



Citation: *PR v Minister of Employment and Social Development*, 2025 SST 869

## Social Security Tribunal of Canada Appeal Division

# Decision

<b>Appellant:</b>	P. R.
<b>Representative:</b>	Warren Cummings
<b>Respondent:</b>	Minister of Employment and Social Development
<b>Representative:</b>	Daniel Crolla and Ian McRobbie

---

<b>Decision under appeal:</b>	General Division decision dated February 28, 2025 (GP-24-761)
-------------------------------	------------------------------------------------------------------

---

<b>Tribunal member:</b>	Neil Nawaz
<b>Type of hearing:</b>	In person
<b>Hearing date:</b>	July 25, 2025
<b>Hearing participants:</b>	Appellant Appellant's representative Respondent's representatives
<b>Decision date:</b>	August 13, 2025
<b><u>Corrigendum date:</u></b>	<u>August 15, 2025</u>
<b>File number:</b>	AD-25-171

## Decision

[1] I am allowing this appeal. The Appellant is entitled to a Canada Pension Plan (CPP) disability pension.

## Overview

[2] The Appellant is a 60-year-old former high-lift delivery driver who injured his right ankle in June 2016. After time off work, his employer, an airport catering company, placed him on light duties. He carried on in various capacities until he was laid off at the beginning of the COVID-19 pandemic in March 2020. He has since undergone retraining but hasn't been able to get a job.

[3] The Appellant applied for a CPP disability pension in September 2023.<sup>1</sup> He claimed that he could no longer work because of his ankle injury, as well as back pain, diabetes mellitus, and a hearing impairment.

[4] Service Canada, the Minister's public-facing agency, refused the application after finding that the Appellant did not have a severe and prolonged disability.<sup>2</sup> It acknowledged that the Appellant had medical problems but found he could still do light work within restrictions.

[5] The Appellant appealed the Minister's refusal to the Social Security Tribunal's General Division. It held a hearing by teleconference and dismissed the appeal. It found that the Appellant remained regularly capable of substantially gainful work. It noted that the Appellant continued to work for his previous employer for several years after his ankle injury and was eventually terminated for non-medical reasons.

[6] The Appellant then applied for permission to appeal to the Appeal Division. In March, one of my colleagues on the Appeal Division allowed the Appellant's appeal to proceed. Last month, I held an in-person hearing to discuss his disability claim in full.

---

<sup>1</sup> See the Appellant's application for CPP disability benefits submitted on September 25, 2023, GD2-61.

<sup>2</sup> See Service Canada's reconsideration refusal letter dated April 3, 2024, GD2-10.

## Issue

[7] For the Appellant to succeed, he must prove that, more likely than not, he had a **severe** and **prolonged** disability during his coverage period.

- A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.<sup>3</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>4</sup> The disability must be expected to keep the claimant out of the workforce for a long time.

[8] The parties agreed that the Appellant's CPP disability coverage ended on December 31, 2024.<sup>5</sup> As a result, I had to decide whether the Appellant had a severe and prolonged disability as of that date.

## Analysis

[9] Claimants for disability benefits bear the burden of proving that they have a severe and prolonged disability.<sup>6</sup> I have applied the law to the available evidence, and I am satisfied that the Appellant met that burden. From what I can see, the Appellant's condition does not permit him to deliver the kind of regular performance demanded in a commercial workplace.

### The Appellant has a severe disability

[10] In his application for CPP disability benefits, the Appellant said that he was mainly disabled by leg and back pain.<sup>7</sup> He rated all of his functional abilities as "poor."

---

<sup>3</sup> See *Canada Pension Plan*, section 42(2)(a)(i).

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

<sup>5</sup> Under section 44(2) of the *Canada Pension Plan*, a "minimum qualifying period" (MQP) is established by making threshold contributions to the CPP. The Appellant's CPP contributions are listed on his most recent record of earnings at GD2-6.

<sup>6</sup> See *Canada Pension Plan*, section 44(1).

<sup>7</sup> See the Appellant's CPP disability application dated September 25, 2023, GD2-61.

[11] The Appellant testified that he was born in Portugal and immigrated to Canada in 1985. He soon got a job at X, a company that delivered prepared meals to airlines at X airport. He worked there for the next 35 years.

[12] The Appellant's job was to deliver food carts from commercial planes using a truck with a built-in forklift. In June 2016, he was unloading his truck when he fell off a ramp, spraining his ankle and breaking some ribs. He was taken to the hospital, treated, and released the same day. He applied for WSIB benefits, went on sick leave, and underwent physiotherapy. After three months, he returned to modified duties. He carried on in various light capacities until early 2020, when the COVID-19 pandemic hit. When flights resumed, he asked to return to his old job but was told it had been eliminated.

[13] The Appellant says that he never fully recovered from his injuries. His ribs healed but, despite physiotherapy, his ankle never really got better. He can't fully support his weight or easily climb stairs. If he picks up his grandkids, or any heavy load, he can't walk with them. He can still drive but for only 30 minutes at a time. He feels a burning sensation in his legs. He now has back pain.

[14] I can't exclusively base my decision on the Appellant's subjective account of his impairments. However, there is enough objective evidence on file to convince me that he is regularly incapable of substantially gainful occupation.

### **The medical evidence points to a significant impairment**

[15] The Appellant suffers from a variety of injuries and age-related medical conditions that, looked at together, render him incapable of regular, remunerative employment.

[16] In a medical questionnaire that accompanied his CPP disability application, his current family physician said that he first started treating the Appellant's primary condition in March 2023.<sup>8</sup> Dr. Tawadros-Elraheb listed the Appellant's diagnoses as a previous right ankle injury, lower back degenerative disc disease, sciatica, and diabetes

---

<sup>8</sup> See the CPP medical report dated December 13, 2023 by Dr. George Tawadros Elraheb, family physician, GD2-103.

mellitus with peripheral neuropathy. He indicated that the Appellant was unable to bear weight on his right foot or to sit or stand for more than 20 minutes.

**– The Appellant sustained a significant ankle injury**

[17] Most of the Appellant's difficulties flow from ongoing leg pain. In July 2016, the Appellant's former family physician, Dr. Dautey, reported that her patient had sprained his ankle at work when he missed a step and fell forward hitting his chest and leg.<sup>9</sup> She advised him to avoid lifting more than 15 pounds and limit climbing and walking for more than one hour, but she cleared him to return to work on modified duties within two weeks.

[18] A few months later, Dr. Dautey noted that the Appellant had some residual swelling and heat but was walking well. An ultrasound revealed a sprain with moderate effusion (swelling).<sup>10</sup> In November 2016, she noted that the Appellant had been assigned smaller flights but had the same workload. He continued to report sharp pain and couldn't stand or sit for a long time without pain radiating along his leg.<sup>11</sup> An MRI scan indicated a torn tendon and tenosynovitis (inflammation).

[19] In December 2016, the Appellant underwent a comprehensive foot and ankle assessment through the Ontario Workers' Safety Insurance Board (WSIB).<sup>12</sup> The assessors, an orthopedic surgeon and physiotherapist, noted that the Appellant's pain had improved with physiotherapy and that he was working regular hours and duties with some accommodations. They concluded that he had neuropathic pain and possible soft tissue impingement and recommended, among other treatment alternatives, use of an orthotic boot. In a follow-up report, the assessors wrote that the Appellant's pain was

---

<sup>9</sup> See Ontario Workers' Safety Insurance Board (WSIB) Health Professional's Report dated July 27, 2016 by Dr. Sandra Dautey, family physician, GD3-61.

<sup>10</sup> See Dr. Dautey's clinical note dated October 5, 2026, GD3-72.

<sup>11</sup> See Dr. Dautey's clinical note dated November 30, 2026, GD3-73.

<sup>12</sup> See report dated December 20, 2016 by Dr. Warren Latham, orthopedic surgeon, and Lucia Yoon, physiotherapist, of the WSIB Foot and Ankle Specialty Program, GD3-25.

better following a steroid injection.<sup>13</sup> He was observed to ambulate with a minimally antalgic gait pattern and advised to continue working regular hours with modified duties.

[20] In February 2017, pain specialist saw the Appellant for what he described as “moderate” pain in his right foot with intermittent pins and needles.<sup>14</sup> On examination, the Appellant exhibited tenderness in his right foot with little evidence of neuropathy. He walked comfortably and had almost normal range of motion. The pain specialist prescribed the Appellant with an anti-inflammatory cream and advised him to continue taking extra strength Tylenol.

[21] In March 2017, a physiotherapist advised the Appellant to avoid uneven surfaces and refrain from repetitive squatting and bending from the knees and ankles.<sup>15</sup>

[22] In April 2017, a WSIB-commissioned functional abilities assessment found that, while the Appellant demonstrated pain and limitations as a result of his right ankle injury, he was still able to work to physiological maximal exertion.<sup>16</sup> The assessor concluded that the Appellant demonstrated the ability to work within the “light physical demand level,” with limitations related to lifting and carrying, although he would likely require micro-breaks as needed.

[23] In September 2021, an internist indicated that the Appellant needed to take micro breaks while walking, and had limitations with lifting, bending, and stair climbing, as well as prolonged standing and walking.<sup>17</sup> He concluded that the Appellant was capable of returning to work with restrictions.

[24] The most recent report is from another chiropractor.<sup>18</sup> In April 2025, Dr. Bhullar found a 50 percent reduction in extension of the spine. Straight leg raise testing was

---

<sup>13</sup> See Dr. Latham and Ms. Poon’s follow-up report (pages missing) dated February 23, 2017, GD3-89.

<sup>14</sup> See WSIB Specialty Consultation Assessment Pain Management Report dated February 27, 2017 by Dr. Anuj Bhatia, pain specialist, GD3-95.

<sup>15</sup> See WSIB Functional Abilities Form completed on March 31, 2017 by Taruneet Kaur Dhir, physiotherapist, GD2-99.

<sup>16</sup> See Functional Abilities Evaluation report dated April 10, 2017 by Kyle Leming, occupational therapist, GD3-124.

<sup>17</sup> See X Functional Abilities Form completed on September 22, 2021 by Dr. K.A. Makinde, specialist in internal medicine, GD2-112.

<sup>18</sup> See report dated April 7, 2025 by Dr. Shelley Bhullar, chiropractor, AD3-2.

positive for low back pain extending to the right leg. On reviewing x-rays (not included in the file), Dr. Bhullar diagnosed the Appellant with a suspected herniated disc at L5-S1 and recommended, among other therapies, non-surgical spinal decompression.

[25] In all, the available medical evidence indicates that the Appellant sustained a significant work-related injury in 2016, one that led to permanent functional limitations. He returned his old job, but on modified duties. His doctors generally agreed that he was no longer capable of sustained standing or walking, bending or lifting, kneeling or squatting.

**– The Appellant’s other medical conditions contributed to his disability**

[26] On top of ankle pain, the Appellant has developed a number of other medical conditions:

- Low back pain — In March 2018, Dr. Dautey noted that the Appellant was complaining low back pain radiating from his right ankle, and she speculated that it might be related to an altered gait.<sup>19</sup> She noted that the Appellant had participated in physiotherapy and wore orthotics with only mild relief. She diagnosed the Appellant with sciatica and prescribed him with Gabapentin. In September 2021, a chiropractor wrote that the Appellant had experienced a flareup in his low back pain with radiation into his right leg after doing yard work.<sup>20</sup> He diagnosed the Appellant with a lumbar disc bulge, lumbar facet degeneration, and lumbar compression syndrome.
- Diabetes — In February 2020, Dr. Dautey noted that the Appellant had a history of diabetes.<sup>21</sup> In December 2023, Dr. Tawadros-Elraheb listed diagnoses of diabetes mellitus and peripheral neuropathy, which he said produced numbness and tingling in the feet, although he did not identify any functional limitations.<sup>22</sup>

---

<sup>19</sup> See Dr. Dautey’s clinical note dated March 2, 2018, GD3-76.

<sup>20</sup> See report dated September 20, 2021 by Dr. Rishi Tayal, chiropractor, GD3-158.

<sup>21</sup> See Dr. Dautey’s clinical note dated February 12, 2020, GD3-82.

<sup>22</sup> See Dr. Tawadros-Elraheb’s clinical note dated December 13, 2023, GD2-109.

- Hearing loss — In September 2021, a hearing test revealed that the Appellant had mild to moderate hearing loss in both ears, as well as moderate to severe hearing loss at high frequency sounds in his left ear.<sup>23</sup>

[27] None of the above conditions by themselves prevented the Appellant from working but, together, combined with his ongoing right ankle pain, they contributed to a severe disability.

### **The Appellant took reasonable steps to mitigate his impairments**

[28] The law requires CPP disability claimants to do what is reasonably necessary to mitigate, or overcome, their impairments. They must do so in two ways: by showing that they followed medical advice and by demonstrating that they made an effort to seek and maintain alternative employment.

[29] In my view, the Appellant took reasonable steps to get better and remain the workforce, despite his condition.

#### **– The Appellant followed medical advice**

[30] The *Canada Pension Plan* doesn't say anything about treatment, but a case called *Lalonde* says that disability claimants must comply with their doctors' recommendations.<sup>24</sup> *Lalonde* also requires decision-makers to consider whether a claimant's refusal of recommended treatment is reasonable and, if not what impact that refusal is likely to have on the claimant's disability.<sup>25</sup>

[31] In this case, the Appellant has generally followed medical advice. He underwent months of physiotherapy. He has seen many specialists. He has tried custom orthotics. He takes pain medication as needed. He watches his diet and checks his blood sugar levels regularly.

---

<sup>23</sup> See report dated January 4, 2022 by Dr. Mark Korman, otolaryngologist, GD3-383.

<sup>24</sup> See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

<sup>25</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.



[32] The Appellant has been told to try a hearing aid for his hearing impairment but has never done so. However, he offered an explanation: the cost would be more than \$3,000, and he says he can't afford that amount.

[33] I found this explanation reasonable. In any event, I don't believe the Appellant's hearing loss is a significant part of his overall impairment, and the Appellant himself has not suggested otherwise.

– **The Appellant attempted to obtain alternative employment**

[34] A case called *Inclima* requires disability claimants with residual capacity to show that they have made an effort to obtain and secure employment and that the effort was unsuccessful because of their health condition.<sup>26</sup>

[35] The effort must be **meaningful**.<sup>27</sup> Claimants can't 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>28</sup>

[36] In this case, the Appellant has at least some work capacity — enough to trigger the obligation to pursue alternative employment. I satisfied that he fulfilled that obligation.

[37] After taking time off to recover from his ankle injury, X gave the Appellant a job as a dispatcher. At first, he was tasked with assigning co-workers to pick up duty-free goods to be sold on flights. That job was phased out, and he was made a runner, a job that required him to periodically go out and buy ingredients for in flight meals. His runs were usually no more than 15 minutes both ways, and he typically did two or three of them per shift. It suited him because he could work at his own pace. He had special back support. He could get up and walk around as needed. He was allowed to take microbreaks.

---

<sup>26</sup> See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

<sup>27</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>28</sup> See *Canada (Attorney General) v Ryll*, 2008 FCA 164.

[38] The Appellant worked in this role until the onset of the COVID crisis. When restrictions eased, he wanted to come back, but X told him they had nothing for him. His old bosses had retired, and his new ones didn't know him or respect his seniority.

[39] He again applied for WSIB. He was sent for educational upgrading at a private college, first in a work transition program, then in an automotive program. Part of his training was a three-month work term as a car jockey for a used car dealership. His job was to pick up purchases from automobile auctions and drive them back to the lot. He worked for four hours per day, twice a week.

[40] The Appellant said that an earlier psychovocational report had deemed him capable of several jobs, such as parking lot attendant, Wheel-Trans bus driver, or airport park'n'fly driver.<sup>29</sup> He sent out a lot of resumes, but he received only a few callbacks. Many of the jobs were heavier than advertised. He had three interviews: one was in Scarborough and therefore too long a commute from his home in Brampton. Another involved delivering food to a daycare, but it required lifting 50-pound boxes and going up and downstairs. The third was as a car jockey, but they said he might have to occasionally drive to Ottawa, which he thought was beyond his capacity. They also told him that he might have to do tasks such as detailing and changing tires between trips.

[41] A friend had a part-time job delivering prescription drugs for pharmacies. Thinking that such a job would be easy on his back and legs, he sent out more resumes and even went so far as to apply personally at Dynacare, although they weren't hiring. Asked whether he would have taken the job had there been an opening, he replied that he was willing to try it, provided it was within his restrictions. He insisted that he couldn't do any job that requires lifting over 50 pounds or driving long distances. He added that he was still looking for a job.

[42] This account indicates that the Appellant has done his best to remain in the workforce, despite his medical conditions. He returned to modified duties at his longtime employer and carried on in various capacities there for the next three years. When X let

---

<sup>29</sup> I couldn't find a report on file that specifically referred to these potential occupations. Wheel-Trans is the Toronto Transit Commission's public transportation service for people with disabilities.

him go, he retrained for a position that was within his capabilities and interned at a used car dealership. He then applied for many jobs and attended several interviews, although he got no offers. At his own initiative, he investigated the possibility of working as a prescription drug courier but found no open positions.

### **The Appellant is not employable in the real world**

[43] The Appellant actively attempted to get another job, but he didn't succeed. There's a good reason for that: he is effectively unemployable.

[44] The leading case on the interpretation of "severe" is *Villani*, which requires the Tribunal, when assessing disability, to consider a disability Appellant as a "whole person" in a real-world context.<sup>30</sup> Employability is not to be assessed in the abstract, but rather in light of "all of the circumstances." Those circumstances fall into two categories:

- A claimant's medical condition — this is a broad inquiry, requiring that the claimant's condition be assessed in its totality.
- A claimant's background — matters such as age, education level, language proficiency and past work and life experience are relevant.

[45] In this case, I don't think the Appellant has anything left to offer a real-world employer. He has well-documented leg and back conditions that restrict his physical performance. He was able to return to X after his injury in 2016, but I suspect that was only because of the advocacy of his union<sup>31</sup> and the WSIB, which incentivizes employers to take back injured workers. The Appellant spent three years on modified duties, but his roles as a dispatcher and runner were not particularly challenging, mentally or physically, and I doubt they would have been available to him had he not had 30 years of seniority.

[46] It appears that the Appellant's job ended for reasons other than his impairments. But once X was through with him, the Appellant had few options. He underwent

---

<sup>30</sup> See *Villani v Canada (Attorney General)*, 2005 FCA 248.

<sup>31</sup> There are indications in the file that the Appellant was a member of the Teamsters — see Dr. Dautey's note dated April 13, 2018, GD3-77.

retraining as an auto dealership attendant, but he couldn't get a job in that field or any other comparable field. Previous functional abilities evaluations, one in 2017 and another in 2021, had found that the Appellant was capable of light work with accommodations, but I don't think they took into account his position in the competitive labour market. By December 31, 2024, the Appellant was approaching 60 and coping with a variety of increasingly bothersome ailments. Although he had upgraded some basic language and computer skills, he remained what he had always been: an immigrant with a limited education for whom English was a second language.<sup>32</sup> At his age, the Appellant was unlikely to be hired for the kind of low-skilled labour that he had done in the past. It is true that the Appellant continues to look for work (admirably so), but he only feels up to a physically undemanding part-time job. Even if he managed to find such a job, it would be highly unlikely to pay him more than the substantially gainful threshold enshrined in law.<sup>33</sup>

[47] Given his medical conditions and his background, I find it hard to imagine the Appellant securing employment that might earn him some kind of reasonable living.

### **The Appellant was credible**

[48] The Appellant was a sympathetic witness who answered questions forthrightly and unguardedly. He detailed the injuries he sustained in his workplace accident and the symptoms — mainly leg and back pain — that have persisted over nearly a decade. He described the work he did at X, before and after his accident, and he explained why, despite retraining, he was unable to find a suitable job.

[49] The Appellant's credibility was enhanced by his work history, which includes more than 30 consecutive years of earnings for a single employer. It appears that, for much of that time, the Appellant was making a good living, and it is difficult to see why someone with his kind of demonstrated work ethic would have applied for disability benefits if he did not have a genuine and significant impairment.

---

<sup>32</sup> The Appellant is a high school graduate — see GD2-74.

<sup>33</sup> Under section 68.1 of the *Canada Pension Plan Regulations*, any earnings over the maximum annual amount that a person can receive as a disability pension are deemed to be "substantially gainful." In 2024, that maximum annual amount was \$19,278.

## The Appellant has a prolonged disability

[50] The available evidence indicates that the Appellant has had a significant physical impairment since his ankle injury nine years ago. He has tried many treatments, including physiotherapy, orthotics, and painkillers, but his condition has not significantly improved. Age has likely led to a further decline in his functional capacity, and I don't see any real prospect of recovery.

## Conclusion

[51] The Appellant injured his right ankle in June 2016 and, after an extended period on modified duties, was laid off in March 2020. By then, he was in his mid-fifties, an age that, along with his limited education, made him a less-than-attractive candidate as a new hire or trainee. He has undergone retraining and made a genuine attempt to get a suitable job but to no avail. His medical condition and profile make it unlikely that he will ever secure alternative employment that pays him a living wage.

[52] Since the Appellant submitted his application for benefits in September 2023, he can be deemed disabled no earlier than ~~October 2022~~ June 2022.<sup>34</sup> That means his CPP disability pension will start as of ~~February 2023~~ October 2022.<sup>35</sup>

[53] The appeal is allowed.




---

Member, Appeal Division

---

<sup>34</sup> Under section 42(2)(b) of the *Canada Pension Plan*, a person cannot be deemed disabled more than 15 months before the Minister received the application for a disability pension.

<sup>35</sup> According to section 69 of the *Canada Pension Plan*, payments start four months after the deemed date of disability.