



Citation: *KD v Minister of Employment and Social Development*, 2023 SST 293

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

Decision

Appellant: K. D.
Representative on record: M. M.
Representative at the hearing: T. C.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated November 16, 2021
(issued by Service Canada)

Tribunal member: James Beaton

Type of hearing: Teleconference
Hearing date: March 20, 2023
Hearing participants: Appellant
Appellant's representative

Decision date: March 23, 2023
File number: GP-22-79

Decision

[1] The appeal is dismissed.

[2] The Appellant, K. D., 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 33 years old. She last worked as a client care specialist and veterinary technician assistant at a veterinary clinic. She stopped working in September 2019 when she was attacked by a dog during work. This caused post-traumatic stress disorder (PTSD). She also has other mental health conditions.

[4] The Appellant applied for a CPP disability pension on March 26, 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 mental health conditions make her unable to work.

[6] The Minister says the Appellant might not have been able to work as of December 31, 2021 (the last day she could qualify for a disability pension).¹ But her disability isn't likely to be indefinite. Therefore, she isn't eligible for a disability pension.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she has a disability that was severe and prolonged by December 31, 2021. This date is based on her contributions to the CPP.²

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

¹ See GD6 and GD8.

² 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 GD6-11.

[9] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.³

[10] This means I must look at all of the Appellant's medical conditions together to see what effect they have on her ability to work. I must also look at her background (including her 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 her disability is severe. If the Appellant is capable regularly of doing 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.⁴

[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. So if the Appellant's disability isn't severe as of the hearing date, then it isn't prolonged. It is the severity of the disability, not just the underlying diagnoses, that must be indefinite.⁵

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

Reasons for my decision

[14] I find that the Appellant didn't have a severe disability as of the hearing date, which was March 20, 2023. Even if she had a severe disability before, I don't believe that her disability is severe now. This means it isn't prolonged. A disability must be both severe and prolonged to qualify someone for a disability pension.

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

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

⁵ See *Canada (Attorney General) v Angell*, 2020 FC 1093.

[15] To explain my reasons, I will:

- describe the Appellant's functional limitations as of December 31, 2021
- explain why the Appellant's functional limitations as of March 20, 2023, don't make her incapable regularly of doing work that she could earn a living from

Was the Appellant's disability severe?

[16] The Appellant's disability wasn't severe as of March 20, 2023. I reached this finding by considering several factors. I explain these factors below.

– The Appellant's functional limitations affected her ability to work

[17] The Appellant says she has:

- PTSD
- social anxiety
- attention deficit hyperactivity disorder (ADHD)
- autism spectrum disorder
- borderline personality disorder (BPD)
- sensory processing issues
- an overactive bladder
- tendinitis in both shoulders
- gout

[18] However, I can't focus on the Appellant's diagnoses.⁶ Instead, I must focus on whether she has functional limitations that got in the way of her earning a living by December 31, 2021.⁷ 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 her ability to work.⁸

[19] I find that the Appellant had functional limitations by December 31, 2021.

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.

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

[20] The Appellant says her medical conditions have resulted in functional limitations that affected her ability to work by December 31, 2021. This is what she says.⁹

- Due to **PTSD**, she often can't leave her house. Her PTSD is triggered by encounters with dogs. Sometimes she has flashbacks.
- Due to **social anxiety**, she gets anxious in public places. She can't talk on the phone without a support person.
- She experiences episodes of "dissociation" when she is overwhelmed. During these episodes, which can last for hours, she isn't aware of where she is or of what she is doing. She tends to have nightmares the night after an episode and be fatigued and unmotivated the next day.
- Due to **ADHD**, she is easily distracted and can't focus. She has trouble reading and remembering what people tell her.
- Due to **BPD**, she has poor interpersonal communication skills. She is afraid of confrontation and is hypervigilant. Instead of communicating with people to resolve problems, she tends to isolate herself from others.
- Due to **sensory processing issues**, she avoids computers and other electronic devices. She finds the humming noise of electronics, lights, and appliances distracting. She doesn't like the sensation of water on her skin, so she only bathes once or twice per week.
- Due to an **overactive bladder**, she has to use the bathroom twice as often as someone without an overactive bladder. She experiences incontinence every day, which she finds "disheartening and frustrating." She wears period underwear.
- She has flare-ups of **gout** two or three times per week, when the joints in her hands and feet swell up. So she can't walk long distances.

⁹ What the Appellant says about her functional limitations can be found at GD2-22 to 26 and on the hearing recording.

[21] She didn't clearly explain what functional limitations she has from **autism spectrum disorder** that are different from her other functional limitations.¹⁰ She didn't identify any functional limitations from **tendinitis** in her shoulders. She gets injections, which help with the pain. (The last injections didn't help for as long as usual, which she attributes to the stress of having to put down her pet cat.)

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

[22] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 2021.¹¹

[23] The medical evidence supports **most** of what the Appellant says. It supports that she has PTSD that is triggered by animals. She has been diagnosed with social anxiety, BPD, and sensory processing issues.¹²

[24] The medical evidence includes many references to the Appellant's dissociative episodes. However, they are based on the Appellant's self-reports.¹³ There is no record of any of her healthcare providers actually witnessing a dissociative episode with the characteristics she describes. Ms. Clifford (a nurse therapist) questioned whether she has dissociative episodes.¹⁴ Dr. Bryden (a general practitioner who provided psychosocial support to the Appellant) noted that these reported episodes had no impact on the Appellant being able to attend appointments.¹⁵

[25] It isn't clear if the Appellant has ADHD. But she does struggle with a lack of focus.¹⁶ This is more important than her diagnosis.

¹⁰ The Appellant has not been diagnosed with autism spectrum disorder either. See GD2-55, 56, and 136 to 138; and GD7-15 to 17.

¹¹ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹² See, for example, GD2-68, 69, 77, 79, 133, 134, 139, 140, 199 to 201, and 210 to 213; and GD3-8 to 18.

¹³ See, for example, GD2-163 and GD3-14 to 18.

¹⁴ See GD2-125 and 126.

¹⁵ See GD7-18 to 20.

¹⁶ See GD3-8 to 18.

[26] The latest medical evidence shows that her overactive bladder problem is generally managed with medication.¹⁷ If she has any remaining symptoms, they are limited to “dysfunctional voiding” (being unable to empty the bladder thoroughly).¹⁸

[27] There is one mention of gout in Dr. Bryden’s notes from July 2021. The condition had flared up and Dr. Bryden increased her medication (allopurinol) as a result.¹⁹ The lack of medical evidence regarding gout doesn’t support that the Appellant has weekly flare-ups. Rather, it supports that this condition is adequately treated and doesn’t impact the Appellant’s ability to work.

[28] The medical evidence supports that the Appellant’s functional limitations prevented her from doing her job at the veterinary clinic by December 31, 2021. Her PTSD is triggered by encounters with dogs.

[29] The Appellant might not have been able to work as of December 31, 2021. Indeed, in November 2021, Dr. Muir (her psychiatrist) wrote that she “is completely disabled, in my opinion, at the present time and would be unable to leave the house let alone work productively because of her symptoms.”²⁰ However, her functional limitations have improved since then. I believe she can work now.

– **The Appellant’s functional limitations have improved**

[30] The Appellant’s functional limitations have improved.

[31] She says she doesn’t leave the house to run errands (like get groceries and the mail) because there are large, unchained dogs on her street, she lives close to an off-leash dog park, and she gets anxious in public places.

[32] But she **does** leave the house. She drives and attends medical appointments on her own.²¹ In April 2022, she attended a play with her family and coped well with the

¹⁷ See the report of Dr. Baverstock (internal medicine specialist) at GD2-147.

¹⁸ See GD2-102.

¹⁹ See GD2-70.

²⁰ See GD2-53 and 54.

²¹ See GD2-92 and the hearing recording. Her mother may drive her to appointments when she is home. Her mother is away for weeks at a time, though, for her job.

crowds.²² In January 2023, she told Service Canada that she was going out more often but avoiding places with animals. She testified that she will take her pet dog with her for support. While she might do this, I don't think she **needs** to. I think she would have mentioned this restriction to Service Canada if it were important.²³

[33] She says she can't talk on the phone without a support person. But since at least June 2022, she has been volunteering regularly with Elements Mental Health, where she goes for therapy. As a volunteer, she waters plants and answers the phone.²⁴ This shows that she can talk with strangers on the phone independently.

[34] She says she first noticed her sensory processing issues while attending university and that they have gotten worse. But she also testified that she now has coping skills that she didn't have before, as well as a special computer screen that dims and makes less noise than a typical monitor. In other words, she has identified ways to deal with this issue. She bathes weekly despite not liking the sensation of water on her skin.²⁵

[35] These improvements in the Appellant's condition are in line with what Dr. Muir predicted. He completed a medical report in March 2022 (after his report from November 2021) stating that he anticipated the Appellant returning to work in one or two years, in a job that doesn't require interacting with animals. It has now been one year since that report. This is the latest medical evidence available from Dr. Muir.²⁶

– **The Appellant's remaining functional limitations don't keep her from working**

[36] The Appellant's remaining functional limitations don't keep her from working.

[37] Despite having trouble focusing, she graduated from university with good grades. She audio-recorded lectures.²⁷ There is no indication that her lack of focus (whether

²² See GD7-29.

²³ See GD5.

²⁴ See GD5 and the hearing recording. She usually waters the plants every week and volunteers to answer the phone every two weeks.

²⁵ See the hearing recording.

²⁶ See GD3-8 to 13.

²⁷ The Appellant said this at the hearing.

related to a formal diagnosis of ADHD or not) has worsened. This suggests that she can read, focus, and process verbal information.

[38] Regarding BPD, the Appellant testified about an incident that happened when she worked at a retail clothing store. She described her behaviour as “rude.” She was “written up.” But she wasn’t let go from that job. She left because she was also studying at the time, and it was too busy for her.²⁸ She didn’t describe having any BPD-related issues at the veterinary clinic, where she worked full-time from February 2018 to September 2019.²⁹

[39] If the Appellant has any residual symptoms of an overactive bladder, they don’t impact her ability to work. The medical information shows that she has dysfunctional voiding, which could cause leaking and more frequent trips to the bathroom. She wears period underwear to address the leaking. And I don’t think that having to use the bathroom twice as often as “normal” would keep her from working, even in combination with her other functional limitations.

[40] To be severe, the Appellant’s functional limitations must prevent her from earning a living at any type of work, not just her usual job.³⁰

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

[41] 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

²⁸ The Appellant said this at the hearing.

²⁹ See GD2-22.

³⁰ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

[42] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say she can work.³¹

– **The Appellant’s personal characteristics favour employability**

[43] The Appellant’s personal characteristics favour employability. She is 33 years old. She has a bachelor’s degree and a veterinary office technician assistant diploma. She is fluent in English. She worked at a bowling alley where she used computers and provided customer service. Then she was an order-picker at a warehouse. She coached gymnastics for 9 to 10 years before taking the retail clothing job. At the veterinary clinic, she did administrative work and provided customer service.³² Her work history gives her transferrable skills.

[44] Before the Appellant stopped working, she earned a substantially gainful income.³³ I believe she can do so again.

[45] I also believe she can work predictably. She says she can’t because of her unpredictable dissociative episodes. But the medical evidence doesn’t support that these episodes interfere with her ability to function or keep a schedule.³⁴ She doesn’t miss medical appointments.³⁵ And although she described her episodes as unpredictable, she said they are mainly caused by high-stress situations and encounters with animals.

[46] She probably can’t return to her job at the veterinary clinic, and she might need to limit herself to lower-stress jobs. But she can still do some type of work.

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

[47] If the Appellant can work in the real world, she must show that she tried to find and keep a suitable job. She must also show that her efforts weren’t successful

³¹ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

³² See GD2-22 and 23, and the hearing recording.

³³ She earned \$28,122 in 2018 and \$19,859 in 2019 (GD6-12). A substantially gainful income was \$16,030 in 2018 and \$16,348 in 2019. See section 68.1 of the *Canada Pension Plan Regulations*.

³⁴ See GD2-125 and 126, and GD7-18 to 20.

³⁵ The Appellant said this at the hearing.

because of her medical conditions.³⁶ Finding and keeping a suitable job includes retraining or looking for a job that she can do with her functional limitations.³⁷

[48] The Appellant didn't make efforts to work. She testified that she hasn't worked since September 2019.

[49] Therefore, I can't find that she has a severe disability.

Conclusion

[50] I find that the Appellant isn't eligible for a CPP disability pension because her disability wasn't severe as of March 20, 2023. So she doesn't have a prolonged disability.

[51] This means the appeal is dismissed.

James Beaton
Member, General Division – Income Security Section

³⁶ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

³⁷ See *Janzen v Canada (Attorney General)*, 2008 FCA 150.