



Citation: *YX v Minister of Employment and Social Development*, 2024 SST 226

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

# Decision

**Appellant:** Y. X.  
**Representative:** Danielle Scheffel

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated March 7, 2023 (issued by  
Service Canada)

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**Tribunal member:** Brianne Shalland-Bennett

**Type of hearing:** Videoconference

**Hearing date:** February 29, 2024

**Hearing participants:** Appellant  
Interpreter for the Appellant  
Appellant's representative  
Appellant's witness

**Decision date:** March 4, 2024

**File number:** GP-23-891

## Decision

[1] The appeal is dismissed.

[2] The Appellant, Y. X., 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 62 years old with a university education. He last worked as a teaching assistant at a university. He stopped working in 2011. He hasn't worked since. He says while going to school for his master's degree he was framed and charged with assault. He says the charges led to depression. He also says he has limitations because of his heart, high blood pressure, uncontrolled diabetes, and lower back pain.

[4] The Appellant applied for a CPP disability pension on April 5, 2022. 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 Minister says the Appellant's disability isn't severe and prolonged.

[6] The Appellant disagrees. He says he hasn't been able to work since 2013.

## What the Appellant must prove

[7] For the Appellant to succeed, he must prove he has a disability that was severe and prolonged by December 31, 2014. In other words, no later than December 31, 2014. This date is based on his CPP contributions.<sup>1</sup> He must also prove that he continues to be disabled.<sup>2</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 contributions can be found at GD6-8.

<sup>2</sup> In *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that the 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)*, 2001 FCA 318.

[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 capable regularly of doing 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.<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 he has to show it is more likely than not that he is disabled.

## Reasons for my decision

[14] I find the Appellant hasn’t proven he had a severe and prolonged disability by December 31, 2014. I reached this decision by considering the following issues:

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

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<sup>3</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability. Section 68.1 of the *Canada Pension Plan Regulations* says a job is “substantially gainful” if it pays a salary or wages equal to or greater than the maximum annual amount a person could receive as a disability pension.

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

## **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.

### **– The Appellant's functional limitations affected his ability to work**

[16] The Appellant has:

- diabetes
- depression and anxiety
- lower back pain
- high blood pressure
- heart problems

[17] However, I can't focus on the Appellant's diagnoses.<sup>5</sup> Instead, I must focus on whether he has functional limitations that got in the way of him earning a living.<sup>6</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>7</sup>

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

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

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

- He feels dejected, especially after his wrongful conviction.
- His mood is low. He hasn't had a good day since he was charged.
- He doesn't feel motivated, and he has no energy.
- He has a poor ability to adjust to change.
- His concentration and communication skills are poor.
- He has a poor ability to socialize and fears speaking to people.

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<sup>5</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>6</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>7</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[20] The Appellant says his sleep is poor and he is often woken by nightmares. He says his fatigue is overwhelming. When he does any task, he needs frequent breaks.

[21] The Appellant says he feels pain in his lower back after a workplace accident in 2002. His pain got worse around 2013 or 2014. Because of his pain he has a hard time lifting heavy items. He says he is limited on how far he can walk. He says he has to take many breaks just walking around the block.

[22] The Appellant says his diabetes is uncontrolled and he has high blood pressure. The limitations from these conditions have impacted his life substantially. He says:

- He had a heart attack in or around 2014.
- He lost all of his teeth and relies on dentures.
- He has ulcers on his fingers and toes.
- He can't see clearly and gets blurry eyes.
- He experiences erectile dysfunction.

[23] The Appellant says he has limitations with doing activities of daily living. This includes household chores and grocery shopping. He says he relies on his wife to help him get to the washroom because of his poor physical strength.

[24] The Appellant says his health was generally okay until 2013. He explained that after his lower back injury in 2002, he did light duties until the business closed. Then, he worked as a caregiver. He says his diabetes was controlled and his general health was okay. He stopped working because his employer died. Next, he worked as a computer programmer and a teaching assistant. Again, he says his health was okay.

[25] The Appellant says he doesn't think he could have worked from around 2013. Around that time, he had decided to return to school and upgrade his education. He was 95% done with his master's program when he was framed in 2013.<sup>8</sup> After that, his blood pressure, diabetes, heart health, and mental health got worse.

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<sup>8</sup> Details about the Appellant's charges and legal history can be found at GD2-63 to 65.

– **What the Appellant’s witness says about his functional limitations**

[26] The Appellant’s wife testified at the hearing. She says many of the Appellant’s limitations started in 2013 and 2014, after she says he was framed for a crime he didn’t commit. Her evidence was consistent with the Appellant’s evidence.

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

[27] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work no later than December 31, 2014.<sup>9</sup>

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

[29] I considered what the medical evidence says about the Appellant’s back pain.

[30] I find the medical evidence shows Appellant likely had limitations from his back pain from when he got injured in 2001. However, his limitations weren’t continuous.

[31] The medical evidence shows the Appellant had pain in his lower back after a workplace injury in 2001. Because of his pain: <sup>10</sup>

- He could not lift heavy items.
- He was to avoid aggravating activities.
- He also was to stay in comfortable positions.
- However, he could return to work doing light duties.

[32] The Minister says although the Appellant said he had a relapse of his back pain in 2014, there is no evidence to support this statement.<sup>11</sup>

[33] I agree. There isn’t medical evidence included with the file showing ongoing limitations with the Appellant’s back pain from 2002 to his minimum qualifying period.

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<sup>9</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>10</sup> See GD2-27 to 31 and GD2-42 to 50.

<sup>11</sup> See GD7.

[34] I considered what the medical evidence says about the Appellant's heart.

[35] I find the medical evidence shows the Appellant likely had chest pain. But, these limitations weren't continuously affecting his ability to work. The evidence shows: <sup>12</sup>

- He went to the hospital in 2012.<sup>13</sup>
- In January 2015, Dr. Hailu (family doctor) said he had some chest pain. He went to the ER and the cardiac investigations were all fine.
- In May 2016, he felt right-sided chest pain, but his pain stopped.
- In November 2018, Dr. Hailu said the Appellant had tachycardia.
- At the hearing, he showed me his heart medication that expired in 2014.

[36] I considered what the medical evidence says about the Appellant's depression and anxiety. The medical evidence shows: <sup>14</sup>

- He had work related stress in March 2013.
- From January 2015 to September 2016, Dr. Hailu said the Appellant wasn't feeling down, depressed, or had a loss of interest.
- In October 2016, he started feeling a loss of interest, and felt down and depressed. This continued in 2017.
- From November 2017 to March 2022, there were no reported symptoms of depression and anxiety.

[37] I asked the Appellant about why he didn't talk to a doctor about this depression and anxiety. He explained that in Chinese culture, people do not want others to know about their mental health. So, they keep the information private.

[38] The Appellant's explanation is reasonable. However, there is a significant gap between when his symptoms were first reported and when his symptoms were next

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<sup>12</sup> See GD2-169, GD2-172, and GD2-178.

<sup>13</sup> The Appellant said he had a heart attack and had to go to the hospital. He also said he got heart medication before the end of 2014. He showed it to me at the hearing.

<sup>14</sup> See GD2-160 to 161, GD2-173 to 174, GD2-180, GD2-205, and GD2-217.

reported. There is also another significant gap between his experiences in 2016 to 2017 and when his symptoms were again reported in 2022.

[39] I considered what the medical evidence says about the Appellant's diabetes.

[40] I find the medical evidence shows the Appellant more than likely had limitations because of his poorly controlled diabetes by December 31, 2014. However, the ulcers he had on his feet and hands were not reported. And his vision changes began after his minimum qualifying period. The medical evidence shows:<sup>15</sup>

- He has had poorly controlled diabetes since 2005. His symptoms include fatigue, excessive urination, low energy, and poor concentration.
- Dr. Hailu didn't note any type of retinopathy (autonomic or painful) since April 2015. His foot exams were also normal.
- He started having diabetic macular changes in his right eye in 2021.

[41] I note the Appellant showed me a cream at the hearing for his diabetic ulcers with an expiry date of 2014.

[42] I considered what the medical evidence says about the Appellant's ability to work and capacity for work.

[43] The Minister said Dr. Hailu's evidence was filled out a year after December 31, 2014. It doesn't show what the Appellant's limitations were like by then.<sup>16</sup>

[44] I agree. There isn't medical evidence showing what the Appellant's capacity to work was by December 31, 2014. It shows:<sup>17</sup>

- In September 2017, Dr. Hailu said he was under a lot of stress representing himself at court. He needed accommodation so he could better prepare himself and control his conditions.

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<sup>15</sup> See GD2-71, GD2-160, GD2-169 to 174, and GD2-178 to 182.

<sup>16</sup> See GD7.

<sup>17</sup> See GD2-1-30, GD2-17 to 24, GD2-168, GD2-196 to 203, and GD2-205.



- In April 2022, Dr. Hailu said he could return to a job that would need retraining.
- In September 2022, he said the Appellant could not work for legal reasons.
- In December 2022 and March 2023, he said the Appellant could not work.

[45] Though Dr. Hailu says the Appellant can't work now, he wasn't treating the Appellant until January 2015. And, his evidence dated around them does not demonstrate a severe disability that would prevent the Appellant from all types of work by December 31, 2014.

[46] To summarize, I find the medical evidence supports some of what the Appellant says about his limitations by December 31, 2014. It shows:

- He had lower back pain in the past, but these limitations weren't continuous from 2002 to December 31, 2014.
- He had intermittent chest pain and an instance of tachycardia. However, these limitations weren't continuous and resolved.
- He felt stress around the legal proceedings of his assault case in 2013. However, his depression and anxiety symptoms were not continuous.
- He had poorly controlled diabetes but, there is no evidence of his ulcers being a continuous issue after 2014 and, his vision issues began after December 31, 2014.

[47] The Appellant may not be able to work now as his overall health has gotten worse but, I find he was able to do some type of suitable work with his limitations by December 31, 2014.

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

– **The Appellant's experience with treatment**

[49] To receive a disability pension, an appellant must follow medical advice.<sup>18</sup>

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<sup>18</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

[50] The Appellant follows medical advice. He treats his depression and anxiety with medication. He can't afford his diabetes medication, so he gets samples from Dr. Hailu when they are available.

– **The Appellant could work in the real world by December 31, 2014**

[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:

- 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.<sup>19</sup>

[53] I find the Appellant can work in the real world. He more than likely was still able to work as of December 31, 2014.

[54] The Appellant had positive qualities that would have helped him to find suitable work or retrain by December 31, 2014. Here is what I considered:

- He was 52 years old and had 13 years until the standard age of retirement.
- He has a language barrier for some complex statements, but, he can speak, read, and write in English.
- He has a good education – he almost completed his post-graduate degree.
- He has a good work history doing labour work, caregiving, computer programming, and as a teaching assistant.

[55] When I look at the Appellant's functional limitations alongside his personal characteristics, I find he likely could have done some type of suitable work by December

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<sup>19</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

31, 2014. I find the evidence shows he likely could have done lighter or modified physically demanding work. I also find that although he had stress with his case, his cognitive and emotional limitations may have allowed him to do suitable work.

– **The Appellant tried to find a suitable job**

[56] If the Appellant can work in the real world, he must show that he tried to find and keep a suitable job. He must also show his efforts weren't successful because of his medical conditions.<sup>20</sup> Finding and keeping a suitable job includes retraining or looking for a job he can do with his functional limitations.<sup>21</sup>

[57] The Appellant did try to work. But his efforts don't show that his disability gets in the way of earning a living.

[58] Before the Appellant was faced with criminal charges, he worked at various jobs with his conditions. There is no indication from the medical evidence or the Appellant's testimony that he was unable to work before March 2013.

[59] The Appellant says when he was faced with criminal charges, his life changed. He doesn't think he could work full-time. He doesn't think he could do any job properly. This is because of his heart failure, diabetes, low mood, and his inability to see clearly.

[60] I asked the Appellant if he had any legal reasons that would affect his ability to obtain and maintain work.

[61] The Appellant also said that during and after the trial he had restrictions that limited where he could go and what he could do.<sup>22</sup> He said his trial ended two and a half years after he was first charged in March 2013. I find these restrictions were likely in place for years after then and would have affected his ability to find suitable work by December 31, 2014.

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<sup>20</sup> See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

<sup>21</sup> See *Janzen v Canada (Attorney General)*, 2008 FCA 150.

<sup>22</sup> See GD2-219 to 221.

[62] The Appellant says he applied for many jobs. He only got one interview. In the interview, he was asked for his police record. He explained to the employer what happened with his charges. He didn't get a follow-up call after his explanation. He says he continued to apply for jobs after that, but he didn't get a call back.

[63] The Appellant says that even with his court mandated restrictions, he doesn't think he could do a suitable job because of his limitations.

[64] I acknowledge the Appellant may have felt stress because of his case and some limitations because of his diabetes. However, I don't find that he could not have done some type of suitable work by December 31, 2014, and continuously since then.

[65] The Appellant's attempts to obtain and maintain a suitable job don't show he was unsuccessful because of his **limitations**. He was unsuccessful because the prospective employer became aware of his legal case or because the employers didn't call him for an interview. And, even without the restrictions in place during and after his trial, I find the Appellant's limitations and work efforts don't show he could not do suitable work.

[66] So, I can't find that the Appellant had a severe disability by December 31, 2014.

## **Conclusion**

[67] I find 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.

[68] This means the appeal is dismissed.

Brianne Shalland-Bennett  
Member, General Division – Income Security Section