



Citation: *LK v Minister of Employment and Social Development*, 2025 SST 1305

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

**Decision**

**Appellant:** L. K.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated February 21, 2025 (issued  
by Service Canada)

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**Tribunal member:** Shannon Russell

**Type of hearing:** Teleconference

**Hearing date:** November 18, 2025

**Hearing participants:** Appellant  
Interpreter

**Decision date:** December 8, 2025

**File number:** GP-25-656

## Decision

[1] The appeal is dismissed.

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

## Overview

[3] The Appellant is almost 60 years old. He worked as a shopworker / driver for an HVAC company from 2014 to January 2020, when he was laid off. He fabricated, assembled, and repaired sheet metal products. He also delivered those products to work sites.<sup>1</sup>

[4] In 2018, the Appellant started his own business. He operated a machine to bend sheets of metal. He also drove a truck to make deliveries. He closed the business in June 2023 for medical reasons.<sup>2</sup>

[5] The Appellant applied for a CPP disability pension in June 2024.<sup>3</sup> In his application, he said he can't work because of kidney disease, diabetes, and blood pressure problems.<sup>4</sup>

[6] The Minister of Employment and Social Development (Minister) denied his application at both the initial and reconsideration levels of review. The Appellant appealed the Minister's reconsideration decision to the Social Security Tribunal's General Division.

[7] The Appellant says that his disability is severe. He says he can't work because he can't walk properly and because he has dialysis every two days. He says each

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<sup>1</sup> See pages GD2-299 to GD2-303.

<sup>2</sup> See pages GD2-13 to GD2-14.

<sup>3</sup> See page GD2-219.

<sup>4</sup> See page GD2-222.

dialysis session lasts four to six hours, which would make it difficult for him to attend work. He also says his disability is prolonged.

[8] The Minister acknowledges that the Appellant's disability may be severe now. But the Minister says it wasn't severe by December 31, 2021, when the Appellant last met the CPP contributory requirements. The Minister points out that the Appellant improved after a hospital admission in 2020 and was able to return to full-time work and earn a substantially gainful income.

## **What the Appellant must prove**

[9] To succeed with his appeal, the Appellant must prove he has a disability that became severe and prolonged between January 1, 2008, and December 31, 2021. He must also prove that he continues to be disabled.<sup>5</sup>

### **Where does the date of January 1, 2008, come from?**

[10] The Appellant previously applied for the disability pension in 2009. The Minister denied that application twice, and then the Appellant appealed to a Review Tribunal. The Review Tribunal held a hearing in December 2010. The issue at that hearing was whether the Appellant's disability was severe and prolonged by December 31, 2007, when he met the CPP contributory requirements. The Review Tribunal found that the Appellant's disability wasn't severe by December 31, 2007.<sup>6</sup> The Appellant didn't appeal that decision.

[11] The Review Tribunal's decision of 2010 is final and binding. This means that the issue of whether the Appellant was disabled by December 31, 2007, is closed and cannot be considered again.<sup>7</sup> That is why the Appellant must show he became disabled after the end of 2007.

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<sup>5</sup> In *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that the appellant has to show a severe and prolonged disability by the end of their minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

<sup>6</sup> See pages GD2-405 to GD2-420.

<sup>7</sup> This is because of a legal rule called *res judicata*. *Res judicata* is Latin for "thing decided." Generally speaking, the rule says that, when a person appeals to a tribunal more than once for the same benefit, the next tribunal can't re-hear the case.

**Where does the date of December 31, 2021, come from?**

[12] The date of December 31, 2021, is when the Appellant last met the CPP contributory requirements based on his 2024 application for the disability pension.<sup>8</sup> This date is significant because it represents the date by which the Appellant must have been disabled. If the Appellant's disability became severe after December 31, 2021, he doesn't qualify for the disability pension.

**What severe and prolonged mean**

[13] The words "severe" and "prolonged" are defined in the CPP legislation.

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

[15] This means I have to look at all of the Appellant's medical conditions together to see what effect they have on his ability to work. If the Appellant is capable regularly of doing some kind of work that he could earn a living from, then he isn't entitled to a disability pension.

[16] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.<sup>10</sup>

[17] This means the Appellant's disability can't have an expected recovery date. The disability must be expected to keep the Appellant out of the workforce for a long time.

[18] The Appellant has to prove his case. He has to prove it on a balance of probabilities. This means he has to show it is more likely than not that he became disabled between January 1, 2008, and December 31, 2021.

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<sup>8</sup> Service Canada uses an appellant's years of CPP contributions to calculate their coverage period, or "minimum qualifying period" (MQP). The end of the coverage period is called the MQP date. See section 44(2) of the *Canada Pension Plan*. The Appellant's CPP contributions are on page GD2-244.

<sup>9</sup> A severe disability is defined in section 42(2)(a)(i) of the *Canada Pension Plan*.

<sup>10</sup> A prolonged disability is defined in section 42(2)(a)(ii) of the *Canada Pension Plan*.

## Reasons for my decision

[19] The Appellant hasn't proven he had a severe and prolonged disability by December 31, 2021.

### Was the Appellant's disability severe?

[20] The Appellant's disability wasn't severe by December 31, 2021. I reached this finding by considering several factors. I explain these factors below.

### My focus is on functional limitations and not diagnoses

[21] The Appellant has been diagnosed with several medical conditions, including chronic kidney disease, high blood pressure, type 2 diabetes, and heart failure.<sup>11</sup>

[22] However, I can't focus on the Appellant's diagnoses.<sup>12</sup> Instead, I must focus on whether he has functional limitations that got in the way of him earning a living by the end of 2021.<sup>13</sup>

### The Appellant had functional limitations in 2020

[23] I accept that the Appellant's medical conditions resulted in functional limitations in 2020.

[24] For example, the medical evidence shows the Appellant was doing well until about May 2020 when he developed symptoms of a diabetes-related foot infection.<sup>14</sup>

[25] Because of the infection, the Appellant was admitted to the hospital on May 29, 2020.<sup>15</sup> He stayed in the hospital for several months. During that time, he had foot surgeries. He was also diagnosed with congestive heart failure.<sup>16</sup>

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<sup>11</sup> See page GD2-274.

<sup>12</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>13</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>14</sup> See page GD4-3.

<sup>15</sup> See page GD4-28.

<sup>16</sup> See pages GD2-277, GD4-20, and GD4-35.

[26] The foot infection and surgeries resulted in some mobility issues.<sup>17</sup> The heart condition resulted in some mild shortness of breath.<sup>18</sup>

[27] Fortunately, the Appellant improved by the end of 2020. I will talk more about that improvement shortly.

### **The Appellant's medical conditions got worse in June 2023**

[28] I acknowledge that the Appellant's medical conditions got worse in June 2023.

[29] For example, a hospital report of June 28, 2023 says the Appellant had a one-week history of fever and a one-month history of problems with his left foot. He had a foot ulcer with discharge.<sup>19</sup>

[30] In July 2023, the toes on the Appellant's left foot were amputated because of infection. His renal (kidney) function also got a lot worse.<sup>20</sup> In July 2024, the Appellant's nephrologist (Dr. Dhillon) recommended that he start dialysis. The Appellant declined at that time but has since started the dialysis.<sup>21</sup>

[31] In January 2025, a family doctor (Dr. Mehta) reported that the Appellant has end-stage renal disease and is on dialysis every other day. Dr. Mehta also explained that the Appellant has balance issues due to the amputation of half of the left foot.<sup>22</sup>

### **The Appellant's health improved by the end of 2020**

[32] As I said before, the evidence shows that the Appellant improved by the end of 2020. The Appellant didn't dispute this. In fact, he said he recovered and that he was able to return to work from December 1, 2020, to June 2023.<sup>23</sup> He also said that if he had been unable to work in December 2021, then he would have applied for the

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<sup>17</sup> See page GD4-37.

<sup>18</sup> See page GD4-31.

<sup>19</sup> See page GD2-350.

<sup>20</sup> See pages GD2-289 to GD2-292 and page GD2-329.

<sup>21</sup> See pages GD2-293 to GD2-295.

<sup>22</sup> See page GD2-269.

<sup>23</sup> See page GD2-18 and the Appellant's testimony.

disability pension at that time. He confirmed that his disability prevented him from working as of June 2023.

[33] The Appellant's work activity in and after 2021 is important because the definition of a severe disability is directly linked to a person's ability to work.

[34] In my view, the Appellant's work activity in and after 2021 shows that his disability wasn't severe by December 31, 2021, and continuously after that. Here's why:

- The Appellant was able to keep working for a long time. The file shows that the Appellant returned to work by December 2020. He continued working until June 2023.<sup>24</sup> This is not a case, for example, where the appellant tried to work and realized within a relatively short time (a few months) that he could not sustain it.
- The Appellant worked a lot of hours. He worked 8 to 10 hours a day or 50 to 55 hours a week.<sup>25</sup>
- The Appellant's income was substantially gainful. A job is substantially gainful if it gives a person an income or salary that is the same as or more than the maximum annual CPP disability pension.<sup>26</sup> In 2021, 2022, and 2023, the maximum annual CPP disability pension was about \$17,000 (2021), \$17,500 (2022), and \$18,500 (2023). The Appellant's earnings were well above that. He said his gross earnings were about \$65,000 a year.<sup>27</sup> I don't have evidence of what his net earnings were. But it's reasonable to find they would have been above the substantially gainful thresholds.
- The Appellant worked alone in his business.<sup>28</sup> This means he wasn't getting help to do the work.

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<sup>24</sup> See the Appellant's testimony.

<sup>25</sup> See page GD2-15.

<sup>26</sup> See section 68.1(1) of the *Canada Pension Plan Regulations*.

<sup>27</sup> See page GD2-15.

<sup>28</sup> See page GD2-15.

- The Appellant acknowledged that he was able to work “fine” until June 2023.<sup>29</sup>

[35] In addition to the work activity, the medical evidence confirms that the Appellant’s health improved.

[36] For example, a cardiologist reported in September 2020 that the Appellant didn’t have any major cardiac symptoms of concern. The cardiologist described the cardiac status as stable.<sup>30</sup>

[37] In April 2021, Dr. Dhillon reported that the Appellant remained well. He had relatively stable renal function with reasonable blood pressure control. He also had improved foot wounds.<sup>31</sup>

[38] In July 2021, Dr. Dhillon reported that he was happy to learn the Appellant had returned to work. He also said the Appellant was feeling well, had experienced considerable improvement in his renal function, and had reasonable blood pressure control. He was also able to weight bear on his feet.<sup>32</sup>

### **The Appellant could work in the real world by December 31, 2021**

[39] When I am deciding whether the Appellant could work, I can’t just look at his medical conditions and how they affected what he could do. I must also consider factors such as his age, level of education, language abilities, and past work and life experience.

[40] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say that he can work.<sup>33</sup>

[41] I acknowledge that the Appellant turned 56 years old in December 2021. I also acknowledge that he reported having limited education and limited proficiency in

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<sup>29</sup> See the Appellant’s testimony.

<sup>30</sup> See pages GD4-47 to GD4-48.

<sup>31</sup> See pages GD2-283 to GD2-284.

<sup>32</sup> See pages GD2-286 to GD2-287.

<sup>33</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

English.<sup>34</sup> However, the Appellant could work in the real world by December 31, 2021. The best evidence of this is that he was in fact working. He was successfully operating his own business.

### **I can't consider the Appellant's financial situation**

[42] The Appellant wants me to consider his financial situation. He says he doesn't have enough money to afford even a cup of coffee.

[43] I am sympathetic to the Appellant's circumstances. However, the law does not allow me to grant a pension based on an appellant's financial situation.<sup>35</sup>

### **Conclusion**

[44] The Appellant isn't eligible for a CPP disability pension because his disability wasn't severe by December 31, 2021, and continuously after that. Because I have found that his disability wasn't severe, I didn't have to consider whether it was prolonged.

[45] This means the appeal is dismissed.

Shannon Russell  
Member, General Division – Income Security Section

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<sup>34</sup> See page GD2-231. The Appellant used an interpreter during the hearing.

<sup>35</sup> See *Miter v Canada (Attorney General)*, 2017 FC 262.