



Citation: *JA v Minister of Employment and Social Development*, 2023 SST 392

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

Decision

Appellant: J. A.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated May 3, 2021 (issued by Service Canada)

Tribunal member: James Beaton

Type of hearing: Teleconference

Hearing date: March 30, 2023

Hearing participant: Appellant

Decision date: March 31, 2023

File number: GP-21-2199

Decision

[1] The appeal is dismissed.

[2] The Appellant, J. 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 53 years old. He worked at a correctional facility until June 2016. He hasn't worked or looked for work since then. He is receiving long-term disability benefits through a private insurer.

[4] The Appellant applied for a CPP disability pension on November 28, 2019. 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.

[5] The Minister says the Appellant doesn't have functional limitations that keep him from working. Just because he is getting a private disability benefit doesn't mean he is eligible for a disability pension.

[6] The Appellant says he doesn't have any medical conditions. He only applied for a disability pension because his private insurer made him.

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, 2019. This date is based on his contributions to the CPP.¹

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

¹ 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 GD5-12 and 13.

[9] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.²

[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. 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.³

[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.

Reasons for my decision

[14] I find that the Appellant hasn't proven he had a severe and prolonged disability by December 31, 2019.

Was the Appellant's disability severe?

[15] The Appellant's disability wasn't severe by December 31, 2019.

– The Appellant doesn't claim to have a mental or physical disability

[16] A CPP disability pension is only payable to a person who is disabled according to the *Canada Pension Plan* and the *Canada Pension Plan Regulations*. This means the person must have a mental or physical disability.⁴

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

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

⁴ See sections 42(2) and 44(1)(b) of the *Canada Pension Plan*. See also section 68(1) of the *Canada Pension Plan Regulations*.

[17] The Appellant doesn't claim to have a mental or physical disability. In his application, he described his medical condition as "I hate people" without any further details.⁵ At the hearing, he testified that he has no medical conditions. He emphasized that he only applied for a disability pension because his private insurer made him. I tried to ask the Appellant for more information, but he refused to answer most of my questions because he considered them personal or irrelevant, even though I explained the purpose of my questions to him. For example, he refused to say whether he takes any medications.

[18] The Appellant did identify functional limitations in his application. For example, he rated his ability to work in a team as poor. However, I must consider whether those functional limitations are caused by a medical condition.

– **The Appellant doesn't have functional limitations from a medical condition**

[19] Despite the Appellant's position that he has no medical conditions, I also considered the medical evidence in his file. The medical evidence supports that he had no functional limitations from a medical condition as of December 31, 2019.

[20] The earliest medical evidence is a clinic note from Dr. Fitzpatrick (a psychiatrist) from August 2016.⁶ Dr. Fitzpatrick wrote that the Appellant was off work at the direction of his employer. He had started swearing at others and pushing inmates at work. He was hypervigilant, irritable, unmotivated, and had poor sleep. Dr. Fitzpatrick said that these symptoms were consistent with post-traumatic stress disorder (PTSD). She prescribed CipraleX and risperidone, and encouraged him to continue seeing his social worker, Ms. Hamilton.

[21] The next medical evidence is a note from Ms. Hamilton from September 2017.⁷ She wrote: "At this point, [the Appellant] feels a break from appointments with me is a good idea. He feels he has tools and strategies to work with and he wants to try them on his own for a time. He did agree to be in touch with this office should he find his

⁵ The Appellant's application is at GD2R-56 to 69.

⁶ See GD2R-27 to 29.

⁷ See GD2R-26.

mood / anxiety worsening.” I asked the Appellant when he last saw Ms. Hamilton. He said he didn’t know who Ms. Hamilton is. There is no evidence that he saw Ms. Hamilton or any other social worker or therapist after September 2017.

[22] The next medical evidence is a note from Dr. Ross (the Appellant’s family doctor at the time) from November 2019.⁸ Dr. Ross discussed the Appellant’s diet, but no mental health issues. The Appellant told him he was in “good spirits” and was going to Mexico for the winter.

[23] The only other medical evidence is a report from Dr. Ross from April 2021.⁹ He wrote that the Appellant had PTSD, anxiety, and a history of alcohol overuse, which kept him from working in corrections facilities.

[24] I don’t give Dr. Ross’s report any weight. Dr. Ross confirmed that:

- he had not seen the Appellant since November 2019
- he wasn’t sure of the Appellant’s whereabouts
- the Appellant’s Ontario provincial healthcare coverage had been cancelled

[25] The November 2019 clinic note (the only clinic note that I have from Dr. Ross) doesn’t mention PTSD or anxiety. Dr. Ross encouraged the Appellant to drink less alcohol, but didn’t prescribe any treatment to suggest that his alcohol use amounted to a medical condition.

[26] The medical evidence shows that the Appellant had PTSD in 2016. But it also shows that he stopped seeing his social worker because he felt he no longer required appointments. He didn’t discuss any mental health issues with his family doctor at their last appointment together. Rather, he was in “good spirits.”

[27] For these reasons, I find that the Appellant had no functional limitations from a medical condition as of December 31, 2019.

⁸ See GD2R-26.

⁹ See GD2R-19 to 24.

– **Why I didn't consider the Appellant's personal characteristics**

[28] When I decide whether a disability is severe, I usually have to consider an appellant's personal characteristics. Factors like age, level of education, language abilities, and past work and life experience, may affect whether an appellant can work in the real world.¹⁰

[29] But I didn't consider the Appellant's personal characteristics. This is because an appellant can't qualify for a disability pension based on their personal characteristics alone. There still has to be medical evidence to support a finding of disability.¹¹

[30] In the Appellant's case, there is medical evidence from before December 31, 2019. But it doesn't support that he had a mental or physical medical condition **at that time**. The Appellant's own testimony is that he doesn't have a medical condition. So there is no reason to consider his personal characteristics.

[31] I find that the Appellant didn't have a medical condition that resulted in functional limitations as of December 31, 2019.

Conclusion

[32] I find that the Appellant isn't eligible for a CPP disability pension because he didn't have any functional limitations from a medical condition as of December 31, 2019. So he didn't have a severe and prolonged disability.

[33] This means the appeal is dismissed.

James Beaton
Member, General Division – Income Security Section

¹⁰ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

¹¹ Section 42(2)(a) of the *Canada Pension Plan* says that a person is disabled only if they have a severe and prolonged **mental or physical disability**. See also *Villani v Canada (Attorney General)*, 2001 FCA 248 at paragraph 50, where the Court said that “[m]edical evidence will still be needed ...”