



Citation: *DK v Minister of Employment and Social Development*, 2026 SST 42

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: D. K.

Respondent: Minister of Employment and Social Development
Representative: Lucky Ingabire

Decision under appeal: General Division decision dated November 21, 2024
(GP-24-1020)

Tribunal member: Janet Lew

Type of hearing: In person
Hearing date: October 8, 2025
Hearing participants: Appellant
Respondent's representative

Decision date: January 22, 2026
File number: AD-25-168

Decision

[1] The appeal is dismissed. The Appellant, D. K. (Claimant), is not eligible for a Canada Pension Plan disability pension.

Overview

[2] This is an appeal of the General Division decision dated November 21, 2024, by the Claimant. The General Division found that the Claimant did not have a severe disability as defined by the *Canada Pension Plan*, by the end of his minimum qualifying period on December 31, 2013.¹ As a result, the General Division determined that the Claimant was not eligible for a Canada Pension Plan disability pension.

[3] The Claimant appealed the General Division decision to the Appeal Division, arguing that the General Division made several factual errors. The Appeal Division accepted that there was an arguable case that the General Division may have misapprehended some of the evidence.

[4] The Appeal Division granted leave (permission) to appeal the decision made by the General Division. An appeal to the Appeal Division of a decision made by the Income Security Section is heard anew and determined as a new proceeding.² I conducted a new hearing on October 8, 2025.

[5] The Claimant argues that he has had a severe and prolonged disability since before 2013, and continuously since then. He testified that he has been looking for work, but argues that there is nothing suitable, given his medical condition.

[6] The Respondent, the Minister of Employment and Social Development (Minister), argues that the Claimant did not have a severe or prolonged disability under the *Canada Pension Plan* by the end of his minimum qualifying period. The Minister argues that the Claimant was able to work in the real world but that he did not make any

¹ The end of the minimum qualifying period is the date by which a claimant has to prove that they have a severe and prolonged disability for the purposes of the *Canada Pension Plan*. The minimum qualifying period is based on a claimant's contributions to the Canada Pension Plan.

² See section 58.3 of the *Department of Employment and Social Development Act*.

earnest efforts to find suitable employment. The Minister asks the Appeal Division to dismiss the appeal.

Preliminary matters

– I refused the Minister’s request to file a Witness Information Form on the day of the hearing

[7] At the hearing of this appeal, the Minister asked the Appeal Division to allow Dr. Isabelle-Sophie Jolin to give evidence. The Minister’s counsel explained that she had prepared a Witness Information Form on June 16, 2025. However, the Minister did not file the document with the Social Security Tribunal. So, there was no prior notice of the Minister’s intention to call Dr. Jolin to give evidence.

[8] The Minister argued that allowing Dr. Jolin to give evidence was in the interests of procedural efficiency. She argued that the late notice of the Minister’s witness could be cured by giving the Claimant time after the hearing to respond to Dr. Jolin’s evidence.

[9] The Claimant did not take a discernible position about whether I should allow Dr. Jolin to give evidence. Instead, the Claimant was concerned about whether Dr. Jolin had access to all of his medical records.

[10] I refused the Minister’s request. The Social Security Tribunal Rules of Procedure includes rules about witnesses. The Rules state that if a party wants to have a witness testify, they have to file a notice with the Tribunal by the filing deadline. The Tribunal set a deadline of June 16, 2025, by which the parties had to give notice of any witnesses.³

[11] The Minister’s Notice on the day of the hearing comes too late in the day. Allowing Dr. Jolin to testify without any prior notice to the Claimant prejudices him. He did not anticipate that the Minister would be producing a witness. In the context of the hearing, there is little chance for the Claimant to properly prepare for any cross-

³ See Social Security Tribunal letter dated May 29, 2025.

examination he might have otherwise undertaken had he had sufficient notice of the Minister's witness.

[12] Letting the Claimant respond to any oral evidence of the witness after the hearing of this appeal, as the Minister suggests, is unworkable. It would not allow the Claimant the chance to prepare for and effectively cross-examine the witness during the hearing.

[13] I note that the Social Security Tribunal prepared and sent the parties a List of Documents on July 31, 2025. So the Minister had about two months to review the list and verify that the Tribunal had received the Minister's documents. Had the Minister closely reviewed the List of Documents, it would have noticed that it had yet to file its Witness Information Form with the Tribunal. It could have taken steps then to rectify its oversight in failing to file the Witness Information Form on time.

[14] The Minister was uninterested in further delays in this appeal and did not seek an adjournment of the proceedings, which might have allowed it to properly issue its notice. Nevertheless, I considered whether an adjournment would be appropriate.

[15] I did not see any appreciable benefit in adjourning the proceedings to allow for filing of the Witness Information Form. The Minister did not persuade me that Dr. Jolin's anticipated evidence is vital to the Minister's case. The Minister advised that he expected Dr. Jolin to testify about how the Claimant's conditions impacted his functionality and whether or not he followed any recommended medical treatment.

[16] I ordered the hearing to go ahead without Dr. Jolin giving evidence on behalf of the Minister. Dr. Jolin remained available for the Minister to consult.

– **I accepted relevant documents for post-hearing filing**

[17] The Minister filed additional submissions after the hearing.⁴ The Claimant filed a series of emails with the Tribunal after the hearing.⁵

⁴ See Minister's letter dated October 10, 2025, at AD20.

⁵ See the Claimant's emails, from October 9 to October 28, 2025, at AD21 to AD25, AD27 to AD28, and AD31 to AD33.

[18] I am accepting these documents. I had asked the Minister to clarify its position on the issue of the extent a claimant is expected to mitigate his conditions. The Minister provided detailed submissions on this issue. I provided the Claimant with a reasonable opportunity to respond to the Minister's submissions on the mitigation issue.

[19] The Claimant gave more evidence, in part to clarify what he said at the hearing, and as he recognizes that there is an incomplete medical picture for him. I accepted the Claimant's late documents as they largely supplement the Claimant's oral evidence and as they are relevant.

[20] The Claimant advised that he would try to get, "the initial findings from the Chiropractors..." and from a family clinic. I had indicated to the Claimant during the hearing that I would give him an additional two weeks to get additional medical records. In particular, I advised him that it might be helpful to get the complete file from his family doctor, given that he has seen him for about 30 years.

[21] I extended this deadline for filing any records, as the Claimant indicated in his email of October 21, 2025, that he would try to get his files.⁶ He acknowledged that it appeared to him that he would have difficulties getting his records. Some of the doctors' offices told him that it had already destroyed his records, given the passage of time. The Claimant wrote that he was still waiting for a response from some of his doctors. I gave the Claimant extra time after the hearing to produce any outstanding records. (I note that he had been trying to get records for some time and that the hearing of this appeal had been adjourned previously to allow him to try to get any records.⁷)

[22] In another email of October 21, 2025, the Claimant indicated that he had lost confidence in the family doctor whom he had been seeing for many years. He wrote that he would seek an opinion from another doctor. I wrote to the Claimant and advised him that I would not accept a new medical opinion from another doctor who had not previously treated the Claimant around the time of his minimum qualifying period. On top of that, there are no medical records from around the end of the minimum qualifying

⁶ See Claimant's email of October 21, 2025, at AD27.

⁷ See Claimant's email of August 5, 2025, at AD14.

period upon which a doctor might have been able to draw an opinion on the Claimant's capacity regularly of pursuing any substantially gainful occupation.

[23] The Claimant advised that he would seek an opinion from his original family doctor, with whom he had an appointment on October 5, 2025.⁸ The Claimant has not produced any updated medical opinions or any records from his former family doctor. Indeed, the only medical records or opinions from the Claimant's former family doctor is a January 2017 medical report⁹ and a referral to a pain clinic. The family doctor referred the Claimant to a pain clinic in April 2024.¹⁰

[24] The Minister argued that the Claimant's series of emails do not show that the Claimant's medical conditions extinguished his work capacity by December 2013.¹¹

[25] The Claimant continued to seek extensions of time.¹² I advised him that the Social Security Tribunal could not wait indefinitely for him to get records. Even so, I gave the Claimant more time to try to get additional records.

[26] In response to another request for an extension of time to produce records, I provided an extension to January 5, 2026.¹³ The Claimant advised that he had a follow-up appointment with his new family doctor on January 6, 2026, which he recognized fell after the extended filing deadlines for records.¹⁴

[27] The Claimant did not ask for, and I did not extend the deadline to file the new family doctor's records. The Claimant's new family doctor has only recently begun seeing the Claimant, long after the Claimant's minimum qualifying period ended.

⁸ See Claimant's email of October 24, 2025, at AD31.

⁹ See family doctor's medical report dated January 22, 2017, at GD2-96 to GD2-103.

¹⁰ See family doctor's referral dated April 30, 2024, at GD6-2.

¹¹ See Minister's letter dated October 23, 2025, at AD29.

¹² See Claimant's emails of October 27, 2025 (at AD32) and October 28, 2025 (at AD33).

¹³ See Social Security Tribunal's letter dated November 25, 2025, at AD37.

¹⁴ See Claimant's email of December 5, 2025, at AD38.

– **I did not accept medical opinions that have not been written yet**

[28] After the hearing, the Claimant wrote that he wanted to get a medical opinion to support his appeal. He suggested that he would require “much more time, several months at a minimum.”¹⁵

[29] I might have granted the Claimant’s request for an extension of time to get a medical opinion. But the Claimant did not provide a compelling reason for an extension.

[30] The Claimant’s request comes late. The Claimant should have obtained a report for his appeal at the General Division. The General Division wrote that “there is a lack of medical evidence in or around the [minimum qualifying period] to support the presence of a severe disability.”¹⁶ Yet, the Claimant did not take any steps to get any opinions until after the hearing at the Appeal Division.

[31] More importantly, the Claimant testified at the Appeal Division hearing that he did not see his family doctor or any health caregivers between about 2011 and 2014 or 2015. Indeed, he was travelling and was out of the country for a portion of that time. So, even if I had been prepared to give the Claimant more time to get a medical opinion, he would have been unable to get medical report(s) based on any records for that timeframe, as such records simply do not exist.

[32] The Claimant’s family doctor already prepared a medical report, although he did not specifically address the Claimant’s condition at the end of 2013.¹⁷

[33] In my letter dated October 31, 2025, I advised the Claimant that I was unlikely to accept any medical reports or opinions that had not already been produced, short of any compelling reasons. I queried how any doctors would be able to provide an opinion about his condition between 2011 and 2014 or 2015, if he had not seen any health

¹⁵ See Claimant’s email of October 30, 2025, at AD35.

¹⁶ See General Division decision at para 20.

¹⁷ See family doctor’s medical report dated January 22, 2017, at GD2-96 to GD2-103.

caregivers within that timeframe.¹⁸ I likely would have given little weight to such opinions, had the Claimant produced any.

Issue

[34] Did the Claimant have a severe and prolonged disability for the purposes of the *Canada Pension Plan*, by the end of his minimum qualifying period on December 31, 2013?

Analysis

[35] A claimant has to prove that, more likely than not, they had a severe and prolonged disability by the end of their qualifying period. In this particular case, based on the Claimant's contributions to the Canada Pension Plan, his minimum qualifying period ended on December 13, 2013.

- A disability is severe if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.¹⁹
- A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death.²⁰

[36] When assessing whether a disability is severe, one must consider the “real world” context.²¹ This means considering a claimant's particular circumstances, such as their age, education level, language proficiency, and past work and life experience.

[37] 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.²²

¹⁸ See Social Security Tribunal's letter dated October 31, 2025, at AD34.

¹⁹ See section 42(2)(a)(i) of the *Canada Pension Plan*.

²⁰ See section 42(2)(a)(ii) of the *Canada Pension Plan*.

²¹ See *Villani v Canada (Attorney General)*, 2001 FCA 248 at para 38.

²² See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

[38] Medical evidence will still be needed, as will evidence of employment efforts and possibilities.²³

Background facts and review of medical records

[39] I adjourned the hearing of the appeal twice, to give the Claimant a chance to seek legal representation and to get medical records that he says would establish that he was severely disabled by the end of his minimum qualifying period.

[40] Despite the two adjournments and the additional time given to the Claimant to get records after the hearing, relatively little documentary medical evidence has been filed.

– General chronology

[41] The Claimant testified that he has had numerous injuries throughout his life but may not have told any of his doctors about when his pain started. The Claimant says that he has had back pain since he was six years of age. He had been buried under a collapsed snow fort. Rescuers attempted to dig him out, but someone accidentally struck him with a spade at the L5-S1 of his spine. He says that he has had spinal injuries since he was six years old.

[42] At age 16, the Claimant stretched knee ligaments while playing hockey. After the hearing, he wrote that he had been knocked unconscious from contact sports and motor vehicle and other accidents, which have challenged his memory.²⁴ He wrote that he also had a workplace accident in about 1980, when he was struck in the spine by a large piece of steel. He filed a workers' compensation claim and was off work for several months after the accident. He says this particular injury represents his biggest challenge.²⁵

²³ See *Villani v Canada (Attorney General)*, 2001 FCA 248 at para 50.

²⁴ See Claimant's email of October 30, 2025, at AD35.

²⁵ See Claimant's email of October 30, 2025, at AD35.

[43] The Claimant aggravated his back in a motor vehicle accident in 1987 during a winter storm. He struck the steering wheel. He also hurt his neck. He reported developing a spinal injury, L5 limbus compression fracture, and arthritis.

[44] The Claimant aggravated his back again in 1993.²⁶ Diagnostic exams taken on September 30, 1999, showed an osteophyte, but there was no accompanying opinion on the significance of these findings.²⁷ He received treatment.²⁸

[45] At the General Division hearing, the Claimant testified that his medical conditions began deteriorating a couple of years after 2011 when he began experiencing problems with his shoulder.²⁹

[46] The Claimant testified that his back pain has gotten worse over time. He says that he has not seen any improvement in his functionality and that he is currently just as limited in his function as he was in 2013.

[47] The Claimant has had different types of treatment, including physiotherapy, radiofrequency lesioning (also called ablation), and medications. But he experienced various side effects from the medications. He says that Vioxx, for instance, affected his liver. So he stopped taking them. He also had surgery in 2002, but claims that his back got worse. Oxycontin helped, but he was taken off it, and it is no longer available in Canada. No other medications have helped him with his pain. He testified that treatment has not helped to reduce his pain or to improve his functionality.

[48] In July 2016, the Claimant applied for the Alberta Assured Income for the Severely Handicapped (AISH).³⁰ In the application, he disclosed that he tore tendons in his right shoulder in November 2015. He also wrote that he uses a spinal decompression device. He says the device realigns his spine.

²⁶ See letter dated January 12, 1993, from Workers' Compensation Board, at AD19-3.

²⁷ See exam of lumbosacral spine, coccyx, and sacrum, taken on September 30, 1999, at AD19-5.

²⁸ See consultation report dated June 27, 2002, at AD19-2.

²⁹ See Minister's letter and submissions dated June 9, 2025, at AD5-1, citing Claimant's testimony at the General Division hearing, at about 00:36:51 to 00:37:32 of the audio recording.

³⁰ See Claimant's application for the Alberta Assured Income for the Severely Handicapped, filed July 20, 2016, at GD2-105 to 112.

[49] In 2024, the Claimant testified that he began to experience moderate to severe pain, particularly on his left side and left leg. There was no injury or any trauma to explain the onset of pain. He went to see his family doctor who suggested that he return to the pain clinic where he had last been in 2002.

[50] The Claimant started taking medication again. After a couple of weeks, the pain in his left side and left leg subsided and then disappeared. It has not returned since. He remains on the wait list for the pain clinic. He says that he will stay on the wait list for now, in case the symptoms return. Otherwise, he does not see any need to go to the pain clinic.

– **The Claimant says that he has had and continues to have numerous limitations**

[51] The Claimant says that he has permanent limitations from the 1987 accident. He says that he is unable to sit or stand for more than one hour, walk for more than one block, or carry more than five pounds. He says that there are days when he can barely walk or move because of chronic lower back pain. He also complains that his legs fall asleep after sitting for too long, so can no longer drive. He also says that he is unable to remember things or think clearly because of his pain.

[52] The Claimant says that he can no longer drive trucks for a living either. The earnings and contributions history indicates that the Claimant had continued to work after the 1987 accident. He had gainful earnings between 1989 and 1995, but did not have any earnings for 1996, 2002 (the year he had surgery), or 2004. His earnings after 1997 were mostly nominal, other than for about three years.³¹ The Claimant did not have any earnings after 2011.

³¹ See Claimant's earnings and contributions history, at GD2-39 to GD2-49, GD2-52 to GD2-54; GD2-66 to GD2-67.

[53] The Claimant also stated in his 2016 AISH application that he could no longer work as of January 2011 or, for that matter, regularly do anything or do any type of labour because of his medical condition.³²

[54] When asked in the AISH application whether he could work full-time or under close supervision, the Claimant replied, “no.” When asked whether he could work part-time or perform light duties, he responded, “yes.”³³ He stated that he would explore his options. He had taken courses but had yet to find anything suitable.

[55] The Claimant’s family doctor prepared a medical report in January 2017, in support of the Claimant’s AISH application.³⁴ He diagnosed the Claimant with chronic back pain and spasms, irritable bowel syndrome, depression, and shoulder arthritis.³⁵ Other than the shoulder arthritis, all of the other conditions began early on and were exacerbated by his accident in 1987.

[56] The family doctor observed limited mobility. The Claimant had limitations with lifting and prolonged sitting. The family doctor was of the opinion that the Claimant was otherwise independent in activities of daily living.³⁶ He found that the Claimant’s degree of impairment was mild.³⁷ He did not have any limitations with activities of daily living, though it took him longer to complete tasks. The doctor also wrote that the Claimant had been unable to keep a job as he had trouble with his functional abilities.³⁸

– The Claimant’s medical treatment

[57] The Claimant lived with his mother until she passed away in 2010. After that, his siblings forced him out of his home. He took his share of the inheritance. He recalls spending time looking for another home in 2012 and 2013. Between 2012 and 2014 or

³² See Claimant’s application for the Alberta Assured Income for the Severely Handicapped, filed July 20, 2016, at GD2-110.

³³ See Claimant’s application for the Alberta Assured Income for the Severely Handicapped, filed July 20, 2016, at GD2-110.

³⁴ See family doctor’s medical report dated January 22, 2017, at GD2-96 to GD2-103.

³⁵ See family doctor’s medical report dated January 22, 2017, at GD2-100.

³⁶ See family doctor’s medical report dated January 22, 2017, at GD2-98 to 99.

³⁷ See family doctor’s medical report dated January 22, 2017, at GD2-98 to 99.

³⁸ See family doctor’s medical report dated January 22, 2017, at GD2-101.

2015, he travelled and camped. He spent his summers in British Columbia and the winters in the south, including in Arizona, Ecuador, and Colombia. He camped where there were hot springs, as he found it helped his arthritis.

[58] The Claimant testified that he was not seeking any medical treatment during this time, nor was he taking any medications. He testified that rest was the only thing that alleviated his pain, so he tried to get as much rest as possible. On top of that, he did his own chiropractic self-adjustments as he needed regular realignments.

[59] The Claimant's family doctor indicated in his January 2017 medical report that he had not referred the Claimant to any specialists. The family doctor wrote that the Claimant had refused a trial of medications but that he had completed a course of physiotherapy for his shoulder. There had been slight improvement in his shoulder.³⁹

[60] The Claimant was not undergoing any treatment in 2012 to 2015 though used a heating pad with a spine decompressive device to relax his back muscles. The doctor recommended physiotherapy as needed. Even so, the doctor was of the opinion that the Claimant's condition was likely going to get worse over time.⁴⁰

[61] The Claimant is still trying to find relief from his symptoms. He has an appointment with a Pain Clinic in 2026, though testified that the appointment will be unnecessary unless there is a flare-up of his pain. At the same time, he testified that at age 63, his injuries affect him more now. He is not taking any pain relief medication currently.

– **The Claimant's work experience**

[62] The Claimant has worked as a lifeguard, emergency medical technician, and ambulance attendant, and as a truck driver. All of these occupations were too physically demanding. The Claimant says that he has been unable to work as a truck driver since 1998 or 1999.

³⁹ See family doctor's medical report dated January 22, 2017, at GD2-99 to GD2-103.

⁴⁰ See family doctor's medical report dated January 22, 2017, at GD2-99 to 100.

[63] The Claimant also volunteered as a counsellor and as a supervisor, but he is unable to do this type of work anymore either. He states that he cannot do the physical aspects of the work. Many clients had severe mental illnesses, and he was expected to help them with doing tasks, which was beyond his physical capability.

– **The Claimant's attempts to return to work**

[64] Despite his medical conditions, the Claimant says that he has been trying to return to work since 2012. This includes part-time employment. However, he testified that the biggest issue for him is that when he tries to be active, his arthritis flares up and causes him pain again. So, he has to be careful with his activity level and the type of activity that he does.

[65] The Claimant denies that he can ever consider sedentary work because of his limited sitting tolerance. At the hearing, the Claimant sat for more than two hours without taking any breaks. He had not taken any pain relief medication before or during the hearing. He confirmed that he was able to sit that length of time but stated that he could not sit indefinitely, nor reliably always sit for that long. He testified that, from time to time, he has limited tolerance for prolonged sitting.

[66] The Claimant states that he has tried to figure out what kind of work he can do without aggravating his condition. But he has not been able to think of anything for which he is qualified. He denies that he has many transferable skills.

[67] Although the Claimant's minimum qualifying period ended years ago, the Claimant states that he vividly recalls his condition in 2013. He testified that his condition has remained unchanged. The Claimant gave conflicting evidence on this point, as he also testified numerous times throughout the hearing that his condition has gotten worse over time.

The Minister argues that the Claimant did not have a severe and prolonged disability by the end of his minimum qualifying period

[68] The Minister argues that the Claimant has not established that he had a severe and prolonged disability by the end of his minimum qualifying period.

[69] The Minister accepts that the Claimant had irritable bowel syndrome and that he developed low back pain and mental health troubles from a workplace injury and a motor vehicle accident.

[70] But the Minister argues that it is not enough for the Claimant to say that he was disabled and was unable to work. The Minister argues that he also had to provide medical evidence that showed the nature, extent, the basis for diagnosis, prognosis, resulting limitations, and any other pertinent information.⁴¹

[71] The Minister argues that the Claimant's condition clearly deteriorated after the end of the minimum qualifying period had passed when other symptoms emerged and he began having problems with his shoulder.

[72] The Minister notes that the Claimant was diagnosed with left shoulder arthritis in 2015⁴² and a rotator cuff tear in 2017.⁴³ But the Minister argues that this does not establish what his condition might have been like at the end of 2013. The Minister claims that there is no evidence that the Claimant's neck and back conditions prevented him from being able to work by December 2013. The Minister says that while X-rays taken in 2017 and 2020 confirm that he had degenerative disc disease, they do not establish that he was severely disabled by 2013.

[73] The Minister argues that the Claimant could work in the real world, taking into account his personal characteristics. The Claimant was 51 years of age by the end of December 2013 and fluent in English. The Minister argues that he also has transferable work experience in trucking and lifeguarding. The Minister argues that these characteristics, and the Claimant's functional abilities, would not have prevented him from pursuing a range of occupations within his limitations by the end of 2013.

⁴¹ See Minister's submissions, at AD5-9 at para 17, citing in part *RE v Minister of Employment and Social Development*, 2024 SST 136 at para 30 and *Warren v Canada (Attorney General)*, 2008 FCA 377 at para 4.

⁴² See Minister's submissions, at AD5-10 at para 18, citing the General Division audio recording at 00:36:51 to 00:37:32.

⁴³ See Minister's submissions, at AD5-10 at para 18, citing the General Division audio recording at 00:36:51 to 00:37:32.

[74] The Minister argues that this shows that the Claimant had residual work capacity by the end of December 2013. And because of this, the Minister argues that the Claimant was required to try to find a suitable job. But the Minister argues that the Claimant did not try to do this. Instead, the Claimant retrained to become a lifeguard. The Minister says that this type of work was not appropriate, given the Claimant's medical conditions. So, he did not satisfy what he was required to do under the *Canada Pension Plan* to qualify for a disability pension.

The evidence falls short in showing that the Claimant had a severe and prolonged disability by December 31, 2013

[75] The Claimant argues that his medical condition has been unchanged since December 31, 2013, and that he remains severely disabled.

[76] However, it is well established in law that some medical evidence of a claimant's disability is required.⁴⁴ As the Federal Court of Appeal held in *Villani*,

[50] This restatement of the approach to the definition of disability does not mean that everyone with a health problem who has some difficulty finding and keeping a job is entitled to a disability pension. Claimants still must be able to demonstrate that they suffer from a "serious and prolonged disability" that renders them "incapable regularly of pursuing any substantially gainful occupation." **Medical evidence will still be needed** as will evidence of employment efforts and possibilities.⁴⁵ (my emphasis)

[77] Despite the Claimant's efforts, he has been unable to get sufficient supporting documents to establish that he had a severe and prolonged disability by December 31, 2013. Several years have passed since his minimum qualifying period ended. The Claimant believes that some of his health caregivers have destroyed their records since that time.

⁴⁴ See, for instance, *Warren v Canada (Attorney General)*, 2008 FCA 377.

⁴⁵ See *Villani v Canada (Attorney General)*, 2001 FCA 248 at para 50.

[78] There are no medical records on file for the timeframe after June 2002 up to April 2016. While the diagnostic examinations confirm that the Claimant has osteoarthritis in his right shoulder and hip and degenerative disc disease in his cervical and lumbar spines, these examinations do not speak to what his condition might have been like around the end of the minimum qualifying period. There are no medical opinions as to the significance of these diagnostic examinations, and there is no clinical correlation.

[79] The Claimant faults his doctors for failing to properly investigate and diagnose him. He says that it should not have taken until now to get X-rays or other scans of his cervical spine. He suggests that I should accept his testimony as proof that he was severely disabled by the end of 2013.

[80] I accept that the Claimant had ongoing back issues from accidents and injuries, starting from early in his life. I also accept that his overall medical condition is getting progressively worse over time. I also accept that the Claimant has had functional limitations involving his back.

[81] However, without any supporting medical evidence to show the extent of his limitations around the end of his minimum qualifying period, the Claimant falls short in establishing that he had a severe disability at the relevant time.

[82] Contemporaneous medical evidence around the end of 2013 simply does not exist as the Claimant confirms that he did not have any medical treatment in the years before and following the end of his minimum qualifying period.

[83] The Claimant largely relied on rest to relieve his pain. He says that he was not getting any relief from traditional means of medical treatment. However, there is no medical evidence that might have shown what treatment or treatment recommendations he might have received around the end of his minimum qualifying period. There also is no evidence that could show that the Claimant had reasonably exhausted any medical treatment measures that might have been available or recommended and could have had some impact on his disability status.

[84] Most of the medical evidence that exists relates to the Claimant's medical condition well after the end of his minimum qualifying period had long passed. None of it relates back to the Claimant's condition around 2013. There is simply too large a gap in the medical records to enable me to find that the Claimant was severely disabled by the end of 2013.

[85] Given the lack of medical evidence, it is unnecessary to consider the Claimant's "real world" context. While his education, past work and life experience could have been relevant in assessing the extent of his disability, there still has to be some medical evidence to show whether the Claimant had a severe and prolonged disability by the end of 2013, and continuously since then.

[86] It is also unnecessary to consider whether the Claimant had a prolonged disability by the end of his minimum qualifying period, given the cumulative requirements under the *Canada Pension Plan*. If an applicant does not meet the severe criterion of disability under the *Canada Pension Plan*, his application for a disability pension cannot succeed.⁴⁶

Conclusion

[87] The appeal is dismissed.

[88] The Claimant did not produce sufficient medical evidence to establish that he had a severe and prolonged disability by the end of his minimum qualifying period on December 31, 2013. As a result, the Claimant is not eligible for a disability pension under the *Canada Pension Plan*.

Janet Lew
Member, Appeal Division

⁴⁶ *Klabouch v Canada (Social Development)*, 2008 FCA 33 at para 10.