



Citation: *AK v Minister of Employment and Social Development*, 2024 SST 436

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

## Decision

**Appellant:** A. K.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated May 23, 2023 (issued by  
Service Canada)

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**Tribunal member:** Selena Bateman

**Type of hearing:** Teleconference

**Hearing date:** April 18, 2024

**Hearing participant:** Appellant

**Decision date:** April 19, 2024

**File number:** GP-23-1454

## Decision

[1] The appeal is dismissed.

[2] The Appellant, A. 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 is 59 years old. She worked as a housecleaner. She bases her disability claim on fibromyalgia, anxiety, osteoarthritis, degenerative disc disease and pain. She last worked in December 2021.

[4] The Appellant applied for a CPP disability pension on March 21, 2022. The Minister of Employment and Social Development (Minister) refused her application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Appellant says that she is disabled from working any job. At the hearing she told me that she also bases her claim on a thyroid condition. She claims her disability began before the end of 2003 and has been continuous.

[6] The Minister argues that the evidence doesn't support a finding of disability. The Minister says that she worked for years after 2003. The Minister says that there isn't medical evidence in the file written by 2003 or even many years after.<sup>1</sup>

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<sup>1</sup> See GD12, 13, 15, and 18.

## What the Appellant must prove

[7] For the Appellant to succeed, she must prove she has a disability that was severe and prolonged by December 31, 2003. This date is based on her CPP contributions.<sup>2</sup> She must also prove that she 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] 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> 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.

[11] The Appellant has to prove she has a severe and prolonged disability on a balance of probabilities. This means she has to show it is more likely than not that she is disabled.

## Reasons for my decision

[12] I find that the Appellant hasn’t proven she had a severe and prolonged disability by December 31, 2003. I reached this decision by considering the following issue:

- Was the Appellant’s disability severe?

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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 GD12-2.

<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.

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

[13] 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 didn't affect her ability to work**

[14] I find that the Appellant doesn't have functional limitations that affected her ability to work by December 31, 2003.

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

[15] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work since 2003. She says:

- She had panic attacks that started in either the summer of 2003 or in 2004.<sup>6</sup> She was diagnosed with an anxiety disorder in the summer of 2003. She would be out of breath and needed medication to help her calm down.
- She had symptoms of a thyroid disorder in 2002. She says she was diagnosed with a thyroid disorder in 2003. She was weak, lost weight, couldn't sleep, had nausea and was shaky. She says she was prescribed Synthroid for this condition around 2008 and continues to take this medication.
- She had sciatica by 2003 which caused severe low back pain and difficulty with lifting.
- She had degenerative disc disease and arthritis causing pain and weakness by 2003.
- She had a rotator cuff injury and tendonitis by 2003, which cause pain and a lack of mobility in her right arm.

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<sup>6</sup> See GD9-1. At the hearing, the Appellant said she had panic attacks that started in 2003.

[16] The Appellant didn't file any medical evidence to support that her conditions were in existence by 2003. She says she had a different family doctor during that time. She didn't make any efforts to obtain her older medical records.

[17] The Appellant says she worked after the end of 2003. She says she worked until around 2021. She was self-employed and cleaned homes by herself. Her physical labour work contributed to how she feels today.

– **I didn't rely on the Appellant's testimony**

[18] The Appellant's testimony wasn't credible. Because of this, I preferred the medical evidence over the Appellant's testimony.

[19] The Appellant's testimony wasn't internally consistent and went against common sense. It didn't corroborate the available medical evidence. Her work history didn't support her testimony.

[20] I asked the Appellant to explain several discrepancies. The responses didn't enhance her credibility. For instance, when she applied for CPP disability she wrote that her disability began in December 2021<sup>7</sup>. At the hearing, she told me that her disability from her conditions began by 2003. When I asked her to explain how she had a rotator cuff injury and tendonitis by 2003 but no diagnosis or treatment for twenty years, she said she didn't know why.

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

[21] The Appellant must provide some medical evidence to support that her functional limitations affected her ability to work no later than December 31, 2003.<sup>8</sup>

[22] The available medical evidence doesn't support what the Appellant says.

[23] The omission of medical evidence during the relevant period is critical to the Appellant's claim. The appeal file doesn't contain medical evidence authored by the end

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<sup>7</sup> See GD2-31.

<sup>8</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

of 2003 or any medical evidence later that addresses her health by this time. The appeal file has medical evidence that addresses her recent health – from 2019 onward.

[24] The medical evidence in the file doesn't support that the Appellant had the medical conditions she says she had by 2003. The date of onset for each of her conditions began many years after 2003:

- she was diagnosed with osteoarthritis and degenerative disc disease in 2021.<sup>9</sup>
- In 2023 she was recently diagnosed with right hip osteoarthritis and right shoulder rotator cuff injury.<sup>10</sup>
- Her fibromyalgia symptoms began in 2018.<sup>11</sup>
- Her anxiety treatment began in 2020. No date of onset was listed.<sup>12</sup> No medical evidence suggests that she had an anxiety disorder by 2003.
- Her carpal tunnel symptoms began in 2020.<sup>13</sup>
- There is no mention of a thyroid disorder in her medical evidence. There is no medical evidence to support that she is prescribed medication for this condition.<sup>14</sup>

[25] I understand that the Appellant has many medical conditions now. She genuinely believes she is disabled. However, I can't consider her health now without her first establishing that she had a medical condition by the end of her coverage period.

[26] The medical evidence doesn't support that the Appellant's functional limitations affected her ability to work by the end of her minimum qualifying period. She hasn't proven she had a severe disability.

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<sup>9</sup> See GD2-107.

<sup>10</sup> See GD2-109.

<sup>11</sup> See GD2-114.

<sup>12</sup> See GD2-115.

<sup>13</sup> See GD2-116.

<sup>14</sup> See GD7-3 for the Appellant's current prescription list.

– **Why I didn't consider the Appellant's personal characteristics**

[27] When I am deciding whether a disability is severe, I usually have to consider an appellant's personal characteristics. Factors like age, level of education, language abilities, and past work and life experience, may affect whether an appellant can work in the real world.<sup>15</sup>

[28] But I didn't consider the Appellant's personal characteristics. This is because an appellant can't qualify for a disability pension based on their personal characteristics alone. There must still be medical evidence to support a finding of a disability.<sup>16</sup>

[29] In the Appellant's case, there isn't any medical evidence to support a finding of disability by December 31, 2003. Since there is no relevant medical evidence, there is no reason to consider her personal characteristics.

## **Conclusion**

[30] I find that the Appellant isn't eligible for a CPP disability pension because her disability wasn't severe. Because I have found that her disability wasn't severe, I didn't have to consider whether it was prolonged.

[31] This means the appeal is dismissed.

Selena Bateman

Member, General Division – Income Security Section

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<sup>15</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

<sup>16</sup> Section 42(2)(a) of the *Canada Pension Plan* says that a person is disabled only if they have a severe and prolonged **mental or physical disability**. See also *Villani v Canada (Attorney General)*, 2001 FCA 248 at paragraph 50, where the Court said that "medical evidence will still be needed..."