Citation: *PN v Minister of Employment and Social Development*, 2022 SST 234

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	P. N.
Representative:	Rajinder Johal
Respondent:	Minister of Employment and Social Development
Representative:	Jordan Fine

Decision under appeal:	General Division decision dated November 11, 2021 (GP-20-1129)

Tribunal member:	Neil Nawaz
Type of hearing:	On the record
Decision date:	April 8, 2022
File number:	AD-22-86

Decision

[1] The appeal is allowed. The General Division made an error when it found that the Appellant was not entitled to a Canada Pension Plan (CPP) disability pension. The Appellant's pension will begin as of January 2019.

Overview

[2] The Appellant, P. N., formerly worked as a machine operator for a manufacturer of electrical components. He has the equivalent of a Grade 10 education and is now 61 years old. In June 2018, after experiencing shortness of breath and chest pain, he was diagnosed with unstable angina. Soon after, he underwent an angioplasty that saw two stents inserted into his coronary arteries. He has not worked since.

[3] In December 2019, the Appellant applied for a Canada Pension Plan (CPP) disability pension. He claimed that he could no longer work because of symptoms related to coronary artery disease, including chest pain, breathlessness and fatigue.

[4] The Minister, through her Service Canada agency, refused the Appellant's application because, in her view, the Appellant had not shown that he had a severe and prolonged disability.[1] Among other things, the Minister noted that the Appellant had made no effort to seek alternative employment.[2]

[5] The Appellant appealed the Minister's refusal to the Social Security Tribunal's General Division. The General Division held a hearing by teleconference and dismissed the appeal because it did not find enough medical evidence to show that the Appellant was disabled from substantially gainful employment. The General Division acknowledged that the Appellant occasionally felt chest discomfort but saw no indication that it prevented him from doing light work.

[6] The Appellant then asked the Appeal Division for permission to appeal. He insisted that he was disabled and argued that the General Division drew the wrong

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[1] Coverage for the CPP disability pension is established by working and contributing to the CPP. In this case, the Claimant's CPP disability coverage will end on December 31, 2022.
[2] See Minister's reconsideration decision letter dated July 30, 2020, GD2-12.

conclusions from the evidence. He specifically alleged that the General Division failed to consider the totality of the material before it.

[7] In a decision dated February 24, 2022, I granted the Appellant permission to appeal because I thought he had an arguable case.

[8] The parties have now reached an agreement. They have asked me to prepare a decision that reflects that agreement.

Agreement

[9] The agreement dated April 1, 2022 between the parties reads in full:

> THE PARTIES AGREE that the Appeal Division should allow this appeal because the General Division committed legal and factual errors within the meaning of paragraphs 58(1)(b) and (c) of the *Department of Employment and Social Development Act* (*DESDA*).
>
> The General Division failed to apply *Villani*'s "real world" analysis and thereby failed to consider if the Appellant, in his personal circumstances, background, and medical condition, is capable regularly of pursuing any substantially gainful occupation. Normally, this analysis is integral to assessing the severity of a claimant's disability. *Giannaros* (and other cases like *Kiriakidis*) involved circumstances where a decision-maker may bypass a real world analysis. These decisions may remain good law and bind the Tribunal, but they do not apply to this case's facts. Unlike *Giannaros*, the Appellant neither disregarded medical treatment nor failed to provide any objective medical evidence to support his claim. Unlike *Kiriakidis*, the Appellant did not provide the Tribunal with medical evidence that confirmed he continued working in his capacity to do that work. This was not a case where the general division was entitled to bypass a real world analysis.
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> The General Division also failed to appreciate or misapprehended the following medical reports:
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> 1. Dr. Khandaker's report dated January 29, 2019;
> 2. Dr. Lin's reports dated December 13, 2018 and March 24, 2021; and
> 3. Dr. Aggarwal's report dated July 14, 2021.
>
> The General Division failed to appreciate these reports alone and/or combined suggest that, on a balance of probabilities and in his personal

circumstances, the Appellant's functional limitation(s) interfered with his capacity to work starting June 2018. According to these reports and considering them in the context of the full record, the Appellant shows a history of coronary artery disease associated with anxiety and dyslipidemia and suffers bouts of atypical chest pain, discomfort, and fatigue. The Appellant's family doctor has known and treated him since approximately 2014 and supports that he lacks capacity to work as a result of functional imitations resulting from his health condition(s). The General Division based its decision, at least in part, on an erroneous factual finding that the Appellant's medical condition posed no functional limitation(s) to his capacity to work starting June 2018 until the date of his hearing.

Had the General Division assessed the Appellants health condition(s) and functional limitation(s), in a real world analysis, as prescribed by *Villani* and other cases, it would have determined, on a balance of probabilities, that the Appellant had a severe and prolong disability as of his December 31, 2022 minimum qualifying period (MQP) and thereafter.

THEREFORE under section 18 of the *Social Security Tribunal Regulations* (*SST regs*), and subsection 59(1) of DESDA, the parties ask the Appeal Division to allow the appeal and give the following order that the General Division should have given:

(a) The Appellant's income and contributions create an MQP of December 31, 2022;

(b) The Appellant became disabled in June 2018, within the definition of the *CPP*'s paragraph 40(2)(a). However, under *CPP* paragraph 42(2)(b), the Appellant's earliest possible deemed date of onset of disability is September 2018, fifteen (15) months before his December 13, 2019 Application for Disability Benefits;

(c) Therefore, under CPP paragraph 44(1)(b)(ii) and section 69, the Appellant is entitled to a disability pension commencing January 2019, which is four months after the deemed month of the Appellant's disability onset in September 2018; and

(d) Proceeding in this manner is the most cost-effective and efficient for both parties and consistent with section 2 and paragraph 3(1)(a) of the *SST Regs*.

Analysis

[10] For the following reasons, I accept the parties' agreement.

The General Division disregarded the Appellant's background and personal characteristics

[11] The leading CPP disability case is *Villani v Canada*,[3] which requires claimants to be assessed in a real world context. According to *Villani*, decision-makers must consider claimants as whole persons, taking into account background factors such as age, education, language proficiency, and work and life experience. This principle has been affirmed in cases such as *Bungay*,[4] which says that employability is not to be assessed in the abstract, but in light of "all of the circumstances," including the claimant's background and medical condition.

[12] In its decision, the General Division cited *Villani* but saw no need to apply it:

> Finally, when I am deciding whether a disability is severe, I usually have to consider a claimant's personal characteristics. This allows me to realistically assess a claimant's ability to work.
>
> I do not have to do that here because I do not believe the Appellant's functional limitations make him incapable of regularly of pursuing any substantially gainful occupation. This means he did not prove her disability was severe by then.[5]

In support of this position, the General Division cited a case called *Giannaros*, which, on the face of it, appears to relieve decision-makers of the need to conduct a real world analysis if they have already decided that a claimant's disability falls short of severe.[6]

[13] In my leave to appeal decision, I raised the possibility that *Giannaros* is inconsistent with *Villani*, because the latter suggests that the real world analysis is an integral part of any severity assessment. However, I don't have to investigate that

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[3] See *Villani v Canada (Attorney General)* 2001 FCA 248.
[4] See *Bungay v Attorney General of Canada*, 2011 FCA 47.
[5] General Division decision, paragraphs 31–32.
[6] See *Giannaros v Canada (Minister of Social Development)*, 2005 FCA 187.

question here, because I am satisfied that *Giannaros* was never applicable to the Appellant's fact situation in the first place.

[14] *Giannaros* involved a claimant who disregarded clear and elementary medical advice that would have likely mitigated her impairments. Thus, it was impossible to say whether her disability was "severe and prolonged" without knowing the scope for improvement in her condition. No such difficulty exists with the Appellant. His medical file contains no hint that he has ever been non-compliant with treatment recommendations. As such, the General Division had no justification to dispense with the *Villani* analysis. It committed an error of law in doing so.

Remedy

[15] When the General Division makes an error, the Appeal Division can fix it by one of two ways: (i) it can send the matter back to the General Division for a new hearing or (ii) it can give the decision that the General Division should have given.[7]

[16] The Tribunal is required to proceed as quickly as fairness permits. The parties agree that the Appellant is disabled, and there is enough information on file to allow me to confirm that assessment for myself.

[17] Having reviewed the entire case file, I am satisfied that the Appellant is incapable regularly of pursuing any substantially occupation. I base this conclusion on the following factors:

- The Appellant stopped working in June 2018 after experiencing severe chest pain;
- He was diagnosed with coronary artery disease and later underwent an angioplasty;

[7] DESDA, section 59(1).

- He recovered from the surgery but, according to his physicians, remains incapable of anything more than light physical work;[8] and
- He continues to experience chest discomfort and breathlessness after exerting himself.[9]

[18] The Appellant has a limited education and is now past 60. English is his second language. He has many years of work experience but only in semi-skilled jobs that have physical component. The Appellant inquired about light duties at his last place of work but none was available. He is a poor candidate for retraining and, given his profile and limitations, is effectively unemployable.

Conclusion

[19] The appeal is allowed in accordance with the parties' agreement. The Appellant became disabled as of June 2018, the last month he worked. I am giving the decision that the General Division should have given and granting the Appellant a CPP disability pension beginning January 2019.[10]

Member, Appeal Division

[8] See reports dated January 29, 2019 by Dr. Masur Khandaker, cardiologist (GD5-28), and December 13, 2019 by Dr. Jameson Lin, family physician (GD2-73).
[9] See reports dated October 13, 2020 (GD5-16) and June 10, 2021 (GD7-5) by Dr. Ram Aggarwal, cardiologist.
[10] Under 42(2)(b) of the *Canada Pension Plan*, the earliest that claimants can be deemed disabled is 15 months before their application date. Since the Appellant applied for the disability pension in December 2019, his date of deemed disability is September 2018. According to section 69 of the *Canada Pension Plan*, payment of a pension starts four months after the disability date or, in this case, January 2019.