



Citation: *KG v Minister of Employment and Social Development*, 2025 SST 777

Social Security Tribunal of Canada

Appeal Division

Decision

Appellant: K. G.

Respondent: Minister of Employment and Social Development
Representative: Daniel Crolla

Decision under appeal: General Division decision dated July 18, 2024
(GP-23-955)

Tribunal member: Janet Lew

Type of hearing: Videoconference

Hearing date: June 10, 2025

Hearing participants: Appellant
Respondent's representative

Decision date: July 28, 2025

File number: AD-24-759

Decision

[1] I am dismissing the appeal. The Appellant, K. G. (Claimant), is not entitled to a Canada Pension Plan disability pension.

Overview

[2] This is an appeal of the General Division decision by the Claimant. The General Division determined that she did not have a severe and prolonged disability by the end of her minimum qualifying period on December 31, 2021. As a result, the General Division found that she was not eligible for a Canada Pension Plan disability pension.

[3] The Claimant appealed the General Division decision to the Appeal Division. The Appeal Division granted leave (permission) to appeal the General Division decision. Once the Appeal Division grants leave, then the appeal goes ahead as a new hearing, without any consideration for the General Division decision. I held a new hearing on June 10, 2025.

[4] The Claimant argues that she has had a severe and prolonged disability since an accident in June 2019. A patient service partner at a hospital, she injured her shoulder and arm from lifting a heavy patient. She argues that she has been unable to regularly pursue any substantially gainful employment since the accident due to ongoing pain in her shoulder and neck, as well as anemia and stress. For the most part, she has not returned to work since her accident, other than for brief attempts to work.

[5] The Claimant asserts that she has tried all medical treatments recommended by her doctors. She says that she has not seen any improvement. Instead, she states that her condition has gotten progressively worse over time. She also states that she attempted to return to work and to retrain, but has been unsuccessful because of her pain, fatigue, and inability to concentrate. The Claimant says that once doctors properly diagnosed her, they recommended that she stop working. The Claimant asks the Appeal Division to allow her appeal and to find that she qualifies for a Canada Pension Plan disability pension.

[6] The Minister argues that the evidence shows that the Claimant did not have a severe and prolonged disability by the end of her minimum qualifying period on December 31, 2021. The Minister also argues that the medical evidence shows that the Claimant has residual capacity and that she could have attempted alternative employment suitable for her limitations.

[7] The Minister also argues that the Claimant has unreasonably refused treatment recommendations and that her inconsistent efforts at treatment have limited her recovery. The Minister asks the Appeal Division to dismiss the appeal.

Issue

[8] Did the Claimant have a severe and prolonged disability for the purposes of the *Canada Pension Plan*, by the end of her minimum qualifying period on December 31, 2021?

Analysis

[9] A claimant has to prove that, more likely than not, they had a severe and prolonged disability by the end of their qualifying period.

- A disability is severe if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.¹
- A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death.²

[10] When assessing whether a disability is severe, one must consider the “real world” context.³ This means considering a claimant’s particular circumstances, such as their age, education level, language proficiency, and past work and life experience.

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

² See section 42(2)(a)(ii) of the *Canada Pension Plan*.

³ See *Villani v Canada (Attorney General)*, 2001 FCA 248 at para 38.

[11] This “real world” context also means considering whether a claimant has pursued all reasonable treatment recommendations, whether any refusal is unreasonable and what impact that refusal might have on that claimant’s disability status should the refusal be considered unreasonable.⁴

[12] Medical evidence will still be needed, as will evidence of employment efforts and possibilities.⁵

The Claimant argues that she has a severe disability

[13] Several years have passed since the end of the Claimant’s minimum qualifying period. Over time, memories fade. The Claimant acknowledges that sometimes it is difficult to remember what happened in the past. But she says that she vividly recalls her injury, her pain, and of her functionality at the end of her minimum qualifying period. She remembers because it was the middle of the pandemic. Her family had to stay away and could no longer help her, so she had to start doing things by herself. Her pain got worse at this time.

[14] When examining the Claimant’s history, I will see whether the medical records corroborate or confirm what the Claimant says about her condition, her capacity and functionality, and her response to any treatment. If there are gaps in the medical evidence, or where the Claimant simply does not remember how she felt or what she was capable of doing, then I will rely on the written medical evidence.

[15] The Claimant argues that the evidence clearly establishes the following, that:

- she injured her right shoulder and arm in a work accident in June 2019. She says the records show that she had a labral tear in her right shoulder. She also claims that doctors have diagnosed with her with an untreatable neck condition.

⁴ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

⁵ See *Villani v Canada (Attorney General)*, 2001 FCA 248 at para 50.

- she has had extensive investigations and was discovered to be severely anemic. Since her accident in June 2019, she has also developed anxiety and depression.
- she has numerous limitations and restrictions that have left her incapable regularly of pursuing a substantially gainful occupation.
- she has not refused any reasonable treatment recommendations and has been fully compliant, until her insurer and the Workplace Safety Insurance Board (WSIB) both stopped providing coverage. She has been unable to afford physiotherapy and acupuncture, which she found helpful.
- she tried to return to work at modified duties but found that nothing was suitable for her because of her conditions. Her doctors have told her to stop working.

Review of the medical evidence

[16] I will review the Claimant's medical conditions.

– 2019

[17] In June 2019, the Claimant attempted to lift a heavy patient. She strained her shoulder.

[18] The medical records start in August 2019. The Claimant had an MRI of her right shoulder, which revealed a rotator cuff tendinopathy without a discrete rotator cuff tendon tear.⁶ Analgesics, non-steroidal anti-inflammatory drugs, and Tylenol did not provide any relief. She started a trial of physiotherapy but found that it exacerbated her symptoms.⁷

⁶ See MRI dated August 2, 2019, at GD 2-143.

⁷ See orthopaedic surgeon's consultation report dated September 27, 2019, at GD 6-12 and GD 8-9.

[19] In or about December 2019, the Claimant began complaining of neck pain. An orthopaedic surgeon recommended that she be referred to a neck specialist. He also recommended that she avoid heavy lifting at work.⁸

– **2020**

[20] In 2020, blood work showed low haemoglobin levels, and an ultrasound revealed multiple fibroids, accounting for the Claimant's heavy menstrual bleeding, which, in turn, explained her anemia. The Claimant states that her pain and increased activity contributes to her anemia, but none of the medical opinions suggests that pain has caused or is the cause of the Claimant's anemia.

[21] In May 2020, the Claimant told the orthopaedic surgeon that her right shoulder pain was getting worse. She was having difficulty doing overhead activity and lifting. She also had pain at night. An MRI scan did not show any evidence of tearing of the rotator cuff muscles or tendons or of the labrum. The orthopaedic surgeon was of the opinion that her pain was due to rotator cuff tendinitis. He recommended physiotherapy. If that did not help, then she could consider getting a cortisone injection. She was to continue with her current job modifications.⁹

[22] In 2020, the Claimant began phone consultations with a psychologist, who had been referred by WSIB. The psychologist diagnosed the Claimant with somatic symptom disorder with predominant pain and adjustment disorder with mixed anxiety and depressed mood. There had been no progress with either physiotherapy or occupational therapy. Indeed, the Claimant reported that her pain had gotten worse over time. The prognosis was poor.

[23] Despite the diagnosis, the Claimant hoped to return to school in order to complete a nursing diploma. She did not cite any psychological barriers to her return to work.¹⁰

⁸ See orthopaedic surgeon's consultation report dated September 27, 2019, at GD 6-12 and GD 8-9.

⁹ See orthopaedic surgeon's consultation report dated May 11, 2020, at GD 6-8 and GD 8-7.

¹⁰ See Upper Extremity Specialty Program - Psychology Treatment Report: Progress #3, dated February 18, 2021, at GD 2-105.

[24] The psychologist was of the opinion that the Claimant's "inconsistent level of engagement and attendance record limited her ability to benefit from treatment."¹¹ The psychologist found that the Claimant "was generally resistant to treatment and was often skeptical or dismissive of suggestions as well as psychoeducation."¹² The psychologist found that the Claimant exhibited minimal effort with regard to cognitive behavioural interventions. The Claimant was pain focused and presented with a high degree of disability perceptions. Even so, the psychologist was of the view that the Claimant would benefit from involvement with a return to work specialist.¹³

[25] The Claimant continued to complain of right-sided neck and arm pain, radiculopathy, and weakness. An MRI of her cervical spine showed mild degenerative changes with mild posterior disc bulges at the C5-6 and C6-7 levels. There were no signs of any cervical disc herniation, cord signal change, or neuroforaminal narrowing.¹⁴

– **2021**

[26] In February 2021, the orthopaedic surgeon saw the Claimant again. He noted that she had yet to do physiotherapy. He recommended physiotherapy for her right shoulder, which he hoped would make her symptoms better.¹⁵ He did not see her again that year. (The Claimant had had physiotherapy up to about mid-2020, but has not had physiotherapy since that time.)

[27] In 2021, the Claimant's primary focus was on her symptomatic fibroids and severe anemia. A gynecologist noted that the Claimant's anemia was impacting her quality of life. She was taking regular iron. Tranexamic acid was only moderately helpful. The gynecologist reviewed potential options, which included a trial of Lupron,

¹¹ See Upper Extremity Specialty Program - Psychology Treatment Report: Progress #3, dated February 18, 2021, at GD 2-101.

¹² See Upper Extremity Specialty Program - Psychology Treatment Report: Progress #3, dated February 18, 2021, at GD 2-101.

¹³ See Upper Extremity Specialty Program - Psychology Treatment Report: Progress #3, dated February 18, 2021, at GD 2-101 to 108.

¹⁴ See MRI of the cervical spine, dated June 27, 2020, at GD 2-141.

¹⁵ See orthopaedic surgeon's consultation report dated February 1, 2021, at GD 2-125 (and also at GD 6-6 and GD 8-6).

hormonal menstrual suppression, referral to a hematologist for consideration of IV iron, and surgery (typically a hysterectomy).¹⁶

[28] The Claimant testified that she was interested in undergoing a hysterectomy to remove the fibroids. She had had a myomectomy in 2011 so did not have any reservations about surgery. She testified that because of the pandemic, surgery was unavailable. However, the gynecologist's consultation reports show that the Claimant chose to continue with Tranexamic acid and iron, rather than undergo surgery.

[29] The gynecologist also offered an endometrial biopsy, likely to ensure that the fibrous masses were benign. The Claimant did not see any utility in getting a biopsy, as she claimed that she had already had a lot of biopsies in the past. There were no further consultation reports from the gynecologist after 2021.

[30] The Claimant also saw her family doctor throughout 2021.¹⁷ She reported ongoing neck and shoulder pain. She also reported now having lower back pain. She reported that it was becoming severe and affecting her sleep. She reported that the pain became severe when she chewed food or laughed.

[31] The family doctor recommended cortisone injections. The Claimant testified, however, that the records are inaccurate. She testified that her doctors have told her that cortisone injections are futile as they do not help when there is diffuse, widespread pain. The Claimant reportedly told her family doctor that her shoulder pain was better with Lyrica.¹⁸

[32] By the end of December 2021, however, the Claimant reported that the pain was getting worse in her shoulder and arm. She had stopped taking her medications. She explained that WSIB had stopped providing coverage so she could no longer afford taking medication.

¹⁶ See gynecologist's consultation reports dated April 6, 2021, at GD 2-123 (and at GD 7-2) and July 22, 2021, at GD7-6.

¹⁷ See family physician's clinical records for the dates April 23, July 13, July 27, and December 29, 2021, at GD2-110 to 111.

¹⁸ See family physician's clinical records for July 27, 2021, at GD2-110.

– 2022

[33] The Claimant continued to see her family doctor in 2022, with complaints of neck and right shoulder pain. She had numbness in her hand, so he referred her for EMG studies.

[34] In late March 2022, the family doctor prepared a Canada Pension Plan medical report. He confirmed a diagnosis of anemia, which left her lacking any energy to work. She was taking iron supplements, though he noted that they were not helping. He also noted that she was reluctant to undergo surgery, contrary to the Claimant's oral testimony. Even so, he was of the view that her anemia was likely to improve over time.

[35] The family doctor also diagnosed the Claimant with neck and shoulder pain from a herniated disc and tendinitis in the shoulder, which left her unable to handle her job. He did not provide a prognosis. It is unclear how the family doctor diagnosed the Claimant with a herniated disc, given that the MRI of the cervical spine clearly ruled this out.¹⁹ The MRI shows mild degenerative changes with disc bulges.

[36] The family doctor listed the Claimant's medications. She was taking Lyrica, Cymbalta, and Tylenol. She had physiotherapy and acupuncture on and off between July 2019 and July 2020. He wrote that he had recommended that she stop working in August 2019, though expected her to be able to return to modified work at some point.²⁰ He again thought she might be able to work an "easy job" -- after her anemia improved. He was of the opinion that she needed a hysterectomy.²¹

[37] The Claimant saw the orthopaedic surgeon in April 2022. She reported that she had not seen any benefit from pain medications. She reported ongoing pain in her right shoulder. She also reported that she had pain with activities and with any motion. The

¹⁹ See MRI of the cervical spine, dated June 27, 2020, at GD 2-141. See also opinion of neurologist dated June 7, 2022, at GD 2-97.

²⁰ See family doctor's Canada Pension Plan medical report dated March 29, 2022, at GD 2-115 to 122.

²¹ See family physician's letter of October 6, 2022, at GD2-109.

specialist recommended that she go to the Shoulder and Elbow Clinic for further assessment and treatment. He speculated that surgery might be required.²²

[38] In June 2022, the Claimant had electrodiagnostic studies to investigate why she was getting numbness in her hand. The Claimant also saw a neurologist-electrophysiologist. On examination, he found that her neck, shoulder, elbow, and wrist motions were neither painful nor restricted. She exhibited strength and tendon reflexes. Sensory testing, cranial nerves and the Claimant's gait were normal. He diagnosed her with mild trivial non-sympathetic right distal median neuropathy. In other words, he found it unlikely that her symptoms were attributable to either a peripheral or central neurological disorder. He did not make any recommendations for treatment.²³

[39] In August 2022, the Claimant's family doctor advised the claimant that she needed to see a psychiatrist and to adjust her Cymbalta. He did not explain what led to the discussion that she see a psychiatrist. She informed him that she had seen psychiatrists through WSIB.²⁴ (In fact, she saw a psychologist.)

[40] In October 2022, the Claimant's family physician again offered that the Claimant might be able to work at an easy job after her anemia was addressed.²⁵ Later, he defined an easy job as one not requiring any physical or mental exertion.²⁶

[41] The Claimant saw the orthopaedic surgeon again in November 2022. This time, she reported having numbness in her fingers. She dropped things. She said that the symptoms were activity-related, such as doing grocery shopping or washing dishes. The specialist was of the opinion that the nerve-like symptoms were consistent with a radiculopathy.²⁷

²² See orthopaedic surgeon's consultation report dated April 27, 2022, at GD2-93 (and at GD 6-4 and GD 8-5).

²³ See neurologist-electrophysiologist's consultation report dated June 2, 2022, and electrodiagnostic studies at GD 2-97 to GD 2-100.

²⁴ See family physician's clinical records for August 30, 2022, at GD 2-113.

²⁵ See family physician's letter of October 6, 2022, at GD2-109.

²⁶ See family physician's letter dated January 30, 2024, at GD 8-2.

²⁷ See orthopaedic surgeon's consultation report dated November 28, 2022, at GD 6-2 (and at GD 8-4).

[42] The specialist was of the opinion that injections and physiotherapy for the Claimant's shoulder would not help her neck, although physiotherapy for her neck could help. He suggested that the Claimant's family doctor refer her to a neck specialist, the same recommendation he made in December 2019.²⁸

– **2023**

[43] In August 2023, the family physician provided an opinion on the cause of the Claimant's complaints. He attributed the Claimant's chronic pain syndrome to the 2019 accident.²⁹ He did not comment on when he had last seen her.

[44] There were no contemporaneous medical records for 2023.

– **2024**

[45] In January 2024, the family physician responded to the Claimant's questions. This time, he was of the opinion that the prognosis for the Claimant's anemia was unknown, although he did not explain why or how he had changed his opinion from March 2022, when he was of the view that she could expect improvement.³⁰ The family doctor's prognosis is contrary to the specialist's opinion, who clearly outlined treatment options for the Claimant that she not wish to pursue.

[46] The family doctor concluded that the Claimant had chronic neck and shoulder pain and severe anemia. He was also of the opinion that, as a result, she was unable to return to gainful employment.³¹

[47] Although the family doctor continued to diagnose the Claimant with severe anemia, there are no recent lab results to show a red blood cell or haemoglobin deficiency that could confirm that the Claimant remains severely anemic, unlike in 2021.

²⁸ See orthopaedic surgeon's consultation report dated November 28, 2022, at GD 6-2 (and at GD 8-4).

²⁹ See family physician's responses dated August 29, 2023, to the Claimant's questions, at GD 8-11.

³⁰ See family physician's letter dated January 30, 2024, at GD 8-2.

³¹ See family physician's letter dated January 30, 2024, at GD 8-2.

The 2021 lab results showed that the Claimant's haemoglobin levels were low and well below the average range.³²

[48] As the Claimant is no longer heavily bleeding and takes iron supplements, it is unlikely she would continue to have iron deficiency anemia. (She testified that she had blood work done in the past year, though she could not recall when. She testified what her haemoglobin level was. The levels were low, but improved over the 2021 results.) If, as the Claimant alleges, she has ongoing anemia, it is unclear what could account for it. She should be further investigated and treated.

– 2025

[49] The Claimant began seeing a psychotherapist in January 2025. The psychotherapist is of the opinion that the Claimant had developed an adjustment disorder with mixed anxiety. Symptoms included low mood, generalized anxiety, sleep disturbance, difficulty concentrating, feelings of hopelessness and helplessness, and significant social withdrawal and isolation.

[50] The psychotherapist is of the opinion that the Claimant developed the disorder because of the intersection of untreated physical pain and the lack of access to effective multidisciplinary treatment. The psychotherapist did not offer any opinion as to when the Claimant might have developed the disorder.

[51] The psychotherapist is also of the opinion that the Claimant is severely limited in her ability to engage in regular, gainful employment.³³ As the psychotherapist did not see the Claimant near the end of her minimum qualifying period, she could not offer an opinion on the Claimant's functionality or employability for that timeframe.

The Claimant did not have a severe disability by the end of her minimum qualifying period

[52] The Claimant argues that the medical evidence shows that she had a severe and prolonged disability by the end of December 2021. She says that her doctors were

³² See lab results, dated April 14, 2021, and August 20, 2021, at GD2-138 and GD2-139.

³³ See medical report dated April 29, 2025, of registered social service worker, at AD9.

initially unaware of the nature of her condition as it related to her neck, but she says that once they made a proper diagnosis, they determined that she should stop working in any capacity. As she has had longstanding chronic pain, she also argues that her doctors have advised her that no treatment is available to resolve her injuries and that her long-term prognosis is poor.

[53] The Claimant injured her right shoulder and arm in a work accident in June 2019. She has had ongoing shoulder and arm pain since then. She also developed neck pain. However, I find that the evidence falls short in establishing that the Claimant had a severe and prolonged disability by the end of her minimum qualifying period on December 31, 2021, and continuously since then.

[54] To begin with, I find that the Claimant is not a reliable historian. Some of the Claimant's oral evidence on issues such as the medical opinions on her condition, treatment options, and recommendations for returning to the workforce, stands in stark contrast to the documentary medical evidence.

[55] For instance, the Claimant states that her doctors advised her that she should not return to work because of a herniated disc in her cervical spine. Her family physician is the only doctor who has diagnosed her with a herniated disc.³⁴ That being the case, then it is reasonable to conclude that the family doctor could have been the only one who might have possibly advised the Claimant against ever returning to work by the end of 2021.

[56] But it is highly unlikely that the Claimant's family doctor would have advised her not to return to work. Such advice would conflict with the medical opinions that he gave shortly after her minimum qualifying period ended. In March 2022 and even later in October 2022, he expected that she would be able to return to work performing modified duties.³⁵

³⁴ It is unclear how the family doctor came up with this diagnosis of a herniated disc as an MRI ruled out a diagnosis of a herniated disc.

³⁵ See family doctor's Canada Pension Plan medical report dated March 29, 2022, at GD2-121. See also medical letter dated October 6, 2022, at GD2-109.

[57] At some point between October 2022 and January 2024, the family doctor's opinion changed. He felt that the Claimant could no longer return to gainful employment. But this was well past the end of the Claimant's minimum qualifying period. If he meant that she had been unable to return to gainful employment since her accident in June 2019, then he should have explained why he changed his opinion over time.

- **The medical evidence does not show that the Claimant was incapable regularly of pursuing any substantially gainful occupation by the end of her minimum qualifying period**

[58] There is no dispute that the Claimant has chronic pain involving her neck and right shoulder, with pain going down her arm. She has been consistent in her complaints of right shoulder and neck pain since June 2019. The Claimant has had diagnostic investigations, the results of which are consistent with the clinical history. An MRI of her right shoulder in August 2019 revealed a rotator cuff tendinopathy. An MRI of her cervical spine in June 2020 showed disc bulging, consistent with degenerative disc disease at various levels of her cervical spine.

[59] The Claimant takes pain relief medication. She has had physiotherapy and acupuncture for her shoulder pain. She consulted two orthopaedic surgeons. The Claimant did not produce records from one of the specialists, so it is unclear if that specialist treated the Claimant and if so, for how long, or what advice they may have given. The second specialist, on the other hand, followed the Claimant for over two years and is familiar with her history. He made several treatment recommendations.

[60] Despite treatment, the Claimant says that there has been no relief of her pain symptoms. She says that her pain has gotten progressively worse, especially since the pandemic, when her family stopped helping her. She testified that since then, she has had to push herself and do what she can. This increases her pain levels, which she says can last all week. She testified that she finds it very challenging now.

[61] The records give a mixed picture, in terms of whether any of the treatment has been helpful. Some of the medical records show that the Claimant reported that both physiotherapy and acupuncture have helped with her pain. But the Claimant has also

reported that she has not seen any relief from these modalities. But setting aside the issue of the effectiveness of these treatments, the Claimant says that she cannot afford to access these forms of treatment anymore. Her insurer and WSIB have terminated coverage.³⁶

[62] The Claimant contends that because of her ongoing pain, she is incapable regularly of pursuing any substantially gainful occupation. The Claimant testified that she cannot pursue sedentary work because she has limited tolerance for sitting. She testified that sitting and standing aggravate her pain.

[63] However, there is no medical evidence to suggest that the Claimant ever told any of her health caregivers that she has limitations with sitting or standing. If the Claimant has any limitations with sitting or standing, it is likely a more recent complaint, and if she had any problems with sitting or standing in the past, it was likely minor or short-lived, such that it did not merit mentioning to her doctors.

[64] The Claimant's family doctor prepared a medical report dated March 29, 2022. He wrote that he had recommended that the Claimant stop working in August 2019. However, there are no records or any notes from him from 2019 (1) to verify that he made this recommendation, or (2) to explain why he might have recommended that she stop working at that point. The records for the family physician start in April 2021.

[65] Even so, I am prepared to accept that her family doctor likely recommended that she stop working at her particular job as a patient service partner at a hospital in 2019 because of her neck and shoulder pain. In his March 2022 report, the family doctor wrote that the Claimant was unable to handle or perform "her job."³⁷ He found she could not handle her job as a patient service provider because of neck and shoulder pain and because of fatigue from anemia (though there is no indication that the Claimant had been diagnosed with anemia in 2019 or 2020).

³⁶ The Claimant testified that her lawyer is pursuing a claim against WSIB on her behalf.

³⁷ See family doctor's Canada Pension Plan medical report dated March 29, 2022, at GD 2-118 and 119.

[66] As her job as a patient service provider was physically demanding, it is unsurprising that the Claimant was incapable of working as a patient service provider because of her neck and shoulder pain and in 2021, because of anemia too. The family doctor, however, did not rule out other forms of employment that the Claimant might have been capable of pursuing or performing.

[67] In his report of January 2024, the family doctor wrote that the Claimant was unable to return to any gainful work because of right shoulder pain and fatigue.³⁸ He clarified an opinion that he gave in October 2022 that she might work at an “easy job.” There, he defined an easy job as a “few hours job that has no physical nor mental exertion.”³⁹

[68] Yet, the orthopaedic surgeon determined that the Claimant was capable of regularly pursuing any substantially gainful occupation, at least from a physical perspective. He recommended that the Claimant avoid any overhead or heavy lifting at work. In May 2020, he was comfortable with the Claimant continuing with her job modifications. The orthopaedic surgeon at no time suggested that the Claimant was incapable regularly of pursuing any substantially gainful occupation.

[69] The family doctor should have addressed the orthopaedic surgeon’s opinion that the Claimant has some residual capacity for work.

[70] Even so, the family doctor’s opinion of March 2022 is not that dissimilar from the orthopaedic surgeon’s opinion. Despite advising that the Claimant cannot work because of right shoulder pain and fatigue, the family physician did expect the Claimant to be able to return to work in at least a modified capacity at some point. The family doctor did not outline what modifications he expected that she would require.

[71] The only evidence as to what modifications are appropriate for the Claimant comes from the orthopaedic surgeon. He rules out physical work, including heavy lifting, but does not otherwise rule out sedentary or light work. Given the specific modifications

³⁸ See family physician’s letter dated January 30, 2024, at GD 8-2.

³⁹ See family physician’s letter dated January 30, 2024, at GD 8-3.

he outlined, I accept his opinion that the Claimant should avoid overhead work and heavy lifting.

[72] From a physical perspective, the Claimant has some residual capacity for non-physical employment or for employment that does not require overhead work or heavy lifting.

[73] But I also have to consider any other medical conditions and the Claimant's overall functionality. The Claimant has mental health issues. She also complains of anemia. So I cannot simply consider the Claimant's physical complaints in isolation without considering these other medical conditions and together, how they impact her. I have to consider the Claimant's complaints in their totality, particularly in this case, due to the intersection of physical and mental health considerations and because of what she says is unrelenting anemia.

[74] I accept that the Claimant has an adjustment disorder with mixed anxiety and depressed mood since at least 2020. That year, a psychologist diagnosed her with a somatic symptom disorder with predominant pain and adjustment disorder with mixed anxiety and depressed mood. This diagnosis was partly confirmed by a registered social service worker years later in 2025.

[75] The medical evidence for 2021 and into early 2022, however, is quite sparse in showing that the mental health issues even contributed to the Claimant's disability status. The psychologist noted that the Claimant had not been forthcoming in testing, so it was difficult to assess her abilities and restrictions. In fact, the Claimant did not cite any psychological barriers for a return to work. So, while the Claimant likely experienced stress, anxiety, and depression, the evidence falls short of showing that they affected her capability or functionality, in concert with her other medical conditions.

[76] The Claimant has had severe iron deficiency anemia, resulting in fatigue, along with other symptoms. With such low haemoglobin levels, it is unsurprising that the Claimant would have encountered fatigue and lack of energy.

[77] The anemia could also have hindered the Claimant's cognitive ability, making it difficult to concentrate. I note, however, that when the psychologist saw her in February 2021, the Claimant was fully able to concentrate.⁴⁰ The Claimant had reported difficulties with attention and concentration, but during the sessions with the psychologist, there were no signs or any symptoms consistent with gross cognitive deficits.⁴¹

[78] The Claimant suggests that severe menstrual bleeding and physical pain have been the source of her anemia. It is widely accepted that excessive bleeding can cause severe anemia, but the Claimant testified that it has been about a year since she has experienced any heavy bleeding. She points to her pain as the cause of her ongoing anemia.

[79] I do not see anything in the records that supports the Claimant's contention that pain has been or is causing her ongoing anemia. The gynecologist pointed to the Claimant's excessive bleeding as the cause of her anemia.

[80] As the Claimant testified that she no longer experiences heavy bleeding, she should have at least produced updated lab results or a recent medical opinion. They could have confirmed whether a diagnosis of anemia remains appropriate.

[81] As it is, the Claimant's family doctor expected the Claimant to be able to return to work, although he did not know when. He wrote in following reports that she might be able to work light jobs after "correction of anemia."⁴²

[82] I accept that the Claimant was dealing with iron deficiency anemia up to and after the end of her minimum qualifying period. But I do not see any supporting evidence to show that it remains an ongoing issue. I note that her family doctor states that her haemoglobin and anemia are "still refractory"⁴³ into January 2024, but there are no

⁴⁰ See Upper Extremity Specialty Program - Psychology Treatment Report: Progress #3, dated February 18, 2021, at GD 2-105.

⁴¹ See Upper Extremity Specialty Program - Psychology Treatment Report: Progress #3, dated February 18, 2021, at GD 2-102.

⁴² See family physician's letter of October 6, 2022, at GD2-109.

⁴³ See family physician's letter dated January 30, 2024, at GD 8-2.

supporting lab reports, let alone any clinical records to show when the doctor last saw her. Besides, this might have been just before the Claimant's heavy bleeding ended.

[83] The family doctor stated that he had seen the Claimant approximately 15 times since 2021. There are at least 12 documented visits to the family doctor up to September 20, 2022. The doctor wrote reports on December 31, 2021, and on October 6, 2022, but it is unclear whether he actually saw her on those dates. If he did not see her on those dates, this would mean that the Claimant saw her doctor no more than three times up to January 2024. Otherwise, if he saw her on those dates, then he would have seen her only one other time. In short, it is unclear how the family doctor arrived at his 2023 and 2024 opinions that she still has anemia.

[84] In summary, the Claimant was dealing with multiple medical issues at the time of her minimum qualifying period. She had chronic pain in her right shoulder, arm, neck, mental health issues and anemia.

[85] But the medical evidence regarding the Claimant's mental health issues is insufficient to show that they impacted her ability to regularly pursue any substantially gainful occupation by the end of her minimum qualifying period.

[86] There is no doubt that the Claimant was dealing with both pain issues and severe anemia in late 2021. However, it is questionable whether the claimant continues to experience severe anemia, given the absence of supporting medical evidence.

[87] The anemia affected the Claimant's quality of life but there is no suggestion from the gynecologist (whose opinion I strongly prefer over the family doctor's opinion) that the severe iron deficiency anemia interfered with the Claimant's ability to regularly pursue any substantially gainful occupation at any time by or around the end of the minimum qualifying period.

[88] Similarly, there is insufficient evidence also that the Claimant's mental health issues impacted her capability and functionality at the end of her minimum qualifying period.

[89] And the evidence regarding the Claimant's pain complaints show that she had some residual capacity for alternative work that did not require heavy lifting or overhead work.

[90] Taken together, the medical evidence does not support the Claimant's assertions that she was incapable regularly of pursuing any substantially gainful occupation by the end of her minimum qualifying period.

[91] The Claimant testified that doctors told her to stop working after she was diagnosed with a herniated disc in her cervical spine. But, as I have noted above, even after investigation into her neck complaints ruled out a herniated disc and revealed that she had degenerative disc disease, her family doctor still expected that she would be able to return to work. Her family physician expected that she would be able to return to work performing modified duties. The orthopaedic surgeon did not change his opinion that she avoid overhead work and heaving lifting.

- **The Claimant's real-world circumstances**

[92] The definition of a severe disability under the *Canada Pension Plan* includes an employability component. So, when assessing the severity of a claimant's disability, I also have to consider their "real world" circumstances.

[93] This means considering things such as their age, education level, language proficiency, and past work and life experience. That is because these types of considerations have some bearing on the scope of what is suitable substantially gainful occupations for a claimant. As the Federal Court of Appeal set out in *Villani*, a middle-aged applicant with an elementary school education and limited English or French language skills would not normally include work as an engineer or doctor.

[94] The Claimant was 48 years old by the end of her minimum qualifying period. But she certainly did not think of herself near retirement, having enrolled in a practical nursing program two years before that, to work as a nursing assistant. She is reasonably well educated. She earned a diploma in practical nursing. She worked as a

patient service provider and before that, worked in sales for a larger department store for several years. She also worked as a cleaner. The Claimant is proficient in English.

[95] It is no longer appropriate for the Claimant to engage in heavy lifting or overheard work, but her versatility, educational background, and training indicate that, from an employability perspective, she had employment options. Lighter or sedentary work that did not involve heavy lifting or overhead work were potential options at the end of her minimum qualifying period.

- **The medical evidence shows that treatment options are available for the Claimant and that the Claimant unreasonably refused some recommendations**

[96] Even if the medical evidence showed that the Claimant had functional limitations that affected her ability regularly of pursuing any substantially gainful occupation, she would also need to show that she followed medical advice and did not refuse reasonable treatment options. She would have to provide a reasonable explanation for failing to follow medical advice. I would also have to consider what effect the medical treatment might have had on the Claimant's disability status.⁴⁴

[97] The Claimant asserts that she has complied with all treatment recommendations, other than for continuing to have physiotherapy and acupuncture for her shoulder and neck. I find that the Claimant has a reasonable explanation for not continuing to have physiotherapy and acupuncture. She is unable to afford these treatments. She does not have any coverage for these types of expenses.

[98] The Claimant contends that there are no treatment options left. But this is not consistent with the medical evidence. The orthopaedic surgeon's recommendations for her shoulder and later, for her neck, were not limited to physiotherapy. The orthopaedic surgeon also recommended cortisone injections and that she go to the Shoulder and Elbow Clinic for further assessment and treatment.⁴⁵ He also suggested that she see a

⁴⁴ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

⁴⁵ See orthopaedic surgeon's opinions of September 27, 2019 (GD 6-12) and May 11, 2020 (GD 6-8). See also family physician's recommendations of July 31, 2021 (GD 2-110). For the recommendation to the Shoulder and Elbow Clinic, see recommendation of April 27, 2022 (GD 2-93).

neck specialist because of her ongoing neck pain. Clearly, the Claimant has not exhausted treatment options.

[99] The Claimant testified that she went to the Shoulder and Elbow Clinic when she saw the orthopaedic surgeons. This makes little sense that the orthopaedic surgeon would recommend that she go to the Shoulder and Elbow Clinic if he operated out of the Clinic.

[100] In fact, I find that the Claimant has not gone to the Shoulder and Elbow Clinic, as recommended. She has not provided any explanation for why she has not gone to the Clinic.

[101] Even so, as it is unclear whether the Claimant would in fact benefit from further assessment and treatment of her right shoulder by going to the Shoulder and Elbow Clinic, I do not see the non-compliance with this specific recommendation as a failure to mitigate by the Claimant.

[102] As early as 2019 and in November 2022, the orthopaedic surgeon also recommended that the Claimant see a neck specialist. The Claimant testified that she keeps asking her family doctor for a referral to a neck specialist, but that her doctor will not refer her because the surgery could aggravate her condition. The orthopaedic surgeon recommended that she see a neck specialist for treatment options, but it was not strictly for surgery. Besides, I find it implausible that a general practitioner such as a family physician would not heed the advice of a specialist that they refer a patient to another specialist.

[103] That said, it is unclear whether the Claimant's family doctor ever tried to arrange a referral to a neck specialist, or if the Claimant chose not to see one. As the evidence is unclear on this point, I do not find that the Claimant unreasonably refused the referral to a neck specialist. Besides, there is insufficient evidence to find that consulting with a neck specialist would necessarily lead to any improvement in the Claimant's neck complaints.

[104] The orthopaedic surgeon also recommended that the Claimant have cortisone injections, as this would likely improve her pain. I find that the Claimant does not have a reasonable explanation for refusing cortisone injections for her pain. The Claimant explains that her doctors have told her that cortisone injections are futile as she has diffuse, widespread pain and injections target only a specific area. There is no medical evidence that supports this claim that cortisone injections would not help in the Claimant's case. Her doctors are aware that she has pain in her shoulder radiating down to her arm, as well as neck pain. Yet, they have continued to recommend that she have cortisone injections with the expectation that she would see some improvement in her symptoms.

[105] As for the Claimant's mental health issues, it has been recommended that she see a psychiatrist and also have cognitive behavioural therapy. A psychologist saw the Claimant in 2020 and 2021. The Claimant testified that she attended all sessions, which were conducted by phone. From her perspective, the Claimant believes that she attended all treatments and was fully cooperative in undergoing treatments.

[106] But the Claimant's evidence is not consistent with the psychologist's report. The psychologist noted that the Claimant had cancelled two appointments and missed another two. Further, the psychologist noted that the Claimant was generally resistant to treatment.

[107] The psychologist was unable to recommend any additional psychological treatment for the Claimant. The psychologist noted that the Claimant had been offered cognitive behavioural training, but her attendance and participation was limited. Hence, the psychologist was unprepared to schedule any further treatments.

[108] I find that the Claimant was non-compliant with the sessions with the psychologist, as she resisted treatment and dismissed suggestions and psychoeducation.⁴⁶

⁴⁶ See Upper Extremity Specialty Program - Psychology Treatment Report: Progress #3, dated February 18, 2021, at GD 2-101.

[109] The psychologist was also of the opinion that the Claimant would benefit from the involvement of a return to work specialist, but this does not appear to have been arranged. I do not find that the Claimant was non-compliant with this particular recommendation, as it does not appear that anyone arranged for her to see a return to work specialist.

[110] As for the Claimant's anemia, the gynecologist made numerous recommendations, including trialling different medications, having hormone suppression therapy, IV therapy, and surgery. The Claimant testified that she tried to get a hysterectomy but that the procedure was unavailable because of COVID-19. This is inconsistent with the evidence. The evidence shows that she was uninterested in any options other than to continue taking Tranexamic acid and iron supplements.

[111] I find that the Claimant unreasonably refused treatment options for her anemia that would have at the very least immeasurably improved the quality of her life. However treatment for her iron deficiency anemia may no longer be relevant as the Claimant no longer experiences any heavy bleeding.

[112] In summary, numerous treatment recommendations have been made for the Claimant's various medical issues. While the Claimant has been compliant with some of these recommendations or has a reasonable explanation for not pursuing some of them, she has not been compliant with other recommendations that were expected to help her, and she does not have a reasonable explanation for not pursuing them.

- **The Claimant was required to try to obtain and maintain employment**

[113] The Claimant denies that she had any residual capacity. She points to the fact that (1) she attempted to return to work at modified duties and (2) continues to face challenges, even though she had retraining as a nursing assistant.

[114] The Claimant attempted to return to work on two separate occasions in 2019. The first time was at a reduced work schedule with fewer work hours. The second time involved modified duties. Both were short-lived attempts. She stopped working as she

found it too difficult. The earnings history shows that she has not had any employment earnings since 2019.⁴⁷

[115] When asked whether she asked for a desk job or something that was not physically demanding, the Claimant testified that her employer did not have this type of work available for her. Her employer told her that “they cannot give me any kind of job. That’s it, if [she] was not able to do trade, that’s what they said.”⁴⁸ She testified that she was in too much pain from her injury.

[116] At the time of her accident in June 2019, the Claimant had been enrolled in a practical nursing program. She was three courses shy of completing the program, which included the placement. There were some physical demands, including heavy lifting, with which she struggled. The Claimant testified that her pain and anxiety increased, so she came close to stopping and not completing the program. In fact, she delayed completing the final semester of the program and did not finish on time, whereas all of her classmates finished on time.

[117] The Claimant argues that the fact that she completed the training does not reflect any measure of capacity. She says that she struggled with the retraining and with completing the nursing program.

[118] I do not find that the retraining was suitable, given the Claimant’s symptoms. The retraining involved some heavy lifting. Her doctors recommended against lifting or overhead work. If the retraining did not involve physical challenges, I might have been prepared to consider the Claimant’s arguments that the fact that she struggled with retraining showed that she did not have any capacity to regularly pursue any substantially gainful employment.

[119] But the medical evidence shows that the Claimant had residual capacity at the end of her minimum qualifying period. Having determined that the Claimant had some

⁴⁷ See earnings history at GD 2-4 to 6 and GD 2-62 to 76.

⁴⁸ At approximately 1:13:13 of the audio recording of the Appeal Division hearing.

residual capacity, she was required to show that efforts at obtaining and maintaining employment suitable to her limitations were unsuccessful by reason of her disability.⁴⁹

[120] Here, the Claimant did not endeavour to look for any retraining or work that did not involve any overhead work or any lifting.

I do not have to consider whether the Claimant had a prolonged disability by the end of her minimum qualifying period

[121] A disability must be both severe and prolonged. The Claimant has not proven that her disability was severe by the end of her minimum qualifying period. Therefore, I do not have to consider whether her disability was prolonged by the end of her minimum qualifying period.

Conclusion

[122] The medical records fall short in establishing that the Claimant had a severe and prolonged disability by the end of her minimum qualifying period. Doctors were of the opinion that she had work capacity, but should avoid heavy lifting and overhead work. Despite this, the Claimant did not attempt to find work within her work capacity. On top of that, she did not pursue reasonable treatment options that would have alleviated her pain or addressed other medical issues, to help restore some functionality.

[123] The appeal is dismissed.

Janet Lew
Member, Appeal Division

⁴⁹ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.