



Citation: *AV v Minister of Employment and Social Development*, 2022 SST 1685

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

Decision

Appellant: A. V.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated September 8, 2020 (issued
by Service Canada)

Tribunal member: Adam Picotte
Type of hearing: On the Record
Hearing date: August 15, 2022
Decision date: August 16, 2022
File number: GP-20-2073

Decision

[1] The appeal is dismissed.

[2] The Appellant, A. V., isn't eligible for a Canada Pension Plan (CPP) disability pension. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant is 39 years old. In June 2017 he stopped working when he found his friend deceased in their shared apartment. The death of his friend, was traumatic for the Appellant. It caused him grief and resulted in him spiraling into a state of suicidal ideation. For a significant period, the Appellant remained unable to work in any capacity. He applied for and was successful in obtaining long term disability benefits through his employment contract.

[4] The Appellant applied for a CPP disability pension on August 19, 2019. 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.

[5] The Appellant wrote that since June 1, 2017 it had been extremely difficult for him to maintain a proper sleep schedule. His sleep ranged from 2-5 hours per session, being interrupted by flashbacks and nightmares of finding his dead friend. He further wrote that being punctual, maintaining focus, and fatigue were problematic for him.

[6] The Minister acknowledges that the Appellant's medical condition has resulted in some limitations and that he might not be able to return to his previous job; however, the medical evidence does not show any serious pathology or impairment that would prevent him from doing suitable work within his limitations.¹

¹ GD4-3

What the Appellant must prove

[7] For the Appellant to succeed, he must prove he had a disability that was severe and prolonged by December 31, 2019. This date is based on his contributions to the CPP.²

[8] The *Canada Pension Plan* defines “severe” and “prolonged.”

[9] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.³

[10] 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 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.

[11] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁴

[12] 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.

[13] 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.

² 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 GD2-49

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

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

Matters I have to consider first

The Appellant wasn't at the hearing

[14] A hearing can go ahead without the Appellant if he got the notice of hearing.⁵ I decided that the Appellant got the notice of hearing because he received by email at the address he provided to the Tribunal a confirmation of oral hearing on July 25, 2022. This was followed up with reminder calls to the Appellant on August 10, August 12, and August 15, 2022. The Registry Officer left detailed voicemail messages reminding the Appellant of the oral hearing location, time, and the phone number to call if he was not going to be able to make the hearing.

[15] The Appellant did not contact the Tribunal upon receiving the notice of hearing or any of the calls from the Registry Officer. I am satisfied given the efforts by the registry staff that the Appellant had notice of the oral hearing but chose not to attend for his own reasons.

[16] I also note that in attending the Service Canada site where the oral hearing was to be held, that I waited an hour after the hearing was intended to commence for the Appellant to arrive. I did so being mindful that one of the functional limitations the Appellant noted in his application was fatigue and being unable to attend meetings on time. I also requested twice that Service Canada staff walk through the line up to enter the facility to determine if the Appellant was waiting in line. He was not.

[17] Given these facts, I have determined that the matter should proceed in the absence of the Appellant.⁶

Reasons for my decision

[18] I find that the Appellant hasn't proven he had a severe and prolonged disability by December 31, 2019.

⁵ Section 12 of the *Social Security Tribunal Regulations* sets out this rule.

⁶ See Section 3 of the *Social Security Tribunal Regulations*

Was the Appellant's disability severe?

[19] The Appellant's disability wasn't severe. I reached this finding by considering several factors. I explain these factors below.

- **The Appellant's functional limitations don't affect his ability to work**

[20] The Appellant has been diagnosed with Post-Traumatic Stress Disorder, Anxiety, Major Depressive Disorder, Insomnia Disorder, and Nightmare Disorder.

[21] However, I can't focus on the Appellant's diagnoses.⁷ Instead, I must focus on whether he had functional limitations that got in the way of him earning a living.⁸ 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 affected his ability to work.⁹

[22] I find that the Appellant has functional limitations that affected his ability to work.

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

[23] The Appellant says that his medical conditions have resulted in functional limitations that affect his ability to work. He says he has the following functional limitations:

⁷ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁸ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁹ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- **Fatigue** – The Appellant wrote that he has a difficult time maintaining appointments. He regularly falls asleep throughout the day. He has a difficult time sleeping at night because he has visions of his friend dying.
 - **Adjusting to unexpected changes**
 - **Managing anxiety**
 - **Handling being in public places**
 - **Learning new things**
 - **Keeping at difficult tasks until he gets them done**
-
- **What the medical evidence says about the Appellant’s functional limitations**

[24] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work by December 31, 2019.¹⁰

[25] The medical evidence supports what the Appellant says.

[26] In February 2019 Dr. Palfy completed a long term disability attending physician’s statement of continuing disability form for Sunlife Financial. He wrote that the Appellant suffered from Post-Traumatic Stress Disorder, anxiety, major depressive disorder, insomnia disorder, and nightmare disorder.¹¹

[27] Dr. Palfy wrote that the Appellant felt responsible for his roommate’s death. Following his roommate’s death, the Appellant had developed extreme fatigue. This remained his primary barrier for returning to work. Dr. Palfy wrote that the Appellant was chronically fatigued and unable to think clearly.¹²

¹⁰ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹¹ GD2-79

¹² GD2-79

[28] Dr. Palfy wrote that the Appellant was only able to sleep intermittently and often only in the middle of the day. As such, he was not confident in his ability to perform the duties of his job.¹³

[29] In a medical consultant response, Dr. Heath wrote that the Appellant had a number of mental health problems that preceded the suicide of his friend and likely impacted his prognosis for recovery and a return to work.¹⁴

[30] Dr. Heath noted that the Appellant had severe symptoms such as feeling like was being punished, self-loathing, strong suicidal thoughts and difficulty making decisions.¹⁵

[31] In a medical follow-up form dated August 8, 2019, Dr. Ho wrote that the Appellant had severe problems with concentration and moderate problems with analytical reasoning, memory, and multi-tasking.¹⁶

[32] The medical evidence supports that the Appellant's mental illnesses support the presence of a disability. These conditions, and in particular, his fatigue, prevented him from doing his regular work for X.

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

- **The Appellant has followed medical advice**

[34] To receive a disability pension, an appellant must follow medical advice.¹⁷ If an appellant doesn't follow medical advice, then they must have a reasonable explanation for not doing so. I must also consider what effect, if any, the medical advice might have had on the appellant's disability.¹⁸

¹³ GD2-80

¹⁴ GD2-104

¹⁵ GD2-105

¹⁶ GD2-138

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

¹⁸ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

[35] The Appellant has followed medical advice.¹⁹ He has engaged in CBT and has followed the recommendations of his attending physician and psychologist.

[36] 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.²⁰

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

[37] 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:

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

[38] 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.²¹

[39] I find that the Appellant can work in the real world.

[40] The Appellant is young. He is 39 years old. He has a university degree and worked as a network support representative for X. His education, work experience and relatively young age, make him a strong candidate for alternate employment.

[41] The problem I have in this matter, is that the Appellant did not attend the oral hearing and as such, I have no evidence on his efforts to obtain suitable employment given his functional limitations and restrictions.

¹⁹ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

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

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

[42] On September 17, 2020, Dr. Palfy reported that the Appellant had been seen fourteen times since October 2019. It was noted that he had been resistant to cognitive restructuring. Dr. Palfy wrote that the Appellant had made considerable progress in his recovery from his mental illness. He was still impaired, but Dr. Palfy opined that the Appellant may be able to work from home.²²

[43] Whether the Appellant took steps to find employment where he was able to work from home is unknown to me. In a CPP disability appeal, the Appellant bears the onus of proving he has a severe disability. The Appellant's lack of attendance at the oral hearing and lack of evidence on Dr. Palfy's comments leads me to find that he does not have a residual capacity for substantially gainful employment and as such he does not have a severe disability within the meaning of the CPP.

[44] This accords with the evidence from Dr. Ho, the Appellant's family physician. Dr. Ho wrote in medical reports to the LTD provider that he thought the Appellant, with counselling and time, would be able to return to work on a gradual part-time basis. This again supports a finding of residual capacity for substantially gainful employment.²³

[45] Further, Dr. Ho wrote in his June 18, 2020 letter that he had last seen the Appellant in December 2019 and he had no active treatment plans for the Appellant. Given the lack of active treatment, and the irregular medical appointments there is not a basis to suggest the Appellant had a severe disability within the meaning of the CPP.²⁴

[46] For these reasons, I have determined that the Appellant does not have a severe disability within the meaning of the CPP.

[47] I find that the Appellant isn't eligible for a CPP disability pension because his disability wasn't severe. Because I have found that his disability wasn't severe, I didn't have to consider whether it was prolonged.

²² GD2-51-52

²³ GD2-123-126

²⁴ GD2-54

[48] This means the appeal is dismissed.

Adam Picotte
Member, General Division – Income Security Section