



Citation: *GW v Minister of Employment and Social Development*, 2023 SST 678

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

# Decision

**Appellant:** G. W.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated July 9, 2021 (issued by  
Service Canada)

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**Tribunal member:** Lianne Byrne

**Type of hearing:** Teleconference

**Hearing date:** December 13, 2022

**Hearing participant:** Appellant

**Decision date:** March 3, 2023

**File number:** GP-21-1957

## **Decision**

[1] The appeal is allowed.

[2] The Appellant, G. W., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of November 2019. This decision explains why I am allowing the appeal.

## **Overview**

[3] The Appellant is 56 years old. He worked as a millwright for 30 years. He stopped working in July 2019 because he had pain and swelling in his feet and ankles. He feels he can no longer work due to pain throughout his body and post traumatic stress disorder (PTSD).

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

[5] The Appellant says that he has a severe and prolonged disability. He is no longer able to work due to the combination of his health problems.

[6] The Minister says that the evidence provided does not support the presence of any severely disabling physical or mental conditions by way of diagnosis, investigative findings, treatment, or functional limitations that would render him disabled indefinitely for any and all work activity. While he may not be able to return to his previous occupation as a millwright, he is capable of attempting alternate work. His college education and work experience would have provided him with the educational and vocational competencies to allow for direct entry into the workforce in a suitable capacity.

## 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, 2022. This date is based on his contributions to the CPP.<sup>1</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>2</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>3</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>1</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 page GD4-11.

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

<sup>3</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 July 2019. 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 do affect his ability to work

[16] The Appellant has:

- Rheumatoid Arthritis
- Plantar Fasciitis
- Degenerative Disc Disease
- Left elbow ulnar neuropathy
- Left shoulder tendonitis
- PTSD
- Pain in his feet, ankles, legs, knees, back, buttocks, left shoulder, and left elbow.

[17] However, I can't focus on the Appellant's diagnoses.<sup>4</sup> Instead, I must focus on whether he had functional limitations that got in the way of him earning a living.<sup>5</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>6</sup>

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<sup>4</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>5</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>6</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

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

– **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 worked for 30 years as a millwright, which is a physically-demanding job. His duties included fixing furnaces, presses, vices, and milling machines.

[20] In approximately 2017, he started to have severe pain in his feet. His pain worsened progressively over time. It got to the point that he could no longer carry his toolbox at work. He pushed himself to work through his pain, but there were days he could not even get out of bed. His family physician told him he has plantar fasciitis and gout. His doctor recommended that he stop working in July 2019, which he did.

[21] His foot pain did not improve after he stopped working. He cannot feel the bottom of his feet. He has constant foot pain that increases significantly if he steps on anything, such as a pebble.

[22] In addition, he has arthritis and pain throughout his body, including in his ankles, knees, left hip, and both hands. His pain worsens throughout the day. It also worsens with prolonged sitting, standing, and walking. He gets morning stiffness. It takes about 30 minutes before he is limber enough to walk properly. His hands and feet swell up.

[23] He has left shoulder and elbow pain that comes and goes. If he does anything to aggravate his shoulder, his pain will increase to the point that he cannot pick anything up. It will then take 4-6 weeks for his left shoulder pain to settle.

[24] In January 2020, he underwent left ulnar decompression surgery. This resolved some of his symptoms, but he still has numbness in his baby finger.

[25] He also suffers from PTSD, depression, and anxiety. Medication has helped with his anxiety, but not with PTSD or his depression. He has nightmares all the time. He gets easily frustrated and anxious when he is out of the house and around other people. He has difficulty breathing.

[26] He is unable to stand for more than 30-45 minutes, walk for more than 20 minutes, or sit for more than an hour. He is unable to lift or carry anything heavier than 10-15 lbs. He gets terrible pain in his back and hip with bending. He has trouble stair climbing. He has difficulty concentrating. He is forgetful.

[27] He has not tried to return to work or look for another job since he stopped working in July 2019. He finds it difficult enough to deal with his daily pain and anxiety.

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

[28] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work by the hearing date.<sup>7</sup> The medical evidence supports what the Appellant says.

[29] The CPP Medical Report was completed on December 9, 2020 by Dr. L. Spicer, family physician. The Appellant has bilateral foot pain since April 2019. He was diagnosed with plantar fasciitis and rheumatoid arthritis. He has limited mobility and difficulty walking. He also has left elbow ulnar neuropathy and tendonitis in his right wrists. This was surgically repaired in January 2020. However, he still has limited mobility. He cannot do any heavy lifting and only limited overhead reaching. He has left shoulder tendonitis with a lot of pain and limited mobility. This limits his ability to lift and reach overhead. Dr. Spicer does not expect him to return to any type of work in the future.

[30] Dr. Alex Rabinovich, orthopedic surgeon, reported on September 3, 2019 that the Appellant has bilateral foot pain. He has bilateral ankle osteoarthritis and bilateral plantar fasciitis. It was hoped that he could return to work in 6-8 weeks with active therapy.

[31] On May 9, 2019, Dr. Michael Tran, orthopedic surgeon, reported that the Appellant has had left shoulder pain for 25 years. He was injured catching a heavy

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

object that was falling. He has left shoulder tendonitis for which non-operative treatment was recommended.

[32] On January 21, 2020, Dr. Samir Parbhakar, surgeon, performed left ulnar nerve decompression and left elbow nerve block.

[33] There are several reports on file from Dr. Reza Teghavi, including the following:

- On June 1, 2020, he was noted to have rheumatoid arthritis with moderate disease mainly in his feet.
- On January 13, 2021, he was noted to have rheumatoid arthritis with gout. He takes medication, but still experiences prolonged stiffness and aching pain, which worsens with swelling. His rheumatoid arthritis seems to be active.
- On April 27, 2021, he was still experiencing stiffness and aching pain in his feet, but with less severity. He has rheumatoid arthritis with mildly active disease.
- On October 27, 2021, his rheumatoid arthritis was in remission. However, he still complained of swelling and aching feet and ankles worse with walking. His symptoms are due to degenerative disc disease and plantar fasciitis.
- On March 2, 2022, his rheumatoid arthritis is noted to be in remission. He still has morning stiffness and recently developed acute back pain with radiculopathy.
- On July 20, 2022, he was noted to have developed feet and right knee pain and swelling. His rheumatoid arthritis is active.

[34] Dr. N. Gagic, Hamilton Vein Clinic, wrote on February 6, 2021 that he has varicosities of the right leg and early signs of chronic venous insufficiency. Dr. S. Rammaghan wrote on March 9, 2021 that he is wearing stockings.

[35] Dr. Catherine Ballyk reported on May 4, 2022 that he has longstanding left buttocks pain. He has been unable to work due to his musculoskeletal complaints for at

least two years. EMG showed chronic S1 and some L4-5 radiculopathy, which is likely related to degenerative disc disease.

[36] With respect to his mental health, Dr. Poonam Sharma, psychiatrist, reported that he struggles with PTSD related to his childhood as well as his time in the army. He has flashbacks and nightmares. He also has anxiety attacks. He had two previous suicide attempts. He is struggling with symptoms of PTSD, depression, and anxiety. His illness is perpetuated by alcohol dependence. His physical limitations add to his psychological difficulties.

[37] Dr. Ron Book, psychiatrist, reported on May 9, 2022 that he has generalized anxiety disorder and depressive difficulties.

[38] An MRI of his lumbar spine dated October 8, 2022 showed multilevel degenerative changes and mild right foraminal narrowing at L4-5.

[39] The medical evidence supports that the Appellant's difficulty standing, walking, sitting, bending, lifting, and reaching prevented him from physically-demanding work, including the work he had been doing for 30 years as a millwright.

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

– **The Appellant has followed medical advice**

[41] To receive a disability pension, an appellant must follow medical advice.<sup>8</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>9</sup>

[42] I am satisfied that the Appellant made genuine efforts to improve his health. He is taking medication for his pain, rheumatoid arthritis, depression, and anxiety. He attended physiotherapy and massage therapy. He had left ulnar decompression surgery in January 2020. He may require surgery on his left shoulder in the future, but it

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<sup>8</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

<sup>9</sup> See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.



has not yet been recommended. He recently saw a surgeon about his left hip. He was sent for a CT scan. He is wearing compression stockings. He is seeing a psychiatrist. He saw a psychologist in the past, but cannot afford ongoing treatment.

[43] The Appellant has not unreasonably refused any recommended treatment. He has followed medical advice.<sup>10</sup> I accept that his condition has not improved significantly despite his efforts.

[44] 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>11</sup>

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

[45] 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

[46] 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>12</sup>

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

[48] In this case, the Appellant is 56 years old. He is fluent in the English language. He completed a millwright program at the college level. He worked in the army for 3 years, then for 30 years as a millwright.

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<sup>10</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

<sup>11</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>12</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[49] The Appellant is unable to return to his job as a millwright. He cannot do any job that requires standing, walking, lifting, carrying, bending, or reaching. He worked for 30 years as a millwright and the skills he acquired in the workplace pertain to this type of work. His education was also focused on this type of work. He has never held a sedentary job and, given his age, education, and work experience, he would be unlikely to obtain a sedentary job even without considering his medical conditions. He would require retraining, which is unrealistic considering his age in combination with his difficulty sitting, concentrating, and remembering.

[50] I find that the Appellant's disability was severe as of July 2019, when the Appellant stopped working.

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

[51] The Appellant's disability was prolonged. The Appellant's conditions began in 2017 and worsened over time. These conditions have continued and they will more than likely continue indefinitely.<sup>13</sup>

[52] I considered that Dr. Rabinovich was optimistic about his prognosis. On September 3, 2019, Dr. Rabinovich was hopeful that with some active therapy he would be able to return to work in 6-8 weeks. However, the Appellant testified that his condition did not improve significantly and he was never able to return to work.

[53] The remaining medical reports on file support that the Appellant's disability is prolonged. Dr. Tran noted the longstanding nature of the Appellant's left shoulder pain on May 9, 2019. Dr. Spicer wrote on December 9, 2020 that his prognosis was unknown. He does not expect him to return to any type of work in the future. Dr. Ballyk noted his longstanding left buttock pain on May 4, 2022. It was noted that he has been unable to work due to his musculoskeletal complaints for at least two years. I also

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<sup>13</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.

accept the Appellant's oral evidence that he suffers from ongoing health problems that have not improved over time.

[54] I find that the Appellant's disability was prolonged as of July 2019, when Dr. Spicer recommended that he stop working.

### **When payments start**

[55] The Appellant's disability became severe and prolonged in July 2019.

[56] There is a four-month waiting period before payments start.<sup>14</sup> This means that payments start as of November 2019.

### **Conclusion**

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

[58] This means the appeal is allowed.

Lianne Byrne  
Member, General Division – Income Security Section

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<sup>14</sup> Section 69 of the *Canada Pension Plan* sets out this rule.