



Citation: *RR v Minister of Employment and Social Development*, 2022 SST 1691

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: R. R.
Representative: R. K.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated February 26, 2021 (issued
by Service Canada)

Tribunal member: Anne S. Clark

Type of hearing: Videoconference

Hearing date: August 11, 2022

Hearing participants: Appellant
Appellant's representative
Appellant's Spouse (Witness)
Interpreter

Decision date: August 30, 2022

File number: GP-21-1156

Decision

[1] The appeal is allowed.

[2] The Appellant, R. R., is eligible for a *Canada Pension Plan* (CPP) disability pension. Payments start as of June 2018. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant is 57 years old. She lives her spouse (Witness). They have three children. The Appellant moved to Canada in in 1994. English is her second language. At her request an interpreter provided verbatim interpretation of the hearing. Before coming to Canada, the Appellant completed grade 10 but did not complete a diploma. She did not complete any education in Canada.

[4] The Appellant has worked in Canada since 1995. Her work has been physically demanding. Over the years she assembled auto parts. She was required to bend, lift and stack parts. She had to use her legs to operating the machinery. She worked approximately six days per week until 2005. She had significant pain and it was difficult to use her hands and back. She stopped working in 2005.

[5] The Appellant had to remain off work until around 2011 when she first attempted to return to work. By 2013 she had returned to part time work. She felt she had to try to work because her family was having financially difficulties. She took medication and had three steroid injections to try to manage her symptoms so she could work. She continued to work until 2016 when she stopped completely.

[6] The Appellant applied for a CPP disability pension on May 7, 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.

[7] The Appellant says pain and physical limitations make her unable to work. Her conditions began before 2005. They worsened until she could not do anything physical. Pain, fatigue, and limited use of her hands and knees made her unable to work. In 2013 she returned to work but could only manage part time work. To do that she needed injections in her knees and pain medication. The Appellant also says her personal circumstances including her language skills, education and work history make her unemployable in a real world market.

[8] The Minister says the evidence does not support a finding of disability. The conditions she said affect her ability to work began after 2016. She worked in substantially gainful employment after her claimed date of disability meaning she cannot be considered disabled within the meaning of the CPP.

What the Appellant must prove

[9] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2007. This date is based on her contributions to the CPP.¹

– Prorated Period

[10] The Appellant had CPP contributions in 2016 that were below the minimum amount the CPP accepts. These contributions let the Appellant qualify for a pension if she became disabled between January 2016 and October 31, 2016.²

[11] The Appellant and the Representative say the Appellant did not become disabled in 2016 by the end of the prorated period. The Appellant's evidence and the Representative's submission say the Appellant became disabled before December 31, 2007.

¹ A person's years of contributions to the CPP are used to calculate the "minimum qualifying period". It is usually called the MQP and is often described using the date the period ended. In this case it is December 31, 2007. See subsection 44(2) of the *Canada Pension Plan*. The Appellant's contributions are on page GD3-6.

² This is based on sections 19 and 44(2.1) of the *Canada Pension Plan*.

[12] The Appellant does not claim she became disabled in the prorated period. This means she must prove she had a severe and prolonged disability by December 31, 2007.

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

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

[15] 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 to earn a living, then she isn’t entitled to a disability pension.

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

[17] 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.

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

Reasons for my decision

[19] I find that the Appellant had a severe and prolonged disability as of December 31, 2007. I reached this decision by considering the following issues:

- Was the Appellant’s disability severe?

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.

- Was the Appellant's disability prolonged?

Was the Appellant's disability severe?

[20] The Appellant's disability was severe. I reached this finding by considering several factors. I explain these factors below.

– The Appellant's functional limitations do affect her ability to work

[21] The Appellant has:

- Hypothyroidism
- Bilateral Carpal Tunnel Syndrome (CTS)
- Bilateral knee osteoarthritis (OA)
- Dyslipidemia
- Non-alcoholic steato hepatitis
- Varicose veins

[22] However, I can't focus on the Appellant's diagnoses.⁵ Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.⁶ 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 her ability to work.⁷

[23] I find that the Appellant has functional limitations that affected her ability to work.

– What the Appellant says about her functional limitations

[24] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work. She says she has pain in her hands and legs. She has very limited grip strength. Her knees make it difficult for her to walk, stand, squat or sit. Even after surgery for her knee she has continuing pain and limitations. The

⁵ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁶ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁷ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

Appellant says any physical activity makes the pain much worse. She finds it unbearable.

– **What the Witness says about the Appellant’s functional limitations**

[25] The Witness is the Appellant’s spouse. He said she started have trouble with her health in 2000. She continued to work but, more and more, she had to take days off or leave work early because of pain. Sometimes she would have to take four or five days off before the pain eased.

[26] When she tried to work in 2013 she could only work part time. When she was working she couldn’t do anything else. She was always tired because she couldn’t sleep. She relied on the Witness and their children to do everything around the house. The Witness said she could not be active as she was before.

[27] The Witness said the Appellant worked more hours in 2013 to 2016. She had to take pain medication every day to be able to go to work. She worked two or three days a week. Working was very hard on her and made her conditions worse. But she had to keep trying because their family was in serious financial difficulty.

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

[28] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 2007.⁸

[29] The medical evidence supports what the Appellant says about some of the conditions. In particular, there is medical evidence of CTS beginning in 2001 that continued to get worse until she needed surgery in 2004.⁹ Limitations from the CTS persisted and the Appellant required ongoing treatment in 2009, 2014 and 2016 to manage the reduced sensation and pain.¹⁰

⁸ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

⁹ The report at GD2-20 shows she was diagnosed in 2001 and followed conservative treatment plan. At GD2-21 the report confirms the symptoms worsened and she required surgery.

¹⁰ See the reports at GD2-25, 332 and 38.

[30] The Appellant was diagnosed with bilateral osteoarthritis (OA) in both knees. Letters in early 2007 show she was dealing with pain and other limitations in 2007.¹¹ The orthopaedic surgeon described the Appellant's limitations as including difficulty standing, walking, using stairs, and sitting. Pain and stiffness in her knees did not improve. This information is confirmed in letters in 2014.¹² By 2019 the Appellant required a total right knee arthroplasty.¹³

[31] The Appellant has other conditions that may affect her functional ability. The medical evidence does not confirm they likely existed before December 31, 2007. She developed pain in her neck and shoulder in 2017.¹⁴ The specialist concluded she had frozen should but said her symptoms began about four months before his letter (May 2017). She has hypothyroidism, dyslipidemia, varicose veins, and non-alcoholic steato hepatitis.¹⁵ The Appellant's family physician called these conditions longstanding but did not say when they began. The Appellant believes all of the conditions began before December 31, 2007. I found there is other medical evidence to confirm the Appellant had functional limitations that affected her ability to work. Therefore she met the requirement to provide some medical evidence of her functional limitations.

[32] The medical evidence supports that the Appellant's CTS and osteoarthritis in both knees prevented her from doing any work that required repetitive hand motions, standing, walking, squatting, bending, lifting and sitting.

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

– **The Appellant has followed medical advice**

[34] To receive a disability pension, an appellant must follow medical advice.¹⁶ If an appellant doesn't follow medical advice, then they must have a reasonable explanation

¹¹ See the letters at GD2-16 and 28.

¹² See GD2-40.

¹³ See GD2-52.

¹⁴ See GD2-46.

¹⁵ See GD2-15.

¹⁶ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

for not doing so. I must also consider what effect, if any, the medical advice might have had on the Appellant's disability.¹⁷

[35] The Appellant has followed medical advice.¹⁸ The file contains reports and letter from the Appellant's physicians over the years. There is no evidence to suggest she refused to follow medical advice. I note that she elected to try conservative treatment for the CTS before deciding to have surgery. However, there is no evidence to suggest that decision was contrary to medical advice. She had treatment options and elected to try more conservative treatment first. I find that a very reasonable decision.

[36] 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.¹⁹

– **The Appellant can't work in the real world**

[37] 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

[38] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say that she can work.²⁰

[39] I find that the Appellant can't work in the real world. The Appellant's work experience is in physically demanding jobs. She is not able to work in English or French and did not complete high school. Her experience, education and other personal

¹⁷ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

¹⁸ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁹ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

²⁰ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

circumstances would limit her opportunities for employment she could do with her physical limitations.

[40] The Appellant did return to similar work and earned what is considered substantially gainful earnings in 2013, 2014, and 2015. For the reasons that follow I find that shows the Appellant took extraordinary steps to work despite having a severe disability. She pushed herself to return to the only work she was trained to do. She needed medication and injections to continue as long as she did. While she was working she was not able to do any other activity. She couldn't participate in family events or help take care of her home and personal tasks.

[41] I believed the Appellant when she said she was only able to push herself to work because she had medication, injections and the complete support of her family.

– **The Appellant worked after 2007**

[42] A person's disability is severe if she is incapable regularly of pursuing a substantially gainful occupation. An occupation is "substantially gainful" if it provides wages of at least the maximum CPP disability pension.²¹ The Appellant's earnings in 2013, 2014 and 2015 were more than the maximum CPP disability pension.²² However, I find the evidence shows she could not do that work regularly. Her work hours were inconsistent and she could not maintain a regular schedule. By 2016 she could not work at all.

[43] The Appellant and Witness said the Appellant had to force herself to return to some work because the family was having financial difficulties. The Appellant said she could only work part time and had to refuse many shifts that were available to her. She needed pain medication every day and it made her feel sick. She had cortisone injections in both knees to help her keep working but they were not effective for very long.²³

²¹ See s. 68.1(1) of the *Canada Pension Plan Regulations*.

²² See the Appellant's statement of earnings at GD3-6.

²³ See pages GD2-436,437, and 439.

[44] The Appellant said she could sometimes work a full day or longer. But, that was not every week. She had to take shorter shifts and left work early a lot of the time. She did not ask her employer for special assistance but co-workers helped her sometimes. She was able to sit down when the pain was too bad. There were more shifts available to her but the Appellant was not capable of working them.²⁴ The Appellant said she did not ask the Employer for assistance so it is not unexpected that there would be no record of the help she received from co-workers.

[45] The Appellant said she forced herself to work even though she had continuing pain and limitations. She did this as long she could and took pain medicine before every shift. By 2016 she could not work any longer.

[46] The effective date of the Appellant's pension is determined by her date of application. Therefore, it is not necessary to identify a specific date of onset as long as it is by December 31, 2007. I find that the Appellant's disability was severe in 2005 when she first stopped working.

Was the Appellant's disability prolonged?

[47] The Appellant's disability was prolonged. The evidence does not show the Appellant's conditions will likely resolve or improve with time or treatment.

[48] From the Appellant's evidence, the conditions that affect her most began in 2001 (CTS) and 2007 (knee OA). These conditions have continued since then, and they will more than likely continue indefinitely. Since 2001 the CTS has required monitoring and surgery.²⁵ The CTS symptoms persist and continue to cause pain and restrict the Appellant's use of her hands. The knee OA worsened and eventually required surgery. Even with surgery the pain and limitations have continued. The Appellant had injections in 2014 and 2015. They provided some temporary relief.

²⁴ The Employer's Report begins at GD2-220. It confirms the Appellant's part time employment and absences for illness.

²⁵ In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that you have to show a severe and prolonged disability by the end of your minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

[49] I find that the Appellant's disability was prolonged in 2005 when she first stopped working. As noted earlier the exact date of onset will not affect the outcome of the decision since it is before December 31, 2007.

When payments start

[50] The Appellant had a severe and prolonged disability in 2005.

[51] However, the *Canada Pension Plan* says an appellant can't be considered disabled more than 15 months before the Minister receives their disability pension application.²⁶ After that, there is a 4-month waiting period before payments start.²⁷

[52] The Minister received the Appellant's application in May 2019. That means she is considered to have become disabled in February 2018.

[53] Payments of her pension start as of June 2018.

Conclusion

[54] I find that the Appellant is eligible for a CPP disability pension because her disability was severe and prolonged.

[55] This means the appeal is allowed.

Anne S. Clark

Member, General Division – Income Security Section

²⁶ Section 42(2)(b) of the *Canada Pension Plan* sets out this rule.

²⁷ Section 69 of the *Canada Pension Plan* sets out this rule. This means that payments can't start more than 11 months before the application date.