



Citation: *KB v Minister of Employment and Social Development*, 2021 SST 87

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

Decision

Appellant: K. B.
Representative: A. J.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated September 8, 2020 (issued
by Service Canada)

Tribunal member: Tengteng Gai

Type of hearing: Teleconference
Hearing date: October 28, 2021

Hearing participants: Appellant
Appellant's representative
Interpreter

Decision date: December 22, 2021
File number: GP-20-1368

Decision

[1] The appeal is dismissed.

[2] The Appellant, K. B., 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 63 years old. He has a bachelor degree from an Indian University. He immigrated to Canada in 2000. He obtained an electrician certificate in 2006.

[4] The Appellant worked in a factory from 2000 to 2006. He then worked as an electrician from 2006 until July 2010, when he injured his left knee in a workplace accident.

[5] The Appellant applied for a CPP disability pension on May 14, 2020. 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.

[6] The Appellant argues that he had a severe and prolonged disability.

[7] The Minister argues that the medical evidence doesn't show that the Appellant had a severe and prolonged disability by December 31, 2012. In support of its position, the Minister cited a number of medical conditions that deteriorated or were diagnosed after December 31, 2012.

What the Appellant must prove

[8] For the Appellant to succeed, he must prove he had a disability that was severe and prolonged by his Minimum Qualification Period (MQP) of December 31, 2012.¹ This date is based on his contributions to the CPP.

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

[10] A disability was **severe** if it made an Appellant incapable regularly of pursuing any substantially gainful occupation.²

[11] This means I have to look at all of the Appellant’s medical conditions together to see their effect on his ability to work. I also have to consider his background including his age, level of education, and past work and life experience. I do this to get a realistic or “real world” picture of whether his disability was severe. If the Appellant was able to regularly do some kind of work that he could earn a living from, then then isn’t entitled to a disability pension.

[12] A disability was **prolonged** if it was likely to be long continued and of indefinite duration, or was likely to result in death.³

[13] 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.

[14] The Appellant has to prove he had 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 was disabled.

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 GD5-14.

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

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

Reasons for my decision

[15] I find that the Appellant hasn't proven he had a severe and prolonged disability by December 31, 2012.

The Appellant's disability wasn't severe

[16] I find that the Appellant's disability wasn't severe. I base this on several factors. I explain these factors below.

– The Appellant testified that he had functional limitations

[17] The Appellant had bilateral knee pain, low back pain, osteoarthritis, depression, anxiety, Alzheimer's disease, venous disease, and cardiac problems. However, I can't focus on the Appellant's diagnosis.⁴ Instead, I must focus on whether he had resulting functional limitations that got in the way of him earning a living.⁵ 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 affected his ability to work.⁶

[18] I find the Appellant's testimony sincere.

[19] At the hearing, the Appellant said that had functional limitations that affected his ability to work in the following ways:

- He had trouble standing.
- He had difficulty bending down.
- He had problems walking.
- He could not lift or carry objects.
- He could not sit for long because of back pain.
- He felt depressed.
- He felt anxious.
- He had trouble concentrating.

⁴ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁵ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁶ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- He had trouble sleeping.

– **The medical evidence doesn't support the Appellant's testimony.**

[20] The Appellant must provide medical evidence that his functional limitations affected his ability to work by December 31, 2012.⁷

[21] I won't consider functional limitations from Alzheimer's disease, venous disease, and cardiac problems for the following reasons:

- Alzheimer's disease was diagnosed in 2016.⁸
- Venous disease (damaged veins) was diagnosed in 2019.⁹
- He had a heart attack in 2018 and was later diagnosed with cardiac problems.¹⁰

[22] I won't consider functional limitations from these medical conditions because they were diagnosed or occurred after his MQP date of December 31, 2012. This appeal must focus on the medical conditions he had by that date.¹¹ New medical conditions that arose after aren't relevant to this appeal.

[23] The Appellant genuinely believed that his functional limitations affected his ability to work. However, the medical evidence doesn't support his testimony. I base this finding on the following:

- Although the medical evidence mentioned left knee pain, right knee pain, low back pain, and osteoarthritis,¹² there wasn't details of associated functional limitations by his MQP date.

⁷ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

⁸ See Dr. Kakar's report at GD4-13.

⁹ See Dr. Darvish-Kazem's report at GD4-2.

¹⁰ See Dr. Kakar's report at GD2-110.

¹¹ See *Johnson v Canada (Attorney General)*, 2016 FC 1254.

¹² See Dr. Gerges's progress notes at GD2-74 to 77.

- Left knee surgery in 2011 reduced pain and he had normal range of motion in his left knee by October 3, 2012.¹³
- The medical evidence mentioned mild depression, anxiety, and insomnia in 2011.¹⁴ However, no further details or associated functional limitations were noted by his MQP date.
- On February 19, 2018, Dr. Kakar reported functional limitations from severe major depression and persistent depressive disorder.¹⁵ However, these functional limitations were backdated to August 2015, well after the Appellant's MQP date.

[24] I have sympathy for the Appellant's situation. Unfortunately, he hasn't provided objective medical evidence of a severe disability existing on or before his MQP date of December 31, 2012.¹⁶ The medical evidence he provided doesn't show that he had functional limitations that affected his ability to work by his MQP date. As a result, he hasn't proven he had a severe disability.

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

[26] This allows me to realistically assess an Appellant's ability to work.¹⁷

[27] I don't have to do that here because the Appellant's functional limitations didn't affect his ability to work by December 31, 2012. This means he didn't prove his disability was severe by then.¹⁸

¹³ See Dr. Gerges's progress notes at GD2-76.

¹⁴ See Dr. Gerges's progress notes at GD2-75.

¹⁵ See Dr. Kakar's report at GD2-197.

¹⁶ See *Canada (Attorney General) v Angell*, 2020 FC 1093

¹⁷ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

¹⁸ See *Giannaros v Minister of Social Development*, 2005 FCA 187.

Conclusion

[28] I find that the Appellant isn't eligible for a CPP disability pension because his disability wasn't severe. Since I found that his disability wasn't severe, I don't have to consider whether it was prolonged.

[29] This means the appeal is dismissed.

Tengteng Gai
Member, General Division – Income Security Section