



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *MH v Minister of Employment and Social Development*, 2021 SST 167

Tribunal File Number: GP-20-256

BETWEEN:

**M. H.**

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

Teleconference hearing on: March 3, 2021

Date of decision: March 21, 2021

## **DECISION**

[1] The Claimant, M. H., is not entitled to a Canada Pension Plan (CPP) disability pension. This decision explains why I am dismissing the appeal.

## **OVERVIEW**

[2] The Claimant is a computer engineer. For many years he was a network technician for the X. In 2008 -2009 he was in Afghanistan, where he witnessed three violent, traumatic incidents. He started having nightmares. After returning to Canada, he took time off to spend with his family.

[3] In 2013 the Claimant returned to the workforce. He took a job with a telecommunications company. His nightmares got worse. He had them several times a month. When he had one, he would miss work for the next few days. Then he started having episodes where he could not control his anger. He felt he was becoming unravelled. One of these incidents happened when he was going to work in April 2015. He ran another driver off the road and beat him up, then drove away. He talked to his boss. They agreed the Claimant needed to find out what was wrong with him.

[4] The Claimant went on medical leave. He went to a psychiatrist, who diagnosed him with PTSD (post-traumatic stress disorder). He started taking medication. He saw a therapist until his insurance company made him switch to one he did not find very helpful. He still sees the psychiatrist and his family doctor.

[5] The Claimant has not worked since April 2015. He does not have nightmares as often, but he cannot handle being around more than one other person. He says he has not been able to return to work because of this.

[6] The Claimant applied for a CPP disability pension in June 2018. The Minister of Employment and Social Development (Minister) refused the application. The Minister says the Claimant's condition improved, and he should be able to do some type of work.<sup>1</sup>

[7] The Claimant appealed to the Social Security Tribunal's General Division.

### **WHAT THE CLAIMANT MUST PROVE**

[8] For the Claimant to succeed, he must prove he has a disability that was severe and prolonged by December 31, 2018, and continuously thereafter. This date is based on his contributions to the CPP.<sup>2</sup>

[9] The CPP defines "severe" and "prolonged".<sup>3</sup> A disability is severe if it makes a person incapable regularly of pursuing any substantially gainful occupation. It is prolonged if it is likely to be long continued and of indefinite duration, or is likely to result in death.

[10] The Claimant has to prove it is more likely than not that he is disabled as defined in the CPP.

### **THE REASONS FOR MY DECISION**

[11] The Claimant has not proven he has a disability that was severe and prolonged by December 31, 2018. I reached this decision by considering the following issues.

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<sup>1</sup> The Minister's written submission is at GD3. The initial denial letter is at page GD2-14-16. The reconsideration decision is at page GD2-4-6.

<sup>2</sup> The CPP uses a person's years of CPP contributions to calculate their coverage period, or "minimum qualifying period" (MQP). The end of the coverage period is called the MQP date. See subsection 44(2) of the *Canada Pension Plan*. The Claimant's CPP contributions are at pages GD3-11-12. In the decision *Canada (Attorney General) v. Angell*, 2020 FC 1093, the Federal Court said a person has to show a severe and prolonged disability by the end of their minimum qualifying period and continuously thereafter. See also *Brennan v. Canada (Attorney General)*, 2011 FCA 318.

<sup>3</sup> The definitions are in paragraph 42(2)(a) of the *Canada Pension Plan*.

### **The Claimant has some work capacity despite his functional limitations**

[12] My focus is not on the Claimant's diagnosis.<sup>4</sup> I must focus on whether he has functional limitations that get in the way of him earning a living.<sup>5</sup>

[13] The Claimant gave evidence at the hearing. He was straightforward and honest. I believe what he told me. I accept that he cannot work in a regular workplace. However, because of his skill set, he was capable of working remotely at a substantially gainful occupation at December 31, 2018.

[14] The Claimant told me his main problem with working is that he cannot be in crowds. To him, a crowd is more than one person. He becomes anxious and starts to panic. He takes medication for this, and is working on going to public places like grocery stores and fast-food restaurants. However, he cannot function outside his home for more than two or three hours at a time. He also has trouble because, while his nightmares do not happen as often as they used to, they are unpredictable.

[15] The medical evidence confirms what the Claimant told me. His psychiatrist, Dr. Hajiazim, said the Claimant has major depressive disorder, social anxiety disorder, panic disorder, and PTSD.<sup>6</sup> Dr. Hajiazim also said the Claimant's anxiety and nightmares were improving. His reports since June 2018 show the Claimant has continued to improve.<sup>7</sup>

### **The Claimant can work in the real world**

[16] At December 2018, the Claimant's nightmares were not frequent enough to significantly interfere with a job. But he could not spend enough time around people to be able to function in a workplace. He still can't, despite his best efforts. In many cases, this might lead me to conclude he did not have any work capacity. However, when I am deciding if the Claimant could work, I must consider more than just his medical conditions and how they affected what he could do. I

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<sup>4</sup> The Federal Court of Appeal said this in *Ferreira v. Canada (Attorney General)*, 2013 FCA 81.

<sup>5</sup> The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

<sup>6</sup> GD2-84-88

<sup>7</sup> GD2-48-58

must also consider his age, level of education, language ability, and past work and life experience.<sup>8</sup> These factors help me decide if he had any ability to work in the real world.

[17] The Claimant is a skilled computer engineer with many years of experience. He was honest in admitting he would be able to work remotely from home, doing something similar to his last job. He said this would be possible because his interactions with others were not too long, and he could use headphones (which make it easier for him to talk on the phone).

[18] Not everyone has the skills that would allow them to work in this way. But the Claimant does. Therefore, I find he was capable of working in the real world at December 31, 2018.

**The Claimant has not tried to work at a suitable job**

[19] If the Claimant can work in the real world, he must show that he tried to find and keep a job. He must also show his efforts were not successful because of his medical condition.<sup>9</sup> Finding and keeping a job includes retraining or looking for a job that accommodates his limitations.<sup>10</sup>

[20] The Claimant has not looked for work. He told me he has not because he is on long-term disability benefits through his last job. His employer has not tried to accommodate him. The insurance company has effectively discouraged him from trying to work anywhere else, because he will lose his benefits. Not surprisingly, he does not want to take this chance.

[21] I understand the Claimant's position. I do not blame him for not wanting to take a different job. Unfortunately, the law says he has to try. If he does not, I cannot find he had a severe disability at December 31, 2018.

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<sup>8</sup> The Federal Court of Appeal said this in *Villani v. Canada (Attorney General)*, 2001 FCA 248.

<sup>9</sup> The Federal Court of Appeal said this in *Inclima v. Canada (Attorney General)*, 2003 FCA 117.

<sup>10</sup> The Federal Court of Appeal said this in *Janzen v. Canada (Attorney General)*, 2008 FCA 150.

**CONCLUSION**

[22] I find the Claimant is not eligible for a CPP disability pension because his disability is not severe. Because I found the disability is not severe, I did not have to consider if it is prolonged.

[23] The appeal is dismissed.

Virginia Saunders  
Member, General Division—Income Security