



Citation: *Minister of Employment and Social Development v EH*, 2025 SST 727

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** Minister of Employment and Social Development  
**Representative:** Yanick Bélanger

**Respondent:** E. H.  
**Representative:** Chanel Scheepers

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**Decision under appeal:** General Division decision dated October 24, 2024  
(GP-24-141)

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**Tribunal member:** Neil Nawaz

**Type of hearing:** Teleconference

**Hearing date:** July 2, 2025

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

**Decision date:** July 15, 2025

**Corrigendum date:** July 23, 2025

**File number:** AD-25-49

## Decision

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

## Overview

[2] The Respondent is a 57-year-old former dental hygienist with a history of right-handed pain. She hasn't worked since January 2020.

[3] The Respondent applied for a CPP disability pension in October 2022.<sup>1</sup> She claimed that she could no longer work because of symptoms related to carpal tunnel syndrome (CTS) and de Quervain's tenosynovitis (DQT).<sup>2</sup> The Minister of Employment and Social Development refused the application after determining that the Respondent did not have a severe and prolonged disability.<sup>3</sup>

[4] The Respondent appealed the Minister's refusal to the Social Security Tribunal. The Tribunal's General Division held a hearing by teleconference and ~~dismissed~~ allowed the appeal. It found that, ~~although~~ the Respondent ~~had some physical limitations, she still~~ no longer had the capacity to regularly perform substantially gainful employment.

[5] The ~~Respondent~~ Minister then applied for permission to appeal to the Appeal Division. In March, one of my colleagues on the Appeal Division granted ~~her~~ the Minister permission to appeal. Earlier this month, I held a hearing to discuss ~~her~~ the Respondent's disability claim in full.

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<sup>1</sup> See the Respondent's application for CPP disability benefits dated October 21, 2022, GD2-26.

<sup>2</sup> CTS and DQT are related repetitive strain conditions characterized by inflammation of the wrist and thumb tendons, respectively.

<sup>3</sup> See the Minister's initial refusal letter dated May 23, 2023 (GD2-23) and reconsideration decision letter dated December 14, 2023 (GD2-9).

## Issues

[6] For the Respondent to succeed, she had to prove that, more likely than not, she had a **severe** and **prolonged** disability during her coverage period.

- A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.<sup>4</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>5</sup> The disability must be expected to keep the claimant out of the workforce for a long time.

[7] The parties agreed that the Respondent's coverage period ended on December 31, 2022.<sup>6</sup> In this appeal, I had to decide whether the Respondent had a severe and prolonged disability as of that date and continuously thereafter.

## Analysis

[8] I have applied the law to the available evidence and decided that the Respondent did not have a severe and prolonged disability during her coverage period. The Respondent has medical problems, but they didn't prevent her from regularly pursuing substantially gainful employment as of December 31, 2022.

### The Respondent did not have severe disability

[9] Claimants for disability benefits bear the burden of proving that they have a severe and prolonged disability.<sup>7</sup> Having reviewed the record, I concluded that the

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<sup>4</sup> See *Canada Pension Plan*, section 42(2)(a)(i).

<sup>5</sup> See *Canada Pension Plan*, section 42(2)(a)(ii).

<sup>6</sup> Under section 44(2) of the *Canada Pension Plan*, a minimum qualifying period is established by making threshold contributions to the CPP. The Respondent's earnings and contributions are listed on her record of earnings at GD2-52.

<sup>7</sup> See *Canada Pension Plan*, section 44(1).

Respondent didn't meet that burden according to the test set out in the *Canada Pension Plan*.

[10] In her application for benefits, the Respondent claimed that she faced significant difficulties performing physical tasks such as

- Bending down to pick up coins from the floor
- Removing items from her back pocket
- Changing an overhead light bulb
- Pulling or pushing a heavy door to open it
- Picking up two bags of groceries and walking a block
- Opening a can with a manual can opener
- Pounding a nail with a hammer

[11] The Respondent also reported difficulties with personal care tasks such as brushing her teeth, combing her hair, and putting on her clothes. She said that she was unable to perform home maintenance tasks without frequent breaks. But she also rated as "good" her ability to do other tasks, such as driving, answering the telephone, or pressing a keyboard with her index finger. She denied having any behavioural, emotional, or cognitive impairments.

[12] At the hearing, the Respondent testified that she first started feeling pain in her right hand about 10 years ago. She eventually had to give up full-time work and, by January 2020, she could no longer manage even part-time hours.

[13] After being diagnosed with CTS and DQT, she tried rest, physiotherapy, and exercise, but nothing really worked. In June 2021, she had surgery, followed by eight months of physiotherapy, with limited success. It addressed most of her pain, but the base of her thumb remained swollen and irritable. She still feels a pulling sensation when she tries to extend it.

[14] She has never recovered full strength, and her pinch strength is particularly weak. She can't squeeze a tube of toothpaste. Her penmanship is terrible. She can't

even hold a piece of paper. Asked how she would manage if she had to write a note or letter, she replied that she would be able to get through a few lines but then would have to take a break.

[15] The Respondent may feel that she is disabled, but I must base my decision on more than just her subjective view of her capacity.<sup>8</sup> In this case, the evidence, looked at as a whole, does not suggest a severe impairment that prevents her from performing suitable work. From what I can see, the Respondent is subject to some limitations, but she is not incapacitated from all forms of employment.

**– The Respondent’s hand condition is not completely disabling**

[16] The Respondent spent many years working as a dental hygienist, an occupation that demands constant repetitive motion. The available medical evidence suggests that the Respondent began experiencing problems with her right hand, wrist, and forearm in the early 2000s.<sup>9</sup> Her symptoms, which included tingling and numbness, were initially treated with bracing, physiotherapy, and anti-inflammatory pain medication.

[17] The Respondent continued to work on a part-time basis. In January 2020, she told her family physician, Dr. Edwards, that she was having difficulty holding her tools at work.<sup>10</sup> The following month, Dr. Edwards completed a long-term disability form, declaring that the Respondent had a right-hand injury that had recently flared up, leaving her with pain and reduced strength.<sup>11</sup> However, Dr. Edwards also checked a box indicating that the Respondent was capable of sedentary activity. She said it was too soon to tell if the Respondent would be a candidate for rehabilitation or vocational rehabilitation.

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<sup>8</sup> A 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*. In *Warren v Canada (Attorney General)*, 2008 FCA 377, the Federal Court of Appeal said that there must be some objective medical evidence of a disability. See also *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>9</sup> See report dated October 25, 2016 by Dr. Peter Hindle, physiatrist, GD2-148.

<sup>10</sup> See clinical note dated January 23, 2023 by Dr. Jacqueline Edwards, family physician, GD2-156.

<sup>11</sup> See Dr. Edwards’ Empire Life attending physician statement dated March 6, 2020, GD2-162.

[18] Dr. Edwards referred the Respondent to a plastic surgeon. In February 2020, Dr. Azad noted that the Respondent felt unsafe return to work with her symptoms, and he recommended a graduated return to work, emphasizing the importance of hand elevation, physiotherapy, and splintage.<sup>12</sup>

[19] The Respondent also saw a physiatrist. In June 2020, Dr. Elsherif noted that that neuromuscular examination and electrodiagnostic studies suggested right mild CTS, as well as wrist tendonitis, and DQT related to her job and repetitive hand work activities using vibrating tools. Like Dr. Azad, Dr. Elsherif recommended that the Respondent stay off work until her symptoms resolved.<sup>13</sup>

[20] The Respondent never returned to work and continued to experience pain and tingling in her right wrist. In June 2021, she underwent carpal tunnel release surgery with no complications.<sup>14</sup>

[21] There are no post-surgery follow-up reports from Dr. Elsherif on file, but there are extensive progress reports from the Respondent's physiotherapist. Over eight months, Mark Eaton documented what appeared to be a good recovery from her surgery. The following are representative comments from his notes:

July 19, 2021	"Doing OK. Still sensitive and tingling up thumb" <sup>15</sup>
October 14, 2021	"Feeling pretty good" <sup>16</sup>
October 28, 2021	"Feeling OK, a little achy" <sup>17</sup>
November 2, 2021	"Not doing too badly today" <sup>18</sup>

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<sup>12</sup> See report dated February 28, 2020 by Dr. Sanjay Azad, plastic surgeon, GD2-178.

<sup>13</sup> See report dated June 12, 2020 by Dr. Hanan Elsherif, physiatrist, GD2-143.

<sup>14</sup> See Dr. Azad's operative report dated June 21, 2021, GD2-201.

<sup>15</sup> See charting sheet dated July 19, 2021 and completed by Michael Eaton, registered physiotherapist, AD10-98.

<sup>16</sup> See Mr. Eaton's charting sheet dated October 21, 2021, AD10-57.

<sup>17</sup> See Mr. Eaton's charting sheet dated October 28, 2021, AD10-51.

<sup>18</sup> See Mr. Eaton's charting sheet dated November 2, 2021, AD10-49.

November 25, 2021	“Feeling OK. Was doing some housework before coming so a little sore” <sup>19</sup>
December 12, 2021	“Doing OK. Thumb seems a little swollen” <sup>20</sup>
December 14, 2021	“Thumb has been a little sore this weekend, not sure why” <sup>21</sup>
December 16, 2021	“Splint is really helping. Surprised how well it works. Was able to make the bed today without any pain (for the first time in a long time)” <sup>22</sup>
December 21, 2021	“Hand is feeling OK today” <sup>23</sup>

[22] On January 13, 2022, Mr. Eaton noted that the Respondent was feeling “pretty good,” although her grip strength had declined 10 kg over the previous six weeks.<sup>24</sup> Still, he noted that she was “feeling OK” and that her pain level and exercise tolerance had improved. He wasn’t sure what had caused the regression in her strength scores.

[23] Hand assessments confirm a sudden and unexplained decline in the Respondent’s performance. On November 23, 2021, her right grip strength was 36 kg (75 percent of normal) and her cumulative right pinch strength was 7 kg (49 percent of normal).<sup>25</sup> At the same time, the Respondent reportedly said, “My fingers feel stronger... thumb is still numb.” Mr. Eaton also wrote, “Exercises seem to be working well. Comfortable with them, but they’re still challenging.”

[24] However, the next assessment, on January 26, 2022, showed a marked deterioration.<sup>26</sup> Now the Respondent’s right grip strength (with a brace) was only 26 kg

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<sup>19</sup> See Mr. Eaton’s charting sheet dated November 25, 2021, AD10-28.

<sup>20</sup> See Mr. Eaton’s charting sheet dated December 12, 2021, AD10-26.

<sup>21</sup> See Mr. Eaton’s charting sheet dated December 14, 2021, AD10-24.

<sup>22</sup> See Mr. Eaton’s charting sheet dated December 16, 2021, AD10-22.

<sup>23</sup> See Mr. Eaton’s charting sheet dated December 21, 2021, AD10-18.

<sup>24</sup> See Mr. Eaton’s charting sheet dated January 13, 2022, AD10-4.

<sup>25</sup> See Hand and Upper Limb Assessment Sheet dated November 23, 2021, AD10-36.

<sup>26</sup> See Hand and Upper Limb Assessment Sheet dated January 26, 2022, AD10-11.

and her cumulative pinch strength was 6.2 kg. In a final assessment on February 8, 2022, the numbers were even lower, at 22.9 kg and 5.7 kg, respectively.<sup>27</sup>

[25] Despite these declines, the Respondent's physiotherapy apparently ended in March 2022. The file doesn't contain a discharge note explaining why Mr. Eaton decided to stop treatment when he did.

[26] At the hearing, the Respondent couldn't remember Mr. Eaton discussing her reduced strength scores. She did recall him telling her that she was being released because her recovery had plateaued. She said that it had nothing to do with her insurance company cutting her off.

[27] I find it surprising that the physiotherapist would have ended treatment just as the Respondent's condition went into an apparent reversal. Still, Mr. Eaton's notes tell a mostly positive story, with the Respondent's main complaint being residual pain and numbness at the base of the right thumb and an associated loss of gripping and pinching strength. Treatment appears to have had a positive effect. The Respondent found Mr. Eaton's exercises challenging, but that's not surprising: physiotherapy, when administered properly, inevitably produces a short-term pain and discomfort in furtherance of long-term benefit.

[28] The Respondent continued to regularly see her family physician. However, even here, Dr. Edwards' notes suggest that the Respondent retained considerable functionality, despite her hand and wrist injury.

[29] In April 2022, the Respondent told Dr. Edwards that she had no strength and "never got any better after her surgery."<sup>28</sup> She also said that she was unable to grip for any length of time or pinch at all — her fine motor skills never came back. However, the Respondent also said that the surgery got "rid of most of the pain" and that she was able to make the bed without pain. She had tried a few things like golf but couldn't do it

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<sup>27</sup> See handwritten assessment dated February 8, 2022, AD10-8.

<sup>28</sup> See Dr. Edwards' office note dated April 27, 2022, GD2-82.

more than once a week. A month later in May 2022, Dr. Edwards wrote that the Respondent had been going out golfing “a fair bit.”<sup>29</sup>

[30] At the hearing, I asked the Respondent about her golfing. She said that she didn’t golf at all from 2020 to 2022 but took up it again after her physiotherapist told her it would be OK. She said that she went golfing maybe once a week in 2023 and two or three times per week in 2024. So far, she has been out 10 or 11 times this summer.

[31] I wouldn’t go as far as to equate an ability to golf with an ability to work. Still, the Respondent’s ability to regularly and frequently pursue this particular pastime does say something about her overall capacity. Golfing, whatever one’s level of proficiency, requires strength, particularly grip strength. The Respondent has always conceded that her right-handed grip was relatively strong, but she maintains that her fine motor skills are impaired to the extent that she is effectively unemployable. I disagree.

[32] I don’t doubt that the Respondent experiences intermittent pain at the base of her thumb, nor do I doubt that she has difficulty pinching with her thumb and forefinger and/or index finger. But not every job requires dominant hand dexterity. Dr. Edwards ruled out returning to work as a dental hygienist, but that job involved repetitive and precise hand movements for extended periods. There are many jobs that are easier on the hands, for instance, in the service and retail sectors. Many of these jobs require continual keyboarding, but some don’t, and I see no reason why the Respondent could not at least have attempted to work in, for instance, a shop or call centre.

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

[33] I find that, despite the Respondent’s medical problems, she still had at least some ability to work at the end of her coverage period. I am reinforced in this belief when I look at her overall employability.

[34] 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

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<sup>29</sup> See Dr. Edwards’ office note dated May 25, 2022, GD2-86.

a real-world context.<sup>30</sup> 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;<sup>31</sup> and
- The claimant’s background — matters such as age, education level, language proficiency and past work and life experience are relevant.

[35] In this case, the Respondent’s disability claim was entirely focused on her right hand and wrist problems. She has complained of neck and upper back pain in the past,<sup>32</sup> but her application for benefits made no mention of this condition.<sup>33</sup> Dr. Edwards, the Respondent’s family physician, completed a medical questionnaire in support that application, but she didn’t mention neck or back pain either, listing only CTS and DQT as the Respondent’s main disabling conditions. She said that the Respondent had difficulty using her hands for more than 20 minutes, but she did not completely rule out a return to work. She only wrote that, having lost the use of her dominant hand, it was “hard to say” what the Respondent was going to do. As we have seen, the Respondent’s right-handed fine motor skills are somewhat impaired, but she is still able to grip and grasp with force.

[36] On the whole, I don’t believe the Respondent’s medical condition rendered her completely unemployable. Nor were her background and personal characteristics significant barriers to her continued participation in the workforce. The Respondent is in her fifties, but she has several assets that would help her in a job search. English is her first language. She has a college education. She has a long work history, marking her as a potentially reliable employee.

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<sup>30</sup> See *Villani v Canada (Attorney General)* 2001 FCA 248.

<sup>31</sup> See *Bungay v Attorney General of Canada*, 2011 FCA 47.

<sup>32</sup> In his report dated December 30, 2020 (GD2-80), Dr. Elsherif relayed the Respondent’s four-week history of sudden electric shock type pain down her right neck to her shoulder and arm, which she said was relieved by moving her head. Subsequent imaging reports revealed moderate to severe multilevel neuroforaminal narrowing at the of the Respondent’s cervical spine — see Dr. Elsherif’s report dated February 16, 2021, GD2-116.

<sup>33</sup> See the Respondent’s CPP disability application dated October 21, 2022, GD2-26.

[37] Given this background, the Respondent, even with her medical conditions, had the capacity to return to the labour market or make a reasonable effort to do so.

– **The Respondent did not attempt alternative work**

[38] 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.<sup>34</sup>

[39] This passage suggests that, if a claimant retains at least **some** work capacity, the decision-maker 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.

[40] On top of that, disability claimants must make **meaningful** attempts to return to work.<sup>35</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>36</sup> Claimants who fail to pursue alternative forms of employment may be ineligible for benefits.

[41] At the hearing, the Respondent testified that she has never tried any other type of work or looked for another job. She said that she has no other skills other than as a dental hygienist. Office work would be out of the question. If she worked in a restaurant, she said, she would drop the coffee.

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<sup>34</sup> See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

<sup>35</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>36</sup> See *Canada (Attorney General) v Ryall*, 2008 FCA 164.

[42] My review of the evidence suggests that the Respondent had at least some work capacity — enough to trigger the obligation to pursue employment that might have been better suited to her limitations.

[43] However, the Respondent has never **attempted** to return to work in any capacity. She has not tried a job — or even looked for one — that did not involve sustained repetitive hand and arm motion. She therefore can't show that her impairments caused her to fail at such a job. For that reason, I find that she has not fulfilled the obligation imposed by the *Inclima* case.

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

[44] A disability must be severe **and** prolonged.<sup>37</sup> Since the Respondent has not proved that her disability is severe, there is no need for me to assess whether it is also prolonged.

### **Conclusion**

[45] The Respondent suffers from various medical conditions, but I am not convinced they produce symptoms that amount to a severe disability. She sustained right-handed repetitive strain injuries that were partially addressed by surgery and physiotherapy. She continues to experience pain and weakness in her thumb, but those symptoms have not stopped her from regularly playing golf. She may no longer be able to work as a dental hygienist, but she has the residual capacity to at least attempt a lower impact job. She has not fulfilled her duty to make such an attempt.

[46] The appeal is allowed.



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Member, Appeal Division

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<sup>37</sup> See *Canada Pension Plan*, section 42(2)(a).

