



Citation: *FB v Minister of Employment and Social Development*, 2024 SST 293

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

## Decision

**Appellant:** F. B.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated May 17, 2023 (issued by  
Service Canada)

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**Tribunal member:** James Beaton

**Type of hearing:** Videoconference

**Hearing date:** March 18, 2024

**Hearing participants:** Appellant  
Appellant's witness

**Decision date:** March 20, 2024

**File number:** GP-23-1409

## Decision

[1] The appeal is allowed.

[2] The Appellant, F. B., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of July 2021. This decision explains why I am allowing the appeal.

## Overview

[3] The Appellant is 57 years old. In 1986, he completed vehicle technician training with the Canadian Armed Forces. After working in a factory and in construction, he retrained to do a sedentary job that would be better for his back and knees. He completed a business administration diploma in 1994 and started working in an office.<sup>1</sup>

[4] In October 2005, the Appellant was in a car accident. He returned to work in January 2006 but developed symptoms of post-traumatic stress disorder (PTSD) that led him to leave work again in April 2007.<sup>2</sup> He had a very traumatic childhood, which might also have led to the development of PTSD.<sup>3</sup>

[5] From 2008 to 2012, he ran his own “business” refurbishing computers and donating them to veterans and low-income families. This endeavour was purely voluntary and didn’t generate an income. He did it to feel useful.<sup>4</sup>

[6] In 2015, he was diagnosed with and treated for Hodgkin’s lymphoma (a rare type of cancer).<sup>5</sup>

[7] In 2020 and 2021, he connected with an agency that helps people with disabilities to re-enter the workforce. Completion of the program was delayed by the Covid-19 pandemic. Eventually, in July 2021, he took a work placement as a customer

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<sup>1</sup> See GD2-66, 67, and the hearing recording.

<sup>2</sup> See GD2-189. The Appellant’s mention of working in November 2009 (GD1-8 to 11) appears to be an error. His Record of Earnings (GD7-18) shows no earnings in 2009.

<sup>3</sup> See GD1-74 to 80 and 91 to 96.

<sup>4</sup> See the hearing recording.

<sup>5</sup> See GD1-8 to 11 and 87 to 90.

service representative. Unfortunately, his PTSD got worse and he stopped working in September 2021.<sup>6</sup> He hasn't worked since then.

[8] The Appellant applied for a CPP disability pension on June 10, 2022. The Minister of Employment and Social Development refused his application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[9] The Minister says there isn't enough medical evidence to support that the Appellant was disabled continuously from December 31, 2009 (the last day he could qualify for a disability pension), to the present. The Minister argues that the Appellant's volunteer efforts show work capacity.

[10] The Appellant acknowledges that there are some periods for which he can't produce medical evidence, but he says those gaps don't detract from his disability. He doesn't think that his volunteering shows work capacity.

[11] I agree with the Appellant.

## What the Appellant must prove

[12] For the Appellant to succeed, he must prove he has a disability that was severe and prolonged by December 31, 2009, and continuously since then. This date is based on his contributions to the CPP.<sup>7</sup>

[13] The *Canada Pension Plan* defines "severe" and "prolonged."

[14] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.<sup>8</sup> This means I must look at all of the Appellant's medical conditions together to see what effect they have on his ability to work. I must also look at his background (including his age, level of education, language abilities, and past work and life experience). This is so I can get a realistic or "real world" picture

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<sup>6</sup> See GD2-145, 146, 165, and 255.

<sup>7</sup> See GD7-18 and section 44(2) of the *Canada Pension Plan*.

<sup>8</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

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.

[15] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.<sup>9</sup> 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.

[16] The Appellant must prove he has a severe and prolonged disability. He must prove this on a balance of probabilities. This means he must show that it is more likely than not he is disabled.

## **Matters I have to consider first**

### **I allowed the Appellant's wife to testify**

[17] I allowed the Appellant's wife to testify even though the Appellant didn't tell the Tribunal that he wanted her to testify until his deadline to do so had passed. It was in the interests of justice to allow her to testify.<sup>10</sup> The Minister didn't attend the hearing and didn't object to her testifying.

## **Reasons for my decision**

[18] I find that the Appellant had a severe and prolonged disability as of April 2007, and continuously since then. 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?**

[19] The Appellant's disability was severe by April 2007. I reached this finding by considering several factors. I explain these factors below.

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<sup>9</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

<sup>10</sup> See sections 8(4) and 41(1) of the *Social Security Tribunal Rules of Procedure*.

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

[20] The Appellant has PTSD as well as longstanding back and knee pain. However, I can’t focus on his diagnoses. Instead, I must focus on whether he has functional limitations that got in the way of him earning a living by December 31, 2009. When I do this, I must 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 had functional limitations by April 2007.

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

[22] The Appellant says his medical conditions have resulted in functional limitations that affected his ability to work by April 2007.<sup>12</sup>

[23] He says he injured his back and knees while doing physical jobs many years ago. He retrained to do sedentary work. His back and knee issues persisted, though. Now he uses a cane, a back brace, and (sometimes) knee braces. It is difficult for him to kneel and bend.

[24] He says the 2005 accident caused PTSD. He returned to work in January 2006, but the symptoms became too much for him to handle, and he left in April 2007. In his application, he described his limitations in great detail. He rated as “poor” his ability to handle change, ask for help from coworkers, deal with strangers, control his temper, manage anxiety, and be in public places. He easily loses track of what he is doing if he is interrupted. If someone startles him, he panics and it takes him a long time to calm down. He struggles to make decisions and learn new things.

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<sup>11</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81; *Klabouch v Canada (Attorney General)*, 2008 FCA 33; and *Bungay v Canada (Attorney General)*, 2011 FCA 47.

<sup>12</sup> What the Appellant says about his limitations is on the hearing recording and at GD1-8 to 11 and GD2-20, 55 to 92, 145, and 146.

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

[25] The Appellant must provide some medical evidence to support that his functional limitations affected his ability to work.<sup>13</sup> Although there are gaps in the medical evidence, the evidence that I have is generally consistent with what the Appellant says. I will discuss the medical evidence by grouping it into time periods.

– **1997 to 2001**

[26] The medical evidence from this period shows that the Appellant had low back pain resulting from a series of back injuries. His right knee was tender. He took painkillers and saw a neurologist, who supported the Appellant's decision to pursue sedentary work. In May 2001, he attended a pain clinic. He began a job as a project manager for a defence construction company in 2002.<sup>14</sup> Between May 2001 and the accident in October 2005, there is no medical evidence, suggesting that the Appellant coped well with his physical limitations while doing that job.

– **2005 to 2009**

[27] The medical evidence from this period shows the significant impact of the car accident on the Appellant. Ms. Wardrop (a social worker) and Dr. Hutchison (a psychologist) documented impaired sleep and focus, irritability, hypervigilance, and poor emotional control. Dr. Jordan (a family doctor) saw the Appellant regularly and recorded similar symptoms, including nightmares, flashbacks, fatigue, anxiety, and depression. Just a few months after the accident, Dr. Haslam (a psychiatrist) diagnosed him with PTSD, depression, and panic episodes.<sup>15</sup>

[28] A few psychiatrists completed independent evaluations of the Appellant:

- In January 2009, Dr. Waisman found that the Appellant's focus and memory were objectively good and that he didn't meet the criteria for depression,

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<sup>13</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>14</sup> See GD2-170 to 182 and the hearing recording.

<sup>15</sup> Ms. Wardrop's notes are at GD1-81 to 84. Dr. Hutchison's notes are at GD1-26 to 28. Dr. Jordan's notes are at GD1-29 to 32. Dr. Haslam's notes are at GD1-66 to 69.

anxiety, panic attacks or social phobia. He concluded that the Appellant did have limitations but that they weren't disabling.<sup>16</sup>

- In August 2009, Dr. Iezzi diagnosed the Appellant with depression and complex PTSD. He wrote, "[f]rom a vocational perspective and in line with a number of other opinions, the extent of [his] psychological stress would preclude him from being able to return to work in his previous occupation or in any other occupation on a full-time or part-time basis. He has been functional in his volunteer activities when done in a paced and low stress manner, but this would not represent an actual return to work potential."<sup>17</sup>
- In October 2009, Dr. Mount wrote that the Appellant was better able to manage his triggers, was less irritable, and was less depressed.<sup>18</sup>

[29] These evaluations all support that the Appellant had limitations to varying degrees. To the extent that they differ in their conclusions, I prefer Dr. Iezzi's report because it is most consistent with the findings of the healthcare providers who treated the Appellant on an ongoing basis. Furthermore, the medical evidence reveals that when the Appellant experienced improvement in his symptoms, it was inevitably followed by a worsening of his condition. And when he seemed to improve, that improvement was considered fragile:

- In April 2008, Dr. Hutchison wrote, "although there have been some positive changes over the past year, I do not see enough change to make it likely that a return to work will be successful. It would be my concern that a return to work may have a detrimental effect on [his] psychological condition."<sup>19</sup>
- In July 2008, Dr. Jordan wrote, "[p]eriodically he gets symptom improvement which is subsequently followed by exacerbations that are triggered by one sort of stress or another." Dr. Jordan advised against the Appellant returning to the workforce and wrote that the Appellant wasn't trying to avoid work.<sup>20</sup>

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<sup>16</sup> See GD2-221 to 233.

<sup>17</sup> See GD1-55 to 65.

<sup>18</sup> See GD1-33 to 52.

<sup>19</sup> See GD1-26 to 28.

<sup>20</sup> See GD1-29 to 32.

- In November 2009, Ms. Smith (a social worker) commented that the Appellant's volunteer work "began as a positive and healthy experience" but became "overwhelming and draining. This pattern seems to be repetitive in his life and plays a significant role both in his instability and emotional dysregulation." She gave a guarded prognosis.<sup>21</sup>

– **2010 to 2015**

[30] Apart from diagnostic testing related to Hodgkin's lymphoma in 2015,<sup>22</sup> the medical evidence from this period is limited to a list of appointments. The list shows that the Appellant saw a social worker or psychiatrist until 2013.<sup>23</sup>

[31] The Minister says a list of appointments isn't enough to satisfy the legal requirement for medical evidence. I am satisfied that the list of appointments, together with the other medical evidence, fulfils the Appellant's obligation to provide medical evidence. I can rely on his testimony to fill in gaps in the medical evidence.<sup>24</sup>

[32] I found the Appellant to be a credible witness who testified in a direct and detailed manner. I accept his explanation that, by 2013, he had exhausted the benefits of treatment. Put another way, he wasn't likely to derive further benefit from continued therapy.

[33] I also note that the Appellant had no family doctor from 2012 to 2015. He had moved to a more remote area of Ontario. He had to go on a waiting list to become a patient of one of the two family doctors in the area.<sup>25</sup>

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<sup>21</sup> See GD1-53 and 54.

<sup>22</sup> See GD1-87 to 90.

<sup>23</sup> See GD1-16 to 25. He also had one psychiatry appointment in 2015.

<sup>24</sup> See *NS v Minister (Employment and Social Development)*, 2022 SST 96.

<sup>25</sup> See GD2-145 and 146, and the hearing recording.



– **2016 to 2020**

[34] Dr. Brown became the Appellant's family doctor in August 2016. She wrote in a June 2022 medical report that the Appellant had displayed PTSD symptoms for the past several years, even before he tried working in 2021.<sup>26</sup>

– **2021 to the present**

[35] In September 2021, Dr. Brown excused the Appellant from work for three months due to worsening PTSD symptoms that coincided with his return to the workforce in July of that year. At the same time, he started going to regular therapy again.<sup>27</sup>

[36] Dr. Brown endorsed a diagnosis of complex PTSD resulting in anxiety attacks, hypervigilance, emotional reactivity, poor focus, and a poor ability to interact with other people. She also confirmed that the Appellant could not sit, stand or walk for very long due to back and knee pain.<sup>28</sup>

– **Conclusions about the Appellant's functional limitations**

[37] The medical evidence supports that the Appellant's limitations prevented him from working as a project manager by April 2007, when he last did that job. He was easily startled at work, exhibited a poor memory and poor focus, and made mistakes.<sup>29</sup> Gaps in the medical evidence are explained by a lack of access to a family doctor and the fact that the Appellant had exhausted treatment for his mental health by 2013.

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

– **The Appellant followed medical advice**

[39] To receive a disability pension, an appellant must follow medical advice.<sup>30</sup> The Appellant followed medical advice. The Minister doesn't dispute this. He pursued both

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<sup>26</sup> See GD2-142, 144, and 155 to 163.

<sup>27</sup> See GD1-70, 71, and 86; and GD3-2.

<sup>28</sup> See GD2-155 to 163.

<sup>29</sup> See GD2-189. The Appellant was self-medicating with cough syrup during this time, but it isn't clear that this contributed to his work performance (GD1-39). The results of other attempts to volunteer and work (when he was no longer self-medicating) indicate that the overuse of cough syrup was not the cause of his poor performance. I discuss these other volunteer and work efforts later in my decision.

<sup>30</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

conservative and invasive forms of treatment for back pain in the 1990s.<sup>31</sup> After the accident, he tried medications and did many sessions of individual and group therapy. I see no indication that he ever refused treatment.

[40] 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.<sup>32</sup>

– **The Appellant can't work in the real world**

[41] 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, education, language abilities, and work and life experience. These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say he can work.<sup>33</sup>

[42] These factors suggest that the Appellant **could** work. He was only 40 years old in April 2007. He was fluent in English, with a diploma in business administration, and a diverse work history that included working for the Canadian Armed Forces, in a factory, in construction, and in various office jobs.<sup>34</sup>

[43] Unfortunately, these factors don't overcome his limitations. He can't do a physical job because of longstanding back and knee pain. That is why he retrained for sedentary work. But he can't do a sedentary job now either. His limitations are severe. He is easily startled. He can't regulate his emotions in order to interact professionally with coworkers or customers. Indeed, between January 2006 and April 2007, he returned to work with fewer responsibilities. He still became increasingly anxious and emotional. For example, he started crying in his manager's office when she identified an error in his work.<sup>35</sup>

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<sup>31</sup> See GD2-177, 178, and 182.

<sup>32</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>33</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

<sup>34</sup> See GD2-67 and the hearing recording.

<sup>35</sup> See the hearing recording. See also GD2-189.

– **The Appellant’s volunteering doesn’t show work capacity**

[44] The Minister argues that the Appellant’s volunteer efforts from 2008 to 2012 show work capacity.<sup>36</sup> The Minister points to Dr. Mount’s report in which he referenced a June 2009 psychovocational assessment. Apparently, the assessment (which is not in the file) recommended the Appellant for sedentary, repetitive, predictable, and stress-free work. Dr. Mount added his own thoughts: “[The Appellant’s] ability to initiate, organize, and implement [his volunteer business] is reason for some optimism that **under proper guidance**, in a **graduated fashion**, he **might** enjoy further success that **could** lead to employability in the future” (my emphasis).<sup>37</sup>

[45] I disagree with the Minister, for four reasons. First, there is no real-world job that is completely predictable or stress-free. Second, Dr. Mount’s opinion is couched in so many qualifiers that I can’t take it as a serious assessment of work capacity. Third, the Appellant was only able to volunteer because he could control how and when he did it. He didn’t have to report to anyone or meet any productivity targets. He did much of the work alone or with close friends from his military days.<sup>38</sup> Fourth, Ms. Smith wrote that volunteering actually made the Appellant’s PTSD worse.<sup>39</sup>

[46] Therefore, I find that the Appellant’s disability was severe as of April 2007.

**Was the Appellant’s disability prolonged?**

[47] The Appellant’s disability was prolonged by April 2007.

[48] The Appellant’s back pain started in the 1990s. His mental health deteriorated after the October 2005 accident. Those conditions have continued since then.<sup>40</sup> I acknowledge that the Appellant’s PTSD symptoms did improve and stabilize between

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<sup>36</sup> The Appellant testified that he began volunteering around 2008. His volunteering wound down in 2011 and 2012. In his written submissions, he said he volunteered until October 2014, when symptoms of Hodgkin’s lymphoma began (GD1-8 to 11). It may be that he occasionally volunteered after 2012. But I find that the bulk of his volunteering happened between 2008 and 2012, based on his testimony.

<sup>37</sup> See GD1-33 to 52.

<sup>38</sup> See GD6-2 to 6 and the hearing recording.

<sup>39</sup> See GD1-53 and 54.

<sup>40</sup> See *Canada (Attorney General) v Angell*, 2020 FC 1093; and *Brennan v Canada (Attorney General)*, 2011 FCA 318.

2013 and 2020.<sup>41</sup> However, I find that such stability was the result of many years of treatment and was only sustainable as long as the Appellant **did not work**. His attempts to return to work support this conclusion.

– **The Appellant’s attempts to work prove that his disability was prolonged**

[49] I have already discussed the Appellant’s failed attempt to work from January 2006 to April 2007, as well as his volunteer efforts. He made other attempts to volunteer or return to work, which were unsuccessful:

- Around 2009, he briefly tried teaching a computer class. This made his PTSD symptoms worse.<sup>42</sup>
- In 2011, the Appellant tried delivering flyers door to door for six weeks. He found this too painful and stopped.<sup>43</sup>
- In August 2021, following completion of a program that helps people with disabilities to re-enter the workforce, the Appellant started a job as a customer service representative. He was required to work in the office 1 out of every 10 days. The rest of the time, he could work from home. He found daily deadlines stressful. He became angry and anxious. During an in-office workday, he was startled by a colleague and two fire drills. The events of that day sent him into a downward spiral. He stopped working in September 2021 with his family doctor’s support and started going to therapy again.<sup>44</sup>

[50] The Appellant’s efforts show that his medical conditions have kept him from working since April 2007.<sup>45</sup> I believe that his mental state was so fragile that any return to the workforce was bound to result in his condition worsening. His healthcare providers predicted exactly this scenario. Even if he had tried returning to work sometime between 2013 and 2020, when his symptoms were less prominent, the

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<sup>41</sup> In his application, the Appellant wrote that his symptoms during this period were “few, though present, and much less severe.” They were worse during periods of stress. See GD2-87.

<sup>42</sup> See the hearing recording.

<sup>43</sup> See GD2-145 and 146.

<sup>44</sup> See the hearing recording; GD1-70 to 73 and 86; and GD2-145, 146, and 155 to 163.

<sup>45</sup> See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

outcome likely would have been the same. On the surface, the Appellant's disability might have improved for several years—but only as long as he didn't work.

[51] The Appellant's conditions will more than likely continue indefinitely. Dr. Brown isn't sure if he will be able to work again.<sup>46</sup> Given the Appellant's long history of dealing with his medical conditions, her skepticism is warranted. With continued treatment, he might improve to his pre-2021 state. But that doesn't mean he could work. His mental state has been fragile ever since the accident. It isn't reasonable to expect him to keep trying to work when multiple, concerted efforts to do so have failed.

[52] I find that the Appellant's disability was prolonged as of April 2007.

### **When payments start**

[53] The Appellant had a severe and prolonged disability in April 2007. 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. After that, there is a four-month waiting period before payments start.<sup>47</sup>

[54] The Minister received the Appellant's application in June 2022. That means he is considered to have become disabled in March 2021. Payments of his pension start as of July 2021.

### **Conclusion**

[55] I find that the Appellant is eligible for a CPP disability pension because his disability was severe and prolonged by April 2007. This means the appeal is allowed.

James Beaton

Member, General Division – Income Security Section

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<sup>46</sup> See GD2-155 to 163.

<sup>47</sup> See sections 42(2)(b) and 69 of the *Canada Pension Plan*.