



Citation: *CA v Minister of Employment and Social Development*, 2024 SST 973

## **Social Security Tribunal of Canada**

### **Appeal Division**

# **Decision**

**Appellant:**

C. A.

**Respondent:**

Minister of Employment and Social Development

**Representative:**

Dylan Edmonds

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**Decision under appeal:**

General Division decision dated February 25, 2024  
(GP-23-1458)

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**Tribunal member:**

Neil Nawaz

**Type of hearing:**

On the record

**Decision date:**

August 14, 2024

**File number:**

AD-24-291

## Decision

[1] The appeal is allowed in accordance with an agreement reached between the parties.

## Overview

[2] The Appellant is a 40-year-old former factory worker with a history of shoulder pain. He was born in Ghana, where he attended school up to the age of 16. He immigrated to Canada about 20 years ago and most recently worked as a packer and loader for a hot tub manufacturer in X. In October 2022, he fell at home, tearing his right rotator cuff and bicep. Six months later, he underwent arthroscopic surgery, but he continued to experience pain and functional limitations.

[3] The Appellant applied for a Canada Pension Plan (CPP) disability pension in December 2022. The Minister of Employment and Social Development refused the application after determining that the Appellant did not have a severe and prolonged disability.<sup>1</sup>

[4] The Appellant appealed the Minister's refusal to the Social Security Tribunal's General Division. It held a hearing by teleconference and dismissed the appeal. It found that, although the Appellant was no longer able to perform physically demanding work, he still had the capacity to attempt alternative occupations that might have been better suited to his limitations.

[5] The Appellant then asked the Appeal Division for permission to appeal, alleging that the General Division had made various errors in arriving at its decision. Earlier this year, one of my colleagues on the Appeal Division allowed the Appellant's appeal to proceed.

[6] On July 31, 2024, the Appellant submitted a package of medical documents, including recent x-rays and reports from his family physician and orthopedic surgeon.

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<sup>1</sup> Coverage for the CPP disability pension is established by working and contributing to the CPP. In this case, the Appellant's earnings history indicates that he has CPP disability coverage until December 31, 2024. That meant the Appellant had to show that he was disabled as of the decision date.

That prompted the Minister's representative to request a settlement conference. At the conference, held on August 14, 2024, the parties reached an agreement, and they have asked me to prepare a decision that reflects that agreement.

## Agreement

[7] The Minister conceded that the Appellant became disabled in December 2022, the month he stopped working. The Minister accepted that, as of that date, the Appellant's right shoulder injury had rendered him regularly incapable of working in any substantially gainful occupation.<sup>2</sup>

[8] The Appellant expressed his agreement with the Minister's concession.

[9] Having reviewed the record, I am endorsing the parties' agreement for the following reasons:

- Dr. Tavazzani, orthopedic surgeon, wrote that the Appellant continued to experience significant pain and loss of function 16 months after reparative surgery, despite post-operative rehabilitation and cortisone injections. Dr. Tavazzani concluded that the prognosis for recovery was poor.<sup>3</sup>
- Dr. Kassim, family physician, wrote that the Appellant had been diagnosed with severe post-operative tendinopathy, making his right shoulder mobility and pain level "bad." Dr. Kassim agreed that the Appellant's prognosis was poor.<sup>4</sup>
- The Appellant has limited education, few skills, and poor command of English. Given his injuries, he is effectively unemployable.

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<sup>2</sup> Refer to recording of the settlement conference held on August 13, 2024.

<sup>3</sup> See report dated July 16, 2024 by Dr. Franco Tavazzani, orthopedic surgeon, AD7-37.

<sup>4</sup> See report dated July 26, 2024 by Dr. Ali Kassim, family physician, AD7-24.

## Conclusion

[10] I hereby allow the appeal in accordance with the parties' agreement. According to the *Canada Pension Plan*, payments start four months after the date of disability. That means the Appellant's CPP disability pension begins as of April 2023.<sup>5</sup>



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Member, Appeal Division

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<sup>5</sup> See section 69 of the *Canada Pension Plan*.