



Citation: *GC v Minister of Employment and Social Development*, 2023 SST 1986

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

## Decision

**Appellant:** G. C.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated March 18, 2022 (issued by  
Service Canada)

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**Tribunal member:** Anne S. Clark

**Type of hearing:** Teleconference

**Hearing date:** July 19, 2023

**Hearing participant:** Appellant

**Decision date:** December 4, 2023

**File number:** GP-22-952

## Decision

[1] The appeal is dismissed.

[2] The Appellant, G. 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 56 years old. He wrote that his health conditions include Tourette syndrome, heart murmur, genetic heart disease, dyslexia, whiplash injury, chronic fatigue, and a torn knee. He says he can't work in any job.

[4] The Appellant applied for a CPP disability pension on July 26, 2021.<sup>1</sup> 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 Appellant says he has been disabled since 1976. He was designated as a person with a disability in 2017. Therefore, he is eligible for a CPP disability pension.

[6] The Minister says the medical evidence does not support that the Appellant had a severe disability by the end of his qualifying period. Since his claimed date of disability, the Appellant was able to work and complete his post secondary education.

## 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, 2011. This date is based on his contributions to the CPP.<sup>2</sup>

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<sup>1</sup> The Appellant's application begins at page GD2R-37.

<sup>2</sup> A person's years of contributions to the CPP are used to calculate the "minimum qualifying period". It is usually called the MQP and is often described using the date the period ended. In this case it is December 31, 2011. See subsection 44(2) of the *Canada Pension Plan*. The Appellant's contributions are on pages GD2R-59,60.

[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>3</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 to earn a living, 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>4</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.

## **Matters I had to consider first**

### **The Appellant’s appeal did not proceed as a constitutional challenge**

[14] The Appellant appealed to the Tribunal to challenge the validity of the law that denied him a CPP disability pension. To challenge the constitutional validity, applicability, or operability of any provision of the CPP, an appellant must file a notice that essentially explains the challenge. In order to proceed as a constitutional challenge

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<sup>3</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

<sup>4</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

the notice has to satisfy the rules.<sup>5</sup> The Appellant's Notice did not satisfy the rules. Therefore, his appeal could only continue as a regular appeal.<sup>6</sup>

### **I accepted the documents sent in after the hearing**

[15] During the hearing the Appellant said he realized the file has very little medical evidence. He said he believed he could get evidence to prove that he had a severe disability. He asked for three months to obtain medical records and submit them in support of his appeal.

[16] Some relevant medical evidence is necessary to prove a person has a disability as defined by the CPP.<sup>7</sup> I found the Appellant's request was reasonable. I also allowed the Minister time to respond to any evidence the Appellant filed. Therefore, the delay would not cause any unfairness in the appeal process.

### **Reasons for my decision**

[17] I find that the Appellant hasn't proven he had a severe and prolonged disability by December 31, 2011.

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

[18] The Appellant's disability wasn't severe by December 31, 2011. I reached this finding by considering several factors. I explain these factors below.

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<sup>5</sup> The Regulations have recently undergone a major overhaul. Prior to it, the section that set out the criteria for a notice of constitutional question to be valid was found in section 20. Now, those criteria are found in section 1. Since these criteria are purely procedural in nature, the new section must be applied. See *R v. Dineley*, 2012 SCC 58 at para 10 and *R. v. Chouhan*, 2021 SCC 26 at paras 91-92.

<sup>6</sup> See the Interlocutory Decision dated February 15, 2023.

<sup>7</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

– **The Appellant didn't prove he had functional limitations that affected his ability to work**

[19] The Appellant's conditions include:<sup>8</sup>

- Tourette syndrome
- Heart murmur
- Dyslexia
- Torn rib cage

[20] However, I can't focus on the Appellant's diagnoses.<sup>9</sup> Instead, I must focus on whether he had functional limitations that got in the way of him earning a living.<sup>10</sup> 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.<sup>11</sup>

[21] I find that the Appellant didn't prove he had functional limitations that affected his ability to work by December 31, 2011.

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

[22] The Appellant says that his medical conditions have resulted in functional limitations that affect his ability to work. He says he has been disabled since birth. A person is born with Tourette syndrome. The Appellant says that means he has always been disabled by an "injury to his mind". He says Tourette syndrome causes pain in his brain that never stops. He says he cannot interact with other people. His doctor said he is a person with a disability and is, therefore, entitled to any benefits that are available to people with disabilities.

[23] The Appellant says that the fact he is a person with a disability also means the Minister should not be allowed to say he doesn't have a disability. I understand the Appellant is disturbed because the Minister says he doesn't have a severe disability.

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<sup>8</sup> The appellant listed these conditions in his application at GD2R-40>

<sup>9</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>10</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>11</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

This appeal and my decision do not intend to address whether the Appellant's health conditions meet other definitions of disability or if he is entitled to other benefits. The appeal and this decision are about whether the Appellant has a severe disability **as defined by** the CPP.

– **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 31, 2011.<sup>12</sup>

[25] The medical evidence doesn't support what the Appellant says. There are some reports and notes that are dated before December 31, 2011, but they do not provide evidence related to whether the Appellant had a severe disability. I will explain why I say that.

[26] Notes and test results by December 31, 2011, do not show the Appellant had a severe disability. For example, a x-ray from 2012 that shows mild findings in his lumbar spine.<sup>13</sup> He had a chest x-ray in 2008 to determine if he had pneumonia<sup>14</sup> In 2007 he consulted a cardiologist about possible cardiac symptoms.<sup>15</sup> In 2005 he had a lesion removed from his elbow.<sup>16</sup> Also, in 2005 he had symptoms that were identified as neck and back strain.<sup>17</sup> The test results showed minimal findings.

[27] Based on the information from before December 31, 2011, the evidence does not show the Appellant had a severe disability. I also considered evidence that is dated after December 31, 2011. I did that because medical evidence dated **after** a qualifying period can have information that is relevant to an appellant's health **before** the end of the qualifying period. In this case the evidence after December 31, 2011, does not talk about how the Appellant's health affected his ability to work by December 31, 2011.

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<sup>12</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>13</sup> See GD2R21-6.

<sup>14</sup> See GD2R-7

<sup>15</sup> See GD2R21-8 to 11.

<sup>16</sup> See GD2R21-13 and 14.

<sup>17</sup> See GD2R21-15 to 18.

[28] In 2014 the Appellant's doctor said he had atypical features of Tourette's/Autism Spectrum Disorder. He referred to the Appellant's self assessment.<sup>18</sup> The Appellant was designated as a person with a disability in 2017.<sup>19</sup> In 2015 his doctor wrote that he assessed the Appellant as a person with a disability.<sup>20</sup>

[29] The reports after 2011 do not address the Appellant's health by December 31, 2011. There is no evidence that the people who assessed him saw or treated him before the end of the qualifying period. Dr. Hamm does not talk about the Appellant's condition before he assessed him in 2014. There is no medical evidence about when symptoms would have affected the Appellant's ability to work. Dr. Hamm said he feels the Appellant is a person with a disability. But the forms Dr. Hamm completed, and his notes are long after 2011. He did not say he considered any medical reports or evidence from before December 31, 2011. I cannot rely on medical evidence in 2014 and later to conclude the Appellant's health made him unable to work by December 31, 2011.

[30] Even if I can conclude the Appellant had Tourette syndrome before December 31, 2011, that does not prove he had a severe disability within the meaning of the CPP. An appellant has to show not just that he has health conditions, but that his conditions were severe and prolonged within the meaning of the CPP by the end of the qualifying period. In this case that is December 31, 2011.

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

[31] When I am deciding whether a disability is severe, I usually have to consider an appellant's personal characteristics. Factors like age, education, language abilities, and past work and life experience, may affect whether an appellant can work in the real world.<sup>21</sup>

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<sup>18</sup> See Dr. Hamm's letter at GD2R-89.

<sup>19</sup> See GD2R-87.

<sup>20</sup> See GD2R-88.

<sup>21</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[32] I didn't consider the Appellant's personal characteristics. The reason is that an appellant can't qualify for a disability pension because of personal characteristics alone. There still has to be medical evidence to support a finding of disability.<sup>22</sup>

[33] The Appellant didn't provide evidence to support a finding that he was disabled by December 31, 2011. Since there is no relevant medical evidence there is no reason to consider his personal characteristics.

[34] The Appellant didn't prove he had functional limitations that affected his ability to work by December 31, 2011. This means he hasn't proven his disability was severe by then.<sup>23</sup>

## Conclusion

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

[36] This means the appeal is dismissed.

Anne S. Clark  
Member, General Division – Income Security Section

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<sup>22</sup> Section 42(2)(a) of the *Canada Pension Plan* says 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 medical evidence will still be needed.

<sup>23</sup> See *Giannaros v Minister of Social Development*, 2005 FCA 187.