



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. G. v Minister of Employment and Social Development*, 2020 SST 440

Tribunal File Number: GP-18-2456

BETWEEN:

**C. G.**

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: Virginia Saunders

Claimant represented by: Niki Schnurr

Teleconference hearing on: March 10, 2020

Date of decision: April 27, 2020

## DECISION

[1] I am allowing the appeal. The Claimant, C. G., is entitled to a *Canada Pension Plan* (CPP) disability pension, to be paid as of June 2016. These are my reasons.

## OVERVIEW

[2] The Claimant worked as an auto insurance estimator for 15 years. He stopped in January 2015 because he had a combination of health problems like high blood pressure, adrenaline rushes, nausea, abdominal cramps, dizziness and fatigue. He says these left him unable to deal with his workload, and he has not been able to work since then.

[3] The Claimant applied for a CPP disability pension in May 2017.<sup>1</sup> The Minister denied the application, and the Claimant appealed to the Social Security Tribunal.

## ISSUE

[4] The Claimant is entitled to a CPP disability pension if he meets these conditions:

- he must have contributed to the CPP within a time frame called the minimum qualifying period or MQP;
- he must have a disability that is severe and prolonged, and
- he must have become disabled on or before the end of his MQP.<sup>2</sup>

[5] The Claimant's MQP ended on December 31, 2017.<sup>3</sup> I have to decide if he has a severe and prolonged disability, and if he was disabled by that date. The Claimant has to prove this on a balance of probabilities – meaning it is more likely than not that he is disabled.

## ANALYSIS

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<sup>1</sup> The Claimant's CPP application and disability questionnaire are at pages GD2-29-33 and GD2-258-265. In the disability questionnaire, the Claimant said he said he stopped working in January 2015, and could no longer work as of January 2016. I asked him about this discrepancy. He and his wife clarified that January 2015 was the correct date for both. His 2015 income was from disability payments, not employment.

<sup>2</sup> Paragraph 44(1)(b) and subsection 44(2) *Canada Pension Plan*

<sup>3</sup> The Claimant's CPP contributions are at page GD4-14-15.

[6] The Claimant testified at the hearing, along with his wife, J. G., and one of his work colleagues, M. M.. They all struck me as honest and forthright. I believe what they told me about the Claimant's condition. They filled in gaps and gave context to the medical information. After considering their evidence along with the medical records, I am satisfied the Claimant has had a severe and prolonged disability since he stopped work in January 2015.

#### **Oral evidence of the Claimant's condition**

[7] The Claimant's wife told me she has lived with him for about 17 years. He always seemed to have issues with high adrenaline. Then he developed high blood pressure and mood swings. About five or six years ago, he started having difficulty functioning in day-to-day life. Any mental or physical stress— for example, going for walks, or listening to their young children playing – caused adrenaline rushes, dizziness, blurry vision and nausea. Sometimes he had episodes where these symptoms were extreme. At those times he went to the hospital or, in her opinion, should have gone but refused because he could not bear waiting during the admissions process. At other times his reaction was not quite as bad, but he would have to lie down and rest. He was always weak and fatigued.

[8] The Claimant told me something similar. At first his problems were manageable. Then they got worse. He had almost constant dizziness, nausea, fatigue, panic, sweating, and shortness of breath. On top of these he had extreme episodes that he said hit him "like a storm". This happened about once a month before he stopped working, but in between he was not well either. He stopped going for walks with his family. It was hard to get out of bed and get ready for work. He often called in sick. If he went to work, he was anxious and sweating on the way there. He was no better when he got to his job. He felt panicked and physically ill. He was stressed by his work duties, although they had not changed, nor had his workload. He finally stopped working because he was regularly overwhelmed by his symptoms. He has not worked since.

[9] The Claimant's co-worker, M. M., told me she and others often noticed he was anxious, beet-red and sweating. Besides his physical symptoms, he started making obvious errors on many files. She was the first aid attendant at work, and was called to the Claimant on his last day there. He looked awful, his heart was racing, and he complained of being dizzy. She called the manager, who sent the Claimant home.

[10] The Claimant told me that after he stopped work the extreme episodes became more frequent. Since 2016 and 2017 he has had them every couple of weeks, and sometimes more often. He still has his symptoms in between extreme episodes. They regularly get worse by triggers such as heat or even slight physical or mental stress. If he pushes himself with something like a short walk around the block, he returns red-faced and gasping for air, with his blood pressure going up. He feels like he always has the flu and he always wants to lie down.

[11] The Claimant's wife said he has not improved at all since he stopped working. Their older children, who are now 8 and 11, help around the house because he cannot. He does almost nothing because he has no energy and he does not want to make his symptoms worse. He rarely drives. He does not play with his children. He is exhausted after a slow 10-minute walk. If he tries to do a simple chore like cooking, he has to stop after a few minutes because he is fatigued, dizzy and sweating. She takes him to all his appointments and makes phone calls for him.

[12] I asked the Claimant about statements by some of his doctors that he looked well, or was "largely symptom free".<sup>4</sup> He did not agree with these observations. He said he has never been without symptoms for any length of time. However, he has always doubled-up on his medications before going to appointments so he can tolerate the drive and the inevitable wait. If he told any doctor that he was feeling better or not having symptoms, he would not have been referring to anything beyond that particular moment.

### **Medical evidence**

[13] There are no medical reports in the Tribunal file before May 2016. However, it is clear the Claimant's problems started long before. A June 2016 report by Dr. Shin, an internist, said the Claimant had severe and difficult to treat hypertension, with multiple investigations done to look for possible secondary causes. She noted the Claimant had been off work for a year because of difficulties with dizziness, hypertension, excessive sweating and unsteadiness. Until recently, he was seeing a Dr. Pavlic who was unable to find a secondary cause despite investigations and trial of multiple medications.<sup>5</sup>

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<sup>4</sup> Dr. T.W. Shin, October 3, 2016, GD2-202-203; May 2, 2017, GD2-122-123; Dr. A. Shin, October 19, 2017, GD2-169-170; Dr. Tsui, March 14, 2018, GD2-89-91

<sup>5</sup> Dr. A. Shin, June 13, 2016, GD2-219-220

[14] Since then the Claimant has continued to have investigations. He has continued to complain of the many symptoms he described at the hearing.<sup>6</sup> He has “longstanding resistant hypertension” with “episodic symptoms of presyncope, nausea and diaphoresis [excessive sweating]”.<sup>7</sup> His hypertension is being treated and is somewhat under control, although it spikes in some circumstances. But he still has his other symptoms.<sup>8</sup> No one knows why. Neurological examination is normal. Pituitary function is normal.<sup>9</sup> Testing has ruled out adrenal gland tumours and hormonal disorders.<sup>10</sup>

### **The Claimant has a severe disability**

[15] The Claimant has multiple chronic conditions. Some of these respond to treatment, and some do not. Symptoms that may not be debilitating on their own may be so when a person is dealing with other health concerns at the same time. I have to look at the Claimant’s overall condition.<sup>11</sup> I am satisfied the combination of his numerous symptoms causes a severe disability.

[16] The absence of an explanation for the Claimant’s condition does not matter. I believe what he told me. Nothing in the medical evidence suggests the many doctors he has seen do not also believe him. The key question is the functional effect the Claimant’s symptoms have on his ability to work.<sup>12</sup> The Minister submitted the medical evidence does not show the Claimant has “a condition that with ongoing management, would prevent some type of work”.<sup>13</sup> I disagree.

[17] It is true that a severe disability has to prevent a person from working at any type of job, not just his usual work.<sup>14</sup> But the test is not whether he can or cannot do “some type of work”. It is whether he is incapable regularly of pursuing any substantially gainful occupation.<sup>15</sup> Being

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<sup>6</sup> For example: Dr. Dahl, September 7, 2016, GD2-202-209; Dr. Gupta, February 20, 2017, GD2-187-188; Dr. Lim, April 27, 2017, GD2-183-186; Dr. George, June 9, 2017, GD2-137-139; Dr. Tsui, March 14, 2018, GD2-89-91; Dr. McKay, May 25, 2018, GD2-50-51; Drs. Atkins and Schroeder, June 27, 2018, GD6-9-13; Dr. Lim, December 3, 2019, GD3-6.

<sup>7</sup> Drs. Atkins and Schroeder, at GD6-12

<sup>8</sup> Dr. Tsui, September 29, 2017, GD2-71-74; Dr. A. Shin, October 19, 2017, GD2-169-170; Dr. Lim, December 18, 2019, GD3-6

<sup>9</sup> Dr. Gupta, February 20, 2017, GD2-187-188

<sup>10</sup> Drs. Atkins and Schroeder, at GD6-12; Dr. Belzberg, September 13, 2018, GD6-3

<sup>11</sup> *Bungay v. Canada (A.G.)*, 2011 FCA 47

<sup>12</sup> *Ferreira v. Canada (A.G.)*, 2013 FCA 81

<sup>13</sup> GD4-8

<sup>14</sup> *Klabouch v. Canada (A.G.)*, 2008 FCA 33; *Ferreira v. Canada (A.G.)*, 2013 FCA 81

<sup>15</sup> Paragraph 42(2)(a) *Canada Pension Plan*.

able to do something regularly means being predictable.<sup>16</sup> The Claimant has to be able to report to work when expected, and be productive enough to earn at least the amount set out in the *CPP Regulations*.<sup>17</sup>

[18] I do not see how the Claimant can possibly do that, regardless of the job. His work as an auto insurance estimator was not physically demanding. He took photos of damaged vehicles, made notes, walked through repair yards, communicated with adjusters, customers, and auto body shops by phone or by computer, and drew up estimates. He spent more than half his time working at a desk set up in his vehicle. At least once or twice a year he spent several weeks in an express office doing completely sedentary work. As his symptoms worsened, he started spending more time working in his car. These changes to his working conditions did not make any difference.

[19] The Claimant has debilitating symptoms every day. They worsen without warning and in every circumstance. This happens despite any ongoing medical management. Physical exertion is one cause, but the amount of exertion can be negligible. He is fatigued all the time. To avoid his symptoms worsening at home he has to sit or lie down and do nothing. That being the case, I cannot see how he would be able to perform even a sedentary or part-time job.

[20] The Claimant said one of the things that makes him worse is stress, but the examples he gave tell me he is really talking about stimulation of any kind. In his case, there is no such thing as a less stressful job. Jobs where you do not use most if not all of your senses do not exist.

[21] The Claimant's inability to avoid triggers, and his constant feeling of being unwell, make it unlikely he would be able to go to any job or stay there on a predictable basis. He would be an unreliable employee in terms of attendance and productivity.

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<sup>16</sup> *Atkinson v. Canada (A.G.)*, 2014 FCA 187

<sup>17</sup> Section 68.1 of the *Canada Pension Plan Regulations* says "substantially gainful", in respect of an occupation, describes an occupation that provides a salary or wages equal to or greater than the maximum annual amount a person could receive as a disability pension. In 2015 the amount was \$15,175.08. It goes up with inflation each year, so in 2019 it was \$16,347.60.

[22] The Minister noted the Claimant's family doctor, Dr. Lim, said in April 2017 that the Claimant had depression, anxiety, and panic attacks, but had not been referred to a psychiatrist.<sup>18</sup> In September 2016 an endocrinologist, Dr. Dahl, wondered if the Claimant had anxiety and depression.<sup>19</sup> However, the following year Dr. Dahl said he and other consultants found no evidence of a somatic etiology for the Claimant's condition.<sup>20</sup> There is no suggestion anywhere else that the Claimant's mental health might be a cause of or a contributing factor to his condition. Therefore, whether or not he has been referred to a psychiatrist is of little or no significance to the question of whether his condition is severe or prolonged.

### **The Claimant does not have work capacity**

[23] The Claimant and his wife both said he would be working if it were at all possible. The present situation is hard on the family and on their marriage. They are in financial distress. I believe them.

[24] Where there is evidence of work capacity, a person must show he tried to work but could not because of his health condition.<sup>21</sup> There is no evidence of work capacity here. Because of his symptoms, the Claimant cannot apply himself to even the most basic tasks for more than a few minutes. As a result, it does not matter that he is young (he was 43 when his MQP ended), completed high school, or has any attributes or transferable skills that might enhance his employability. He does not have the capacity to work under any circumstances.

### **The Claimant has followed reasonable treatment recommendations**

[25] The Claimant has had years of investigations and medication changes. The medical reports describe him as pleasant and co-operative. No one has suggested he has not made a reasonable effort to follow all treatment recommendations, except when Dr. Dahl said he was non-compliant with CPAP.<sup>22</sup> The Claimant did not use the CPAP because he could not tolerate

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<sup>18</sup> GD4-5; Dr. Lim, April 27, 2017, GD2-183-185

<sup>19</sup> Dr. Dahl, September 7, 2016, GD2-206-209

<sup>20</sup> Dr. Dahl, November 7, 2017, GD2-174

<sup>21</sup> *Inclima v. Canada (A.G.)*, 2003 FCA 117

<sup>22</sup> Dr. Dahl, September 7, 2016, GD2-206-209

it.<sup>23</sup> No one has suggested he should try again, or that use of a CPAP will make any significant difference to his condition.

[26] I asked the Claimant about a January 2017 recommendation by a gastroenterologist, Dr. George, that he stop cannabis use.<sup>24</sup> He does not remember this. He told me his internists, both named Dr. Shin, recommend the opposite. He now uses oils rather than smoking. I accept the Claimant's evidence about this. In June 2017 Dr. George noted the Claimant used cannabis oil and it helped him somewhat. He did not recommend that he stop.<sup>25</sup> Other doctors show no concern about the Claimant's cannabis use.<sup>26</sup> Therefore I think it is unlikely that stopping cannabis would make any difference to the Claimant's symptoms.

### **The Claimant has a prolonged disability**

[27] A disability is prolonged if it is likely to be long continued and of indefinite duration.<sup>27</sup> The Claimant's disability is prolonged. By the end of his MQP he had been off work for three years. It has now been five years. He is still being investigated and treated. However, his symptoms have not improved; there is no explanation for them, and no treatment plan to address his overall condition.

### **CONCLUSION**

[28] The Claimant had a severe and prolonged disability in January 2015, when he stopped working. A person cannot be deemed disabled more than 15 months before the Minister received the disability application.<sup>28</sup> The Minister received the Claimant's application in May 2017, so the deemed date of disability is February 2016. Payments start four months after that, in June 2016.<sup>29</sup>

[29] The appeal is allowed.

Virginia Saunders

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<sup>23</sup> Dr. A. Shin, July 19, 2016, GD2-215-216

<sup>24</sup> Dr. George, January 17, 2017, GD2-117-120

<sup>25</sup> Dr. George, June 9, 2017, GD2-137-139

<sup>26</sup> For example: Dr. Tsui, September 29, 2017, GD2-71-74; Dr. T.W. Shin, March 14, 2018, GD2-89-91

<sup>27</sup> Paragraph 42(2)(a) *Canada Pension Plan*

<sup>28</sup> Paragraph 42(2)(b) *Canada Pension Plan*

<sup>29</sup> Section 69 *Canada Pension Plan*



Member, General Division - Income Security