



Citation: *HM v Minister of Employment and Social Development*, 2026 SST 11

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** H. M.  
**Representative:** Mark Grossman

**Respondent:** Minister of Employment and Social Development  
**Representative:** Nathan Beck

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**Decision under appeal:** General Division decision dated May 26, 2025  
(GP-24-584)

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**Tribunal member:** Pierre Vanderhout

**Type of hearing:** Videoconference

**Hearing date:** November 4, 2025, and December 2, 2025

**Hearing participants:** Appellant  
Appellant's representative  
Respondent's representative  
Respondent's witness  
Interpreters

**Decision date:** January 13, 2026

**File number:** AD-25-421

## Decision

[1] The appeal is dismissed. The Appellant is not entitled to a Canada Pension Plan (CPP) disability pension. He did not have a severe and prolonged disability by December 31, 2022.

## Overview

[2] I will refer to the Appellant, H. M., as the “Claimant” in this decision. I will refer to the Respondent, the Minister of Employment and Social Development, as the “Minister.”

[3] The Claimant worked as a full-time machine operator in a factory in Stratford, Ontario (the Factory). On May 3, 2018, he suffered a finger laceration on his right hand at work. He needed a surgical repair of the nerve and tendon. He never returned to full employment, at the Factory or elsewhere. However, he had self-employment earnings until 2022.

[4] In February 2023, the Claimant applied for a CPP disability pension. He said he was unable to work because of a right-hand nerve problem. He also said he had a psychiatric problem.<sup>1</sup> The Minister denied his application initially and on reconsideration.

[5] The Claimant appealed to the General Division of the Social Security Tribunal (Tribunal). The Tribunal’s General Division dismissed his appeal.<sup>2</sup> He then obtained leave to appeal that decision at the Tribunal’s Appeal Division. As a result, I held a *de novo* hearing. I did not consider the testimony from the General Division hearing.

[6] I must decide whether the Claimant had a severe and prolonged disability, as defined in the CPP, by December 31, 2022.

[7] I find that the Claimant did not have such a disability by December 31, 2022. The rest of this decision explains why I made that finding.

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<sup>1</sup> See GD2-163.

<sup>2</sup> See AD1-13.

## Issues

[8] The issues in this appeal are:

- a) Did the Claimant have a severe disability by the end of 2022?
- b) If so, did he also have a prolonged disability?
- c) If the answer to b) is “yes,” when does his CPP disability pension start?

## Analysis

[9] The Claimant’s minimum qualifying period (MQP), or coverage period, ended on December 31, 2022.<sup>3</sup> This is the date by which he must establish a disability.

[10] Under the *Canada Pension Plan*, a disability must be both severe and prolonged. Both “severe” and “prolonged” are defined in the *Canada Pension Plan*.

[11] A disability is **severe** if it makes a person incapable regularly of pursuing any gainful occupation.<sup>4</sup>

[12] When assessing severity, I must look at all of the Claimant’s medical conditions together to see what effect they have on his ability to work.<sup>5</sup> If he can regularly do some type of work from which he could earn a living, he is not entitled to a disability pension.

[13] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.<sup>6</sup>

### Did the Claimant have a severe disability by the end of 2022?

[14] I find that the Claimant did not have a severe disability by the end of 2022. To explain how I made this finding, I will first set out his claimed functional limitations.

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<sup>3</sup> This date is based on his CPP contributions. The Claimant’s CPP contributions are shown at GD2-6. Details of these earnings are at GD2-180 and AD5-21. Service Canada uses a person’s years of CPP contributions to calculate their coverage period (MQP). See section 44(2) of the *Canada Pension Plan*.

<sup>4</sup> See section 42(2)(a) of the *Canada Pension Plan*.

<sup>5</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47, at paragraph 8.

<sup>6</sup> See section 42(2)(a) of the *Canada Pension Plan*.

– **What functional limitations did the Claimant identify by the end of 2022?**

[15] The Claimant applied for a CPP disability pension on February 3, 2023. However, he signed his application form on December 17, 2022.<sup>7</sup> This means that his application form could give a timely snapshot of his perceived functional limitations at the end of 2022.

[16] The Claimant's application focused on his right-hand nerve injury and his psychiatric problems. He is right-handed.<sup>8</sup> However, I must focus on his functional limitations, rather than the nature or name of his medical conditions.<sup>9</sup>

[17] The Claimant rated his following functional abilities as "poor":<sup>10</sup>

- Change a light bulb in the ceiling above his head
- Pull or push a heavy door to open it
- Pick up two bags of groceries and walk a block (100 m)
- Open a can with a manual can opener
- Pound a nail with a hammer
- Work in a team
- Change his usual work approach when asked
- Keep at difficult tasks until he gets them done
- Adjust easily to unexpected changes
- Ask for help from co-workers when needed
- Deal with people he does not know
- Control his temper when dealing with others
- Manage his anxiety
- Handle being in public places or situations
- Understand what people say in everyday conversations
- Remember to do important things, such as keeping appointments

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<sup>7</sup> See GD2-177.

<sup>8</sup> See GD2-163.

<sup>9</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81, at paragraph 7.

<sup>10</sup> See GD2-166 to GD2-169.

[18] The above list shows that the Claimant's most serious limitations arose from tasks which involved:

- dealing with people or change,
- controlling his emotions,
- heavy or awkward use of his hands,
- remembering important tasks, or
- verbal comprehension.

[19] The next question is whether the medical evidence supports those limitations. This is important because CPP disability applicants must provide some medical evidence about their underlying conditions.<sup>11</sup>

– **Does the medical evidence support the claimed limitations?**

[20] In December 2022, Dr. Shahnawaz (family doctor) said the Claimant had depression and right-hand nerve damage from a workplace injury. Dr. Shahnawaz explained that his depression was not well controlled. Dr. Shahnawaz also noted right-hand pain, weakness, numbness, and poor grip strength.<sup>12</sup>

[21] Dr. Shahnawaz's December 2022 evidence is consistent with the functional limitations described by the Claimant. I also see similar conditions in Dr. Shahnawaz's clinical notes from the second half of 2022.<sup>13</sup> I accept that the medical evidence could support the claimed limitations. I will now look at the Claimant's personal characteristics.

– **What were the Claimant's relevant personal characteristics?**

[22] When deciding whether the Claimant had a severe disability, I must consider factors such as his:<sup>14</sup>

- Age
- Language ability

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<sup>11</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377, and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>12</sup> See GD2-2428 and GD2-2431.

<sup>13</sup> See GD5-4.

<sup>14</sup> See *Villani v Canada (Attorney General)*, 2002 FCA 248.

- Education level
- Past work and life experience

[23] These factors will help me decide whether the Claimant could work in the real world. I will look at each of them in turn.

[24] The Claimant was 37 years old at the end of 2022. He was still 28 years away from the typical retirement age in Canada. His age would not have imposed any limits.

[25] The Claimant's first language is Tigrinya. He grew up in Eritrea but then moved to Israel and lived there for 13 years. He came to Canada in 2017.<sup>15</sup> He requested an interpreter for the Appeal Division hearing. However, he agreed to a hearing in English without interpretation unless it became necessary. In March 2019, Dr. Waisman said the Claimant refused a Tigrinya interpreter because his English was better than his Tigrinya. In fact, he reported feeling more comfortable speaking Hebrew.<sup>16</sup>

[26] I am satisfied that the Claimant can speak and understand English at a functional level. He demonstrated this during the Appeal Division hearing. He periodically spoke in Tigrinya but mostly participated in English. He also said he could read and write in English. In a January 2024 phone call, a Minister's employee confirmed they had no difficulty conversing with him in English.<sup>17</sup>

[27] English is an official language of Canada. This means the Claimant's language ability should not be a large barrier to work. Exceptions would be for jobs requiring a native speaker's level of English proficiency or with a very strong emphasis on English communication.

[28] The Claimant is relatively well educated. In Israel, he attended a college program in technical engineering. He did not have a learning disability or any problems with reading or writing at the college level.<sup>18</sup> At the Appeal Division hearing, he clarified the

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<sup>15</sup> See GD1-114. See also his evidence at the Appeal Division hearing.

<sup>16</sup> See GD1-111.

<sup>17</sup> See GD2-192.

<sup>18</sup> See GD1-114, GD2-2246, and GD2-2405.

nature of his college studies. He said he studied farming at an engineering technical college and only finished two years of the four-year program.

[29] The Claimant's education should not be a major barrier, other than for jobs with specific academic requirements. Finishing two years of college shows a capacity for learning. It also shows the cognitive ability to handle many situations and demands.

[30] The evidence about the Claimant's work history is often contradictory. For example, one report said he had worked for 10 years as a cleaner in Israel.<sup>19</sup> But at the Appeal Division hearing, he said he had lots of different jobs in Israel. Many of those jobs involved labour for construction companies. He said one of those jobs, where he worked on network towers, lasted 2.5 years. He also said he worked in a fast-food restaurant kitchen there for three years.

[31] One report said the Claimant had worked mainly in factories. Another said he worked as a machine operator. But he also worked briefly for a company called X (X). He had also been an Uber driver.<sup>20</sup> At the Appeal Division hearing, he said he subcontracted for a couple of years. The contract was for cleaning a building. He would arrange cleaners and drive them to and from the building.

[32] While I see contradictions, I can still draw conclusions about the Claimant's work experience. He likely had work aptitude in cleaning, food preparation, manufacturing environments, driving, machine operation, general labour, and construction. He would also have some supervisory skills and organizational skills, given his subcontracting.

[33] **Without considering the Claimant's medical conditions**, I find that he would have been suited for work in any of those areas in which he had experience. From his college studies, he likely has at least some aptitude for farming roles too. However, as English was not his first language and he occasionally fell back on Tigrinya, he would not be suited for jobs needing a lot of precise communication.

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<sup>19</sup> See GD2-2246.

<sup>20</sup> See GD1-114, GD2-2405, and GD7-3.

[34] I will now apply the Claimant's personal characteristics to his limitations, so I can decide whether he had any residual work capacity by the end of 2022. I need to focus on the period leading up to the end of 2022 because that was the end of his MQP. If he was not severely disabled continuously since then, his appeal cannot succeed. I also note that his ability to do tasks would likely evolve as time passed after his 2018 injury.

– **Did the Claimant have any residual work capacity by the end of 2022?**

[35] The Claimant had residual work capacity by the end of 2022. I will now explain why.

[36] The Claimant's work capacity by the end of 2022 was established by combining two types of evidence. The first was his evidence at the Appeal Division hearing about the type of work he could do. The second was the evidence of his family doctor.

*1. The Claimant's evidence at the Appeal Division hearing*

[37] The Claimant's evidence at the hearing indicates that he would have had some work capacity at the end of 2022.

[38] The Claimant's 2018 finger injury led to both his right-hand limitations and his depression. The injury happened at work. As a result, he was involved in a long rehabilitation process with both the Factory and the Workplace Safety Insurance Board (WSIB). This process focused on finding the Claimant alternate work with the Factory. The process was ultimately not successful.

[39] However, the Claimant maintained that the alternate work offered was not suitable for him. For example, in 2019, he said he would like to work as a cafeteria table cleaner at the Factory. He also thought he could distribute gloves and papers to the other employees.<sup>21</sup> But the Factory did not offer him such work.

[40] The Claimant expanded on this at the Appeal Division hearing. He said he would go to work "tomorrow" if the Factory offered him work at one of two jobs: quality control

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<sup>21</sup> See GD2-794 and GD2-1171.

or cleaning tables in the company cafeteria. He said the jobs offered by the Factory were unsuitable because he couldn't do a job requiring two hands.

[41] The Claimant said the quality control role was "easy." He said he could handle it. He thought he would need to take breaks, as he could not stand for too long and had some social problems. Similarly, with breaks, he thought he could clean the tables too.

[42] These statements are especially significant for the Claimant's work capacity at the end of 2022. This is because he also said that his condition had gotten worse since the end of 2022. If he thought a role was easy in 2025, it likely would also have been easy for him at the end of 2022.

## 2. *Evidence from the Claimant's family doctor*

[43] Much of the evidence at the relevant time was from Dr. Shahnawaz. His late 2022 and early 2023 evidence suggests at least some work capacity around that time.

[44] In July 2022, Dr. Shahnawaz said the Claimant wanted to go back to work. He was sleeping well, and his depression was better controlled. He hadn't fully recovered but was feeling better. His energy level, focus, and concentration were all "okay." The doctor said he could go back to work. Similarly, in September 2022, Dr. Shahnawaz said the Claimant wanted to start work slowly. His depression was not bad, and he was still sleeping well. But, on both occasions, he was told to keep taking his medication.<sup>22</sup>

[45] In November 2022, Dr. Shahnawaz's report was different. The Claimant was not sleeping well. His mood and energy were low. His focus was not good. However, he was also not taking his antidepressant medication.<sup>23</sup> This was despite Dr. Shahnawaz's instructions at the previous two appointments.

[46] On December 2, 2022, Dr. Shahnawaz prepared a report for CPP purposes. The report said the Claimant's ongoing "quite severe" depression was not well controlled and his right hand was weak, numb, and painful. The doctor did not expect the Claimant

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<sup>22</sup> See GD5-3 to GD5-4.

<sup>23</sup> See GD5-4 to GD5-5.

to return to any type of work in the future.<sup>24</sup> This statement is at odds with the doctor's notes from July 2022 and September 2022. Also, the Claimant's downturn in November 2022 seems to be linked to not taking the recommended medication.

[47] In December 2022, Dr. Shahnawaz also said he recommended that the Claimant stop working in 2018. However, only three months before, Dr. Shahnawaz cleared him to return to work. Dr. Shahnawaz also said he could return to work in October 2019, with some restrictions.<sup>25</sup>

[48] Dr. Shahnawaz's gloomy December 2022 prognosis is also inconsistent with the **only** medical document from 2023. On March 7, 2023, Dr. Shahnawaz saw the Claimant to follow up his depression. The doctor said he was doing well. His mood and sleep were both good. His depression, pain, and blood pressure were all well controlled. Dr. Shahnawaz did not see him again until April 15, 2024.<sup>26</sup> Nor do I see any other medical treatment during that 13-month period.

[49] Finally, in the years leading up to 2022, I see little or no recognition in Dr. Shahnawaz's clinical notes of the Claimant's self-employment activities. The Claimant had relatively minimal employment income each year between 2019 and 2022. But he had extensive business activity during that time. The following chart shows his self-employment and regular employment earnings (Earnings Chart):<sup>27</sup>

<u>Year</u>	<u>Gross Business Income</u>	<u>Net Bus. Income</u>	<u>Regular Employment Income</u>
2019	\$20,676.00	\$6,264.00	\$3,366.00
2020	\$98,940.00	\$19,214.00	\$2,220.00
2021	\$80,689.00	\$0.00	\$5,036.00
2022	\$22,533.00	\$0.00	\$2,815.00

[50] Dr. Shahnawaz did not appear to know about the Claimant's (self-employed) business activities that generated such significant gross income during these years. He

<sup>24</sup> See GD2-2428 and GD2-2431.

<sup>25</sup> See GD1-175 and GD2-2431.

<sup>26</sup> See GD5-5.

<sup>27</sup> See AD5-21.

only appeared to know about the Claimant's periodic attempts to return to the Factory.<sup>28</sup> At the Appeal Division hearing, the Claimant admitted that he did not talk to Dr. Shahnawaz about his Uber work attempt.

[51] I cannot place too much weight on Dr. Shahnawaz's conclusions in the December 2022 medical report about working. I prefer to rely on the doctor's clinical notes made before and after the December 2022 report. They were not prepared at the Claimant's request, and likely provide a more objective view of his work capacity.

[52] I also am concerned that the Claimant's November 2022 downturn may have resulted from his failure to take medication, rather than reflecting a permanent inability to work. Further, Dr. Shahnawaz did not appear to have any information about the Claimant's significant recent self-employment activity.

#### *Conclusion on work capacity*

[53] I find that the Claimant had some work capacity around the end of 2022. Taken together, his doctor's evidence and his own statements support this. However, such capacity would only have been for work (such as table cleaning or quality control) with low physical and mental health demands. This work was suitable for his personal characteristics. I must stress that his work capacity did not extend to **all** forms of suitable work. Nor did it extend to the type of work he did before his May 2018 accident.

[54] The Claimant still had some limitations leading up to the end of 2022. But a full recovery is not required to establish some work capacity.

[55] When a CPP disability applicant has some work capacity, he must show that efforts at obtaining and maintaining employment have been unsuccessful because of his health condition.<sup>29</sup> I will now look at the Claimant's efforts in that regard.

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<sup>28</sup> See, for example, GD1-186 and GD2-410.

<sup>29</sup> See *Inclima v Canada (Attorney General)*, 2003 FCA 117, at paragraph 3.

– **Were the Claimant’s efforts at obtaining and maintaining work unsuccessful because of his health conditions?**

[56] The Claimant’s efforts to obtain and maintain suitable work did not fail around the end of 2022 because of his health condition.

[57] It is difficult to sort out the Claimant’s work attempts up to and around the end of 2022. His evidence on this issue has been inconsistent.

[58] For example, in his December 2022 CPP disability pension application, the Claimant said he last worked on June 1, 2018 (at the Factory), and did not have any other jobs since then.<sup>30</sup>

[59] In June 2023, the Claimant told the Minister that his only return-to-work attempt lasted only one day. That was at the Factory. When confronted with his earnings between 2019 and 2022, he then told the Minister that he worked a bit for the Factory throughout those years. However, he said it was only a week or two at a time. He said he was always sent home.<sup>31</sup>

[60] In July 2023, the Claimant said he had not worked since January 2019 and was not currently working. He denied any self-employment since June 2018.<sup>32</sup>

[61] This contradicts his earnings in the Earnings Chart. In 2021, for example, his gross business income was nearly \$98,940.00 and his net business income was \$19,214.00. This was on top of his regular employment income of \$5,036.00.

[62] In November 2024, the Claimant said his only return-to-work attempt since June 2018 was for three weeks at X in 2022.<sup>33</sup> At the Appeal Division hearing, he said that he had not made any applications for work since then.

[63] At the Appeal Division hearing, the Claimant was asked why he didn’t mention any of this activity in his CPP pension application. He said he asked somebody else to

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<sup>30</sup> See GD2-171.

<sup>31</sup> See GD2-215.

<sup>32</sup> See GD2-119 to GD2-121 and GD2-123.

<sup>33</sup> See GD7-3.

fill out the form for him and he didn't check everything. He also thought that the government knew about his earnings. He also said the "Work Centre" helped him fill out the application.

[64] The evidence suggests that the Claimant had at least four jobs since June 2018. Two were "regular" employment: at the Factory (through the WSIB), and at X. Two jobs were in the form of self-employment: as an Uber driver, and as a cleaning subcontractor. I will now look at each of these separately.

### *The Factory*

[65] Leading up to the end of 2022, the Claimant had several return-to-work attempts with the Factory.<sup>34</sup> However, he also said that the work they offered him was not suited to his limitations. He said the Factory never offered him the type of work he could do.<sup>35</sup> As a result, I cannot find such attempts probative of his ability to do suitable work.

### *X*

[66] In June 2023, the Claimant said he worked for X for 1-2 weeks in 2022 but stopped due to his medical condition. He did not provide the 2022 dates.<sup>36</sup>

[67] In July 2023, the Claimant said he worked for X in 2022 and earned \$2,815.58. But he did not provide specific dates.<sup>37</sup>

[68] In November 2024, the Claimant said he worked for X in 2022 for only three weeks. He did not give a precise start or stop date.<sup>38</sup>

[69] At the Appeal Division hearing, the Claimant could not remember when he worked at X. He said it could have been in 2022 or 2023. He said he worked there for two weeks. At another point in the hearing, he said this work attempt was in 2023.

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<sup>34</sup> See, for example, GD2-215.

<sup>35</sup> See the Claimant's evidence at the Appeal Division hearing.

<sup>36</sup> See GD2-215.

<sup>37</sup> See GD2-118.

<sup>38</sup> See GD7-3.

However, he also said the cleaning business and Uber were his last two work attempts. This is not consistent with the X work being in late 2022 or early 2023.

[70] If the work at X were highly physical, it would not have been suitable for the Claimant. This means it would not show whether he could do the type of work (quality control or cleaning cafeteria tables) he said he was capable of doing. I do not see specific evidence about the nature of his work at X. But he was asked whether he had tried to find quality control jobs, and he had replied, “no.” I see nothing to suggest that the X job was akin to cleaning cafeteria tables.

[71] Given the above, I do not find it likely that the X work was both timely and appropriate for the Claimant’s functional limitations.

#### *Self-employment as an Uber driver*

[72] In July 2018, the Claimant said his hand injury affected his ability to complete his second job as an Uber driver.<sup>39</sup> This suggests he was already driving by July 2018.

[73] In June 2023, the Claimant said his self-employment was for Uber. However, he could not provide any details about dates or hours worked.<sup>40</sup>

[74] In November 2024, the Claimant said he worked for Uber for two weeks. He did not give a precise start or stop date, although he was responding to a request about self-employment since June 2018.<sup>41</sup>

[75] At the Appeal Division hearing, the Claimant said he tried working as an Uber driver in 2021 for 1-2 hours per day. He said he stopped because of problems with his hands, eyes, and back. He explicitly denied working for Uber in July 2018, and said he only did that work in 2021 or early 2022.

[76] I prefer the Claimant’s earlier evidence about working as an Uber driver in 2018. I cannot see why he would discuss that work then, unless he was actually doing it. But

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<sup>39</sup> See GD2-40.

<sup>40</sup> See GD2-215.

<sup>41</sup> See GD7-3.

even if he did Uber work as late as early 2022, I still do not find it helpful. It was still too far ahead of the end of 2022 to be probative. As noted, his doctor said he could return to work in September 2022. The frequent contact with people, as well as the need to use both hands, would also appear to be inconsistent with his claimed limitations.

*Self-employment through a cleaning subcontract*

[77] In June 2023, the Claimant said his self-employment consisted of working for Uber. He did not mention his cleaning business.<sup>42</sup>

[78] In July 2023, the Claimant denied having any business or company. He said he did not work any self-employed hours. He denied having any employees. He did not produce the requested tax documents, including statements of income and expenses, for the years since June 2018.<sup>43</sup>

[79] In November 2024, the Claimant said his only self-employment since June 2018 was two weeks of work for Uber. He did not mention his cleaning business.<sup>44</sup>

[80] At the Appeal Division hearing, the Claimant said he tried to do cleaning work but stopped because he was unable to do it. He said a friend gave him a subcontract to do that work, but people complained that he wasn't doing the work. He then said he didn't do the work; he paid people to do it.

[81] When asked how he had nearly \$100,000.00 in gross income in 2020, the Claimant said he had three employees and drove them to work. He waited for them at work, but didn't do anything himself. He added that he had no net income in 2021 (despite gross income of more than \$80,000.00) because he had nothing left after paying people. In 2022, when his self-employment earnings stopped, he said he did nothing after his Ontario Disability Support Program (ODSP) payments started.

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<sup>42</sup> See GD2-215.

<sup>43</sup> See GD2-119 to GD2-121.

<sup>44</sup> See GD7-3 to GD7-4.

[82] I am troubled by the Claimant's failure to mention his cleaning business by November 2024. He had multiple opportunities to do so, and at one point he explicitly denied any self-employment or employees whatsoever. However, the Earnings Chart shows that he had gross self-employment income of \$222,838.00 between 2019 and 2022 alone. His net income during that period was much less (only \$25,478.00), but still significantly exceeded his regular employment earnings over the same period.

[83] I also have difficulty with the Claimant's insistence that he did not and could not do the cleaning work. For 2020 at least, his net income was considerably higher than the threshold for substantially gainful employment. Even if he had not been capable of the physical work, he could manage the work of three employees and still have enough net income left over to give himself substantially gainful earnings.<sup>45</sup> This shows an ability to manage costs and people, which is in an employable skill.

[84] Despite those concerns, I do not need to rely on them. This is because the Claimant said he stopped his cleaning business once his ODSP payments started. This means he has not shown that his efforts at maintaining self-employment were unsuccessful because of his health condition. Instead, the evidence shows he stopped working because he started to get ODSP.

[85] Given this finding, I do not need to decide whether net income is an adequate reflection of the Claimant's actual work capacity. That could have been an issue in this appeal, as his gross income and net income were so far apart between 2019 and 2022. I will simply note the Federal Court of Appeal's position that a business's profits or losses (net income) do not necessarily indicate work capacity.<sup>46</sup>

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<sup>45</sup> Since June 2014, the words "substantially gainful" have been defined in section 68.1(1) of the *Canada Pension Plan Regulations*. An occupation is "substantially gainful" if it provides earnings equal to or greater than the maximum annual amount a person could receive as a CPP disability pension. In 2019, the maximum annual CPP disability pension was \$16,347.60. This means the Claimant met the "substantially gainful" threshold in 2019, as his earnings were \$19,214.00.

<sup>46</sup> See *Kiriakidis v Canada (Attorney General)*, 2011 FCA 316, at paragraph 7. The Tribunal's Appeal Division has expanded on this topic in non-binding decisions such as *Minister of Employment and Social Development v PC*, 2021 SST 530, at paragraphs 33-35.

### *Conclusion on attempts to obtain and maintain work*

[86] None of the four job attempts help the Claimant show that his attempts to **maintain** suitable work failed around the material time due to his medical conditions.

[87] I also need to consider the Claimant's attempts to **obtain** suitable work. But I do not see any persuasive evidence that his searches for suitable work failed because of his health condition. It appears that he made few attempts to find regular work outside the Factory. I appreciate that he was in the WSIB system for many years and their focus was on working for the Factory. However, this does not remove the onus on him.

[88] At the Appeal Division hearing, the Claimant was asked if he tried to find quality control work at another employer. He said no, adding that nobody would hire him. When asked why nobody would hire him, he said he didn't know why. This means he has not shown that his attempts to **obtain** work failed because of his medical conditions. I do not see evidence that he tried to find table cleaning or similar work elsewhere either.

[89] The Claimant's attempts to obtain and maintain suitable work did not fail around the material time due to his medical conditions. This means he has not established a severe disability by the end of 2022.

### **Did the Claimant also have a prolonged disability?**

[90] I found that the Claimant did not have a severe disability by the end of 2022. For this reason, I do not need to decide whether his disability was prolonged.

### **Conclusion**

[91] The appeal is dismissed. The Claimant did not show that he had a severe and prolonged disability by the end of 2022.

Pierre Vanderhout  
Member, Appeal Division