



Citation: *RF v Minister of Employment and Social Development*, 2023 SST 1057

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

## Decision

**Appellant:** R. F.  
**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated August 17, 2021 (issued by  
Service Canada)

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**Tribunal member:** Connie Dyck  
**Type of hearing:** Videoconference  
**Hearing date:** July 5, 2023  
**Hearing participants:** Appellant  
**Decision date:** July 21, 2023  
**File number:** GP-21-2565

## Decision

[1] The appeal is dismissed.

[2] The Appellant, R. F., 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 62 years old. He stopped working as a self-employed electronic repairperson in January 2018 after a car accident. Because of injuries from the car accident, he eventually closed his business. In 2020, he began providing estimates for extended warranties and other claims. This self-employment continues today.

[4] The Appellant applied for a CPP disability pension in January 2020.<sup>1</sup> 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.

## What the Appellant must prove

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

[6] The *Canada Pension Plan* defines "severe" and "prolonged."

[7] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.<sup>3</sup>

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<sup>1</sup> GD2-100 to 124 and GD2-165

<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 GD33-2.

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

[8] This means I must look at all the Appellant's medical conditions together to see what effect they have on his ability to work. I also must 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 regularly able to do some kind of work that he could earn a living from, then he isn't entitled to a disability pension.

[9] 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>

[10] 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.

[11] The Appellant must prove he has a severe and prolonged disability. He must prove this on a balance of probabilities. This means that he must show that it is more likely than not he is disabled.

## **Reasons for my decision**

[12] I find that the Appellant hasn't proven he had a severe and prolonged disability by December 31, 2013.

### **Was the Appellant's disability severe?**

[13] The Appellant's disability wasn't severe by December 31, 2013. I reached this finding by considering several factors. I explain these factors below.

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

[14] The Appellant explained that he had problems with his left hand by December 2013. He said he had difficulty lifting things. He also had trouble putting his hand inside a unit he was repairing. In February 2013, he told Dr. Bergen (family doctor), that he wanted to see a plastic surgeon about his Dupuytren's contracture of his pinky finger.

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<sup>4</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

He didn't want to go yet. He would tell him when he did.<sup>5</sup> The Appellant told me that he should have had surgery in 2013, but he was working by himself, so he "put it in the background". He had surgery in 2016. He stopped working in January 2018 when he was in a car accident.<sup>6</sup>

[15] The Appellant tried to work repairing electronics in 2018 and 2019, but he couldn't because of functional limitations from the accident. In the spring of 2020, he started doing estimates for repair and warranty work. Except for a short time of shutdown during Covid, he has done this work since 2020. He explained that he doesn't have to do any physical repairs. He gives estimates of the cost of repairs to companies. He said he can do this work at his own pace, and it basically involves taking pictures, phone calls and paperwork.

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

[16] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work by December 31, 2013.<sup>7</sup>

[17] In January 2020, Dr. Bergen noted the Appellant had suffered from osteoarthritis of his spine and neck since 2010.<sup>8</sup> This caused him pain when turning or extending his neck. He also had pain in his back when bending or lifting. In addition, he had asthma since 1982. The Appellant had shortness of breath with exertion. He got chest infections, weakness and fatigued quickly. However, to the Appellant's credit, he was able to work for many years as an electronic repair person. He also found gainful self-employment work in 2020, which was within his functional capacities.

[18] Dr. Bergen recommended the Appellant stop working in September 2019. He said the Appellant's medical disability started in February 2018 after a car accident.<sup>9</sup> The Appellant had a sternal fracture with a lot of discomfort, tenderness and difficulty

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<sup>5</sup> GD2-139

<sup>6</sup> GD2-83

<sup>7</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>8</sup> GD2-169 to 170

<sup>9</sup> GD1-35

with deep breathing. He had shortness of breath, an ongoing cough and chest infections including pneumonia since February 2018. Dr. Bergen noted the Appellant fatigued easily. It was his opinion that the Appellant would likely not be going back to his previous job. However, this is all well after the Appellant's MQP of December 31, 2013.

[19] Dr. Dubyna (sports medicine doctor) said since the Appellant's car accident in January 2018, he has had quite significant chronic pain mainly in his chest.<sup>10</sup> He also had tendon issues in his hands and feet. It was Dr. Dubyna's opinion that the Appellant's symptoms caused a significant chronic disability which was likely permanent. Again, this is after the Appellant's MQP.

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

– **Employment Earnings after December 31, 2013**

[21] The Appellant was the sole owner and operator of his electronic repair business from at least 2008 until 2018.<sup>11</sup> He was responsible for doing repairs, finding new business, paying bills, signing a lease, in-home service, deliveries, and pick-ups. He was also responsible for written and computer paperwork related to the business. He stopped working in January 2018 because of his injuries from the car accident. In 2019, he closed his business.<sup>12</sup>

[22] The Appellant returned to work in the spring of 2020. He closed his repair business and worked as a self-employed estimator. He provided Notices of Income Tax Reassessment for 2020, 2021 and 2022.<sup>13</sup> In 2021 and 2022, his net income was well above what is considered "gainful".<sup>14</sup>

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<sup>10</sup> Dr. Dubyna's report is at GD1-36

<sup>11</sup> GD2-10

<sup>12</sup> GD2-13 to 14

<sup>13</sup> GD3-7, GD3-15 and GD3-24

<sup>14</sup> *Canada Pension Plan Regulations* 68.1 explains what is considered "gainful".

[23] When I am deciding whether a disability is severe, I usually must consider an appellant's personal characteristics.

[24] This allows me to realistically assess an appellant's ability to work.<sup>15</sup>

[25] I don't have to do that here because the Appellant's functional limitations didn't affect his ability to work by December 31, 2013. This means he hasn't proven his disability was severe by then.<sup>16</sup>

## **Conclusion**

[26] I find that the Appellant isn't eligible for a CPP disability pension because his disability wasn't severe by December 31, 2013. Because I have found that his disability wasn't severe, I didn't have to consider whether it was prolonged.

[27] This means the appeal is dismissed.

Connie Dyck  
Member, General Division – Income Security Section

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<sup>15</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

<sup>16</sup> See *Giannaros v Minister of Social Development*, 2005 FCA 187.