



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *HS v Minister of Employment and Social Development*, 2020 SST 1169

Tribunal File Number: GP-19-990

BETWEEN:

**H. S.**

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: Adam Picotte

Claimant represented by: Jaswinder Johal

Teleconference hearing on: July 16, 2020

Date of decision: July 27, 2020

## **DECISION**

[1] H. S. is the Claimant in this case. He applied for a Canada Pension Plan (CPP) disability pension. The Minister of Employment and Social Development Canada (the Minister) denied the application. The Claimant appealed to the General Division of the Social Security Tribunal.

[2] I have decided that the Claimant is not entitled to a CPP disability pension. This written decision explains why.

## **OVERVIEW**

[3] The Claimant worked in sales at a tractor dealership from March 2013 to June 2015. In June 2015, he had a workplace injury when a falling beam crushed his foot. His worker's compensation claim was initially accepted, but his employer appealed. The claim was eventually denied. He then filed a claim for a CPP disability pension on September 26, 2018.

[4] A person who applies for a disability pension has to meet the requirements set out in the law. First, you have to pay contributions into the Canada Pension Plan that meet minimum requirements. The legal term for this is the "minimum qualifying period."<sup>1</sup> I find the Claimant's minimum qualifying period ended on December 31, 2015.

[5] Second, the disability must be both "severe" and "prolonged" by the end of the minimum qualifying period.<sup>2</sup> The law defines what "severe" and "prolonged" mean.

## **ISSUE**

[6] I have to decide if the Claimant's disability was both severe and prolonged by December 31, 2015. First, I have to decide if the disability is "severe" as the law defines it.

[7] The Canada Pension law says that a person has a severe disability if he cannot regularly pursue **any** substantially gainful occupation. That means that the disability must prevent him

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<sup>1</sup> This term is found in s 44(1)(b) of the *Canada Pension Plan*.

<sup>2</sup> This requirement is in s 42(2)(a) of the *Canada Pension Plan*.

from earning a living at any type of job.<sup>3</sup> It is up to the claimant to prove this is more likely than not.<sup>4</sup>

### **WAS THE CLAIMANT'S DISABILITY SEVERE?**

[8] The Claimant and the Minister agree that he had a significant workplace accident that required surgery.<sup>5</sup>

#### **The medical evidence does not show a severe disability as defined in CPP law**

[9] The Claimant had a consultation with a surgeon early in 2016. The surgeon's March 2016 consultation report cleared the Claimant to return to sedentary employment.<sup>6</sup>

[10] Early in 2017, the Claimant had surgery on his injured foot. A March 2017 post-operative report says that the claimant had ongoing symptoms, including constant pain, numbness, and poor sleep.<sup>7</sup>

[11] The Claimant's family physician submitted a medical report to the Claimant's insurance provider in September 2018. It said that the Claimant had been diagnosed with chronic pain syndrome, lower back pain, fracture of the left foot, and depression.<sup>8</sup> However, in an August 10, 2018 consultation, the same family physician noted that the Claimant generally appeared normal in both his physical and mental health.<sup>9</sup>

[12] I found it important that the March 2016 consultation report said the Claimant could return to sedentary employment. This report was written shortly after the end of the Claimant's minimum qualifying period. If the Claimant was able to regularly do some kind of work that is substantially gainful, then his disability does not meet the definition of 'severe' in CPP law.<sup>10</sup>

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<sup>3</sup> *Klabouch v. Canada (A.G.)*, 2008 FCA 33; *Ferreira v. Canada (A.G.)*, 2013 FCA 81

<sup>4</sup> This is a clear-language paraphrase of the legal requirement to decide "on a balance of probabilities."

<sup>5</sup> GD2-100

<sup>6</sup> GD2-138

<sup>7</sup> GD2-97

<sup>8</sup> GD2-120

<sup>9</sup> GD2-60

<sup>10</sup> This is explained in a Federal Court of Appeal decision called [Klabouch](#).

**Did the Claimant make an effort to do some other kind of work?**

[13] To decide on this, I have to look at the effect of the Claimant's medical conditions on his capacity to work.<sup>11</sup> I also have to look at the Claimant's background. This includes age, level of education, language, and past work and life experience. This is so I can get a "real world" picture of whether the disability is severe.<sup>12</sup>

[14] The Claimant is relatively young (currently 35) and has fluent language proficiency. He has extensive experience running and operating his own company. In 2009, he started his own trucking company, where he drove and managed four trucks with other drivers. The Claimant was responsible for dispatching and logistics around the drivers. He was responsible for checking the trucks and managing everything. The Claimant's wife was responsible for payroll. He did this work until 2012, when he and his wife separated and the company ceased operations. After that, the Claimant worked in sales for the tractor dealership.

[15] It is clear to me that the Claimant had a capacity for work that is not physically demanding before the end of his minimum qualifying period. It is not clear to me that the Claimant made a serious effort to find suitable work, as CPP law requires him to do.<sup>13</sup>

[16] At the hearing, the Claimant told me that, through his provincial workers' compensation system, he had applied for a number of jobs. In his applications, he wrote that he had a workers' compensation claim, walked with a cane, and needed to take several breaks a day to rest his leg.

[17] I asked the Claimant what kind of employment he felt he might be able to do. He told me that he had thought about becoming a real estate agent. But he felt there were too many courses and that the cost was too high. I asked whether he had looked into financial aide. He told me that he had not thought about it.

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<sup>11</sup> The Federal Court of Appeal explains this in a case called *Bungay v Canada (Attorney General)*, 2011 FCA 47.

<sup>12</sup> The Federal Court of Appeal explains how to understand the concept of a "severe" disability in a case called *Villani v Canada (Attorney General)*, 2001 FCA 248.

<sup>13</sup> *Klabouch v. Canada (A.G.)*, 2008 FCA 33

[18] I find that the Claimant has not put a reasonable amount of effort into looking for suitable work or upgrading his education to help advance him into work he might be able to do.

## **CONCLUSION**

[19] The medical evidence indicates that the Claimant should have been able to work in a sedentary job. The Claimant did not make reasonable efforts to look for such work or develop his skills.

[20] I find that the Claimant does not have a severe disability within the meaning of CPP law. This means that I do not need to decide whether the Claimant's disability is prolonged.

[21] The result is that the appeal is dismissed.

Adam Picotte  
Member, General Division - Income Security