



Citation: *GP v Minister of Employment and Social Development*, 2023 SST 133

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

Decision

Appellant: G. P.

Respondent: Minister of Employment and Social Development

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

Tribunal member: Adam Picotte

Type of hearing: Teleconference

Hearing date: February 3, 2023

Hearing participants: Appellant

Decision date: February 7, 2023

File number: GP-21-2447

Decision

[1] The appeal is allowed.

[2] The Appellant, G. P., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of May 2020. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant is 52 years old. From 1997 to 2020 he worked as a constable with the X. In 2020, after attempting modified employment with the X he applied for and was accepted onto long term disability (LTD) benefits. This followed a sustained period of disability from a lumbar spine injury, post traumatic stress disorder (PTSD), and a torn meniscus of the right knee.

[4] The Appellant applied for a CPP disability pension on February 5, 2021. 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 he is unable to work. He has difficult concentrating, is unable to walk or stand, and spends most every morning stretching so that he can engage in basic activities of daily living. He is unable to perform any sort of employment given his functional impairments.

[6] The Minister says that the Appellant's disability is not to such an extent that he is incapable fully from working.¹ The Minister submits that the information on file does not rule out suitable employment. The Minister wrote that given his age, education and training as an X/police officer and language ability; the Appellant should have some transferable skills that leave him able to perform some form of employment.²

What the Appellant must prove

[7] For the Appellant to succeed, he must prove he has a disability that is severe and prolonged by the hearing date, February 3, 2023.³

¹ GD6-3

² GD6-8

³ 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 GD2-45-46. In this case, the Appellant's coverage period ends after the hearing date, so I have to decide whether he was disabled by the hearing date.

[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.⁴

[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.⁵

[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.

Reasons for my decision

[14] I find that the Appellant had a severe and prolonged disability as of January 2020. 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:

⁴ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

⁵ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

- PTSD
- back pain
- headaches
- knee pain
- degenerative disc disease
- low mood and irritability

[17] However, I can't focus on the Appellant's diagnoses.⁶ Instead, I must focus on whether he had functional limitations that got in the way of him 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 his ability to work.⁸

[18] I find that the Appellant has functional limitations that affect 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 says he experiences the following functional impairments:

- **Remain on feet 20 minutes** – He will start to get back pain and needs to sit down. Sometimes it is less than 20 minutes.
- **Kneeling or squatting** – Anytime he squats down he feels back and knee pain. He has only a limited amount of time before he starts to feel pain.
- **Bend down** – He experiences the same sensation when kneeling or squatting. He has back and knee pain and can only do this activity for a very limited time before he starts to feel pain.
- **Sit for 20 minutes** – He cannot sit and watch his children play basketball games. He needs back support or will need to stand and move around. He usually needs to find a heat source or a massage to assist in taking the pain away.

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.

- **Stare at a computer screen for 20 minutes** – The Appellant is able to last about 10 minutes looking at a computer screen. Any period of sitting causes his back pain to crop up and he is unable to maintain focus.
- **Work in a team** – He told me that he has a really hard time dealing with anyone. He is unable to deal with other people. He dislikes being around people.
- **Difficult tasks** – He cannot take direction and has little patience for anyone.
- **Adjust to changes** – He needs routine to keep his head straight. Without it he gets irritable and angry.
- **Ask for help** – He told me that he has a difficult time asking for help. He told me that it is not something he is able to do very often.
- **Control temper** – Routine helps him control his temper but he struggles with controlling his temper when something comes up unexpectedly.
- **Follow authority** – He does not follow authority very well. He told me that he was a boss' nightmare when he was working.
- **Memory** – His memory is terrible. He forgets what he is talking about. He has a hard time with names and needs to write things down.
- **Learn new things** – The Appellant told me that he struggles with doing anything than what he is used to and what he knows.
- **Write an email** – It depends on what he is writing but it takes him a long time to respond and remember how to respond via email. Even while working he would need assistance with writing emails because of his lack of focus or being able to take in new information.
- **Housework** – He told me he is quite limited and relies on his kids and fiancée to assist with cleaning. He cannot clean the floors or the washrooms. He told me that he can do some vacuuming but not for very long. He's unable to spend an hour cleaning the house.

– **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 the hearing date.⁹

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

[22] Dr. Galik, his family physician, provided a medical report for both his CPP disability benefit application and for his LTD benefit application. Both reports consistently outline significant impairments in the Appellant’s level of function.

[23] In her report for a disability benefit through the CPP, Dr. Galik wrote that she had treated the Appellant for his medical conditions since 2017.¹⁰

[24] She wrote that the Appellant had suffered from PTSD since 2011. As a result, he had difficulty with concentration and multitasking. He was hypervigilant and suffers from anxiety symptoms especially when trying to manage multiple tasks. 11

[25] Dr. Galik noted that the Appellant had suffered from migraine headaches since 2004. During acute migraines he would suffer pain with nausea, photophobia and phonophobia and could be bedridden for 3-4 days.¹²

[26] When this happens, he is unable to care for his children or make meals.¹³

[27] Dr. Galik also noted that the Appellant has suffered from degenerative disc disease since the 1990s. She wrote that the Appellant’s back pain interfered with his ability to lift and bend. He was unable to do repetitive bending, twisting, or lifting during back flare ups.¹⁴

[28] Dr. Galik wrote that he would continue to suffer flare ups of pain and that his degenerative disc disease was chronic and had no cure.¹⁵

⁹ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹⁰ GD2-144

¹¹ GD2-145

¹² GD2-146

¹³ GD2-146

¹⁴ GD2-147

¹⁵ GD2-71

[29] Dr. Galik also provided a report for the Appellant's application for LTD benefits. In it, Dr. Galik wrote that the Appellant had chronic migraines and mechanical back pain for over 10 years. The symptoms can fluctuate in frequency and severity; however, these are both chronic illnesses.¹⁶

[30] Dr. Galik also noted that the Appellant suffered from the following conditions:

- moderate to severe insomnia
- moderate to severe back pain
- severe headaches
- moderate to severe knee pain, and
- moderate low mood and irritability¹⁷

[31] Dr Galik further noted that the Appellant wore a back brace and knee braces for physical activities including housework. He was only able to work for short periods of time and must take frequent breaks. He had a routine of stretching/heat/ice that he had to do consistently to stay mobile. In the event of a migraine, he could be bedridden for up to 3 days with pain.

[32] Dr. Galik enclosed chart notes with her medical report for LTD benefits. The chart notes indicate the presence of these conditions since at least 2019.¹⁸

[33] The medical evidence supports that the Appellant's PTSD, degenerative disc disease, headaches, low mood, and knee pain prevented him from doing his work as a police officer.

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

– **The Appellant has followed medical advice**

[35] To receive a disability pension, an appellant must follow medical advice.¹⁹ 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.²⁰

¹⁶ GD2-88

¹⁷ GD2-69

¹⁸ GD2-129

¹⁹ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

²⁰ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

[36] The Appellant has followed medical advice.²¹ The Minister did not suggest the Appellant had not followed medical advice. Moreover, I asked the Appellant about Dr. Galik's comment that he needed a routine of stretching/heat/ice to stay mobile throughout the day.

[37] The Appellant told me that when he wakes up, he takes his pain killers and uses heat. After that he stretches and will go for a walk. Then he will do light weights to try to strengthen his knees. He tries to complete his morning regime of stretching, heat, and ice by noon every day.

[38] Given the lack of medical to the contrary and the Appellant's evidence that he has followed his physician's advice, I am satisfied that this is not an issue in this case.

[39] 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.²²

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

[40] 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

[41] 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.²³

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

[43] While the Minister is correct, in that the Appellant is relatively young, has good work experience, and no language limitations, I am still satisfied that the Appellant cannot work in any capacity.

²¹ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

²² See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

²³ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[44] The Appellant told me about the extensive impairments he suffers because of his PTSD. Every day is a struggle for him. He is not able to sleep at night. He constantly checks his locks and windows. He gets into arguments with strangers, and he is confrontational with people he does not know.

[45] On top of his PTSD, the Appellant explained to me that his body is a wreck. He cannot engage in family activities. He relies on his children and fiancée to clean and manage his home. If he does any strenuous activities, he can be laid out for up to two weeks.

[46] When it comes to his mental well being, the Appellant's memory is shot. If he does not write things out, he forgets to do tasks.

[47] These are just a small sample of the various impairments that the Appellant suffers from. When I think about the Appellant's condition from a real-world perspective, I am satisfied that his disability is severe. He's not able to function around others given his PTSD. Taking direction is problematic for him.

[48] From a cognitive perspective he is severely impaired. His ability to learn new things is limited. He cannot focus his attention long enough to complete tasks. His ability to work with others is also impaired given his PTSD.

[49] From a physical perspective the Appellant is also severely impaired. Walking, standing, and sitting are all difficult. His mornings start with stretching, icing, and heat application. This lasts until noon. Even after this is complete, he needs to rest or change positions every 20 minutes. It is difficult to imagine any form of work that would allow the Appellant to rest until noon and then constantly change position.

[50] In the real world, there is no possibility that the Appellant could return to any form of employment.

[51] I find that the Appellant's disability was severe as of January 2020 when he stopped working as a police officer due to complications with his mental and physical health.

Was the Appellant's disability prolonged?

[52] The Appellant's disability was prolonged.

[53] Dr. Galik noted that the Appellant's PTSD started in 2011.²⁴ His headaches have been ongoing since 2004.²⁵ Finally, the Appellant's degenerative disc disease had been present since the 1990s.²⁶

[54] Because of his conditions, the Appellant hasn't been able to work for over three years.

[55] Dr. Galik wrote that the PTSD was chronic and there was no cure.²⁷ She wrote that the Appellant's headaches were chronic as was his back pain.²⁸

[56] Given the chronic nature and long-standing presence of these conditions I am satisfied that each is also prolonged within the meaning of the CPP.

When payments start

[57] The Appellant's disability became severe and prolonged in January 2020.

[58] There is a four-month waiting period before payments start.²⁹ This means that payments start as of May 2020.

Conclusion

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

[60] This means the appeal is allowed.

Adam Picotte

Member, General Division – Income Security Section

²⁴ GD2-145

²⁵ GD2-146

²⁶ GD2-147

²⁷ GD2-89

²⁸ GD2-88

²⁹ Section 69 of the *Canada Pension Plan* sets out this rule.