



Citation: *AB v Minister of Employment and Social Development*, 2025 SST 539

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

# **Decision**

**Appellant:** A. B.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated January 29, 2025 (issued  
by Service Canada)

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**Tribunal member:** Jackie Laidlaw

**Type of hearing:** Teleconference

**Hearing date:** May 22, 2025

**Hearing participants:** None

**Decision date:** May 26, 2025

**File number:** GP-25-226

## Decision

[1] The appeal is dismissed.

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

## Overview

[3] The Appellant is a 53-year-old woman who has terminal lung cancer, which was diagnosed in 2024. She also has coronary artery disease, diabetes and high blood pressure.

[4] The Appellant applied for a CPP disability pension on September 5, 2024. 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 is unable to work because of two cardiac arrests and lung cancer.

[6] The Minister says her conditions all arose after her prorated minimum qualifying period (MQP).

## What the Appellant must prove

[7] The Appellant had CPP contributions in 2020 that let the Appellant qualify for a pension if she became disabled between January 2020 and May 31, 2020. This is her prorated MQP. She must also prove she continues to be disabled.<sup>1</sup>

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

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<sup>1</sup> This is based on sections 19 and 44(2.1) of the *Canada Pension Plan*.

[9] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.<sup>2</sup>

[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.<sup>3</sup>

[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.

## **Matters I have to consider first**

### **The Appellant wasn't at the hearing**

[14] A hearing can go ahead without the Appellant if she got the notice of hearing.<sup>4</sup> I decided that the Appellant got the notice of hearing because of the following:

- a) The Appellant and the Tribunal had a telephone call about her file on February 27, 2025, explaining the process. A follow-up letter was sent to her the same day by email.

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<sup>2</sup> 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.

<sup>3</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

<sup>4</sup> Section 58 of the *Social Security Tribunal Rules of Procedure (Rules)* sets out this rule.

- b) The Appellant emailed her notice of readiness on March 25, 2025, to the Tribunal.
- c) On April 7, 2025, the Tribunal sent an email to the Appellant explaining that her reply period had started . The Appellant confirmed receipt of the email on April 7, 2025.
- d) On April 14, 2025, the Tribunal phoned the Appellant and left a detailed message on her personal voicemail regarding the date of the hearing. On that day, the hearing was set for May 22, 2025. A letter was also sent by email to the Appellant that day. On April 14, 2025, the Appellant confirmed receipt of the Notice of Hearing.
- e) On May 15, 2025, the Tribunal called the Appellant to remind her of the hearing. Her phone number was not in service. The Tribunal sent a follow-up email requesting she contact the Tribunal with an updated phone number, and once again noted the hearing date and time.
- f) On May 16, 2025, a second hearing reminder was emailed to the Appellant.
- g) Between May 16 and May 20, 2025, the Tribunal attempted to call the Appellant three more times. The number was not in service. The Appellant did not confirm receipt of the emails, as she generally did.
- h) If the Appellant moved, she had an obligation to report her new information to the Tribunal.<sup>5</sup>
- i) The Appellant confirmed receipt of the initial Notice of Hearing by email on April 14, 2025. The hearing date and time have never changed. I am satisfied the Appellant was aware of her hearing.

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<sup>5</sup> Section 13(3) of the *Rules* sets out this rule.

- j) I waited 30 minutes for the Appellant to join the teleconference as scheduled. She did not.

[15] So, the hearing took place when it was scheduled, but without the Appellant.

## Reasons for my decision

[16] I find that the Appellant hasn't proven she had a severe and prolonged disability within the prorated MQP of January 1, 2020, to May 31, 2020. I reached this decision by considering the following issue:

- Was the Appellant's disability severe?

## Was the Appellant's disability severe?

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

### – The Appellant's functional limitations didn't affect her ability to work

[18] At the time of her prorated MQP, the Appellant may have had diabetes, although it wasn't diagnosed until May 2024. After her MQP, the Appellant had the following conditions:

- a heart attack in May 2021, and again in May 2024
- terminal lung cancer, with symptoms beginning June 2024
- high blood pressure

[19] However, I can't focus on the Appellant's diagnoses.<sup>6</sup> Instead, I must focus on whether she has functional limitations that got in the way of her earning a living.<sup>7</sup> 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.<sup>8</sup>

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<sup>6</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>7</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>8</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[20] I find that the Appellant doesn't have functional limitations that affected her ability to work.

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

[21] The Appellant wrote a letter to the Tribunal on March 26, 2025.<sup>9</sup> In this letter, she stated the following:

- She moved to the east coast from Alberta in May 2020 during the pandemic and could not get work because of all the restrictions.
- She had a heart attack in "April/May" 2021 and a second one in May 2022.
- She was diagnosed with terminal cancer in August 2024.

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

[22] The Appellant must provide some medical evidence to support that her functional limitations affected her ability to work between January 1 and May 31, 2020.<sup>10</sup>

[23] The medical evidence supports the Appellant had conditions which arose after her MQP.

[24] Cardiologist Dr. Kate MacEachen wrote in an undated letter that the Appellant had an initial heart attack on May 1, 2021, and a second one in May 2024. On June 3, 2021, Dr. MacEachen wrote that the Appellant was considered to be low-risk with a grossly normal echocardiogram and exercise stress test and was scheduled to receive a coronary angiography the next day.<sup>11</sup> On June 11, 2021, after the surgery, Dr. MacEachen wrote the Appellant had an excellent recovery from a cardiac perspective. She was safe to return to work on June 23, 2021, and was given a letter for her employer.<sup>12</sup>

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<sup>9</sup> See GD 5-2.

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

<sup>11</sup> See GD 5-6.

<sup>12</sup> See GD 5-7.

[25] On January 5, 2024, Dr. MacEachen wrote that in “May of this year,”<sup>13</sup> the Appellant had an episode of atypical chest discomfort. She indicated that the Appellant felt in hindsight the chest discomforts may be due to significant stress at work. During her stay at hospital in May 2024, she was diagnosed with significant sleep apnea and diabetes.

[26] On February 28, 2025, Dr. MacEachen wrote that since the last assessment, the Appellant developed metastatic small cell lung cancer and an aneurysm. From a cardiac perspective, the Appellant was stable. However, she would be assessed for palliative care for her terminal malignancy.<sup>14</sup>

[27] On March 21, 2025, oncologist Dr. Donal Rowe noted the Appellant was diagnosed with metastatic small cell lung cancer Stage 4 and was incurable. The next step was palliative care.<sup>15</sup>

[28] The medical evidence supports what the Appellant says. My sympathies to the Appellant that her condition is now terminal.

[29] Unfortunately, there is no medical evidence to support any functional limitations which prevented the Appellant from working between January 1 and May 31, 2020. As a result, she hasn’t proven she had a severe disability.

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

[30] 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.<sup>16</sup>

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<sup>13</sup> I presume the doctor was reporting the incident happened in May 2024. However, the letter was incorrectly dated January 2024. It should have been January 2025. In February 2025, Dr. MacEachen wrote another letter indicating the recent heart episode was May 2024. (See GD 5-14.)

<sup>14</sup> See GD 5-14-15.

<sup>15</sup> See GD 4-2.

<sup>16</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[31] 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.<sup>17</sup>

[32] In the Appellant's case, there isn't any medical evidence to support a finding of disability between January 1 and May 31, 2020. Since there is no relevant medical evidence, there is no reason to consider her personal characteristics.

## Conclusion

[33] 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.

[34] This means the appeal is dismissed.

Jackie Laidlaw

Member, General Division – Income Security Section

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<sup>17</sup> 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..."