



Citation: *WM v Minister of Employment and Social Development*, 2023 SST 593

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: W. M.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated May 5, 2022 (issued by
Service Canada)

Tribunal member: Anne S. Clark

Type of hearing: In writing

Decision date: February 28, 2023

File number: GP-22-1365

Decision

[1] The appeal is dismissed.

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

Overview

[3] The Appellant was 47 years old when he was last eligible for a CPP disability pension. He is currently affected by health conditions that include post traumatic stress disorder (PTSD), Type II diabetes, profound hearing loss in his left ear, soft tissue sarcoma, and tachycardia arrhythmia.¹ The Appellant's family physician said the Appellant did not allow him to share all of his medical information. He said he could confirm the Appellant had heart ablation surgery in 2019 and cancer surgery in 2020.

[4] The Appellant applied for a CPP disability pension on December 17, 2013.² The Appellant applied again on May 4, 2021.³ The Minister of Employment and Social Development (Minister) refused his application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Appellant says he has severe and prolonged conditions that are a result of his work with the Canadian Armed Forces in the 1980s.

[6] The Minister says the Appellant did not provide evidence to show he had a severe and prolonged disability by December 31, 2011.

¹ Dr. A. Savarimuthusosal writes about the diagnoses in GD2R-59 and 182. He also included a description of the Appellant's conditions in various letters to the Department of Veteran's Affairs beginning at GD2R-222.

² The Application is at page GD2R-125. The Minister denied the application and it was not appealed.

³ This application is at GD2R-95. This application is the subject of the appeal.

What the Appellant must prove

[7] For the Appellant to succeed, he must prove he had a disability that was severe and prolonged by December 31, 2011. This date is based on his contributions to the CPP.⁴ He also has to prove that his disability has been continuous since then.⁵

[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.⁶

[10] This means I have to look at all of the Appellant’s medical conditions together to see what effect they had 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 able to regularly do some kind of work to earn a living, then he 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.⁷

[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.

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

⁴ A person’s years of contributions to the CPP are used to calculate the “minimum qualifying period”. It is usually called the MQP and is often described using the date the period ended. In this case it is December 31, 2011. See subsection 44(2) of the *Canada Pension Plan*. The Appellant’s contributions are on GD2R-146.

⁵ In *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that an 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.

⁶ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

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

Matters I have to consider first

The Appellant said he wanted his appeal to proceed in writing

[14] The Tribunal sent information to the Appellant. The letters told him about the processes that could apply to an appeal at the General Division. An officer also worked with him to make sure the Appellant had a full opportunity to participate in the appeal and know the rules that applied. The Appellant said he wanted his appeal to proceed in writing. The Minister did not object to the Appellant's request. After all reasonable opportunities for the parties to make submissions, I decided the appeal on the basis of the evidence and submissions on file.

[15] An appeal can proceed in writing particularly if the parties request this method of proceed. I am mindful of the Appellant's right to have his appeal proceed as simply and quickly as fairness allows and to be able to participate fully in the appeal process.⁸

[16] A Tribunal Member wrote to the Appellant about his preferred method of proceeding.⁹ The Member explained what would happen if the appeal was in writing. The Member explained the decision would be made on the basis of the evidence and submissions on file. The letter told the Appellant there would be no additional opportunity for him to clarify any points or explain his position.

[17] In a telephone conversation with an officer the Appellant confirmed his choice to proceed in writing. The Tribunal sent another letter to the Appellant to confirm his choice and explain the appeal would proceed in writing once the Minister had the opportunity to make submissions.¹⁰

[18] The Minister filed submissions. The Tribunal told the Appellant the appeal would be ready to proceed in writing after January 15, 2023. The Appellant replied on January 31, 2023, and said he refused to read any correspondence.

⁸ See sections 8 and 17 of the *Social Security Tribunal Rules of Procedure*.

⁹ See GD3.

¹⁰ See GD4.

This decision is only about the appeal at the General Division

[19] The Appellant said he refused to read or acknowledge correspondence from the Tribunal. He said he wanted to have the General Division **and** Appeal Division of the Tribunal make decisions so he could proceed directly to the Federal Court. The Tribunal informed the Appellant that this appeal is before the General Division only. The General Division will not forward his appeal to the Appeal Division. If the Appellant disagrees with this decision, he will have to take the appropriate steps to appeal.

Reasons for my decision

[20] I find that the Appellant hasn't proven he had a severe and prolonged disability by December 31, 2011.

Was the Appellant's disability severe?

[21] The evidence does not show the Appellant's disability was severe by December 31, 2011. I reached this finding by considering several factors. I explain these factors below.

– The Appellant's functional limitations didn't affect his ability to work

[22] The Appellant's health conditions include the following:

- Profound hearing loss in his left ear.
- Tinnitus.
- Soft tissue sarcoma.
- Type 2 Diabetes.
- Tachycardia Arrhythmia.

[23] However, I can't focus on the Appellant's diagnoses.¹¹ Instead, I must focus on whether he had functional limitations that got in the way of him earning a living.¹² When

¹¹ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

¹² See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

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.¹³

[24] I find that the Appellant did not prove he had functional limitations that affected his ability to work by December 31, 2011.

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

[25] The Appellant says that his medical conditions have resulted in functional limitations that affect his ability to work. He says certain events and exposures when he worked with the Canadian Armed Forces caused some or all of his conditions. He says PTSD, Diabetes, hearing loss and a heart condition combine to make him incapable of any form of gainful employment.

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

[26] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work by December 31, 2011.¹⁴

[27] The medical evidence doesn't support what the Appellant says. To prove he has a disability under the CPP the Appellant must show that he was incapable regularly of pursuing any substantially gainful employment by December 31, 2011. There is some evidence that agrees his current conditions were likely caused by events and exposures before December 31, 2011. I do not question that the Appellant was likely affected by his friend's death around 1985 and his wife's suicide in 2011.

[28] The Appellant's family doctor agrees that the Appellant's diabetes and heart condition are a direct result of exposure to agent orange.¹⁵ He also said his PTSD is a result of his co-worker's death and his first wife's suicide.¹⁶

¹³ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

¹⁴ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹⁵ Dr. Savarimuthusosal said this at GD2R-227.

¹⁶ Dr. Savarimuthusosal said this at GD2R-229.

[29] In April 2021 a psychologist completed an assessment for the Department of Veteran's Affairs.¹⁷ The Appellant described his past experiences for her. She wrote that he declined to answer any questions about his legal history. She did not explain if that impacted her opinion. Ms. Harris said she felt the Appellant's symptoms and were likely related to experiences he had when he was in the military. She said he needs treatment.

[30] However, there is no evidence to show if those events caused conditions that affected the Appellant's ability to work by December 31, 2011. Without evidence of the symptoms, how they affected him and when I cannot conclude that he had a severe disability by December 31, 2011. In fact, there is evidence that isn't consistent with a finding that he likely had limitations by December 31, 2011.

[31] The evidence includes the following:

- The Appellant said he was disabled by hearing loss in October 2013.¹⁸ He did not say he was affected by other conditions.
- The Appellant said he was disabled by hearing loss, soft tissue sarcoma, diabetes, PTSD, and tachycardia arrhythmia in January 2016.¹⁹
- In January 2014 the Appellant's former family doctor said he had known the Appellant for 14 years.²⁰ He began treating him for his main condition (hearing loss) in July 2013. He did not say there were other conditions that affected the Appellant's function.
- In February 2021 the Appellant contacted Power Psychological Services for a mental health assessment.²¹ The assessment was based on the Appellant's self-report. He said he had symptoms of depression and anxiety over 35 years. He said he had two traumatic personal events but told the therapist he

¹⁷ See Bryanne Harris' report beginning at GD2R-33.

¹⁸ See the Appellant's first application at GD2R-125.

¹⁹ See the Appellant's application at GD2R-95.

²⁰ See Dr. Izzard's report at GD2R-255.

²¹ See Janet Tomlinson's report beginning at GD2R-215.

did not “...identify them as having any trauma symptoms to date.” He reported no past psychiatric diagnoses. The therapist said she felt he had moderate symptoms of anxiety and depression suggestive of PTSD.

- According to Dr. Savarimuthusosal’s letters the Appellant began medication for PTSD in 2021, had cancer surgery in 2020, a heart ablation procedure in 2019, and has been on pain medication since 2020.²²
- The Appellant said he kept his business going after his wife died in 2011. He said he did not earn any income. He said he was financially secure after his wife’s death and the law did not require him to contribute to the CPP. He did not explain whether his health affected his ability to work. He said he worked in 2015 and left that job because of unsafe work practices. He did not explain if his health contributed to his ability to work. He did state that he was angry and yelled and threw tools around but there was no information to show when that behaviour began or if it was related to his health.

[32] The Appellant’s application in 2013 said he was disabled by hearing loss. His doctor of 14 years said he began treating him for his main condition in July 2013. If there was information on the doctor’s charts about other conditions the Appellant did not submit it.

[33] In his current application in 2021 the Appellant claimed he was disabled by several conditions.²³ His family doctor of more than five years said he first treated the Appellant for his main condition in January 2020. He said he began treating him for diabetes in 2016 and soft tissue sarcoma in April 2016. He said he recommended the Appellant stop working in February 2021.

[34] The medical evidence doesn’t show that the Appellant had functional limitations that affected his ability to work by December 31, 2011. Even with opinions about what caused the conditions, there is no evidence about how they affect his ability to work or

²² See Dr. Savarimuthusosal’s letters beginning at GD2R-222.

²³ See the report beginning at GD2-182.

when. The evidence does not show he had a disability by December 31, 2011. As a result, he hasn't proven he had a severe disability.

- **There is no evidence of personal circumstances that would have affected the Appellant's ability to work.**

[35] When I am deciding whether a disability is severe, I usually have to consider an appellant's personal characteristics.

[36] This allows me to realistically assess an appellant's ability to work.²⁴

[37] Even though the evidence does not show the Appellant had a disability by December 31, 2011, I considered whether he had personal circumstances that could have affected his ability to work. All of his personal factors are in his favour. By December 31, 2011, he was 47 years old. He had finished high school and three years of university. He was certified as a Land Surveying Technician. He was an owner operator of a Land Surveying business. There appeared to be no language issues.

Conclusion

[38] I find that 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.

[39] This means the appeal is dismissed.

Anne S. Clark
Member, General Division – Income Security Section

²⁴ See *Villani v Canada (Attorney General)*, 2001 FCA 248.