



Citation: *HA v Minister of Employment and Social Development*, 2023 SST 391

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

# Decision

**Appellant:** H. A.  
**Representative:** Eloho Atekha-Aideyan

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated October 4, 2021 (issued by  
Service Canada)

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**Tribunal member:** Sharon Buchanan

**Type of hearing:** Videoconference

**Hearing date:** March 28, 2023

**Hearing participants:** Appellant  
Appellant's representative  
Interpreter

**Decision date:** April 12, 2023

**File number:** GP-21-2137

## Decision

[1] The appeal is dismissed.

[2] The Appellant, H. A., 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 60 years old.<sup>1</sup> She came to Canada in 1989. She worked, from January 2001 until the end of December 2009, full time in a factory packaging honey. She says severe back pain affected her ability to work during this time, and by the time the company moved the plant in 2009 it was very bad. She says by December 2013 the pain was so severe she couldn't work. The Appellant returned to work in 2017 for six months. The Appellant has not worked since.

[4] The Appellant applied for a CPP disability pension on May 20, 2021. 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 her severe back pain means she can't stand for long, lift anything or sit. This prevents her from doing work she is suitable for.

[6] The Minister says the Appellant's condition wasn't diagnosed until 2015, two years after she last qualified for disability benefits. There is no objective evidence on file pertaining to the Appellant's back condition. Although the Appellant said she previously had thyroid cancer, her family physician doesn't mention the condition and there is no evidence of a severe condition. The Minister says the Appellant demonstrated work capacity well after she was required to prove that she was disabled.

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<sup>1</sup> She said this in the hearing

## What the Appellant must prove

[7] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2013. This date is based on her contributions to the CPP.<sup>2</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>3</sup>

[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.<sup>4</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 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.

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<sup>2</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 numbers GD2-4 from the file.

<sup>3</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

<sup>4</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 hasn't proven she had a severe and prolonged disability by December 2013.

### Was the Appellant's disability severe?

[15] The medical evidence doesn't support that the Appellant's disability was severe. I reached this finding by considering several factors. I explain these factors below.

#### – The Appellant's functional limitations didn't affect her ability to work

[16] The Appellant's health conditions are osteoarthritis, severe low back pain and thyroid cancer.

[17] However, I can't focus on the Appellant's diagnoses.<sup>5</sup> Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.<sup>6</sup> When I do this, I have to look at **all** the Appellant's medical conditions (not just the main one) and think about how they affected her ability to work.<sup>7</sup>

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

[18] The Appellant says that her back pain has resulted in functional limitations that affect her ability to work. The Appellant said during the period she worked at the factory:

- She had pain in her lower back that sometimes radiated into her upper back. She said the pain was excruciating. Sometimes the pain would last a whole week, other times for two or three days. She said the pain was so bad that sometimes she would have to lie down and wouldn't be able to get up. She said that she was off work for three months at one point because of her back. She returned because she couldn't stop working, but she said she was struggling.

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<sup>5</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>6</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>7</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- She said when the pain came it was very strong, and she couldn't stand for even 10 minutes. She said it also gets very bad when she sits, and for that reason she needs to get up and move around all the time. She said her pain impacted her sitting, lying down and affected her sleep. She said she can't walk when the pain comes.
- She said that her pain is aggravated by, and worse, in cold weather.
- She said that she didn't work after the factory closed in 2009 because of her condition.<sup>8</sup>
- She said her pain in 2017 when she went back to work was the same as it was in 2013. The only difference is that in 2013 she was younger, and it has become much more difficult as she ages.

[19] The Appellant, at times, provided inconsistent evidence or had difficulty recalling events. For example, although she said she never worked after the factory moved in 2009, she later clarified that self-employment earnings that she had reported in 2011 and 2012 were from providing childcare.<sup>9</sup> This causes me to question the reliability of her statements on important issues that I must decide.

[20] I acknowledge that given the time that has passed recalling what was happening in the period leading up to 2013 could be challenging. However, her own evidence was inconsistent, and the matters that she could not recall were things that I would expect her to know. I will address these concerns as I come to them in the decisions that I need to make.

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

[21] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 2013.<sup>10</sup>

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<sup>8</sup> She said this in the hearing

<sup>9</sup> See GD2-5

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

[22] The medical evidence doesn't support what the Appellant says.

[23] There is evidence that the Appellant was being followed for her thyroid and taking thyroid medication. However, there is no evidence of thyroid cancer.<sup>11</sup> There is also no mention of any limitations related to this condition and the Appellant did not mention any.

[24] The Appellant had difficulty obtaining medical evidence.

[25] There is evidence from the Appellant's family physician, Dr. Stasberg, who completed the August 2021 medical report in support of the Appellant's CPP application. However, the physician went on leave and therefore was unavailable to provide further information. I do not fault the Appellant for this difficulty. The locum physician who is currently covering the family physician's practice advised that she was unable to access any medical records prior to 2014.

[26] The locum physician also said she was unable to speak to the Appellant's medical symptoms in 2013 versus 2015.<sup>12</sup>

[27] The medical evidence from the Appellant's family physician does not support that the Appellant had functional limitations by December 31, 2013. The physician said the onset of the Appellant's back pain was March 2015 and that she began treating the Appellant's condition at that time.<sup>13</sup> The physician's office notes do not suggest that the condition was present any earlier. The first mention of the Appellant complaining of back pain is October 19, 2017, when the physician records that the Appellant reported sharp pain in her lower right back had been ongoing for a month.<sup>14</sup>

[28] The Appellant said that there is no mention of her back pain earlier because her family physician wasn't responding when she talked about her back pain. The Appellant said she was always complaining and that Dr. Stasberg didn't do anything.

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<sup>11</sup> See GD5-2

<sup>12</sup> See GD5-2

<sup>13</sup> See GD2-77, 78

<sup>14</sup> See GD2-78

[29] The Appellant said, on the advice of people she knew who had similar problems, she sought out different treatment. She went to a doctor downtown who practiced traditional Chinese medicine and who was also a naturopath.<sup>15</sup>

[30] The Appellant testified at length about years of treatment of her back pain by this doctor. She said she was prescribed many medications and was referred for acupuncture. However, she was unable to provide any further information about, or from, this physician. There is no medical evidence from this doctor. The Appellant said she hasn't seen them for at least three years and isn't sure if the doctor is still practicing at the same location.

[31] The only medical evidence that speaks of the Appellant's back pain by December 2013 is provided by Ibrahim Issah from an herbal centre in Ghana.<sup>16</sup> The Appellant said he is an herbalist and naturopath. Mr. Issah said:

- The Appellant had a severe back problem, and he advised the Appellant not to do any kind of work that involved standing for a long time and lifting.
- Because herbal medicine takes time to take effect, he advised the Appellant to stop doing any kind of labour in 2013.

[32] According to Mr. Issah, he came into contact with the Appellant somewhere in October 2013 and prescribed herbal medicine for her every two weeks on her visit.<sup>17</sup>

[33] The Appellant was in Ghana in late 2013 and back in Canada by January 2014.<sup>18</sup> She said she went to Ghana to seek treatment.

[34] Counsel submits this evidence supports the Appellant experienced limitations in standing and lifting from severe back pain in 2013 and had been advised not to work. She said it shouldn't affect the weight to be given this evidence that it came from

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<sup>15</sup> She said this in the hearing

<sup>16</sup> See GD12-2

<sup>17</sup> See GD12-2

<sup>18</sup> See GD5-3

someone without western medicine credentials. That is not the reason I am unable to rely on this evidence.

[35] I am not prepared to give this evidence weight because the Appellant's evidence of her relationship with Mr. Issah is different than what Mr. Issah said, and I find it to be significant.

[36] The Appellant said that she has been in contact with, and treated by, this person since she was working at the factory. She called him, and he advised her on herbal medicines. She said sometimes he mailed the medicines to her.<sup>19</sup> That would mean she has been using his services since prior to 2009, not since October 2013. This is inconsistent with Mr. Issah's evidence that he came into contact with the Appellant in late 2013 and prescribed herbal medications during her visit.

[37] Although the Appellant was adamant that she was first treated by Mr. Issah while working at the factory, and continued to receive treatment, she doesn't know his name. The Appellant said that because he is a senior, she only calls him by an honorific, as is the practice in her community. I accept that this is how he may be respected and referred to, but I don't accept that after the longstanding relationship that she described, that included meeting him in person and having contact by phone and mail, that she wouldn't know his name.

[38] For these reasons I place no weight on Mr. Issah's evidence.

[39] The medical evidence doesn't show that the Appellant had functional limitations that affected her ability to work by December 31, 2013. As a result, she hasn't proven she had a severe disability.

[40] When I am deciding whether a disability is severe, I usually have to consider an Appellant's personal characteristics.

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<sup>19</sup> She said this in the hearing



[41] This allows me to realistically assess an Appellant's ability to work.<sup>20</sup>

[42] I don't have to do that here because the medical evidence doesn't support that the Appellant's functional limitations affected her ability to work by December 31, 2013. This means she didn't prove her disability was severe by then.

## **Conclusion**

[43] 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.

[44] This means the appeal is dismissed.

Sharon Buchanan  
Member, General Division – Income Security Section

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<sup>20</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.