



Citation: *LB v Minister of Employment and Social Development*, 2022 SST 1055

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

Decision

Appellant: L. B.
Representatives: Matthew MacIsaac
S. V.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated February 5, 2021 (issued
by Service Canada)

Tribunal member: James Beaton

Type of hearing: Videoconference

Hearing dates: July 5, 2022
August 2, 2022

Hearing participants: Appellant
Appellant's representatives

Decision date: August 30, 2022

File number: GP-21-1084

Decision

[1] The appeal is dismissed.

[2] The Appellant, L. 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 54 years old. She worked at a correctional facility from 1991 to 2019. Sometime between 2004 and 2009, she was moved to her most-recent position, at the front desk, because of a neck and shoulder strain injury.¹ She had two motor vehicle accidents, on October 21, 2018, and July 15, 2019.² She made two attempts to go back to work after the first accident, but was unsuccessful. She stopped working on March 20, 2019, due to a number of physical and mental health conditions.

[4] The Appellant applied for a CPP disability pension on June 2, 2020. The Minister of Employment and Social Development refused her application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Appellant says her medical conditions were improving until she had the accidents. The accidents made her conditions worse. She says she is hard-working and would work if she could. She tried to go back to work twice after her accidents, but didn't succeed. She urged me to rely on letters from Dr. Chehade (her current family doctor) and Dr. Dalgity (her chiropractor), which say she is disabled.³

[6] The Minister says there is no evidence of any serious injuries from the accidents. The Appellant's age, education, and skills are favourable, so she is still able to do some type of work. Therefore, the Minister believes she isn't disabled.

¹ See GD2-189, 328, and 331; GD8-42; and the hearing recording.

² She also had a motor vehicle accident much earlier, in 1983.

³ These letters are at GD4-3 to 6.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she has a disability that was severe and prolonged by the hearing date, which was August 2, 2022.⁴

[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.⁵

[10] 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, language abilities, 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.

[11] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁶

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

⁴ 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 GD13. In this case, the Appellant’s coverage period ends on December 31, 2022, after the hearing date, so I must decide whether she was disabled by the hearing date.

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

⁶ 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 she had a severe and prolonged disability by August 2, 2022.

Was the Appellant's disability severe?

[15] The Appellant's disability wasn't severe by August 2, 2022. I reached this finding by considering several factors. I explain these factors below.

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

[16] The Appellant says she has:

- diabetes
- dermatitis
- blurry vision
- carpal tunnel syndrome in both wrists
- headaches and migraines
- widespread physical pain
- insomnia
- mental health conditions—anxiety, depression, and PTSD
- side effects from her medications

[17] However, I can't focus on the Appellant's diagnoses.⁷ Instead, I must focus on whether she has functional limitations that got in the way of her earning a living by August 2, 2022.⁸ When I do this, I must look at **all** of the Appellant's medical conditions (not just the main one) and think about how they affected her ability to work.⁹

[18] I find that the Appellant had functional limitations by August 2, 2022.

⁷ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁸ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁹ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

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

[19] The Appellant says her medical conditions have resulted in functional limitations that affected her ability to work by August 2, 2022.

[20] The Appellant's testimony about **diabetes** was confusing. She said it caused neuropathy (numbness in her feet and a bit in her hands) around 2012, which has gotten worse. This makes it hard to do everyday things like showering and washing her hands. But she added that her symptoms aren't constant. Then she said that she thought the neuropathy was related to her sugars being poorly controlled after the accidents, and that her sugars are controlled now.¹⁰ This suggests that she doesn't have functional limitations from diabetes anymore.

[21] She says **dermatitis** makes her severely itchy and uncomfortable. When she has a rash, she can't focus on anything else, like work. However, she acknowledged that dermatitis isn't currently a problem. Since November 2021, she hasn't had any "huge outbreaks" and was only treated for a flare-up on her face in February 2022.¹¹

[22] She says she has **blurry vision** due to an eye injury from one of the accidents. She has had surgery to correct this. But she still has diminished peripheral vision. Looking up and down causes blurry vision, and sometimes her vision will go out of focus.¹²

[23] She says she has **carpal tunnel syndrome** in both wrists. Her fingers are stiff and her wrists hurt. Her left wrist is worse than her right wrist, and the pain is worse at night than during the day. She says she has trouble typing and using a computer mouse.¹³

[24] She says she gets **headaches and migraines**. She described her headaches as daily and more severe than other people's headaches. She described getting one bad migraine every month, which can last up to three days. When she has a bad migraine,

¹⁰ The Appellant said this at the hearing.

¹¹ See GD10-4 and 20, and the hearing recording.

¹² The Appellant said this at the hearing.

¹³ The Appellant said this at the hearing.

half her face is paralyzed and she goes to the hospital to get IV drugs. She needs to be in a dark, quiet room.¹⁴

[25] She says she has **widespread physical pain**, which she variously described as fibromyalgia, sciatica, neck and back pain, and tightness in her jaw. As a result, she says:

- she can't stand or walk more than 5 minutes—she sits down to shower
- she can't sit more than 10 minutes
- she can't lift more than 2 pounds
- she can't lift her arms above her shoulders
- she has trouble carrying, reaching, and bending
- her neck gets tight if she looks at a computer screen for too long
- she does very limited housework¹⁵

[26] Due to **insomnia**, she says she only gets three to five hours of sleep per night.¹⁶

[27] Because of her **mental health conditions**, she says:

- she can be emotional and irritable—she experiences bouts of rage and she can't predict what will trigger them
- she has trouble concentrating and remembering things, like turning off appliances
- she gets nervous when driving, although she does drive her son to work four times per week, and to get groceries
- she gets even more nervous when she is a passenger in a vehicle¹⁷

¹⁴ The Appellant said this at the hearing.

¹⁵ See the Appellant's application at GD2-54 to 58 and 80 to 87, and the hearing recording.

¹⁶ See the Appellant's application at GD2-54 to 58 and 80 to 87.

¹⁷ See the Appellant's application at GD2-54 to 58 and 80 to 87, and the hearing recording.

[28] Finally, at the hearing, the Appellant said her medications cause **side effects**. She says they make her feel tired and like her “head is in the clouds.” She says they impact her appetite and digestion.

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

[29] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by August 2, 2022.¹⁸

[30] The medical evidence supports **some** of what the Appellant says.

– **Physical limitations**

[31] The medical evidence doesn’t support that the Appellant has functional limitations from **diabetes**. Dr. Shapiro (a psychologist) noted in March 2019 that it had been more difficult for the Appellant to manage her diabetes since the 2018 accident. However, he didn’t elaborate.¹⁹ Dr. Dayus (a family doctor) didn’t mention any functional limitations from diabetes in her June 2020 medical report.²⁰

[32] The medical evidence doesn’t support that the Appellant has functional limitations from **dermatitis**. Dr. Lovegrove (a dermatologist) told her that dermatitis may be chronic, but it can be managed with creams and good hygiene.²¹ It seems, based on the Appellant’s testimony, that her dermatitis is indeed being managed.

[33] The medical evidence supports that the Appellant has **blurry vision**. In April 2019, she reported having brief periods of blurry vision.²² In March 2020, she told Dr. Takahashi (a neurologist) that she had intermittent blurry vision.²³ Dr. Proulx (an optometrist) told her in July 2020 that she had “a little bit of misalignment of the eyes,”

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

¹⁹ See GD2-977 to 982.

²⁰ See GD2-88 to 96.

²¹ See GD10-21 and 22.

²² See GD5-8 to 11.

²³ See GD2-101 to 104.

which could explain her double vision. She was supposed to follow up for testing to confirm the diagnosis, but there is no evidence that this was done.²⁴

[34] The medical evidence supports that the Appellant has **carpal tunnel syndrome** in her left hand, resulting in numbness and a weak grip.²⁵ There is no evidence that she has carpal tunnel syndrome in her right hand. She is right-handed.²⁶ This supports that the Appellant might have some trouble typing, but it doesn't support that she has trouble using a computer mouse with her right hand.

[35] The medical evidence supports that the Appellant used to get **headaches and migraines**. Before the accidents, her headaches were mainly associated with stormy weather.²⁷ They went away entirely in May 2018, and were still "much better" in October 2018.²⁸ In December 2018, after the first accident, she told Dr. Shapiro that she had severe, daily headaches.²⁹ However, there is no medical evidence after that to support ongoing functional limitations from headaches or migraines. There are also no hospital records to support the Appellant's testimony of going to the hospital for IV drugs.

[36] Regarding **widespread physical pain**, the medical evidence shows three things.

[37] First, it shows that the Appellant worked with pain before her accidents. She had chronic myofascial shoulder girdle strain in 2017, which she managed throughout 2017 and 2018. She was moved to her most-recent position at the front desk to accommodate this.³⁰ This means not all pain has resulted in functional limitations that impact her ability to work at her most-recent job.

[38] Second, it shows that she experiences pain beyond what her physical condition can explain.³¹ This means I can't rely on diagnostic imaging to show where her pain is

²⁴ See GD10-45 and 46.

²⁵ See GD5-8 to 11.

²⁶ See GD2-82.

²⁷ See GD2-152.

²⁸ See GD2-189, 389, and 390.

²⁹ See GD2-944 to 946.

³⁰ See GD2-189, 328, and 331.

³¹ See GD2-100, 107 to 109, 130, 207, 433 to 444, and 874 to 885, GD5-8 to 11, and GD8-32 and 33.

or how it affects her.³² However, the extent to which her treating healthcare professionals **believe** she is affected by pain is still relevant.

[39] Third, it shows that her pain has changed over time.

- In 2017, she had shoulder pain.³³
- In 2018, before her accident, she had neck and shoulder pain.³⁴
- In 2018, after her accident, she was sore all over and had generalized pain.³⁵
- In January 2019, she had neck and back pain, and radiculopathy (numbness, weakness, pain or tingling) in her left arm.³⁶ By March, the pain was extending throughout her body.³⁷ In April, she complained of pain mainly in her neck, left shoulder, left arm, left leg, and back or trunk area.³⁸ In September, she also reported radiculopathy in both legs.³⁹ In October, she reported chest pain.⁴⁰
- In 2020, she had pain in her neck, back, both arms, both legs, and her chest.⁴¹
- In 2021, she only reported back and hip pain.⁴²

[40] This means that what she told her doctors years ago might not be an accurate reflection of her condition now.

[41] The Appellant has seen many doctors over the years. But what matters most is how her pain affected her as of August 2, 2022. For this reason, my focus is on the

³² See *Nova Scotia (Workers' Compensation Board) v Martin*, [2003] 2 SCR 504.

³³ See GD2-328.

³⁴ See GD2-189, 389, and 390.

³⁵ See GD2-191 and 193.

³⁶ See GD2-592.

³⁷ See GD2-130 and 874 to 885.

³⁸ See GD2-985 and 986, and GD5-8 to 11.

³⁹ See GD2-594.

⁴⁰ See GD2-117. See also GD2-433 to 444 regarding ongoing neck, shoulder, and arm pain.

⁴¹ See GD2-54 to 80, 80 to 87, and 101 to 109.

⁴² See GD8-5 and 10, and GD10-32 to 38. She also had a swollen ankle (GD8-8) and a painful bump below her tailbone (GD8-13), which seem to have been temporary issues, since they are not discussed further in the doctor's notes.

most-recent medical evidence and the functional limitations it describes. That evidence **supports** that:

- she had low back pain that affected her when changing positions (this could account for her difficulty bending as well)
- she had neck and shoulder pain that limited her range of motion and her tolerance for physical activity involving the neck and shoulders

[42] The evidence (including what the Appellant told her doctors) **does not support** that the Appellant's physical limitations are as extensive as she claims. The evidence doesn't support that she can only stand or walk for 5 minutes, or that she can only sit for 10 minutes. Functional limitations like lifting, carrying, and reaching below shoulder height aren't explained by the medical evidence either.

[43] In making these findings, I have given weight to **Dr. Dayus's medical report** from June 2020, which specifically lists where the Appellant had pain (her neck and shoulders) and the functional limitations it caused. Dr. Dayus was the Appellant's family doctor at the time, and had been since 2008.⁴³ I note that the Appellant has reported neck and shoulder pain most consistently over time, including before her accidents.

[44] I have also given weight to **Dr. Chehade's notes** from 2021, because they are recent, and he is her current family doctor. His notes only mention back pain that affected her when changing positions.⁴⁴ While Dr. Dalgity mentions hip pain in 2021,⁴⁵ the fact that the Appellant never mentioned this to Dr. Chehade at all in 2021 is significant. (She saw Dr. Chehade about 20 times in 2021, and spoke with him about back pain and other medical issues.)⁴⁶ She also didn't tell Dr. Chehade about any functional limitations that might come from hip pain. So I don't think hip pain resulted in any functional limitations.

⁴³ See GD2-88 to 96.

⁴⁴ See, for example, GD8-5 and 10.

⁴⁵ See GD2-32 to 38.

⁴⁶ See GD8-2 to 15.

[45] I have not given weight to **Dr. Chehade and Dr. Dalgity's letters** from June 2021. Although they are recent, they are mainly summaries of the Appellant's medical history based on a review of her medical records. Dr. Chehade's letter in particular is based mostly on a review of other healthcare professionals' records, rather than his own observations.⁴⁷ I think their notes from 2021 are more useful than their summaries of past records.

[46] The medical evidence supports that the Appellant has low energy and doesn't feel rested, possibly due to **insomnia**.⁴⁸

– **Limitations caused by mental health conditions**

[47] The medical evidence supports that the Appellant has functional limitations from her **mental health conditions** (anxiety, depression, and PTSD). She has low motivation, poor concentration, and poor memory. She gets anxious as a driver or a passenger. Dr. Bureau's notes mention a few incidents of the Appellant being emotional or impatient, although mostly in the context of interpersonal issues with family members. More recently (in March and April 2022), he wrote that she is managing her feelings.⁴⁹

– **Limitations caused by medications**

[48] The medical evidence doesn't support that the Appellant has problems with cognition or digestion (such as irritable bowel syndrome) as **side effects** from her medications.

[49] Dr. Dayus reported in April 2019 that the Appellant's medications impacted her cognition. But she didn't say which medications were responsible.⁵⁰ The Appellant is taking different medications now. Only ibuprofen and her diabetes medications are the same.⁵¹ She doesn't have side effects from her diabetes medications.⁵² I believe it is

⁴⁷ These letters are at GD4-3 to 6.

⁴⁸ See GD8-42 to 55, 88 to 96, 207, and 977 to 982.

⁴⁹ See GD2-88 to 96, 195, 944 to 946, and 977 to 982; GD8-42 to 55; and GD16.

⁵⁰ See GD2-985 and 986.

⁵¹ Before, she was taking Lyrica, Cymbalta, Cesamet, ibuprofen, and diabetes medications (GD2-985). Now she is taking lorazepam, ibuprofen, and diabetes medications (see the hearing recording).

⁵² See GD8-10.

more likely that poor cognition was a side effect of the medications she is no longer taking, rather than the medication that she is still taking (ibuprofen).

[50] There is no medical evidence of digestion issues.

[51] I have already found that the Appellant feels tired—it doesn't matter whether this is from her medical conditions, or from the medications. There is also medical evidence that the Appellant has a poor appetite from time to time, although it isn't clear whether this is from her medications.⁵³ In any case, this isn't a functional limitation.

– **Summary of the Appellant's functional limitations**

[52] The Appellant has the following functional limitations:

- She has blurry vision.
- She can type, but not for sustained periods.
- She has a weak left grip.
- She can't change positions often due to low back pain.
- She can't bend.
- She has limited range of motion in her neck and shoulders.
- She has limited tolerance for activity involving her neck and shoulders.
- She has low energy.
- She is unmotivated.
- She has poor concentration and memory.
- She gets anxious as a driver or a passenger.

[53] The medical evidence supports that the Appellant's functional limitations prevented her from working full-time at her usual job by August 2, 2022. Although she could perform her usual duties, she didn't have the stamina to work full-time hours.

[54] Next, I will look at whether the Appellant has followed medical advice.

⁵³ See GD8-17 and 20, and GD16.

– **The Appellant has followed medical advice**

[55] The Appellant has followed medical advice.⁵⁴ The Minister doesn't dispute this. She has tried chiropractic treatment, physiotherapy, and massage therapy. She has gotten injections for pain and headaches. She has gone to therapy and attended a chronic pain group. She wears a splint at night for carpal tunnel syndrome. She currently takes diabetes medications, as well as lorazepam and ibuprofen.⁵⁵

[56] I now have to decide whether the Appellant can regularly do other types of work. To be severe, the Appellant's functional limitations must prevent her from earning a living at any type of work, not just her usual job.⁵⁶

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

[57] When I am deciding whether the Appellant 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 abilities
- past work and life experience

[58] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say she can work.⁵⁷

[59] I find that the Appellant **can** work in the real world. She was still able to work as of August 2, 2022. Her age (54), education (a high school diploma and some college

⁵⁴ To receive a disability pension, an appellant must follow medical advice. If an appellant doesn't follow medical advice, then they must have a reasonable explanation for not doing so. I must also consider what effect, if any, the medical advice might have had on the appellant's disability. See *Sharma v Canada (Attorney General)*, 2018 FCA 48; and *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

⁵⁵ See GD2-88 to 96, 101 to 104, 119, 121, 132, 195, 985, and 986; GD5-8 to 11 and 128; GD8-15; and GD16.

⁵⁶ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁵⁷ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

education), fluency in English, and nearly 30 years of work experience in the security field are all factors that positively influence her ability to work.⁵⁸

[60] The Appellant's functional limitations don't keep her from doing all work. They **do** keep her from doing a job that requires:

- reliably good vision
- lots of typing without breaks
- changing positions often
- bending
- moving her neck and shoulders a lot
- focusing on one task for a long time
- a good memory

[61] Her low energy and lack of motivation mean she might not be able to work full-time, whether at a physical or sedentary job. She still drives, so I believe she could commute to and from work, although she isn't well-suited to a job that itself requires driving or being a passenger in a vehicle.

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

[62] If the Appellant can work in the real world, she must show that she tried to find and keep a suitable job. She must also show that her efforts weren't successful because of her medical conditions.⁵⁹ Finding and keeping a suitable job includes retraining or looking for a job that she can do with her functional limitations.⁶⁰

[63] The Appellant made efforts to work. But these efforts don't show that her disability got in the way of earning a living by August 2, 2022.

⁵⁸ See the Appellant's application at GD2-54 to 58 and 80 to 87.

⁵⁹ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

⁶⁰ See *Janzen v Canada (Attorney General)*, 2008 FCA 150.

– **The Appellant’s attempts to work**

[64] The Appellant hasn’t tried to work since March 2019. Her first work attempt was the week after her accident in October 2018, and it is unclear how long it lasted. Her second attempt lasted from January 2019 to March 20, 2019. She started working two hours per day, three days per week, and increased this to four hours per day, three days per week. At the hearing, she said she only reached three hours per day, but both Dr. Dayus and Dr. Shapiro said she reached four hours per day. Since they both said the same thing, I think their evidence is more reliable than the Appellant’s recollection.⁶¹

[65] As I will explain more below, it isn’t clear why the Appellant stopped working when she did. The best explanation comes from Dr. Dayus, who wrote in May 2019 that she stopped because “her pain escalated and she wasn’t able to cope.”⁶² The Appellant also mentioned mobility issues and headaches as reasons why she stopped working. But I have already found the evidence doesn’t support that she had functional limitations from headaches, or any mobility issues beyond her neck and shoulders. There is no evidence that her job required her to frequently change positions or bend either.

– **The Appellant’s employer wasn’t benevolent**

[66] The Appellant’s employer wasn’t benevolent. Although her employer accommodated her by providing her with ergonomic office equipment and assigning her to the front desk, she worked with those accommodations for years.⁶³ There is no evidence that her employer accommodated her beyond what might be required in a competitive workplace.⁶⁴

⁶¹ See GD2-191, 196, 292, 296, 297, 301, 977, and 982, and the hearing recording. Dr. Cobrin wrote on March 12, 2019, that the Appellant was working two hours every other day (GD8-42 to 55). However, his report also says the Appellant started working in February, which isn’t true. At one point, Dr. Cobrin wrote that she had worked with accommodations for 15 years, and at another point he says 10 years. While I still find Dr. Cobrin’s medical opinion valuable, his comments about the Appellant’s work history are unreliable.

⁶² See GD2-196.

⁶³ See GD2-189, 231, 328. At the hearing, the Appellant mentioned using an ergonomic computer mouse at work.

⁶⁴ An employer is considered benevolent if they accommodate an employee beyond what is required in a competitive workplace. See *Atkinson v Canada (Attorney General)*, 2014 FCA 187.

[67] Given her current functional limitations, it is unclear why she could not do her usual job now, with those same accommodations.

– **The Appellant can still do her usual job**

[68] The Appellant can still do her usual job. Her job consisted of checking people's identification and operating the front doors of a correctional facility to let people in and out. She did some keyboarding and watched computer screens.

[69] She was able to do that job before, despite carpal tunnel syndrome and pain in her neck and shoulders.⁶⁵ She didn't give evidence that back pain when changing positions, bending, a poor memory, poor concentration, or occasionally blurry vision impacted her ability to do that job. I have found that she is still able to drive to and from work.

[70] Furthermore, when the Appellant's representative asked her why she could not go back to work now, she said it was because of a lack of sleep and the inability to meet deadlines. A lack of sleep doesn't explain why the Appellant could not work part-time. And there is no evidence that her job involved any deadlines.

[71] I accept that the Appellant likely could not work full-time anymore, because she struggles with motivation and fatigue. However, I believe she could regularly attend work. Apart from missing a few days of work when she tried returning to work before, she was able to keep a regular schedule.⁶⁶ She didn't give evidence that she was late for work or had to leave shifts early.

⁶⁵ See GD2-189 and 328. When I asked the Appellant about carpal tunnel syndrome, she testified that she used ergonomic office equipment at work, although it wasn't "100% effective." This suggests that she worked with carpal tunnel syndrome before.

⁶⁶ See the hearing recording.

[72] I believe the Appellant could work at least 10 hours per week, making her income substantially gainful.⁶⁷ She was working 12 hours per week before she stopped.

– **The medical evidence that says the Appellant can work**

[73] Three of the Appellant’s doctors supported her efforts to keep working as recently as March 2019 (the month she stopped working).

[74] Dr. Sequeira (a physical rehabilitation specialist) reported on January 9, 2019, that the Appellant was struggling with two hours of work per day, but he supported her efforts to gradually increase her hours.⁶⁸ On March 8, 2019, he recommended that she continue trying for a few more months.⁶⁹

[75] Similarly, Dr. Jaroszynski (an orthopedic surgeon) recommended on March 12, 2019, that the Appellant continue increasing her hours. He said she didn’t require modified duties. He added:

At this point there is no specific task that she is not able to perform, it is that performing them for a prolonged period of time increases her subjective pain perception. As such there is no specific treatment that will change her subjective perception of pain and the best mode of treatment would be encouragement to continue with a gradual return to her usual activities.⁷⁰

[76] This aligns with Dr. Dayus’s notes that “her pain escalated and she wasn’t able to cope.” The difference is that Dr. Jaroszynski recommended the Appellant **keep working**—that this was the best way to reduce her pain. I give more weight to Dr. Jaroszynski’s opinion than Dr. Dayus’s, because Dr. Jaroszynski is a specialist, and Dr. Dayus is a generalist (a family doctor).

⁶⁷ She testified that her current wage (if she were working) would be about \$34 per hour. Her annual income would be \$17,680, which is more than the substantially gainful income of \$17,578 for 2022. See section 68.1 of the *Canada Pension Plan Regulations*. Alternatively, using the wage she earned when she stopped working (\$32), and applying this to 2018 (the year she stopped working), her earnings then would still have been substantially gainful at \$16,640, compared to a substantially gainful income of \$16,030 set by the *Canada Pension Plan Regulations*.

⁶⁸ See GD2-134.

⁶⁹ See GD2-130.

⁷⁰ See GD2-874 to 885.

[77] Also in March 2019, Dr. Cobrin (a psychologist) wrote that the Appellant could not work full-time.⁷¹ I take this to mean that he thought she could work part-time.

– **The medical evidence that says the Appellant can't work**

[78] I acknowledge Dr. Sequeira's opinion from July 2019 that the Appellant could not work for three months. Dr. Sequeira said this was due to a flare-up of pain.⁷²

Presumably, this means she could have returned to work eventually, when the flare-up went away. There are notes from Dr. Sequeira after July 2019, but they don't give an opinion about whether the Appellant could return to work.⁷³

[79] I acknowledge Dr. Dayus's notes from October 2019 that say the Appellant's occupational therapist thought she could not work at all.⁷⁴ However, the occupational therapist's report doesn't say this. It describes certain functional limitations and says that the Appellant would "benefit from" a personal support worker at home.⁷⁵ The Appellant never got a personal support worker (she wasn't sure why), and she has evidently been able to function without one.⁷⁶

[80] I acknowledge Dr. Dayus's own medical report, which says she is unsure if the Appellant will be able to return to work.⁷⁷ However, the functional limitations that Dr. Dayus lists in her report don't lead me to the same conclusion as her.

[81] Finally, I acknowledge that Dr. Dalgity and Dr. Chehade described the Appellant as completely disabled from work in their June 2021 letters.⁷⁸ As I have already explained, their recent office notes don't support the conclusions in their letters.

⁷¹ See GD8-42 to 55.

⁷² See GD2-121.

⁷³ See GD2-105, 106, 117, and 119, and GD5-128.

⁷⁴ See GD2-203.

⁷⁵ See GD2-433 to 444.

⁷⁶ See the hearing recording. The Appellant described relying on her husband for help with physical tasks around the house.

⁷⁷ See GD2-88 to 96.

⁷⁸ See GD4-3 to 6.

– **The Appellant hasn't looked for other work**

[82] Even if the Appellant could not return to her usual job part-time (for example, if it was no longer available), her personal circumstances and functional limitations don't keep her from doing other work. She hasn't looked for any other work.⁷⁹ It is not the Minister's or the Tribunal's role to suggest jobs that the Appellant can do.⁸⁰

[83] Therefore, I can't find that the Appellant had a severe disability by August 2, 2022.

Conclusion

[84] I find that the Appellant isn't eligible for a CPP disability pension because her disability wasn't severe by August 2, 2022. Because I found that her disability wasn't severe, I didn't have to consider whether it was prolonged.

[85] This means the appeal is dismissed.

James Beaton
Member, General Division – Income Security Section

⁷⁹ The Appellant said this at the hearing.

⁸⁰ See *Kiraly v Canada (Attorney General)*, 2015 FCA 66.