



Citation: *JL v Minister of Employment and Social Development*, 2022 SST 1720

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

## Decision

**Appellant:** J. L.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development reconsideration decision dated July 8, 2021 (issued by Service Canada)

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**Tribunal member:** Adam Picotte

**Type of hearing:** Teleconference

**Hearing date:** December 2, 2022

**Hearing participants:** Appellant

**Decision date:** December 9, 2022

**File number:** GP-21-2587

## Decision

[1] The appeal is allowed.

[2] The Appellant, J. L., 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 46 years old. He started working in the field of general labour right out of high school. He continued in this job field until he stopped working in 2018 because of chronic pain and mental health issues.

[4] The Appellant applied for a CPP disability pension on March 29, 2018. 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.

[5] The Appellant says that he could no longer work as of February 2018 because of an assortment of disabilities including disc degenerative disease, chronic pain, PTSD, anxiety, and major depressive disorder.

[6] The Minister says that the Appellant's relatively young age and his residual skill-sets make him capable of working in an alternate field of employment. However, the Appellant has not attempted work in another area and as such he cannot qualify for a CPP disability benefit.<sup>1</sup>

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<sup>1</sup> GD7-3

## What the Appellant must prove

[7] For the Appellant to succeed, he must prove he had a disability that was severe and prolonged by December 31, 2021. This date is based on his contributions to the CPP.<sup>2</sup>

[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.<sup>3</sup>

[10] This means I have to look at all of the Appellant’s medical conditions together to see what effect they have on his ability to work. I also have to look at his background (including his age, level of education, and past work and life experience). This is so I can get a realistic or “real world” picture of whether his disability is severe. If the Appellant is able to regularly do some kind of work that he could earn a living from, then he 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.<sup>4</sup>

[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 has to prove he has 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 is disabled.

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<sup>2</sup> 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 GD2-76

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

<sup>4</sup> 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 had a severe and prolonged disability as of February 2018. I reached this decision by considering the following issues:

- Was the Appellant's disability severe?
- Was the Appellant's disability prolonged?

### Was the Appellant's disability severe?

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

#### – The Appellant's functional limitations affect his ability to work

[16] The Appellant has:

- Disc degenerative disease;
- Chronic pain;
- PTSD;
- Generalized Anxiety Disorder; and
- Major Depressive Disorder.

[17] However, I can't focus on the Appellant's diagnoses.<sup>5</sup> Instead, I must focus on whether he had functional limitations that got in the way of him earning a living.<sup>6</sup> 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.<sup>7</sup>

[18] I find that the Appellant has functional limitations that affected his ability to work.

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<sup>5</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>6</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>7</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

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

[19] The Appellant says that his medical conditions have resulted in functional limitations that affect his ability to work. He says that he has the following impairments:

- **Kneeling and squatting** – The Appellant is unable to regularly get up from a kneeling or squatting position because of instability and pain in his knees.
- **Bending down** – The Appellant is prone to falling when bending over. When he needs to pick things up from the ground he will use his toes to pick things up and then move them to his hands.
- **Sitting for 20 minutes** – The Appellant is able to sit for no more than 20 minutes. After that his back pain will flare up and he will need to stretch and move to a different position.
- **Pulling and pushing doors** – the Appellant cannot do this movement. It causes too much stress and pain on his body.
- **Working under stress** – The Appellant is unable to cope with stressful situations. He cannot think properly and shuts down. He is unable to react appropriately and think through stressful situations.
- **Being in public** – The Appellant cannot manage public situations. He finds the experience exhausting. He told me that he feels broken inside.
- **Household chores** – The Appellant cannot regularly do household chores such as laundry, meal prep, cooking, and cleaning. He told me that he has to delay these activities because of unexpected pain flare-ups. Cooking and cleaning are too painful for him to manage. He cannot do dishes because the process of standing in one place for 10 minutes is too painful on his body.
- **Grocery Shopping** – The Appellant cannot attend Costco or Walmart because the drive is too much for him. He is confined to a local grocery store and relies

upon the assistance of the people who work there. They help him bring his groceries to his car and to load his vehicle.

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

[20] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work by December 31, 2021.<sup>8</sup>

[21] The medical evidence supports what the Appellant says.

[22] On April 4, 2018, the Appellant’s family physician, Dr. Le Roux provided a medical report for his CPP disability benefit application. Dr. Le Roux endorsed the following conditions:

- Chronic Pain;
- Chronic spinal cord pain;
- PTSD;
- Anxiety; and
- Throat irritation.<sup>9</sup>

[23] Dr. Le Roux further note that the Appellant had difficulties with his memory. He was prone to making mistakes causing damage to himself and equipment. He wrote that the Appellant was a risk to himself and others if he continued to work.<sup>10</sup>

[24] In June 2022, Dr. Le Roux wrote that the Appellant continued to have a number of functional impairments, including the following:

- Chronic pain in the lumbar, thoracic and cervical spine;
- Knee pain affecting the Appellant’s mobility and frequently requiring rest;
- Pain in the left knee
- Pain in the left shoulder; and

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

<sup>9</sup> GD2-205

<sup>10</sup> GD2-212

- Sexual dysfunction and discoloration of the hands/feet/face while slightly chilled.<sup>11</sup>

[25] Dr. Le Roux further noted that the Appellant suffered from PTSD, anxiety, and stress. He commented that these conditions resulted in a loss of concentration, loss of focus, and cognitive impairments. He also wrote that the Appellant had become socially isolated, unable to deal with stress, and could no longer communicate well with others.<sup>12</sup> Dr. Le Roux also noted that the Appellant suffered from degenerative disc disease and fibromyalgia. These conditions caused the Appellant chronic pain.

[26] In a medical report from March 15, 2019 Dr. Thomas noted that the Appellant had chronic daily pain that limited his activities of daily living.

[27] The medical evidence supports that the Appellant's functional impairments prevented him from engaging in his activities of daily living, including working in manual labour employment.

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

– **The Appellant has followed medical advice**

[29] To receive a disability pension, an appellant must follow medical advice.<sup>13</sup> 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.<sup>14</sup>

[30] The Appellant has followed medical advice.<sup>15</sup> The Appellant has gone out of his way to obtain medical treatment for his conditions. In 2020, the Appellant attended a surgical department in Germany for a cervical spine total discectomy.<sup>16</sup>

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<sup>11</sup> GD4-2

<sup>12</sup> GD2-174

<sup>13</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

<sup>14</sup> See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

<sup>15</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

<sup>16</sup> GD2-151

[31] This treatment was supported by the Worker's Compensation Board in British Columbia.<sup>17</sup> In order to obtain the surgery, the Appellant had to outlay \$40,000.00. He did so without a guarantee that he would be reimbursed by the Worker's Compensation Board.

[32] Similarly, the Appellant has consistently sought treatment for his ongoing symptoms of pain, and psychological distress.

[33] I find that the Appellant has followed medical advice and treatment.

[34] 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 him from earning a living at any type of work, not just his usual job.<sup>18</sup>

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

[35] When I am deciding whether the Appellant can work, I can't just look at his medical conditions and how they affect what he can do. I must also consider factors such as his:

- age
- level of education
- language abilities
- past work and life experience

[36] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say that he can work.<sup>19</sup>

[37] I find that the Appellant can't work in the real world.

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<sup>17</sup> GD6-10

<sup>18</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>19</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.



[38] The Appellant is relatively young at 46 years of age. While this factor would favour a capacity for employment, when I look at the Appellant in his totality, I am satisfied that he cannot work in any capacity.

[39] The Appellant has significant functional impairments as documented above. He cannot sit or stand for more than 20 minutes. He's unable to clean his house or make food. His ability to concentrate and deal with the public is hampered by his psychological conditions. He cannot focus or concentrate. In fact, he is likely to put people at risk of injury if he were to do a safety sensitive type of employment.

[40] Even if the Appellant could be retrained, which I find he cannot because of his psychological impairments, it would be of no use. He cannot maintain a sedentary position long enough to regularly perform employment activities.

[41] The Appellant cannot drive for long periods and is generally confined to an area close in proximity to his home.

[42] The biggest factor that precludes the Appellant from engaging in any form of employment is that his symptoms flare up without any warning. He cannot regularly do any vocation or hobby activities on account of the random flare-ups of pain that he suffers through. His pain is truly debilitating leaving him unable to concentrate or focus when it is impacting him.

[43] For these reasons, I find that the Appellant is unable to work in any capacity.

[44] I find that the Appellant's disability was severe as of February 2018 when he was no longer able to continue working because of his disability.

### **Was the Appellant's disability prolonged?**

[45] The Appellant's disability was prolonged.

[46] The Appellant's conditions began over 20 years ago. These conditions have continued since then, and they will more than likely continue indefinitely.<sup>20</sup>

[47] Dr. Le Roux wrote that the Appellant had experienced ongoing progression of his pain symptoms for over 20 years and that it was likely his symptoms would continue to progress.<sup>21</sup>

[48] Given the continuity of symptoms and Dr. Le Roux's opinion about the likelihood of continued progression, I am satisfied that the Appellant's disability is also prolonged.

### **When payments start**

[49] The Appellant's disability became severe and prolonged in February 2018 when he stopped working because of his pain and mental health impairments.

[50] There is a four-month waiting period before payments start.<sup>22</sup> This means that payments start as of June 2018.

### **Conclusion**

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

[52] This means the appeal is allowed.

Adam Picotte

Member, General Division – Income Security Section

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<sup>20</sup> 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.

<sup>21</sup> GD2-208

<sup>22</sup> Section 69 of the *Canada Pension Plan* sets out this rule.