



Citation: *DB v Minister of Employment and Social Development*, 2024 SST 247

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: D. B.

Respondent: Minister of Employment and Social Development
Representative: Ian McRobbie

Decision under appeal: General Division decision dated October 16, 2022
(GP-21-2192)

Tribunal member: Neil Nawaz

Type of hearing: Teleconference

Hearing date: February 13, 2024

Hearing participants: Appellant
Respondent's representative

Decision date: March 11, 2024

File number: AD-23-602

Decision

[1] I am dismissing this appeal. The Appellant is not entitled to a Canada Pension Plan (CPP) disability pension.

Overview

[2] The Appellant is a 42-year-old former oil field worker with hidradenitis suppurativa (HS), a skin condition that causes sores and abscesses in areas where there are hair follicles and sweat glands — most commonly around the groin, buttocks, and armpits.

[3] The Appellant was diagnosed with this condition in the 1990s, but it started to get worse 20 years ago. His abscesses became larger and more painful. They began to rupture and get infected. In 2016, he left his job as a drilling fluids technician after experiencing side effects from a medication called Humira. He hasn't worked since.

[4] The Appellant applied for a CPP disability pension in January 2020.¹ The Minister of Employment and Social Development refused the application after determining that the Appellant did not have a severe and prolonged disability as of December 31, 2018, the last time he had CPP disability coverage.²

[5] The Appellant appealed the Minister's refusal to the Social Security Tribunal's General Division. It held a hearing by teleconference and dismissed the appeal. It found that, although the Appellant had some physical limitations, he still had the capacity to regularly perform substantially gainful employment.

[6] The Appellant then applied for permission to appeal to the Appeal Division. In June 2023, one of my colleagues on the Appeal Division granted the Appellant permission to appeal. Last month, I held a hearing to discuss his disability claim in full.

¹ See the Appellant's application for CPP disability benefits dated January 6, 2020, GD2-26.

² See the Minister's initial refusal letter dated August 31, 2020 (GD2-21) and reconsideration decision letter dated September 23, 2021 (GD2-4).

[7] Now that I have considered submissions from both parties, I have concluded that the Appellant failed to show that he is disabled under the CPP. The evidence shows that, although the Appellant has a serious medical condition, he still has the capacity to pursue some kind of alternative career.

Issue

[8] For the Appellant to succeed, he must prove that, more likely than not, he had a **severe** and **prolonged** disability during his coverage period. The parties agreed that the Appellant's coverage ended on December 31, 2018.³

- A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.⁴ A claimant isn't entitled to a disability pension if they are regularly able to do some kind of work that allows them to earn a living.
- A disability is **prolonged** if it is likely to be long continued and of indefinite duration or is likely to result in death.⁵ The disability must be expected to keep the claimant out of the workforce for a long time.

[9] In this appeal, I had to decide whether the Appellant developed a severe and prolonged disability before December 31, 2018.

Analysis

[10] I have applied the law to the available evidence and concluded that the Appellant did not have a severe and prolonged disability as of December 31, 2018. I am satisfied that the Appellant's medical conditions have not prevented him from regularly pursuing substantially gainful employment.

³ Under section 44(2) of the *Canada Pension Plan*, a "minimum qualifying period" is established by making threshold contributions to the CPP. The Appellant's earnings and contributions are listed on his record of earnings at GD2-54.

⁴ See *Canada Pension Plan*, section 42(2)(a)(i).

⁵ See *Canada Pension Plan*, section 42(2)(a)(ii).

The Appellant did not have severe disability during his coverage period

[11] Claimants for disability benefits bear the burden of proving that they have a severe and prolonged disability.⁶ I have reviewed the record, and I have concluded that the Appellant didn't meet that burden according to the test set out in the *Canada Pension Plan*.

[12] In his application for benefits, the Appellant said that he suffers from severe and persistent symptoms associated with HS, including painful abscesses and cysts that rupture, leaving open sores that are prone to infection. He said that he had undergone various day surgeries to drain and repair wounds in his buttocks, back, and armpits. He rated his ability to perform most physical tasks as "good," with the exceptions of "changing a lightbulb above your head" and "sitting in a chair for at least 20 minutes," both of which he rated as "poor." He reported no problems with his emotional behaviours or his thinking and communication abilities.

[13] The Appellant testified that he has been getting abscesses in his buttocks, groin, and underarms for many years. In the early 2000s, the abscesses began to get larger and produce fluid. He managed by self-medicating with Robaxecet, Advil, and other over-the-counter painkillers. His family doctor prescribed him with a supply of antibiotics that he could take as needed. Around 2012, his condition got worse. The abscesses became more painful and persistent — they were less likely to heal by themselves.

[14] He was working in the Alberta oil sands as, first a derrick hand, then a drill fluids technician. The jobs were demanding. He worked two weeks on and two weeks off in 12-hour shifts, seven days a week. His condition began to interfere with his work. He couldn't lift his arms. He couldn't sit down for any length of time without finding his underwear soaked in blood and fluid. He continued working, relying on the support of his colleagues for physically demanding tasks.

[15] His doctor prescribed him with Humira, a biologic medication that reduced the frequency, duration, and intensity of his HS flare-ups. However, Humira also produced

⁶ See *Canada Pension Plan*, section 44(1).

side effects. After six months, he began experiencing flu-like symptoms. He felt sick all the time. He lost strength. He got frequent headaches. He went from 225 pounds to 180. In July 2016, his doctor recommended that he take leave from his job. He hasn't worked since. Around that time, he also went off Humira, although he has returned to it several times since.

[16] The Appellant returned to his home province of Nova Scotia. He underwent a series of procedures to address HS-related symptoms. In November 2017, October 2018, and July 2019 he had surgeries to drain and remove tissue from areas in and around his armpits. He had more surgeries in April 2021 to remove diseased tissues from his buttocks. After each surgery, there was a recovery period in which required homecare from a nurse, who would visit him several times a day to change his dressings.

[17] He still gets abscesses on both arms. He can't lift them without feeling pain. On his left side, he has a cyst that never goes away. It is a constant open wound. He carries wet wipes wherever he goes. If he sits for an extended period, he feels a combination of pain and pressure due to built-up scar tissue. Currently, he is not taking any medication, except for a painkiller — Tramadol as needed.

[18] The Appellant may feel that he is disabled, but I must base my decision on more than just his subjective view of his capacity.⁷ In this case, the evidence, looked at as a whole, does not suggest a severe impairment that prevented him from performing suitable work during his coverage period. From what I can see, the Appellant was subject to some limitations at the time, but he was not incapacitated from all forms of work.

[19] I base this conclusion on the following factors:

⁷ A claimant has to provide a report of any physical or mental disability, including its nature, extent and prognosis; the findings upon which the diagnosis and prognosis were made; any limitation resulting from the disability, and any other pertinent information. See section 68(1) of the *Canada Pension Plan Regulations*. In *Warren v Canada (Attorney General)*, 2008 FCA 377, the Federal Court of Appeal said that there must be some objective medical evidence of a disability. See also *Canada (Attorney General) v Dean*, 2020 FC 206.

– **The Appellant’s medical files suggests that his condition is manageable**

[20] The Appellant has HS, but I can’t focus on a diagnosis.⁸ Instead, I have to ask whether the Appellant had functional limitations that got in the way of earning a living during his coverage period.⁹ A person can have a serious medical condition yet not be completely debilitated by it.

[21] The medical evidence shows that the Appellant has functional limitations that affected his ability to perform physically demanding jobs. However, they also show that his treatments and medications produced positive results.

[22] In July 2018, the Appellant’s family doctor completed a medical questionnaire in support of his patient’s CPP application.¹⁰ Dr. MacLean confirmed that the Appellant had suffered HS since the early 2000s. He disclosed that the Appellant had inflammatory drainage affecting both axillae (armpits), which reduced his range of motion in both shoulders. The Appellant required dressing changes one to four times daily, depending on drainage. He did not take any regular medications but took antibiotics as needed for bacterial infections. He expected to return to modified work in the future, although he would likely to have restrictions in both arms.

[23] The Appellant has had several surgeries since he left his job:

- In November 2017, the Appellant underwent an excision of his right axilla after complaining of pain, inflammation, and bleeding.¹¹ The following month, Dr. LeBlanc noted that the Appellant’s wound was healing and that his shoulder displayed good range of motion with no limitations. By September 2018, the wound was reported to be completely healed with no swelling or residual drainage.¹²

⁸ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁹ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

¹⁰ See CPP medical report completed by Dr. Gregor MacLean on December 13, 2019, GD2-111.

¹¹ See operative report dated November 8, 2017 by Dr. Martin LeBlanc, plastic surgeon, GD2-128. See also report dated November 23, 2018 by Dr. Peter Green, dermatologist, GD2-123.

¹² See Dr. LeBlanc’s report dated September 25, 2018, GD2-133.

- In October 2018, the Appellant underwent an excision of his left axilla after complaining of discomfort.¹³ He was reported to be progressing well,¹⁴ but then suffered a series of setbacks, including breakdown of his wound, development of a pilonidal cyst, and reduction of movement.¹⁵
- In June 2019, the Appellant had another left axilla excision.¹⁶ Like the previous excision, it initially healed well but then opened and began emitting fluid.¹⁷
- In April 2021, the Appellant underwent excision and debridement of the left and right buttocks following an HS flare-up.¹⁸ In August 2021, he underwent a similar procedure in the same area. Two weeks later, Dr. LeBlanc reported that the Appellant was healing well, he was able to sit comfortably, and he did not have any limitations in his movement.¹⁹ In February 2022 Dr. LeBlanc reported that the only area that was open at that point was the right axilla, and the wound was decreasing in size. He again recommended biologics.²⁰

[24] The medical record indicates that the Appellant's condition is episodic, characterized by periodic and unpredictable flare-ups.²¹ From 2017 to 2021, the Appellant had several surgeries to lance and drain abscesses on or near his armpits and buttocks. The results were mixed, but it appears that the abscesses from that period ultimately healed, although they left scarring in the affected areas. I find it notable that the Appellant has apparently had no surgeries since, suggesting that his condition has stabilized. There is also a suggestion that he is now better able to tolerate Humira, which remains the only medication that has prevented and alleviated his lesions. In

¹³ See Dr. LeBlanc's reports dated September 25, 2018 (GD2-133) and October 17, 2018 (GD2-134).

¹⁴ See Dr. LeBlanc's report dated December 11, 2018, GD2-136.

¹⁵ See Dr. LeBlanc's reports dated February 12, 2019 (GD2-137) and February 26, 2019 (GD2-138).

¹⁶ See Dr. LeBlanc's operative report dated June 19, 2019, GD2-141.

¹⁷ See Dr. LeBlanc's report dated October 15, 2019, GD2-146.

¹⁸ See Dr. LeBlanc's report dated April 26, 2021, GD4-46.

¹⁹ See Dr. LeBlanc's report dated August 31, 2021, GD4-65.

²⁰ See Dr. LeBlanc's report dated February 8, 2022, GD4-58.

²¹ In a report dated November 21, 2016 (GD2-194), Dr. Green wrote that he was seeing the Appellant after a year, during which time "there really has been no change... the [HS] only flared once and he was able to drain the lesion without issues."

March 2018, Dr. LeBlanc noted that the Appellant was taking Humira as needed during flare-ups to make his conditions manageable.²²

[25] I also note that, following the surgeries, Dr. MacLean expected that the Appellant would be able to return to work.²³ The family physician noted that the Appellant would see limitation in the use of both of arms, with abduction (the degree to which the arms can rise parallel to the shoulders) under 90 degrees. He also noted that there would be occasional flare ups that might require bandages, antibiotics, and other medications. However, even with these constraints in mind, Dr. MacLean did not bar the Appellant from working.

[26] The best indication that the Appellant retains at least some ability to work can be found in a functional assessment report from February 2023.²⁴ Following two days of testing and examination, the assessors concluded that, although the Appellant was not suited to his pre-injury position as an oil field worker, he was capable of light work. The assessors also cautioned that the Appellant was seen at a time when he was relatively symptom-free; if he were to experience a flare-up in his skin condition, then “his performance would decline and further impact his ability to perform work of any nature.”

[27] I understand that the Appellant’s condition can deteriorate without warning. However, I find that he still has residual capacity to pursue alternative employment.

– **The Appellant’s condition, looked at as a whole, did not prevent him from working in the real world**

[28] The Appellant undoubtedly has a significant medical condition that interferes with his ability to work. However, there is evidence that he retains some capacity when looked at as a whole. I am reinforced in this belief when I consider his background and personal characteristics.

²² See Dr. LeBlanc’s report dated March 20, 2018, GD2-132.

²³ See Dr. MacLean’s CPP medical report dated December 13, 2019, GD2-119.

²⁴ See functional capacity evaluation dated February 22, 2023 by Katlynn Westhaver, occupational therapist, and Sarah Turcotte, kinesiologist, AD4-2.

[29] The leading case on the interpretation of “severe” is *Villani*, which requires the Tribunal, when assessing disability, to consider a disability Appellant as a “whole person” in a real-world context.²⁵ Employability is not to be assessed in the abstract, but rather in light of “all of the circumstances.” When deciding whether the Appellant can work, I can’t just look at his medical conditions. I must also consider factors such as his age, level of education, language abilities, and past work and life experience. These factors help me decide whether the Appellant could work in the real world.

[30] The Appellant is a native-born English speaker and was 37 years old when he last had CPP disability coverage — far from the usual age of retirement. In his 20s, he earned a college diploma in marketing. Although he never used that diploma in the labour market, it demonstrates that he has the intellectual capacity to retrain.

[31] The Appellant has another asset that would benefit him if he were to pursue another career. Although he has never had anything other than physically demanding jobs, he nevertheless has a lengthy and consistent work history, one that would likely demonstrate his reliability to a prospective employer.

[32] Given his background, the Appellant is well equipped to attempt to return to the labour market should he wish to do so. Even with his medical condition, he has the residual capacity to at least attempt a light job or retrain for one. As we will see that capacity imposes on him an obligation.

– **The Appellant did not attempt suitable alternative employment**

[33] A Federal Court of Appeal decision called *Inclima* says that disability claimants must do what they can to find alternative employment that is better suited to their impairments:

Consequently, an applicant who seeks to bring himself within the definition of severe disability must not only show that he (or she) has a serious health problem but where, as here, there is evidence of work capacity, must also show that efforts at

²⁵ See *Villani v Canada (Attorney General)* 2001 FCA 248.

obtaining and maintaining employment have been unsuccessful by reason of that health condition.²⁶

[34] This passage suggests that, if a claimant retains at least **some** work capacity, the General Division must conduct an analysis to determine (i) whether they attempted to find another job, and (ii) if so, whether their impairments prevented them from getting and keeping that job.

[35] On top of that, disability claimants must make **meaningful** attempts to return to work.²⁷ They cannot limit their job search to the type of work that they were doing before they became impaired. That is because they must show that they are regularly incapable of pursuing **any** substantially gainful occupation.²⁸ Claimants who fail to pursue alternative forms of employment may be ineligible for benefits.

[36] In this case, the Appellant had at least some work capacity — enough to trigger the obligation to pursue employment that might have been better suited to his limitations. However, I am not convinced that the Appellant fulfilled that obligation.

[37] At the hearing, the Appellant testified that he has never tried to find another job. He previously expressed interest in enrolling in an accounting program, but his condition was particularly acute at the time, so he never took the idea further.²⁹ There is evidence that the Appellant's condition has stabilized, even improved, since. However, he has still not taken any steps to pursue an alterative career.

[38] I referred the Appellant to the recent functional assessment that found he might be capable of light work. When I asked him whether he could imagine himself doing a job that required extended sitting, he replied that he had no ability to look into the future and see what might happen. He said that his condition remains active, and he can't be sure when an abscess will erupt. He acknowledged that he might be able to sit at a desk for, say, two weeks without any problems. But he added that flare-ups inevitably

²⁶ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

²⁷ See *Tracey v Canada (Attorney General)*, 2015 FC 1300, in which the Federal Court stated that the onus is on claimants to show that they made "sincere" efforts to meet the employment efforts test.

²⁸ See *Canada (Attorney General) v Ryall*, 2008 FCA 164.

²⁹ See progress report dated October 17, 2017 by Lynn Toole, rehabilitation consultant, GD2-174.

occur and that the frequency and duration of those flare-ups is unpredictable. He has tried different diets, and he has quit drinking and smoking, but nothing has helped. His doctors have told him that he will have to live with his condition.

[39] In the end, I was unable to properly assess the severity of the Appellant's disability. That's because he has never made an effort to look for employment that might have been better suited to his functional limitations. For that reason, his claim must fail.

I don't have to consider whether the Appellant has a prolonged disability

[40] A disability must be severe **and** prolonged.³⁰ Since the Appellant has not proved that his disability is severe, there is no need for me to assess whether it is also prolonged.

Conclusion

[41] The Appellant's HS is serious, but I am not convinced that it produces symptoms that amount to a severe disability. The condition flares up from time to time, resulting in painful, oozing lesions. However, they usually heal by themselves, and they are responsive to medication. It appears that the Appellant went through a particularly acute phase of his illness from 2016 to 2021, but it appears to have stabilized. Given his education and relative youth, I see no reason why the Appellant could not have at least attempted a job that might have been less physically demanding than the ones he held previously.

[42] The appeal is dismissed.



Member, Appeal Division

³⁰ See *Canada Pension Plan*, section 42(2)(a).