



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SS v Minister of Employment and Social Development*, 2021 SST 517

Tribunal File Number: GP-20-1972

BETWEEN:

S. S.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Virginia Saunders

Teleconference hearing on: June 9, 2021

Date of decision: July 2, 2021

Decision

[1] The Claimant, S. S., 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 45 years old. He worked as a corrections officer for over 20 years. His job was to maintain order and manage inmates in a federal penitentiary. In 2012, there was a disturbing incident at work. The Claimant developed post-traumatic stress disorder (PTSD). He was off work for over a year getting treatment. He returned to regular duties, with some limitations to avoid triggering his symptoms. However, he found these situations were hard to avoid.

[3] Over time, the Claimant's PTSD symptoms returned. By April 2016, he had anxiety every morning. He was nauseous and couldn't eat. His employer tried him in different jobs. He had problems with the first two. The third one was better, but his employer didn't let him keep it. They refused to accommodate the Claimant after that.

[4] The Claimant stopped working in March 2018. He hasn't worked at all since then. Recently, he was approved to retire on medical grounds.

[5] The Claimant applied for a CPP disability pension in March 2019. He said he couldn't work as of March 2018 because of complicated PTSD, a bad back, bad knees, and other conditions including anxiety, hyper vigilance, and depression.¹ The Minister of Employment and Social Development (Minister) refused his application. The Claimant appealed to the Social Security Tribunal's General Division.

¹ See GD2-24.

What the Claimant must prove

[6] For the Claimant's appeal to succeed, he must prove he has a disability that was severe and prolonged by December 31, 2019. This date is based on his contributions to the CPP.²

[7] The Claimant has to prove this on a balance of probabilities. This means he has to show it is more likely than not that he is disabled.

[8] The Canada Pension Plan defines "severe" and "prolonged."

[9] A disability is severe if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.³ This means if the Claimant can regularly do some kind of work that he could earn a living from, then he isn't entitled to a disability pension.⁴

[10] A disability is prolonged if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁵ This means the Claimant's disability can't have an expected recovery date. The disability must be expected to keep him out of the workforce for a long time.

Reasons for my decision

[11] The Claimant has not proven he has a disability that was severe and prolonged by December 31, 2019. I reached this decision by considering the following issues.

- Is the Claimant's disability severe?

[12] The Claimant's disability was not severe by December 31, 2019. He has PTSD that affects his ability to work at some jobs. Despite this, he has some work capacity. He has to show that he tried to work at a suitable job, but couldn't because of his health condition. He hasn't done this.

² 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 at GD2-47.

³ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

⁴ A substantially gainful occupation is one that pays a salary or wages equal to or more than the maximum annual amount a person could receive as a disability pension. See section 68.1 of the *Canada Pension Plan Regulations*. In 2019 the maximum CPP disability pension was \$16,651.92. See [Canada Pension Plan \(CPP\) Maximum Monthly Amounts of New Benefits - Open Government Portal](#).

⁵ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

The Claimant has functional limitations

[13] I can't focus on the Claimant's diagnosis. I have to focus on whether he has functional limitations that get in the way of his earning a living.⁶

[14] The Claimant gave evidence at the hearing. He was straightforward and honest. I believe what he told me. He has nightmares, angry outbursts, and "can't stand being micromanaged." When he thinks about his previous employment, he gets negative thoughts and shuts down. He has trouble sleeping. He is exhausted mentally and physically.

[15] The medical evidence confirms that the Claimant has PTSD symptoms.

[16] The Claimant's family doctor, Dr. Gosal, said in March 2019 that the Claimant could not concentrate on work-related tasks. He gets bouts of extreme agitation with any form of stress.⁷

[17] The Claimant started seeing a psychiatrist, Dr. Khattak, around October 2016. Dr. Khattak's most recent report is from January 2019. He said the Claimant had PTSD symptoms. He was hyper vigilant, irritable, upset and agitated. His focus and concentration weren't very good.⁸

The Claimant has some work capacity despite his functional limitations

[18] Dr. Khattak said the Claimant could not do his regular job because of his illness.⁹ But to be severe, the Claimant's functional limitations must prevent him from earning a living at any type of work, not just his usual job.¹⁰

[19] The Claimant's efforts to return to work show that he has the capacity to work in some jobs. He tried three jobs with his employer, Correctional Services of Canada.

[20] The first job was in the summer of 2017. It didn't go well. He was in an office at regional headquarters, reviewing files for use of force. He felt that he didn't fit in. He had trouble

⁶ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33 and *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁷ See GD2-69.

⁸ See GD2-421.

⁹ See GD2-422.

¹⁰ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

adjusting. He is a widower, and he was having trouble managing his three children. After two months, he was taken off this job because his supervisors said he was too argumentative and wasn't a good fit.

[21] The second job was a few months later. It didn't go well either. The Claimant was still at regional headquarters, doing secretarial work in a medical department. He was invoicing, sending email, arranging travel, and organizing Christmas parties. He said he wasn't trained properly. He thought his colleagues were unprofessional. He was moved out of this job because he wasn't a good fit.

[22] The Claimant said his third job was "awesome." He was escorting contractors (such as repairmen) in and out of different institutions, and making sure they did their work. He liked the job, and thought he would continue in it. However, after several months, his employer told him it was only a temporary job and they had nothing else to offer him.

[23] I accept that the Claimant's failure to fit into the first two jobs was likely due to his anger and irritability, which are caused by PTSD. But his third job ended because the employer decided not to keep him on. There is no evidence it was because of his PTSD symptoms. The Claimant thought he was doing it well. This tells me the Claimant was capable of working in a non-office setting.

[24] I recognize this job effort took place almost two years before December 31, 2019, the latest date by which the Claimant has to prove he became disabled. The Claimant told me he wondered if he could do that job now. He also wondered about how his back and knees might interfere with his ability to work.

[25] Unfortunately, there isn't any medical information to show the Claimant's condition got worse between March 2018, and December 2019. The Claimant has to provide objective medical evidence that shows his limitations affected his ability to work by December 31, 2019.¹¹

[26] In March 2019, Dr. Gosal said the Claimant's mood was stable on medication.¹² Although Dr. Khattak said in January 2019 that the Claimant "is unable to work on a regular job

¹¹ The Federal Court of Appeal said this in *Warren v. Canada (Attorney General)*, 2008 FCA 377; the Federal Court repeated this in *Canada (Attorney General) v. Dean*, 2020 FC 206.

due to his illness,” he didn’t explain why. The rest of the report was focussed on why the Claimant wouldn’t be able to work as a corrections officer, or would find it difficult to start a job relevant to his training and education.¹³ Dr. Khattak didn’t describe any symptoms that would keep the Claimant from trying a job that wasn’t related to being a corrections officer.

The Claimant can work in the real world

[27] 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.¹⁴ These factors help me decide if he had any ability to work in the real world at December 31, 2019.

[28] These personal factors work in the Claimant’s favour. In December 2019, he was 43 years old. He had Grade 12 and a criminal justice diploma. He is fluent in English. He does not claim any literacy problems. He spent most of his working life as a corrections officer, but he also has experience doing manual labour and working in sales. There is nothing in his background that would make it hard for him to retrain or find a job that did not involve stressful situations or office politics.

[29] One thing I can’t consider is the Claimant’s family obligations. He is a single parent with sole responsibility for his three children. I recognize this is a big, time-consuming job. But it isn’t something I can take into account in deciding if he can work in the real world.

[30] The Claimant hasn’t tried to work since March 2018. His last job ended for reasons unrelated to his health. The fact that his employer didn’t have another job for him doesn’t matter. The question is whether he can earn a living at any job that he is capable of doing. Labour market conditions don’t matter.¹⁵

[31] 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.¹⁶

¹² See GD2-69.

¹³ See GD2-422.

¹⁴ The Federal Court of Appeal said this in *Villani v. Canada (Attorney General)*, 2001 FCA 248.

¹⁵ The Federal Court of Appeal said this in *Canada (MHRD) v Rice*, 2002 FCA 47.

¹⁶ The Federal Court of Appeal said this in *Inclima v. Canada (Attorney General)*, 2003 FCA 117.

Finding and keeping a job includes retraining or looking for a job that accommodates his limitations.¹⁷

[32] The Claimant had some work capacity at December 31, 2019. Because he did not try to find and keep a job after March 2018, I can't find that his disability was severe.

CONCLUSION

[33] 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.

[34] The appeal is dismissed.

Virginia Saunders
Member, General Division - Income Security

¹⁷ The Federal Court of Appeal said this in *Janzen v. Canada (Attorney General)*, 2008 FCA 150.