



Citation: *NJ v Minister of Employment and Social Development*, 2025 SST 1455

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: N. J.
Representative: S. R.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated October 31, 2023 (issued
by Service Canada)

Tribunal member: Brianne Shalland-Bennett
Type of hearing: Teleconference and in writing
Hearing date: February 26, 2025, and in writing
Hearing participants: Appellant
Appellant's representative, witness, and, support person
Decision date: April 7, 2025
File number: GP-24-348

Decision

[1] The appeal is dismissed.

[2] The Appellant, N. J., 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 57 years old with a grade 10 education. He has mostly done physically demanding and driving jobs. He says his health usually affected his performance. Sometimes, he could not perform well enough for the jobs and was let go. He stopped working in 2004 because of his back pain, depression, and anxiety.¹

[4] The Appellant applied for a CPP disability pension on December 19, 2022. The Minister of Employment and Social Development (Minister) refused his application. He appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Appellant says that by 2008, he knew he could not work at any job because of his back pain, anxiety, and depression. He still can't work now.

[6] The Minister says there isn't evidence showing the Appellant had a severe and prolonged disability by his minimum qualifying period or prorated date.²

What the Appellant must prove

[7] For the Appellant to succeed, he must prove he has a disability that was severe and prolonged by no later than December 31, 2004. This date is based on his CPP contributions.³ He must also prove that he continues to be disabled.⁴

¹ See GD2-40 and GD13-2 to 4.

² I will explain these terms next.

³ 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 GD2-6.

⁴ 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.

[8] The Appellant had CPP contributions in 2005 that were below the minimum amount the CPP accepts. These contributions let him qualify for a pension if he became disabled between January 2005 and April 2005, and he continues to be disabled.⁵

[9] The *Canada Pension Plan* defines “severe” and “prolonged.”

[10] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.⁶

[11] 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. I also have to look at his background (including his age, level of education, and past work and life experience). This is so I can get a realistic or “real world” picture of whether his disability is severe. 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.

[12] A disability is **prolonged** if it is likely to be long continued and of indefinite duration or is likely to result in death.⁷

[13] 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.

[14] The Appellant has to prove he has a severe and prolonged disability. He has to prove this on a balance of probabilities. This means he has to show it is more likely than not that he is disabled.

⁵ This is based on sections 19 and 44(2.1) of the *Canada Pension Plan*.

⁶ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability. Section 68.1 of the *Canada Pension Plan Regulations* says a job is “substantially gainful” if it pays a salary or wages equal to or greater than the maximum annual amount a person could receive as a disability pension.

⁷ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

Matters I have to consider first

I chose to have a hybrid hearing

[15] I chose to have a hybrid hearing. This is because the Appellant's representative told me the Appellant could not attend by teleconference because of his mental health.

[16] The Appellant's representative appeared as a witness and gave her evidence over the phone. I sent the Appellant a questionnaire with questions after the hearing.

[17] A hybrid hearing was a fair choice. It let the Appellant participate. All parties had a chance to respond to each other's submissions.⁸ I also got information to allow me to assess the Appellant's entitlement to a disability benefit and write this decision.

The Appellant doesn't benefit from the prorated period

[18] The prorating rule says the **onset** of the Appellant's disability needed to have been between January 1, 2005, and April 2005. The evidence shows his conditions started **before 2005**.⁹ So, I will focus on his minimum qualifying period (December 31, 2004), for the rest of my decision.

Reasons for my decision

[19] I find the Appellant hasn't proven he had a severe and prolonged disability by December 31, 2004. I reached this decision by considering the following issues:

- Was the Appellant's disability severe?
- Was the Appellant's disability prolonged?

Was the Appellant's disability severe?

[20] The Appellant's disability wasn't severe by December 31, 2004. I reached this finding by considering several factors. I explain these factors below.

⁸ See GD12 to 14.

⁹ See the Appellant's submissions at GD13. He says that by 2004, and 2005, his back pain, anxiety and depression got worse.

– **The Appellant’s functional limitations affected his ability to work**

[21] The Appellant has back pain, depression, and anxiety. But, I can’t focus on his diagnoses.¹⁰ I must focus on if he has functional limitations that got in the way of him earning a living.¹¹ When I do this, I have to look at **all** of the Appellant’s medical conditions (not just the main one) and think about how they affected his ability to work.¹²

– **What the Appellant says about his functional limitations**

[22] The Appellant says his medical conditions have resulted in functional limitations that affect his ability to work. He says that by 2008, he knew he could not work at any job because of his back pain, anxiety, and depression. He still can’t work now.¹³

[23] The Appellant has depression and anxiety. He says he tried to overcome these limitations while working, but he could not function well enough for any employer. His depression and anxiety got more severe in the last few years. Here is what he says about his limitations from these conditions by December 31, 2004:¹⁴

- His mood was low, he was constantly worried, and he felt frustrated.
- His sleep was poor, he had no energy, and he felt fatigued.
- He lost interest in most things and began to isolate.
- His anxiety affected his ability to function normally.
- He tried to stay away from all people and had difficulty being in public.
- He had panic attacks and felt embarrassed.
- His depression made it hard for him to concentrate.

[24] The Appellant says his back pain affected his performance and attendance in the workplace. His pain and limitations are worse now. Here is what he says about his limitations by December 31, 2004:¹⁵

¹⁰ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

¹¹ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

¹² See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

¹³ See GD2-40 and GD13-8.

¹⁴ GD2-14, GD2-44, and the Appellant’s submissions at GD13.

¹⁵ See GD2-14, GD2-38, GD2-43, and the Appellant’s submission at GD13.

- Most physical activity aggravated his pain.
- He had difficulty and pain bending, lifting, and walking, and squatting.
- He could not stand in one place for more than 15 minutes.
- He got dizzy and felt pain when changing positions.
- He could drive as long as it wasn't for a long time.
- His back pain affected his ability to sleep.
- He had to take multiple breaks while doing a task.
- He could sit for 30 minutes to an hour but had to change positions.
- Sometimes, he collapsed because of the pain.
- He stopped doing outdoor activities because of the pain.
- His physical limitations contributed to his mental health limitations.

– **What the Appellant's witness says about his functional limitations**

[25] The Appellant's common-law partner testified at the hearing and provided written submissions.¹⁶ She says the Appellant has both mental and physical conditions that affect his ability to function. She says no medications and treatments have worked. She doesn't think he could have worked by 2004 or 2005. She said he tried to work at many different jobs, but he could not cope.

[26] The Appellant's witness says he got a Disability Tax Credit (DTC) from the Canada Revenue Agency (CRA) from 2010 to 2015. The CRA and the CPP have different laws relating to what a disability is or isn't. I can only follow what the CPP says in making my decision. This means, just because the Appellant may have been approved for the DTC, doesn't mean he has a disability within the meaning of the CPP.

– **What the medical evidence says about the Appellant's functional limitations**

[27] The Appellant must provide some medical evidence to support that his functional limitations affected his ability to work no later than December 31, 2004.¹⁷

¹⁶ See GD7-1 and GD15.

¹⁷ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

[28] The Minister says the Appellant hasn't provided any medical evidence to show the severity of his conditions by December 31, 2004.¹⁸

[29] I agree with the Minister.

[30] The medical evidence in the file is dated after December 31, 2004, and doesn't show the Appellant had functional limitations by December 31, 2004. Dr. Gelber (a mental health specialist) prescribed the Appellant medication in **2013**. Dr. Boyrazian (family doctor) started treating him in **2022**. In the medical report, he said the Appellant's back pain started in **2022**, and his depression started in **2023**.¹⁹

– **Why I didn't consider the Appellant's personal characteristics**

[31] When I am deciding if a disability is severe, I usually have to consider an appellant's personal characteristics. Factors like age, level of education, language abilities, and work and life experience, may affect if they can work in the real world.²⁰

[32] But I didn't consider the Appellant's personal characteristics. This is because an appellant can't qualify for a disability pension based on their personal characteristics alone. There **must** still be medical evidence to support a finding of a disability.²¹

[33] I acknowledge the Appellant genuinely believes that his limitations affected his ability to work by December 31, 2004. I also acknowledge the Appellant's representative said she tried to get medical evidence but was unsuccessful in doing so.²²

[34] That being said, there isn't any medical evidence to support a finding of disability by December 31, 2004. Since there is no medical evidence, I can't find his disability was severe by then. There is no reason to consider his personal characteristics.

¹⁸ See GD6-9.

¹⁹ See GD2-17, GD2-111 to 113, and GD2-117 to 118.

²⁰ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

²¹ Section 42(2)(a) of the *Canada Pension Plan* says that a person is disabled only if they have a severe and prolonged mental or physical disability. See also *Villani v Canada (Attorney General)*, 2001 FCA 248 at paragraph 50, where the Court said that "[m]edical evidence will still be needed..."

²² I note the Appellant says he saw a Dr. Shanaz by 2004, or 2010, and started being treated by Dr. Gelber for his mental health in 2011.²²

Conclusion

[35] I find the Appellant isn't eligible for a CPP disability pension because his disability wasn't severe. Because I have found that his disability wasn't severe, I didn't have to consider whether it was prolonged. This means the appeal is dismissed.

Brianne Shalland-Bennett
Member, General Division – Income Security Section