



Citation: *WC v Minister of Employment and Social Development*, 2023 SST 175

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

## Decision

**Appellant:** W. C.  
**Representative on record:** Allison Schmidt  
**Representative at the hearing:** Chantelle Yang

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

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

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**Tribunal member:** James Beaton

**Type of hearing:** Teleconference  
**Hearing date:** January 30, 2023  
**Hearing participants:** Appellant  
Appellant's witness  
Appellant's representative

**Decision date:** February 3, 2023  
**File number:** GP-21-1448

## Decision

[1] The appeal is dismissed.

[2] The Appellant, W. C., 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 64 years old. He last worked as a retail store manager. He stopped working in July 2019 due to a number of physical health conditions, including Wegener's disease, which causes inflammation in the blood vessels.

[4] The Appellant applied for a CPP disability pension on February 26, 2020. The Minister of Employment and Social Development (Minister) refused his application. The Appellant appealed to the Social Security Tribunal's General Division.

[5] The Minister says the Appellant's healthcare providers believed he could return to work once his Wegener's disease stabilized. In the Minister's view, there is no evidence that his other medical conditions were unstable or that they caused significant functional limitations. The Minister argues that the Appellant can still work.

[6] The Appellant says the combination of his conditions makes him unable to work.

## What the Appellant must prove

[7] For the Appellant to succeed, he must prove he has 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."

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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 at GD2-47 and 48.

[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 must look at all of the Appellant's medical conditions together to see what effect they have on his ability to work. I must also look at his background (including his age, level of education, language abilities, 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 capable regularly of doing 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 must prove he has a severe and prolonged disability. He must prove this on a balance of probabilities. This means he must show that it is more likely than not he is disabled.

## **Matters I have to consider first**

### **I allowed the Appellant's spouse to testify as a witness**

[14] The *Social Security Tribunal Rules of Procedure* say that an appellant must tell the Tribunal in writing if they will have a witness at the hearing. They must give the witness's name, their relationship to the appellant, and the language they will use to testify.<sup>4</sup> The Appellant didn't do this, probably because the rules are fairly new. I allowed the Appellant's spouse to testify anyway. The rules say I can do this if it is in the interests of justice.<sup>5</sup> It was in the interests of justice to hear evidence from the Appellant's spouse.

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<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.

<sup>4</sup> See section 41(1) of the *Social Security Tribunal Rules of Procedure*.

<sup>5</sup> See section 8(4) of the *Social Security Tribunal Rules of Procedure*.

## Reasons for my decision

[15] I find that the Appellant hasn't proven he had a severe and prolonged disability by December 31, 2022.

### Was the Appellant's disability severe?

[16] The Appellant's disability wasn't severe by December 31, 2022. I reached this finding by considering several factors. I explain these factors below.

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

[17] The Appellant has:

- anxiety
- asthma and chronic obstructive pulmonary disease (COPD)
- hemochromatosis (too much iron stored in certain organs)
- high blood pressure
- hypogonadism
- mild to moderate sleep apnea
- neuropathy (tingling and numbness) in his feet and hands
- osteoporosis
- periodic scleritis (inflammation) in his right eye
- tinnitus
- type-2 diabetes
- Wegener's disease

[18] However, I can't focus on the Appellant's diagnoses.<sup>6</sup> Instead, I must focus on whether he has functional limitations that got in the way of him earning a living by December 31, 2022.<sup>7</sup> When I do this, I must 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>8</sup>

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<sup>6</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>7</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>8</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[19] I find that the Appellant had functional limitations by December 31, 2022.

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

[20] The Appellant says his medical conditions have resulted in functional limitations that affected his ability to work by December 31, 2022. He says:

- He gets short of breath when he carries groceries or walks for too long (for example, during 20-minute walks with his spouse). His feet also feel numb or painful at times, which makes walking difficult.
- He is fatigued. He always has “minor, minor fatigue,” but it is more severe three to four times per week. During those times, doing housework is “pretty much near impossible” and (according to his spouse) his focus is poor.
- Fatigue makes him dizzy one or two times per week. He has to sit or lie down until the dizziness passes.
- Fatigue also gives him a headache once per week. However, he testified that amitriptyline (which he takes daily) “certainly takes care of my headaches, that’s for sure.” Occasionally, he takes extra-strength Tylenol.
- Headaches sometimes make him nauseous.
- His hands tingle and shake, which makes it hard to carry things and write.
- His right eye gets inflamed for a day or so each month, impacting his vision.<sup>9</sup>

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

[21] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work by December 31, 2022.<sup>10</sup> The medical evidence supports that:

- he gets **mildly** short of breath on exertion
- he experiences fatigue
- he has unexplained dizzy spells

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<sup>9</sup> See GD2-22 to 44, GD6-465 to 468, and the hearing recording.

<sup>10</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

- he gets occasional headaches
- he has neuropathy in his hands and feet
- he gets tremors in his hands
- his right eye gets inflamed sometimes, but this **does not** impact his vision<sup>11</sup>

[22] The medical evidence supports that the Appellant’s functional limitations, particularly his fatigue, prevented him from working full-time as a retail manager by December 31, 2022.

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

– **The Appellant didn’t follow medical advice**

[24] To receive a disability pension, an appellant must follow medical advice. If an appellant doesn’t follow medical advice, then they must have a reasonable explanation for not doing so. If they don’t have a reasonable explanation, then I must also consider what effect, if any, the medical advice might have had on the appellant’s disability.<sup>12</sup>

[25] The Appellant didn’t follow medical advice. He didn’t give a reasonable explanation for not following the advice.

[26] The Appellant declined a recommendation from Dr. Malik (a respirologist) to get a CPAP machine for his sleep apnea. The Appellant didn’t want to invest in a CPAP machine and not end up using it. Instead, he tried an oral appliance (which didn’t work) and bought an adjustable bed. He sleeps with extra pillows. This seems to have eliminated his snoring. But Dr. Malik urged the Appellant to “reconsider it if he does notice increased daytime tiredness or develops any overt cardiac disease.”<sup>13</sup>

[27] One of the Appellant’s main functional limitations is fatigue, despite reportedly sleeping well at night. Indeed, he testified that he stopped working mostly due to fatigue

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<sup>11</sup> See GD2-77 and GD6-35, 50, 58, 59, 192, 205 to 207, 213, 214, 230 to 232, 279, 280, 288, 328 to 330, 413 to 415, 421, and 441.

<sup>12</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 18; *Brown v Canada (Attorney General)*, 2022 FCA 104; and *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

<sup>13</sup> See GD6-423 to 425 and 441.

and neuropathy in his feet.<sup>14</sup> He also testified that fatigue is what causes his dizziness and headaches; headaches are the cause of his nausea. Given the significance of the Appellant's fatigue to his disability, and Dr. Malik's continued recommendation, it was unreasonable not to try a CPAP machine.

[28] I find that following the medical advice might have made a difference to the Appellant's disability. Dr. Malik acknowledged that the Appellant's fatigue could be caused by a medical condition other than sleep apnea. But it is also possible that his sleep apnea contributes to the degree of fatigue that he experiences. Otherwise, Dr. Malik would not have continued to make the recommendation.

[29] The Appellant didn't follow medical advice that might have affected his disability. This means his disability wasn't severe.

[30] If I am wrong about whether the Appellant followed medical advice, I would still find that his disability isn't severe. This is because his functional limitations don't prevent him from earning a living from some type of work.<sup>15</sup>

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

[31] 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

[32] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say he can work.<sup>16</sup>

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<sup>14</sup> See the hearing recording from 00:53:40 to 00:54:15.

<sup>15</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>16</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[33] I find that the Appellant was still able to work as of December 31, 2022.

[34] His age (63 as of December 31, 2022) negatively impacts his ability to work. However, he is fluent in English and has a high school diploma. He has a steady work history and transferrable skills. He did carpentry and quarrying and briefly owned a fast-food franchise where he cooked, managed inventory, and hired staff. He has spent most of his career working for the same retail employer, first as a clerk, then as a department manager, and finally as a store manager. This involved helping customers, scheduling shifts, and supervising staff.<sup>17</sup>

[35] There is conflicting evidence about the Appellant's computer skills. He told Service Canada that he "**likes** to use a computer and is able to text, use the Internet, and use social media" (my emphasis).<sup>18</sup> His spouse testified that his computer skills are "very, very basic." Although she has a computer, the Appellant doesn't use it. He checks email on his phone.<sup>19</sup> The Appellant similarly testified that he doesn't use a computer in his daily life. He can't use Microsoft Word and he types with one finger.<sup>20</sup>

[36] All I can reasonably conclude from this is that the Appellant's computer skills (or lack of them) didn't impact his ability to do his usual job. Either he didn't need computer skills, or they were good enough. I note that computer skills aren't essential to every job.

[37] His functional limitations mean that he can't do a job that involves a lot of lifting, carrying, walking (without breaks) or writing by hand. His functional limitations don't keep him from doing a somewhat physical job that requires these tasks from time to time, though. According to his spouse, his handwriting has worsened—but he can still write. He still goes for walks, exercises on a stationary bike, carries groceries into the house, cleans, dusts, sweeps, vacuums, takes out the garbage, and drives.<sup>21</sup>

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<sup>17</sup> See the Appellant's application (GD2-22 to 44) and the hearing recording. The Appellant lived in Scotland until 1987, but I don't consider this significant to assessing his work capacity.

<sup>18</sup> See GD2-54 and 55.

<sup>19</sup> See the hearing recording from 00:29:30 to 00:30:15.

<sup>20</sup> See the hearing recording from 01:29:20 to 01:30:00.

<sup>21</sup> See GD2-54 and 55, and the hearing recording.



[38] He is also fatigued. I accept that this would limit how many hours he could work. But it would not keep him from working entirely. Furthermore, by working fewer hours, he would not be as fatigued (he testified that he got more tired the longer he worked). If he were not as fatigued, he should not experience as many dizzy spells or problems focusing either, since fatigue is what causes those issues. His headaches and nausea are infrequent and adequately treated with amitriptyline and Tylenol.

– **The Appellant can work on a predictable basis**

[39] Even if an appellant can work sometimes, that doesn't mean they are capable regularly of working. If an appellant can't be relied upon to attend work as scheduled, they can't work predictably. An appellant who can't work predictably isn't capable regularly of working.<sup>22</sup>

[40] Both the Appellant and his spouse said they don't think the Appellant could work part-time because he would not be able to do so predictably. I disagree. I don't conclude that variability or unpredictability in the Appellant's condition would interfere with his ability to work. I found their testimony on this matter to be unreliable. I will explain why.

[41] According to their testimony, between February and July 2019 (when he stopped working altogether), the Appellant missed one day of work per week, and came home early two or three days per week. On those days, he came home two or three hours into his nine-hour shift. He also took extra breaks at work.

[42] The medical evidence doesn't explain why the Appellant would have missed so much work before July 2019. He had a flare-up of Wegener's disease in late June 2019, which explains why he stopped working in July.<sup>23</sup> But before that, his medical conditions were minor. He had mild shortness of breath in 2017 which Dr. Malik attributed to early COPD. He visited the hospital in September 2018 for weakness, but he felt better a few days later. He had some inflammation in his eye, which was successfully treated with

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<sup>22</sup> See *Atkinson v Canada (Attorney General)*, 2014 FCA 187.

<sup>23</sup> See GD2-77, 81 to 83, 94, 96, 110, 114 to 117, 138, and 140 to 142; and GD6-35, 149, 150, and 185.

prednisone. He had unspecified symptoms “consistent with sleep apnea,” which was considered mild at the time. He had a cold and hay fever in May 2019.<sup>24</sup>

[43] Second, the medical evidence contradicts the testimony about when the Appellant’s symptoms started. The medical evidence shows:

- his fatigue began in June 2019<sup>25</sup>
- his dizziness first appeared in 2020<sup>26</sup>
- the neuropathy in his hands began in January 2020<sup>27</sup>
- he generally had no trouble with stairs until February 2020 at the earliest<sup>28</sup>
- his nausea and the tremors in his hands began around September 2020<sup>29</sup>
- his headaches began in October 2020, or possibly in March 2021<sup>30</sup>

[44] The Appellant’s spouse worked at the same retail store as the Appellant until she retired in July 2017. She reported observing the Appellant struggle with fatigue, stairs, ladders, and tremors in his hands beginning in 2017. She said the fatigue, dizziness, nausea, and headaches were why he came home from work early. This doesn’t fit with the documentary evidence that I have just summarized.

[45] Testimony from the Appellant and his spouse was also inconsistent about how variable his condition is **currently**. They testified that he has one or two good days per week, when he can do housework. On a bad day, he will spend all day sitting or in bed.

[46] However, the Appellant also said that his fatigue is severe three or four times per week. His headaches, dizziness, nausea, weakness, and lack of focus are all associated with fatigue, which suggests that they occur on the same days. His other functional limitations (tremors, neuropathy, and shortness of breath on exertion) would

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<sup>24</sup> See GD6-29, 33, 107, 125, 133, 141, 142, and 144.

<sup>25</sup> See, for example, GD2-77 and GD6-46, 49, 50, and 324.

<sup>26</sup> See GD6-51, 66, 235, 295, 373, 390, 413 to 415, and 421.

<sup>27</sup> See GD6-192, 230 to 232, 273 to 275, and 413 to 415.

<sup>28</sup> See GD2-28.

<sup>29</sup> See GD6-58, 59, 279 and 280.

<sup>30</sup> See GD6-290 to 292 and 421.

not account for him staying in bed all day. Based on this testimony, he would have three or four good days per week, not one or two.

[47] These inconsistencies are too many and too significant for me to ignore. They make the testimonial evidence unreliable on the issue of the variability and unpredictability of the Appellant's medical conditions. I give no weight to the testimonial evidence on these issues.

[48] Next, I will explain why the medical evidence doesn't lead me to conclude that variability or unpredictability in the Appellant's condition would be a barrier to work.

– **The medical evidence supports that the Appellant can work**

[49] The medical evidence supports that the Appellant can work. Dr. Marsay (whose specialty isn't given) said the Appellant would be able to work once his condition stabilized without evidence of relapse.<sup>31</sup>

[50] The latest medical evidence supports that the Appellant's condition is stable. In April 2022, Dr. Dang (a respirologist) said he had improved. In May 2022, Dr. Dang said he had some physical limitations, but no flare-ups, and he was doing reasonably well.<sup>32</sup> The Appellant's representative argues that this means he was doing reasonably well in terms of the management of his conditions, but not his overall condition. With respect, I don't see a distinction here.

[51] In June 2022, the Appellant saw Dr. Malik for a follow-up appointment for his ongoing daytime fatigue. Dr. Malik's notes don't mention any changes in his fatigue since his appointment in March 2022, or any marked fluctuations from day to day.<sup>33</sup>

[52] More importantly, in July 2022, the Appellant told Dr. Kruger (his family doctor) that he had no major concerns. Dr. Kruger did a physical examination and concluded he

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<sup>31</sup> See GD2-77.

<sup>32</sup> See GD6-435 and 439.

<sup>33</sup> See GD6-423 to 425 and 441.

was healthy.<sup>34</sup> This is the last medical evidence on file. At the hearing, the Appellant confirmed that his Wegener's disease remains stable.

[53] This shows that the Appellant's Wegener's disease and other medical conditions have been stable for nearly a year now, with no evidence of flare-ups. He still has functional limitations, but they aren't so severe, variable, or unpredictable that they keep him from being capable regularly of working.

[54] In conclusion, when I consider the Appellant's functional limitations and personal characteristics together, I find that the Appellant is regularly able to do substantially gainful work. In fact, it isn't clear to me why he can't return to his usual job. If he were to only work three hours per day, five days per week, he would still earn a substantially gainful income.<sup>35</sup> This is fewer hours than he says he worked in the first half of 2019.<sup>36</sup>

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

[55] If the Appellant can work in the real world, he must show that he tried to find and keep a suitable job. He must also show that his efforts weren't successful because of his medical conditions. Finding and keeping a suitable job includes retraining or looking for a job that he can do with his functional limitations.<sup>37</sup>

[56] The Appellant didn't make efforts to work. He told Service Canada that his employer was "holding" his job for him. Yet he hasn't tried to go back to work. He hasn't looked for other work, either.<sup>38</sup> He gave no evidence that he has spoken with his employer about trying to return to work, even though his condition has improved and stabilized since he left in July 2019.

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<sup>34</sup> See GD6-69.

<sup>35</sup> His hourly wage was \$26 (see the hearing recording). He would have earned \$20,280. A substantially gainful income in 2022 was \$17,578 (see section 68.1 of the *Canada Pension Plan Regulations*).

<sup>36</sup> If I accept his testimony about how much work he missed in 2019, he was still working at least one full day (9 hours) and three partial days (2.5 hours each on average). This is 16.5 hours per week.

<sup>37</sup> See *Inclima v Canada (Attorney General)*, 2003 FCA 117; and *Janzen v Canada (Attorney General)*, 2008 FCA 150.

<sup>38</sup> See GD2-53 and 54, and the hearing recording.

[57] I acknowledge that the Appellant has worked for many years.<sup>39</sup> His representative said this shows he would continue working if he could. As I have explained, the evidence as a whole shows on a balance of probabilities that he still has residual work capacity. His work history doesn't change that. The law requires him to test his residual work capacity.<sup>40</sup> As of the hearing date, he had not done that. Therefore, I can't find that he had a severe disability by December 31, 2022.

## **Conclusion**

[58] I find that the Appellant isn't eligible for a CPP disability pension because his disability wasn't severe by December 31, 2022. Because I found that his disability wasn't severe, I didn't have to consider whether it was prolonged.

[59] This means the appeal is dismissed.

James Beaton  
Member, General Division – Income Security Section

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<sup>39</sup> See GD2-47 and 48.

<sup>40</sup> See *Inclima v Canada (Attorney General)*, 2003 FCA 117; and *Janzen v Canada (Attorney General)*, 2008 FCA 150.