Citation: *DC v Minister of Employment and Social Development*, 2024 SST 306

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	D. C.
Representative:	C. Y.
Respondent:	Minister of Employment and Social Development
Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated October 31, 2022 (issued by Service Canada)
Tribunal member:	Jackie Laidlaw
Type of hearing:	Teleconference
Hearing date:	March 19, 2024
Hearing participants:	Appellant Appellant's representative
Decision date:	March 21, 2024
File number:	GP-23-202

Decision

[1] The appeal is dismissed.

[2] The Appellant, D. C., 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 almost 65 years old. He has a university degree. He worked for almost 25 years as a project manager. In 2015 he began to have symptoms of colitis. By 2019, he had lost 20 lbs. His work had become extremely stressful. Contracts were cancelled, layoffs were taking place and the company was in turmoil. The stress exacerbated his condition. He was diagnosed with lymphocytic colitis, which is stress related. He stopped work in August 2019. He began taking steroids for his condition and has been stable since 2021.

[4] The Appellant applied for a CPP disability pension on February 1, 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 Appellant submits:

a) that his family physician has confirmed on four occasions that he is unfit to return to any type of employment and significant weight should be given to his primary treating physician.

b) that he has been compliant with treatment.

c) that he would not be able to work in the real world due to his age.

d) that he has a good work ethic and would not sit idly at home if he could possibly work.

[6] The Minister acknowledges Appellant's symptoms were related to his previous, stressful job. The Minister also submits the following:

a) He has been managed conservatively with medication for some time, suggesting an efficacy in the management of his condition.

b) The evidence on file does not show any severe pathology or impairment that would have precluded him from performing all suitable work within his limitations.

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, 2022. This is called the Minimum Qualifying Period (MQP). This date is based on his CPP contributions.[1] He must also prove that he continues to be disabled.[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 capable regularly of doing some kind of work that he could earn a living from, then he isn't entitled to a disability pension.

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[1] 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 GD 2-6.
[2] 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.
[3] 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.

[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 he has to show it is more likely than not that he is disabled.

Matters I have to consider first

The Appellant asked me to reschedule (adjourn) the hearing

[14] The Appellant asked me to reschedule the hearing for a few weeks because his representative was away until March 14, 2024 or later.[5]

[15] I agreed to reschedule the hearing for March 19, 2024. I can only reschedule a hearing if it is necessary for a fair hearing.[6] I decided that the hearing would not be fair unless it was rescheduled.

The Minister asked me for an extension of time to file submissions

[16] The Minister asked me for an additional 75 days in order to get more information from the Appellant's family physician.[7]

[17] I decided not to allow the extension as the Appellant's MQP was in the past, in 2022, and there was evidence from the family doctor up to 2022. Providing an additional 75 days for the Minister to prepare would delay the hearing.

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[4] Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.
[5] See GD 7.
[6] Section 43(3) of the *Social Security Tribunal Rules of Procedure* sets out this rule.
[7] See GD 4.

The Appellant left the hearing

[18] The Appellant phoned into the teleconference hearing while driving in his car. I asked him to pull over while he is in the hearing. He stated he did, however I have no way of knowing if that was the case. He mentioned he had “double-booked” his time and was on to another appointment. His representative was present. I was informed he would like to speed up this hearing as he had already gone over all this information in the past. His representative confirmed he meant with his insurance company.

[19] Eighteen minutes into the hearing the Appellant said he was frustrated with the questions. He told me his representative can answer and he hung up.

[20] I had the chance in those 18 minutes to ask the Appellant a few questions which shed light on his condition and his ability to work. I gave the representative the opportunity to provide her submissions, which she did. The representative also agreed that I would write my decision based on his testimony, and the documentary evidence.

[21] I feel the Appellant had been given numerous opportunities to be available for his hearing, as the final date had been rescheduled at his request. It is up to the Appellant to participate in his own hearing, and not up to his representative to provide testimony on his behalf. The Appellant participated as much as he felt he needed to. The Appellant made it clear this was the extent of his involvement in his hearing.

Reasons for my decision

[22] I find that the Appellant hasn’t proven he had a severe and prolonged disability by December 31, 2022. 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?

[23] 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 at his previous job**

[24] The Appellant has lymphocytic colitis. He also states he has Barrett's esophagus, but it does not affect his ability to work. His representative confirmed he was not claiming anxiety, or any other mental health condition prevented him from working.

[25] However, I can't focus on the Appellant's diagnosis.[8] Instead, I must focus on whether he has functional limitations that got in the way of him earning a living.[9] 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.[10]

[26] I find that the Appellant has functional limitations that affected his ability to work at his previous job.

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

[27] The Appellant says that his medical condition has resulted in functional limitations that affect his ability to work. He says the colitis symptoms were:

(i) abdominal pain and cramping,

(ii) severe frequent and unpredictable watery diarrhea, and

(iii) a 20 lb. weight loss.

[28] The Appellant also said the following:

- The form of colitis has, the lymphocytic colitis, is not as bad as the regular colitis. Lymphocytic colitis is related to stress.

- When he stays on his drugs and avoids a stressful work environment his condition is managed.

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[8] See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.
[9] See *Klabouch v Canada (Social Development)*, 2008 FCA 33.
[10] See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- He is also permanently taking Tecta for acid reflux; however, this does not affect his ability to work.

- When he was at work, in a very stressful period of downsizing, he first noticed his weight loss. After a year this was diagnosed as lymphocytic colitis. The stress at work caused a severe exacerbation of colitis. He took a month leave of absence. He returned to work and eventually had a second exacerbation of colitis in August 2019. This was the last time he had a major issue with colitis.

[29] In August 2019, the Appellant stopped working altogether and went on long-term disability (LTD). He stated his work environment was not conducive to him keeping his colitis under control.

[30] He is taking steroids permanently for his colitis.

[31] His gastroenterologist, Dr. Andrea Faris, told him to try to stop the steroids and see what happens. The Appellant was not clear on dates, but stated it was three or four years ago. She then told him, at least three years ago to remain on the steroids permanently. Since then, his condition has been stable.

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

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

[33] The Appellant followed medical advice.[11] Dr. Faris reported to the insurance company in 2021 that the Appellant's co-operation in the treatment is excellent.[12] I have no reason to question this opinion.

[34] The Appellant's family physician, Dr. Dawson, indicated in an insurance report on November 18, 2019 that the symptoms appeared in July 2019. He also reported that the Appellant had previous flares of lymphocytic colitis in September 2015, February 2016, May 2016, March 2019, and August 2019. The stress at work caused a flare from early summer 2019 (the March 2019 flare). Dr. Dawson noted at the time he was unable to

[11] See *Sharma v Canada (Attorney General)*, 2018 FCA 48.
[12] See GD 2-91 January 6, 2021.

work, though his conditions had improved since he stopped working and began taking Entocort (Budesonide). [13]

[35] Dr. Dawson also noted that the Appellant cannot return to part-time or modified work because he was off work until a specialist consultation with gastroenterologist in March 2020. They would review the possibility of a return to work after that.

[36] On January 24, 2020, prior to meeting the gastroenterologist, Dr. Dawson again noted the Appellant's symptoms had partially settled. His note confirms the Appellant's testimony that he tried to go off the steroids which caused his symptoms to flare, and he had to go back on the medication. The steroids were starting to help with diarrhea, but it was too early to determine the effectiveness. Dr. Dawson noted this all impacts his ability to work.[14] I accept Dr. Dawsons opinion at this point the Appellant could not return to work because they had not completely stabilized his condition, he had not had the specialist consultation, and the environment at work was still stressful.

[37] The report from Dr. Faris to Desjardin, the insurance company on January 6, 2021 indicates his symptoms are moderate and his conditions are stable and managed with Entocort and Tecta.[15]

[38] The medical evidence supports that the Appellant's colitis prevented him from working at his stressful job, but the condition is managed when he remains on Entocort.

[39] However, the Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work at any job no later than December 31, 2022.[16]

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[13] See GD 2-80.
[14] See GD 2-86.
[15] See GD 2-91.
[16] See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

– **The Appellant had a capacity to work**

[40] Dr. Dawson wrote a note on July 11, 2022 indicating simply that his longtime patient suffers from a prolonged and severe medical condition which precludes him from working at any job.[17]

[41] I do not put much weight on this note. Dr. Dawson has noted as far back as January 2020 that his symptoms had partially settled with the steroids, and was waiting for the consultation with Dr. Faris before reviewing the possibility of a return to work. This would mean Dr. Dawson would defer to Dr. Faris. A few months before this January 2020 opinion, in November 2019, Dr. Dawson felt the Appellant was possibly fit for a low stress job environment.[18]

[42] Dr. Faris indicated by January 2021, his condition was stable with the steroids. By this point he was on steroids permanently. This implies his condition would remain stable. As his condition was now stable, he would be able to consider some form of work in a low stress environment.

[43] I accept that the Appellant could not return to his previous job. The company was laying off employees and selling off it's trucks because contracts were cancelled. This caused a very stressful environment for the Appellant which, in turn, caused his colitis. As his colitis is stress-related, it is reasonable he would not be able to return to a stressful job.

[44] However, I agree with the Minister that there is no evidence to support a severe limitation preventing him from doing other work.

[45] 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.[19]

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[17] See GD 2-18.
[18] See GD 2-85.
[19] See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

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

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

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

[47] 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.[20]

[48] The Appellant has asked that I put weight on his age, which was 63 at the time of his MQP. I agree his age would present a barrier to finding work. He has a university degree and over 20 years experience as a project manager. I agree with the Minister both his education and past work experiences would be an asset to finding employment.

[49] However, it is not just these factors which I must assess. There must be a severe disability that would prevent an appellant from working in conjunction with these factors. There is not. The Appellant does have lymphocytic colitis which is brought on by stress. As the Appellant himself stated, it is not as bad as the other colitis, and only stress related.

[50] He stopped work because of his colitis. He left the stressful work environment. Once the colitis was stabilized by 2021 and he was out of the stressful environment, it would be reasonable he could try to return to some type of work.

– **The Appellant did not try to work once his condition stabilized**

[51] 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

[20] See *Villani v Canada (Attorney General)*, 2001 FCA 248.

medical conditions.[21] Finding and keeping a suitable job includes retraining or looking for a job he can do with his functional limitations.[22]

[52] There are many jobs which would not require any further training. As well, not all jobs are stressful.

[53] The Appellant argued that he has worked a long time, and would not stay off work if he didn't have to. I do not believe the Appellant is a malingerer. However, he was, and is still on long-term disability benefits and it is presumed his job no longer exists. Both these factors would make it easier for him to remain on LTD until age 65. Nonetheless, his argument does not alter the determination that he has a capacity to work. The rules that apply to his appeal say he has to show he made efforts to return to any work, not just his previous job, and those efforts were not successful because of his disability.

[54] I find that the Appellant can work in the real world. The Appellant didn't try to find and keep a suitable job

[55] Therefore, I can't find he had a severe disability by December 31, 2022.

Conclusion

[56] I find that 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.

[57] This means the appeal is dismissed.

Jackie Laidlaw

Member, General Division – Income Security Section

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[21] See *Inclima v Canada (Attorney General)*, 2003 FCA 117.
[22] See *Janzen v Canada (Attorney General)*, 2008 FCA 150.