



Citation: *KH v Minister of Employment and Social Development*, 2021 SST 973

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: K. H.
Representative: Allison Schmidt

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated July 27, 2020 (issued by
Service Canada)

Tribunal member: Michael Medeiros

Type of hearing: Teleconference

Hearing date: September 29, 2021

Hearing participants: Appellant
Appellant's representative

Decision date: October 27, 2021

File number: GP-20-1203

Decision

[1] The appeal is allowed.

[2] The Claimant, K. H., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of March 2018. This decision explains why I am allowing the appeal.

Overview

[3] The Claimant is 60 years old. He worked for many years as a firefighter. In June 2016, he experienced a traumatic event at work. He was stuck with a dirty needle while assisting an unconscious person. He could not return to work after this incident. He was diagnosed with post-traumatic stress disorder (PTSD), anxiety, and depression. He has a very hard time functioning in public and dealing with other people. His anger can be easily triggered. He has trouble concentrating and getting things done. He completed considerable treatment, but his symptoms remain.

[4] The Claimant applied for a CPP disability pension on February 11, 2019. The Minister of Employment and Social Development (Minister) refused his application. The Claimant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Claimant says his medical conditions prevent him from working. He learned tools in therapy to manage his symptoms, but they continue to be severe and unpredictable. His efforts to find other employment show that he can't regularly do any work he could earn a living from.

[6] The Minister says the Claimant does not have a severe and prolonged disability. The medical evidence does not show impairment that would prevent the Claimant from doing alternate work within his limitations. The Claimant may not be able to return to his former job, but he still has work capacity.

What the Claimant must prove

[7] For the Claimant to succeed, he must prove he has a disability that is severe and prolonged by the hearing date, September 29, 2021.¹

[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.²

[10] This means I have to look at all of the Claimant’s medical conditions together to see what effect they have on his ability to work. I also have to look at his background (including his age, level of education, and past work and life experience). This is so I can get a realistic or “real world” picture of whether his disability is severe. If the Claimant is able to regularly do some kind of work that he could earn a living from, then he isn’t entitled to a disability pension.

[11] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.³

[12] This means the Claimant’s disability can’t have an expected recovery date. The disability must be expected to keep the Claimant out of the workforce for a long time.

[13] The Claimant has to prove he has a severe and prolonged disability. He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not he is disabled.

¹ Service Canada uses a claimant’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 section 44(2) of the *Canada Pension Plan*. The Claimant’s CPP contributions are on GD7-12-14. In this case, the Claimant’s coverage period ends after the hearing date, so I have to decide whether he was disabled by the hearing date.

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

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

Reasons for my decision

[14] I find that the Claimant has a severe and prolonged disability by September 29, 2021, the date of the hearing. I reached this decision by considering the following issues:

- Is the Claimant's disability severe?
- Is the Claimant's disability prolonged?

Is the Claimant's disability severe?

[15] The Claimant's disability is severe. I reached this finding by considering several factors. I explain these factors below.

– The Claimant's functional limitations do affect his ability to work

[16] The Claimant has PTSD, anxiety, and depression. However, I can't focus on the Claimant's diagnoses.⁴ Instead, I must focus on whether he has functional limitations that get in the way of him earning a living.⁵ When I do this, I have to look at **all** of the Claimant's medical conditions (not just the main one) and think about how they affect his ability to work.⁶

[17] I find that the Claimant has functional limitations.

– What the Claimant says about his functional limitations

[18] The Claimant says that his medical conditions have resulted in functional limitations that affect his ability to work. He says his PTSD, anxiety, and depression seriously limit his ability to function. The Claimant's wife testified at the hearing and gave many supporting examples. The Claimant's limitations include:

⁴ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁵ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁶ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- **Social anxiety** – Being in public causes him stress, especially when he’s alone. He has to mentally prepare himself before leaving the home and might not be up for it on any given day.
- **Serious challenges controlling anger and frustration** – He is often irritable. Many different things can trigger him. He has been violent in the past when unable to control himself. It can take as long as several hours to calm down if his anger runs too high.
- **Poor ability to deal with others** – He can’t be told what to do. He has to do everything at his own pace. He can be easily triggered by other people.
- **Panic attacks** – He often deals with panic attacks. They happen less frequently now. He learned to feel them coming and walk away from the problem situation before it gets out of control.
- **Problems with concentration and decision making** – He usually has someone around to help him make decisions and explain things to him. He loses focus and can’t finish what he started.
- **Problems sleeping** – He often relives the trauma in his sleep through “night terrors”. His sleep is often disturbed – tossing, turning, talking, and waking up. Lack of sleep makes it harder for him to function the next day.

– **What the medical evidence says about the Claimant’s functional limitations**

[19] The Claimant must provide medical evidence that shows that his functional limitations affected his ability to work.⁷

[20] The medical evidence supports what the Claimant says. A number of doctors have confirmed that the Claimant suffers from PTSD and major depressive disorder.⁸

⁷ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

⁸ See Dr. Goldsmith Medical Report, February 1, 2019 (GD2-176); Dr. Saruk Psychological Assessment, May 30, 2019 (GD2-122-131); Dr. Eveleigh Clinical Opinion, July 4, 2019 (GD2-132-133).

Dr. Goldsmith explained in her medical report dated February 1, 2019, that the Claimant suffers from PTSD with symptoms that included anxiety, depression, flashbacks, sleep disturbance, avoiding reminders of trauma, feeling separated from others, less interest and participation in significant activities, irritability, hypervigilance, and problems with concentration.⁹ Dr. Saruk similarly explained how the Claimant's medical conditions result in low mood, energy, and motivation, as well as difficulty making decisions and decreased tolerance for stress.¹⁰ Dr. Austin, the Claimant's counsellor, further explained how the Claimant experiences a significant rise in his stress when facing "the perceived incompetence of others, injustice, external control, and requests beyond his coping ability".¹¹

[21] The medical evidence supports that the Claimant's numerous functional limitations prevented him from having the ability to work.

[22] Next, I will look at whether the Claimant followed medical advice.

– The Claimant has acted reasonably in following medical advice

[23] The Claimant has followed medical advice. He has decided against taking medication to treat his depression and anxiety, but his explanation is reasonable.

[24] To receive a disability pension, a claimant must follow medical advice.¹² If a claimant doesn't follow medical advice, then he must have a reasonable explanation for not doing so. I must also consider what effect, if any, the medical advice might have had on his disability.¹³

[25] The Claimant has followed medical advice.¹⁴ He has met regularly with a clinical counsellor, Dr. Austin, since August 2016¹⁵. He also saw a psychologist, Dr. Goldsmith,

⁹ See Dr. Goldsmith Medical Report, February 1, 2019 (GD2-176).

¹⁰ See Dr. Saruk Psychological Assessment, May 30, 2019 (GD2-126-127).

¹¹ See Dr. Austin's Letter, January 9, 2021 (GD3-2). See also Dr. Austin's Letter, October 8, 2019 (GD2-161).

¹² See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹³ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

¹⁴ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁵ See Dr. Austin's Letter, January 9, 2021 (GD3-2). See also Dr. Austin's Letter, October 8, 2019 (GD2-161).

between June 2017 and January 2020¹⁶. He checked himself into a residential treatment facility to receive intensive treatment for trauma and alcohol addiction between November 2018 and January 2019.¹⁷ He testified that he is part of a peer support group of former patients from the residential treatment facility that talk by telephone. Dr. Eveleigh thought further treatment would be helpful “in terms of stabilizing [the Claimant’s] condition”, but noted that he has already attended considerable treatment¹⁸. Dr. Eveleigh thought that it was unlikely that additional treatment would resolve the Claimant’s conditions.¹⁹

[26] The Claimant has a reasonable explanation for choosing not to treat his depression and anxiety with medication. The Claimant gave the following reasons why he will not take medication:

- He saw during his career as a firefighter a lot of people “go down rabbit holes” because of medication;
- He previously used alcohol as a form of medication to cope with his conditions and doesn’t want to “go down that path”;
- Dr. Goldsmith told him that it is better if he can work through his conditions without medication; and
- He believes that he developed tools from therapy that allow him to manage his conditions without medication.

[27] I find that the Claimant gave a reasonable explanation why he didn’t follow medical advice about medication. His choice is based on his unique work and life experience. His concern about abusing medication is especially reasonable in light of his struggles with alcohol. I find that he has managed reasonably well without medication – he uses tools daily that he learned in treatment, has a good support

¹⁶ Dr. Goldsmith Medical Report, February 1, 2019 (GD2-175); Dr. Goldsmith’s Clinical Notes (GD2-88-99).

¹⁷ Dr. Whelton Letter, November 8, 2018 (GD2-119-121).

¹⁸ Dr. Eveleigh Clinical Opinion, July 4, 2019 (GD2-133).

¹⁹ Dr. Eveleigh Clinical Opinion, July 4, 2019 (GD2-133).

network, and has quit alcohol. His choice also aligns with his psychologist's opinion about the best long-term approach.

[28] I now have to decide whether the Claimant can regularly do other types of work. 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.²⁰

– **The Claimant can't work in the real world**

[29] When I am deciding whether the Claimant can work, I can't just look at his medical conditions and how they affect what he can do. I must also consider factors such as his:

- age
- level of education
- language abilities
- past work and life experience

[30] These factors help me decide whether the Claimant can work in the real world—in other words, whether it is realistic to say that he can work.²¹

[31] I find that the Claimant can't work in the real world. His severe functional limitations leave him with no capacity for substantially gainful employment. The Claimant has skills that could help him find work. He operated a property management business while also employed as a firefighter. He is very handy and in good physical shape. However, he can't overcome his limitations that prevent him from doing the basic requirements of any job. The Claimant's medical conditions severely limit his ability to do the following:

- **Function in public** - He needs someone with him – usually a family member – to function in public. A sudden change or unexpected event can spike his stress

²⁰ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

²¹ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

level and require that he physically remove himself from the situation. Time in public can trigger flashbacks or nightmares.

- **Communicate with people** – Strangers can be a significant trigger. He has a very hard time taking direction from other people.
- **Keep a schedule** – His anxiety, irritability, and anger are unpredictable. Good days and bad days are hard to predict. When he gets overwhelmed, it can take two to three hours to calm down. His wife testified that whether the Claimant can keep a plan to leave the house depends on how he is feeling that day.
- **Complete tasks** – He has a hard time making decisions. He must do everything at his own pace. Tasks that used to be simple for him take much longer to complete, if he can finish them at all.

[32] The evidence does not support the Minister's submission that the Claimant has the capacity for alternate work. The Claimant made significant efforts to find other employment after he stopped working as a firefighter. He couldn't keep a real job because his conditions made him unreliable and unable to function normally in public with other people. These efforts detailed below provide further evidence that the Claimant can't work in the real world.

- **Property management business** – The Claimant operated a business while still employed as a firefighter that did landscaping, snow removal, and other property related services. He tried to continue this business after he stopped working, but it eventually failed because of his medical conditions. He had to pay people to do his job and lost important work because of his unavailability. He ended up selling off all his equipment.
- **Other work attempts** – He tried working various other jobs, including tying steel and working on engines. He could not last more than a few weeks. He was unreliable and had incidents with people that triggered his anger. In one case, he threw a shovel at another worker.

- **Snow removal** - The Claimant did snow and ice removal last winter for a care facility. He did it because it made him feel good to help out those in need. He received approximately \$1500 for the season. He always had someone with him, usually his son. The work would drain him mentally. He testified that there is no way he could handle another contract.

[33] The Claimant earning \$1500 for a season's work that required someone to be with him at all times does not amount to substantially gainful employment. The fact that this is the most he can manage is further evidence that he can't regularly do any work he could earn a living from.

[34] I find that the Claimant's disability is severe.

Is the Claimant's disability prolonged?

[35] The Claimant's disability is prolonged.

[36] The Claimant's conditions became disabling in June 2016, when he experienced a traumatic event at work. These conditions have continued since then, and they will more than likely continue indefinitely.²² The following factors lead me to find that the Claimant's disability is likely to be long continued and of indefinite duration:

- The traumatic event that disabled the Claimant happened in June 2016, more than 5 years ago;
- Dr. Goldsmith said in February 2019 that the Claimant's PTSD was likely to remain the same;²³

²² In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that a claimant has to show a severe and prolonged disability by the end of their minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

²³ Dr. Goldsmith Medical Report, February 1, 2019 (GD2-176).

- Dr. Eveleigh recognized in July 2019 that the Claimant had already completed considerable treatment and that further treatment was unlikely to resolve the Claimant's conditions;²⁴ and
- The Claimant testified at the hearing on September 29, 2021, that he continues to experience significant symptoms from his conditions.

[37] I find that the Claimant's disability is prolonged.

When payments start

[38] The Claimant had a severe and prolonged disability in June 2016, when a traumatic work event prevented him from continuing to work.

[39] However, the *Canada Pension Plan* says a claimant can't be considered disabled more than 15 months before the Minister receives their disability pension application. After that, there is a four-month waiting period before payments start.²⁵

[40] The Minister received the Claimant's application in February 2019. That means he is considered to have become disabled in November 2017.

[41] Payment of his pension starts as of March 2018.

Conclusion

[42] I find that the Claimant is eligible for a CPP disability pension because his disability is severe and prolonged.

[43] This means the appeal is allowed.

Michael Medeiros
Member, General Division – Income Security Section

²⁴ Dr. Eveleigh Clinical Opinion, July 4, 2019 (GD2-133).

²⁵ Section 69 of the *Canada Pension Plan* sets out this rule. This means that payments can't start more than 11 months before the application date.