



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *CW v Minister of Employment and Social Development*, 2021 SST 469

Tribunal File Number: GP-20-573

BETWEEN:

**C. W.**

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: Jackie Laidlaw

Claimant represented by: Allison Schmidt

Teleconference hearing on: March 16, 2021

Date of decision: March 29, 2021

## Decision

[1] The Claimant, C. W., is not eligible for a Canada Pension Plan (CPP) disability pension. This decision explains why I am dismissing the appeal.

## Overview

[2] The Claimant had a hearing for a CPP disability benefit on March 19, 2019, and was denied a CPP disability benefit. A leave to appeal was denied on August 15, 2019. His minimum qualifying period (MQP) was December 31, 2019. Therefore, it has been determined he is not disabled as of March 19, 2019, the date of the hearing. He then applied for a CPP disability benefit on August 19, 2019 for the period from March 20, 2019 to his MQP of December 31, 2019 and continuously. The period of disability that I must consider is referred to as a window period<sup>1</sup>. The Claimant is currently a 41-year-old man who has previously worked at Canada Revenue Agency (CRA). He has not attempted any work since March 20, 2019 due to anxiety and depression.

[3] The Minister of Employment and Social Development (Minister) refused his application recognizing that he does have a history of mental health symptoms and may not be able to return to his job at the CRA, however, there is no indication he cannot do any type of suitable employment. The Claimant appealed that decision to the Social Security Tribunal's General Division.

## What the Claimant must prove

[4] For the Claimant to succeed, he must prove he has a disability that was severe and prolonged between March 20, 2019 and December 31, 2019. This last date, December 31, 2019 is based on his contributions to the CPP.<sup>2</sup>

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<sup>1</sup> *H.D. v. MHRSD* (December 7, 2011), CP 23992 (PAB) notes that, "In a window situation, what must be decided is whether there is evidence that the applicant became, after the Review Tribunal hearing and before the MQP, incapable regularly of pursuing any substantially gainful occupation".

<sup>2</sup> Service Canada 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 on GD 2 141

[5] The CPP defines “severe” and “prolonged”. A disability is severe if it makes a person incapable regularly of pursuing any substantially gainful occupation.<sup>3</sup> It is prolonged if it is likely to be long continued and of indefinite duration.<sup>4</sup>

[6] The Claimant has to prove it is more likely than not he is disabled.

## **Reasons for my decision**

[7] I find the Claimant has not proven he has a disability that was severe and prolonged from March 20, 2019 to December 31, 2019. I reached this decision by considering the following issues.

### **The Claimant’s disability was not severe**

#### **- The Claimant’s limitations do not affect his ability to work**

[8] The Claimant has major depressive disorder (MDD) and anxiety. My focus though is not on the Claimant’s diagnosis.<sup>5</sup> I must focus on whether he had functional limitations that got in the way of him earning a living.<sup>6</sup>

[9] I find the Claimant does not have functional limitations. Here is what I considered.

#### **- What the Claimant says about his limitations**

[10] The Claimant says he has limitations from his MDD and anxiety that affect his ability to work in the following ways. He stated he had difficulty concentrating due to fatigue caused by sleep disturbances. He wanted return to work accommodations from the CRA in March 2019 including flexibility in his work schedule with any start time on any given day and breaks whenever he needed them. He stated he cannot work due to family situations. He also noted that he cannot work anywhere else because of depression and anxiety.

[11] He stated that after March 19, 2019 his behaviour became more “risky”.

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<sup>3</sup> Paragraph 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

<sup>4</sup> Paragraph 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

<sup>5</sup> The Federal Court of Appeal said this in *Ferreira v. Canada (Attorney General)*, 2013 FCA 81.

<sup>6</sup> The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

- **What the medical evidence says about the Claimant's limitations**

[12] The Claimant must provide objective medical evidence that shows his functional limitations affected his ability to work between March 20, 2019 and December 31, 2019.<sup>7</sup> The medical evidence does not support what the Claimant says.

[13] There is no dispute the Claimant has MDD and anxiety. There is no dispute he has financial difficulties as well as family situations causing stress and anxiety. There is also no dispute that the Claimant had difficulties with his employer for over 10 years regarding the accommodations he requested and were noted above in paragraph 10. The Minister accepts that a return to work at CRA would not be possible. The Claimant must show he was incapable of working at any occupation.

[14] Nurse Practitioner Amanda Hopps has treated the Claimant since June 24, 2011<sup>8</sup>. Dr. Sawatzky is the family physician who does not have as much interaction with the Claimant as Ms. Hopps.

[15] In March 2019, his family physician, Dr. Cynthia Sawatzky, referred him to psychologist Dr. Lorraine DeWiele for counselling. Dr. Sawatzky felt she wanted Dr. DeWiele's intervention, in order to complete a return to work assessment.<sup>9</sup>

[16] Dr. DeWiele initially saw the Claimant on June 3, 2019 and diagnosed depression, anxiety and workplace stress. She initiated a treatment plan utilizing cognitive behavioural therapy (CBT), and cultural support services as his parents were survivors of the residential school program. The focus was to alleviate depression and family stressors.<sup>10</sup>

[17] The Claimant was also consulting with psychiatrist Dr. W.O. Lawal in July 2019<sup>11</sup>. Dr. Lawal also diagnosed MDD with anxiety symptoms and prescribed Nortriptyline for depression and sleep or Duloxetine (Cymbalta) as good management for depression and anxiety. He found the Claimant's thought process to be logical and organized, and his cognition intact. A year

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<sup>7</sup> The Federal Court of Appeal said this in *Warren v. Canada (Attorney General)*, 2008 FCA 377.

<sup>8</sup> GD 2 188 letter from Ms. Hopps August 15, 2019

<sup>9</sup> GD 2 202 March 13, 2019 Dr. Sawatzky letter

<sup>10</sup> GD 2 198 Dr. DeWiele June 3, 2019

<sup>11</sup> GD 2 196 July 31, 2019 Dr. Lawal

later, in May 2020, he found the Claimant demonstrated a good capacity of decision-making and was competent.<sup>12</sup>

[18] The letter from Amanda Hopps to Service Canada in October 2019 outlines Dr. Lawal's opinion at the time of his assessment in June 2019. There were no limitations or restrictions physically to return to work. The Claimant had restrictions on returning to his job due to his mental health, chronic insomnia, fatigue and impaired decision-making. A temporary restriction for a return to work at his old job was determined. The prognosis was likely to improve with ongoing CBT with Dr. DeWiele, intervention with community trauma worker Don Robinson; and, ongoing support at the Aboriginal Health and Wellness.

[19] The Claimant received monthly CBT from Dr. DeWiele from June 2019 until March 2020. After COVID-19 shut down most offices, Dr. DeWiele told him to contact her after the pandemic was over. It is common knowledge that doctors continued to work through internet or telephone sessions. Dr. DeWiele did not refer him to any other psychologist or continue with his treatments. He also received cultural support in August 2019 until March 2020 through a monthly 30 minute phone, and two weekend events. He consulted with a shared care counsellor three or four times until September 2019 to help him deal with finances and apply for benefits. Both the Claimant and his daughter consulted with trauma worker Don Robinson two or three times until late 2019.

[20] He is not seeing a psychologist now or receiving any ongoing therapy. The CBT sessions were success and the Claimant testified they helped him, and he enjoyed the therapy.

[21] What has changed in his condition since March 19, 2019? The Claimant states his behaviour has become more risky, such as driving faster. There is no evidence to show his behaviour has become erratic or risky. He stated that his concentrations has improved with the drug Abilify. That is a positive change. He felt he was better with the CBT.

[22] Mainly the Claimant stated that between March and December 2019 he was trialling many different medications. That is not a change from before March 19, 2019 as he had allergic

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<sup>12</sup> GD 3 3 May 20, 2020 in a letter to Amanda Hopps

reactions to most medications over the years. He also testified that since his settlement with the CRA in August 2020, he stopped taking all drugs and only uses light therapy.

[23] I am putting weight on Amanda Hopps letter of August 2019<sup>13</sup> in response to his application for retirement on medical grounds. In large type, she states she does not believe he is permanently disabled and feels the plan is to work in some form of employment in the future, but not in his usual job at the CRA. She stated that he would be able to engage in gainful employment after intensive treatment and effective pharmacological management.

[24] She was clear is not disabled from working at any employment.

[25] Both Dr. Lawal and Ms. Hobbs gave the Claimant a positive prognosis for a return work after treatment. The Claimant has received the treatment and intervention recommended by Dr. Lawal. He may return to treatment with Dr. DeWiele, or he would be able to find another psychotherapist to provide CBT as it is a common treatment. He stopped this treatment due to COVID. He did not stop the other treatments due to COVID. He stopped seeing both Don Robinson and the shared community services in 2019, before COVID became a pandemic. He stopped the cultural support in March 2020; however, this was always on the telephone so the reason cannot be COVID.

[26] His main barrier to working was workplace stress at the CRA. Ms. Hopps noted that he cannot resume his usual work and noted a past psychiatry assessment recommended a career change.<sup>14</sup> He settled all his claims with the CRA in 2020 and will not be returning to that job.

[27] The evidence shows the Claimant's sleep fatigue, complex family concerns, depression and anxiety prevented him from doing his usual job. His prognosis was he would likely improve with therapy. He successfully received the therapy and is no longer receiving any more.

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<sup>13</sup> GD 2 188 August 15, 2019

<sup>14</sup> *ibid*

[28] I now have to decide if the Claimant can regularly do other types of work. To be severe, the Claimant's limitations must prevent him from earning a living at any type of work, not just his usual job.<sup>15</sup>

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

[29] When I am deciding if the Claimant can work, I must consider more than just his medical conditions and how they affect what he can do. I must also consider his age, level of education, language ability, and past work and life experience.<sup>16</sup> These factors help me decide if the Claimant has any ability to work in the real world.

[30] The Claimant is a young man, age 40 at the time of his MQP. He is well educated with a high school education and one year of electrical engineering studies. He testified that he did well in school. He has worked in a variety of fields and would have transferable skills.

[31] I find that the Claimant can work in the real world.

[32] Dr. Lawal has noted there is no physical restriction to his working. Both Dr. Lawal and Ms. Hobbs find he is capable of working once he completes his treatments. He had extensive CBT treatment from June 2019 to March 2020, along with trauma intervention and cultural support. There is no follow up evidence from Dr. DeWiele or from Ms. Hobbs to indicate that he requires further treatment. The likelihood is that he was capable of returning to gainful employment.

- **The Claimant did not try to find a suitable job**

[33] 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>17</sup> Finding and keeping a job includes re-training or looking for a job that accommodates his limitations.<sup>18</sup>

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<sup>15</sup> The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

<sup>16</sup> The Federal Court of Appeal said this in *Villani v. Canada (Attorney General)*, 2001 FCA 248.

<sup>17</sup> The Federal Court of Appeal said this in *Inclima v. Canada (Attorney General)*, 2003 FCA 117.

<sup>18</sup> The Federal Court of Appeal said this in *Janzen v. Canada (Attorney General)*, 2008 FCA 150.

[34] The Claimant did not make these efforts. I agree with the Minister that there is no indication that he cannot do any type of work.

[35] Therefore, I cannot find he had a severe disability by December 31, 2019.

## **CONCLUSION**

[36] 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.

[37] The appeal is dismissed.

Jackie Laidlaw  
Member, General Division - Income Security