



Citation: *S. Z. v Minister of Employment and Social Development*, 2022 SST 1270

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: S. Z.
Representative: Jason Singer

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated March 18, 2021 (issued by
Service Canada)

Tribunal member: Sarah Sheaves

Type of hearing: Videoconference

Hearing date: October 18, 2022

Hearing participants: Appellant
Appellant's representative

Decision date: November 8, 2022

File number: GP-21-1249

Decision

[1] The appeal is dismissed.

[2] The Appellant, S. Z., 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 44 years old and worked as a school teacher. She is also currently completing a doctorate degree in education. The Appellant was hit by a vehicle in September 2015. She had some physical injuries which have resolved. She continues to experience anxiety, depression, post traumatic stress, and was diagnosed with somatic pain symptoms.

[4] The Appellant applied for a CPP disability pension on August 14, 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 consistently since her accident, and that it's not realistic for her to return to work for the foreseeable future. She says that the combination of her psychiatric conditions causes a severe and prolonged disability.

[6] The Minister says the Appellant is doing a doctorate program part-time, which demonstrates work capacity. It argues the Appellant hasn't tried to do alternate work to accommodate her conditions. It says that based on the Appellant's age, education, and skills she could work in the real world.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by the hearing date.¹

[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.²

[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.³

[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.

¹ 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 GD2-6. In this case, the Appellant’s coverage period ends after the hearing date, so I have to decide whether she was disabled by the hearing date.

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

³ 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 the hearing date. I acknowledge she has been diagnosed with and seeks some limited treatment for mental health conditions. However I don't find that they cause functional limitations that would prevent her from working at a substantially gainful job.

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 affect her ability to work

[16] The Appellant has:

- Depression
- Anxiety
- Post traumatic stress disorder
- Somatic Pain Disorder

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

[18] I find that the Appellant has functional limitations that affected her ability to work as a school teacher.

– 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 as a school teacher. She says the following:

⁴ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁵ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁶ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- She gets anxiety when she has marking and report card deadlines at work
- She feels overwhelmed and fearful when she is teaching
- She has lost confidence in her teaching and second-guesses herself
- She finds it difficult to deal with surprises

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

[20] The Appellant must provide some medical evidence that outlines the nature and extent of her disability, findings related to her diagnosis and prognosis, and any limitation resulting from the disability. This can also include other pertinent information, such as recommendations for treatment.⁷

[21] The medical evidence supports some of what the Appellant says about her limitations.

[22] There is an orthopaedic report from Dr. Wasserstein dated August 8, 2017.⁸ He said the Appellant broke her foot in 2015 and has a permanent scar on her left thigh, without any functional limitations. He said there was no evidence of a back injury, neck injury, or ongoing physical impairment.

[23] Dr. Wasserstein said the Appellant had been back to working part-time for one year. He also said the Appellant wasn’t taking any medication for her conditions.

[24] There is a medical report from Dr. McNally, the family doctor, dated February 11, 2020.⁹ He says the Appellant has no physical restrictions and can perform all of her work activities in a quiet, less stressful environment. The functional restriction he gave was for less stressful stimulation.

[25] There is a medical report for CPP from Dr. McNally dated July 13, 2020.¹⁰ He says the Appellant has memory and concentration impairment when she has a panic

⁷ See section 68(1) of the *Canada Pension Plan Regulations*; and *KB v Minister of Employment and Social Development*, 2022 SST 915.

⁸ See GD2-86.

⁹ See GD2-126.

¹⁰ See GD2-71.

attack. He further listed issues with insomnia, paranoia, fatigue from compulsive activity, and headaches.

[26] There is an independent psychiatric assessment of Dr. Waisman, psychiatrist, dated April 20, 2020. He wasn't a treating doctor. He said the Appellant has a major depressive disorder and was disabled from gainful employment. He also said she had post-traumatic stress as a result of her accident.

[27] Dr. Waisman also diagnosed a somatic symptom disorder with severe predominant pain. He didn't make any suggestions for any type of treatment to address the conditions he said were severe and completely disabling. He confirmed the Appellant wasn't taking any medications.

[28] The independent assessment of Dr. Waisman is the only medical report that suggests that the Appellant has issues with physical pain after she recovered from her accident injuries. The predominant and severe somatic pain diagnosis isn't supported anywhere else in the medical evidence.

[29] I will note that the records of Dr. McNally were also submitted as evidence.¹¹ The records don't have any mention of physical pain complaints from the Appellant.

[30] Given that Dr. Waisman's report stems from a one time assessment, and that the diagnosis of somatic pain isn't supported by the rest of the medical evidence, I am not giving much weight to his opinion about the ability to work.

[31] Dr. Waisman's report is 13 pages long, yet there is no suggestion that the Appellant needs any type of treatment for her conditions.

[32] The Appellant received psychotherapy with Dr. Bodnar for several years. Dr. Bodnar wrote several reports in support of the Appellant from 2019 to 2022.¹² I note that the reports say substantially the same thing each time.

¹¹ See GD2-121.

¹² See GD1-102, GD1-128, GD2-20 and GD5-2.

[33] I don't give much weight to Dr. Bodnar's opinion on the Appellant's ability to work. Her reports are repetitive, and demonstrate inaccuracies or missing relevant information. They each say that improvements have been made, then suggest more improvement is needed in order to work. Yet the only treatment suggestion is to continue to attend therapy once per month.

[34] Dr. Bodnar diagnoses depression, post traumatic stress, and vehicular anxiety in her reports. All the reports say there is improvement of symptoms, with fluctuating mood, and struggles with working. The reports generally suggest the Appellant can't return to work until she manages a significant improvement. Yet each report suggests improvement has occurred.

[35] In the report dated July 15, 2022, Dr. Bodnar says the Appellant hasn't been able to continue her PhD program, and hasn't been able to return to work or school. She suggests that this is due to the Appellant's anxiety.¹³

[36] However the Appellant told me she was still doing her educational program.

[37] Furthermore, Dr. Bodnar doesn't mention that the reason the Appellant stopped working most recently in 2021 was related to her pregnancy, not her psychological medical conditions.

[38] Dr. Bodnar's reports do confirm that the Appellant continues to seek psychotherapy treatment related to anxiety, stress, and depression. She has attended 28 sessions over the course of five years to treat her conditions.

[39] The medical evidence suggests that the Appellant's anxiety and depression have impacted on her ability to work as a school teacher. She tells me that she feels fearful and less confident when teaching her students, and this has caused her to take leaves of absence from her work.

¹³ GD5-2.

[40] Next, I will look at whether the Appellant has followed medical advice. I will also consider if her conditions prevent her from working regularly at any substantially gainful employment.

– **The Appellant has followed medical advice**

[41] To receive a disability pension, an appellant must follow medical advice.¹⁴ 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.¹⁵

[42] The Appellant has followed medical advice.

[43] The Minister hasn't argued that the Appellant hasn't followed the medical advice she received.

[44] The Appellant has attended psychotherapy with Dr. Bodnar, attending 28 sessions in total since 2017.¹⁶

[45] When it comes to medical recommendations for the Appellant's psychiatric conditions, there hasn't been many treatment suggestions. Dr. Bodnar suggests therapy once per month.

[46] There is no doctor who has suggested the Appellant is non-compliant with treatment.

– **The Appellant hasn't required traditional conservative treatment**

[47] The Minister argued that the Appellant doesn't have a treating psychiatrist. It suggests this is evidence the conditions aren't severe.

¹⁴ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁵ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

¹⁶ See GD5-2.

[48] At the hearing I also confirmed the Appellant has never taken any medications for her psychiatric conditions. She told me there were times she was pregnant or breastfeeding and didn't want to take medications.

[49] However, she also confirmed that even when she wasn't pregnant or breastfeeding she hasn't taken any medications because she prefers natural and alternate treatments. She also said her mother has mental health conditions, and watching her mother's medication issues is another reason she won't take medication.

[50] I do find the fact that the Appellant has never taken a medication to address psychiatric conditions that she says are severe, has some relevance when assessing the severity of the condition. As is the lack of oversight in her care, and/or treatment with a psychiatrist.

[51] Being under the care or supervision of a psychiatrist and taking medications are some of the most typical and basic forms of treatment for psychiatric illnesses. The fact that the Appellant hasn't required or engaged in either of these forms of treatment suggests that her conditions may not be severe.

[52] While the Appellant has engaged in some therapy with Dr. Bodnar, the treatment isn't consistent and isn't pursued at the recommended one session per month. The Appellant had four sessions in 2021 and two in 2022. The limited nature of the psychological treatment also speaks to the level of severity of the conditions.

[53] Treatment is only one factor to consider when assessing the severity of the Appellant's condition. I also 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.¹⁷

¹⁷ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

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

[54] 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

[55] 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.¹⁸

[56] I find that the Appellant can work in the real world.

[57] The Appellant is 44 years old. Her age isn't a barrier for being able to work.

[58] The Appellant has a master's degree in education. She is currently doing a part time doctorate degree in education. Her education isn't a barrier to working in the real world.

[59] The Appellant is employed as a school teacher. She has also worked as a fitness instructor, with certifications in cycling, kickboxing, and step class. Her work experience isn't a barrier to finding physical or sedentary work.

[60] The Appellant speaks English and Persian. English is her primary language and she taught English as a subject in school. She doesn't have communication barriers for working in the real world.

[61] The Appellant started her doctorate degree part-time in 2020. She continues in her program. This demonstrates a capacity for work at a sedentary part-time level.

¹⁸ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[62] Engaging in a doctorate degree requires considerable reading and writing, concentration, and attention to detail at a sedentary level.

[63] The Appellant describes her current educational program as a coping mechanism and a positive escape for her, in relation to her conditions.

[64] The Appellant told me she has fallen behind by over half a year, in her educational program. However, I note during this time, she has also had a child, which, on a balance of probabilities, would impact on her ability to attend to school.

[65] The Appellant confirmed she is still in her educational program as of the hearing date.

[66] The Appellant also confirmed she is able to care for her infant all day by herself. She says her middle child is in daycare because it would be too difficult to care for her two youngest children alone.

[67] However, I do find that the ability to care for an infant all day unassisted does speak to some capacity for work. I note that the Appellant is caring for her infant, and pursuing her doctorate at the same time, as of the hearing date.

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

[68] 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 her efforts weren't successful because of her medical conditions.¹⁹ Finding and keeping a suitable job includes retraining or looking for a job she can do with her functional limitations.²⁰

[69] The Appellant has repeatedly returned to work at her prior job as a school teacher over the years. She is still employed with the school board. She hasn't tried to look for or work at any other job.

¹⁹ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

²⁰ See *Janzen v Canada (Attorney General)*, 2008 FCA 150.

[70] The Appellant argues that she hasn't been able to work regularly since 2015, due to her conditions. She says she tried working part-time and modifying her duties, but was unable to work consistently.

[71] The Appellant has reported a substantially gainful income every year since 2015.²¹

[72] The Appellant has also had three children since 2017. Her pregnancies and parental leaves are also reasons she was unable to work regularly during this period.

[73] In her most recent attempt to work in fall of 2021, the Appellant stopped working in October 2021 because she had a high risk pregnancy in the pandemic. Her doctor said she could work part-time, but her employer could not accommodate her for virtual teaching.²²

[74] I don't find that the reason the Appellant stopped working in 2021 was due to her conditions. She stopped working because she was pregnant and her employer could not or would not provide part-time work. Her doctor didn't say she was incapable of working.

[75] The Appellant told me she also felt overwhelmed in October 2021. She said this was one reason she has regularly been unable to work since 2015. She feels fear and second-guesses herself when teaching.

[76] The Appellant has an obligation to look for suitable work or re-training that will accommodate her limitations, including her feelings of fear and overwhelm while teaching.

[77] The Appellant hasn't looked for any alternate work aside from teaching. All of the Appellant's attempts to work have been at her same job as a teacher.

²¹ See GD2-6. Also, section 68.1 of the Canada Pension Plan Regulations say work is "substantially gainful" if it pays a salary or wages equal to or greater than the maximum annual amount a person could receive as a disability pension.

²² See GD4-11.

[78] Additionally, instead of looking for re-training in some other field to accommodate her limitations with teaching, the Appellant decided to further pursue her education as a teacher with her doctorate program.

[79] While the Appellant made efforts to work, these efforts don't show that her disability gets in the way of earning a living.

[80] The Appellant hasn't tried to use her extensive education and experience to find a non-teaching job, or any other type of sedentary work.

[81] The Appellant hasn't tried to work as a fitness instructor, with all of her existing certifications. She has confirmed she regularly exercises for her self care.

[82] The Appellant's inability to work consistently is also impacted by having three children since 2017. I am not able to accept that all of her work absences were caused by her medical conditions.

[83] Even if I did think the Appellant's medical conditions affected her ability to work as a teacher, she has never tried any other type of work in order to accommodate her conditions and limitations. As a result of this she hasn't proven on a balance of probabilities that her disability prevents her from working at a substantially gainful job.

[84] Therefore, I can't find that the Appellant had a severe disability by the hearing date.

Conclusion

[85] 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.

[86] This means the appeal is dismissed.

Sarah Sheaves
Member, General Division – Income Security Section