



Citation: *SK v Minister of Employment and Social Development*, 2024 SST 408

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

## Decision

**Appellant:** S. K.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated February 27, 2023 (issued  
by Service Canada)

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**Tribunal member:** Connie Dyck

**Type of hearing:** In Writing

**Decision date:** April 16, 2024

**File number:** GP-23-694

## Decision

[1] The appeal is dismissed.

[2] The Appellant, S. K., isn't eligible for a Canada Pension Plan (CPP) disability pension. This decision explains why I am dismissing the appeal.

## Overview

[3] The Appellant was 58 years old when he stopped working as a caregiver for his father in September 2021.

[4] The Appellant applied for a CPP disability pension on April 7, 2022.<sup>1</sup> 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 says an x-ray taken in 2008 shows that he had arthritis in his hip. In 2022, x-rays showed the arthritis was severe. He needed a hip replacement surgery in January 2023.

[6] The Minister says the medical evidence doesn't show the Appellant had functional limitations by December 31, 2017, that would prevent him from working.

## 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, 2017. In other words, no later than December 31,

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<sup>1</sup> GD2-33 to 51.

2017. This date is based on his CPP contributions.<sup>2</sup> He must also prove that he continues to be disabled.<sup>3</sup>

[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>4</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>5</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.

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<sup>2</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 GD2-17 to 18.

<sup>3</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.

<sup>4</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>5</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

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

### **I didn't accept late documents**

[14] The Minister submitted documents after the deadline. This was a contribution of earnings record. I didn't accept the late documents because they weren't new, and they could have been filed earlier. In fact, the document provided the same information that is already in the file.<sup>6</sup>

### **Reasons for my decision**

[15] I find that the Appellant hasn't proven he had a severe and prolonged disability by December 31, 2017.

### **Was the Appellant's disability severe?**

[16] The Appellant's disability wasn't severe by December 31, 2017. I reached this finding by considering several factors. I explain these factors below.

[17] The Appellant had osteoarthritis in his right hip.

[18] However, I can't focus on the Appellant's diagnosis.<sup>7</sup> Instead, I must focus on whether he has functional limitations that got in the way of him earning a living.<sup>8</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>9</sup>

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

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

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<sup>6</sup> GD2-8 to 12.

<sup>7</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>8</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>9</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- In 2008, an x-ray showed mild osteoarthritis in his right hip.<sup>10</sup> An x-ray taken in 2022, showed severe osteoarthritis. He felt he could no longer work because of this condition in December 2019.
- He was a full-time caregiver for his father from March 2011 to September 2021, when his father passed away.
- During the time he looked after his father, he was experiencing quite a bit of pain and discomfort as caring for a senior put more stress on his right hip joint.<sup>11</sup>

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

[20] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work no later than December 31, 2017.<sup>12</sup>

[21] Dr. Jeans said the Appellant had symptoms of osteoarthritis in his hip in 2007. Although there is no x-ray, the Appellant said he had an x-ray of his hip in 2008 that showed osteoarthritis. I have no reason to doubt him. However, the existence of a condition doesn’t mean someone is disabled. There must be medical evidence that shows the Appellant had functional limitations by December 31, 2017, that would prevent him from working.

[22] The medical evidence from January 2017 to 2020, doesn’t support that the Appellant had any functional limitations that would prevent him from working.

[23] Dr. Jeans (family doctor) described the Appellant’s medical history from January 2017 to December 2021.<sup>13</sup> She said the bulk of his visits during this time were for hypertension monitoring and management, and for treatment of plantar warts. In the spring of 2017, he also had two visits regarding palpitations he experienced and associated investigations. In 2018, he had treatment to remove a skin tag. Through

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<sup>10</sup> GD1-53.

<sup>11</sup> Gd1-14.

<sup>12</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>13</sup> GD2-86.

2020, he was seen several times for leg pains, which resolved with stopping statin medication.

[24] In December 2021, the Appellant told Dr. Jeans his chronic right hip pain had become progressively worse over the previous months.<sup>14</sup> However, this is several years after December 31, 2017, the date when the Appellant needed to be disabled.

[25] In April 2022, the moderate to severe symptoms were pain, decreased mobility, decreased range of motion and increased pain with walking. The Appellant used no medications as he had declined Tylenol which was recommended. Dr. Jeans said the Appellant was referred to an orthopedic surgeon. She didn't think he would be able to return to his prior occupation, even with hip replacement. This is because this was mostly restaurant work that involved physical tasks like bending, lifting, and twisting. Dr. Jeans said the Appellant's hip joint became a disability in 2019.

[26] The Appellant told Dr. Boudreau (orthopedic surgeon) that he had problems with his right hip for a number of years, but it started getting "really bad" in about 2019.<sup>15</sup> He said he was at a point where it was affecting his quality of life. Dr. Boudreau recommended total right hip replacement surgery.<sup>16</sup>

[27] The Appellant had a total right hip replacement in January 2023.<sup>17</sup>

[28] At a follow-up appointment in March 2023, Dr. Boudreau said the Appellant was doing well.<sup>18</sup> He had less pain than before the surgery. He had a reasonable range of motion. Dr. Boudreau cleared the Appellant to drive a car again.

[29] In April 2023, the Appellant told Dr. Boudreau he had no pain. He was walking without any aids and no limp.<sup>19</sup>

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<sup>14</sup> GD2-86.

<sup>15</sup> GD1-45.

<sup>16</sup> GD1-46.

<sup>17</sup> GD1-38.

<sup>18</sup> GD1-48.

<sup>19</sup> GD3-5.

[30] The medical evidence doesn't support the Appellant had functional limitations by December 31, 2017. I recognize the Appellant had functional limitations in 2019. This is when he said it affected his quality of life. This is also when Dr. Jeans said his hip joint became a disability. However, this is two years after the date by which the Appellant must be disabled.

[31] Further, the Appellant had a total right hip replacement in 2023. He no longer had pain or limitations with walking. This supports that the Appellant disability wasn't continuous.

– **The Appellant could work in the real world at and after December 31, 2017**

[32] 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

[33] 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>20</sup>

[34] I find that the Appellant can work in the real world. He was still able to work as of December 31, 2017.

[35] The Appellant was 55 years old in December 2017. His age may be a factor in him finding employment. But he has a grade 12 education, one year of university with a diploma in dining room services and bartending. Also, he was a partner in a restaurant from May 2002 to April 2014. This would provide him with transferable skills including customer service and business skills.

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<sup>20</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[36] I recognize Dr. Jeans said the Appellant's symptoms started in 2007. However, the Appellant was able to work with this condition for many years. His involvement with the restaurant didn't end until April 2014. And this was because the partnership dissolved.<sup>21</sup>

[37] 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 condition.<sup>22</sup> Finding and keeping a suitable job includes retraining or looking for a job he can do with his functional limitations.<sup>23</sup>

[38] The Appellant worked as a caregiver to his father from March 2011 to September 2021 after his father had a stroke. He described his work as the same as a personal support worker (PSW) working in a care home.<sup>24</sup> He took care of his father's meals, appointments, and helped him with daily hygiene on a full-time basis. From September 2013, he was paid \$400.00 per month for his work caring for his father.

[39] In this case, the Appellant was successful in finding a suitable job. He chose to be a full-time caregiver for his father. This job ended in September 2021, not because of a medical condition of the Appellant, but because his father passed away.<sup>25</sup>

[40] There is no evidence this was a benevolent employer situation. I recognize he provided care for a family member, but the Appellant said the work he did was the same as a PSW would do in a care home. This was a full-time job and there were expectations of care that would be the same for any other employee.

## Conclusion

[41] I find that the Appellant isn't eligible for a CPP disability pension because his disability wasn't severe by December 31, 2017, and continuously thereafter. Because I

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<sup>21</sup> GD2-45.

<sup>22</sup> See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

<sup>23</sup> See *Janzen v Canada (Attorney General)*, 2008 FCA 150.

<sup>24</sup> GD1-61.

<sup>25</sup> GD1-14.



have found that his disability wasn't severe, I didn't have to consider whether it was prolonged.

[42] This means the appeal is dismissed.

Connie Dyck  
Member, General Division – Income Security Section