Citation: *MA v Minister of Employment and Social Development*, 2022 SST 1150

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	M. A.
Representative:	Elizabeth Moniz
Respondent:	Minister of Employment and Social Development
Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated April 28, 2021 (issued by Service Canada)

Tribunal member:	Anita Nathan
Type of hearing:	Teleconference
Hearing date:	November 25, 2022
Hearing participants:	Appellant Appellant's representative
Decision date:	December 15, 2022
File number:	GP-21-1607

Decision

[1] The appeal is allowed.

[2] The Appellant, M. A., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of February 2019. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant is 67 years old.[1] He was 53 years old when he last qualified for disability benefits. He worked in construction when he had a workplace injury, which caused significant back pain. The pain later moved to his neck, legs, hips, feet and hands. The pain was quite severe, and made it difficult for him to do his job, which involved a lot of manual labour. The Appellant was laid off in December 2006 because there were no light duties available.

[4] The Appellant applied for a CPP disability pension on January 24, 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] The Appellant says he can't work because he has severe back and neck pain. He can't sit, stand or walk for extended periods. He retrained and did a work placement after 2008, but he struggled through both, even though it was part-time and he had accommodation.

[6] The Minister says that although the Appellant has limitations, he didn't have a severe and prolonged disability by December 2008. The Appellant retrained and did a part-time work placement after December 2008, showing he has work capacity.

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[1] In order to qualify for CPP disability benefits, you have to be under 65 years of age. The Appellant applied for disability benefits when he was 64 years old; therefore, he met the age qualification to apply.

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, 2008. This date is based on his contributions to the CPP.[2]

[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.[3]

[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.[4]

[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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[2] 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 GD3 - 4.
[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.

Reasons for my decision

[14] I find that the Appellant had a severe and prolonged disability by January 2007. I reached this decision by considering the following issues:

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

Was the Appellant's disability severe?

[15] The Appellant has a back strain, degenerative disc disease and depression. However, I can't focus on the Appellant's diagnoses.[5] Instead, I must focus on whether he had functional limitations that got in the way of him 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 affect his ability to work.[7]

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

– What the Appellant says about his functional limitations

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

[18] The Appellant had a back injury at work on September 27, 2004. In 2005, the pain in his back spread to his neck. As a result, he has severe back and neck pain.

[19] He finds it difficult to do tasks at home. Personal hygiene is very hard, and he has to do it slowly. He also has difficulty sleeping because of the pain, and only gets about three hours of sleep a night.

[20] The Appellant says that he has the following functional limitations:

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[5] See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.
[6] See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.
[7] See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- can only walk for 10-15 minutes at a time
- can only stand for 10 minutes at a time
- can only sit for 20 minutes at a time
- difficulty climbing stairs (uses a cane or the railing for assistance)
- can't reach
- can't turn his back or neck
- fatigue
- can't drive

[21] The Appellant says that he struggled through retraining. First, the Appellant participated in a post-secondary academic upgrading program. A letter from the program says it took place from April 28, 2008 to May 26, 2010.[8] The Appellant testified that he had to attend class for two to three hours a day, Monday to Friday. But, he never completed a full day of class because he would either miss days, arrive late or leave early. He described his pain as severe because he was sitting a lot. He said he could only sit for 20 minutes at most, and then he had to get up and walk around. He had pain in his back that went down his legs, and pain in his hands. He also had a sharp pain in his neck because he was looking down at his desk. His teachers were aware of his injury, so they allowed him to take frequent breaks. Sometimes he needed to lie down and he couldn't do that in school, so he had to miss parts of the program. His teachers understood his limitations.

[22] The Appellant says he needed accommodation to do even part-time training. After the academic upgrading, the Appellant did a 10-week computer training course from June 7, 2010 to August 13, 2010.[9] At most, he had to be in class for three hours.

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[8] See GD9, Vol 2 – 219.
[9] GD5, Vol 4 – 1001-1005.

There was a couch where the training took place. The Appellant said he had to take breaks and lay down, or walk around. He would also miss days, arrive late or leave early to cope with the pain. This was the same for the four-week job training program he did from September 6, 2010 to October 1, 2010.[10] Again, classes were at most three hours a day. The Appellant said the job training program was more flexible and he was able to take breaks as necessary. He also took a lot of pain killers to manage his pain during all the training programs.

[23] The Appellant was retrained as a hotel front desk clerk, but he says he can't do the job. The Appellant completed the work placement from October 2010 to March 2011. The job placement was very difficult due to the long periods of standing. He testified that he worked only part-time hours – two to three hours a day, three days a week. But, even that he found very difficult due to his pain. Standing so long made the pain in his back, neck and his feet worse. He asked for a stool to sit, which the employer accommodated. Despite this, he experienced a burning sensation in his leg, and numbness in his back, shoulders and hands.

[24] The Appellant said WSIB forced him to do light duties and retrain. According to the Appellant, WSIB pushed him beyond his limits. He had to do light duty work if it was offered. He says that WSIB also told him he had to retrain, even with his pain. If the Appellant refused, he would have no income and no way to pay his bills. He said he has no family in the city, so he has no one to rely on. Therefore, he felt he had no choice but to work light duties, retrain, and complete a work placement, even though he didn't feel capable of doing these things with his pain.

[25] The Appellant says that he can't work any job because of his functional limitations. He says he definitely couldn't work as of December 2008. Even in 2006, the Appellant says his pain had worsened. He was unable to do even light duties and reduced hours.

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[10] GD5, Vol 4 – 1001-1005.

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

[26] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work by December 2008.[11]

[27] The medical evidence supports what the Appellant says. The records will be reviewed chronologically.

[28] An October 2004 report from the Appellant's orthopaedic surgeon, Dr. Sehmi, diagnosed the Appellant with an occupational low back strain. They noted the Appellant has had back pain for the last three years, and it is worsening due to his job, which requires constant low level bending. The Appellant's main discomfort was his lower back, which was worse in the morning and evening. On examination, Dr. Sehmi noted tenderness in the lower back with painful extension.[12]

[29] Dr. Veidlinger, the Appellant's neurologist, wrote a report in October 2004. It stated that the Appellant developed sudden pain in his right lower back, groin and legs after his injury. The Appellant described the pain extending to his hips, and a burning sensation in his thigh. He said he had pain with bending, standing and sitting. He also said he had general fatigue. On examination, Dr. Veidlinger noted that when bending, the Appellant's back curved inwards indicating muscle spasm, which limits bending. Straight leg raising caused sudden spasms in the quadriceps.[13]

[30] In January 2005, Dr. Veidlinger summarized the Appellant's CT scan. It showed L5-S1 degenerative disc disease, and a mild disc bulge. He noted that the Appellant tried to shovel snow and got increasing back pain going down into the right leg. Dr. Veidlinger said the Appellant couldn't do any heavy lifting. He stated that the Appellant was working light duties, but it was difficult to say whether he will be able to return to heavy duties.[14]

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[11] See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.
[12] See GD2 – 114.
[13] See GD2 – 116.
[14] See GD2 – 115.

[31] The Appellant's family doctor, Dr. Obaji, wrote in January 2005, that the Appellant still complained of lower back pain and required 12 days off work.[15]

[32] Dr. Mayer conducted an assessment in March 2005 and determined the Appellant had a back strain and degenerative disc disease. The Appellant was asked to minimize bending and heavy lifting.[16]

[33] The Appellant's family doctor wrote a letter dated June 2005. He said that the Appellant was still complaining of severe lower back pain with a burning sensation, down to the lower limbs. Pain increased with prolonged standing and sitting.[17]

[34] In July 2005, Dr. Veidlinger wrote that the Appellant had to stand and hold a flag on the road. He had a lot of pain in both knees, and both feet, and couldn't stand for such long periods. The Appellant developed pain when standing and on trying to walk. There was also a burning sensation in the left thigh going up into the left shoulder. Finally, there was pain in the back of the neck when flexing. Upon examination, neck movement was painful, there was tenderness in the lower back, bending was painful and straight leg raising was painful bilaterally. Dr. Veidlinger said the Appellant had mechanical back pain. He was instructed not to bend or stay in one position for too long.[18]

[35] A CT scan dated August 2005 found the Appellant had degenerative disc disease and a small central disc protrusion at L5-S1.[19]

[36] In November 2005, Dr. Sehmi saw the Appellant and summarized his complaints as:

- continues to have low back pain, with pain radiating down the legs, the left more than the right, up to the feet

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[15] See GD5, Vol 3, 737.
[16] See GD8, Vol 3 – 725-727.
[17] See GD5, Vol 3, 720.
[18] See GD2 – 31.
[19] See GD8, Vol 3, 716.

- left leg feels heavy
- problem sitting and standing for too long
- only able to walk a short period
- can't bend or lift anything heavy
- pain on twisting movements, and on pushing and pulling.
- pain at night
- difficulty getting out of the bed in the morning
- unable to put the left leg first, because it starts shaking[20]

[37] Dr. Sehmi diagnosed the Appellant with a small broad based central disc protrusion at the L5-S1 level associated with degenerative disc disease. They determined that the Appellant's diagnosis was causing his ongoing mechanical back pain with bilateral sciatic pains. Dr. Sehmi was of the opinion that the Appellant had permanent partial restrictions. He is unable to sit or stand for more than 30 minutes, he can't do repetitive bending, he can't lift more than 10 pounds, and he can't do any excessive pushing or pulling or any sustained overhead activity.[21]

[38] The Appellant saw Dr. Sehmi again in August 2006 because of increasing pain in his lower back, and bilateral leg pain with a tingling and burning sensation. The Appellant also noted pain when driving in a small car as his leg was in a bent position. His left leg was noted to be more painful than the right and felt heavy. On occasion, his left leg started shaking. He also had trouble sleeping at night because he has to keep changing positions.[22]

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[20] See GD2 – 144-146.
[21] See GD2 – 144-146.
[22] See GD2 – 26-27.

[39] On examination, the Appellant had tenderness in the low back, his forward bending was reduced, rotation was painful, and his straight leg raising was limited on both sides. The Appellant also had pain on standing on his heels and toes, and putting full weight on alternate legs. Dr. Sehmi determined he had chronic mechanical low back pain with bilateral sciatic pains, the left more than the right. Dr. Sehmi again noted that the Appellant has permanent partial restrictions. He is unable to sit or stand for more than 20 – 30 minutes. He can't do repetitive bending or lift more than 10 pounds. He is unable to do excessive pushing, pulling or sustained overhead activity. Dr. Sehmi also recommended avoiding twisting movements, especially mopping or sweeping.[23]

[40] In October 2006, Dr. Veidlinger noted the Appellant had pain in the middle of his back, radiating down the right leg to the heel and ankle. On the left side, there was also pain intermittently from the waist going into the left leg when walking, and the left leg felt heavier than the right. When the Appellant lied down there was a burning sensation under his heels. Upon examination, bending in the back was limited by pain and there was tenderness in the lower back. The left hip area was tender and straight leg raising was painful.[24]

[41] Several medical records were filed that don't relate to the period before 2009. Since the Appellant last qualified for disability benefits in 2008, the records dated after 2008 won't be reviewed in this section.

[42] The Appellant said he has depression. There is only one medical record dated January 2020 that relates to this condition. The Appellant must submit some objective medical evidence that supports that his functional limitations affected his ability to work by December 2008. Since the evidence filed about depression is well past 2008, and there is no indication that the depression was present in 2008, this condition will not be discussed further.

[43] The medical evidence supports that the Appellant's functional limitations affected his ability to work in construction. The medical evidence supports that the Appellant had

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[23] See GD2 – 26-27.
[24] See GD2 – 110.

limitations sitting, standing, bending, lifting, pushing, pulling, twisting and overhead activities.

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

– **The Appellant has followed medical advice**

[45] To receive a disability pension, an appellant must follow medical advice.[25] If an appellant doesn't follow medical advice, then he must have a reasonable explanation for not doing so. I must also consider what effect, if any, the medical advice might have had on his disability.[26]

[46] The Appellant has followed medical advice.[27]

[47] The Appellant has taken medication. He has applied creams for pain relief.

[48] The Appellant did massage therapy, physiotherapy and received chiropractic care when he was working and had benefits. After he was laid off in 2006, he had no benefits so he could not afford regular treatment. He does treatments here and there when he can afford it. This is reasonable.

[49] He was not recommended any other treatment.

[50] 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.[28]

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

[51] 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:

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[25] See *Sharma v Canada (Attorney General)*, 2018 FCA 48.
[26] See *Lalonde v Canada (Minister of Human Resources Development*), 2002 FCA 211.
[27] See *Sharma v Canada (Attorney General)*, 2018 FCA 48.
[28] See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

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

[52] 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.[29]

[53] I find that the Appellant can work in the real world. I will assess the various factors that lead to this conclusion.

[54] The Appellant's age and education would have helped him continue working. The Appellant was 53 years old at the time he last qualified for CPP disability benefits. He has a grade 6 education, but did a two-year academic upgrading program through WSIB. The Appellant also completed a business program and a customs and taxation course in Morocco, as well as a hotel management program in England.[30] His education would help him re-enter the workforce, although it is recognized that not all employers treat international training and education as equivalent to Canadian.

[55] The Appellant has transferrable skills, and satisfactory English language skills. The Appellant has about four years of experience in construction. He also has 12 years of experience as a cook in various restaurants in Toronto. He retrained to work as a hotel front desk clerk. The Appellant's English language skills are satisfactory. When retraining, he wrote the entrance exam for Constellation College twice but failed both times, partly due to his English language skills.[31]

[56] After the workplace injury, the Appellant continued to work in construction, on and off, for two years.[32]

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[29] See *Villani v Canada (Attorney General)*, 2001 FCA 248.
[30] See GD8, Vol 4 – 1006.
[31] See GD5, Vol 4 – 1001-1005.
[32] See GD8, Vol 2 – 253-254, and GD8, Vol 2 – 561.

[57] The Appellant completed a number of training programs after December 2008. He did a 23-week academic upgrading program, a 10-week computer training course, and a 4-week job search training course.[33]

[58] The Appellant also did a 23 week job placement.[34]

[59] I agree with the Minister that the Appellant had work capacity. Based on the Appellant's personal circumstances, the fact that he continued in his job for two years, completed retraining programs and did a work placement, the Appellant had work capacity.

– **The Appellant tried to find and keep a job**

[60] 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.[35] Finding and keeping a job includes retraining or looking for a job that he can do with his functional limitations.[36]

[61] The Appellant made efforts to work. These efforts show that his disability gets in the way of earning a living.

[62] Although the Appellant continued to work in construction for two years, his attendance was inconsistent. A summary of his work history after the accident is below:

- injured September 27, 2004[37]
- two months off to recover[38]
- returned to modified duties December 6, 2004 to December 20, 2004[39]

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[33] See GD8, Vol 2 – 1110 – 1012 and GD8, Vol 2 – 1121.
[34] See GD8, Vol 2 – 1012.
[35] See *Inclima v Canada (Attorney General)*, 2003 FCA 117.
[36] See *Janzen v Canada (Attorney General)*, 2008 FCA 150.
[37] See GD8, Vol 2 – 561.
[38] See GD8, Vol 2 – 561.
[39] See GD8, Vol 2 – 561.

- December 21, 2004 to January 8, 2005 off because modified duties unavailable[40]
- returned to work January 10, 2005 but laid off the same day as the Appellant reported that sweeping a large area increased his pain[41]
- January 11, 2005 to February 2, 2005, modified work was available but the Appellant refused[42]
- returned to modified duties on February 3, 2005,[43] but it is unclear what happened between February 2005 and November 2005[44]
- laid off from November 2005 to May 14, 2006 due to lack of work[45]
- returned to work May 15, 2006 and worked sporadically because modified duties were not always available[46]
- laid off in December 2006[47]

[63] Modified duties were difficult for the Appellant. On modified duties, the Appellant was asked to stand on the road and hold a flag. He visited both Dr. Veidlinger and Dr. Sehmi and complained of throbbing and tingling pain in his hips, knees, feet, thigh, shoulder, and neck, due to prolonged standing.[48]

[64] Dr. Sehmi also noted that when the Appellant was working modified duties sweeping and washing, after work he had a lot of back pain, and couldn't move. The Appellant's pain was so bad he took three weeks off.[49]

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[40] See GD8, Vol 2 – 561.
[41] See GD8, Vol 2 – 561.
[42] See GD8, Vol 2 – 561.
[43] See GD8, Vol 2 – 561.
[44] The Appellant was asked about this at the hearing but he could not recall as it was a long time ago.
[45] See GD8, Vol 2 – 280-281.
[46] See GD8, Vol 2 – 280-281.
[47] See GD8, Vol 2 – 272.
[48] See GD2 – 31 and See GD2 – 144-146.
[49] See GD2 – 144-146.

[65] Dr. Sehmi made a note that the Appellant was having difficulties with light duties, especially mopping. Driving was also difficult, which the Appellant had to do often. Dr. Sehmi's report says that the Appellant returned to full-time work but that increased the pain in his back and legs. Once the Appellant worked a full day and he had to take the next day off due to pain.[50]

[66] The Appellant's employer wrote to WSIB and stated that the Appellant was asked to pick up garbage, but he said he can't do it. The employer noted that it had been 1.5 years since the injury, and the Appellant's condition had not improved.[51]

[67] The Appellant testified that he was ultimately laid off because no light duties were available.

[68] The Appellant completed the retraining programs with significant accommodation. The Appellant testified that at most, his classes were three hours a day. He would miss days, or have to come late or leave early. He also had to take frequent breaks and change positions constantly. When he had a couch available to him at the computer training course, the Appellant had to lie down to make his pain better. The level of accommodation the Appellant required shows the Appellant couldn't regularly work, nor would he be a reliable employee.

[69] The Appellant couldn't work as a hotel clerk. The Appellant struggled through his work placement. The Appellant was retrained as a front desk clerk as WSIB determined he couldn't work in construction anymore. The placement agency wrote a letter to WSIB stating that after the first three days of his placement, the Appellant said he was in too much pain and couldn't return without the approval of his doctor and his representative.[52]

[70] The Appellant did return to the placement, and worked four to five hour shifts, three days a week. The employer wrote that the Appellant stays until he can't tolerate his pain. The employer asked him to increase his hours twice, but he said he was in too

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[50] See GD2 – 26-27.
[51] See GD8, Vol 2 – 290
[52] See GD8, Vol 4 – 927-928.

much pain. The employer decided that since the Appellant had trouble reaching even the part-time requirements (8-hour shifts, 3 days a week), they couldn't offer him a permanent position.[53]

[71] The hotel clerk job was not substantially gainful. The Appellant worked a maximum of 15 hours a week, at a rate of $14.50/hour. This is equivalent to an annual income of $11,310. In the Appellant's case, substantially gainful work is equal to the maximum annual CPP disability payments in 2011, the year he earned income. This amount was $13,840.44. So, although the Appellant did work as a hotel clerk, his income was not substantially gainful. Even if it was, earnings over the substantially gainful threshold in any single year after the Appellant says they became disabled, will not automatically mean the Appellant has capacity to work during that period. To decide whether a person has capacity to work we need to consider whether the Appellant is "incapable" "regularly" of "pursuing" "any" "substantially gainful occupation."[54] In this case, the Appellant couldn't reliably maintain consistent work.

[72] The Appellant testified that the placement was very difficult for him. He said he even started experiencing numbness in his hands. He testified that he only did the placement because he felt he had no choice, otherwise WSIB wouldn't pay him and he would have no income. Dr. Veidlinger confirms this when he wrote that the hotel clerk job was very difficult for the Appellant because he had to stand and bend for four hours, three times a week.[55]

[73] All of the Appellant's efforts to work failed because of his functional limitations. The Appellant tried to continue working in construction doing modified work, but he had difficulty with much of the modified duties. The Appellant couldn't do sedentary work. He did complete academic upgrading and some re-training courses, but he had a lot of accommodation. This level of accommodation would be unrealistic in a work

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[53] See GD8, Vol 4 – 927-928.
[54] See *Minister of Employment and Social Development v KH*, 2022 SST 426 (CanLII)
[55] See GD2 – 28.

environment. The Appellant re-trained as a hotel front desk clerk, but couldn't do that job either because of the need for prolonged standing.

[74] I find that his disability was severe. The Appellant's efforts show that, by January 2007, he couldn't regularly do any work he could earn a living from. The Appellant was laid off from his full-time construction job in December 2006. After this date, he was only able to do part-time re-training and work.

Was the Appellant's disability prolonged?

[75] The Appellant's disability was prolonged.

[76] The Appellant's conditions began in September 2004. These conditions have continued since then, and they will more than likely continue indefinitely.[56]

[77] It has been 16 years since the Appellant's injuries.

[78] There is no treatment the Appellant has not tried.

[79] In June 2011, Dr. Veidlinger noted that the Appellant's condition was getting worse. He had new symptoms of pain in both arms and hands. He also developed a pinching sensation in his neck and couldn't bend. Dr. Veidlinger noted that the Appellant can't work at all.[57]

[80] In February 2016, Dr. Veidlinger wrote that since the injury, the Appellant has made no physical gains and in fact, has deteriorated to a degree that not only negatively impacts his ability to work, but also his quality of life. Dr. Veidlinger was of the opinion that the Appellant had too many restrictions to be able to return to employment.[58]

[81] I find that the Appellant's disability was prolonged by January 2007.

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[56] In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that an appellant has to show a severe and prolonged disability by the end of their minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.
[57] See GD2 – 28.
[58] See GD8, Vol 3 - 665.

When payments start

[82] The Appellant had a severe and prolonged disability in January 2007.

[83] However, the *Canada Pension Plan* says an appellant can't be considered disabled more than 15 months before the Minister receives their disability pension application.[59] After that, there is a four-month waiting period before payments start.[60]

[84] The Minister received the Appellant's application in January 2020. That means he is considered to have become disabled in October 2018.

[85] Payment of his disability pension starts as of February 2019.

[86] The Appellant turned 65 years old in August 2020. At age 65, the CPP disability benefit is automatically changed to a CPP retirement pension.

Conclusion

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

[88] This means the appeal is allowed.

Anita Nathan

Member, General Division – Income Security Section

[59] See s. 42(2)(b) of the *Canada Pension Plan*.
[60] Section 69 of the *Canada Pension Plan* sets out this rule. This means that payments can't start more than 11 months before the application date.