



Citation: *DK v Minister of Employment and Social Development*, 2023 SST 771

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

Decision

Appellant: D. K.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated December 20, 2022
(issued by Service Canada)

Tribunal member: James Beaton

Type of hearing: Teleconference

Hearing date: June 28, 2023

Hearing participant: Appellant

Decision date: June 29, 2023

File number: GP-23-152

Decision

[1] The appeal is dismissed.

[2] The Appellant, D. K., isn't eligible for an automatic reinstatement of his Canada Pension Plan (CPP) disability pension. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant applied for a CPP disability pension based on perianal fistulas resulting in pain and bleeding.¹ The Minister of Employment and Social Development approved his application. The Appellant was considered disabled as of May 2014.²

[4] In November 2019, the Minister decided that the Appellant was no longer disabled because he had successfully returned to work. So the Minister stopped paying him a disability pension at the end of November 2019.³

[5] In July 2022, the Appellant applied to have his disability pension automatically reinstated.⁴ The Minister may automatically reinstate (resume paying) a disability pension when certain requirements are met. The Minister decided that the Appellant didn't meet those requirements and denied his application.⁵ The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

– The Appellant's other applications were put on hold

[6] In the meantime, the Appellant applied for automatic reinstatement again. The Minister got that application in August 2022.⁶ In September 2022, the Appellant also submitted a fast-track application.⁷ A fast-track application has different requirements

¹ See GD2-129 to 140.

² See GD2-67 and 249.

³ See GD2-53 to 55.

⁴ See GD2-41 to 43.

⁵ See GD2-21, 22, 25, and 26.

⁶ See GD2-24.

⁷ See GD3-8 to 13.

than an automatic reinstatement application and a regular disability pension application.⁸

[7] The Minister put both of those applications on hold while it waited for the outcome of this appeal. Now that I have decided the appeal, the Minister will consider the Appellant's August and September 2022 applications.

What the Appellant must prove

[8] For the Appellant to succeed, he must prove that he meets the requirements for an automatic reinstatement of his disability pension. Specifically, he must prove the following:⁹

- 1) He is under 65 years old.
- 2) He has a severe and prolonged disability.
- 3) His disability is the same as, or related to, the disability that entitled him to a disability pension before.
- 4) He became incapable again of working.
- 5) He wasn't getting a CPP retirement pension in the month he became incapable again of working.
- 6) He became incapable again of working within two years from the month in which he stopped getting a disability pension. He stopped getting a disability pension in November 2019. So he must prove that he became incapable again of working **no later than November 30, 2021**.
- 7) He became incapable again of working within 12 months before the month in which he applied for reinstatement. He applied for reinstatement in July 2022.

⁸ The Minister's letter to the Appellant dated December 20, 2022, explains these requirements (GD2-21 and 22).

⁹ See sections 70.1(1) to (3) of the *Canada Pension Plan* and sections 71 and 72 of the *Canada Pension Plan Regulations*.

So he must prove that he became incapable again of working **no earlier than July 1, 2021**.

[9] The Appellant must prove all of these things on a balance of probabilities. This means he must show it is more likely than not that he meets **all** of these requirements. If he doesn't meet one of them, then it doesn't matter if he meets the rest.

[10] The combination of requirements (6) and (7) means the Appellant must prove that he became incapable again of working between July 1, 2021, and November 30, 2021. The Minister argues that the Appellant doesn't meet this requirement.¹⁰ For the following reasons, I agree with the Minister.

Reasons for my decision

[11] I find that the Appellant didn't become incapable again of working between July 1, 2021, and November 30, 2021. To explain how I came to this conclusion, I will consider:

- what the Appellant says about when he became incapable again of working
- why the Appellant chose that date

– What the Appellant says about when he became incapable again of working

[12] Although this appeal is about the Appellant's first application for automatic reinstatement, I also looked at his second application and his fast-track application. In each of these applications, the Appellant gave a different date for when he became incapable again of working. These three dates are:

- June 17, 2022¹¹
- June 9, 2012¹²

¹⁰ The Minister's submissions are at GD3-2 to 7.

¹¹ See GD2-41.

¹² See GD2-24.

- December 17, 2021¹³

[13] I asked the Appellant to explain why he gave different dates. He said he stopped working on December 17, 2021 (the third date). Then he tried going back to work in June 2022 and stopped on June 17 (the first date). The second date of June 9, 2012, was a mistake; he meant to write June 17, 2022.

[14] I asked him to confirm for me when he believes he became incapable again of working. He answered December 2021.

[15] None of these three dates falls between July 1, 2021, and November 30, 2021. However, I also need to consider why the Appellant chose December 2021, since the evidence might show that he actually became incapable again of working **before** then.

– **Why the Appellant chose December 2021**

[16] When the Appellant's disability pension payments stopped, it was because he had returned to work in 2019.

[17] The Appellant testified that he did the same job from 2019 until December 17, 2021, although he admitted that he wasn't sure of the exact date he started working.

[18] What he said at the hearing doesn't match the information in his file. The Minister's letter about stopping payments in November 2019 says the Appellant was working at a gas bar.¹⁴ In his fast-track application, he wrote that he started working for a different employer in February 2021.¹⁵ Whether or not the Appellant started his most recent job in 2019 or in February 2021, the evidence doesn't support that he became incapable again of working between July 1, 2021, and November 30, 2021.

[19] The Appellant worked as a mechanic. He spent a tenth of his time doing paperwork, which allowed him to sit down. However, his job was mostly physical and involved walking, bending, lifting, and carrying. These movements caused him a lot of

¹³ See GD3-8. This application asks when the Appellant stopped working, not when he became incapable again of working. These dates could be different.

¹⁴ See GD2-53.

¹⁵ See GD3-9.

pain. Sometimes he would “bleed out” from his perianal fistulas. He took morphine pills every day to help him “get through the day.”¹⁶

[20] In December 2021, the Appellant and his employer agreed that the Appellant could no longer do his job. He was laid off.¹⁷ He collected regular Employment Insurance benefits from January to August 2022.¹⁸ In June 2022, he tried returning to work with the same employer, but stopped after a few weeks.¹⁹

[21] Although the Appellant stopped working in December 2021, it isn’t clear to me what changed that led him to stop working then. He testified that he didn’t miss work, work shorter hours, or do modified duties because of his medical condition at any time between 2019 and December 2021. His regular hours were 8:00 AM to 5:00 PM, five days per week. His medical treatment didn’t change since he resumed working. He didn’t describe any changes to his symptoms while he was working. He said that he worked until he could no longer tolerate the pain, which was always there.²⁰

[22] The evidence supports that the Appellant was able to do his regular job until at least December 2021, even though he was in pain. He started that job in 2019 (based on the Minister’s letter)²¹ or in February 2021 (based on the Appellant’s fast-track application).²² Either way, he started that job **before** July 1, 2021, and nothing changed until at least December 2021. In other words, he didn’t become incapable again of working between July 1, 2021, and November 30, 2021.

– **The Appellant’s arguments**

[23] The Appellant explained that his condition hasn’t changed: the medical condition that made him disabled before is what makes him disabled now. He says he feels like

¹⁶ See the hearing recording.

¹⁷ See GD2-23 and the hearing recording.

¹⁸ See GD3-9 and the hearing recording.

¹⁹ See GD2-23, GD3-12, and the hearing recording.

²⁰ See the hearing recording.

²¹ See GD2-53.

²² See GD3-9.

he is being punished for trying to work as long as he could. He noted that he is in financial need.²³

[24] I acknowledge the Appellant's arguments. However, the legal requirements for an automatic reinstatement of a disability pension are strict. I can't change or relax those requirements, even to help the Appellant in difficult circumstances.²⁴

Conclusion

[25] I find that the Appellant isn't eligible for an automatic reinstatement of his disability pension.

[26] This means the appeal is dismissed. The Minister will now consider the Appellant's August and September 2022 applications.

James Beaton
Member, General Division – Income Security Section

²³ See GD1.

²⁴ The Federal Court of Canada said this in *Miter v Canada (Attorney General)*, 2017 FC 262.