



Citation: *WW v Minister of Employment and Social Development*, 2023 SST 1175

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

Decision

Appellant: W. W.
Representative: Ashwin Ramakrishnan

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated April 21, 2022 (issued by
Service Canada)

Tribunal member: Sarah Sheaves

Type of hearing: Teleconference

Hearing date: August 16, 2023

Hearing participants: Appellant
Appellant's representative

Decision date: August 28, 2023

File number: GP-22-1131

Decision

[1] The appeal is dismissed.

[2] The Appellant, W. W., 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 36 years old. She was employed as a manual labourer for a construction company. She was 30 years old when she stopped working due to pain in her right arm, wrist, and hand, after taking a fall.

[4] The Appellant applied for a CPP disability pension on July 28, 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 she is unable to work at any type of job because of the limitations in her right arm and hand. She says she has limited education and work experience that would permit her to return to work. She argues that her condition is severe and prolonged.

[6] The Minister says the Appellant was able to find work after June 2020 and was able to meet the demands of a modified job. It argues that the Appellant has capacity for sedentary or light work and could work or re-train for an alternate job. It says the Appellant's condition isn't severe and prolonged.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2019. This date is based on her contributions to the CPP.¹

[8] The Appellant had CPP contributions in 2020 that were below the minimum amount the CPP accepts. These contributions let the Appellant qualify for a pension if she became disabled between January 2020 and June 30, 2020.²

[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.³

[11] This means I have to look at all of the Appellant’s medical conditions together to see what effect they have on her ability to work. I also have to look at her background (including her age, level of education, 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 able to regularly do some kind of work that she could earn a living from, then she isn’t entitled to a disability pension.

[12] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁴

[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.

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 on GD2-46.

² This is based on sections 19 and 44(2.1) of the *Canada Pension Plan*.

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.

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

Reasons for my decision

[15] I find that the Appellant hasn't proven she had a severe and prolonged disability by December 31, 2019, or June 30, 2020.

[16] Although the Appellant has limitations that affect her ability to return to her prior work, she has capacity for light or sedentary work. She hasn't shown efforts to work or re-train for a sedentary or light job that were unsuccessful because of her disability.

Was the Appellant's disability severe?

[17] 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 affect her ability to work as a construction labourer

[18] The Appellant has right arm, wrist, and hand pain. She sometimes gets left arm pain due to over-use.

[19] However, I can't focus on the Appellant's diagnosis.⁵ Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.⁶ 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 her ability to work.⁷

[20] I find that the Appellant has functional limitations that affected her ability to work as a construction labourer. This was a physically demanding job that required heavy lifting, and repetitive pushing and pulling with the right arm.

⁵ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁶ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

⁷ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[21] I can't consider the Appellant's left arm or hand pain when making a decision, because the medical evidence suggests it arose after December 31, 2019, and June 30, 2020.

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

[22] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work. She says the following:

- Her fingers and arm can feel numb at times, affecting her ability to grip
- She has limitations for writing, typing, or scrolling with her right hand
- She can have difficulty getting dressed or combing her hair some days due to arm and hand pain
- She has difficulty doing activities where she has to lift her right arm overhead
- If she is doing chores like laundry or sweeping, she needs a break after about 15 minutes
- She isn't able to use a manual can opener or peel vegetables

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

[23] The Appellant must provide some medical evidence⁸ that outlines any physical or mental disability as of December 31, 2019, or June 30, 2020, and that includes the following:

- nature, extent, and prognosis for the disability
- findings upon which the diagnosis and prognosis were made
- limitations resulting from the disability; and
- any other pertinent information, which can include recommendations for treatment

[24] The medical evidence supports some of what the Appellant says.

⁸ See section 68(1) of the *Canada Pension Plan Regulations*

[25] The Appellant saw Dr. Howatt, an orthopaedic surgeon, in February 2018.⁹ He thought she might have carpal tunnel or ulnar neuropathy. He said there was full range of movement of the elbow and wrist. He referred her for a neurological assessment.

[26] Dr. Jubenville, neurologist, examined the Appellant in April 2018 and performed nerve conduction studies.¹⁰ He said there was no damage or impairment based on the testing. He said the Appellant doesn't have radiculopathy or neuropathy. No further investigation was recommended.

[27] Dr. Jubenville thought the Appellant's condition was a soft tissue injury and said there were no limitations from a neurological perspective.

[28] A report from CBI physiotherapy centre in July 2020 said the Appellant has functional abilities within the sedentary to light range of activity.¹¹

[29] In October 2020, Dr. Cogswell said the Appellant still had pain with mopping and wringing things out.¹² She said the Appellant reported pins and needles in her hand and some pain using her left hand in the morning. She said the Appellant refused to try a modified return to work due to fear of pain.

[30] In November 2021, Dr. Cogswell said she didn't think there would be significant improvement of right arm pain. She again noted the Appellant had refused to try modified work out of fear. She said the Appellant can't perform heavy lifting, pushing, pulling, or physical labour.¹³

[31] Dr. Cogswell also confirmed in November 2021 that specialists have been unable to confirm any diagnosis of the Appellant's condition and that the cause of her pain can't be explained by physiological or anatomical means.

⁹ See GD2-94.

¹⁰ See GD2-88.

¹¹ See GD4-11.

¹² See GD2-140.

¹³ See GD2-182.

[32] The Appellant saw Dr. Leckey in August 2022, for a second neurological opinion. He said she reports features of carpal tunnel syndrome and recommended an MRI test.¹⁴

[33] In a report from March 2023, Dr. Cogswell said the Appellant will need some education for a different type of job, noting she will not be employable without getting some training.¹⁵

[34] The medical evidence supports that the Appellant's right arm, wrist and hand pain prevented her from doing the work of a heavy construction labourer. She was noted to have limitations with gripping, strength, lifting, pushing, pulling, and wringing things out.

[35] The medical evidence says the Appellant doesn't have neuropathy or radiculopathy, meaning there is no evidence to support numbness or weakness from a medical perspective.

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

– **The Appellant followed medical advice**

[37] To receive a disability pension, an appellant must follow medical advice.¹⁶ If an appellant doesn't follow medical advice, then they must have a reasonable explanation for not doing so. I must also consider what effect, if any, the medical advice might have had on the appellant's disability.¹⁷

[38] The Appellant has followed medical advice.¹⁸

[39] The Appellant has tried physiotherapy and acupuncture. She tried medication for a while.

¹⁴ See GD3-16.

¹⁵ See GD4-3.

¹⁶ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁷ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

¹⁸ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

[40] The Appellant is not currently engaging in any treatment for her medical condition. She says she is “not a pill person”.

[41] I don’t have any evidence that medications would increase her functional capacity at this time.

[42] The Appellant is on a waitlist for chronic pain treatment.

[43] 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.¹⁹

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

[44] 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

[45] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say that she can work.²⁰

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

[47] The Appellant was 33 years old on December 31, 2019, and June 30, 2020. She speaks English. Her age and her communication skills aren’t barriers for working in the real world.

¹⁹ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

²⁰ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[48] The Appellant has completed Grade 10. She worked as a construction labourer. Her education and work experience could be a barrier for finding a sedentary job. However, her age and communication skills would allow her to participate in re-training for work that accommodated her functional limitations.

– **The Appellant has work capacity**

[49] The Appellant has general knowledge of computers. She has basic knowledge and can use email and social media. She uses a computer to do zoom calls and to communicate with her doctor and lawyer.

[50] A medical letter from Dr. Cogswell dated February 2, 2020, said the Appellant functions at a sedentary to medium level of activity.²¹

[51] A medical report from the physiotherapy clinic in July 2020 said the Appellant had functional abilities in the sedentary to light range.²²

[52] Dr. Cogswell has stated that the Appellant can't return to a job that requires heavy physical labour.²³

[53] In March 2023, Dr. Cogswell said the Appellant would require education or training to qualify for a different type of work, like a sedentary job.²⁴ She says the Appellant is unemployable, without proper training.

[54] There is no medical evidence that the Appellant is incapable of sedentary work or re-training. The evidence suggests she could do sedentary work if she had some training or education for a job.

[55] The Appellant says she can't re-train because she has no education. She also said she would be unable to do sedentary work like a call centre because she has no training.

²¹ See GD2-147.

²² See GD4-11.

²³ See GD2-182.

²⁴ See GD4-3.

[56] I don't find that not having existing training is a reasonable explanation for failing to try to re-train.

[57] I acknowledge the Appellant has some limitations for the use of her right arm and hand. However, she does use her right hand and her arm, it isn't completely limited.

[58] The Appellant said she does light chores with difficulty, including sweeping, dishes, laundry, and light meals. She will need to take breaks. Dr. Cogswell also notes that she reports doing chores with difficulty.²⁵

[59] Dr. Cogswell's reports suggest the Appellant could do sedentary work if she was trained. They don't indicate any limitation or symptom that would prevent her from attempting to re-train or return to school. The reports suggest she is precluded from physical work because of her disability, and sedentary work due to a lack of training.²⁶

[60] I find, based on the evidence, that the Appellant has capacity to re-train for sedentary work.

[61] Given the Appellant's young age, communication skills, basic computer knowledge and capacity to function at the sedentary to medium level, I find she could work in the real world.

– **The Appellant hasn't shown she was unable to work at, or re-train for a suitable job due to her disability**

[62] 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 her efforts weren't successful because of her medical conditions.²⁷ Finding and keeping a suitable job **includes retraining** or looking for a job she can do with her functional limitations.²⁸

²⁵ See GD2-359.

²⁶ See GD2-147, GD2-182, GD2-359, and GD4-3.

²⁷ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

²⁸ See *Janzen v Canada (Attorney General)*, 2008 FCA 150.

[63] The Appellant made efforts to work. But these efforts don't show that her disability gets in the way of earning a living.

[64] The Appellant tried returning to work in October 2020 doing traffic control for a construction company. She says she had to stop working due to her disability. She said she consulted Dr. Cogswell about stopping her modified work.

[65] However, the Appellant's employer confirmed that she was able to perform all the duties of the job, had no medical absences, and didn't require accommodations to do the tasks of her job.²⁹ She worked 30 hours per week for five weeks.

[66] The employer said it wasn't aware the Appellant had a disability. The employer says the Appellant stopped working because of a work shortage, not due to her medical condition.

[67] I asked the Appellant to comment on the evidence from the employer. She said the employer didn't want to comment on her disability because they weren't familiar with it.

[68] I wasn't convinced by the contradiction in the Appellant's evidence from that of her employer, based on her explanation. On a balance of probabilities, I find that the employer's evidence was likely an accurate summary of the attempt to work, her performance, and the information they had.

[69] I also note that there is no indication that the Appellant consulted Dr. Cogswell about her attempt to return to work, or that Dr. Cogswell supported that she stop performing modified work.

[70] Dr. Cogswell's reports suggest the Appellant told her she didn't try the return to modified work out of fear.³⁰ They suggest Dr. Cogswell doesn't have knowledge of the attempt to work, and that she didn't advise the Appellant to stop working.

²⁹ See GD2-326.

³⁰ See GD2-140 and GD2-182.

[71] Based on the evidence of the Appellant's employer in 2020, I don't find that the Appellant has shown she was unable to perform suitable modified work or sedentary work because of her disability.

[72] The Appellant hasn't made any efforts to re-train or return to school to upgrade her education for a suitable job. She hasn't demonstrated that she is unable to retrain due to her medical condition.

[73] If the Appellant can work in the real world and has work capacity, she must show that she isn't able to work at a job that accommodates her or to re-train, because of her medical condition. She hasn't done so.

[74] Therefore, I can't find that the Appellant had a severe disability by December 31, 2019, or June 30, 2020.

Conclusion

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

[76] This means the appeal is dismissed.

Sarah Sheaves
Member, General Division – Income Security Section