



Citation: *KR v Minister of Employment and Social Development*, 2024 SST 475

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: K. R.
Representatives: Allison Schmidt and Chanel Scheepers

Respondent: Minister of Employment and Social Development
Representative: Marcus Dirnberger

Decision under appeal: General Division decision dated September 25, 2023
(GP-22-1353)

Tribunal member: Neil Nawaz

Type of hearing: Teleconference

Hearing date: April 16, 2024

Hearing participants: Appellant
Appellant's representative
Respondent's representative

Decision date: May 5, 2024

File number: AD-23-1132

Decision

[1] I am dismissing this appeal. The Appellant is not entitled to a Canada Pension Plan (CPP) disability pension.

Overview

[2] The Appellant is a 35-year-old high school graduate who has had a variety of jobs — as a security guard, call centre worker, housekeeper, customer service representative, and shipper and receiver. Other than a brief and unsuccessful attempt to operate a childcare business from her home, she hasn't worked since May 2021.

[3] The Appellant applied for a CPP disability pension in July 2021.¹ In her application, she said that she was disabled from work by depression, anxiety, fibromyalgia, irritable bowel syndrome (IBS), and post-traumatic stress disorder (PTSD).

[4] The Minister of Employment and Social Development (Minister) refused the application after finding that the Appellant did not have a severe and prolonged disability.

[5] The Appellant appealed the Minister's refusal to the Social Security Tribunal's General Division. It held a hearing by teleconference and dismissed the appeal. It found insufficient evidence that the Appellant was regularly incapable of substantially gainful employment. Among other things, it found that the Appellant hadn't made sufficient effort to look for a job that might have been better suited to her functional limitations.

[6] The Appellant then applied for permission to appeal to the Appeal Division. Earlier this year, one of my colleagues on the Appeal Division granted the Appellant permission to appeal. Last month, I held a hearing to discuss the Appellant's claim in full.

[7] Now that I have considered submissions from both parties, I have concluded that the Appellant does not qualify for a CPP disability pension. The evidence shows that, although the Appellant is subject to some functional limitations, she did not have a

¹ See Appellant's Application for Canada Pension Plan Disability Benefits dated July 6, 2021, GD2-9.

severe or prolonged disability as of December 31, 2023, the last time she had CPP disability coverage.

Issue

[8] For the Appellant to succeed, she had to prove that, more likely than not, she had a severe and prolonged disability during her coverage period. The parties agreed that the Appellant's coverage period ended on December 31, 2023.²

- A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.³ A claimant isn't entitled to a disability pension if they are regularly able to do some kind of work that allows them to earn a living.
- A disability is **prolonged** if it is likely to be long continued and of indefinite duration or is likely to result in death.⁴ The disability must be expected to keep the claimant out of the workforce for a long time.

[9] In this appeal, I had to decide whether the Appellant had severe and prolonged disability as of December 31, 2023.

Analysis

[10] I have applied the law to the available evidence and concluded that the Appellant does not have a severe and prolonged disability. I am satisfied that the Appellant's medical conditions did not prevent her from regularly pursuing substantially gainful employment during her coverage period.

² Under section 44(2) of the *Canada Pension Plan*, a "minimum qualifying period" is established by making threshold contributions to the CPP. The Appellant's CPP contributions are listed on her record of earnings at GD2-6.

³ See section 42(2)(a)(i) of the *Canada Pension Plan*.

⁴ See section 42(2)(a)(ii) of the *Canada Pension Plan*.

The Appellant does not have severe and prolonged disability

[11] Claimants for disability benefits bear the burden of proving that they have a severe and prolonged disability.⁵ I have reviewed the record, and I have concluded that the Appellant did not meet that burden according to the test set out in the *Canada Pension Plan*. The Appellant has limitations, but they aren't serious enough to qualify her for a disability pension.

[12] In her application for benefits, the Appellant said that her main disabling conditions were depression, anxiety, fibromyalgia, IBS, and PTSD. She claimed that, as a result of these conditions, she got confused easily; she had trouble controlling her emotions; she was "horrible" in dealing with confrontation;" and she was hard of hearing in noisy environments. She also reported difficulty climbing stairs and performing household tasks.

[13] The Appellant testified that she is always in pain and discomfort — in her back, legs, and knees. She forced herself to keep working past her limitations, even though she could barely pull laundry out of the machines. During flare-ups, which occur maybe once a week, she is confined to bed all day and completely incapacitated. Tylenol doesn't work. She can't take Advil because of her IBS — it produces severe stomach pain. The only thing that helps her are heating pads and lying down. She was on a pain clinic waiting list for two years.

[14] The IBS causes her nausea and severe abdominal pain. She has to go to the bathroom three or four times a day. That causes her embarrassment. Gravol or Pepto-Bismol help. So does Pantoprazole, which relieves her diarrhea and stomach pain.

[15] She has had PTSD since the birth of her second child, who was born prematurely at 25 weeks and spent months on life-support. She has received mental health counselling from a social worker named Erin Desmarais, although she was covered for only a few sessions a year. She can't afford a private therapist. She is about to receive more counselling through the military family resource centre, although she's

⁵ See section 44(1) of the *Canada Pension Plan*.

afraid she'll see somebody she knows there. Her doctor stopped Bupropion (Wellbutrin) and put her on Sertraline (Zoloft), but it made her emotionally numb.

[16] All her conditions make her anxious, paranoid, and irritable. She can't concentrate — she can't even follow a grocery list. She has alienated family and friends. Lorazepam (Ativan) makes her dizzy and nauseous, as does Pregabalin (Lyrica).

[17] In September 2021, after she had her third child, she attempted to earn money by watching children in her home. Eventually, she had one full-time child and one part-time after school child. It was too much for her, both mentally and physically, even though one of the mothers sent food with their child. After losing one account, she tried to get more customers, but was unsuccessful and she gave up the venture in January 2023.⁶

[18] Asked if she thought she could manage a desk job, the Appellant replied no. If she sits for more than an hour, her back begins to hurt. Moreover, she says that her powers of concentration and recall are severely diminished.

[19] Although the Appellant may feel that she is disabled, I must base my decision on more than just her subjective view of her capacity.⁷ In this case, the evidence, looked at as a whole, does not suggest a severe impairment that prevents her from performing suitable work.

[20] I base this conclusion on the following factors:

– **The Appellant stopped working for reasons other than her medical conditions**

[21] The evidence suggests that the Appellant was struggling at work. However, the fact remains that she left her last job at X not because of her medical condition, but because of her family's relocation to Trenton from Kingston. As her family physician

⁶ See also the Appellant's self employment questionnaire dated January 28, 2024, AD4-81.

⁷ A CPP disability claimant has to provide a report of any physical or mental disability, including its nature, extent and prognosis; the findings upon which the diagnosis and prognosis were made; any limitation resulting from the disability, and any other pertinent information. See section 68(1) of the *Canada Pension Plan Regulations*.

noted, she moved shortly after leaving her job on May 21, 2021. She applied for CPP disability benefits only six weeks after that date.⁸

[22] The Appellant also said that she stopped working as a hotel housekeeper in August 2019 largely because it was a seasonal business and her shifts dropped off at the end of summer.

[23] The Appellant later attempted to earn money by operating an in-home daycare business. However, by her own account, she gave it up largely because she had difficulty getting clients, not because of anything to do with her impairments.⁹

– **None of the Appellant’s treatment providers ruled out a return to work**

[24] The Appellant cites depression, anxiety, fibromyalgia, IBS, and PTSD as the main conditions preventing her from working. These are all progressive, chronic conditions. They generally do not arise overnight. Yet the oldest doctor’s report I see is from February 2021, only three months before the Appellant left her last employment as a shipper/receiver at X.¹⁰

[25] The absence of medical information before 2021 makes it hard to get a clear idea about the extent of the Appellant’s problems at the time she quit her job. Her file documents regular interactions with her family health team after February 2021, but they contain few indications that her condition was severe.

[26] In the months leading up the Appellant’s departure from X, the Appellant complained about a blocked ear (resolved through cleaning), allergies (treated with medication); and nasal congestion (likely caused by quitting smoking the previous year). However, the Appellant did not report any pain to her doctors until May 2021, when she complained of

a linear soreness across her diaphragm last week, started as a dull ache on her left abdomen, then expanded as a band across

⁸ See office note dated May 10, 2021 by Dr. Matt Simpson, general practitioner, GD2-78.

⁹ See the Appellant’s self-employment questionnaire, AD4-81.

¹⁰ The Appellant submitted records from a family medicine practice, the Queen’s Family Health Team, that she attended in Kingston. The earliest office note on file, prepared by Dr. Matt Simpson, is dated February 8, 2021, GD2-73.

her abdomen. Non-radiating. **Now resolved pain**, no further concerns with this. Had a lot heaving lifting then. **No upper chest pain** reported [emphasis added].¹¹

[27] Although the Appellant told her mental health counsellor that she was feeling constant widespread pain, subsequent examinations suggested that her pain was not completely debilitating. In a November 2021, the Appellant complained only of “paresthesia” (tingling) in her arms but, on examination, she displayed full range of motion and power in her wrists.¹² The following month, the Appellant was seen for upper back pain and bilateral arm numbness. However, on examination, she demonstrated full strength and range of motion in her back and neck and upper and lower extremities.

[28] There are no pain complaints on the record for nearly a year. In October 2022, a member of the Appellant’s family health team examined her for upper back pain, “ongoing since pregnancy and worse since lifting her baby.”¹³ She was referred for x-rays, which revealed a normal cervical spine and only mild degenerative changes in her thoracic spine.¹⁴

[29] The Appellant has complained of shortness of breath, which she said had been ongoing since March 2020.¹⁵ However, her doctor’s note suggests the condition was mild: “Had a bit of SOB up the stairs, resolved after sitting down.”¹⁶ The Appellant was prescribed a Ventolin inhaler to be taken as needed. Later, the Appellant told her doctor that her breathlessness was getting worse: “Occurs with any exertion, e.g. stairs, walking a few blocks... worse when lying flat has to sleep propped up on pillows.”¹⁷ However, medical examination revealed clear lungs and no significant cardiovascular issues. Pulmonary functioning testing indicated no abnormalities,¹⁸ and her chest x-ray was unremarkable.¹⁹

¹¹ See office note dated May 10, 2021 by Dr. Ruby Hsin Yun Yang, general practitioner, GD2-78.

¹² See office note dated November 17, 2021 by Dr. Kelsey Ruetz, general practitioner, GD2-85.

¹³ See office note dated October 6, 2022 by Dr. Matt Simpson, general practitioner, GD4-97.

¹⁴ See x-rays of the cervical and thoracic spine dated October 6, 2022, GD4-26.

¹⁵ See Dr. Ruetz’s office note dated November 17, 2021, GD2-87.

¹⁶ See Dr. Yang’s office note dated May 10, 2021, GD2-78.

¹⁷ See Dr. Ruetz’s office note dated November 17, 2021, GD2-87.

¹⁸ See pulmonary function test results from Kingston Respiratory Services, October 4, 2021, GD2-54.

¹⁹ See x-ray of the chest dated November 30, 2021, GD2-49

[30] The Appellant has also claimed to be disabled by severe gastrointestinal symptoms, but there is little independent evidence on the record to corroborate those complaints. Drs. Moreau and Le completed a medical report to accompany the Appellant's CPP disability application, and it listed, among her other conditions, IBS causing nausea, vomiting, diarrhea, and abdominal pain. But there is little mention of such symptoms in the family health team's office notes, other than an isolated reference, in September 2022, to Advil causing her IBS to "flare up." The same note says that she was taking Omeprazole for the condition, although there was no indication about whether it was doing her any good.²⁰

[31] Until late 2023, the only specialists that the Appellant saw were obstetricians/gynecologists leading up to the delivery of her third child in July 2022. I find it notable that, even though the Appellant reported symptoms associated with several chronic diseases, her family health team never thought it worthwhile to refer her to a medical specialist, whether to an orthopedic surgeon for her joint pain, an endocrinologist for her fibromyalgia, a gastroenterologist for her IBS, or a psychiatrist for her anxiety and depression. This suggests that, in the period around the Appellant's departure from X, her treatment providers regarded her condition as less than severe.

[32] None of her doctors has ever suggested that the Appellant was incapable of work. Even Drs. Moreau and Le, when they completed their CPP disability questionnaire, expected the Appellant to return to some kind of modified work in the future.

– **The Appellant's depression and anxiety were largely situational**

[33] The Appellant has mental health issues, but they largely been a product of external stressors. The available evidence indicates that Appellant has struggled with depression and anxiety, not because of a significant underlying condition, but because of passing circumstances, variously related to her last job, her move to another town, and her third pregnancy.

²⁰ See CPP medical Report dated July 15, 2021 completed by Dr. Ben Moreau and Dr. Julie Le, both general practitioners, GD2-181.

[34] In their CPP medical Report, Dr. Moreau and Dr. Le wrote that the Appellant had been diagnosed with depression and generalized anxiety disorder with panic attacks, marked by a decrease in concentration and motivation, fluctuating moods, poor decision-making, and ongoing stress leading to poor energy levels and productivity. The two general practitioners added that she had participated in an anxiety and depression group for one month in 2021 and received support through social work from June 2017 to June 2021.

[35] Drs. Moreau and Le wrote this in July 2021, following a period of particularly high stress for the Appellant. In March 2021, the Appellant told Dr. Simpson that her husband, a member of the Canadian Armed Forces, was away for training. She said that she was under stress because of her son's COVID test and because of work-related pressures, magnified because she was working alongside her parents for the same company.²¹ Dr. Simpson referred the Appellant for counselling with Erin Desmarais, a social worker affiliated with his team:

- In April 2021, Ms. Desmarais reported that the Appellant was struggling with intrusive thoughts and low mood. She felt overwhelmed at home with routine tasks and described being irritable and reactive. She also felt that her workload was too heavy and had a hard time telling her parents about her difficulties.²² She continued to push herself to attend work daily despite wanting to quit. At the same time, she was taking care of her children while receiving only a little help from her mother-in-law in the evenings.²³
- The Following month, Ms. Desmarais noted that the Appellant was facing an additional stressor: her husband's relocation and the family's impending move. She had given notice to her employer, as she did not think she could manage the commute from Trenton to Kingston. Still, the Appellant said that she was doing well overall and had learned several helpful tools to manage stress.²⁴

²¹ See Dr. Simpson's office note dated March 11, 2021, GD2-73.

²² The Appellant testified that her parents had helped her get the job at X.

²³ See progress report dated April 16, 2021 by Erin Desmarais, counsellor, GD2-75.

²⁴ See Erin Desmarais's progress report dated May 12, 2021, GD2-79.

- In June 2021, Ms. Desmarais reported that the Appellant had described her mood as “good.” She and her family had completed their move, and everything had gone “as smooth as possible.” She had been practicing her stress management skills and felt confident that she would be able to put them into practice.²⁵

[36] These reports suggest that (i) the Appellant’s psychological condition was driven by specific external stressors and that (ii) her anxiety and depression responded to treatment. Shortly after leaving her job and moving to another community, the Appellant faced another challenge: a difficult pregnancy and the premature birth of her third child.

[37] In August 2022, Dr. Simpson wrote that the Appellant was doing “very well,” although her mental health was severely negatively affected by her circumstances, including a newborn and being “cooped” up in the hospital neonatal intensive care unit. However, “she was home now and did not report any new issues.”²⁶ The following month, Dr. Simpson wrote, “No physical concerns or issues with mood.”²⁷

[38] It is interesting to contrast Dr. Simpson’s relatively positive reports with what the Appellant told her lawyer only two weeks later. In a telephone conversation documented by Kristen Slaney, the Appellant said that her fibromyalgia symptoms were worse than before her pregnancy with increased body pain, extreme difficulty walking, getting up stairs and sitting. She also said that she was struggling with her concentration, memory, and energy, as well as reported trouble with some aspects of her personal care (due to lack of motivation) and her housekeeping:²⁸ I find it difficult to reconcile the two accounts, but I prefer the evidence of Dr. Simpson, a member of the Appellant’s primary care team and a professional with no interest in anything other than relaying objective findings.

[39] In March 2023, Dr. Xu reported that the Appellant was numb, teary, easily overwhelmed and irritable, with low energy, appetite, and concentration. Still, Dr. Xu

²⁵ See Erin Desmarais’s progress report dated June 16, 2021, GD2-81.

²⁶ See Dr. Simpson’s office note dated August 10, 2022, GD4-96.

²⁷ See Dr. Simpson’s office note dated September 6, 2022, GD4-96.

²⁸ See memorandum dated September 21, 2022 by Kristen Slaney, barrister and solicitor, GD3-20.

attributed the Appellant's low mood to postpartum depression, suggesting that her condition was temporary — the result of factors that would likely ease as her son grew out of infancy.²⁹

[40] The Appellant continued to have difficulty controlling her emotions, particularly when dealing with her children.³⁰ In November 2023, Dr. Simpson reported that the Appellant was managing “okay,” although she had recently become overwhelmed and frustrated with the behaviour of her young son.³¹ She reported some suicidal ideation, although her social worker, Ms. Desmarais, did not view her as a high risk for self-harm.³²

[41] I acknowledge that the Appellant is prone to anxiety and depression and has difficulty controlling her emotions when under pressure. However, she was able to work from 2017 to 2021, even though she had the same conditions at the time, and there is no indication that they have worsened significantly since then. The evidence shows that she has responded to counselling, and she has demonstrated an ability to use coping tools in the past. The Appellant's second and third pregnancies were difficult, but her medical file contains no confirmation that she has ever been formally diagnosed with PTSD.

– **The Appellant's physicians continue to explore treatment options**

[42] The Appellant has received treatment for her various conditions, but that treatment has mostly been conservative. Many of the medications that she has tried for her pain and anxiety have produced unwanted side effects, but she did get some benefit from Tylenol and Wellbutrin. She has also had some success in managing her IBS symptoms through diet.

[43] Moreover, she has not exhausted all treatment options. She testified that she was recently referred to a pain clinic where, presumably, she will be offered the option of taking subdural nerve block injections. In November 2023, the Appellant finally saw a

²⁹ See office note dated March 9, 2023 by Dr. Lily Xu, general practitioner, AD4-54.

³⁰ See progress note by Erin Desmarais dated September 25, 2023, AD4-66.

³¹ See Ms. Desmarais's note dated November 28, 2023, AD4-76.

³² See Ms. Desmarais's note dated January 11, 2024, AD4-78.

psychiatrist.³³ She had long complained of being unable to complete tasks and wanted an assessment for attention deficit and hyperactivity disorder (ADHD) or any other mental health problems she might have. Following an interview and a review of her medical file, Dr. Richer concluded that the Appellant's struggles were consistent with generalized anxiety disorder, obsessive-compulsive personality disorder, and possibly undiagnosed obstructive sleep apnea (OSA), for which she was undergoing investigations. She noted that symptoms such as forgetfulness, fatigue, and lack of motivation are often misdiagnosed as ADHD, when the true cause is OSA.

[44] Earlier that month, a respirologist had diagnosed the Appellant with moderate to severe OSA.³⁴ At her hearing before me, the Appellant said that she began using a CPAP machine in March 2024 but, after six weeks, she had seen no improvement. However, six weeks is not, in my view, much time to assess the efficacy of a device designed to address a chronic medical condition. The Appellant may feel that nothing has changed so far, but I strongly suspect that further assessments and perhaps adjustments lie in store. Until this process has played itself out, I think it is too early to conclude that nothing can be done about the Appellant's OSA and the symptoms that flow from it.

[45] Dr. Richer also recommended a trial of Pregabalin, as well as dialectical behavioural therapy and cognitive behavioural therapy. The Appellant testified that the Pregabalin gives her side effects and, although she has received intermittent counselling from Erin Desmarais, she has never had intensive psychotherapy from a psychologist or psychiatrist. Again, until the Appellant has explored all reasonable treatment options, it is too soon to say that she is disabled by a mental health condition. I note that as of January 2024 the Appellant had never accessed mental health services available to her as a military spouse, because she was concerned about the possibility that it might reflect badly on her husband's record. A member of her family health team

³³ See report dated November 21, 2023 by Dr. Amanda Richer, psychiatrist, AD4-11.

³⁴ See sleep analysis report dated December 14, 2023 by Dr. Aaron Aggarwal, respirologist, AD4-10.

had to assure her that any medical file generated by military healthcare professionals would be confidential.³⁵

[46] It appears that the Appellant and her treatment providers have recently escalated their efforts to address her many problems. The Appellant has seen a psychiatrist and a respirologist, who have put new options on the table. However, the Appellant has either not yet tried those options or has given them only a little time to work. For that reason, I am reluctant to conclude that her mental health condition is severe or prolonged.

– **The Appellant’s condition, looked at as a whole, did not prevent her from working in the real world**

[47] I find that the Appellant’s physical and psychological conditions, considered as a whole, have left her with at least some ability to work. I am reinforced in this belief when I look at her overall employability.

[48] The leading case on the interpretation of “severe” is *Villani*, which requires the Tribunal, when assessing disability, to consider a disability claimant as a “whole person” in a real-world context.³⁶ Employability is not to be assessed in the abstract, but rather in light of all circumstances. Those circumstances fall into two categories:

- The claimant’s medical condition — this is a broad inquiry, requiring that the claimant’s condition be assessed in its totality;³⁷ and
- The claimant’s background — matters such as age, education level, language proficiency and past work and life experience are relevant.

[49] In this case, the Appellant claims that she is disabled, mainly by anxiety and depression, widespread body pain, and incontinence. However, close examination of the available medical evidence leads me to doubt that the Appellant is completely incapable of pursuing suitable employment. As we have seen, the Appellant’s problems were, for the most part, manageable, situational, or not as serious as claimed during the

³⁵ See office note dated January 10, 2024 by Dr. Giancarlo Pukas, general practitioner, AD4-78.

³⁶ See *Villani v Canada (Attorney General)* 2001 FCA 248.

³⁷ See *Bungay v Attorney General of Canada*, 2011 FCA 47.

relevant period. I don't believe that their combined effect render the Appellant unemployable.

[50] The Appellant's background and personal characteristics are not barriers to her continued participation in the workforce either. The Appellant is only in her thirties, and she lacks physical and mental endurance, but she also has several assets that would help her in a job search. She is a native-born English-speaker, she has a high school education, and she has several years working in a variety of jobs, including positions — in call centres and warehouses — that required her to use a computer.

[51] In all, I am satisfied that, even with her background and her medical conditions, the Appellant is equipped to at least make an attempt to return to the labour market, should she wish to do so. With her age, education, and experience, she is well positioned to pursue a job that might be less mentally and physically demanding than the ones she held previously.

– **The Appellant has not attempted alternative employment**

[52] In the end, I was unable to properly assess the severity of the Appellant's disability as of December 31, 2023. That's because she has not yet made a serious effort to look for another job.

[53] A Federal Court of Appeal decision called *Inclima* says that disability claimants must do what they can to find alternative employment that is better suited to their impairments:

Consequently, an applicant who seeks to bring himself within the definition of severe disability must not only show that he (or she) has a serious health problem but where, as here, there is evidence of work capacity, must also show that efforts at obtaining and maintaining employment have been unsuccessful by reason of that health condition.³⁸

[54] This passage suggests that, if a claimant retains at least **some** work capacity, the General Division must conduct an analysis to determine (i) whether they attempted

³⁸ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

to find another job, and (ii) if so, whether their impairments prevented them from getting and keeping that job.

[55] On top of that, disability claimants must make **meaningful** attempts to return to work.³⁹ They cannot limit their job search to the type of work that they were doing before they became impaired. That is because they must show that they are regularly incapable of pursuing **any** substantially gainful occupation.⁴⁰ Claimants who fail to pursue alternative forms of employment may be ineligible for benefits.

[56] The Appellant has at least some work capacity — enough to trigger the obligation to pursue alternative employment. However, the Appellant has not shown that her health condition caused her to lose a job. As we have seen, the Appellant left a series of jobs in 2018–21, not because of any impairment, but because there was a shortage of work or because she had to move to a new town.

[57] The Appellant did attempt to earn money by setting up a home daycare business, but I have to question why someone with her medical conditions — primarily anxiety and whole body pain — would pursue such a venture. Minding young children, even two or three of them, is hard work, both physically and mentally. They cry, they make noise, they run around, they fall down. Sometimes they have to be picked up. They require constant care and vigilance. There is also the stress associated with getting and keeping clients.

[58] Added to that is the fact that the Appellant shut down her business — again — not because of her medical condition, but because one of her clients withdrew their child from her service, and she couldn't find a replacement.

[59] In the end, I couldn't get an accurate reading of the Appellant's impairments because she has never tried and failed at a job that might have been better suited to her limitations. After her leaving X, the Appellant could have looked for another job, one less stressful and physically demanding than the one she had held previously. She never

³⁹ See *Tracey v Canada (Attorney General)*, 2015 FC 1300, in which the Federal Court stated that the onus is on claimants to show that they made "sincere" efforts to meet the employment efforts test.

⁴⁰ See *Canada (Attorney General) v Ryall*, 2008 FCA 164.

did. For that reason, I find that the Appellant did not make a meaningful attempt to mitigate her impairment by looking for alternative employment.

Conclusion

[60] The Appellant has various medical conditions, but the available evidence suggests that they do not prevent her from regularly pursuing a substantially gainful occupation. What's more, the Appellant has never made a real effort to seek employment that might have been better suited to her limitations. For these reasons, I am not convinced that the Appellant had a severe disability as of December 31, 2023.

[61] The appeal is dismissed.



Member, Appeal Division