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

Citation: *L. P. v Minister of Employment and Social Development*, 2020 SST 243

Tribunal File Number: AD-19-548

BETWEEN:

L. P.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Kate Sellar

DATE OF DECISION: March 16, 2020

DECISION AND REASONS

DECISION

[1] I allow the appeal. The General Division made an error. 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] L. P. (Claimant) worked seasonally as a truck driver in 2016. He stopped due to a shortage of work. He received EI benefits until June 2017. He had a heart attack in August 2017. After the heart attack, the Claimant says he could not work anymore, so he applied for a disability pension under the *Canada Pension Plan* (CPP). In April 2018, the Claimant's family doctor decided that the Claimant could no longer work. The Minister denied the Claimant's application initially and on reconsideration.

[3] The Claimant appealed to this Tribunal. The General Division dismissed the Claimant's appeal in May 2019, finding that the Claimant's disability was not severe and prolonged within the meaning of the CPP. The Claimant made an application for leave to appeal the General Division's decision. I granted the Claimant permission (leave) to appeal the General Division's decision.

[4] I must decide whether the General Division made an error under the *Department of Employment and Social Development Act* (DESDA).

[5] I find that the General Division made an error of fact. I will give the decision that the General Division should have given: the Claimant is entitled to a disability pension under the CPP.

ISSUE

[6] Did the General Division make an error of fact by ignoring medical evidence that explained how Dr. Van decided in April 2018 that the Claimant could no longer work?

ANALYSIS

Reviewing General Division decisions

[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] The DESDA says that it is an error when the General Division "bases its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it."[2] A mistake involving the facts has to be important enough that it could affect the outcome of the decision (that is called a "material" fact). The error needs to result from ignoring evidence, willfully going against the evidence, or from reasoning that is not guided by steady judgement.[3]

Did the General Division make an error of fact?

[9] The General Division made an error of fact by ignoring medical evidence that explained why Dr. Van decided in April 2018 that the Claimant could no longer work. That evidence went to the core of the Claimant's case. The results of the lower extremity arterial duplex (which I will call the "scan") were significant. The scan results explained why Dr. Van changed his opinion about the Claimant's ability to work. Ignoring this piece of objective medical evidence coloured the General Division's analysis of Dr. Van's evidence and led to a finding that the Claimant had some capacity for work even though Dr. Van stated that he could not work.

[10] Where there is conflicting evidence, the General Division member must analyze that evidence and explain why they prefer one piece of evidence to the other.[4] The Federal Court of

---

[1] DESDA, s 58(1).
[2] DESDA, s 58(1)(c).
[3] The Federal Court has considered these ideas about perverse and capricious findings of fact in a case called *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319.
[4] This idea is in many Federal Court of Appeal cases, including *Atri v Canada (Attorney General)*, FCA 178; *Quesnelle v Canada (Attorney General)*, 2003 FCA 92; and *Ryall v Canada (Attorney General)*, FCA 164.

Appeal confirms that overlooking evidence that goes to the core of the Claimant's case is an error of fact.[5]

[11] The Claimant had more than one specialist involved in his treatment. The General Division had evidence from both Dr. Pearce and Dr. Van to consider. Dr. Van stated in March 2018 that the Claimant could work for more than four hours and was able to lift more than 20 pounds.[6] A month later, in April 2018, he stated, "Due to the patient's medical condition, I think he is no longer able to work. I will support him to have a disability."[7] In May 2018, Dr. Pearce stated that the Claimant showed "significant improvement"[8] with treatment, and in October 2018, Dr. Pearce described the Claimant's condition as "stable."[9]

[12] The General Division member weighed the evidence from Dr. Van and Dr. Pearce.[10] The General Division member characterized the change in Dr. Van's opinion about the Claimant's inability to work as an "inconsistency" which was not explained. The General Division member decided that Dr. Van did not provide "any additional objective information" as to why he provided the new opinion that the Claimant could not work. The General Division went on to acknowledge that Dr. Van "did however say that his patient had advanced atherosclerosis disease as evidence in cerebral vascular disease as well as coronary artery disease and arthropathy."

[13] The Claimant argues[11] that the General Division made an error of fact by deciding that Dr. Van did not provide any additional objective information to explain why he changed his opinion about the Claimant's ability to work. It appears that Dr. Van received the results of the scan along with the consultation report dated March 28, 2018. The updated diagnosis of atherosclerosis informed Dr. Van's new opinion about the Claimant's ability to work, which he provided in April 2018.

[14] The Claimant argues that the results of the scan go to the core of his claim. They confirm and support the Claimant's evidence that the pain, tingling and numbness in his legs was worse

---

[5] *Joseph v Canada (Attorney General)*, 2017 FC 391.
[6] GD2-47.
[7] GD4-28.
[8] GD4-54.
[9] GD4-56.
[10] General Division decision, para 11.
[11] AD2-5 to 7.

after his heart attack. The scan informs Dr. Van's updated opinion (namely that the Claimant could no longer work), which in turn supports the Claimant's claim for a disability pension. To decide that the evolution of Dr. Van's opinion was unexplained is an error of fact because it ignores the key medical scan the Claimant had which supports his testimony about how his functional abilities deteriorated after his heart attack.

[15] The Minister argues[12] that the General Division did not make an error. Dr. Van's opinion was not substantiated by objective information to support the opinion. The April 2018 report listed a new diagnosis of advanced atherosclerosis disease. However, the report stopped there. It did not refer to any diagnostic test or notes to support this new diagnosis. The Member makes note of this inconsistency. To make note of that inconsistency is not an error of fact made in a perverse or capricious manner. The General Division noted the inconsistency and went on to consider the information in the report. It is the General Division's role to weigh the evidence and it is not the Appeal Division's role to re-weigh that evidence in order to establish an error.

[16] I find that the General Division made an error of fact. There was objective evidence to support the change in Dr. Van's opinion. The General Division's finding that Dr. Van did not refer to any objective evidence is an error. The results of the scan showed advanced atherosclerosis. Dr. Van's report refers to that diagnosis, although not specifically to the scan itself. I am satisfied that the results of the scan informed Dr. Van's updated opinion. Ignoring that evidence when interpreting Dr. Van's report was an error of fact. The General Division overlooked the objective medical evidence that explained the change in Dr. Van's opinion. This evidence was critical to the Claimant's case because it supported his position that the pain in his legs was worse after his heart attack and was keeping him from working.

[17] Dr. Van's report was key to the Claimant's appeal because Dr. Van is a treating specialist who clearly stated in April 2018 (before the end of the Claimant's minimum qualifying period) that the Claimant was not able to work. The General Division found that the Claimant had some capacity to work, and therefore he needed to show that efforts to get and keep employment were unsuccessful because of his health condition.[13] The Claimant was not able to meet that standard.

---

[12] AD3-10 and 11.
[13] General Division decision, para 20.

The Claimant did not look for work after this heart attack. Dr. Van put in writing that he could not work in April 2018, that he would support a claim that the Claimant was disabled, and he completed a CPP medical report accordingly.[14]

REMEDY

[18] 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.[15] At the Appeal Division hearing, the Claimant and the Respondent confirmed that if I found an error, they did not object to me giving the decision that the General Division should have given.

[19] I will give the decision that the General Division should have given. I am satisfied that the record from the General Division is complete. This is the most fair and efficient way forward.[16]

[20] I find that the Claimant's personal circumstances present a barrier to re-employment. He has a serious medical condition. That condition results in functional limitations in terms of sitting, standing, bending, lifting, and walking. He experiences pain, numbness and tingling (which he calls "needles and pins") in his legs. He has fatigue and interrupted sleep. He has taken steps to manage his conditions. He has not refused treatment. He has a severe and prolonged disability under the CPP and is entitled to a disability pension.

Proving a disability is "severe"

[21] 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 minimum qualifying period (MQP). The Minister calculates the MQP based on the person's contributions to the Canada Pension Plan. A person's

[14] The Claimant had already applied for CPP disability pension right after his heart attack in August 2017, and the CPP medical report that he provided with that application looks like it was completed by a specialist involved in his care at the time of the heart attack.
[15] DESDA, s 59. See also *Nelson v Canada (Attorney General)*, 2019 FCA 222.
[16] *Social Security Tribunal Regulations*, s 2.

disability is severe if it makes them incapable regularly of pursuing any substantially gainful occupation.[17]

[22] The parties agree that the Claimant's MQP ended on December 31, 2019.[18] His MQP was in the future when he had his General Division hearing.

Personal circumstances are a barrier to employment

[23] I must take a "real-world" approach to considering the severity of the Claimant's disability. That means that I must take into account the Claimant's personal circumstances, including his age, education level, language proficiency, and his past work and life experience.[19]

[24] When the MQP ended on December 31, 2019, the Claimant was just over 59 years old. He was less than a year from qualifying for early retirement under the CPP. He was born in Portugal and attended school as a child in Canada. He stopped going to school in grade 9, and started working full-time in the early 1970's. He testified that he has never been involved in any technical, trade or on-the-job training.[20] The Claimant speaks English. The Claimant testified that he worked in a factory packing food and then made deliveries. Later, he became a long-haul truck driver.

[25] The Claimant's representative argued at the General Division that the job areas the Claimant has experience in require a level of physical strength that is above and beyond the Claimant's regular capacity.

[26] In my view, the Claimant faces significant barriers to re-employment. The Claimant's physical limitations are such that I am satisfied that he cannot return to physical employment as he did in the past. The Claimant's work history is limited to some factory and delivery work as well as truck driving. He does not have a set of transferrable skills from his work history that would allow him to access work at the sedentary level.

---

[17] *Canada Pension Plan*, s 42(2).
[18] GD2-30.
[19] The Federal Court of Appeal explains this in a case called *Villani v. Canada (Attorney General)*, 2001 FCA 248.
[20] Audio of the General Division hearing, at approximately 7:15.

[27] I am not satisfied that the Claimant could tolerate the prolonged sitting required to retrain, let alone complete sedentary work within his physical restrictions. It is not reasonable in this case to expect the Claimant (who was 59 years old at the time of the MQP) to upgrade his education at this stage. He left school to work in the 1970's.

The Claimant has limitations that affect his capacity to work

[28] The Claimant's main medical condition that affects his capacity to work is his advanced atherosclerosis disease. This results in leg pain, numbness and tingling, all of which became worse after the Claimant's heart attack in August 2017. He has limitations in terms of sitting, standing, walking, bending, sleeping, and lifting.

[29] While there is some evidence in the file about the Claimant's pulmonary function, I do not find that the Claimant has a series of functional limitations associated with his pulmonary function that affect his ability to work. The Claimant had a heart attack in August 2017. I accept the evidence that he experiences fatigue relating to that medical condition. I accept that this fatigue, while not enough on its own to result in a severe disability, contributes to his lack of capacity for work.

[30] Although the Claimant had problems with his legs that affected his work as early as 2011, I find that the leg symptoms worsened after his heart attack in August 2017. I find that the symptoms worsened further in March 2018, when he had a lower extremity arterial duplex (a "scan"). His treatment team diagnosed advanced atherosclerosis disease. The functional limitations the Claimant experiences because of this condition, coupled with the other barriers he has to re-employment, mean that he has a severe and prolonged disability within the meaning of the CPP.

[31] The Claimant testified[21] that he had low back pain that he could feel down his legs while he was working as a trucker. Sometimes his legs would go numb. Sometimes the muscles would ache when he walked. His doctor told him that he had pulled muscles, and prescribed Tylenol 3's to address that pain. He testified that he took them at night and that it sometimes helped. The Claimant gave evidence that he adjusted his life and work schedule in order to cope with the

[21] Recording of General Division hearing, from about 8:00 to 20:00.

pain. In 2011, he worked less and earned less because of the problems with his legs. He started working seasonally to better cope with his condition. He did not work during the winter months from 2011 to 2016. The Claimant's employer laid him off in the fall of 2016. He received Employment Insurance from January to June of 2017. He was looking for work when, on August 6, 2017, he had a heart attack.

[32] He first applied for the disability pension just after the heart attack, in August 2017. As a result, it seems that the first CPP medical report is not from the Claimant's family doctor or from his cardiologist, but from an internist who stated he knew the Claimant for two weeks.[22] The diagnosis was myocardial infarction with moderate left ventricular dysfunction. The report confirmed that the Claimant had shortness of breath with exertion due to cardiac disease. The report confirms that the Claimant received a stent (angioplasty) and that he would need 6 months of cardiac rehabilitation (which he ultimately completed). The report listed the Claimant's condition as stable.

[33] The Claimant testified that his leg pain got worse after his heart attack.[23] The pain used to come and go but now it "stayed." He could not walk, stand, or sit for prolonged periods. After 10 to 15 minutes of walking, the leg pain became significant and he had to rest for 15 minutes before being able to continue walking. Later in the evening and especially at night, the Claimant felt pain his legs, even at rest.

[34] In a document from January 2018,[24] the Claimant stated that he had chest pains everyday, and that he had leg pains and muscle pains and that his legs were falling asleep and that sometimes he could not feel them. He stated that the right side of his body between his right leg and shoulder had pain every day. He stated that the pain seemed to be getting worse.

[35] Dr. Van (a cardiologist) provided a report dated March 5, 2018,[25] stating that the Claimant was able to walk with no shortness of breath and no palpitations. He had a stress test, showing he could perform with good exercise tolerance. The left ventricle was able to pump out

[22] GD2-86.
[23] Recording of General Division hearing, from about 20:00 to about 31:00.
[24] GD2-67. The document is dated January 2017 but that appears to be an error, it was received by Service Canada in January 2018.
[25] GD2-47.

a low-normal amount of blood. Dr. Van concluded, based on these tests of his cardiac function, that the Claimant was able to work for more than four hours and was able to lift more than 20 pounds. Dr. Van referred the Claimant to Dr. Pearce (another cardiologist) for a lower extremity arterial duplex (a "scan").[26]

[36] The results of that scan were not good. The Claimant had a

> high-grade stenosis of 75-99% in the right proximal common femoral artery and a high-grade stenosis of 50-99% in the left distal external iliac artery. There is mild disease in the superficial femoral and popliteal arteries with diameter reduction of less than 50%.[27]

[37] The Claimant returned to Dr. Pearce on March 28, 2018, just after the scan. Dr. Pearce prescribed a medication to increase the blood flow to his extremities.

[38] The Claimant returned to Dr. Van on April 12, 2018. Dr. Van learned of the new diagnosis of advanced atherosclerosis disease. Dr. Van wrote a new letter to Dr. Wong that day,[28] confirming that diagnosis. Dr. Van stated that due the Claimant's medical condition "I think he is no longer able to work. I will support him to have a disability."[29]

[39] Accordingly, on April 16, 2018, Dr. Van completed a medical report for CPP.[30] That report states that he had been treating the Claimant for 8 months for severe peripheral vascular disease and ongoing care for claudication (cramping pain from the blocked arteries in the legs). Dr. Van stated that the Claimant's functional limitations were claudication from leg artery blockage, and fatigue and tiredness from his heart attack.[31] Dr. Van stated that the Claimant's LAD (left arterial descending artery) was "stable" and that his prognosis for PVP (peripheral venous pressure) was good if he had surgical intervention. Dr. Van stated that the Claimant's PVD (peripheral vascular disease) had not improved and that he may need a by-pass.

---

[26] GD2-48.
[27] GD2-50 to 51.
[28] GD4-22.
[29] GD4-28.
[30] GD4-42 to 45.
[31] This is what I understand from Dr. Van's form, which is handwritten.

[40] By May 23, 2018, Dr. Pearce did state that the Claimant had significant improvement in his claudication symptoms.[32]

[41] On October 15, 2018, Dr. Pearce stated that he had seen the Claimant for follow up on his peripheral arterial disease.[33] Dr. Pearce found that the "severity and distribution of [the Claimant's] disease is unchanged since his last appointment. His claudication symptoms are stable. His nocturnal cramping is not caused by his PAD. Possibly his Lipitor […]."

[42] The Claimant testified that he cannot work. He has trouble sleeping. He testified that the medication he takes does what it can, but that it is not enough. To a "certain degree, it numbs the pain down" but the pain is "still there". The Claimant testified that he forces himself to walk to avoid further heart attack or stroke. He walks and takes stairs and pushes grocery carts as recommended by his doctor, but he requires long rests of 15 minutes, and that he experiences, numbness, painful pins and needles, and stiffness in his legs. When or if his feet go purple, he says he is supposed to call 911. He feels physically weak. He likes and prefers to work. He cannot do household maintenance and his friends and family help him.

[43] I have reviewed all of the medical evidence and the Claimant's testimony. The Claimant testified in a forthright manner. I put a great deal of weight on Dr. Van's opinion about the Claimant's inability to work as of April 2018. Dr. Van's opinion about the Claimant's ability to work evolved after the scan (which explained the problems with the Claimant's legs, previously treated by the family doctor as pulled muscles). The developments in information available to Dr. Van explain the evolution in his opinion. The Claimant had PVP, PVD, and advanced atherosclerosis disease.

[44] Dr. Van's letter, however, is not perfect. The Minister pointed out (and I do find it strange) that Dr. Van wrote both that the Claimant has "no diabetes, no hypertension and no dyslipidemia" and then in the same letter states, "with that, I would like to aggressively control the patient's blood pressure as well as diabetes and cholesterol."[34]

---

[32] GD4-54.
[33] GD4-56.
[34] GD4-23.

[45] It may be that the statements are not in error at all – in other words, the Claimant does not have diabetes, hypertension or dyslipidemia, and also that Dr. Van would like to keep it that way by "aggressively controlling" those aspects of the Claimant's health so that they do not become an issue in future. I suppose it may be that Dr. Van confused patients in this report and therefore the whole report is somehow unreliable. However, given the clear statement Dr. Van made about the key developments in the Claimant's medical situation (the diagnoses that explained the problems with the Claimant's legs), I do not find that Dr. Van's statement about the Claimant's inability to work is unreliable.

[46] There are multiple references in the Claimant's medical reports about the fact that he has a history of smoking. The Minister points out that there is evidence that appears to conflict about when the Claimant quit smoking. For example, Dr. Pearce wrote that the Claimant stopped smoking after his heart attack,[35] but that is inconsistent with Dr. Van's report of April 2018, which noted that the Claimant had been a non-smoker "for many years." The two reports do appear to be inconsistent on this point, but I cannot conclude, based on the evidence I have, exactly when the Claimant stopped smoking and therefore which report is incorrect in this regard. Further, I do not have enough information to decide why one physician or the other had this fact incorrect – whether it was a transcription error, whether the physician relied on incorrect information from the Claimant, or otherwise.

[47] In my view, the Claimant has proven that he has a serious medical condition. He has coronary artery disease and he had a heart attack in 2017 that resulted in surgery to add a stent. The main medical condition that stops him from working is the advanced atherosclerosis disease. I accept his evidence that the symptoms related to his legs were difficult for him when he was working, but that they got much worse after his heart attack. When coupled with the fatigue, the pain, numbness, pins and needles, and stiffness that he experiences is in legs results in serious limitations in terms of prolonged sitting, standing and walking.

[48] I accept Dr. Van's evidence that the Claimant was no longer able to work as of March 2018. I accept the Claimant's evidence that the medication helps but has not resulted in increased

[35] GD4-52.

functionality for him. In Dr. Van's CPP medical report, under treatment, it looks to me like Dr. Van wrote PVP and "on pentoxifylline" and "not improved."[36]

[49] Dr. Van has not identified the results of cardiac testing (like the stress test) to be the reason why the Claimant cannot work. When he had those results, he stated that the Claimant could work with some restrictions. Once the scan identified the source and extent of the Claimant's leg problems, Dr. Van stated that the Claimant could no longer work.

[50] Dr. Pearce continues to monitor the Claimant. Dr. Pearce has not stated either way whether the Claimant is capable of working. I find that the medication assisted the Claimant's claudication symptoms in his legs and that this condition is "stable." I do not understand the use of the word "stable" by Dr. Pearce to mean that the Claimant no longer experiences functional limitations with his legs that would interfere with his capacity to work. I understand the word "stable" in this context to mean that the symptoms are not changing for the worse since the improvements that occurred in May 2018 just after the Claimant started on the medication.

[51] Dr. Pearce did not weigh in on the Claimant's ability to work at all. He has documented improvements in the Claimant's condition. The Claimant acknowledged that the medication has helped him. I accept Dr. Pearce's evidence that the Claimant's condition improved in May 2018 after he started the medication, and that it was stable in October 2018.

[52] I accept the Claimant's argument: a condition that has improved and stabilized can still be (and is in this case) severe in accordance with the CPP. It has not gotten any worse, but it still means that the Claimant is incapable regularly of pursuing any substantially gainful occupation. The Claimant's functional limitations in terms of sitting, standing and walking, coupled with his weakness and fatigue, mean that he is incapable regularly of pursuing any substantially gainful occupation. Dr. Pearce's evidence does not tell us that the Claimant lacks these limitations or that he is capable of work.

---

[36] GD4-44.

[53] I find that the Claimant's restrictions mean that he cannot do any of the jobs he did in the past. He requires too much alternating from sitting, standing and walking to make this work. I find that a sedentary job would pose similar barriers due to his physical restrictions. In addition, his personal circumstances (as I discussed above) mean that he does not have transferrable skills for sedentary work, and it is not reasonable to expect him to retrain.

Reasonable steps to manage condition; did not refuse treatment

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

[55] Claimants must show that they have taken reasonable steps to manage their medical conditions.[37] 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).[38]

[56] It is clear from the record that the Claimant experienced pain in his low back and legs when he was working as a truck driver. He modified his work schedule significantly, driving only seasonally to attempt to manage the pain. He tried to find out what was wrong. I accept his evidence that his doctor told him that he was having leg cramps. He was compliant with his prescribed medication to address the pain, including Tylenol 3.

[57] After his heart attack, the Claimant had surgery (stents). He continued to see specialists, and when the many symptoms he experienced with his legs was increasing, he had a scan that resulted in a new diagnosis.

[58] There are examples in the medical documents that show that the Claimant's physicians made recommendations to him about his lifestyle, including the importance of exercise. I accept the Claimant's testimony that he followed the advice of his physicians, and I do not view any of the documents in the file as evidence that he refused treatment unreasonably. There is some confusion in the file about when precisely the Claimant quit smoking, but I am satisfied that he has managed his medical conditions sufficiently.

The disability is prolonged

---

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

[59] The Claimant's disability is likely to be long continued and of indefinite duration. This means it is prolonged within the meaning of the CPP.[39]

[60] The Claimant has had problems with his legs since 2011. I have accepted the Claimant's evidence about the limited impact that medication has had on his symptoms and his ability to work. I am therefore satisfied that the symptoms he has are likely to be long continued.

[61] I am satisfied that the Claimant's disability is likely of indefinite duration, too. The Claimant's counsel argued that there is no cure for the Claimant's condition. The Minister did not refute this position. Dr. Van stated that the Claimant could no longer work. Dr. Van's letter does not state that the disability may improve in future, or that the Claimant is only temporarily unable to work. I give that letter a great deal of weight in concluding that the Claimant's has met his onus to show that the disability is likely of indefinite duration.

[62] Dr. Van's CPP medical report does say that there is a "possible peripheral bypass" in future, and that the prognosis is "good if surgical intervention for the PVD." However, at the time of the General Division hearing, there was no evidence that the Claimant was a candidate for that surgery. He was scheduled for further tests. He had no information about the likely outcome of a surgery that his doctor has not yet recommended he have.

[63] The fact that there is a **possible** surgery with a **good** prognosis for PVD is not enough for me to conclude that the Claimant's disability is not likely of indefinite duration. I have no evidence about what the functional limitations are likely to be if the Claimant has this surgery, or what that might mean for his capacity to work. Absent that kind of information, I am satisfied based on all the evidence, that the Claimant has shown that the disability is likely of indefinite duration.

[64] The Claimant proved that he had a severe and prolonged disability as of April 2018, when Dr. Van stated that he was no longer able to work. The Claimant's MQP did not end until

[39] *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.

December 31, 2019. Payments start four months after the disability began,[40] which means payments start August 2018.

[40] *Canada Pension Plan*, s 69.

CONCLUSION

[65] I allow the appeal. 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

HEARD ON:	November 5, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Nadia Bruno, Representative for the Appellant Susan Johnstone, Representative for the Respondent