Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *L. T. v Minister of Employment and Social Development*, 2019 SST 202

Tribunal File Number: AD-18-631

BETWEEN:

L. T.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Neil Nawaz

DATE OF DECISION: March 14, 2019

Canada

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant, L. T., was born in El Salvador and immigrated to Canada in 1993. He is now 50 years old. He had been working in a furniture assembly plant for more than a decade when, in January 2005, he sustained an on-the-job injury to his back. He was placed on light duties, but his pain worsened, and he was laid off. In 2007, he completed a labour market re-entry (LMR) program through the Workplace Safety and Insurance Board of Ontario (WSIB) but was unable to secure employment in the retail sector. He has also been diagnosed with fibromyalgia and depression.

[3] In September 2016, the Appellant applied for a disability pension under the *Canada Pension Plan* (CPP). The Respondent, the Minister of Employment and Social Development (Minister), refused the application because it found that his disability was not "severe and prolonged," as defined by the CPP, during the minimum qualifying period (MQP), which ended on December 31, 2007. The Minister acknowledged that the Appellant was subject to some physical limitations but found that they did not prevent him from performing sedentary work.

[4] The Appellant appealed the Minister's refusal to the General Division of the Social Security Tribunal. The General Division held a hearing by teleconference and, in a decision dated July 30, 2018, dismissed the appeal because it found, on balance, that the Appellant was capable of substantially gainful work as of the MQP. The General Division also found that the Appellant had made an insufficient effort to look for alternative work within his restrictions.

[5] On October 1, 2018, the Appellant requested leave to appeal from the Tribunal's Appeal Division, alleging various errors on the part of the General Division.

[6] In a decision dated October 23, 2018, I granted leave to appeal because I saw an arguable case that the General Division based its decision on an erroneous finding that the Appellant had never required mental health treatment or been prescribed antidepressants.

[7] On December 5, 2018, the Minister filed submissions arguing that the General Division's decision was sound and should stand.

[8] Having now reviewed the parties' oral and written submissions, I must agree with the Appellant that the General Division erred in rendering its decision. Having considered the substance of the Appellant's claim, I am overturning the General Division's decision, butI am substituting it with my own decision not to grant the Appellant a Canada Pension Plan disability pension.

ISSUES

[9] According to section 58 of the *Department of Employment and Social Development Act* (DESDA), there are only three grounds of appeal to the Appeal Division: The General Division (i) failed to observe a principle of natural justice; (ii) erred in law; or (iii) based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.

[10] I must answer the following questions:

Issue 1: Did the General Division err when it gave little weight to a WSIB decision in the Appellant's favour?

Issue 2: Did the General Division err when it found no evidence that the Appellant had ever required mental health treatment or been prescribed antidepressants?

Issue 3: Did the General Division err when it stated that the Appellant's treatment was "conservative" and that there was no evidence of severe pathology?

Issue 4: Did the General Division err when it considered the "real-world" test without taking into account principles from two key cases, *Morley v Canada* and *Canada v Bennett*?[1]

ANALYSIS

Issue 1: Did the General Division err when it gave little weight to a WSIB decision in the Appellant's favour?

[11] The Appellant suggests that the General Division treated him unfairly by refusing to consider a decision by a WSIB Appeals Resolution Officer (ARO) dated May 20, 2008.[2] In particular, the Appellant alleges that the General Division ignored the ARO's finding that he was unable to participate in either academic upgrading or a functional restoration program for more than three hours per day, even with regular breaks.

[12] In my view, the Appellant's success at the WSIB was strictly irrelevant to the General Division's deliberations. First, although they may seem superficially similar since both involve disability and work capacity, workers' compensation schemes are governed by statutory criteria that significantly differ from those of the CPP. Second, like the General Division, the WSIB is a quasi-judicial administrative tribunal, and its decisions cannot be categorized as evidence. Finally, in finding that the Appellant was "competitively unemployable," the ARO may not have relied on precisely the same evidence that was before the General Division; however, the General Division had access to, and considered,[3] the functional restoration program (FRP) discharge summary, dated May 4, 2007,[4] on which the ARO largely based its finding that the Appellant was capable of no more than a three-hour workday.

[13] On balance, I am not convinced by this submission.

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[1] *Morley v Canada* (*Minister of Employment and Immigration)* (November 23, 1995), CP 3296 (PAB); *Canada (Minister of Human Resources and Development) v Bennett* (July 10, 1997), CP 4757 (PAB).
[2] GD2-159.
[3] See General Division decision, para 8.
[4] GD2-106.

Issue 2: Did the General Division err when it found no evidence that the Appellant had ever required mental health treatment or been prescribed antidepressants?

[14] The Appellant takes issue with paragraph 9 of the General Division's decision, which states, in part:

> The [Appellant] testified that he has not attended with any mental health provider for treatment of his psychological issues. His GAF was measured as 61-70 in May 2007 which is in the range of mild symptoms. There is not any documentation on file that the [Appellant] has ever required treatment from a mental health specialist or has been prescribed significant anti-depressants.

The Appellant alleges that the General Division disregarded evidence that he did, in fact, receive psychological counselling and was, in fact, prescribed medications for depression and anxiety.

[15] Having reviewed the documentary record, I am satisfied that the General Division based its decision on an erroneous finding of fact without regard for the material before it. The Appellant maintains that he was counselled by a psychologist, Dr. Alireza Ebrahimian, as part of a WSIB-sponsored FRP, and I see evidence for this in the associated May 2007 discharge summary.[5] It describes an intensive six-week multidisciplinary program, conducted under the supervision of Dr. Ebrahimian, in which, among other things, the Appellant learned pain management techniques and shared life experiences in group discussions:

> [The Appellant] contributed to group discussions occasionally and often made references to his reliance on religious faith to cope with his physical and psychological pain. [The Appellant] appeared to be receptive to the suggestion of exploring alternative ways of assessing his personal challenges. He did so by sharing in the group that his anxiety concerning the wellbeing of various areas in his life may be viewed as a universal experience shared by many people who did not necessarily share his chronic pain symptoms and employment challenges. He also reported that he began to mentally acknowledge that many other factors are within his control, which may impact on the quality of his life.[6]

[5] GD2-105.
[6] GD2-109.

[16] The Appellant also saw Dr. Ebrahimian to "discuss his psychological functioning and his perception of the program." The FRP was followed by a "booster day" in July 2007,[7] in which the Appellant participated in another group session facilitated by members of the FRP treatment team, including Dr. Ebrahimian.

[17] It is well recognized that fibromyalgia is as much a psychological disorder as it is a physical one. Accordingly, the Appellant's FRP and his FRP booster had strong elements of mental health counselling and group therapy. In that respect, I think that that the General Division erred in finding that the Appellant had never required mental health treatment, and it does not matter that the WSIB initiated the FRP or that its duration was limited. I also think that the General Division's error was material to its decision, which contains these words: "[The Appellant's] psychological condition does not render him incapable of any substantially gainful occupation...."

[18] As for medications, I see evidence in the file that, contrary to the General Division's findings, the Appellant was on antidepressants for at least 10 years. In the medical report that accompanied the Appellant's first Canada Pension Plan application,[8] Dr. Thi Ngoc Dang Nguyen, family physician, listed Celexa and amitriptyline among her patient's medications. Both drugs are indicated for depression and anxiety. Amitriptyline was also among the medications listed in a June 2006 letter from Dr. Rafat Faraawi, a rheumatologist,[9] and it appeared again in Dr. Nguyen's second Canada Pension Plan medical report from August 2016.[10] I am aware that the General Division referred to amitriptyline in its decision, but it did so in a passage[11] that was entirely concerned with the Appellant's pain symptoms, and I suspect that it may not have known what the drug is primarily used for.

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[7] GD2-104.
[8] Canada Pension Plan medical report dated November 20, 2008, GD2-241.
[9] GD2-127.
[10] GD2-86.
[11] General Division decision, para 14.

Issue 3: Did the General Division err when it stated that the Appellant's treatment was "conservative" and there was no evidence of severe pathology?

[19] In its decision, the General Division explained why it had concluded that the Appellant's disability was not severe:

> [The Appellant] was diagnosed with fibromyalgia prior to the MQP and it was noted pain behaviour played a significant role in his disability. There were not any findings of a severe pathology and the treatment that was recommended was conservative. Activity and exercise is recommended for fibromyalgia.[12]

The Appellant objects to this analysis because chronic pain disorder and fibromyalgia are subjective conditions of the nervous system that cause widespread pain in muscles and bones, fatigue, and depression. I agree. The evidence indicates that the Appellant sustained repetitive motion injuries that have evolved into fibromyalgia. Fibromyalgia, like all related chronic pain conditions, is characterized by an **absence** of the kind of objective signs and symptoms that can be seen in a scan or detected in a blood test—a reality recognized by the Supreme Court of Canada in *Martin v Nova Scotia*.[13] By equating an absence of pathological findings with non-severity, the General Division misunderstood the essence of the Appellant's claim.

[20] There was a similar disconnect in how the General Division assessed the Appellant's treatment. The General Division drew a negative inference from its finding that the Appellant had never received anything more than conservative treatment, but "conservative," in a medical context, usually means "non-invasive"—that is, any procedure short of surgery. In that context, it was unfair of the General Division to fault the Appellant for not needing a form of treatment that was not indicated for his particular medical conditions.

Issue 4: Did the General Division err in law when it considered the "real-world" test without considering *Bennett* and *Morley*?

[21] As the Appellant correctly notes, *Bennett* calls on CPP decision-makers to bear in mind that a substantially gainful occupation is predicated on an individual's capacity to come to work

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[12] General Division decision, para 15.
[13] *Nova Scotia (Workers' Compensation Board) v Martin; Nova Scotia (Workers' Compensation Board) v Laseur*, [2003] 2 SCR 504, 2003 SCC 54.

whenever and as often as is necessary; in other words, it is not reasonable, in a competitive labour market, to expect a disability claimant to find a supportive employer offering a flexible work schedule or reduced productivity requirements. *Morley* set out a variant of the same principle, cautioning decision-makers not to equate the capacity to perform light duties in a commercial work environment with the capacity to do household chores, which can generally be performed at one's chosen pace.

[22] *Bennett* and *Morley* both came from the now-defunct Pension Appeal Board, whose decisions do not bind the Appeal Division or, for that matter, the General Division. Still, the principles of these cases are sound and entirely consistent with the leading case on disability, *Villani v Canada*,[14] which held that disability, as defined by the CPP, does not require claimants to show that they are incapable of pursuing any **conceivable** occupation.

[23] The Appellant insists that his experience at the WSIB-sponsored LMR program proved that he was incapable regularly of pursuing any substantially gainful occupation and that the General Division erred in finding otherwise, having disregarded the "regularity" aspect of the severity test. The Appellant notes that he was unable to attend the LMR program for more than three hours per day and required rest for at least ten minutes every hour—a level of accommodation that, he submits, would not be acceptable in the real world.

[24] Ultimately, I see little merit in this submission, which, in essence, is a request to reassess the evidence regarding the Appellant's impairments. I note the words of the Federal Court of Appeal in *Villani*:

> [A]s long as the decision-maker applies the correct legal test for severity—that is, applies the ordinary meaning of every word in the statutory definition of severity in subparagraph 42(2)(a)(i) [of the CPP] he or she will be in a position to judge on the facts whether, in practical terms, an applicant is incapable regularly of pursuing any substantially gainful occupation. The assessment of the applicant's circumstances is a question of judgment with which this Court will be reluctant to interfere.

[14] *Villani v Canada (Attorney General)*, 2001 FCA 248.

This passage suggests that, as the trier of fact, the General Division should be afforded a degree of deference in how it assesses a claimant's background. It also implies that **whether** the test for disability was applied matters more than **how** it was applied. This approach happens to align with recent Federal Court of Appeal decisions[15] that have sharply defined the three grounds of appeal available under section 58(1) of the DESDA. In short, the court now considers that the Appeal Division does not have the authority to intervene on questions of mixed fact and law. It is, therefore, necessary to ask whether a reason for appealing can be clearly classified as an error of law or as an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.

[25] In my view, what the Appellant is alleging is an error of mixed fact and law. In essence, he disagrees with how the General Division applied the law surrounding regularity to his experience in the LMR program and, for that reason alone, it falls outside of my jurisdiction.

[26] Otherwise, I do not see an error of law alone. In its decision, the General Division correctly cited the test for severity: "A person is considered to have a severe disability if incapable regularly of pursuing any substantially gainful occupation."[16] The General Division also correctly cited the central principle from *Villani*: "I must assess the severe part of the test in a real world context. This means that when deciding whether a person's disability is severe, I must keep in mind factors such as age, level of education, language proficiency, and past work and life experience."[17]

[27] Nor do I see an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it. The Appellant has claimed that he struggled to complete the LMR program, but evidence to that effect was on the record (documented in the WSIB ARO's May 2008 decision and on the audio recording of the June 2018 hearing). As the trier of fact, the General Division is presumed to have considered all of the material before it and cannot be expected to refer to each and every item of evidence in its decision.[18] As it is, the General

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[15] *Quadir v Canada (Attorney General)*, 2018 FCA 21; *Cameron v Canada (Attorney General)*, 2018 FCA 100; *Garvey v Canada (Attorney General)*, 2018 FCA 118.
[16] General Division decision, para 7.
[17] General Division decision, para 16.
[18] *Simpson v Canada (Attorney General)*, 2012 FCA 82.

Division was aware of the Appellant's participation in the LMR program, and it summarized the report that Cascade Disability Management issued on completion of the program on March 9, 2007.[19] In paragraph 11 of its decision, the General Division noted that, although he was completely pain-focused, the Appellant had recorded "nearly perfect" attendance during the six-week program, having benefitted from ergonomic accommodations.

[28] As trier of fact, the General Division was entitled to weigh the available evidence as it saw fit, within the limits of section 58(1) of the DESDA. Here, the General Division presumably considered the Appellant's testimony that the LMR program's workload—three hours per day with periodic breaks—was more than he could tolerate. Having weighed that testimony against other items of evidence, including the Cascade report mentioned above and the May 2007 FRP discharge summary,[20] the General Division concluded that the Appellant's impairments did not prevent him from reliably carrying on a job.

[29] Similarly, I see no indication that the General Division incorrectly applied or inadequately considered *Villani*. As seen in paragraph 17 of its decision, the General Division did attempt to apply the real-world test, finding that, although the Appellant's education was limited, he had managed to upgrade his education and had demonstrated an ability to function in English-speaking workplaces. The General Division also relied on the labour market proposal, which examined the Appellant's transferable skills and job training capacity and found a number of occupations within his limitations.

REMEDY

[30] The DESDA sets out the Appeal Division's powers to remedy errors by the General Division. Under section 59(1), I may give the decision that the General Division should have given; refer the matter back to the General Division for reconsideration in accordance with directions; or confirm, rescind, or vary the General Division's decision. Furthermore, under section 64 of the DESDA, the Appeal Division may decide any question of law or fact that is necessary for the disposition of any application made under the DESDA.

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[19] GD2-50.
[20] GD2-106.

[31] The Federal Court of Appeal has stated that a decision-maker should consider the delay in bringing an application for a disability pension to conclusion. The Appellant applied for a disability pension 2½ years ago. If this matter were referred back to the General Division, it would only lead to further delay. In addition, the Tribunal is required to conduct proceedings as quickly as the circumstances and the considerations of fairness and natural justice allow.

[32] In oral submissions before me, the Appellant and the Minister agreed that, if I were to find an error in the General Division's decision, the appropriate remedy would be for me to give the decision that the General Division should have given and make my own assessment of the substance of the Appellant's disability claim. Of course, the parties had different views on the merits of the Appellant's disability claim. The Appellant argued that, if the General Division had properly addressed his chronic pain and mental health, it would have concluded that he was disabled and ordered a different outcome. The Minister argued that, whatever General Division's errors, the balance of the available evidence still pointed to a finding that the Appellant was capable of some form of employment.

[33] I am satisfied that the record before me is complete. The Appellant has filed numerous medical reports with the Tribunal, and I have considerable information about his employment and earnings history. The General Division conducted a full oral hearing and questioned the Appellant about his impairments and their effect on his work capacity. I doubt that the Appellant's evidence would be materially different if the matter were to be reheard.

[34] As a result, I am in a position to assess the evidence that was on the record before the General Division and to give the decision that it would have given, if it had not erred. In my view, even if the General Division had (i) considered the Appellant's mental health treatment and (ii) addressed the Appellant's fibromyalgia and chronic pain, it would have come to the same conclusion. My own assessment of the record satisfies me that the Appellant has not shown that he had a severe and prolonged disability as of December 31, 2007.

Did the Respondent have a severe disability as of the MQP?

[35] To be found disabled, a claimant must prove, on a balance of probabilities, that they had a severe and prolonged disability at or before the end of the MQP. A disability is severe if a

person is incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is "likely to be long continued and of indefinite duration or is likely to result in death."[21]

[36] Having reviewed the record, I am not convinced, on balance, that the Appellant had a severe disability as of the MQP. I have no doubt that the Appellant sustained a back injury in 2005, as indicated by reports from that period by Dr. Faraawi and Dr. Billing.[22] The evidence indicates that the Appellant's injuries prevent him from returning to the kind of physically demanding work he used to do as a furniture assembler, but I am not persuaded that he is incapable of lighter employment. Like the General Division, I place great weight on the Appellant's failure to pursue alternative work that might have been suited to his limitations.

The Appellant had residual capacity

[37] The leading case of *Inclima v Canada* obliges claimants to demonstrate their disability by showing that they attempted and failed to remain in the productive workforce. To invoke *Inclima*, a decision-maker must first determine whether the claimant had the residual capacity to make such efforts.

[38] While the Appellant may no longer be able to perform a physically demanding job, I see indications that he had at least the residual capacity to seek alternative work during the MQP. In coming to this conclusion, I was influenced by the following factors:

- In his March 2005 report, Dr. Faraawi reported that clinical evaluation revealed tenderness in the Appellant's neck and back, but no significant physical restrictions. In a June 2006 follow-up examination,[23] Dr. Faraawi detected "pain behaviour" and concluded that the Appellant had fibromyalgia.

[21] CPP, s 42(2)(a)(ii).
[22] Reports by Dr. Rafat Faraawi, rheumatologist, dated March 22, 2005 (GD2-139) and by Dr. K. Billing, pain specialist, dated October 29, 2007 (GD2-101).
[23] GD2-127.

- In the July 2005 LMR Assessment and Treatment Plan Proposal,[24] Karen Geoffrey, a rehabilitation consultant, analyzed the Appellant's documented restrictions in the context of his psycho-vocational testing results and found that he was suited to working as a customer service or information clerk.
- On completion of the LMR program in March 2007, Kara Adair, a vocational rehabilitation consultant with Cascade Disability Management, noted that the Appellant had completed an English as a second language (ESL) program from August 8, 2005 to June 9, 2006, a Grade 10 English skills upgrading program from June 12, 2006 to October 27, 2006, a customer service skills program from October 30, 2006 to February 5, 2007, and a job search skills training program from February 6, 2007 until March 2, 2007. According to Ms. Adair, the Appellant repeatedly advised her that he was not capable of working, but his attendance during his ESL and upgrading programs was "nearly perfect."
- According to the May 2007 FRP discharge summary,[25] the Appellant demonstrated "the ability to perform activities at a level that would be classified as within the 'limited' physical demand level, as defined by the National Occupational Classification." He was advised to avoid repetitive bending or twisting and above-shoulder activities and to alternate between sitting, standing, and walking.
- The FRP discharge summary also indicated that the Appellant was not diagnosed with depression but with a pain disorder associated with both psychological factors and a general medical condition. Under the supervision of Dr. Ebrahimian, the psychologist, the Appellant successfully learned pain coping techniques and displayed "significant improvement in his pain continuity and duration." The Appellant's Global Assessment of Functioning score was in the 61–70 range, indicating mild symptoms.

[24] LMR Assessment and Treatment Plan Proposal dated July 18, 2005, by Karen Geoffrey, rehabilitation consultant, GD2-55.
[25] GD2-106.

- There is nothing on the record to indicate that the Appellant has ever received counselling specifically for depression or anxiety.[26]
- In October 2007, Dr. K. Billing, a pain management specialist, found that the Appellant had chronic pain and fibromyalgia. According to Dr. Billing, the Appellant reported that "[l]ow back pain and right leg pain is increased by sitting, standing, walking for more than two to three minutes, getting in and out of the car, rolling over in the bed, coughing, sneezing, bending forward."[27]

[39] Like other treatment providers, Dr. Billing concluded that the Appellant had chronic pain and fibromyalgia, but a diagnosis is not the same as a finding of disability,[28] and the key question in Canada Pension Plan disability cases is not the nature or name of the medical condition, but its functional effect on a claimant's ability to work.[29] In my view, Dr. Billing's account of the Appellant's pain is inconsistent with other evidence from the same period, in which, as we have seen, the Appellant successfully completed a comprehensive 18-month educational upgrading and retraining program—one that included several modules of daily classroom work. I acknowledge that the Appellant was able to complete the program, in part, because he was provided with periodic breaks and permitted to use various ergonomic devices, but there is no reason to believe that such accommodations would be unavailable at a desk or counter job. I also note that the Appellant testified, at the hearing before the General Division, that he travels to El Salvador every winter—a trip that would require at least some periods of extended sitting.[30]

[40] I do think that the evidence points to residual capacity to explore alternative employment options. I say this bearing in mind the Appellant's age, level of education, language proficiency, and past work and life experience, as required by *Villani.*[31] The Appellant was only 39 years of age at the end of the MQP. He had a limited education before coming to Canada, but his completion of the LMR program demonstrated an ability to learn new skills. He is proficient

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[26] See also audio recording of General Division hearing, part 2, at 11:35.
[27] GD2-101.
[28] *Klabouch v Canada (Minister of Social Development)*, 2008 FCA 33.
[29] *Ferreira v Canada (Attorney General)*, 2013 FCA 81.
[30] Audio recording of General Division hearing, part 1, at 24:45, part 2 at 22:15, and part 3 at 00:30.
[31] *Supra*, note 14.

enough in English that he was able to manage for many years in a workplace where it was the predominant language, and he later proved himself capable of retraining in English.

The Appellant did not attempt alternative employment

[41] Ultimately, the Appellant's appeal must fail because he has not made a serious attempt to work since his 2005 back injury, and it is therefore impossible to be certain whether he was incapable regularly of pursuing a substantially gainful occupation as of the MQP. At the hearing before the General Division, the Appellant testified that he was not capable of alternative work,[32] but I question how he could be certain if he had never tried it. The report from Cascade Disability Management[33] indicate that the Appellant's LMR plan had him scheduled to participate in a work placement from February to May 2007. Although the Appellant had been deemed potentially suited for customer service jobs at Staples and Value Village, he insisted that his pain and physical restrictions were so severe that he could not carry out the essential tasks of either position. The Appellant stated that he did not feel employable and admitted that he had submitted only one other resumé on his own, falling far short of the minimum 20 recommended under the job search training program.[34] He also admitted that he did not use his home computer to conduct job searches and did not purchase a newspaper to look for jobs. In the end, Ms. Adair, the vocational rehabilitation consultant who wrote the report, determined that there was no point in trying to secure a work placement due to the Appellant's "lack of commitment to securing employment."[35]

[42] *Inclima* requires disability claimants in the Appellant's position to show that **reasonable** attempts to obtain and secure employment have been unsuccessful because of their health condition. Applicants for disability entitlement should demonstrate a good-faith preparedness to

[32] Audio recording of General Division hearing, part 2, at 16:40.
[33] *Supra*, GD2-50.
[34] An LMR employment specialist submitted an additional seven resumés on the Appellant's behalf to help him meet the objectives of the job search training program.
[35] GD2-52.

participate in retraining and educational programs that will enable them to find alternative employment.[36] In this case, the Appellant has not done so.

Did the Appellant have a prolonged disability as of the MQP?

[43] Since the Appellant's evidence falls short of the severity threshold, there is no need to consider whether his disability is prolonged.

CONCLUSION

[44] I am dismissing this appeal. While the General Division erred in how it considered the Appellant's mental health and his chronic pain, I do not think it would have come to a different conclusion if it had not made those errors. Having conducted my own review of the record, I am not persuaded that the Appellant had a severe disability as of December 31, 2007.

Member, Appeal Division

HEARD ON:	February 26, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	L. T., Appellant Todd Cook, Representative for the Appellant Stéphanie Pilon, Representative for the Respondent

[36] *Lombardo v Minister of Human Resources Development* (July 23, 2001), CP12731 (PAB).