



Citation: *JJ v Minister of Employment and Social Development*, 2023 SST 1819

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: J. J.
Representative: Leo Dillon

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated September 6, 2022 (issued
by Service Canada)

Tribunal member: Wayne van der Meide

Type of hearing: Videoconference

Hearing date: November 27, 2023

Hearing participants: Appellant
Appellant's representative

Decision date: November 30, 2023

File number: GP-22-1642

Decision

[1] The appeal is allowed.

[2] The Appellant, J. J., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of April 2020. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant is 54 years old. He came to Canada as a refugee from Iraq in March 2008. Later that year he started working in a furniture factory and then a gas station. After that he worked making deliveries for a company contracted by FedEx. He says that in 2017 he felt like he wasn't able to breathe well, so he quit his FedEx job. He started working as a furniture inspector in February or March 2017. A couple of months later they terminated him because his written English wasn't good enough to write reports. Although he tried to look for a job he could do, he wasn't able to find one and hasn't worked since.¹

[4] In December 2019 he went out with his family to celebrate his birthday. He had a few alcoholic drinks. He started to feel very poorly, including feeling that he was suffocating. He went to hospital where they found he had fluid in his lungs and a very fast heart rate. He was referred to a cardiologist and had an echocardiogram in February 2020. He was diagnosed with a faulty heart valve (damaged when he was a child) which needed to be replaced. Later that month he had one of his heart valves replaced by a mechanical valve.²

[5] At the hearing he said he does breathe better than he did before the surgery but that he still cannot do even minimally physically taxing things without difficulty breathing and becoming extremely tired. He says even walking a short distance leaves him out of

¹ See GD2-38 to GD2-52.

² See GD2-315 to GD2-318, GD2-322, GD2-324, GD2-329, GD2-331 and GD2-332 and GD2-361.

breath. He has developed other physical and mental health symptoms, including anxiety, that I will talk about more below.

[6] The Appellant applied for a CPP disability pension in November 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.

[7] The Minister says that when all the evidence is considered, the Appellant didn't have a severe physical and mental health condition "by way of diagnoses, treatments, medications, or any ongoing active care by any specialists" by December 31, 2019.³

What the Appellant must prove

[8] 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.⁴

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

[10] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.⁵

[11] 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.

³ As I will explain below, this is the date by which the Appellant must have had a severe and prolonged disability.

⁴ 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 GD2-4 to GD2-6 and GD2-59 to GD2-64.

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

[12] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁶

[13] 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.

[14] 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.

Reasons for my decision

[15] I find that the Appellant had a severe and prolonged disability as of December 2019. I reached this decision by considering the following issues:

- Was the Appellant's disability severe?
- Was the Appellant's disability prolonged?

The Appellant's disability was severe

[16] The Appellant's disability was severe. I reached this finding by considering several factors. I explain these factors below.

– The Appellant's functional limitations affect his ability to work

[17] The Appellant has:

- severe valvular disease which was treated surgically
- atrial fibrillation
- pulmonary edema
- hypothyroidism
- insulin-dependent diabetes
- hypertension and low blood pressure
- dyslipidemia (high lipids/cholesterol in the blood) and anxiety

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

[18] However, I can't focus on the Appellant's diagnoses.⁷ Instead, I must focus on whether he had functional limitations that got in the way of him earning a living.⁸ When 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.⁹

[19] I find that the Appellant has functional limitations that affected his ability to work.

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

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

[21] As I mentioned earlier, although surgery reduced his symptoms, he continues to feel breathless with minimal physical activity. He doesn't do any housework, doesn't deal with financial matters, and sometimes needs his wife or son's help to dress himself. He said at the hearing that he no longer sees friends and rarely leaves his house. He never leaves his home alone because he's afraid he'll die. Basically, he is almost a recluse who spends his days on the couch.

[22] He said he is always tired because between obsessively listening to the sounds of his mechanical and racing thoughts, he only sleeps two or three hours a night. He said medications and extreme drops in low pressure make him dizzy a lot. He is very anxious and depressed.

[23] I believed what the Appellant said about his symptoms, functional limitations and how he lives.

⁷ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁸ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

⁹ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

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

[24] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work by December 2019.¹⁰ The medical evidence supports what the Appellant says.

[25] The Appellant's family doctor's report from March 2022 said:¹¹

- His primary medical condition is severe mitral valve disease which was treated surgically. She said he continues to be easily fatigued and gets shortness of breath with mild to moderate physical activity.
- He has had insulin dependent diabetes since 2016, and for that reason too, cannot tolerate moderate physical activity.
- He has had anxiety since 2020, with insomnia, mood swings and nervousness. She said this results in him having a short temper and affects all aspects of his daily activity. She said he has been taking Trazadone since 2020 and his response to it was only fair.
- She didn't know if he could return to any type of work in the future.
- She said he suffered from a complex medical condition and although his heart valvular disease was treated surgically, he still suffered from atrial fibrillation (abnormal heartbeat) and pulmonary edema, as well as anxiety and hypothyroidism.

[26] After his surgery in April 2020, the Appellant saw a psychiatrist, Dr. Mrozek.¹² He was referred for assessment of "anxiety/depression." Dr. Mrozek diagnosed him with a mood disorder due to several general medical conditions. The doctor said that the Appellant's "prognosis was favourable, **assuming** patient's physical and cardiac status continue to improve."¹³ He prescribed medication to help the Appellant sleep if his cardiologist approved. The Appellant said that Dr. Mrozek told him he wanted to see if

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

¹¹ See GD2-295 to GD2-303.

¹² See GD2-185 to GD2-186.

¹³ I added the emphasis in bold.

improvement of his sleep, with medications, would result in improvements to his anxiety and depression. I believe him. Dr. Mozek has since retired. At the hearing, the Appellant said he is trying to find another psychiatrist. The Appellant continues to take sleeping pills but says they don't help. I haven't put much emphasis on this evidence because it is after the Appellant's MQP.

[27] The Minister says that "by way of diagnoses, treatments, medications, or any ongoing active care by any specialists" the Appellant didn't have a severe disability. I disagree. The Appellant's conditions interact to create severe functional limitations. He is on many medications for a wide range of conditions and symptoms.¹⁴ He is trying to get treatment from a psychiatrist and continues to regularly see his family doctor and a cardiologist. He said he gets echocardiograms once every three months.

[28] Next, I will look at whether the Appellant has followed medical advice.

– **The Appellant has followed medical advice**

[29] The Appellant has followed medical advice.¹⁵ The Minister doesn't argue that the Appellant has not followed medical advice and there isn't any evidence of that either.

[30] 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 him from earning a living at any type of work, not just his usual job.¹⁶

– **The Appellant can't work in the real world**

[31] 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

¹⁴ See GD3.

¹⁵ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁶ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

- language abilities
- past work and life experience

[32] 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.¹⁷ I find that the Appellant can't work in the real world.

[33] The Appellant was 51 in December 2019, which means he had several years before the standard age of retirement. This suggests he can work. But his education, language abilities and past work experiences are obstacles that significantly and negatively impact his ability to work in the real world.

[34] His ability to speak English is only basic. His ability to write in English is even more basic. His education was in Iraq and was not in English. Although he has a college diploma from Iraq in computers, he has never worked in computers. He finished that course in 1991, which is over 30 years ago.

[35] His only jobs, in Iraq and here, have been physical, except for one: his last job as a furniture inspector. But he couldn't do it because of his limited ability to write reports in English. He was fired.

[36] I find that the Appellant's disability was severe as of December 2019. This is when he said he could no longer work and when he went to the hospital with severe symptoms.

The Appellant's disability is prolonged

[37] The Appellant's started to experience serious breathlessness and a feeling that that he was suffocating with physical exertion in 2017, which is why he quit his job working for a FedEx delivery contractor. His symptoms got worse until he was diagnosed with congestive heart failure in late 2019 to early 2020.

¹⁷ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[38] Although the Appellant's breathlessness improved after valve replacement surgery, he still has it with even mild physical exertion. There is no anticipated recovery date from any of his physical symptoms.

[39] I find that the Appellant's disability was prolonged as of December 2019.

When payments start

[40] The Appellant's disability became severe and prolonged in December 2019.

[41] There is a four-month waiting period before payments start.¹⁸ This means that payments start as of April 2020.

Conclusion

[42] I find that the Appellant is eligible for a CPP disability pension because his disability was severe and prolonged.

[43] This means the appeal is allowed.

Wayne van der Meide
Member, General Division – Income Security Section

¹⁸ Section 69 of the *Canada Pension Plan* sets out this rule.