



Citation: *DP v Minister of Employment and Social Development*, 2022 SST 1051

**Social Security Tribunal of Canada
General Division – Income Security Section**

Decision

Appellant: D. P.
Representative: P. S.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated June 22, 2021 (issued by
Service Canada)

Tribunal member: Brianne Shalland-Bennett

Type of hearing: Teleconference

Hearing date: March 2, 2022

Hearing participants: Appellant
Appellant's representative

Decision date: March 3, 2022

File number: GP-21-1449

Decision

[1] The appeal is allowed.

[2] The Appellant, D. P., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of January 2020. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant is 40 years old. He did commercial diver training and an underwater skills program in college. His work history has all been physical jobs. He has worked on a farm, done dishwashing, and has delivered furniture.

[4] The Appellant served in the Canadian Armed Forces reserve from 2000 to 2013. He spent some time in Afghanistan from 2008 to 2009. While serving, he also worked for his parent's furniture company, as a commercial diver, and did underwater construction.

[5] After his tour in Afghanistan, the Appellant started working for Ontario Power Generation (OPG) as an armed security officer. In July 2014, his role with OPG changed and he worked as a commercial inspection and maintenance diver.

[6] The Appellant has post-traumatic stress disorder (PTSD). While working, he went to counselling to manage his conditions. He was making progress but his work environment made his symptoms worse.

[7] The Appellant says he saw and was the target of workplace harassment and bullying. This triggered flashbacks of his tour in Afghanistan. He could not sleep and wasn't eating. He became depressed and got more anxious. He felt a lot of stress and could not focus or cope. He says he became a danger to himself and others.

[8] The Appellant stopped working in May 2018. He is currently getting long-term disability benefits. He hasn't been back to any type of work since he stopped working.

[9] The Appellant applied for a CPP disability pension on December 16, 2020.¹

[10] The Minister of Employment and Social Development (Minister) refused his application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[11] The Minister accepts that the Appellant might not be able to go back to work with his former employer. The medical evidence shows he has benefited from therapy. Eventually, he might be able to go back to work in an environment with trusted peers. He also hasn't tried to work anywhere else.²

[12] The Appellant disagrees. His symptoms stop him from doing any type of work. He has tried looking for jobs and volunteer opportunities suitable to his limitations, but his emotional and cognitive limitations have made him unsuccessful.

What the Appellant must prove

[13] For the Appellant to succeed, he must prove he has a disability that is severe and prolonged by the hearing date.³

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

[15] A disability is **severe** if it makes an Appellant incapable regularly of pursuing any substantially gainful occupation.⁴

[16] This means I have to look at all of the Appellant'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

¹ See GD2-32 to 49.

² See GD4 and GD6.

³ Service Canada uses an Appellant'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 Appellant's CPP contributions are on GD6-4 to 5. In this case, the Appellant's coverage period ends after the hearing date, so I have to decide whether he was disabled by the hearing date.

⁴ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

Appellant 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.

[17] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁵

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

[19] The Appellant 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.

Reasons for My Decision

[20] I find that the Appellant has a severe and prolonged disability by the date of the hearing. I reached this decision by considering the following issues:

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

Is the Appellant's disability severe?

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

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

[22] The Appellant has the following conditions:

- PTSD.
- Anxiety.
- Depression.

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

[23] However, I can't focus on the Appellant's diagnoses.⁶ Instead, I must focus on whether he has functional limitations that get in the way of him earning a living.⁷ When I do this, I have to look at **all** of the Appellant's medical conditions (not just the main one) and think about how they affect his ability to work.⁸

[24] I find that the Appellant has functional limitations.

– **What the Appellant says about his functional limitations**

[25] The Appellant says that his medical conditions have resulted in functional limitations that affect his ability to work. Here is what he says:

- On most days, he has low to no energy or motivation.
- His concentration is poor, and he has a hard time speaking.
- He is almost in tears all the time.
- If he falls asleep, he can't stay asleep and doesn't wake up refreshed.
- He is always tired throughout the day, which causes him to lose focus.
- He always has panic attacks. It feels like his heart is beating out of his chest.
- He tries to do chores around the house. He can usually do something for an hour, then he gets distracted, has flashbacks, and can't focus.
- His flashbacks cause him to relive his experiences at work and in Afghanistan. This leads to him spiralling emotionally. He becomes so depressed that he can't do much for days to weeks to months at a time.
- He avoids the public. Being around other people is a struggle. He is terrified of something happening. For example, he doesn't go to the grocery store. His wife orders the groceries, and he picks them up.
- He is hypervigilant and fearful of his surroundings. He is always looking out for attacks from other people or to himself.
- He struggles to get out of bed and is only motivated to get up for his children.
- He has a temper. He tries to take his anger out by walking.

⁶ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁷ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁸ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- His emotional limitations have negatively affected his personal relationships. His family and friends say he isn't an easy person to talk to anymore.
- He can't use a computer for more than an hour without losing focus.
- He can drive, but sometimes he has to pull over and let his wife drive. He can't drive on a bad day.

[26] The Appellant's ability to do anything physical depends on his mental state. His mental state makes it feel like his body can't do anything. Because of his stress and hypervigilance, he has body aches. He always feels weak and his pain is constant.

[27] The Appellant has one or two "good days" a week. On those days, he can get some stuff done around the house. On his "bad days," he has to rest and spends time on the couch, sleeping, or walking his dog to try to manage his anxiety and stress.

– **What the medical evidence says about the Appellant's functional limitations**

[28] The Appellant must provide medical evidence that shows that his functional limitations affected his ability to work by the date of the hearing.⁹

[29] The Minister argues that the medical evidence shows that he can't go back to his regular job, but he might be able to go to his old job.¹⁰

[30] I agree with the Minister. I find that the medical evidence shows he has functional limitations that affect his ability to work. It also shows he can't go back to his regular job, but he might be able to do a different job or retrain with his limitations.

[31] Dr. Ammons is a psychologist. Here is what he says about the Appellant's symptoms:¹¹

- He is sensitive and reactive to conflict in his environment and life in general.
- He has stress, anxiety, and a lack of trust.

⁹ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹⁰ See GD4 and GD6.

¹¹ See GD2-80 to 81, GD2-112 to 113, GD2-122 to 123, and GD2-127 to 142.

- His work situation makes his conditions worse.
- He has periods of insomnia and drowsiness.
- He has panic attacks for hours at a time. It feels like his heart is beating very fast. It drowns everything out. He can't focus on anything when that happens.
- He has withdrawn from most social situations.
- He has overwhelming physical symptoms of anxiety.
- He is irritable, easily frustrated, and has uncontrollable anger.
- Coping is mostly by avoidance.
- His response to treatment is good.

[32] Ms. VanHoof is a nurse practitioner. She is the main person treating the Appellant for his conditions. Here is what I have considered:

- He was managing well with the tools and the strategies he got from Mr. Hill (a counsellor) and Dr. Ammons, but his workplace made his symptoms worse.¹²
- He is hypervigilant and has a hard time relaxing in crowds because of fear.¹³
- Loud noises and bangs trigger him.
- There is no significant impact on personal care and tasks of everyday living.
- His concentration is poor.¹⁴
- He has a hard time doing tasks with consistency.
- He avoids conflict and has a great amount of stress and anxiety.
- His prognosis is good in a different working environment. It is unrealistic for him to go back to his old environment do his job safely.

[33] The medical evidence supports that the Appellant's PTSD, anxiety, and depression stop him from working at his regular job by the date of the hearing.

[34] Next, I will look at whether the Appellant followed medical advice.

¹² See GD2-88 to 81.

¹³ See GD2-90 to 92.

¹⁴ See GD2-105 to 108.

– **The Appellant has followed medical advice**

[35] To receive a disability pension, an Appellant must follow medical advice.¹⁵ If an Appellant 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.¹⁶

[36] The Appellant has followed medical advice.¹⁷

[37] The Appellant has done psychotherapy and trauma-informed cognitive behavioural therapy. He also regularly talks to his nurse practitioner about his symptoms. These treatments give him tools to cope, but the relief doesn't last very long.

[38] The Appellant takes CBD oil. The results aren't always consistent. Sometimes, it helps to temporarily relieve some of his symptoms. Sometimes, it doesn't help at all.

[39] The Appellant doesn't take any pharmaceutical medication for his conditions. He is worried about their side effects and prefers therapy. His medical team also supports not using medication.¹⁸ Ms. VanHoof said that psychological interventions are much more effective than medicinal interventions for reducing PTSD symptoms. She also noted he was being managed appropriately with his current treatments.

[40] I now have to decide whether the Appellant can regularly do other types of work. To be severe, the Appellant's functional limitations must prevent him from earning a living at any type of work, not just his usual job.¹⁹

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

[41] When I am deciding whether the Appellant 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:

¹⁵ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁶ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

¹⁷ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁸ See GD2-80 to 81 and D2-102 to 103.

¹⁹ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

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

[42] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say that he can work.²⁰

[43] I find that the Appellant can't work in the real world.

[44] The Minister says the Appellant is young, has a good education, and skills that would support retraining.²¹

[45] I agree. I find the Appellant has positive characteristics that would allow him to retrain or do other work. He is only 40 years. He has a college education. He has good computer skills and a good history doing physically demanding work at different jobs.

[46] Even though the Appellant has transferable skills that would support retraining, I don't think he could find employment suitable to his limitations.

[47] The Appellant has tried to look for work and volunteer but has been unsuccessful because of his conditions. His experiences show he can't regularly do any work he could earn a living from.

[48] The Appellant needs to work in a safe space. However, he fears **all** public spaces. His hypervigilance, anxiety, panic, irritability, and anger would affect his ability to do anything involving social interactions.

[49] The Appellant thought about going back to work for his parents as a delivery driver. That would give him flexibility. However, he is afraid of damaging his existing personal relationships any more than they are. He also could not deliver the furniture into people's homes because of his fear of the public.

²⁰ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

²¹ See GD4.

[50] The Appellant could not do a remote job. His symptoms cause him to lose focus. He is also always tired. He can't finish projects around the house, use the computer, or stay in one space for over an hour. Afterward, he usually is "emotionally wrecked" and has to rest to try and recover.

[51] The Appellant tried to volunteer and retrain. He asked the humane society and the food bank in his town if there were any volunteer opportunities. He filled out the application to volunteer, panicked and could not follow through with the process. He considered retraining through a veteran's vocational program, but his symptoms stopped him from following through.

[52] When the Appellant makes a push to try and retrain, work, or volunteer he enters a cycle of anxiety, panic, depression, and stress. His sleep gets worse and has "bad days" for weeks at a time. I find the Appellant's experiences show would not be able to hold a schedule or be a productive and reliable employee in any workplace.

[53] I find that the Appellant's disability was severe by the date of the hearing.

Is the Appellant's disability prolonged?

[54] The Appellant's disability is prolonged.

[55] The Appellant stopped working because of his conditions in May 2018. His conditions have continued since then, and they will more than likely continue indefinitely.²²

[56] The Appellant's doctors are hopeful that the Appellant can go back to work in a safe environment with treatment. However, the Appellant hasn't been able to work for almost four years. He has done every treatment that has been recommended to him with little progress. His symptoms are still very present and affect his ability to cope on a daily basis. Even small attempts to retrain or do other work, like asking about a

²² In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that an Appellant 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.

volunteer opportunity or work for his family, have been unsuccessful because of his conditions.

[57] I find that the Appellant's disability was prolonged by the date of the hearing.

When payments start

[58] The Appellant had a severe and prolonged disability in May 2018, when he stopped working at his regular job because of his limitations.

[59] However, the *Canada Pension Plan* says an Appellant 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.²³

[60] The Minister received the Appellant's application in December 2020. That means he is considered to have become disabled in September 2019.

[61] Payment of his pension starts as of January 2020.

Conclusion

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

[63] This means the appeal is allowed.

Brianne Shalland-Bennett
Member, General Division – Income Security Section

²³ 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.