Citation: *DH v Minister of Employment and Social Development*, 2023 SST 625

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	D. H.
Representative:	J. M.
Respondent:	Minister of Employment and Social Development
Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated July 13, 2021 (issued by Service Canada)
Tribunal member:	Jackie Laidlaw
Type of hearing:	Videoconference
Hearing date:	January 31, 2023
Hearing participants:	Appellant Appellant's representative
Decision date:	February 13, 2023
File number:	GP-21-1829

Decision

[1] The appeal is dismissed.

[2] The Appellant, D. H., 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 51 years old. She worked as a quality control operator, which is a job at a desk and on the computer. She worked from December 2007 until April 2016 when she was laid off. She has had carpal tunnel syndrome since 2004, with an unsuccessful operation on her right hand in 2005. She also has headaches, bilateral bursitis or tendonitis of the shoulders and chronic neck and back pain. She has not attempted to try and work since April 2016. The Appellant attended the zoom hearing from Egypt.

[4] The Appellant applied for a CPP disability pension on October 22, 2020. 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.

[5] The Appellant says she has been unable to work due to migraines, shoulder pain, carpal tunnel syndrome, neck and back pain and panic attacks. She states she does not have any transferable skills.

[6] The Minister says she has received conservative treatment for her degenerative disc disease and depression. The specialist examinations do not support a severe impairment. She would be capable of working when viewed in a "real world" context.[1]

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[1] See *Villani v Canada (Attorney General)*, 2001 FCA 248.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2018. This date is based on her contributions to the CPP.[2]

[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.[3]

[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, 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.[4]

[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 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.

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[2] 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 GD 3-7.
[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.

Reasons for my decision

[14] I find that the Appellant hasn't proven she had a severe and prolonged disability by December 31, 2018.

Was the Appellant's disability severe?

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

– The Appellant's functional limitations don't affect her ability to work

[16] According to the medical report[5] of family physician Dr. Gail Webber in October 2020, the Appellant has:

- Bilateral carpal tunnel syndrome since 2004.
- Right rotator cuff tendonitis since 2012.
- Chronic back pain due to osteoarthritis since 2019.
- Chronic neck pain. (Also referred to as regional myofascial pain syndrome).
- The Appellant herself added panic attacks, depression, and chronic daily headaches as conditions.

[17] However, I can't focus on the Appellant's diagnoses.[6] Instead, I must focus on whether she had functional limitations that got 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) and think about how they affected her ability to work.[8]

[18] I find that the Appellant doesn't have functional limitations that affected her ability to work by December 31, 2018.

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[5] See GD 2-230.
[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.

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

[19] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work.

[20] She says she has numbness in her hands from the carpal tunnel syndrome (CTS). Her job required her to flip through pages in a book and on the computer with the use of a mouse. She also had to take staples out of documents. The CTS affected her ability to do this. She must wear wrist splints.

[21] She had a cortisone injection in her right shoulder last year which has helped with her movement of her shoulder, but the pain is still present.

[22] Her neck pain is from sitting at the computer for long and the bulging disc in her neck. This may be one of the causes of her headaches. The neck pain has been daily for the last six to seven years.

[23] She must wear a tooth night guard for her headaches. The migraines are daily. She explained she had two different types of headaches. When she was working, she would only get the migraine headaches every so often, mainly from the computer screen and lifting her head up and down. She also stated the daily forehead headaches started in 2012 and have worsened.

[24] She was told she was laid off work due to a shortage of work. She believes it was because she was not as productive at work as she had been. She stated she took three to five days a month off work for the last year she worked.

[25] Doctors recommended an ergonomic workplace assessment, but she never received one. Instead, she brought her own back support and foot stool to work.

[26] She has tried numerous medications over the years for pain, depression, and sleep. She is unable to take most medications due to gastrointestinal (GI) problems.

[27] She requires physiotherapy but does not have the money to pay for it.

[28] She has had lower and upper back pain with sciatica in the last three to four years from sitting for eight to nine hours shifts. She had a fall down the stairs one month before being laid off and that hurt her back as well.

[29] Her emotional difficulties started because of a lack of sleep. From 2016 to 2018 she was depressed because she was in pain. She also had panic attacks. Her depression returned recently when her mother and brother died.

[30] Functionally she finds cleaning the house difficult, mainly the bathtub. She was taught at the pain clinic to spread the cleaning out over three days.

[31] She only gets two to three hours of sleep a night.

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

[32] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 2018.[9]

[33] The medical evidence doesn't support that the Appellant is unable to work as of December 31, 2018.

[34] The Appellant has asked me to review Dr. Webber's clinic notes[10] over the years. Dr. Webber has been her family physician since 2002. I agree that weight should be given to these notes.

[35] Dr. Webber's notes show right shoulder and knee pain in August 2012. There is mention of numbness in her hands and pain in her thoracic spine in 2013. I am aware that she continued to work for years with these conditions.

[36] Dr. Webbers notes also show the Appellant has had headaches for a few months in 2014, and again in 2015.

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[9] See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.
[10] Begin at GD 2-125 for clinical notes from August 2012 to January 2017.

[37] In June 2015 she was to be on modified duties for one week due to shoulder tendinopathy. She had daily headaches and was struggling at work due to stress. Physiotherapy was recommended as well as Elavil 10 mg. I will outline her treatments further in this decision.

[38] In March 2016, she fell down the stairs and was off work for a week then put on modified duties for one week restricting lifting to no more than 10 lbs and changing positions frequently. She was downsized in April 2016. This caused further anxiety and panic attacks, the latter which stopped by October 2016.

[39] The Appellant worked for nine years with her carpal tunnel syndrome.

[40] The stress at work, noted in Dr. Webber's records, caused many of her symptoms, according to Dr. Strike who works along side Dr. Webber.[11] The Appellant relies upon the WSIB finding of a permanent disability. The WSIB determination is based on her previous job and its responsibility for her condition. The medical information shows the job was wrong for her conditions and caused further symptoms. The decision of the WSIB does not persuade me that she meets the *CPP* disability test.

[41] In Dr. Webber's medical report of October 2020,[12] she does not diagnose any depression, panic attacks or mental health issues. Nor does she diagnose migraines. She does diagnose right rotator cuff tendonitis since 2012 and chronic neck pain. She takes Tylenol since 2012 and Naprosyn since 2020. Dr. Webber diagnosed bilateral carpal tunnel since 2004, and notes she is not taking any medications for it. She diagnosed chronic back pain due to osteoarthritis since 2019, making her unable to sit, walk or stand more than 20 minutes.

[42] I agree with the Minister that the lack of medication[13], treatment and intervention on these diagnosis does not indicate a "severe" condition. I note the back pain was diagnosed after her MQP.

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[11] Please see GD2-112
[12] See GD 2-230.
[13] I will explain her medications further in this decision.

[43] Dr. Webber did not recommend the Appellant stop working.

[44] In 2020, Dr. Webber did not expect her to return to any work, and the cumulative health problems of osteoarthritis and CTS make it unlikely for her to be employed. This opinion is two years after her MQP, and four years after she stopped working. I do not put much weight on this opinion because the diagnostic images do no indicate any severe osteoarthritis, and the Appellant has worked and lived with CTS since 2004. The medical reports do not show her CTS condition has progressed, nor has she had any other operations since 2005. I will explain.

[45] The Appellant does have mild osteoarthritis of the cervical spine. An MRI of 2017 showed mild changes and a mild deformity due to right disc protrusion. Her lumbar spine showed mild osteophyte formation in 2018. In 2019 an MRI of her lumbosacral spine showed mild lumbar disc bulge and the final MRI of her cervical spine in 2019 showed mild disc protrusion with mild spondylotic changes. [14] The diagnostic images do not indicate any severe osteoarthritis.

[46] The Appellant worked for nine years with her carpal tunnel syndrome. In 2015 while working, she had an EMG and nerve conduction study of her bilateral hands. The nerve conduction study was normal. There was neuropathy in her right nerve but had not progressed since 2013. The pain was mostly myofascial in nature, and she was encouraged to perform regular stretching at work and home and wear the wrist splints.[15] The Appellant had an occupational therapy assessment in August 2022. It indicated no functional mobility issues reported. [16]

– **Physiotherapy and Medications**

[47] The Appellant has submitted that she has trialed numerous medications over the years and is unable to take medication due to her GI problems.

[14] See GD 2-245, GD2-247, GD2-246, GD 2-248.
[15] See GD 2-242
[16] See GD 7-12

[48] She has also submitted that she cannot afford physiotherapy. Dr. Webber noted that this is an issue, or implied it is a reason her condition prevents her from working.

[49] I would like to address both these issues.

- **Physiotherapy**

[50] It is important to note that Rheumatologist Dr. Boate indicated that she did not get any sustained relief from physiotherapy. This is important for two reasons. The Appellant has relied on the fact she does not have the funds to continue with physiotherapy and therefore remains "disabled'. As well, Dr. Webber stated in 2020 that she did not have the coverage for physiotherapy, implying this is one of the reasons she is "disabled".

[51] Physiotherapy has been prescribed over the years for chronic pain, headaches and right shoulder pain. In May 2016, the physiotherapist requested a TENS machine to assist her in decreasing her pain and reducing physiotherapy visits.[17] Dr. Webber endorsed this.

[52] The Appellant applied for OHIP funded physiotherapy on the recommendation of Dr. Webber. In January 2017 she did not qualify for the funding.

[53] Physiotherapy is a modality where stretches and exercises are taught for the patient to then perform at home. She was taught these, and she was also provided a TENS machine to decrease her pain and reduce her physiotherapy visits.[18] If Dr. Boate found she did not receive benefit from physiotherapy in 2013, it is irrelevant she cannot afford it because it would not make a difference. As well, the Appellant was given a TENS machine in order to reduce her physiotherapy visits and perform treatment at home.

[54] I do not put weight on the submission that because she cannot afford physiotherapy, she cannot treat her conditions.

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[17] See GD 2 193.
[18] This is according to Prime Physio who had treated her. See GD 2 193.

- **Medications**

[55] The Appellant has submitted that she has attempted numerous medications since 2012 and cannot take most of them due to her stomach. I accept that she has had GI issues with numerous medications, which were trialled once. The Appellant has had GI issues for many years pre-dating her CTS, and the doctors would be aware of the medications which would not be tolerated.

[56] I am more impressed that she has been prescribed Elavil numerous times since 2014 for her headaches, stress, and pain. The latest medical information shows she is tolerating it well.

[57] Elavil had been prescribed by Dr. Boate in May 2014 for her CTS pain and headaches. In December 2015 Dr. Webber prescribed it for her headaches, noting she had stopped it before. Neurologist Dr. Nguyen prescribed it in April 2016 for her stress headaches, which she took then stopped in June 2016. In November 2016 she tried Cymbalta for one week then returned to Elavil. In 2018 the Appellant indicated she was taking Elavil for pain, headaches, and depression. Dr. Webber noted she was not taking any medications in 2020 for her CTS, and only took Tylenol and Naprosyn for her pain. Then, in November 2022, she was prescribed Elavil once again and is tolerating it well. [19]

[58] The evidence shows that she did not give the medications time to test their efficacy. The notes show she only took all the medications for a week or so. Usually, a period of at least six weeks is sufficient to realize any results with a medication. Consistently the Elavil has been prescribed, by Dr. Boate, Dr. Webber and the pain clinic and the Appellant did not continue with it. In 2022, during a three-week chronic pain session, it is noted she is on Elavil again and tolerating it well.

[59] There is no explanation why she can tolerate Elavil now, or that she could not tolerate it years ago. It is not reasonable that these doctors would all continue to prescribe Elavil if it had been found she cannot tolerate the drug. Elavil appears to be

[19] See GD 7-8

the drug that could benefit both her pain and her anxiety, and she is able to tolerate it well. I find she has been non-compliant with taking the Elavil over the years. This could have changed her condition years ago, as it is noted today as being beneficial for her anxiety and pain.

– **Treatments are conservative**

[60] I agree with the Minister that over the years the treatments for her various symptoms have been conservative.

Carpal Tunnel Syndrome

[61] In 2013 she saw physical medicine specialist Dr. Amelia Barry for the CTS. The impression was a mild to moderate neuropathy of the right wrist and conservative measures of bilateral splints should be worn. Dr. Barry also noted that in the future she may wish to consider steroid injections for symptomatic relief. She has never requested, or been provided steroid injections for her CTS.

[62] As previously noted, the Appellant a neurophysiology exam in 2015, and EMG of the bilateral hands. The nerve conduction study was normal. The neuropathy in the right was present but had not progressed since 2013. Again, she was encouraged to wear her splints and perform regular stretching at work and home.[20]

[63] Dr. Boate also recommended wrist splints in 2014. As well, an ergonomic adjustment of her workstation was noted as the only management required.[21] While she did not receive the ergonomic adjustment, she brought her own back support and foot stool to work as assistive devices.

[64] The treatments for her carpal tunnel syndrome, after the right wrist surgery of 2004 have remained conservative to wear the splint, perform regular stretching at home and work, and get an ergonomic adjustment of her workstation. Steroid injections could be considered if required.

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[20] See the report of Dr. Christine Yange, October 13, 2015, at GD 2-242.
[21] See GD 2 91.

[65] The Appellant has never had any steroid injections for her wrists. She continues to wear the conservative treatment of splints. She has tried physiotherapy and takes Elavil for pain. She has not requested any further surgery since 2004.

– **Chronic shoulder and neck pain**

[66] In 2022 she received her first cortisone injection in her right shoulder. The condition had been present since 2015. The injection increased her functional abilities but did not resolve the pain. Waiting seven years to receive an injection that has been beneficial does not indicate the shoulder condition was severe enough to prevent her from working in 2018.

[67] Her neck pain was assessed by neurosurgeon Dr. Sach in October 2017, over a year after she stopped working.[22] Dr. Sachs indicated an MRI showed mild spondylosis without significant compression. No surgery would be beneficial, and epidural steroid injections were recommended. Elavil has been prescribed over the years. Currently, she is back on Elavil and tolerating it well.

[68] She has yet to receive any steroid injections for her neck, which implies her condition is conservatively manageable with medication. Should her neck pain worsen, there are still the steroid injections to try. Since the surgery, this has remained conservative treatment for her CTS.

– **Chronic headaches**

[69] For her headaches, which were present while working, only medication had been prescribed over the years. Dr. Boate prescribed Elavil (Amitriptyline) in May 2014 for depression and pain in the hands and daily headaches. In December 2015 she went to the dentist and got the mouth guard but was not taking it regularly. Elavil was prescribed again in December 2015.[23] She stated she only took Tylenol while working and continues to use two Tylenol every three hours.

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[22] See GD2-213
[23] See GD 2-138

[70] In April 2016 she saw neurologist Dr. Nguyen. No report that was provided. She was told it was stress headaches, and again she was prescribed 10 mg Elavil. She only took it for a short while and continued to have headaches after stopping the Elavil in June 2016.

[71] She went to a three-week pain management program in 2022. No clinical neurologic deficits were found.[24]

[72] I accept she did have chronic headaches at different times while she worked and note that Dr. Webber did not remove her from work for the condition. I am also aware that she had been prescribed Elavil a few times by different specialists and did not continue with it. She is currently on Elavil again and tolerating it well, indicating it can have some benefit. She has not had any in-depth investigations on her headaches since 2016, where the only recommendation was Elavil.

[73] Treatment for her headaches continues to be conservative.

– **Anxiety and stress**

[74] Dr. Webber noted anxiety and stress due to work in 2015. She did not seek any therapy. Dr. Webber did not note any anxiety, stress, or depression in her medical report of 2020.

[75] Apparently, Dr. Webber sent her to Dr. Joseph, a psychologist, in 2017. There are no records on file. The Appellant saw him for three months once a week and taught her to handle the pain. The only other psychologists she consulted with were Dr. Lefebvre, for one week in August 2022 as an assessment, and three weeks of weekly treatment following the assessment with Dr. Christine Boisvert. The Appellant had lost her mother and brother in the last three years which overlays the moderate severe depression.[25] I note the three weeks of treatment with Dr. Boisvert was done four years post-MQP and six years after she last worked.

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[24] See GD 7-3.
[25] See GD 7-8.

[76] The only treatment she sought while working was medication. Again, the most common medication recommended was Elavil.

[77] The medical evidence does not support a state of depression, anxiety or panic attacks which would have prevented the Appellant from working by December 31, 2018, and continuously to date.

[78] The medical evidence doesn't show that the Appellant had functional limitations that affected her ability to work by December 31, 2018. As a result, she hasn't proven she had a severe disability.

[79] 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.[26]

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

[80] When I am deciding whether the Appellant can work, I can't just look at her medical condition/conditions and how it/they affects/affect what she can do. I must also consider factors such as her:

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

[81] 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.[27]

[82] I find that the Appellant can work in the real world. At the time of her MQP she was 47 years old at the time of her MQP. She completed high school in Egypt, took ESL courses and showed herself to be quite capable in the English language. She

[26] See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.
[27] See *Villani v Canada (Attorney General)*, 2001 FCA 248.

obtained courses in computer. She has worked as a dietary aid at a retirement home, and in a sedentary office position as a quality assurance.

[83] Her regular job was not suitable for her CTS. Despite this, she managed to work at the job for nine years before being laid off. She has transferable skills. At age 47 she still had almost 20 years before the usual retirement age. She would not be prevented from obtaining work, or retraining by reason of her age, education, or language skills. Her past work and life experiences would not be barriers to finding suitable employment.

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

[84] If the Appellant can 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 conditions.[28] Finding and keeping a job includes retraining or looking for a job she can do with her functional limitations.[29]

[85] After she was laid off due to a shortage of work, she didn't make efforts to find a suitable job.

– **Working with her conditions**

[86] The Appellant has had CTS since 2004. At the time she was working at her first job after being a stay-at-home mother, as a dietary aid at a retirement home. She had surgery on her right hand in 2005, which did not help. Because of this, she declined surgery on the left hand. She did not return to working until 2007 when she got the job in quality assurance. This was a sedentary job at a desk and computer, with some lifting of boxes. It required constant typing and manual dexterity.

[87] The Appellant took this job, which would not be suitable for someone with carpal tunnel syndrome.

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[28] See *Inclima v Canada (Attorney General)*, 2003 FCA 117.
[29] See *Janzen v Canada (Attorney General)*, 2008 FCA 150.

[88] The Appellant testified she took the job because she did not have any other training. I do not accept this as reasonable. She was not trained at that job, and therefore required to be trained. She could have trained for any other suitable job. She was only 35 years old at the time and would be able to find and train for any suitable job. She had already taken ESL courses and courses in computers.

[89] The Appellant consulted with a rheumatologist, Dr. Boate, in 2014 who found the repetitive movements of her job aggravated her CTS and caused regional myofascial pain syndrome of the neck and upper back. This shows her regular job was never suitable for her condition. It exacerbated her CTS and caused other conditions.

[90] I accept that the Appellant was working in the wrong job for nine years. It was not suitable for her CTS. This caused the problems with her neck and back. The stress of the job caused her headaches and anxiety. I accept that after she was laid off, she continued to seek consultations with specialists. She got physiotherapy for her chronic headaches, shoulder, and neck pain from April 2016 to March 2017.[30] .

[91] Oddly, Dr. Webber continued to provide "to whom it may concern" letters of sick leave, while the Appellant was not working. When questioned, the Appellant explained these were for Employment Insurance (EI) sick benefits. The Appellant received EI sick benefits when she was first laid off. When they expired, she went on regular EI. The last note from Dr. Webber was January 2017 taking her off work for unspecified "medical reasons" until March 1, 2017. That was the date her EI sick benefits ended.

[92] When a person is receiving EI, they agree they are willing and able to work.

[93] The medical information does not show any condition that would prevent the Appellant from working after she stopped receiving EI sick benefits in February 2017.

[94] The previously discussed diagnostics of her cervical spine showed mild degeneration by 2017. Her lumbar spine was first assessed in September 2019 which showed a mild disc bulge. She did not receive any treatment after March 2017, nor was

[30] See GD 2-108.

she under the care of any specialists, other than a three-month pain therapy session with psychologist Dr. Joseph in 2017.[31]

[95] She was downsized due to work shortage. The Appellant has failed to provide any evidence to show she was terminated from work due to her health conditions.

[96] There is no medical opinion at the time of her MQP that she was incapable of working. The medical information on file does not show any condition, or an overall view of her conditions altogether that would prevent her from working at that time either.

[97] Therefore, I can't find she had a severe disability by December 31, 2018.

Conclusion

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

[99] This means the appeal is dismissed.

Jackie Laidlaw
Member, General Division – Income Security Section

[31] Please note there was no medical information provided from Dr. Joseph.