



Citation: *HI v Minister of Employment and Social Development*, 2024 SST 401

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: H. I.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated March 13, 2023 (issued by
Service Canada)

Tribunal member: Sarah Sheaves

Type of hearing: Videoconference

Hearing date: April 11, 2024

Hearing participant: Appellant

Decision date: April 17, 2024

File number: GP-23-1595

Decision

[1] The appeal is allowed.

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

Overview

[3] The Appellant is 58 years old. She has worked as a baker, a carpenter, and a security guard. She developed epicondylitis in her left elbow around 2011. In 2018, she experienced a sudden onset of rheumatoid arthritis affecting all her joints. Around 2020, she was also diagnosed with osteoarthritis affecting her neck and back. In March 2021 she was diagnosed with depression. She stopped working completely in May 2021.

[4] The Appellant applied for a CPP disability pension on January 28, 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 she tried to work for as long as she could. She changed jobs to try and stay employed, but her doctor told her to stop working. She says her functional limitations prevent her from working and her conditions are severe and prolonged.

[6] The Minister says there is no clear evidence diagnosing a severe medical condition. It argues the Appellant's conditions improved with medication and she was able to perform modified work as a security guard, which shows some work capacity. It says the Appellant's conditions aren't severe and prolonged.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2022. In other words, no later than December

31, 2022. This date is based on her CPP contributions.¹ She must also prove that she 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 her ability to work. I also have to look at her background (including her age, level of education, and past work and life experience). This is so I can get a realistic or “real world” picture of whether her disability is severe. If the Appellant is capable regularly of doing some kind of work that she could earn a living from, then she 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.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 she has a severe and prolonged disability. She has to prove this on a balance of probabilities. This means she has to show it is more likely than not that she is disabled.

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 GD2-58.

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.

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

Reasons for my decision

[14] I find that the Appellant had a severe and prolonged disability as of May 2021. She continues to be disabled. 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?

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

– The Appellant's functional limitations affected her ability to work

[16] The Appellant has:

- epicondylitis
- rheumatoid arthritis
- osteoarthritis
- depression

[17] However, I can't focus on the Appellant's diagnoses.⁵ Instead, I must focus on whether she has functional limitations that got in the way of her earning a living.⁶ 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 her ability to work.⁷

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

⁵ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁶ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

⁷ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

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

[19] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work. She says the following:

- She can stand for 10 minutes before she needs a break
- She can drive for a maximum of 30 minutes
- When she sits for longer than 10 minutes, she experiences pain and can have difficulty getting up
- She can walk for up to 30 minutes
- She can't do many chores, such as grocery shopping, laundry, and cleaning floors
- She can only perform one light cleaning task per day at home
- There are some days she can't do anything
- She isn't able to play or engage in activities with her grandchildren
- She has to lay down in the mornings and in the afternoons, due to her conditions
- She can't lift or carry more than 5 pounds.
- She has difficulty picking things up off the floor
- She isn't able to fully straighten her left arm, due to epicondylitis
- She has sadness and low mood because of her physical limitations and the changes in her life since her conditions began

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

[20] The Appellant must provide some medical evidence⁸ that outlines any physical or mental disability that affected her ability to work no later than December 31, 2022, and that includes the following:

- nature, extent, and prognosis for the disability
- findings upon which the diagnosis and prognosis were made

⁸ See section 68(1) of the *Canada Pension Plan Regulations*.

- limitations resulting from the disability; and
- any other pertinent information, which can include recommendations for treatment

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

[22] Dr. Le completed the CPP Medical report on January 22, 2022.⁹ He said the Appellant has had rheumatoid arthritis since 2018, affecting her neck, back, hands, wrists, and elbows. He said she has difficulty with her activities of daily living and walking. He also noted depression since March 2021, with low mood and difficulty completing tasks.

[23] In a report dated June 29, 2002, Dr. Le said the rheumatoid arthritis was of moderate severity, and was also affecting the lower extremities. He stated the Appellant had to stop working as a carpenter due to chronic disease. He also confirmed degenerative low back pain was present. He said the conditions were likely to deteriorate.¹⁰

[24] In a medical report dated January 9, 2024¹¹, Dr. Le confirmed the Appellant's arthritis is inflammatory. He said the osteoarthritis is diffuse from the cervical spine down to the lumbar spine and both hips. He said the rheumatoid arthritis affects the wrists and hands with constant stiffness and pain. He noted the Appellant has also had chronic epicondylitis for several years.

[25] The medical evidence supports that the Appellant's rheumatoid, and osteoarthritis prevented her from doing the heavy tasks of a carpenter. Her limitations for sitting, standing, walking, and lifting/carrying affect her ability to perform the regular tasks of a security guard as well.

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

⁹ See GD2-114.

¹⁰ See GD2-101.

¹¹ See GD5-2.

– **The Appellant followed medical advice**

[27] To receive a disability pension, an appellant must follow medical advice.¹²

[28] The Appellant followed medical advice.¹³

[29] The Appellant followed medical advice to stop working completely.

[30] The Appellant tried physiotherapy for four months. She was discharged and told that physical treatment wasn't going to improve her conditions.

[31] The Appellant gets monthly injections for her arthritis. She also takes daily medication.

[32] The Appellant's arthritis medications cause side effects, including high cholesterol and loss of sight. She takes additional medications and attends follow-up appointments to monitor for these serious side effects.

[33] There is no evidence the Appellant has failed to follow any of the medical advice she has received.

[34] 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 her from earning a living at any type of work, not just her usual job.¹⁴

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

[35] When I am deciding whether the Appellant can work, I can't just look at her medical conditions and how they affect what she can do. I must also consider factors such as her:

- age
- level of education
- language abilities

¹² See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹³ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁴ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

- past work and life experience

[36] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say that she can work.¹⁵

[37] I find that the Appellant can't work in the real world. She hasn't been able to work since May 2021.

[38] The Appellant speaks English and can communicate well. Her communication skills don't affect her ability to work in the real world.

[39] The Appellant was 57 years old on December 31, 2022. Her age would likely impact her ability to find work in the real world.

[40] The Appellant has a high school education. She graduated in 1984. She attended trade school for carpentry. She has limited computer skills, and no computer training. She can use a device for social media. The Appellant's limited education and training would also likely create difficulty for finding work in the real world.

[41] The Appellant worked as a baker and a carpenter for most of her life. These were physically demanding jobs. She has no training for sedentary type work. Her limited job experience could also have an effect on being able to work in the real world, at a job that could accommodate her conditions.

[42] I also take note that the Appellant's limitations for sitting, standing, and walking also affect her ability to work in the real world and meet the demands of a sedentary job, even if she did have the training.

[43] The Appellant did try to find a suitable job she could do with her background and conditions. She told me that working as a security guard was the easiest job she could find. She said the main tasks are sitting at a desk, standing on guard, or walking around on patrol.

¹⁵ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[44] Over time, the Appellant's condition worsened while she was working. There were days she couldn't get out of bed for work. She also became unable to meet the demands for sitting, standing, and walking. Her doctor advised her to stop working completely.

[45] I find the Appellant's failed attempt to work at a lighter job is a further factor supporting that she is unable to work in the real world.

[46] The Minister argued that Dr. Grant's report of March 20, 2019¹⁶, confirmed the Appellant's symptoms had mostly resolved with medication. It says this is evidence that her condition wasn't severe and prolonged.

[47] However, after this date, circumstances changed.

[48] The Appellant attempted to return to working a lighter job, and was advised by Dr. Le to stop working completely in on May 31, 2021.¹⁷

[49] Dr. Le also further confirmed the Appellant was no longer able to engage in any employment in June 2022, and January 2024.¹⁸ He also confirmed that the Appellant developed osteoarthritis and depression, conditions that weren't present at the time of Dr. Grant's report in March 2019.

[50] I find that the Appellant's disability was severe as of May 2021. This was when her doctor told her to stop working. She hasn't been able to work since that time.

Was the Appellant's disability prolonged?

[51] The Appellant's disability was prolonged.

[52] The Appellant's conditions began to affect her ability to work in 2018 when she was diagnosed with rheumatoid arthritis. She also developed osteoarthritis in 2020 and

¹⁶ See GD2-102.

¹⁷ See GD2-114.

¹⁸ See GD2-101 and GD5-2.

depression in 2021. The combination of her conditions and limitations affected her ability to continue working a lighter job. These conditions have continued since then.¹⁹

[53] There is no evidence of any improvement of the Appellant's symptoms or conditions since her doctor told her to stop working in May 2021.

[54] There is no evidence of any treatment or medication that would improve the Appellant's symptoms sufficiently to allow for a return to work.

[55] Dr. Le says he doesn't believe there is any form of work the Appellant could do, now or in the future. He says she is unfit for any type of employment.²⁰

[56] The Appellant's conditions will more than likely continue indefinitely.

[57] Dr. Le confirmed that the conditions are likely to deteriorate over time.²¹

[58] I find that the Appellant's disability was prolonged as of May 2021. That was when she was no longer able to continue working at a modified job.

When payments start

[59] The Appellant's disability became severe and prolonged in May 2021.

[60] There is a four-month waiting period before payments start.²² This means that payments start as of September 2021.

Conclusion

[61] I find that the Appellant is eligible for a CPP disability pension because her disability was severe and prolonged.

¹⁹ In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that an appellant has to show a severe and prolonged disability no later than the end of their minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

²⁰ See GD-101 and GD5-2.

²¹ See GD2-114.

²² Section 69 of the *Canada Pension Plan* sets out this rule.

[62] This means the appeal is allowed.

Sarah Sheaves
Member, General Division – Income Security Section