



Citation: *RV v Minister of Employment and Social Development*, 2025 SST 462

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: R. V.
Representative: Allison Schmidt (appearance by Chantelle Yang)
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated March 4, 2024 (issued by
Service Canada)

Tribunal member: Wayne van der Meide
Type of hearing: Teleconference
Hearing date: April 24, 2025
Hearing participants: Appellant
Appellant's representative
Decision date: May 2, 2025
File number: GP-24-1001

Decision

[1] The appeal is allowed.

[2] The Appellant is eligible for the post-retirement disability benefit (PRDB). Payments start as of April 2022.

[3] This decision explains why I am allowing the appeal.

Overview

[4] The Appellant was born on December 31, 1959. He started receiving his Canada Pension Plan (CPP) retirement pension in March 2020 when he was 61 years old.¹ He continued to work as a warehouse technician until December 2021. He says he stopped working due to severe osteoarthritis in both knees. His right knee was replaced in January 2022, and his left knee was replaced in July 2022.

[5] The Appellant applied for a CPP disability pension on June 9, 2022. His application is also considered an application for the PRDB. The PRDB is a benefit for people receiving a CPP retirement pension who are disabled and between 60 and 65 years old.

[6] The Minister of Employment and Social Development (Minister) refused his application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[7] The Appellant agrees he **is not** eligible for the CPP disability pension because he applied more than 15 months after he started receiving his retirement pension.² However, he says that he is eligible for the PRDB because he was incapable of working and making a living as of December 2021.

¹ See GD2-66.

² Sections 42(2)(b) and 66.1(1.1) of the *Canada Pension Plan* say a retirement pension can't be cancelled in favour of a disability pension if an applicant applies more than 15 months after their retirement pension starts.

[8] The Minister says that surgeries to replace both knees were successful. This means, according to the Minister, that the Appellant didn't have a severe and prolonged disability.

What the Appellant must prove

The minimum qualifying period for the PRDB

[9] To qualify for the PRDB, the Appellant must have become disabled before the end of his minimum qualifying period (MQP). The rules about the MQP for the PRDB changed on May 5, 2023. Both rules are based on an applicant's contributions to the CPP.³

[10] Under the old rules, the Appellant needs to prove that his disability was severe and prolonged by May 4, 2023 (the day before the new rules started). Under the new rules, the Appellant needs to prove that his disability was severe and prolonged by December 31, 2024, which is when he turned 65 years old.

[11] The Minister says that which set of rules applies depends on **when** the Appellant's disability became severe and prolonged, if it did become severe and prolonged. This is called the date of onset.

[12] The new rules don't say how they affect cases from before the new rules started.

[13] In this case, it doesn't matter which rule applies because I find that the Appellant had a severe and prolonged disability by December 2021. This is before both possible dates.

What "severe" and "prolonged" mean

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

³ See section 44(2) of the *Canada Pension Plan*. The Appellant's CPP contributions are at GD2-64 and GD2-65.

[15] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.⁴

[16] This means I have to look at all of the Appellant's medical conditions together to see what effect they have on his ability to work. I also have to look at his background (including his age, level of education, and past work and life experience). This is so I can get a realistic or "real world" picture of whether his disability is severe. If the Appellant is capable regularly of doing some kind of work that he could earn a living from, then he isn't entitled to a disability pension.

[17] A disability is **prolonged** if it is likely to be long continued and of indefinite duration.⁵

[18] 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.

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

Matters I have to consider first

I accepted late documents

[20] The Appellant sent the Tribunal a letter from a treating professional after the deadline. I accepted the late document. My reasons are in a letter dated April 17, 2025.

[21] The Minister sent the Tribunal submissions about the letter I just mentioned after the deadline. I accepted the late document. My reasons are in a letter dated April 23, 2025.

⁴ 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.

⁵ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

Reasons for my decision

[22] I find that the Appellant had a severe and prolonged disability as of December 2021. He continues to be disabled.

Was the Appellant's disability severe?

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

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

[24] The Appellant has osteoarthritis in both knees. His right knee was replaced in January 2022. His left knee was replaced in July 2022. The Appellant also has ankle pain from an old injury and high blood pressure. He says he also has chronic fatigue.

[25] In his application the Appellant said he also had depression and anxiety.⁶ However, at the hearing he said he no longer had depression or anxiety.

[26] I can't focus on the Appellant's diagnoses.⁷ Instead, I must focus on whether he has functional limitations that got in the way of him earning a living.⁸ 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 his ability to work.⁹

[27] I find that the Appellant has functional limitations that affected his ability to work.

– What the Appellant says about his functional limitations

[28] The Appellant says that his medical conditions have resulted in functional limitations that affect his ability to work.

⁶ See GD2-43 to GD2-61.

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.

[29] At the hearing the Appellant said that he stopped working because of severe pain in both his knees. He said that although he has less pain now that his knees have been replaced, he still cannot do the following without pain:

- stand for longer than about 10 or 15 minutes
- drive for more than 20 minutes
- walk for more than 20 minutes
- sit for more than 30 minutes

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

[30] The Appellant must provide some medical evidence to support that his functional limitations affected his ability to work.¹⁰

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

[32] The Minister notes that in February 2023 the Appellant told a Service Canada agent that after his surgeries he could walk and stand and that his depression was improving.¹¹ The Minister also points to a note by an orthopedic surgeon from August 2023, which says that the Appellant said that he only had mild pain in his knees.¹²

[33] The Appellant told me that after his surgeries he hoped that he would be able to return to work. He also said that what he told his surgeon was influenced by the fact that he wanted his surgeon to clear him to work. He told me that instead of knee pain at 10/10, his pain is now about 5/10 to 7/10. He accepts now that he cannot work.

[34] The Appellant's story makes sense and is supported by the medical evidence.

¹⁰ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹¹ See GD2-141.

¹² See GD2-109.

[35] In October 2024 the Appellant's family doctor said that the Appellant wouldn't be able to work in any job that required significant standing, walking, lifting or pulling.¹³ He said the only work the Appellant could do would need to be completely sedentary.

[36] In a note from April 2025, the Appellant's physiotherapist said that even with both knee replacements "it would be not likely that a return to previous work-related duties...is possible."¹⁴

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

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

- age
- level of education
- language abilities
- past work and life experience

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

[39] The Appellant was 61 years old when he stopped working. He didn't go to college or university. After graduating from high school, he started working in warehouses. The only jobs he had have been similar to his last job, in other words, physically demanding.¹⁶ He has never worked in a sedentary job, and said his employers didn't require him to use computers much. He said he only just started using email.

[40] I find that the Appellant can't work in the real world.

¹³ See GD5-3.

¹⁴ See GD10-2.

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

¹⁶ See GD5-52 to GD5-56.

[41] I find that the Appellant hasn't been able to work since December 2021. This is when he stopped working due to severe knee pain.

Was the Appellant's disability prolonged?

[42] The Appellant's disability was prolonged.

[43] The Appellant hasn't been able to work since December 2021. His knees were replaced in 2022, but he still has pain with standing, walking and sitting. In other words, his condition has been long continued.¹⁷

[44] It is now more than two years since his surgeries. He said he does all his stretches and goes to physiotherapy. This tells me that further improvement after his surgery is unlikely. That and the opinions of his family doctor and physiotherapist tell me that his condition will continue indefinitely.

[45] I find that the Appellant's disability was prolonged as of December 2021.

When payments start

[46] The Appellant's disability became severe and prolonged in December 2021.

[47] There is a four-month waiting period before payments start.¹⁸ This means that payments start as of April 2022.

Conclusion

[48] I find that the Appellant is eligible for the PRDB because his disability was severe and prolonged.

[49] This means the appeal is allowed.

Wayne van der Meide
Member, General Division – Income Security Section

¹⁷ 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.

¹⁸ Section 70 of the *Canada Pension Plan* sets out this rule.