



Citation: *NB v Minister of Employment and Social Development*, 2025 SST 390

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

**Appellant:** N. B.  
**Representative:** Mark S. Grossman

**Respondent:** Minister of Employment and Social Development  
**Representative:** Érelégna Bernard

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**Decision under appeal:** General Division decision dated July 22, 2024  
(GP-23-268)

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**Tribunal member:** Neil Nawaz

**Type of hearing:** Videoconference

**Hearing date:** April 4, 2025

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

**Decision date:** April 19, 2025

**File number:** AD-24-530

## Decision

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

## Overview

[2] The Appellant is a 47-year-old former machine operator. She was born in Eritrea and came to Canada in 2015. She worked at an auto parts plant in Guelph for nearly seven years.

[3] In May 2021, the Appellant experienced a sudden jolt of pain in her right hand that extended through her wrist and up to her shoulder and neck. After six months off work, she returned to modified duties. Two weeks later, she resumed her regular duties, but her pain flared up again, and her family physician placed her on leave. She hasn't worked since January 2022.

[4] In May 2022, the Appellant applied for a CPP disability pension. In her application, she claimed that she was disabled because the injury to her right hand made it impossible for her to do repetitive work. Service Canada, the Minister's public facing agency, refused the application after determining 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 that, while the Appellant had some functional limitations, her condition didn't prevent her from working as of December 31, 2023, the last time she had CPP disability coverage. In particular, the General Division found that she had not made enough effort to find alternative employment.

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

## Issue

[7] For the Appellant to succeed, she had to prove that, more likely than not, she became disabled during her coverage period and has remained so ever since. Under the CPP, a disability must be severe and prolonged:

- A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.<sup>1</sup> 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.<sup>2</sup> The disability must be expected to keep the claimant out of the workforce for a long time.

[8] The parties agreed that the Appellant's CPP disability coverage ended on December 31, 2023.<sup>3</sup> That meant I had to assess the Appellant's condition as of that date and decide whether she had functional limitations that got in the way of her earning a living.

## Analysis

[9] Claimants for disability benefits bear the burden of proving that they have a severe and prolonged disability.<sup>4</sup> I have applied the law to the available evidence and concluded that the Appellant did not have a severe and prolonged disability during her coverage period. I am not satisfied that her medical conditions prevented her from regularly pursuing substantially gainful employment at that time.

### The Appellant did not have a severe disability

[10] In her application for CPP disability benefits, the Appellant claimed that she couldn't work because she could no longer use her right hand. She said that she had

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<sup>1</sup> See section 42(2)(a)(i) of the *Canada Pension Plan*.

<sup>2</sup> See section 42(2)(a)(ii) of the *Canada Pension Plan*.

<sup>3</sup> 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.

<sup>4</sup> See *Canada Pension Plan*, section 44(1).

pain, numbness, and tingling from her fingers to her shoulder to her head. She said that her arm became swollen and painful when she did repetitive work. She reported no problems sitting, standing, walking, or bending, but she couldn't lift, carry, or reach with her right hand. She claimed that she could only drive or do housework for short periods.

[11] The Appellant testified that she attended school up to the equivalent of Grade 12 in her native country. She left Eritrea in 2008 and spent the next seven years working as a maid in Saudi Arabia before immigrating to Canada. She briefly worked in a chicken processing plant and then got hired on at a plant owned by X, an auto parts manufacturer.

[12] Her job was as a machine operator, which involved taking a component out of a box, unwrapping it and loading it into a machine, and putting it back in the box once the tooling was done. She communicated with her boss in English. While she is able to speak and understand the language in simple terms, she would not be able to carry on a casual conversation.

[13] For her first six years at X, her health was basically okay. In May 2021, her right hand suddenly swelled up. She told her boss about it, and he told her to work at a slower pace. The pain persisted, so he put her on a different machine and suggested that she rely on her left hand. It was faster-paced assignment, and she was paired with a co-worker.

[14] Her pain continued to get worse and spread up her right arm to her neck and shoulder. In November 2021, X formally placed her on modified duties — she was assigned to a regular line, not as a primary operator but as a helper. After two months, she couldn't take it anymore.

[15] Asked whether she might be able to any other kind of job, such as working in a coffee shop, she replied no. She explained that she felt pain in her hand and arm even when sitting down: "It's always there, even when I'm not using it." She said that, in her condition, she is unable to even look for work. Pain medication helps, but only briefly.

[16] I understand that the Appellant feels disabled. However, I have to base my decision on more than just her subjective view of her capacity.<sup>5</sup> I have to look at the evidence as whole, not just the Appellant's testimony, but also her medical evidence, as well as other factors, such as her background and personal characteristics and her effort to seek treatment.

[17] In the end, I concluded that the Appellant failed to show that she had a severe and prolonged disability according to the legal criteria set out in the *Canada Pension Plan*. I came to this conclusion for the following reasons.

**– The Appellant has a repetitive strain injury, but it appears to be mild and treatable**

[18] A CPP disability claimant must provide objective medical evidence supporting a claimed disability.<sup>6</sup> In this case, the Appellant submitted results and reports confirming pathologies consistent with a repetitive strain injury:

- In May 2021, Dr. Al-Zubaidy, family physician, saw the Appellant for right hand and arm pain, which appeared on assessment to be tendonitis (inflammation of the tendon).<sup>7</sup> X-rays of her right wrist and shoulder showed no abnormalities,<sup>8</sup> but an ultrasound of her right shoulder showed signs of tendinosis (inflammation of a tendon through repetitive use), although no rotator cuff tear.<sup>9</sup>
- In June 2021, the Appellant was referred to a neurologist for an assessment of her right arm pain.<sup>10</sup> On examination, Dr. Cartagena noted normal muscle tone in the Appellant's arms and neck, findings that she said were inconsistent with her complaints of numbness, tingling, and weakness. Nerve

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<sup>5</sup> 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*.

<sup>6</sup> In *Warren v Canada (Attorney General)*, 2008 FCA 377, the Federal Court of Appeal said there must be some objective medical evidence of a disability. See also *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>7</sup> See clinical note dated May 15, 2021 by Dr. Layla Al-Zubaidy, family physician, GD6-8.

<sup>8</sup> See x-rays of the right wrist and shoulder, both dated May 27, 2021, GD6-8-9.

<sup>9</sup> See ultrasound of the right shoulder dated May 29, 2021, GD6-10.

<sup>10</sup> See neurological assessment report dated June 25, 2021 Dr. Ana Cartagena, neurologist, GD6-13.

conduction studies were normal. She suspected that the Appellant's symptoms were myofascial and/or related to overuse. She recommended that the Appellant continue with physiotherapy.

- In January 2022, an orthopedic surgeon and an occupational therapist comprehensively assessed the Appellant's upper extremity assessment pursuant to her Workplace Safety and Insurance Board (WSIB) claim.<sup>11</sup> On examination, they noted decreased range of motion and grip and pinch strengths in the Appellant's right wrist and forearms. They offered a preliminary diagnosis of De Quervain's tenosynovitis, with a possible scapholunate interval injury, and carpal tunnel syndrome. They suggested that the Appellant do modified work that did not require her to use her right hand. They expected a full recovery within six to 12 weeks.
- In April 2022, an MRI of the right wrist showed tendinosis and mild bone marrow edema, likely the result of repetitive stress to the wrist joint.<sup>12</sup> A few months later, ultrasounds of the right wrist and forearm showed no abnormalities, but a shoulder ultrasound indicated tendinopathy.<sup>13</sup>
- In July 2022, Dr. Al-Zubaidy completed a medical questionnaire to accompany the Appellant's CPP disability application.<sup>14</sup> In it, she wrote that the Appellant experienced functional limitations due to pain in her right arm, particularly when performing repetitive movements: she was unable to push, pull, or lift with her right arm. Dr. Al-Zubaidy did not advise the Appellant to stop working but to instead attempt modified work or find another job that would not require repetitive movements.
- In September 2022, Dr. Al-Zubaidy noted that the Appellant had recently gone to the emergency department for wrist pain.<sup>15</sup> Under assessment, Dr. Al-Zubaidy simply wrote "malingering."

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<sup>11</sup> See Comprehensive Assessment Report dated January 4, 2022 by Dr. Elyse Jewer, orthopedic surgeon, and Ms. Lynn Jeaurond, registered occupational therapist, of the Ontario Workers Network Upper Extremity Specialty Program, GD6-19.

<sup>12</sup> See MRI of the right wrist dated April 27, 2022, GD2-70.

<sup>13</sup> See ultrasounds of the right wrist, forearm, and shoulder dated July 26, 2022, GD6-68.

<sup>14</sup> See Dr. Al-Zubaidy's CPP medical report completed on July 11, 2022, GD2-60.

<sup>15</sup> See Dr. Al-Zubaidy's office note dated July 11, 2022, GD2-91.

- In March 2023, the Appellant consulted an orthopedic surgeon, for a second opinion.<sup>16</sup> On examination, Dr. Mathew noted that she “guarded” her hand and displayed several noticeable “pain behaviours.” He concluded that she was suffering from chronic pain. On follow up, Dr. Matthews wrote that he had reviewed MRIs of the wrist and shoulder and had seen nothing to account for the Appellant’s pain.<sup>17</sup> He concluded that the Appellant had chronic pain that was consistent with De Quervain’s tenosynovitis. He noted that she was refusing cortisone injections pending EMG testing.
- In July 2023, Al-Zubaidy completed a WSIB functional abilities form, in which she declared the Appellant capable of full-time work with restrictions only on using her right hand.<sup>18</sup>
- In August 2023, the Appellant saw Dr. Mohapatra, a pain specialist.<sup>19</sup> He diagnosed her with De Quervain’s tenosynovitis, myofascial pain, mechanical neck pain, rotator cuff irritation, lateral epicondylitis, and chronic pain syndrome. The Appellant continued to refuse injections until she received her EMG testing results but, in the meantime, Dr. Mohapatra suggested multiple medication options if her current therapy did not relieve her pain.
- That same month, the Appellant saw Dr. Ballard, a physiatrist, who wrote that her main issues were around her right wrist and thumb region. EMG testing revealed very mild carpal tunnel syndrome that Dr. Ballard felt might be helped by cortisone injections.<sup>20</sup>
- In October 2023, Dr. Mathew, having reviewed the EMG results, declared that, since the Appellant’s condition was multifactorial, she would benefit from a multi-faceted treatment approach.<sup>21</sup>
- In a return-to-work questionnaire completed in October 2023, a chiropractor stated that the Appellant was unable to return to modified duties and that, due

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<sup>16</sup> See report dated March 8, 2023 by Dr. Paul Mathew, orthopedic surgeon, GD6-100.

<sup>17</sup> See Dr. Mathew’s report dated June 26, 2023, GD6-112.

<sup>18</sup> See Dr. Al-Zubaidy’s functional assessment form completed on July 31, 2023, GD5-26.

<sup>19</sup> See report dated August 11, 2023 by Dr. Subhra Mohapatra, pain specialist, GD8-6.

<sup>20</sup> See letter dated August 16, 2023 by Dr. Tonya Ballard, specialist in physical medicine and rehabilitation, GD6-122.

<sup>21</sup> See Dr. Mathew’s report dated October 16, 2023, GD6-130.

to chronic pain, her prognosis for recovery was guarded.<sup>22</sup> In March 2025, another chiropractor wrote a letter declaring the Appellant unfit for work.<sup>23</sup>

[19] The available medical reports make it clear that the Appellant sustained a real and significant repetitive strain injury as a factory worker. Her treatment providers have diagnosed her with various conditions, included tendinosis, De Quervain's tenosynovitis, and lateral epicondylitis. That said, a diagnosis is not the same thing as a disability. I have to focus on whether the Appellant had functional limitations that prevented her from working.<sup>24</sup>

[20] Testing and imaging have revealed few abnormalities on the Appellant's right side. Several of the Appellant's doctors remarked on the disparity between the relatively mild pathologies observed in her hand, wrist, and shoulder and the intensity and duration of her reported pain levels. When the Appellant applied for the CPP disability pension, her family physician notably did not say she was incapable of all forms of work and ruled out only jobs that would have required grasping and the repetitive use of the right hand. That apparently remained Dr. Al-Zubaidy's position until recently, when she completed a return-to-work form declaring the Appellant unable to return to even modified duties, although she qualified that statement by adding "as per the patient."<sup>25</sup> Still, this assessment came more than after a year after the Appellant's coverage period ended.

[21] The fact that her family physician described the Appellant as a "malingerer" did not help matters. Dr. Al-Zubaidy used the word — which usually refers to a person who pretends to be ill in order to avoid having to work — only once and did not elaborate on it further. Nowhere else in the records that were made available to the Tribunal did she suggest that her patient was exaggerating her pain level. For that reason, I didn't give Dr. Al-Zubaidy's isolated use of this loaded term a great deal of weight.

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<sup>22</sup> See questionnaire completed by J. Mistry, chiropractor, on October 16, 2023, GD5-28.

<sup>23</sup> See letter dated March 11, 2025 by Dr. Phillip Bright, chiropractor, AD16-4.

<sup>24</sup> See *Ferreira v Canada (Attorney General)* 2013 FCA 81.

<sup>25</sup> See Dr. Al-Zubaidy's Determination for Employee Return to Work questionnaire completed on March 10, 2025, AD16-6.



– **The Appellant’s injury evolved into a chronic pain condition that has not yet been fully treated**

[22] As noted, the Appellant complained of pain beyond levels that went beyond what her treatment providers expected based on imaging. And her pain persisted despite early predictions it would resolve in a matter of months. After a certain point, she was diagnosed with chronic pain.

[23] There is no authoritative definition of chronic pain, but it is generally considered to be pain whose existence is not supported by objective findings and is disproportionate or persists beyond the normal healing time ordinarily expected for the underlying injury. In a case called *Martin*, the Supreme Court of Canada ruled that chronic pain is a medical condition that can be genuinely disabling.<sup>26</sup>

[24] *Martin* contains no specifics on the question of **how** evidence of chronic pain is to be evaluated in assessing disability and, in particular, it is silent on the question of the extent, if any, to which subjective evidence must be considered by the trier of fact. However, it seems reasonable to argue that a condition whose defining feature is how its sufferers perceive pain should be assessed, at least in part, by considering their subjective evidence of its intensity and its debilitating effects. If so, then the issue of a claimant’s credibility must take on heightened importance.

[25] I believed the Appellant when she testified that she experiences pain, but it wasn’t enough to convince me that she had a severe and prolonged disability as of December 31, 2023. I say that for two reasons. First, her pain was localized: it mainly affected her right upper limb and appeared not to affect her other functions, such as her ability to sit, stand, and walk. Second, and most important, her pain appears to have origins that are psychological as much as they are physical.

[26] Dr. Al-Zubaidy noted that, despite her multiple reassurances to the contrary, the Appellant was anxious and worried that her pain might be related to a more serious condition.<sup>27</sup> Dr. Jewer and Ms. Jeaurond remarked that the Appellant felt overwhelmed,

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<sup>26</sup> *Nova Scotia (Worker’s Compensation Board) v Martin* [2003] SCC 54.

<sup>27</sup> See Dr. Al-Zubaidy’s letter dated July 11, 2022, GD6-66.

had a high perception of her disability, and was prone to catastrophizing.<sup>28</sup> Dr. Mathew wrote that the Appellant's pain was "multifactorial," necessitating a team approach.<sup>29</sup> He also expressed concern that if she were not soon referred to a multidisciplinary clinic, her pain condition ran the risk of becoming chronic.

[27] Despite Dr. Mathew's concern, the Appellant has never received multidisciplinary therapy, nor has she been referred to any other form of pain management counselling. She has not seen a psychologist or psychiatrist. She was referred to a pain specialist, Dr. Mohapatra, who suggested a list of additional pharmacological treatment options, at least two of which (Cymbalta and Elavil) are specifically indicated for anxiety and depression. It doesn't appear that she has tried these either.

[28] It is not clear why neither Dr. Al-Zubaidy nor the Appellant herself have pursued treatment options meant to address the psychological underpinnings of the Appellant's pain condition. Whatever the reason, their failure to do so harms the Appellant's disability claim. Case law says that disability claimants must take reasonable steps to comply with their doctors' treatment advice.<sup>30</sup> In this case, the Appellant has not exhausted all recommended treatment options, leaving me to wonder whether her impairment is in fact prolonged.

**– The Appellant's background and personal characteristics don't make her unemployable**

[29] The bulk of the evidence convinces me that the Appellant has at least some capacity to work. I feel the same way even after I examine her background and personal characteristics.

[30] When deciding whether CPP disability claimant can work, I can't just look at their medical conditions. I must also consider factors such as their age, level of education, language abilities, and past work and life experience. Employability is not to be assessed

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<sup>28</sup> Dr. Jewer and Ms. Jeurond's report dated January 4, 2022, GD6-21 and GD6-33.

<sup>29</sup> See Dr. Mathew's reports dated June 26, 2023 (GD6-112) and October 16, 2023 (GD6-130).

<sup>30</sup> See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

in the abstract, but rather in light of “all of the circumstances.” These circumstances help me decide whether the claimant can work in the real world.<sup>31</sup>

[31] In this case, the Appellant has a repetitive strain injury and has been diagnosed with a pain condition, but she also has several assets that would help her in a job search. She was only 47 years old at the end of her coverage period. She has the equivalent of a high school education. She has six years of Canadian work experience at a large company.

[32] The Appellant is disadvantaged by her English-language skills — she came to Canada as an adult and required an interpreter at the hearing — but I was satisfied that she would be able to function in many types of low-skilled English-speaking work environments. She took six weeks of ESL classes in 2015, and she testified that she has enough English to communicate in simple terms. She was notably able to maintain a line job at X for several years, even though she had an English-speaking boss.

[33] The Appellant’s background highlights no fundamental obstacles to her continued employment. It, along with her less-than-compelling medical record, suggests that she still has residual capacity to work. As we will see, that residual capacity required her to at least make an attempt to re-enter the labour market.

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

[34] A Federal Court of Appeal decision called *Inclima* says that disability claimants must make an effort 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.<sup>32</sup>

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<sup>31</sup> See *Villani v Canada (Attorney General)* 2001 FCA 248.

<sup>32</sup> See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

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

[36] On top of that, disability claimants must make **meaningful** attempts to return to work.<sup>33</sup> 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.<sup>34</sup> Claimants who fail to pursue alternative forms of employment may be ineligible for benefits.

[37] The Appellant has at least some work capacity — enough to trigger the obligation to pursue alternative employment. However, the Appellant has not made a serious attempt to find another job or retrain for an alternative career.

[38] The Appellant argues that she already tried and failed at lighter work — specifically when she spent several months working in so-called “modified duties” at X. But she also testified that those duties were actually physically demanding. She added that it was difficult to work a machine, even with assistance, using only one arm. In the end, the Appellant was still working in a production line, which no matter what accommodations may be offered, will inevitably require a degree of repetitive motion with the dominant hand.

[39] In the end, I was unable to get a clear reading of the Appellant’s impairments because she never attempted a job that might have been better suited to her limitations. Factory work is hard. The Appellant may no longer be capable of being a machine operator, but that doesn’t mean she is incapable of trying a job that might be easier on her hands and arms.

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<sup>33</sup> 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.

<sup>34</sup> See *Canada (Attorney General) v Ryall*, 2008 FCA 164.

## **I don't have to consider whether the Appellant has a prolonged disability**

[40] A disability must be severe **and** prolonged.<sup>35</sup> The Appellant has not proved that her disability is severe, so there is no need for me to assess whether it is also prolonged. However, as I have already mentioned, the Appellant's failure to pursue multidisciplinary pain management makes me doubt that her condition is long continued and of indefinite duration.

## **Conclusion**

[41] The Appellant has been diagnosed with a repetitive strain injury to her right hand that has evolved into a chronic pain condition. However, she did not provide enough medical evidence to show that those diagnoses produced significant functional limitations. The law requires disability claimants to try to alleviate or overcome their impairments. Although the Appellant has residual capacity, she has not fully complied with treatment advice or made an adequate effort to pursue alternative employment. For these reasons, I am not convinced that the Appellant is regularly incapable of substantially gainful employment.

[42] The appeal is dismissed.



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Member, Appeal Division

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<sup>35</sup> See *Canada Pension Plan*, section 42(2)(a).