



Citation: *DG v Minister of Employment and Social Development*, 2023 SST 349

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: D. G.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated May 19, 2021 (issued by
Service Canada)

Tribunal member: Anne S. Clark

Type of hearing: Videoconference

Hearing date: March 7, 2023

Hearing participant: Appellant

Decision date: March 29, 2023

File number: GP-22-360

Decision

[1] The appeal is dismissed.

[2] The Appellant, D. G., cannot cancel her *Canada Pension Plan* (CPP) retirement pension for a CPP disability pension. Also, the Appellant isn't eligible for a post-retirement disability benefit (PRDB). This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant applied for a CPP retirement pension. The Minister of Employment and Social Development (Minister) approved her application. Her retirement pension began in May 2017. On October 6, 2020, the Appellant applied for a CPP disability pension. The Minister refused the Appellant's application. The Appellant appealed to the Social Security Tribunal's General Division (Tribunal).

[4] The Appellant testified that she lives with significant hearing loss and tinnitus. She described some of the ways these conditions affected her throughout her life. With no government support she was able to obtain and maintain employment for more than 25 years.

[5] The Appellant says she uses assistive devices and speech reading to communicate with others. She applied for disability benefits because her ability to speech read was affected when people had to wear masks. Her evidence was not that she could not work but that it was uncomfortable. Also, she had to rely on other ways to communicate.

[6] The Appellant has not worked in her previous job since March 2020. She worked, and continues to work in other jobs. She reported she has diabetes, but she said it does not affect her ability to work. She feels she is entitled to a CPP disability pension and recognition for learning and working with a lifelong disability.

[7] The Minister says the Appellant is not eligible for a CPP disability pension because she made her application for disability benefits more than 15 months after her retirement pension began. The Minister also says the Appellant doesn't meet the eligibility requirements for a PRDB because the medical evidence doesn't prove she had a severe and prolonged disability.

What I have to decide

[8] I have to decide if the Appellant is eligible for a CPP disability pension.

[9] I also have to decide if the Appellant meets the criteria for a PRDB.

Matters I have to consider first

– The Appellant raised issues I don't have authority to decide

[10] The Appellant raised many concerns about her years of work and the lack of government support for people with hearing loss. She asked how she could get support from any government agency. She said hearing loss is a long term and significant condition. She feels she should be recognized for working so many years in spite of this condition.

[11] The Appellant said she worked as an advocate for others with hearing loss. She had to endure isolation in the workplace and had no support programs from the government. She had to complete high school without the benefit of hearing aids. She was only able to work successfully because she worked hard and had family support when she needed it. She did not have support from government. She feels she should be compensated for many years of working with severe hearing loss.

[12] During the hearing I explained that the Tribunal is created by legislation. It only has the powers granted to it by its governing law. This means I have to interpret and apply the provisions as they appear in the CPP and its regulations. I cannot change or waive them, even if they seem unfair in a particular situation.¹

¹ See the Supreme Court of Canada's decision in *R. v. Conway*, 2010 SCC 22.

[13] I also explained that CPP is not a social welfare scheme.² Disability benefits are for Canadians who experience a loss of earnings because a disability makes them unable to earn a living.

Reasons for my decision

– The Appellant applied for a CPP disability pension more than 15 months after her retirement pension began

[14] An appellant cannot collect a CPP retirement pension and a disability pension at the same time.³ An appellant can only request the cancellation of a retirement pension in favour of a disability pension if the appellant is “deemed” disabled before the retirement pension was payable.⁴

[15] The earliest an appellant can be “deemed” disabled is fifteen months before the date the Minister received the disability application.⁵ The effect of these provisions is that the CPP does not allow the cancellation of a retirement pension in favour of a disability pension if the person applies for the disability pension fifteen months or more after the retirement pension began.

[16] The only exception to the rule would be if the Appellant was not able to form or express an intention to apply for the benefit before the date she actually applied.⁶ The Appellant did not claim she was unable to form or express an intention to apply for the disability pension before October 2020. She worked until March 2020. She said it became difficult for her to work after that because she couldn't speech read when people were wearing masks. She said in 2022 she needed help from her granddaughter to interpret for her during a personal appointment. She also talked about having to handle very serious family matters during that time. She did not claim she was incapable of forming or expressing the intention to apply for a disability pension. The

² See the Supreme Court of Canada's discussion in *Granovsky v. Canada (Minister of Employment and Immigration)*, 2000 SCC 28, at para. 9.

³ See *Canada Pension Plan* sections 44(1)(b) and 70(3).

⁴ See *Canada Pension Plan* section 66.1(1.1).

⁵ Paragraph 42(2)(b) *Canada Pension Plan*

⁶ Subsections 60(8) and (9) *Canada Pension Plan*

medical evidence on file doesn't indicate there was a time when the Appellant could meet the incapacity criteria.

[17] The Appellant's retirement pension began in May 2017. She would have to be deemed disabled before May 2017. The Minister received the Appellant's application for a CPP disability pension in October 2020. That means she could not be deemed disabled earlier than July 2019. That means she cannot cancel her retirement pension in favour of a disability pension.

– **Post Retirement Disability Benefit (PRDB)**

[18] The PRDB is a monthly benefit available to people who receive an early CPP retirement pension. It is payable in combination with the retirement pension until an appellant turns 65 years old.⁷

[19] Not all disabled recipients of an early retirement pension are eligible for a PRDB. To be eligible, a person must have contributed to the CPP for a minimum number of years. For people with at least 25 years of contributions (like the Appellant) they must contribute in three of six full calendar years before the year they applied.⁸ The Appellant applied in 2020. The preceding six full calendar years were 2014 to 2019. She had contributions in more than three of those years.⁹ The Appellant has met the contributory requirements to be assessed for a PRDB.

[20] To be eligible for a PRDB the Appellant also has to prove she had a severe and prolonged disability. The evidence the Appellant submitted does not show she had a severe and prolonged disability within the meaning of the CPP. I will explain my reasons for saying this.

⁷ See section 44(1)(h) of the *Canada Pension Plan*.

⁸ See the Appeal Division's explanation in *N.L. v. Minister of Employment and Social Development*, 2020 SST 741. I am not required to follow Appeal Division decisions. I agree with the decision and find it provides a clear explanation of the PRDB rules.

⁹ The Appellant's record of contributions is at pages GD2-9 and 10.

– **The Canada Pension Plan defines “severe” and “prolonged”**

[21] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.¹⁰

[22] 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 to earn a living, then she isn’t entitled to a disability pension.

[23] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.¹¹

[24] 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.

[25] 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.

Was the Appellant’s disability severe?

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

[27] The Appellant has:

- Hearing loss
- Tinnitus
- Diabetes

¹⁰ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

¹¹ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

[28] However, I can't focus on the Appellant's diagnoses.¹² Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.¹³ 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.¹⁴

[29] I find that the Appellant doesn't have functional limitations that make her incapable of working.

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

[30] The Appellant says that her medical conditions have always made it very difficult for her to work. In spite of that she was always able to do her work. She did not need special arrangements or consideration to work. But she felt work was more difficult for her than for other employees. When people wore masks, she could not speech read and that interfered with her ability to communicate.

[31] The Appellant said she was able to work. She could use assistive devices like hearing aids and smartphone. She said she was lucky and could rely on those along with written communication to do her job. She said when she was younger, she went many years without hearing aides. That was very difficult. But, through her commitment she was able to complete high school and pursue employment. Later in her life she was able to use hearing aids, and other devices such as her smart phone improved her ability to communicate with others.

[32] The Appellant said tinnitus can disturb her sleep. Her hearing aides help to mask the noise during the day, but she doesn't wear them at night. So, tinnitus can interrupt her sleep. She said, over the years, when she is tired, she might need to take a day off to rest. She said it was usually not more than once a month. She has never used all of the sick time that was available to employees.

¹² See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

¹³ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

¹⁴ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[33] The Appellant said symptoms from diabetes do not affect her ability to work. She had no other conditions that affect her functional ability.

[34] It was not clear from the Appellant's file or her testimony if she worked until her employer closed because of Covid restrictions. From her testimony it appears she collected benefits because her office closed. She also continued (or resumed) working in her husband's business. She later worked a few hours a month for her son.

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

[35] The Appellant believes she is entitled to disability benefits because she has lived and worked with a significant condition for many years. The fact that she had a condition is not enough to prove disability. She must provide some medical evidence that supports that her functional limitations affected her ability to work.¹⁵

[36] The medical evidence supports that the Appellant has health conditions she described. But it doesn't support a conclusion that she has a severe disability.

[37] The Appellant's family doctor wrote that the Appellant had a hearing impairment all of her life. She saw the nurse practitioner once in the preceding year (2020). He said they did not discuss work and it was unknown if she would return to work.¹⁶

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

[38] 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

¹⁵ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹⁶ Dr. Workman's letter begins at GD2-97. See GD 2-34 for a copy of his chart notes beginning in 2007.

[39] 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.¹⁷

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

[41] Her personal circumstances mostly show skills and experience that would support her efforts to work. She is of an age many would consider retirement age. By the hearing date she said she had, in fact, retired from most work. Her education, language abilities and work experience would all support her efforts to seek employment in the real world. She did not suggest there were any personal circumstances that would prevent her from working in the real world.

[42] It appears the Covid restrictions played a part in the Appellant changing jobs. She continued to work in at least two different jobs although she limited her hours. She said some facts that contributed to her reducing her work hours were family challenges, her husband's health, and her husband closed his business.

[43] The Appellant's clear and consistent testimony was that, even though it could be difficult and uncomfortable, her health has not prevented her from working in any job.

[44] The Appellant clearly feels she should be entitled to compensation because she endured over 25 years working with a serious health condition. She said hearing loss and tinnitus did not make her unable to work. Her complaints were about the lack of service available to her. She also complained that there was a lack of sensitivity when she had to interact with employees at Service Canada.

[45] The Appellant did not prove she had a severe disability. This means she isn't eligible for a PRDB.¹⁸

¹⁷ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

¹⁸ See *Giannaros v Minister of Social Development*, 2005 FCA 187.

Conclusion

[46] The Appellant filed her disability application more than 15 months after her retirement pension began. Therefore, she is not eligible to cancel her retirement pension in favour of a disability pension.

[47] The Appellant isn't eligible for a PRDB 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.

[48] This means the appeal is dismissed.

Anne S. Clark
Member, General Division – Income Security Section