



Citation: *IC v Minister of Employment and Social Development*, 2022 SST 1173

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: I. C.
Representative: Jeffrey Strype
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated January 5, 2021 (issued by
Service Canada)

Tribunal member: Jackie Laidlaw
Type of hearing: Videoconference
Hearing date: September 13, 2022
Hearing participants: Appellant
Appellant's representative
Decision date: October 18, 2022
File number: GP-21-765

Decision

[1] The appeal is dismissed.

[2] The Appellant, I. C., 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 a 44 year-old woman, who was 42 years old at the time of her MQP. She holds two degrees, a Masters degree in electrical engineering and a Bachelor of Science. She worked in a very complex, fast-paced job as a senior physical designer with Intel where she designed micro electronic circuits. She extensively travelled the globe for her job. In 2015 she was in a car accident (MVA). She continued to work and travel the world for her job until she was terminated in July 2018 for taking time off to attend medical appointments. She has not attempted to return to any work since, citing chronic fatigue as her main disabling condition, along with post-concussion syndrome (PCS), post-traumatic stress disorder (PTSD) and physical problems resulting in chronic pain.

[4] The Appellant applied for a CPP disability pension on July 13, 2020. The Minister of Employment and Social Development (Minister) refused her application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Appellant says a few times a month she still has random bad days which take a few days to recover. The "bad days" are when she cannot think logically, or she has pain in her neck, arms and shoulder and will need to go to therapy. She would not be able to work regularly because of this. She is also unable to sit at the computer for long periods. Standing hurts too much and she does not have any strength to lift even a carton of milk. She is mainly unable to work due to chronic fatigue.

[6] The Minister says that no severe symptoms or limitations have been identified which would preclude the Appellant from all types of work suitable to her condition. The

Minister also notes that when viewed in the real world, it would be unrealistic to expect she would be incapable of alternate work. The Appellant was dismissed from work for taking time off to attend medical treatments, and not because she was physically or mentally incapable of working.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2020. This date is based on her contributions to the CPP.¹

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

[9] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.²

[10] This means I have to look at all of the Appellant’s medical conditions together to see what effect they have on her ability to work. I also have to look at her background (including her age, level of education, and past work and life experience). This is so I can get a realistic or “real world” picture of whether her disability is severe. If the Appellant is able to regularly do some kind of work that she could earn a living from, then she isn’t entitled to a disability pension.

[11] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.³

[12] 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.

¹ 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 GD 2 5

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

³ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

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

Matters I have to consider first

Documents sent in after the hearing

[14] The Appellant's representative informed me at the hearing that despite the exceptionally large volume of evidence provided to the Tribunal, there was a missing document from Dr. Thirlwell written in 2021. At the hearing, Mr. Strype explained the relevant information in that document, which I allowed him to send in post-hearing.

[15] Mr. Strype's office sent in the 2021 document from Dr. Thirlwell, along with a few other documents dated 2019 from other doctors. I refused the other documents as they had not been noted by Mr. Strype as missing. Mr. Strype did not question the return of those documents.

[16] Many days after the acceptance of the above documents, the Minister sent in their response to Dr. Thirlwell's letter. The response continued to deny the appeal. I shared the response with the Appellant.

Reasons for my decision

[17] I find that the Appellant hasn't proven she had a severe and prolonged disability by December 31, 2020.

Was the Appellant's disability severe?

[18] The Appellant's disability wasn't severe. I reached this finding by considering several factors. I explain these factors below.

– The Appellant's functional limitations don't affect her ability to work at any job

[19] The Appellant has chronic pain and chronic fatigue. She has been diagnosed with PTSD. While there is a diagnosis of PCS, I find the evidence does not prove that to be the case. I will explain further in this decision.

[20] However, I can't focus on the Appellant's diagnoses.⁴ Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.⁵ 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 her ability to work.⁶

[21] I find that the Appellant does have functional limitations that affect her ability to work at her old job, however she doesn't have functional limitations that affected her ability to work at any substantially gainful occupation.

– **The Appellant's testimony regarding her work, treatments and functional limitations**

Work

[22] The Appellant explained that her job was "super demanding". She would travel a few times a year to Asia, for a month at a time. She would not be given any downtime after returning. She never took the time for her body to recover from these trips. She continued for three years after the accident to do these trips, to be competitive in hopes she would be promoted. Eventually, she started to take a week or so off after the trips because of low energy. Her employer never allowed her to rest. She started to be late for meetings and her performance was slipping. She got a new manager from the United States, who she stated was trying to get her fired.

[23] She could have worked remotely, but her employer did not want her to do so.

[24] There was a note that she was taking an online course from MIT in 2020. She stated that there are online recordings of past lectures from MIT, and whenever she feels she would like to fill her mind she watches one. It was not a course specifically.

⁴ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁵ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁶ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[25] She was terminated three-years post accident for taking time off to get Platelet Rich Plasma (PRP) treatments.

Treatments

[26] She stated that she would take six weeks off to get one PRP treatment. She stated she had them every three months after the accident. The treatment was for her spine. Dr. Ko's surgical/medical history in 2020⁷ indicates a history of PRP treatments from Dr. James Brown for cervical facets in January and December 2017, one for thoracic facets in July 2018, one for the whole spine in November 2018 and thoracic facets in December 2019. The last one she stated was in 2020, or 2021 during the pandemic. The PRP supresses her symptoms but does not cure them. She stated that her back pain had plateaued a long time ago.

[27] She did not realize she had PTSD until pain specialist Dr. Ko sent her to psychiatrist Dr. Stein in 2019. She saw Dr. Stein a few times for psychotherapy and EMDR, a treatment for PTSD. She also went to another therapist and is not sure if it helped. This was years ago, and she cannot remember the name of the therapist or the treatment that she received monthly for a year or two. After Dr. Stein retired in 2020, she began seeing Dr. Thirlwell every six months who monitors her medical cannabis medication. She is only taking CBD oil and no other medication. Dr. Thirlwell recommended EMDR and she is waiting to get a session with an EMDR treatment provider.

[28] Dr. Ko is her main supervising doctor. She consults with him for pain. He sent her to a chiropractor, and provided topical cream and CBD oil for the pain. She still uses both. She stated that right after the accident, in 2015, she would see him three times a week, which would affect her work.

[29] She stated that she did not know she had chronic fatigue. For this, Dr. Ko has recommended physical therapy of chiropractic, massage and acupuncture. She also

⁷ GD 2 1809

consults with a naturopath. She received nerve blocks and the previously mentioned PRP treatments for the pain in her neck, back and hip with Dr. Brown.

[30] She tried naturopath treatments in a non-invasive way to handle her chronic pain. The naturopath put her on Valcyte, an anti-viral medication. This was a trial for six months in 2020 or 2021 and she is no longer on Valcyte.

[31] She is not taking any medication for chronic fatigue.

Functional Limitations

[32] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work.

[33] When she was terminated for taking time to get PRP treatments, her chronic fatigue kicked in and she took a dip down and has never recovered.

[34] In 2020, she was hopeful to go back to work as an engineer, but feels she cannot as she cannot sit at a computer for long periods.

[35] The Appellant the functional limitations which prevent her from working are: difficulty with concentration; anxiety and depression; sitting in front of a computer causes an exacerbation of pain; and lack of strength indicated in an inability to lift a carton of milk.

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

[36] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 2020.⁸

[37] The evidence shows that the Appellant was involved in an MVA in August 2015. She did not hit her head, her air bags did not deploy and she was not taken to the

⁸ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

hospital. She returned to work a day or two later and continued to work for three years until she was terminated in July 2018.

[38] While she reports she missed time from work, and was not punctual, there was no evidence from her previous employer to verify this.

Treatments

[39] The Appellant has had many prior accidents: a previous MVA in February 2008 resulting in chronic cervical spine and left shoulder pain; a snowboarding accident in January 2009 or 2010 resulting in a very mild concussion which resolved; and an elevator accident in June 2011 when an elevator fell three flights and she sustained a whiplash injury and soft tissue injuries in her cervical spine, and left shoulder chronic nerve damage. Then the MVA in 2015, whereby it has been noted she did not hit her head or require any hospital intervention, nor did she experience a loss of consciousness or post-accident amnesia.⁹ She went on to have another MVA in April 2019 where she injured her cervical spine. In February 2020 she had another MVA which she stated was “minor” and denied any new injuries.

[40] Her history is important as it shows she had chronic pain by at least 2008. She continued to work until 2018.

[41] In 2015, after the car accident, she did report immediate pain in her cervical spine and right shoulder. The next day she had pain in her thoracic and lumbosacral spine. She attended a walk-in clinic the next day and was prescribed pain medications and physiotherapy. She continues to attend at physiotherapy, chiropractic and home-exercises.

[42] An Independent Medical Examination a year (IME) after the accident fully outlined her treatments until October 2016 at the time of the report.¹⁰ She went to physiotherapy three times a week for three or four months, with some relief until she

⁹ GD 2 504 according to a Medico legal chronic pain assessment from Dr. Sangita Sharma on behalf of lawyers McCague Borlack, LLP on February 27, 2020

¹⁰ GD 2 1643

plateaued. One month post-accident she began acupuncture once or twice a month. By 2016 she was getting acupuncture on an as needed basis. She saw a neurologist in January 2016 for ongoing head and neck pain and two MRI's indicated no fractures.

[43] In early 2016 she began to consult with physiatrist Dr. Ko. She saw him two times (up to the date of the IME) from early 2016 to October 2016 for nerve blocks and medication, a topical analgesic.

[44] The conclusion of the IME, in October 2016, was that she had reached maximum medical recovery and no further treatment was required.

[45] She was prescribed PRP treatment for pain management by a physiatrist (believed to be Dr. Ko) in December 2016 (noted as January 2017 in the IME), which she tried "a few times", which she found effective for pain management¹¹. She then started to see a naturopath.

[46] The Appellant stated she had PRP treatments every three months. However, Dr. Ko notes the PRP injections were done by Dr. James Brown five times up to his report of January 2020. The first injection was given by Dr. Ko in December 2016. The other dates were January 2017 (presumed to be the December 2016 date as she required a month of recovery), December 2017 and July 11, 2018. After, that, November 2018 and December 2019.¹²

[47] She states she was dismissed from work for taking too much time off for treatments. She did have extensive physiotherapy, chiropractic and acupuncture treatments after the accident, which tapered down in their frequency. It is noted she had plateaued in her treatment and recovery by October 2016. She continued to work for three more years, travelling to Asia for a month at a time. While she indicated she took a month to six weeks to recover from the PRP injections, she only had three in two years before she was terminated. The PRP injections are noted as being positive in

¹¹ GD 2 507 as she indicated to Dr. Sharma on May 4, 2020

¹² GD 2 1809

treating her pain. This does not indicate to me that she was incapable of working with her conditions.

Functional Limitations

[48] The Appellant's lawyer stated they are relying upon Dr. Ko's reports regarding her chronic fatigue, chronic pain and numerous treatments over the years, as well as Dr. Thirlwell's assessment of her depression, PTSD, chronic fatigue, chronic pain and post-concussion syndrome.

[49] Dr. Ko wrote a Comprehensive Multidisciplinary Independent Medical Assessment in July 2, 2019. In it, he notes that she sustained a number of permanent and serious impairments of important physical function, unlikely to improve. He felt it was unlikely she will be able to work to the retirement age of 65, and that she is at a competitive disadvantage in the workplace due to her impairments.

[50] I accept she has chronic pain. However, it has been in place for years due to her previous accidents, and she managed to work with the pain. Dr. Ko found it was unlikely she would work to age 65, but did not state she was prevented from working at any job.

[51] There are many reports from Dr. Ko, and I will refer to the report of January 20, 2020¹³, which is the year of her MQP. This report was written as a follow up on the conditions identified on the problem list, for the post-MVA tort claim. In fine print it is noted the visit was "solely focused on therapeutic management". The problem list indicated somatic symptom disorder, persistent with predominant pain, chronic fatigue symptoms, cervical facet syndrome and right sacroiliac joint dysfunction. Since she was last seen she was 50% improved. The report is very thorough. Red flags and functional inquiry were significant for continued widespread pain in neck and shoulder, and burning pain in the back. Chronic fatigue was not listed as a red flag and functional inquiry. Dr. Ko counselled her for 30 minutes on pain.

¹³ GD 2 1509

[52] In this report, he doesn't place any functional limitations that would affect her ability to work. However, I accept that he has noted she is at a competitive disadvantage in the workplace, and that she does have limitations due to chronic pain.

[53] Despite an exacerbation of her chronic pain of the cervical spine and shoulder, she continued to work at a "super demanding" job. She continued to travel extensively, and intensively for work. She continued to work at a computer-based job for the next three years. I do not consider this to be a failed attempt at working with her conditions.

[54] She was assessed in May 2020 by Dr. Sharma, a pain specialist, at the behest of a law firm. Dr. Sharma's report showed that she was only taking CBD oil, prescribed by Dr. Ko in 2019, which Dr. Sharma thought was not reasonable or necessary. Her pain was in the moderate range. She was capable of independently performing her activities of daily living with self-care and home management. She was not excessively dependant upon others or any health providers for injury management. She was still social, but not participating in recreational activities as before the accident. Dr. Sharma noted she had not (Dr. Sharma's emphasis) developed any signs of Complex Regional Pain Syndrome, but did have a pre-existing pain syndrome. A pre-existing pain syndrome is reasonable given her numerous previous accident.

[55] I am persuaded by Dr. Sharma's report. I accept Dr. Sharma is not a treating physician. I found Dr. Sharma's report was thorough and unbiased.

[56] Dr. Sharma has noted a pre-existing pain syndrome, which the Appellant managed over the years using pacing and modification techniques to complete functional tasks. Dr. Sharma noted the Appellant uses the same techniques today for her pain. Dr. Sharma noted the accident temporarily exacerbated the condition, and by the time of the 2020 assessment, she had returned to her pre-accident status. This would be in keeping with the finding of the 2016 IME indicating she had reached maximum medical recovery.

[57] Meaning, she continues to have chronic pain, which she managed well in order to work for over 10 years from 2008 to 2018, and is back to the same base level as prior

to the accident. I find this would indicate she would be able to work, despite her chronic pain, as she had for many years.

[58] Dr. Sharma's prognosis for the Appellant that was due to the length of time off work, and the ongoing chronic pain syndrome, she now had pain related anxiety and depression. She (Dr. Sharma) encouraged the Appellant to return to physical activity, adding core strengthening and cardio exercises at home. She felt any facility-based treatment was not required.

[59] Dr. Sharma found that she was not substantially disabled from her pre-accident job demands. She is not limited in her employment opportunities or left in a competitive disadvantage due to the injuries from the 2015 MVA. Dr. Sharma had listed the subsequent MVA's, and still found she was not substantially disabled from working.

[60] The picture of the Appellant presented by Dr. Sharma is in stark contrast to that of Dr. Thirlwell in 2021. I accept Dr. Thirlwell is a psychiatrist, and not a specialist in physical conditions. However, the Appellant has noted her main condition is chronic pain and chronic fatigue, and I accept Dr. Thirlwell would be able to speak on those conditions.

[61] Dr. Thirlwell diagnosed PCS, after trauma to the head, and stated it is a direct result of the 2015 MVA and the condition was not present prior to that. I do not put any weight on her diagnosis as it has been established the Appellant never hit her head in the accident. In Dr. Ko's very extensive report of January 20, 2020¹⁴, he notes that there was no head injury or loss of consciousness sustained in the accident. A concussion can also be caused by violently shaking of the head and upper body. It is noted in the IME of 2016 that she did not make any bodily contact with any interior component of the vehicle during the collision.¹⁵

[62] There is a note in 2009 indicating she sustained a very mild concussion in the snowboard fall while wearing a helmet, sustained no loss of consciousness and the mild

¹⁴ GD2 1809

¹⁵ GD 2 1642 from an Independent Medical Examination from Dr. Michael Boucher, October 17, 2016

concussion resolved within a week. Dr. Ko makes note that an MRI of October 10, 2010, after the showboarding accident, showed a normal head. In the six years from the 2015 accident to Dr. Thirlwell's report, the Appellant had never been treated for a concussion. It is unlikely that the resolved mild concussion in 2009 developed into PCS in 2021 without any further trauma to the head for twelve years, or any symptoms alerting a doctor to a concussion.

[63] I have already accepted the Appellant has had chronic pain since 2008, and Dr. Ko's 2020 report does show widespread pain in the neck and right shoulder. She had counselling with Dr. Ko for her pain. Home-based daily stretching was recommended and physiotherapy as well as aquatic exercises. Dr. Ko referred her to Dr. Celeste Thirlwell, an expert in sleep medicine, cannabis-based medicine and mind-body therapies.

[64] The Appellant stated that Dr. Thirlwell was referred after Dr. Stein retired in 2020. This is true, but misleading. She did not continue treatment with Dr. Thirlwell right after Dr. Stein retired. The Appellant stopped treating with Dr. Stein in October 2019. Dr. Thirlwell began treating the Appellant on February 2, 2021, and her report was dated October 21, 2021. The Appellant stated she only sees Dr. Thirlwell twice a year. Therefore, this report was based on two visits. In her report, Dr. Thirlwell indicated she was referred for a PCS assessment, and nonrestorative sleep. She was not referred to assess PTSD, however determined the Appellant suffers from the condition, which was a large part of Dr. Thirlwell's overall assessment of her condition.

[65] In contrast to Dr. Sharma, Dr. Thirlwell stated the Appellant is unable to carry out her activities of daily living, and she was incapable of performing her highly cognitive, intellectual job, nor is she able to multitask or perform taxing detailed work. She indicated she is medically unable to work in any capacity.

[66] I am finding a number of inconsistencies in Dr. Thirlwell's report of the Appellant. The previously mentioned indication she hit her head in the MVA causing a concussion. She did not hit her head at all, nor lose consciousness. She notes, "Her attempts to return to work". There has not been any evidence to suggest she took extensive

absences from work due to any physical or psychological condition. Nor is there evidence to show she attempted to return to work and was unable to do so due to her conditions. The Appellant worked for three years after the MVA and was fired in 2018. She never attempted to return to her previous job, or any job after that. Dr. Thirlwell constantly indicated that she did not present with any symptoms prior to 2015. However, it has been established the Appellant did have chronic pain of the neck and shoulder since 2008.

[67] I will put more weight on the psychological report of Dr. Stein. Dr. Stein saw her in 2019, and diagnosed PTSD from a series of traumatic incidents. The session in July 2019 was good, she was in no physical pain that day, and he only required to see her a few more times.¹⁶ She saw him until October 8, 2019, before he had retired. Therefore, she did not go directly from the care of Dr. Stein to Dr. Thirlwell. She stopped seeing Dr. Stein in 2019 and did not consult with any psychiatrist or psychologist for PTSD or any other condition until February 2021 with Dr. Thirlwell. She still has not received any further PTSD EMDR treatment. I agree with the Minister that there were no severe psychiatric symptoms or limitations necessitating regular psychiatric support.

[68] Oddly, Dr. Thirlwell was not as focused in her letter on the chronic fatigue as she was with her PTSD and PCS. She recommended three months of electromagnetic field therapy for insomnia, chronic pain and overall well-being, as well as a comprehensive naturopathic assessment for adrenal fatigue. She also recommended that weekly massage, physiotherapy and craniosacral therapy will improve her sleep quality, mood and aid in pain control. These are not extensive interventions. As well, they indicate they will improve her sleep quality, mood and pain control.

[69] Therefore, the very dire picture of the Appellant painted by Dr. Thirlwell in 2021, after treating her for only a few months, is not in keeping with the accounts of Dr. Stein or Dr. Ko. It is in great contrast to the assessment of Dr. Sharma.

¹⁶ GD 3 2378

[70] I am putting more weight on Dr. Sharma's assessment than that of Dr. Thirlwell. I understand that Dr. Sharma was a one-time assessment, and Dr. Thirlwell is now a treating specialist. However, at the time of Dr. Thirlwell's letter of 2021, she had only seen the Appellant twice, and therefore her status as treating specialist was no more weighty than Dr. Sharma's one-time assessment where he extensively reviewed a number of her medical consultations and reports. As well, I have found numerous inconsistencies with Dr. Thirlwell's assessment when I review the other medical documents outlining the injuries she sustained in the accident and the Appellant's testimony that she did not attempt to return to work.

[71] I put weight on the very full assessment with Dr. Sharma in 2020, and the assessment of Dr. Ko in 2020, the year of her MQP. Both doctors found she had pre-existing chronic pain. She was able to work with that pain. Dr. Sharma found she had returned to her pre-existing status of manageable chronic pain and was not precluded from working. Dr. Ko did not indicate she is unable to work at any job. Dr. Ko recommended very conventional treatments of physiotherapy, CBD oil, aqua therapy. He continued to recommend PRP treatments, which had been found to be helpful in the past. After that recommendation, she had one more PRP treatment.

[72] Her family physician, Dr. Kwong indicated in his report of May 2020¹⁷ that her limitations of pain, fatigue and lack of concentration were permanent and unlikely to improve to allow for work in the future. I agree with the Minister that these conditions, which she stated have been the result of her 2015 MVA, were present for three years while she worked. She was not terminated because she was unable to work with these conditions.

[73] She has not attempted to work since, and therefore has not shown she is incapable of working at her previous job because of her conditions. Despite this, I accept that she may not be able to return to her high stress, fast-paced demanding career in engineering. That job, which did not allow her any down-time after travelling to

¹⁷ GD 2 51 May 29, 2020

Asia for a month, may have contributed to her fatigue. In all probability, it would not be a healthy job for her given her chronic pain and fatigue.

[74] I now have to decide whether the Appellant can regularly do other types of work. To be severe, the Appellant's functional limitations must prevent her from earning a living at any type of work, not just her usual job.¹⁸

– **The Appellant can work in the real world**

[75] When I am deciding whether the Appellant can work, I can't just look at her medical conditions and how they affect what she can do. I must also consider factors such as her:

- age
- level of education
- language abilities
- past work and life experience

[76] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say that she can work.¹⁹

[77] I find that the Appellant can work in the real world. She is a highly educated woman. Her young age of 42 at the time of her MQP would not be a barrier to finding suitable employment, or returning to work. She has travelled the world, which would be an asset in her knowledge of different cultures. Her age, education and past work and life experiences would all be a benefit to her finding suitable employment.

– **The Appellant didn't try to find and keep a suitable job**

[78] If the Appellant can work in the real world, she must show that she tried to find and keep a job. She must also show her efforts weren't successful because of her

¹⁸ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

¹⁹ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

medical conditions.²⁰ Finding and keeping a job includes retraining or looking for a job she can do with her functional limitations.²¹

[79] The Appellant didn't make efforts to work. The Appellant has argued that the Minister focused on her not trying to go back to work at any job. The Minister was justified in their focus as part of the CPP test of severity.

[80] The Appellant further argued that because of her education she must go back to a similar occupation in the engineering field. As well, her income must be substantially gainful, meaning it must be as substantial as she had previously made.

[81] I do not agree with the Appellant's arguments.

[82] As noted above, "any" substantially gainful occupation means any kind of job within the Appellant capabilities. Not just her usual job.

[83] "The test is not whether the applicant can do his or her former job or a job which would pay a comparable wage. He or she must be physically unable to do any job that is substantially gainful, even if the pay is significantly lower than in the previous job."²²

[84] The "substantially gainful occupation", test is not to prove an applicant can return to their regular earning potential, it is whether they have the capacity to work at a compensable job. As of May 2014, s. 68.1 of the CPP Regulations was added to provide a formula for determining the threshold for "substantially gainful occupation". The threshold is essentially 12 times the maximum monthly disability benefit. In 2020, at the time of her MQP, a substantially gainful occupation would be any income over \$1,413.66 monthly, or \$16,963.92 annually.

[85] The Appellant has extensive degrees as noted by her lawyer at the hearing. She is highly qualified and would be able to find even a sedentary job, or a part-time job, far

²⁰ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

²¹ See *Janzen v Canada (Attorney General)*, 2008 FCA 150.
Brunet v. MEI (March 6, 1996), CP 3476

below her qualifications, which would pay a substantially gainful income as outlined in the regulations.

[86] As she has been found able to work in the real world by December 31, 2020, and did not try to do so, she cannot be found to have a severe disability.

Conclusion

[87] I find that the Appellant isn't eligible for a CPP disability pension because her disability wasn't severe. Because I have found that her disability wasn't severe, I didn't have to consider whether it was prolonged.

[88] This means the appeal is dismissed.

Jackie Laidlaw
Member, General Division – Income Security Section