



Citation: *JR v Minister of Employment and Social Development*, 2024 SST 1306

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

Decision

Appellant: J. R.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated October 11, 2023 (issued
by Service Canada)

Tribunal member: Virginia Saunders

Type of hearing: Teleconference

Hearing date: October 17, 2024

Hearing participants: Appellant
Appellant's witness

Decision date: October 29, 2024

File number: GP-23-2022

Decision

[1] The appeal is dismissed.

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

Overview

[3] The Appellant stopped working in April 2003. At the time, she was living in Doha, Qatar, where she was the marketing and leasing manager for a shopping mall. She had problems with alcohol abuse and other mental health issues. She couldn't do her work properly and she was often absent. As a result, she was let go from her job. She hasn't worked anywhere since then.

[4] The Appellant applied for a CPP disability pension in April 2023. 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.

What the Appellant must prove

[5] 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.¹ She must also prove that she continues to be disabled.²

[6] The *Canada Pension Plan* defines "severe" and "prolonged."

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 GD2-52. She had to make CPP contributions for four years in a six-year period. Her last four years of contributions were in 1998, 1999, 2000, and 2001, so her six-year coverage period ended two years later, on December 31, 2003. This is her MQP date.

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)*, 2011 FCA 318.

[7] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.³

[8] This means I have to look at all of the Appellant's medical conditions together to see what effect they had on her ability to work by December 31, 2003, and since then. I must then 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 was severe by December 31, 2003, and whether it continues to be severe. If the Appellant is or was capable regularly of doing some kind of work that she could earn a living from, then she isn't entitled to a disability pension.

[9] A disability is **prolonged** if it is likely to be long continued and of indefinite duration or is likely to result in death.⁴

[10] This means the Appellant's disability can't have an expected recovery date. The disability must be expected to keep her out of the workforce for a long time.

[11] 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 was disabled by December 31, 2003, and that she continues to be 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. Here are my reasons.

The Appellant's disability wasn't severe

[13] The Appellant's disability wasn't severe. I reached this finding by considering several factors. I explain these factors below.

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.

– **The Appellant’s functional limitations affect her ability to work**

[14] The Appellant’s diagnoses include alcohol dependence disorder and major depressive disorder.⁵ In 2021, she was in hospital for three months because of acute Wernicke’s encephalopathy (a brain disorder) secondary to alcohol dependence. As a result, she has a chronic memory disorder called Korsakoff syndrome.⁶

[15] However, I can’t focus on her diagnoses.⁷ Instead, I must focus on whether she has functional limitations that got in the way of her earning a living.⁸ When I do this, I have to look at all of her medical conditions and think about how they affected her ability to work by December 2003, and continuously since then.⁹

[16] I find that the Appellant has functional limitations that affect her ability to work now. However, the medical evidence does not support that they affected her ability to work at December 31, 2003.

– **What the Appellant and the witnesses say about her functional limitations**

[17] The Appellant’s father wrote a letter to the Tribunal. He said the Appellant has a mental condition and short-term memory loss. He noticed she became forgetful in 2002. It got worse in March 2003.¹⁰ The Appellant told me that her father visited her often, even when she lived overseas. So, I accept that he had first-hand knowledge of her condition.

[18] The Appellant’s husband told me that her short-term memory problems and depression started around the end of 2002. He believes it was because she was drinking too much. She would forget to go to work or to make dinner. He had to remind her to do things. She was also taking medication for depression. The medication made

⁵ See GD2-165.

⁶ See GD2-141, GD2-144, GD2-150-154.

⁷ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁸ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

⁹ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

¹⁰ See GD8-2.

her sleepy and emotional. She had to nap in the afternoon. She would often cry. She refused to go out.

[19] The Appellant told me that her performance at work gradually got worse. She often didn't go. If she did, she didn't do her job very well. In April 2003, her doctor gave her a letter for her employer that said she was not fit to continue working. Based on that, she was fired.

[20] The Appellant said that losing her job was a huge blow. She never got better. Her husband said that he noticed a slight improvement when the Appellant stopped drinking temporarily during her two pregnancies. (Her children were born in March 2006 and May 2008.) But she wasn't significantly better. He felt that "the damage was done."

[21] The Appellant and her husband told me she has had the same functional limitations since 2003. In her disability application, she listed many limitations, including:

- unable to remember what to do
- anxiety
- unable to sleep
- unable to socialize
- unable to drive
- problems with concentration and focus
- problems with learning new things
- problems with housekeeping¹¹

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

[22] The Appellant must provide some objective medical evidence to support that her functional limitations affected her ability to work by December 31, 2003.¹²

[23] There is no objective medical evidence from 2003.

¹¹ See GD2-39-41.

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

[24] The earliest medical evidence is from Dr. Pahwa, a psychiatrist who treated the Appellant in Doha between June 2011 and June 2014, and from September 2019 to August 2021. Dr. Pahwa said the Appellant's condition started approximately five years before she first saw her in 2011.¹³

[25] Even if "approximately" five years before 2011 might mean 2003, Dr. Pahwa's acceptance of this history doesn't satisfy the requirement for objective medical evidence from 2003.

[26] First, Dr. Pahwa didn't get this information from the Appellant's medical records. Her report says she took the Appellant's history and did a mental status examination. There's no suggestion that she had access to or reviewed the Appellant's medical files from 2003.

[27] Second, the information about the Appellant's condition in 2003 lacks the required detail. The *Canada Pension Plan Regulations* (Regulations) say that a disability applicant "shall supply" a "report of any physical or mental disability." The report must include:

- the nature, extent and prognosis of the disability
- the findings upon which the diagnosis and prognosis were made
- any limitation resulting from the disability
- any other pertinent information, including recommendations for further diagnostic work or treatment¹⁴

[28] It may be arguable that the objective medical evidence from 2003 doesn't have to include **everything** that is listed in the Regulations. But in this case, the **only** information is that the Appellant had "a progressive course illness with a total duration of approximately 5 years." It's clear that the illness was related to the Appellant's current concerns, but all of the detail is about the Appellant's condition from 2011 and later.

¹³ See GD2-80-84.

¹⁴ See section 68(1)(a) of the *Canada Pension Plan Regulations*, and *Canada (Attorney General) v Angell*, 2020 FC 1093 at paragraph 40.

[29] The Appellant submitted a letter from her last employer, dated April 29, 2003. The letter says the Appellant was being let go because of poor attendance and because her doctor “believes you are not fit to continue work at your present position due to short term disability that is severe and prolonged condition.”¹⁵

[30] The Appellant told me that she gave her employer a letter from her doctor, but she didn’t keep a copy.

[31] I accept that the employer’s letter was **based on** medical evidence, but it **isn’t** objective medical evidence. The letter is simply the employer’s brief summary of a doctor’s opinion. Nor does it contain any of the detail the law requires of medical evidence, as I discussed above.

[32] I recognize that the Appellant tried her best to get her medical records from 2003. Unfortunately, she wasn’t able to. There isn’t any objective medical evidence to support that she had functional limitations affecting her ability to work by December 31, 2003. As a result, the law says that she hasn’t proven she had a severe disability.

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

[33] 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.¹⁶

[34] 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.¹⁷

¹⁵ GD6-2.

¹⁶ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

¹⁷ 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 “[m]edical evidence will still be needed...”

[35] 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

[36] 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.

[37] This means the appeal is dismissed.

Virginia Saunders
Member, General Division – Income Security Section