



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *N. A. v Minister of Employment and Social Development*, 2019 SST 1508

Tribunal File Number: GP-18-1993

BETWEEN:

**N. A.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Brian Rodenhurst

Claimant represented by: Monica Wolf

In person hearing on: December 17, 2019

Date of decision: December 20, 2019

## **DECISION**

[1] The Claimant is entitled to a Canada Pension Plan (CPP) disability pension to be paid as of November 2016.

## **OVERVIEW**

[2] The Claimant worked for a variety of employers usually through a Staffing Temp. Agency. Employers included factories, grocery stores, fish processor, and fast food restaurants. He injured his left hand at his last place of employment. Bleeding profusely, a dog attacked him causing him to develop a continuing fear of dogs. He maintains he is not able to work at any job due to ongoing medical conditions both psychological and physical.

[3] The Minister received the Claimant's application for the disability pension on July 31, 2017. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[4] To qualify for a CPP disability pension, the Claimant must meet the requirements that are set out in the CPP. More specifically, the Claimant must be found disabled as defined in the CPP on or before the end of the minimum qualifying period (MQP). The calculation of the MQP is based on the Claimant's contributions to the CPP. I find the Claimant's MQP to be December 31, 2018.

## **ISSUE(S)**

[5] Did the Claimant's conditions result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2018?

[6] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2018?

## **ANALYSIS**

[7] Disability is defined as a physical or mental disability that is severe and prolonged<sup>1</sup>. A person is considered to have a severe disability if incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death. A person must prove on a balance of probabilities their disability meets both parts of the test, which means if the Claimant meets only one part, the Claimant does not qualify for disability benefits.

### **Severe disability**

#### *Oral Evidence*

[8] The Claimant testified at the in person hearing. He testified his main problem is focus. In addition to problems focusing, he has physical restrictions.

[9] The evidence of the Claimant was he experiences depression. He recently spent three months in Homewood<sup>2</sup> for depression and problems with addiction. He had been over prescribed narcotic based medication. He feels there has been some improvement in his condition but he still struggles with psychological issues. He has been interacting with a resident<sup>3</sup> who died two years ago. He was given strategies to realize the visitations are not real. He is now aware he spent too much time talking to the dead, and now knows how to deal with the appearance of the dead resident.

[10] The Claimant disclosed he has been suicidal in the past, and this was a reason he spent three months in the residential Homewood program. He has lost all his friends as they call him “psycho”. He spoke at the hearing of how he would like to “give up his body.” He still wants to die sometimes. The thought of not seeing his family keeps him from acting. His social life consists of his brothers taking him to the movies and fitness facility.

[11] His mother and/or brothers will accompany him if he has appointments. If they are not able, his brother inputs the travel address and directions in his cell phone. The Claimant will show this to the taxi driver/bus driver. This method gets him to the correct address. His

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<sup>1</sup> Paragraph 42(2)(a) *Canada Pension Plan*

<sup>2</sup> A well-known and well respected treatment facility in Guelph, Ontario

<sup>3</sup> Resident of the apartment building where he resides

brother(s) takes him to the fitness center. A physiotherapist recommended home exercises. He is able to do them at the center.

[12] The physical restrictions that interfere with his ability to work are lower back pain, right knee pain and left hand injury. The ring finger on his left hand was partially amputated. When pressured or touched it is as if a “bolt of lightning” goes through his body. He is not able to stand/sit<sup>4</sup> for more than 10-15 minutes. He cannot lift items from the floor, and is severely restricted in bending. He has trouble sleeping as he regularly experiences nightmares. The common nightmare involves being attacked by a large dog.

[13] The Claimant testified that he is not physically capable of working but his main impairment is focus. He is not able to read as he gets a headache after a few minutes. He used to enjoy reading on a regular basis. He is able to undertake the activities of daily living with help by his mother and brothers. He is not able to function independently.

[14] I must be careful in the weight I place on my observations during the hearing. I am not an expert in psychology or cognitive impairment. It is obvious, even to an untrained observer; the Claimant is not employable in any capacity by an employer. He struggled answering questions, and had trouble following a conversation. He would not be successful in an interview with a prospective employer. He appeared disoriented and to have cognitive impairments. He testified his main impairment is focus. He clearly exhibited this impairment during the hearing. There was no theatre or exaggeration involved, the Claimant’s difficulties are real and obvious.

### ***Objective Medical Evidence***

[15] There must be sufficient objective medical evidence to substantiate<sup>5</sup> a severe disability. I must consider not only the name of the medical condition but its effect on the Claimant’s ability to work.<sup>6</sup> Dr. Kazi authored a summary of the Claimant’s condition and ability to work on August 12, 2018. He diagnosed chronic back/neck pain, chronic hand pain, major depressive disorder, PTSD, and addiction. He was of the opinion the claimant was unable to work due to his

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<sup>4</sup> He had to get up 5 times in the 60 minute hearing.

<sup>5</sup> Proof on a balance of probabilities

<sup>6</sup> *Ferreira v. AGC*, 2013 FCA 81

mental health condition related to his chronic pain and addiction problem. Dr. Kazi had noted the Claimant experienced severe chronic pain.<sup>7</sup>

[16] Dr. Loveday, Psychiatrist, attended with the Claimant on multiple occasions. He noted the Claimant suffered from insomnia and daytime fatigue that interfered with his ability to concentrate, focus and sustain any activity. He wrote the Claimant suffers vivid nightmares and visual hallucinations and has a history of acting on delusional ideas. Diagnosis included constant pain and the sensation of an electric shock originating in the amputated left finger. The pain and dysesthesia caused distraction to the point of not being able to think. Dr. Loveday further noted the Claimant's mood is consistently low and he spends a lot of time crying uncontrollably. His energy is low and his appetite is poor. Sleep is a struggle as he constantly has nightmares.

[17] Dr. Loveday noted on mental status examination the Claimant's thoughts were somewhat scattered including going on tangents and losing track of the original question. His insight seemed poor and his judgement impaired. Dr. Loveday was of the opinion he may qualify for ODSP<sup>8</sup> due to his impaired mental health. His opinion was the Claimant was unable to work due to medical reasons specifically psychiatric symptoms. He concluded the Claimant meets the criteria for Major Depressive Disorder. On a follow-up appointment, he added the diagnosis of Post-Traumatic Stress Disorder (PTSD), and Substance Abuse Disorder. Dr. Loveday outlined the fear the Claimant has due to warnings from a dead man who visits him. When describing the death threats and visits from the dead man he sobs uncontrollably and crying out.

### ***Real World Analysis***

[18] I must assess the severe part of the test in a real world context<sup>9</sup>. This means that when deciding whether a person's disability is severe, I must keep in mind factors such as age, level of education, language proficiency, and past work and life experience. Medical evidence will still be required as will evidence of employment efforts and possibilities.

[19] The Claimant was only 30 years of age at the time of the MQP. He obtained a Grade 11 education. He has some work experience although somewhat limited to physical low skill

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<sup>7</sup> GD5-3

<sup>8</sup> Ontario Disability benefit

<sup>9</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

occupations. His cognitive difficulties interferes with his ability to retrain. There is sufficient medical evidence to prove it is more likely than not<sup>10</sup> he is incapable<sup>11</sup> of working for a real world employer.

### **Prolonged disability**

[20] Dr. Kazi noted the prognosis for the Claimant was poor due to psychiatric comorbidities and prescription drug abuse. Dr. Loveday, Psychiatrist, was of the opinion the Claimant continued to be unable to work for the foreseeable future. The medical documentation combined with the oral evidence of the Claimant indicates his severe disability is long continued and of an indefinite duration.

### ***Minister's Submissions***

[21] The Minister submitted the Claimant is young, with a Grade 11 education and alternate work or retraining remain reasonable options. The Minister was of the opinion the medical evidence does not support severe physiological or psychological pathology that would preclude all types of work at this MQP. I acknowledge he is over 30 years away from the usual retirement age.

[22] The Minister did not have the advantage of observing and hearing the Claimant give evidence. His psychological difficulties were exhibited at the oral hearing. He would not be a candidate for employment in any occupation for a real world employer. His cognitive difficulties makes retraining improbable. His limitations despite his age and education renders him incapable of any type of employment part or full time. I understand the submission of the Minister but upon hearing the Claimant give evidence, I disagree.

### **CONCLUSION**

[23] The Claimant had a severe and prolonged disability in July 2016. Dr. Kazi noted<sup>12</sup> the Claimant has been unable to work since July 21, 2016 after he injured himself badly at work

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<sup>10</sup> Balance of probabilities

<sup>11</sup> Incapable regularly of pursuing any substantially gainful occupation.

<sup>12</sup> GD5-15 – Claimant wrote October 2016 on Questionnaire, evidence indicates correct date is July

resulting in chronic back and knee pain. He is suffering from significant depression and anxiety as a result of his injury and has been unable to return to work since. Payments start four months after the date of disability, as of November 2016<sup>13</sup>.

[24] The appeal is allowed.

Brian Rodenhurst  
Member, General Division - Income Security

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<sup>13</sup> Section 69 *Canada Pension Plan*