



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *KS v Minister of Employment and Social Development*, 2023 SST 1995

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

# Decision

**Appellant:**

K. S.

**Respondent:**

Minister of Employment and Social Development

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**Decision under appeal:**

Minister of Employment and Social Development  
reconsideration decision dated January 13, 2023 (issued  
by Service Canada)

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**Tribunal member:**

Adam Picotte

**Type of hearing:**

Teleconference

**Hearing date:**

September 29, 2023

**Hearing participants:**

Appellant  
Appellant's witness  
Interpreter

**Decision date:**

October 3, 2023

**File number:**

GP-23-663

## Decision

[1] The appeal is dismissed.

[2] The Appellant, K. S., 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 a former seasonal farm picker. She says her date of disability was November 1994 when she sustained a fractured clavicle in a motor vehicle accident.

[4] The Appellant has applied for a CPP disability pension on multiple occasions. The most recent application was on May 25, 2022. 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 has continued to struggle from her injuries related to her motor vehicle accident. This continues to cause her pain in her neck, back, and shoulders. As a result she has been unable to work in any capacity.

[6] The Minister says the medical evidence on file from in and around 1995 is not demonstrative of a disability under the CPP. The Minister further sets out that the Appellant's earnings post-MQP shows a residual work capacity and as such she cannot qualify for a disability benefit.

## 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, 1995. This date is based on her contributions to the CPP.<sup>1</sup>

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<sup>1</sup> 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 GD2-43.

[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>2</sup>

[10] 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.

[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>3</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 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

[14] I find that the Appellant hasn’t proven she had a severe and prolonged disability by December 31, 1995.

### Was the Appellant’s disability severe?

[15] The Appellant’s disability wasn’t severe. I reached this finding by considering several factors. I explain these factors below.

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

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

– **The Appellant’s functional limitations affect her ability to work**

[16] The Appellant has:

- thoracic outlet syndrome

[17] However, I can’t focus on the Appellant’s diagnosis.<sup>4</sup> Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.<sup>5</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 her ability to work.<sup>6</sup>

[18] I find that the Appellant has functional limitations that affected her ability to work.

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

[19] The Appellant says that her medical condition has resulted in functional limitations that affect her ability to work. She says she has the following impairments:

- **Kneeling** – The Appellant told me that her back and shoulders hurt. She is unable to bend down because she gets dizzy.
- **Changing a lightbulb** – The Appellant is unable to lift her arms up above her shoulders for a long period of time. She gets numbness in her hands from her elbows to her hands.
- **Groceries 100 meters** – She is unable to carry heavy objects. If she tries to walk that far her heart pumps too fast and she gets breathing problems.
- **Housekeeping** – She has hired a private cleaner and relies on her husband and children to do most of the cleaning.

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<sup>4</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>5</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>6</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

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

[20] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 1995.<sup>7</sup>

[21] The medical evidence supports what the Appellant says.

[22] An x-ray exam dated November 26, 1994, showed a right clavicle fracture.<sup>8</sup>

[23] In 1997 Dr. Nelems, opined that a surgery for the Appellant's right clavicle would provide a 50% chance of improvement.

[24] This is the extent of medical evidence either prior to or around the Appellant's MQP. While minimal, it does demonstrate the presence of a right clavicle injury that resulted in thoracic outlet syndrome.

[25] The medical evidence supports that the Appellant's thoracic outlet syndrome interferes with various daily activities.

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

– **The Appellant has followed medical advice**

[27] To receive a disability pension, an appellant must follow medical advice.<sup>9</sup> 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.<sup>10</sup>

[28] The Appellant has followed medical advice.<sup>11</sup>

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

<sup>8</sup> GD2-192

<sup>9</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

<sup>10</sup> See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

<sup>11</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

[29] The Minister did not raise a failure to follow medical advice as a basis to deny this claim. Moreover, in my review of the file I did not see any medical evidence to support such a finding.

[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 her from earning a living at any type of work, not just her usual job.<sup>12</sup>

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

[31] When I am deciding whether the Appellant can work, I can't just look at her medical condition and how it affects what she can do. I must also consider factors such as her:

- age
- level of education
- 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 she can work.<sup>13</sup>

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

[34] In her second application, the Appellant reported that she worked as a seasonal farm picker from 1994 to February 2016. She also wrote in this application that she felt she could no longer work because of her medical condition in February 2016.<sup>14</sup>

[35] In reviewing the Appellant's record of earnings, I also noted that she had earnings as follows:

- 2008 - \$16,320,

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<sup>12</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>13</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

<sup>14</sup> GD2-67

- 2009 - \$13,736, and
- 2014 - \$9,956.

[36] I asked the Appellant about these earnings. This was important because earnings post MQP may be demonstrate of a residual capacity for employment.

[37] The Appellant told me that from 2008-2009 she worked in a furniture shop. She worked during the evenings doing paperwork. She took care of customer orders. Whenever the customer ordered were she would write that out in Punjabi. She continued to do this work until she was laid off in 2008 because the company was short of work. In other words she did not stop the job because of her disability.

[38] The Appellant told me that her earnings in 2014 were work working as a berry picker. This was seasonal work. She would do this for 6-8 hours a day depending on how much work was required. She told me that she did this work slowly because she was unable to run her household. As a result she worked. This work was seasonal and lasted from May or June to October of 2014.

[39] When I am considering whether someone has a severe disability, I need to consider whether they have residual capacity for substantially gainful employment. I am satisfied that the Appellant had a residual capacity for substantially gainful employment.

[40] Her work from 2008-2009 only ended because of a lack of work for the company. Her earnings were above the years basic exemption. Although this is not binding on me, I am persuaded by the lack of any accommodations and her ability to do all aspects of her employment. She did not detail any accommodations that were provided to her. She only stopped working because the company was no longer able to maintain her employment. She did not stop working because of a disability.

[41] This demonstrates a residual capacity for employment.

[42] Similarly, the Appellant's work in 2014 also demonstrates a residual capacity for substantially gainful employment. Although the work was seasonal, she was not

provided with accommodations. She continued to do the work until the season was over. Given these facts, I am satisfied that the Appellant maintained a residual capacity for substantially gainful employment after the expiration of her MQP.

[43] Therefore, I can't find she had a severe disability by December 31, 1995.

## **Conclusion**

[44] 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.

[45] This means the appeal is dismissed.

Adam Picotte

Member, General Division – Income Security Section