



Citation: *JC v Minister of Employment and Social Development*, 2023 SST 769

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

# Decision

**Appellant:** J. C.  
**Representative:** Ashwin Ramakrishnan

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated September 22, 2021  
(issued by Service Canada)

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**Tribunal member:** Selena Bateman

**Type of hearing:** Teleconference

**Hearing date:** June 1, 2023

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

**Decision date:** June 19, 2023

**File number:** GP-22-164

## Decision

[1] The appeal is dismissed.

[2] The Appellant, J. C., 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 49 years old. He worked in construction and as a mortgage specialist. The Appellant bases his disability claim on injuries sustained in car accidents. In his application he said he became disabled in March 2018. Later, he said he became disabled in 2012.<sup>1</sup>

[4] The Appellant applied for a CPP disability pension on May 13, 2020. 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] In the Appellant's CPP disability application, he said he had additional health issues that affect his confidence and memory. He says he was in a coma and had previous head injuries. He is easily frustrated and short-tempered. He says he had diverticulitis and bowel incontinence.<sup>2</sup>

[6] The Minister says that the medical evidence doesn't support a severe disability by December 2015 (this is the end of the Appellant's "minimum qualifying period" which is the date he has to show he was disabled by). The Minister says the medical evidence shows that he was actively looking for work in 2017. The Minister also says there is no evidence the Appellant tried alternate work.<sup>3</sup>

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<sup>1</sup> See GD2-15 and 48.

<sup>2</sup> See GD2-52 to 55.

<sup>3</sup> See GD4.

## What the Appellant must prove

[7] For the Appellant to succeed, he must prove he had a disability that was severe and prolonged by December 31, 2015. This date is based on his contributions to the CPP.<sup>4</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>5</sup>

[10] This means I have to look at all of the Appellant’s medical conditions together to see what effect they have on his ability to work. I also have to 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 able to regularly do 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.<sup>6</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 he has a severe and prolonged disability. He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not he is disabled.

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<sup>4</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 GD4-15.

<sup>5</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

<sup>6</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

## **Matters I have to consider first**

### **I accepted a late document from the Respondent**

[14] The Minister submitted the Appellant's updated record of contributions after the hearing.<sup>7</sup> I decided to accept this document because it is relevant to the issues under appeal.

### **Reasons for my decision**

[15] I find that the Appellant hasn't proven he had a severe and prolonged disability by December 31, 2015.

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

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

#### **– The Appellant's functional limitations don't affect his ability to work**

[17] I accept that the Appellant had hypertension, a breathing issue, and diabetes by the end of 2015.

[18] The medical evidence suggests that the Appellant had hypertension around 2013.<sup>8</sup> I accept that he likely had diabetes by 2015. But I couldn't find a diagnosis or medication by this time. I accept that he had a diagnosis of diabetes prior to starting metformin. He also used a puffer and an inhaler by 2015 which supports he had a breathing condition by this time.<sup>9</sup>

[19] However, I can't focus on the Appellant's diagnoses.<sup>10</sup> Instead, I must focus on whether he had functional limitations that got in the way of him earning a living.<sup>11</sup> When

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<sup>7</sup> See GD7.

<sup>8</sup> See GD2-102.

<sup>9</sup> See GD-127 and GD-GD5-81 and 82.

<sup>10</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>11</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

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 his ability to work.<sup>12</sup>

[20] I find that the Appellant didn't have functional limitations that affected his ability to work by December 31, 2015.

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

[21] The Appellant says that his medical conditions have resulted in functional limitations that affect his ability to work. He says:

- He has a brain injury and back pain from a car accident around 2012.
- He is forgetful and has poor concentration. He has problems with word finding.
- He is moody, easily frustrated, restless, and has a temper.
- He can't sit for 20 minutes, can't climb stairs, or carry groceries.<sup>13</sup>
- He has shortness of breath from a breathing condition.
- He stopped playing golf and walking because of his physical limitations. He also can't do housework.

[22] The Appellant says that he became disabled after a car accident around 2012 or 2013. He says he has a brain injury from this event, but he hasn't been diagnosed with a brain injury. He can't remember if he returned to work after this car accident. But, he says he didn't work from around 2012 to 2018.

[23] The Appellant had two witnesses testify – his wife and a friend. The Appellant met his wife in May 2015. She says that she observed him to have poor concentration and poor memory. For example, he would forget to turn off the oven or forget where he put his keys. He would also repeat himself a lot.

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<sup>12</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

<sup>13</sup> See GD2-51.

[24] The Appellant met his friend in June 2016. This is after the Appellant's minimum qualifying period ended. His friend's evidence doesn't help support the Appellant's limitations by the end of 2015.

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

[25] The Appellant must provide medical evidence about an underlying condition to support an application for a disability pension. Medical evidence must relate to the minimum qualifying period of December 31, 2015, to show that his disability is severe.<sup>14</sup>

– **The Appellant had medical conditions by December 31, 2015**

[26] The Appellant had **diabetes, hypertension, and a breathing issue**. But, I wasn't persuaded that these conditions caused functional limitations that either individually or cumulatively affected his ability to work by December 31, 2015:

- In the CPP disability application, the Appellant didn't list these conditions as affecting his ability to work.<sup>15</sup>
- The Appellant's request for reconsideration says he has an ongoing disability since 2012. But, it doesn't say what the medical condition is that caused the disability nor lists any functional limitations.<sup>16</sup>
- The Appellant's didn't list limitations from diabetes, hypertension, and breathing issues as reasons that affected his ability to work by 2015 or what led to ending employment afterward.<sup>17</sup>
- In 2020, Dr. Ugabi (family doctor) said that diabetes, hypertension, and COPD did not preclude the Appellant from working.<sup>18</sup>

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<sup>14</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>15</sup> See GD2-48.

<sup>16</sup> See GD2-15.

<sup>17</sup> See GD2-48.

<sup>18</sup> See GD2-209. I understand "COPD" to mean chronic obstructive pulmonary disease.

- The Appellant took prescription medication by 2015. But this doesn't tell me that he had caused functional limitations that impacted his ability to work.

– **There is no medical evidence of other conditions by December 31, 2015**

[27] There is no medical evidence that the Appellant had other conditions that affected his ability to work by December 31, 2015.

[28] There needs to be some objective evidence to support a finding of disability by the end of 2015. An appellant is not eligible for a disability pension if they do not have any medical evidence at all that speaks to their condition on or before the end of the minimum qualifying period.<sup>19</sup>

[29] At the hearing, I asked the Appellant about whether he tried to get previous medical records that addressed his health by 2015. The Appellant and his representative tried to get his medical file from Dr. Gallant-Leblanc, his previous family doctor. But they weren't successful. Because of that, he says doesn't have medical evidence leading up to December 31, 2015, aside from a list of prescriptions.

[30] The Appellant didn't list what medical documents he felt were missing from the records. The Representative for the Appellant didn't ask for an adjournment to allow for more time to obtain any past medical records to include them as part of the evidence.

[31] I could also have considered medical evidence written after the end of 2015, as long as it related to that date. But, there is no evidence in the file that meets that requirement.

[32] No medical evidence in the appeal file makes any reference to a 2012 or 2013 car accident or other medical event that caused physical trauma before 2015. This is critical because the Appellant says he has been disabled since this time in relation to a brain injury from a car accident that caused cognitive and psychological limitations.

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<sup>19</sup> See *Canada (Attorney General) v Dean*, 2020 FC 206.

Also, there is no medical evidence that he has bowel incontinence, although he says he has been treated for a bowel condition since 2008.<sup>20</sup>

[33] The file contains medical evidence from Dr. Gallant-Leblanc as of 2015. The evidence supports that she was a care provider in 2015, as she prescribed him medication on multiple occasions.<sup>21</sup> But Dr. Gallant-Leblanc's available notes don't mention any other health issues before a 2017 car accident.

[34] Other medical records didn't support medical conditions that impacted the Appellant's ability to work by 2015. For example, the file contained other medical documents such as chiropractic and massage services provided in relation to a 2017 car accident.<sup>22</sup> There is no reference to any imaging or other diagnostic tests by December 31, 2015.<sup>23</sup>

– **Dr. Ugabi's 2020 he medical report**

[35] In September 2020, Dr. Ugabi wrote that the Appellant believes his post-concussion syndrome from a 2017 car accident prevents him from working. He has musculoskeletal problems which makes physical tasks difficult.<sup>24</sup> This doesn't tell me what Dr. Ugabi's professional opinion is. It tells me the Appellant's position.

[36] The medical report doesn't help to support the Appellant's claim that he was disabled by 2015. There is no medical evidence to support that the Appellant had a brain injury or back injury by December 31, 2015.

[37] The medical report didn't address the Appellant's condition by the end of 2015. Dr. Ugabi wasn't the Appellant's family doctor at this time. It is not evident from Dr. Ugabi's medical report or other records that he had access to Dr. Gallant-Leblanc's charting.

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<sup>20</sup> See GD2-55.

<sup>21</sup> See GD5-83.

<sup>22</sup> See GD5-15 and 31.

<sup>23</sup> Dr. Abraham reviewed imaging from 2017 onwards in GD2-129.

<sup>24</sup> Se GD2-206 to 209.



– **Dr. Abraham’s 2019 independent medical exam**

[38] There is retrospective medical evidence from 2019 that addresses injuries related to a December 2017 car accident.<sup>25</sup> The Appellant had an independent medical exam by Dr. Abraham (orthopedic and spinal surgeon). Dr. Abraham had access to a few of Dr. Gallant-Leblanc’s notes most of which have to do with prescriptions.<sup>26</sup> Dr. Abraham didn’t provide a list of documents or charting reviewed. So, I don’t know what documents he reviewed from Dr. Gallant-Leblanc.

[39] The Appellant told Dr. Abraham that he was actively looking for work in 2017. Dr. Abraham thought that there was no medical disability identified that prevented him from working before the December 2017 car accident.<sup>27</sup> This evidence doesn’t support that the Appellant had a serious medical condition that impacted his ability to work by 2015.

– **Dr. Bishop’s 2021 respirology consultation**

[40] The medical evidence doesn’t support that the Appellant’s breathing issue impacted his ability to work by 2015. It tells me that his breathing worsened years later.

[41] The Appellant spoke to Dr. Ugabi and Dr. Bishop about having shortness of breath in 2021 and reported shortness of breath over the last “couple of years.”<sup>28</sup>

– **Making the case for a severe disability**

[42] I believe the Appellant answered honestly to the best of his ability. However, he couldn’t recall important details that are central to his disability claim.<sup>26</sup> So, I didn’t place a lot of weight on his evidence about his condition on and before December 31, 2015.

[43] I can’t exclusively rely on the Appellant’s testimony without any medical evidence to support that he became disabled by December 31, 2015. The file lacks physical observations, clinical symptoms, established functional limitations, and diagnoses.

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<sup>25</sup> See GD2-125 to 132.

<sup>26</sup> See GD2-126.

<sup>27</sup> See GD2-125 to 132.

<sup>28</sup> See GD2-102.

There is no medical evidence in the file from specialists to support the Appellant's claim that he was disabled by the end of 2015.<sup>29</sup>

[44] Evidence about the Appellant's medical condition after the minimum qualifying period is not relevant because he didn't show that he had a disability by this time.

[45] I now have to decide whether the Appellant can regularly do other types of work. 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.<sup>30</sup>

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

[46] When I am deciding whether the Appellant can work, I can't just look at his medical conditions and how they affect what he can do. I must also consider factors such as his:

- age
- level of education
- language abilities
- past work and life experience

[47] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say that he can work.<sup>31</sup>

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

[49] At the end of 2015, the Appellant had over twenty years left before the standard age of retirement. In his CPP disability application, he recorded that he has a high school diploma. Yet at the hearing he said he has grade eight education. In either event, I accept that his education level is limited to no more than high school level. He doesn't have a barrier to working in English. He has diverse work experience as a dump truck

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<sup>29</sup> See GD5-12. I note that the Appellant was referred to a neurologist for a concussion assessment in January 2019. But this doesn't support that the Appellant needed to see a neurologist prior to the end of 2015.

<sup>30</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>31</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

driver, construction supervisor, working in a call centre, and mortgage specialist. He has transferable skills across multiple fields of employment.

[50] Next, I factored in breathing issues. Heavy physical work may not be suitable with breathing conditions. However, I find it more likely than not that the Appellant would be able to do light physical work or sedentary work in the real world.

– **The Appellant didn't try to find and keep a job by the end of 2015**

[51] If the Appellant can work in the real world, he must show that he tried to find and keep a job. He must also show his efforts weren't successful because of his medical conditions.<sup>32</sup> Finding and keeping a job includes retraining or looking for a job he can do with her functional limitations.<sup>33</sup>

[52] The evidence supports that the Appellant wasn't working in 2014 leading up to the end of December 2015. But, there is no medical evidence to support that the Appellant couldn't work because of his medical conditions at that time.

[53] As mentioned before, the Appellant told Dr. Abraham that he was actively looking for work in 2017.<sup>34</sup> Actively looking for employment supports work capacity.

[54] The Appellant worked after 2015. But, the reason for him ending these jobs wasn't because of shortness of breath.

[55] I can't find that the Appellant had a severe disability by December 31, 2015, and continuously since that time. He hasn't shown he was regularly incapable of pursuing any substantially gainful work.

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<sup>32</sup> See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

<sup>33</sup> See *Janzen v Canada (Attorney General)*, 2008 FCA 150.

<sup>34</sup> See GD2-125 to 132.

## **Conclusion**

[56] I find that the Appellant isn't eligible for a CPP disability pension because his disability isn't severe. Because I have found that his disability isn't severe, I didn't have to consider whether it is prolonged.

[57] This means the appeal is dismissed.

Selena Bateman  
Member, General Division – Income Security Section