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

Citation: *K. C. c Minister of Employment and Social Development*, 2020 SST 31

Tribunal File Number: AD-19-411

BETWEEN:

**K. C.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

# SOCIAL SECURITY TRIBUNAL DECISION
## Appeal Division

DECISION BY: Kate Sellar

DATE OF DECISION: January 17, 2020

Canada

## DECISION AND REASONS

### DECISION

[1] The appeal is allowed. The General Division made an error of law. I will give the decision that the General Division should have given: the Claimant is entitled to a disability pension under the *Canada Pension Plan* (CPP).

### OVERVIEW

[2] K. C. (Claimant) has type 2 diabetes, congestive heart failure, coronary artery disease, anxiety, possible bipolar disorder, fibromyalgia, obesity, sleep apnea, hypertension, gastroesophageal reflux disease, and osteoarthritis. The Claimant stopped working in January 2002. He applied for a *Canada Pension Plan* (CPP) disability pension in September 2017. The Minister denied his application initially and on reconsideration. The Claimant appealed to this Tribunal. The General Division dismissed his appeal on June 7, 2019. I gave the Claimant permission (leave) to appeal the General Division's decision. I found that there was an arguable case that the General Division made an error of law.

[3] Now I must decide whether it is more likely than not that the General Division made an error under the *Department of Employment and Social Development Act* (DESDA). If the General Division made an error, I must decide how to fix (remedy) it.

[4] The General Division made an error of law by failing to analyze what the Claimant's functional limitations were, based on the medical conditions. That analysis of a Claimant's functional limitations is a necessary part of the legal test for determining whether a disability is severe.

[5] I will give the decision that the General Division should have given. Claimant proved that it is more likely than not that he had a severe and prolonged disability on or before December 31, 2004 (the end of his minimum qualifying period). He is entitled to a disability pension.

## ISSUE

[6] Did the General Division make an error of law by failing to decide what the Claimant's functional limitations were (based on the medical conditions) on or before the end of the MQP?

## ANALYSIS

[7] The Appeal Division does not give people a chance to re-argue their case in full at a new hearing. Instead, the Appeal Division reviews the General Division's decision to decide whether there is an error. That review is based on the wording of the DESDA, which sets out the grounds of appeal.[1]

[8] Failing to follow legal tests set out for the General Division by the Federal Court and the Federal Court of Appeal is an error of law. If the General Division makes such an error of law, that is one of the grounds for appeal set out in the DESDA.[2]

### Did the General Division make an error of law?

[9] The General Division made an error of law by failing to decide what the Claimant's functional limitations were, based on the totality of his conditions, on or before the end of the minimum qualifying period (MQP).

[10] Claimants have a "severe" disability within the meaning of the CPP when they are "incapable regularly of pursuing any substantially gainful occupation."[3] The focus is not whether a claimant has severe impairments, but whether the disability prevents a claimant from earning a living.[4] The General Division must assess the claimant's functional limitations when deciding whether the disability is "severe" under the CPP.[5] The General Division must consider all of the conditions in their totality. It is the cumulative impact of the conditions that is important.[6]

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[1] DESDA, s 58(1).
[2] DESDA, s 58(1)(b).
[3] *Canada Pension Plan*, s 42(2).
[4] The Supreme Court of Canada mentions this in a case called *Granovsky v Canada (Minister of Employment and Immigration)*, 2000 SCC 28.
[5] The Federal Court of Appeal explains this in a case called *Klabouch v Canada (Social Development)*, 2008 FCA 33.
[6] The Federal Court of Appeal explains this in a case called *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[11] In this case, the General Division decided that the Claimant did not show that he had a severe disability on or before the end of his MQP. The General Division decided that the Claimant had "limitations", but that he had some capacity to work (residual capacity).[7] The General Division noted the Claimant's testimony that he could not do work that was stressful, and that he could not do heavy lifting.[8]

[12] The Claimant argued that the General Division made an error of law in his case.[9] The Claimant argues that he has functional limitations as a result of his medical conditions, and that is why he cannot work. At the Appeal Division hearing, the Claimant explained that he felt that his health issues were not really addressed by the General Division's decision at all, and that the whole case was decided on some small amounts of volunteer work that he did. He feels that the volunteer work took up too much of the discussion during his hearing at the General Division as well.

[13] The Minister argues that the General Division considered the Claimant's testimony and all of the evidence about his limitations and medical conditions.[10] The Minister argues that the General Division member:

- showed he understood that he had to consider all of the Claimant's conditions;[11]
- listed the Claimant's medical conditions[12] in the decision and referred to the conditions the family doctor listed;
- recognized that the Claimant had cardiac artery disease;[13]
- stated that he had considered all of the Claimants impairments and limitations;[14]

[7] General Division decision, para 18.
[8] General Division decision, para 19.
[9] AD1B-3.
[10] AD3, page 5 of the Minister's submission, starting at para 14.
[11] The General Division referred to the decision in Bungay which requires the General Division to consider all of the Claimants conditions together.
[12] General Division decision, para 2.
[13] General Division decision, para 17.
[14] General Division decision, para 18.

- considered the Claimant's testimony that he could not do heavy lifting and that the work needed to be stress free; and

- noted that the Claimant does not work well under stress.[15]

[14] The Minister acknowledges that the General Division did not mention the functional limitations that the Claimant listed in his Questionnaire. However, on appeal, the Minister notes that there is a presumption that the General Division considered all of the evidence (even if that evidence is not discussed in the decision).[16]

[15] The Minister also notes that it is unclear whether the limitations listed in that Questionnaire were the same as at the time of the MQP.[17] The Claimant testified that he did not work well under pressure and falls apart under stress and that he is able to do light house work.

[16] In my view, the General Division made an error of law. The General Division failed to complete the legal analysis required to decide whether the Claimant had a severe disability within the meaning of the CPP. Although a decision maker does not need to refer to every piece of evidence in the decision, the General Division must assess functional limitations when deciding whether a disability is severe. This decision falls short on that requirement to assess the functional limitations.

[17] The General Division correctly set out a series of legal principles that apply to deciding whether a disability is severe for the purpose of qualifying for a CPP disability pension. The General Division decided that the Claimant did not prove he had a severe disability on or before the end of his MQP. The General Division member explained how he came to that conclusion by providing three reasons why the disability was not severe:

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[15] General Division decision, para 19.
[16] This idea the we presume that the decision maker considered all of the evidence (even if the decision maker does not reference it all in the decision) comes from several cases, including *Simpson v Canada (Attorney General)*, 2012 FCA 82 and *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.
[17] AD3, para 17 of the Minister's submission.

(1) the Claimant volunteered which showed a capacity for sedentary work and he did not show that efforts to get and keep employment were unsuccessful by reason of his health condition;[18]

(2) the Claimant volunteered after the end of his MQP which shows he could perform computer work and had transferable skills for alternate employment;[19] and

(3) the Claimant showed an ability to re-train for other kinds of work. There are no medical reports before December 2004 that showed he suffered from a serve medical condition during his MQP.[20]

[18] In the second half of the analysis, the General Division considers the Claimant's main medical report, one of his conditions, and his testimony.[21]

[19] In other words, the General Division's decision focusses on giving reasons why the Claimant did not show he had a severe disability. The focus was mostly on identifying evidence that suggests that the Claimant had some (residual) capacity for work. But the General Division should still have analyzed the Claimant's medical conditions and functional limitations. After that, if the General Division had found that there is evidence of a capacity to work, it must also consider whether the Claimant's efforts to get and keep work were unsuccessful because of the disability (I'll call that the "re-employment "efforts test").[22] This efforts test is not set out specifically in the legislation. The Federal Court of Appeal's efforts test provides guidance about how to interpret evidence about efforts to get and keep work. In my view, it was never meant to eclipse the main task at hand, which is to consider how the Claimant's functional limitations impact the capacity to work.

[20] The problem with the General Division's approach here is that you cannot decide that these one or two pieces of evidence are truly evidence of some capacity to work without first completing a full analysis of the functional limitations that impact the Claimant's ability to work.

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[18] General Division decision, para 12.
[19] General Division decision, para 13.
[20] General Division decision, para 14.
[21] General Division decision, para 15-16, 17-18, and 19.
[22] *Inclima v Canada (Attorney General)*, 2003 FCA 117.

The General Division should guard against skipping over the analysis of the limitations in order to conduct a search for any evidence of a limited capacity to work that would trigger the need to meet the efforts test. Otherwise, the hunt for residual capacity to work eclipses the true issue in the case, which is whether the Claimant's medical conditions and personal circumstances mean that he is incapable regularly of pursuing any substantially gainful occupation.[23]

[21] The General Division failed to discuss or analyze the Claimant's medical conditions in terms of their functional limitations. The General Division did not explain how the Claimant's medical conditions translated into actual limitations for the Claimant. The Claimant has type 2 diabetes, congestive heart failure, coronary artery disease, anxiety, possible bipolar disorder, fibromyalgia, obesity, sleep apnea, hypertension, gastroesophageal reflux disease, and osteoarthritis. Not all of these conditions result in functional limitations that impact the Claimant's ability to work. However, the decision lacks a sufficient analysis of the functional limitations connected to these conditions taken as a whole. Without doing that analysis, it seems that the General Division was not really able to decide what the impact of the medical conditions was on the Claimant's capacity for work.

[22] The record before the General Division contained evidence about functional limitations that impact the Claimant's ability to work, including:

- the Claimant's family doctor stated that fatigue, chronic pain, and anxiety were the reasons the Claimant is not able to work;[24]

- the Claimant testified that he found some volunteer work overwhelming and that if it was strenuous it would aggravate his heart symptoms, which in turn would aggravate his anxiety;[25]

- the Claimant testified that it takes him a while to complete tech jobs and that he gets overwhelmed and has to take a breather outside;[26]

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[23] The approach I am suggesting seems consistent with the content of para 19 in my colleague's decision in *S.G. v Minister of Employment and Social Development*, 2017 CanLII 141823.
[24] GD2-60.
[25] Audio recording of General Division hearing, at about 13:00.
[26] Audio recording of General Division hearing, at about 17:00.

- the Claimant testified that he pretty well stays at home and that he cannot work with the public (or travel on public transportation with strangers) due to anxiety;[27] and

- the Claimant's Questionnaire describes a series of physical limitations including walking, standing, sitting, bending, and reaching as well as limitations involving short term memory, difficulty concentrating, low attention, and anxiety attacks.[28]

[23] By neglecting to discuss this evidence about his functional limitations before skipping on to identify some residual capacity for work, the General Division made an error of law. The Claimant expected that his hearing before the General Division and the General Division's decision would discuss and analyze his functional limitations, both physical and psychological, to decide whether his disability is severe and prolonged. Claimants are entitled to a full analysis of the limitations that impact their ability to work first, before looking for evidence that might show some capacity. The General Division did not complete the analysis in that way.

**REMEDY**

[24] Once I have found an error by the General Division, I can return the case to the General Division for reconsideration, or I can give the decision that the General Division should have given.[29] At the Appeal Division hearing, the Claimant did not have a strong preference. The Minister requested that if I find that the General Division made an error, that I give the decision that the General Division should have given. The Minister takes the position that the outcome should be the same: the Claimant is not entitled to the disability pension.

[25] I have enough evidence to make the decision. I will give the decision that the General Division should have given. This is the most fair and efficient way forward.[30]

[26] I have considered the medical evidence and the Claimant's evidence about his medical conditions, along with the evidence about his personal circumstances. Many of his personal circumstances lead me to believe that he has transferrable skills and that he might otherwise be a

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[27] Audio recording of General Division hearing, at about 41:30, 50:00, and GD2-54 (about public transportation).
[28] GD2-54.
[29] DESDA, s 59. See also *Nelson v Canada (Attorney General)*, 2019 FCA 222.
[30] *Social Security Tribunal Regulations*, s 2.

good candidate for retraining. However, the functional limitations that he and his doctors have described mean that he cannot reasonably be expected to work at a substantially gainful level (or be retrained for that matter). The Claimant had a severe and prolonged disability within the meaning of the CPP on or before the end of his MQP.[31] He has taken steps to manage his medical conditions and has not refused treatment.

**Proving A Disability Is "Severe"**

[27] A person is entitled to a disability pension when they can show that they had a severe and prolonged disability on or before the end of the MQP. The Minister calculates the MQP based on the person's contributions to the Canada Pension Plan. A person's disability is severe if it makes them incapable regularly of pursuing any substantially gainful occupation.[32]

**Considering only his personal circumstances, the Claimant has skills and could retrain**

[28] When deciding whether a disability is severe, I must consider both the Claimant's personal circumstances and his medical conditions.[33] I must take a "real world" approach to considering the severity of the Claimant's disability and his employability. That means that I must consider the Claimant's personal circumstances, including his age, education level, language skills, and his past work and life experience.[34]

[29] There are some things about the Claimant and his experiences which show that in the real world, he has transferrable skills and could be a good candidate to retrain. However, it is not reasonable to expect him to capitalize on these advantages in terms of his employability. Unfortunately, his functional limitations are an unsurmountable barrier to retraining and to pursuing any substantially gainful occupation.

[30] The Claimant was only 34 years old at the end of his MQP, so his age alone is not a barrier to seeking employment. The highest grade he completed in school is grade 12 and he

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[31] As a result of concluding that the Claimant has a severe disability based on his functional limitations, I have not considered whether his personal circumstances further limit his capacity for work. This analysis would be moot. See
[32] *Canada Pension Plan*, s 42(2).
[33] *Bungay v Canada (Attorney General)*, 2011 FCA 47.
[34] *Villani v Canada (Attorney General)*, 2001 FCA 248.

does not have any post-secondary education.[35] Having a high school education means that theoretically his education is not a barrier to access some kind of substantially gainful occupation. His English language skills do not present any barrier to work. In terms of his work experience, the Claimant worked as an access centre manager and as an educational assistant. He has some computer skills as evidenced by his previous paid work and now his volunteer and very limited casual work. These are transferrable skills that, if he was well enough, he could use to access employment. These factors all mean that if the Claimant's health was good enough, he would be well-positioned to re-train for substantially gainful work.

[31] However, in terms of his life experience, the Claimant explains that he experienced sexual assaults as a child. I accept that this trauma has impacted his health and well-being tremendously and must not be overlooked. I am also mindful of the Claimant's evidence about the struggle he faced to access mental health supports in his community, which is also a key part of his life experience.

[32] The Claimant has some transferrable skills in terms of using computers and performing basic tech functions. However, his anxiety and other functional limitations are barriers that are too high to overcome.

**The Claimant's functional limitations mean that his disability is severe**

[33] I find that the combination of the Claimant's chronic pain, fatigue, and especially his anxiety, mean that he is incapable regularly of pursuing any substantially gainful occupation on or before the end of the MQP. I accept that additionally, he was attempting to get his diabetes under control when he left work, even if we have no medical documents from the time about that due to a flood. Although the Claimant also references his heart condition as a reason he could not work during the MQP, I do not find that I have enough evidence to suggest that was a severe condition that was impacting his ability to work at the time.

a) Dr. Bell's Evidence about Functional Limitations

[35] GD2-51.

[34] The Claimant has multiple medical conditions. In support of his application, the Claimant provided a medical report from Dr. Bell (his family doctor).[36] The report is dated September 11, 2017. Dr. Bell confirms that the Claimant has type 2 diabetes, congestive heart failure, possible coronary heart disease, anxiety and possible bipolar disorder, fibromyalgia, sleep apnea, hypertension (high blood pressure), gastroesophageal reflux disease (GERD), osteoarthritis in his knees and obesity. It is not just the diagnoses that are important, but how those diagnoses impact his ability to work[37]. I do not have evidence on appeal about functional limitations connected to each of the conditions.

[35] However, Dr. Bell says that the Claimant is unable to work due to fatigue, chronic pain, and anxiety.[38] Dr. Bell stated that the Claimant could not function in a work place due to anxiety despite medication.[39] The Claimant has marked peripheral edema, as well as bilateral knee and shoulder pain.[40]

[36] There is no doubt that Dr. Bell's 2017 report was written long after end of the MQP in 2004. Dr. Bell states that he has known the Claimant for 20 years, and at he started treating the Claimant for the main medical condition in 2000.[41] Dr. Bell concluded the report by stating that "the patient has been severely and prolonged disability – hasn't worked since 2002."[42] In a letter, Dr. Bell explained that as a result of a flood in New Brunswick in March 2018, the Claimant does not have medical dated before March 2012.[43]

[37] I put a great deal of weight on Dr. Bell's conclusion that the Claimant is unable to work due to chronic pain, anxiety and fatigue. His evidence about the Claimant's limitations is not disputed by other medical documents. Dr. Bell has been the Claimant's family physician for basically all of the Claimant's adult life.

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[36] GD2-60 to 63.
[37] *Klabouch v Canada (Social Development)*, 2008 FCA 33.
[38] GD2-60.
[39] GD2-60.
[40] GD2-61.
[41] GD2-60.
[42] GD2-63.
[43] GD2-136.

[38] Dr. Bell confirmed that he has been treating the Claimant's main medical condition since 2000, which was before the end of the MQP. Dr. Bell specifically referenced (and is therefore aware) of when the Claimant stopped working. The medical report is absolutely clear that the Claimant is unable to work due to fatigue, chronic pain, and anxiety. Dr. Bell did not provide any statement that suggests that the Claimant would work part-time or from home. Dr. Bell did not express any concerns that the Claimant was not pursuing treatment or was uncooperative in any way. Dr. Bell expressed no concern about the Claimant's decision to stop working in 2002, and provided no evidence that the Claimant could or should have been working at any time after 2002. Dr. Bell's evidence is also consistent with the Claimant's testimony, in which he stressed the impact that his anxiety has on his ability to function in different aspects of his life, including work.

[39] Given the fact that the Claimant's medicals from the time of the MQP were lost in a flood and the Claimant explained why he applied so long after the MQP, I am not troubled by the fact that Dr. Bell's report is dated in 2017 and the Claimant's MQP ended in 2004.

[40] The Claimant explained at the hearing why he did not apply to the CPP sooner. In part, he believed (mistakenly) that he would not be able to apply for a disability pension while receiving social assistance. However, as time went on he became concerned about is ability to support himself in future, particularly as his mother was aging and unwell. The Claimant must provide objective medical evidence to support his application.[44]

[41] While some medical evidence is required to support an application, medical evidence does not need to be dated during the MQP.[45] Also, Dr. Bell's report specifically references that the Claimant has not worked since 2002. There is no hint in the report of concern about whether the Claimant should not have stopped working in 2002, or a reference to the idea that the Claimant's condition was not as serious when he stopped working in 2002. The Claimant's medical records from the time of the MQP are not available through no fault of his own. But the CPP does not only provide the disability pension to people who are lucky enough to have medical records from the MQP.

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[44] This idea comes from a case called *Warren v Canada (Attorney General)*, 2008 FCA 377.
[45]This idea comes from a case called Belo-*Alves v Canada (Attorney General)*, 2014 FC 1100.

b) The Claimant's evidence about Functional Limitations

[42] The Claimant gave evidence about functional limitations at the time of the MQP, including evidence about his mental health, fatigue, his diabetes, physical limitations or pain, and his heart condition. I find that the Claimant provided his evidence in a forthright way, even though he stated that he was very nervous. I find his evidence was reliable about his limitations

[43] The Claimant testified that he was not in a good place mentally from January 2002 (when he stopped working) until the end of his MQP. It was a "dark time" and he did not try to look for other work. He was going to court a lot and he was emotionally and physically tired. This is consistent with Dr. Bell's evidence that fatigue was one of the factors that negatively impacts the Claimant's ability to work. The Claimant testified that he pretty much stays at home, and that he tries not to be a hermit. He stated that his anxiety is high, and that he gets wound up easily and can get disoriented. The Claimant testified that he could not do any heavy lifting and that the work he did needed to be "stress free."[46] He stated he could not work with the public.

[44] The Claimant was sexually assaulted as a child and that trauma has had a profound impact on his well being. He explains that he has had to stop all sports hobbies, and he does not socialize much at all due to his anxiety. He says he has terrible short term memory, and when he is having an anxiety attack he finds it difficult to remember names and dates and places. He finds it difficult to concentrate and has a low attention span. He sleeps with a CPAP machine and gets out of breath easily doing small tasks. He can drive for no more than 2 hours. He is very anxious using public transportation.

[45] The Minister argues that there is other evidence in the file that is inconsistent with concluding that the Claimant had a severe mental health conditions that prevented him from working at the time of the MQP. In 2010,[47] a psychiatrist assessed the Claimant as having mild to moderate symptoms and that he did not have bipolar disorder. The psychiatrist recommended changes to the Claimant's medications.

[46] Audio recording of General Division decision, at about 50:00.
[47] GD2-170 to 173.

[46] The Minister points out that this 2010 report does not support the idea that the Claimant had a severe mental health condition that prevented him from working continuously since the end of his MQP. I have considered the 2010 report in light of the Claimant's testimony and Dr. Bell's report.

[47] I find that the 2010 psychiatrist's report it is not inconsistent with the Claimant's evidence that he was experiencing a "dark time" in 2002 to 2004, and that he was in the "infancy of a lot of his diagnoses."[48] His evidence was that he accessed medications to address his anxiety during the MQP. The fact that by 2010 he had not seen a psychiatrist does not mean his disability was not severe. His family doctor appears to have been managing his conditions since 2000, and although he ruled out bipolar disorder at that time, there was clearly both anxiety and some symptoms consistent with post-traumatic stress disorder.

[48] The Claimant gave evidence at the hearing and provided evidence to a Minister's representative in the file that his diabetes was not well controlled when he stopped working in 2002. The Minister points out that there is no medical evidence to suggest that the Claimant's diabetes was severe or uncontrolled on or before the end of the Claimant's MQP. The Minister identifies this as a concern given that diabetes is the reason the Claimant gave by phone to a Minister's representative as to why he stopped working in 2002.[49]

[49] The Minister is correct to note that there are no reports about the Claimant's diabetes at the time of the MQP to assist us to better understand how that was a barrier to working during the MQP. However, I won't assume that this lack of evidence means that the Claimant's recollection is not correct, since we know the reason for the lack of medical evidence from the time relates to the flood. Given that on this limitation we have only the Claimant's evidence about trying to manage his condition at the time, I accept that his diabetes was not well controlled at the time. If I am wrong about this and the Claimant has not shown that diabetes was part of the reason he could not work in 2002, the result remains the same because of the other conditions the Claimant testified about that are supported by Dr. Bell's evidence, including fatigue, pain, and especially anxiety.

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[48] Audio recording of the General Division decision, at about 52:00.
[49] GD2-135.

[50] I also accept the evidence the Claimant provided in his Questionnaire about his physical abilities. He stated that he can stand for 10 minutes, and sit for an hour. He can walk a kilometre but not more than 10 minutes at a time. He can carry 50 pounds about 10 feet. He cannot reach over his head. He cannot bend more than 3 times and he cannot stay that way long or he gets dizzy. He can complete light housekeeping. This evidence is consistent with Dr. Bell's evidence about the fact that the Claimant experiences chronic pain, and that he has bilateral knee pain and shoulder pain.

[51] Similarly, the Minister points out and I accept that there is not enough evidence that the Claimant's cardiac condition was severe during the MQP. This condition was not the focus of the Claimant's testimony about his medical status at the time of the MQP, medical records from the time are not available, and Dr. Bell did not list limitations resulting from that condition as part of his reasons for why the Claimant could not work.

**Reasonable steps to manage condition and did not refuse treatment**

[52] The Claimant took reasonable steps to manage his condition. He did not refuse treatment

[53] Claimants must show that they have taken reasonable steps to manage their medical conditions.[50] If claimants refuse treatment unreasonably, they may not be entitled to the disability pension (and the impact of the refused treatment is relevant in that analysis).[51]

[54] I appreciate that there are no documents from the Claimant's medical files that show what treatment he had during his MQP. However, we have confirmation that he had a family doctor for his main medical condition since 2000, two years before he stopped working and four years before the end of his MQP. The doctor has stated in the medical report that his anxiety means he cannot work, despite the fact that he takes medication.

[55] The Claimant testified that when he stopped working, he was dealing with some issues in court, but he was also trying to get his diabetes under control. He said that he was trying to get a diagnosis for his mental health issues – whether the issue was bipolar disorder, post-traumatic

[50] The Federal Court of Appeal explains this in a case called *Sharma v Canada (Attorney General)*, 2018 FCA 48.
[51] The Federal Court of Appeal explains this in a case called *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

stress disorder, or multiple personality (in addition to anxiety). The mental heath system was not the best, and he was in counselling on and off. He testified that the idea is to stay medicated and that in the end, many like him suffer in silence. He takes walks as recommended by his cardiologist. The Claimant testified that he takes his medications without fail, and there is a long list of medication in his file.[52]

**Claimant's volunteer and light computer work not evidence of capacity to work**

[56] Although the Claimant has done some very limited volunteer and light computer work, this is not evidence of some capacity to work in this case.

[57] The Claimant has not worked since January 2002 when he left his employment. From the time he left his employment until the end of his MQP, he did some "light computer work" and volunteered at his church. The Claimant testified, as an example, that just before the General Division hearing (and long after the MQP) he set up an entertainment system and was paid gas money to complete that work. He explained that it is not difficult work from a technical perspective. He testified that it took him two to three hours. He gets overwhelmed and has to step aside and "take a breather" outside.[53] In terms of his volunteering for his church, he explained that if they have trouble with getting the lyrics to music projected on the screen, he will come and take a look. He testified that these jobs are 30 minutes long at the very most.[54]

[58] The Minister argues that sedentary work, volunteer work, and an ability to some tasks around the house can be evidence of a capacity to work.[55] Here, the Claimant's volunteer work shows that he had a capacity for work.

[59] The Claimant was on social assistance. The Claimant's volunteer work for his church represents a tiny fraction of time: assisting to ensure some basic audio visual equipment is

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[52] Audio recording of General Division hearing, at about 46:40. Medications are listed in the file in several places, including at GD2-78.
[53] Audio recording of General Division hearing, at about 17:30.
[54] Audio recording of General Division hearing, at about 19:25.
[55] In support of that statement, the Minister relies on the decisions in *Miceli-Riggins v Canada (Attorney General)*, 2013 FCA 158, para 14-15 and *McDonald v Canada (Human Resources and Skills Development)*, 2009 FC 1074, at para 14.

running (for less than 30 minutes at a time) does not show a capacity for substantially gainful employment.

[60] The fact that the Claimant has done some small computer jobs (like setting up an entertainment centre) is also not consistent with even a residual capacity for work. In this case, the jobs are very minor in nature. The Claimant testified that he cannot make more than $200 a month or he would not be able to access his income assistance. The types of jobs he is describing (like setting up a home entertainment system) takes him longer than it might otherwise.

[61] I accept his evidence that the anxiety he experiences precludes him from doing this kind of work on anything other than a very casual basis, and that he struggles to do this work even casually. While working on the task he will feel overwhelmed and has to excuse himself. The Claimant's volunteer and casual work is not evidence of a capacity to work in this case that would trigger a requirement to show that his efforts to get and keep work were unsuccessful because of his health condition.

**Claimant's testimony was not evidence of a capacity to work**

[62] At the hearing, the General Division member asked the Claimant about whether he could work now that he is taking medication. The Claimant stated that he did not know and that he would have to try and that if he could work from home, that would be "the cat's meow."[56] The Claimant testified that he honestly did not know about work because he cannot do heavy lifting, the work needs to be stress-free and he cannot deal with the public. The Claimant speculated that if he could work from home he might be able to do some work.

[63] I find that the Claimant's statements are not evidence of a capacity to work from home. The Claimant is speculating about his ability to work in isolation from the public and without stress. He gave evidence that installing a home entertainment system caused him stress, and took several hours. Dr. Bell's opinion about the Claimant's ability to work is routed in the realities of the Claimant's abilities in light of his fatigue and chronic pain, neither of which the General Division member and the Claimant were discussing at that point in the hearing.

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[56] Audio recording of General Division hearing at about 51:00.

**The disability is prolonged**

[64] The Claimant's disability is likely to be long-continued and of indefinite duration. This means its is prolonged within the meaning of the CPP.[57]

[65] Dr. Bell stated in 2017 that the Claimant's prognosis is "very guarded." Dr. Bell is clear that the Claimant has "many chronic conditions that will unfortunately progress."[58]

[66] The Claimant proved he had a severe disability on or before the end of his MQP on December 31, 2004. For the purpose of payment, the Claimant cannot be considered disabled more than 15 months before he applied.[59] In this case, the Claimant applied for the disability pension on September 20, 2017. So for the purpose of payment, he cannot be considered disabled before June 1, 2016. Payments start four months after the disability began,[60] which means payments start October 2016.

**CONCLUSION**

[67] The appeal is allowed. The General Division made an error. I have given the decision that the General Division should have given. The Claimant is entitled to a disability pension under the *Canada Pension Plan*.

Kate Sellar
Member, Appeal Division

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| HEARD ON: | September 23, 2019 |
| METHOD OF PROCEEDING: | Teleconference |
| APPEARANCES: | K. C., Appellant<br><br>Stéphanie Pilon, Representative for the Respondent |

[57] *Canada Pension Plan*, s 42(2)(a) says that a disability is prolonged within the meaning of the CPP if it is likely to be long-continued and of indefinite duration or likely to result in death.
[58] GD2-63.
[59] *Canada Pension Plan*, s 42(2)(b).
[60] *Canada Pension Plan*, s 69.

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