inventory clerk with a food processing company in Calgary. She stopped working in July 2006 because of her mental health. She also had back and neck pain, but she told me this wasn't the reason she stopped working.

[4] The Appellant received disability benefits through her employer until August 2008, when she moved to X. She didn't appeal her benefits stopping because she didn't feel capable of sending more information to pursue the issue.

[5] The Appellant lived in X for about seven years. She told me that during that time, she didn't have proper health care. Her mental health was unstable and her back pain got worse. She moved back to Calgary in April 2015. She now had better access to health care, but her conditions never improved.

[6] The Appellant applied for a CPP disability pension in March 2019. 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.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she has a disability that was **severe and prolonged** by December 31, 2009. This date is based on her contributions to the CPP.¹

[8] The Appellant says she hasn't been able to work because of depression, osteoarthritis of the spine, and chronic pain.²

[9] The Minister says the Appellant's mental health improved, and that her back issues and chronic pain didn't prevent her from working by December 31, 2009.

What "severe" and "prolonged" mean

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

[11] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.³

[12] 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.

[13] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁴

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 GD2-71.

² See GD2-20. The Appellant told me she struggled at work for several months before she was approved for private disability benefits in July 2006.

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

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

[14] 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.

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

Reasons for my decision

[16] I find that the Appellant hasn't proven she had a severe and prolonged disability by December 31, 2009.

The Appellant's disability wasn't severe

[17] The Appellant's disability wasn't severe at December 31, 2009. I reached this finding by considering several factors. I explain these factors below.

– The Appellant's functional limitations affected her ability to work

[18] The Appellant's family doctor, Dr. Wadhera, said the Appellant has chronic neck and low back pain, anxiety and depression.⁵

[19] I can't focus on the Appellant's diagnoses.⁶ Instead, I must focus on whether she has functional limitations that get 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.⁸ I also have to think about how they affected her ability to work by December 31, 2009, and whether they have continued to affect her.⁹

⁵ See GD2-252-253.

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.

⁹ In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that an appellant has to show a severe and prolonged disability by the end of their minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

[20] I find that the Appellant's mental health caused functional limitations that affected her ability to work by December 31, 2009. However, her limitations weren't so bad that she couldn't have tried some type of work.

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

[21] The Appellant told me she has had **back and neck pain** since she worked on an assembly line in the early 1980s. It got worse while she was in X. She managed by pacing herself, but her pain got much worse after a treatment she had in August 2014.¹⁰ The Appellant says her back and neck pain cause these functional limitations:

- She can only walk, stand, or do household activities for short periods.
- She has to move slowly.
- She has trouble bending and reaching.
- Most activity causes pain, so she needs recovery time between tasks.
- The medication she takes for chronic pain causes problems with memory and concentration. She has trouble staying on task, and she gets confused and distracted. She has trouble motivating herself to complete prescribed exercise programs.¹¹

[22] The Appellant says she has had significant **depression** since late 2005. She was depressed because she was being harassed and threatened at work and her employer wouldn't do anything about it. Her depression causes these functional limitations:

- She isolates herself.
- She angers easily and is short-tempered.
- She struggles with anxiety when she is around people.
- She can't tolerate crowds of any kind.
- She has unpredictable reactions to stress, including panic attacks.
- She is listless and can't concentrate.

¹⁰ The Appellant wasn't sure when she had this treatment. She thought it was in March 2013. However, at the hearing she said she must have been mistaken, because her records show she didn't see this doctor until August 2014. See GD2-108-109.

¹¹ See GD2-23 and 25.

- She has to read things several times to understand them.¹²

– **What the medical evidence says about the Appellant’s functional limitations**

[23] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 2009.¹³

[24] The medical evidence supports some of what the Appellant says. It shows her mental health caused functional limitations. But there isn’t medical evidence of a back or neck condition that affected her ability to work by December 2009.

[25] In April 2007, Dr. Wadhera noted the Appellant had been diagnosed with major depressive disorder in July 2006. Despite being on medication, she still had prolonged periods of low energy where she stayed in bed. She had issues with memory and concentration. She isolated herself. Dr. Wadhera said the Appellant’s symptoms prevented her from performing her usual job because it required attention to detail, pressure, and possibly unpleasant social contacts.¹⁴

[26] The Appellant saw a psychiatrist, Dr. Hamid, in July 2007. He confirmed she had a recurrent major depressive disorder. She had the same limitations that Dr. Wadhera had noted. She wasn’t responding to medication, so Dr. Hamid changed it.¹⁵

[27] In May 2008, Dr. Hamid said the Appellant had “recently improved significantly” with her medication (Sertraline 150 mg and Wellbutrin XL 300 mg a day).¹⁶

[28] The Appellant told me that after she moved to X she got refills of her medication from a walk-in clinic. One of the doctors at the clinic, Dr. Kruger, became her family doctor in April 2009. In late 2010 Dr. Kruger’s daughter, Dr. Hibbitts, took over her care.

¹² See GD2-24.

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

¹⁴ See GD2-158-159.

¹⁵ See GD2-160-161.

¹⁶ See GD2-162.

[29] Dr. Kruger's office notes from April 2009 to June 2010, show the Appellant's mental health improved at times, but was still a problem. Her mood was labile. She was still sleeping a lot in July 2009, but Dr. Kruger didn't note that problem again for the rest of the year. In November and December 2009, Dr. Kruger noted that Fluvoxol was helping and working well. However, in January 2010, the Appellant was anxious and crying. Her mood continued to be a problem in the months after that.¹⁷ Dr. Kruger referred her to a counsellor in February 2010, and to a psychiatrist in June 2010.¹⁸ In May 2010, the Appellant told her counsellor she had no motivation to get out of bed and had trouble concentrating.¹⁹

[30] The only medical evidence of a back or neck condition before December 31, 2009, is an MRI from July 2006. The MRI was to investigate low back pain radiating to the Appellant's left leg. It showed mild disc bulges and degenerative facet changes.²⁰

[31] However, Dr. Wadhera didn't mention back or neck pain as a reason why the Appellant couldn't do her job in April 2007.²¹ The Appellant saw Dr. Kruger 13 times between April and December 2009. His notes don't mention back or neck pain at all.²²

[32] The Appellant told me she was certain she discussed her back pain with Dr. Kruger. She thought he probably didn't realize how bad it was.

[33] Although I believe this is what the Appellant remembers, I don't accept that Dr. Kruger or Dr. Wadhera ignored or failed to recognize a significant health issue. Dr. Wadhera wrote the April 2007 letter specifically to explain why the Appellant couldn't work. It is reasonable to expect that he would have mentioned all the limitations the Appellant had at that time. Dr. Kruger's notes show he discussed other minor issues with the Appellant, including reflux, congestion, and PMS. It is likely that he would have recorded back or neck pain if the Appellant had mentioned either.

¹⁷ See GD2-129 and 174.

¹⁸ See GD2-173-182.

¹⁹ See GD2-106.

²⁰ See GD2-139-140

²¹ See GD2-158-159

²² See GD2-177-182

[34] The medical evidence doesn't support that the Appellant's back and neck pain affected her ability to work by December 31, 2009. Her medical records show she didn't tell her doctor about this type of pain until July 2014.²³

[35] I recognize that the Appellant isn't happy with the medical care she got in X. I also recognize how difficult it is to get medical information from many years ago. But the Appellant **was** able to get her records, except for the short period in X before Dr. Kruger took her on as a patient. Whatever might have been in those records would not have been as relevant as what Dr. Kruger wrote after that. I can't accept the Appellant's argument that she complained of significant back pain to Dr. Kruger and he failed to do anything about it. I think it is more likely that the Appellant's back and neck pain were not significant issues that affected her ability to work until 2014.

[36] The medical evidence supports that the Appellant still had mental health issues at December 31, 2009. But there is no evidence her condition was worse than it had been before she moved to X. Dr. Kruger's notes suggest she had probably improved. So I can't find that she had more limitations than what Dr. Wadhera and Dr. Hamid reported in 2007 and 2008.

[37] I find that, at December 31, 2009, the Appellant's functional limitations would have affected her ability to do work that required attention to detail, workplace pressure, or potentially difficult contact with others.

[38] I now have to decide whether the Appellant could regularly do other types of work at December 31, 2009. To be severe, her functional limitations must have prevented her from earning a living at any type of work, not just her usual job.²⁴

– **The Appellant could work in the real world at December 31, 2009**

[39] I find that the Appellant could work in the real world.

²³ See GD2-117.

²⁴ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

[40] When I am deciding whether the Appellant could work at December 31, 2009, I can't just look at her medical condition and how it affected what she could do. I must also consider factors such as her age, level of education, language abilities, and past work and life experience.

[41] These factors help me decide whether the Appellant could work in the real world—in other words, whether it is realistic to say that she could work.²⁵

[42] The Appellant was 47 years old in December 2009. She had a high school diploma as well as training in purchasing and accounting.²⁶ She had many years of experience in the workforce including clerical and administrative assistant jobs, and assembly work. The medical evidence shows she could have tried full- or part-time work that wasn't mentally demanding or stressful, and didn't require her to interact with the public in challenging situations.

– **The Appellant didn't try to find and keep a suitable job**

[43] Because the Appellant could 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 condition.²⁷ Finding and keeping a job includes retraining or looking for a job she could do with her functional limitations.²⁸

[44] The Appellant didn't make reasonable efforts to work. She told me she applied for one accounting position, but she wasn't offered the job. She didn't try after that.

[45] This one attempt to work isn't enough. Besides that, there is no evidence the Appellant's medical condition was the reason she wasn't hired.

[46] Because the Appellant didn't try to find and keep a suitable job, I can't find that she had a severe disability by December 31, 2009.

²⁵ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

²⁶ See GD2-29.

²⁷ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

²⁸ See *Janzen v Canada (Attorney General)*, 2008 FCA 150.

Conclusion

[47] I find that the Appellant isn't eligible for a CPP disability pension because her disability wasn't severe by December 31, 2009. Because I have found that her disability wasn't severe, I didn't have to consider whether it was prolonged.

[48] This means the appeal is dismissed.

Virginia Saunders
Member, General Division – Income Security Section