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

Citation: *C. K. v Minister of Employment and Social Development*, 2020 SST 260

Tribunal File Number: AD-19-542

BETWEEN:

C. K.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Kate Sellar

DATE OF DECISION: March 26, 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] C. K. (Claimant) worked as an aircraft maintenance engineer until January 2005. He was losing feeling in his legs and falling. He says that his family doctor refused to refer him to a specialist. The Claimant says that his doctor told him that North Americans are lazy and do not want to work. The Claimant decided to take an early retirement due to his medical condition. He says that he was having trouble getting out of bed, walking, and started using a "stick" to help him get around. He says that a family member eventually stepped in to get him an appointment with a specialist. The specialist diagnosed chronic cervical disc disease, anterior cervical decompression and fusion. He had decompression and fusion surgery in September 2014.

[3] The Minister denied the Claimant's disability application initially and on reconsideration. The Claimant appealed to this Tribunal. The General Division dismissed his appeal on May 14, 2019.

[4] I granted permission (leave) to the Claimant to appeal the General Division's decision. I found that there was an arguable case for an error.

[5] I must now decide whether 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.

[6] In my view, the General Division made an error of law by providing inadequate reasons. The General Division did not explain how it decided that the Claimant's medical evidence was insufficient. I will give the decision that the General Division should have given. The Claimant is entitled to a disability pension under the CPP.

ISSUE

[7] Did the General Division make an error of law by failing to explain how it decided that the medical evidence was insufficient?

ANALYSIS

Reviewing General Division decisions

[8] 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] The Appeal Division can review cases from the General Division when the General Division makes an error of law.[2]

Failing to give sufficient reasons

[9] Failing to give reasons on a key issue in circumstances that require an explanation could be an error of law.[3] The General Division does not need to talk about all of the evidence, arguments, legislation, or case law in a decision. However, the reasons must allow the reader to understand why a tribunal made its decision, and allow for review or appeal.[4] The Ontario Court of Appeal put it this way:

> the 'path' taken by the tribunal to reach its decision must be clear from the reasons read in the context of the proceeding, but it is not necessary that the tribunal describe every landmark along the way.[5]

Medical Evidence

[1] DESDA, s 58(1).
[2] DESDA, s 58(1)(b).
[3] *Doucette v Canada (Minister of Human Resources Development)*, 2002 FCA 292, at para 6, citing *R v Sheppard*, 2002 SCC 26.
[4] *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.
[5] *Clifford v OMERS*, 2009 ONCA 270.

[10] A disability has to be severe and prolonged on or before the end of the minimum qualifying period (MQP).[6]

[11] When a person applies for a disability benefit, the law requires them to provide "a report of any physical or mental impairment", including

> (i) the nature, extent and prognosis of the impairment,
>
> (ii) the findings upon which the diagnosis and prognosis were made,
>
> (iii) any limitation resulting from the impairment, and
>
> (iv) any other pertinent information, including recommendations for further diagnostic work or treatment, that may be relevant.[7]

[12] Accordingly, when a Claimant applies for a disability pension, there is a CPP Medical Report form that can be completed and signed by a medical professional. A completed form may well cover most information about the physical and mental impairment listed above.

[13] There are cases from the Federal Courts that this Tribunal is required to follow when making decisions about access to CPP disability pensions. The Federal Courts write those decisions when a party asks the court to decide whether a tribunal decision was reasonable (this is called judicial review). As a result, decisions from the Federal Courts do not always tell us everything we need to know about applying the test for a disability pension in every case. We do know from these decisions that:

- The personal circumstances of the Claimant is important, but medical evidence is still required to meet the test for a disability pension;[8]

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[6] *Canada Pension Plan*, s 42(2).
[7] *Canada Pension Plan Regulations*, CRC, c 385, s 68(1).
[8] *Villani v Canada (Attorney General)*, 2001 FCA 248.

- Some kind of objective medical evidence is needed to support an application for a disability pension;[9]

- Medical reports should not be dismissed out of hand just because they are dated after the MQP, if those reports speak to the Claimant's disability at the time of the MQP;[10]

- The Claimant needs to provide some documents that support what the medical situation was at the time of the MQP;[11]

- Evidence about the Claimant's medical condition after the MQP is not relevant where the Claimant has not proved that there was a disability during the MQP.[12]

Did the General Division make an error of law?

[14] The General Division made an error of law. The General Division did not explain what it was about the medical evidence that was insufficient in this case. It is not clear to me from the reasons whether the General Division found that the content of the CPP medical report itself was insufficient and if so, how it was lacking in relation to the legal tests the Claimant needed to meet. This was a key issue that required explanation because it led the General Division to decide that the Claimant did not prove he had a severe disability on or before December 31, 2008, the end of his MQP.

[15] The General Division:

- accepted the Claimant's evidence that the Claimant's symptoms were "present prior to December 2008";

- accepted that the Claimant was "mismanaged medically"; and

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[9] *Warren v Canada (Attorney General)*, 2008 FCA 377.
[10] *Bowles-Fraser v Canada (Attorney General)*, 2018 FCA 308.
[11] *Dean v Canada (Attorney General)*, 2020 FC 206.
[12] *Canada (Attorney General) v Hoffman*, 2015 FC 1348.

- concluded that there is **"insufficient medical evidence on which to base a finding that [the Claimant's] disc problems, or a combination of his medical conditions, limited his capacity to work on or before his MQP."[13] [emphasis added]**

[16] The General Division decision contains three paragraphs that describe the medical reports in the file. First, the decision describes the CPP medical report the Claimant's family doctor completed, as well as the attached neurosurgeon's report. Second, the decision describes some medical information that describes the Claimant's condition after the end of the MQP, including an internal medicine report after the Claimant's surgery to place a stent after a cardiac event, as well as emergency room visits for gout and for foot pain. Finally, the General Division described the additional medical records the Claimant provided after the hearing, including records that showed that the Claimant injured his ribs in 2004 and that he had spondylosis in 2005.

[17] This the General Division's analysis about the medical evidence:

> The Minister submits there is a significant lack of objective medical information at the MQP of December 2008. I agree. The Minister indicated a request was made for a narrative report from the family doctor regarding the Claimant's medical conditions in 2008 and if these conditions prevented him from working at the time.[15] The family doctor did not provide a report. The Claimant wrote[16] that when he made inquiries at the health clinic for his records following the hearing, he was told a flood in 2010 had damaged the earlier records and his chart was presumed destroyed.[17] The Claimant's testimony was straightforward and credible. But while I accept the Claimant's testimony that he was mismanaged medically and that his symptoms were present prior to December 2008,[18] there is insufficient medical evidence on which to base a finding that his disc problems, or a combination of his medical conditions, limited his capacity to work on or before his MQP.[14]

[18] The Claimant argues that his medical reports, along with his testimony and the testimony of his witnesses, was sufficient to show that he had a severe and prolonged disability on or before the end of his MQP. The Claimant provided objective evidence that he had a doctor who was aware of his symptoms related to the main medical condition during the MQP. The Claimant provided subjective evidence about medical mismanagement by the physician who was treating

[13] General Division decision, para 14.
[14] General Division decision, para 14.

him during his MQP. The General Division member accepted that evidence. The Claimant provided medical evidence that he eventually accessed surgery for his main medical condition. Additional medical records were not available because of flooding, an issue that was outside of the Claimant's control.

[19] The Minister argues that it was the General Division's job to weigh the evidence and to reach conclusions about that evidence based on the legal tests. The Minister argues that the reasons were not insufficient. The General Division reviewed all of the evidence and decided that the medical evidence was not sufficient to show that the Claimant's medical condition was serious enough to restrict him from working on or before the end of the MQP. The Minister argues that the General Division specifically discussed the CPP medical report from the Claimant's family physician. The Minister argues that the decision does not state that the issue with the medical reports was that they needed to have been written during the Claimant's MQP.

[20] In my view, it is not clear from the reasons (either in the descriptions of the medical reports or the analysis) what it was about the medical evidence that was "insufficient" to show that the Claimant's disc problems, or combination of his medical conditions, limited his capacity to work on or before the end of the MQP. The report from the family doctor confirmed that the Claimant had chronic cervical disc disease, anterial cervical decompression and fusion. It confirmed he had weakness in upper left and lower left and that he used a walking aid for movement. The physical findings were weakness in upper and lower legs and the prognosis was unknown. The report confirmed that the Claimant's doctor treated him for the main medical condition starting in 2004 (before the end of the MQP).

[21] Admittedly, the family doctor could have done a more complete job of completing that CPP medical report form. I am focussed on the CPP medical report specifically, as that document confirms that the family doctor treated the Claimant for the condition during the MQP (starting in 2004). The form does state the diagnosis, describes weakness (which it seems to me would be a limitation relevant to working for a person in aircraft maintenance), and states that the prognosis is unknown. Given this, it is not clear to me what the General Division means by saying that the medical evidence is insufficient to show that the Claimant capacity was limited

before the end of the MQP. On its face, the medical evidence does explain that the Claimant had disc problems, that he had weakness, and that those problems occurred during the MQP.

[22] If the General Division's analysis is that the medical reports do not establish that the Claimant was incapable of work during the MQP, this is not clear to me from the reasons. Additionally, the General Division clearly accepted that the Claimant had symptoms before the end of the MQP and that his family doctor mismanaged his case. Accordingly, it seems reasonable that the family doctor will not have any more to say about the Claimant's capacity to work at the time of the MQP that would warrant weight. It seems to me that the family doctor in this case is not likely to have much more to say in a form about whether the Claimant had capacity to work during the MQP. This was the same family doctor who medically mismanaged the Claimant during the MQP, refused to refer the Claimant to a specialist, and then told the Claimant that North Americans were lazy and do not want to work.

[23] The Claimant takes the position that this doctor mismanaged his case, which led the Claimant to retire early from work. If the General Division truly accepts the Claimant's evidence about having symptoms before the end of the MQP and about being medically mismanaged, then surely evidence that confirms he had the diagnoses during the MQP is sufficient? If the General Division's analysis means that the medical evidence must establish all parts of the test for a severe disability on its own (without gaps filled in by the Claimant's subjective evidence), that is not clear from the reasons. Reasons that explain how the General Division concluded that the medical evidence was insufficient are required. Medical evidence does not have to establish, on its own, that the Claimant lacked capacity to work.

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.[15] 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

[15] DESDA, s 59.

that the General Division should have given. The Minister argues that the outcome should be the same: the Claimant is not entitled to the disability pension.

[25] The record from the General Division is complete. I will give the decision that the General Division should have given about whether the Claimant is entitled to a disability pension. This is the most fair and efficient way forward.[16]

[26] The Claimant has shown that he had a severe and prolonged disability within the meaning of the CPP when he stopped working in January 2005. The Claimant's medical evidence and his other barriers to employment are enough to show that he was incapable regularly of pursing any substantially gainful occupation when he stopped working in January 2005. He took reasonable steps to manage his medical condition, and he did not refuse 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 CPP. A person's disability is severe if it makes them incapable regularly of pursuing any substantially gainful occupation.[17]

The Claimant's Functional Limitations

a) The Witness Testimony about the Claimant's Functional Limitations

[28] The Claimant gave evidence about his functional limitations starting in 2004 (several years before the end of the MQP) up to the time of the hearing (many years after the end of the MQP).[18] I put great weight on the Claimant's testimony. I accept his testimony about the treatment he received from his family doctor starting in 2004 up until a member of his family got him in to see a specialist. I accept his testimony about the advice he says he received from the specialist, and about his functional limitations after his surgery up to the time of the General Division hearing. I find that the Claimant gave his testimony in a forthright way. He sometimes

[16] *Social Security Tribunal Regulations*, s 2.
[17] *Canada Pension Plan*, s 42(2).
[18] Recording of General Division hearing: the Claimant's testimony is mostly from 25:00 to about 51:00.

had trouble understanding what either his representative[19] or the General Division member was asking, but I find that the Claimant did his best to be responsive.

[29] The Claimant testified that by 2004, he was experiencing periodic total paralysis in his legs. By paralysis, the Claimant said that his legs, feet, and hands would not work. They would go numb, his legs would get shaky, and he lost control of those muscles. He would fall and then he would not be able to get up again, sometimes for half an hour. Dr. Kamel (his family doctor). sent the Claimant for x-Rays. He diagnosed mild arthritis and told the Claimant to take over the counter Advil and Tylenol and live with it. The Claimant was under the impression that the problem was arthritis in his knee. The Claimant saw his doctor regularly, and asked to see a specialist but Dr. Kamel refused.

[30] The Claimant could not do his job. He could not stand on a ladder or get up on the platform he needed to be on to do his job in aircraft maintenance. He was having real trouble with stairs. Dr. Kamel observed that people in North America do not want to work, and that Newfoundlanders are worse in this regard. He did agree, however, to sign the Claimant off work for two or three weeks. When the Claimant returned for reassessment and there was no change in symptoms, he felt he had no choice but to take early retirement from work. He testified that he had looked into other jobs in his workplace, but desk jobs (within his physical abilities) were for management. The Claimant testified that he was experiencing numbness in his hands, so he did not believe that he could do sedentary work even though he could tolerate sitting. The Claimant also explained that he was not “management material.”

[31] The Claimant did not look for other work. When he had the paralysis in his legs, he would fall. He could not stand again for half an hour. He was using a “stick” to stand up. He was not doing much of anything in a typical day because he could not get around. He also still had numbness in his hands.

[32] The Claimant testified that a family member from the medical community got him in to see a specialist. The specialist ordered an emergency MRI scan, and told him that he had problems much worse than his knee. The specialist recommended surgery. The Claimant testified

[19] The Claimant’s representative is not legally trained.

that the specialist told him he would have permanent damage to his nerves and that there was a possibility that with surgery, he would not see any improvement. I found this testimony compelling and reliable. The Claimant described the basic way the specialist explained the nerve damage to him: the specialist asked him to imagine his spine as a garden hose, and to think of the process of removing a clamp from that hose as the decompression and fusion surgery. It is necessary to remove the clamp, but because the clamp was there for so long, you cannot expect the hose to take on its original shape again. The nerves are pinches and have been pinched for so long, there is irreparable damage.

[33] The Claimant testified that the specialist was right: he did not see improvement after the surgery in 2014. He testified that every day is a struggle and that he has numbness in his hands, even at the time of the hearing. After the surgery, the Claimant testified that the family doctor never asked him how he accessed the surgery, or said anything about his approach to the Claimant's care from 2004 until the surgery in 2014.

b) Available Medical Evidence about Functional Limitations

[34] The Claimant provided medical records that show that he fractured some ribs before the end of the MQP.[20] This is consistent with his evidence about falling because of paralysis in his legs before he took early retirement in 2005.

[35] The CPP Medical Report from Dr. Kamel is dated March 24, 2017. That report confirms that Dr. Kamel has known the patient for more than ten years, and that he started treating the patient for the main medical condition in 2004.[21]

[36] The report states that the Claimant has chronic cervical disc disease (anterior cervical decompression and fusion from C5 to C7). He has weakness in the upper leg and lower leg. The document says that the Claimant uses a walking aid for movement. Under relevant physical findings and functional limitations, Dr. Kamel stated that that Claimant had weakness "u.l" and "l.l" which I understand to mean upper leg and lower leg. He confirmed that there were no further consultations or medical investigations planned, and he did not prescribe the Claimant

[20] GD8-3 and GD8-7.
[21] GD2-70.

any medication. Dr. Kamel left the box to discuss treatment blank. In the section for prognosis, Dr. Kamel wrote “unsure”.

[37] On May 30, 2017, Service Canada wrote to Dr. Kamel, requesting more information about the Claimant’s medical conditions in 2008 and following.[22] It looks to me like Dr. Kamel may have only answered the first question, which was “what were [the Claimant’s] condition sin 2008?” To which it looks like Dr. Kamel responded, “please find attached copies of different consultants reports.”[23]

[38] The Claimant applied for and received the disability tax credit. Dr. Kamel confirmed that the Claimant was markedly restricted in walking and dressing as of 2004.[24] Dr. Kamel stated that even with appropriate therapy, education, and devices, the Claimant had significant restrictions in two or more basic activities of daily living (dressing and walking). These restrictions existed together, all or substantially all of the time.

[39] Reports from the neurosurgeon in 2014 and 2015[25] stated that he Claimant was doing quite well after his surgery. Six months after surgery, he had improvements in his hands and legs and his walking. His stiffness also improved somewhat. A year after surgery, his hand tightness and clumsiness improved significantly, and his gait improved. He only required a cane if he was walking long distances. The reports do not place restrictions on the Claimant’s activities. Although by 2014, the Claimant was long since retired and was almost 60 years old.

There is also evidence in the file about the Claimant’s heart health (he had a stent placement after the end of the MQP)[26] and he has experienced pain serious enough in 2012 that he attended the emergency department. The diagnosis was gout.[27]

Analyzing the Evidence on Functional Limitations: no residual capacity to work

[22] GD2-67 and 68.
[23] GD2-65.
[24] GD2-80.
[25] GD2-74 to 76.
[26] GD2-42 and 46.
[27] GD2-40.

[40] Although the medical evidence was thin, the Claimant proved (using a combination of medical evidence and testimony) that he had functional limitations that affected his ability to work. At the end of the MQP, he did not have residual capacity to work.

[41] I find that the Claimant had functional limitations that negatively affected his ability to work in 2004 and continuously after that. The limitations required him take early retirement from his job in 2005. The Claimant's medical evidence is thin. There are two key reasons why.

[42] First, the Claimant did not produce medical records from Dr. Kamel's office for 2004 (before he stopped working) up until the end the MQP on December 31, 2008. The documents in the file state that a flood in 2010 damaged the records from that time. His medical chart is presumed destroyed. I accept that explanation.

[43] Second, the Claimant testified and I accept that he was medically mismanaged by Dr. Kamel from 2004 right through until the Claimant found a specialist to help him years and years after the MQP.

[44] The Claimant's medical evidence that actually speaks to the MQP therefore consists of the CPP medical report, written by a family doctor who the Claimant alleges mismanaged his medical case and did not have the benefit of medical records to review in order to complete the form. The Claimant also has the disability tax credit documents, which certify that he had limitations starting in 2004, which was before the end of the MQP. I appreciate that the test for the disability tax credit is not the same as the test for a CPP disability pension. However, the information doctors provide on the disability tax credit documents about functional limitations can be highly relevant in CPP disability cases as well.

[45] CPP disability pensions are for people who can show that they have a severe and prolonged disability on or before the end of their MQP. To show a severe disability, the focus is on capacity for work, not just diagnosis. It is clear from the requirements set out in the CPP and decisions from the Federal Court of Appeal that people are not qualified for a disability pension if they do not have any medical evidence at all that speaks to their condition during the MQP.

[46] However, a claimant can establish that they are entitled to a disability pension with a combination of medical documents and their own testimony about their functional limitations

and how they affected their ability to work during the MQP. The focus should not be on making sure that everything the claimant has to say about the condition and limitations is backed up by a medical document. The idea is to assess and weigh all the evidence and come to a conclusion about the claimant's limitations and ability to work. The disability pension is not just for claimants who have access to extensive medical documentation, or medical documentation that speaks to every aspect of the legal tests.

[47] The Claimant here has medical evidence that speaks generally to his condition before the end of the MQP. There is a diagnosis and there is a brief explanation about limitations. The Claimant has medical evidence that shows what treatment he had (the decompression and fusion surgery) long after the end of the MQP.

[48] The Claimant gave detailed testimony that explains why some documents are unavailable (the flood), and why other documents may be vague (they were prepared by a physician who mismanaged the file and made comments that showed a potential bias when assessing subjective complaints from patients and assessing their work capacity). I am not at all surprised (given the Claimant's history with the Dr. Kamel as he described it) that Dr. Kamel did not respond to the Minister's request for more information about the Claimant's capacity to work and treatment history. I refuse to draw any adverse inference against the Claimant for that lack of response from his doctor.

[49] I find that the combination of the Claimant's testimony[28] and his medical evidence is sufficient to show that he had physical limitations that made him incapable of doing his job in aircraft maintenance as of January 2005 and following.

[50] I recognize that the specialist stated that the Claimant was doing well after his decompression and fusion surgery. I accept that the Claimant's gait improved after the surgery and that generally he was doing well. However, I also accept the Claimant's more detailed evidence about the warning he received about the surgery and the fact that it would not necessarily repair the nerve damage, and that he might not see much change in his functionality.

[28](and the testimony of his witnesses, which I find largely corroborated his description of his limitations and his problems in accessing medical care during the MQP)

[51] I find that the Claimant’s functionality improved such that he did not always need a “stick” anymore to aid with walking. However, I also accept the Claimant’s evidence that he still experiences weaknesses in his legs and numbness in his hands. When he experiences the paralysis he described, he sometimes does not regain control of his legs for half an hour. In my view, the Claimant has never been capable again of the kind of physical work that he did back in 2004. He has weakness in his legs and numbness in his arms as evidenced by Dr. Kamel, he cannot dress himself, and he cannot do basic tasks around the house.

Personal circumstances are barrier to employment

[52] When deciding whether a disability is severe, I must consider both the Claimant's personal circumstances and the functional limitations resulting from medical conditions.[29] 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.[30]

[53] When the MQP ended on December 31, 2008, the Claimant was 53 years old. He had a Grade 11 education and had a one-year diploma that allowed him to do aircraft maintenance. In his Questionnaire for CPP benefits, he stated that he had been in aircraft maintenance since 1975. He speaks English, but during the hearing at the General Division, it was clear that he struggled to understand the meaning of some of the questions from his representative and from the General Division. The Claimant speaks plainly and is quite succinct. In response to a question about his abilities and any alternate sedentary kinds of work he might be able to do, he stated simply that he is "not management material."[31]

[54] In my view, the Claimant has some barriers to employment. At the time of the MQP, he was old enough to take "early retirement" rather than simply quit. However, if he had been healthy, he may well have worked for 7 or even 12 more years (I am referring here to the dates for early retirement and retirement under the CPP for the Claimant). He does not have a high school (or equivalent) diploma, which is a barrier to many types of employment. His English does not represent a barrier. However, in terms of employment background, he has worked exclusively in aircraft maintenance for over 30 years. The lack of varied experience and his limited education will make it more difficult for him to retrain for work that is less physical. It seems to me that based on the style and content of his communication, retraining for a sedentary role would not be a natural fit for the Claimant.

[55] These barriers, along with his functional limitations (including the numbness in his hands), show that the Claimant's disability was severe before the end of the MQP.

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[29] *Bungay v Canada*, 2011 FCA 47.
[30] *Villani v Canada (Attorney General)*, 2001 FCA 248
[31] General Division hearing recording, at approximately 37:30.

[56] The Claimant has not worked since his early retirement in January 2005. I do not find that he had any capacity for work at the end of his MQP on December 31, 2008. I accept his evidence that he had numbness in his hands, and that he had these paralysis symptoms in his legs that made it too difficult for him to be mobile enough to do his old job in aircraft maintenance. His condition was not any better at the end of the MQP than it was when he stopped working in January 2005.

[57] I find that the Claimant was incapable regularly of pursuing any substantially gainful occupation on or before the end of his MQP. He has barriers to re-employment, including a lack of education, the lack of diversity in the types of work experience he had over the years, and the physical difficulty in retraining for a sedentary job. I conclude, based on the evidence, that he was not capable regularly for work, even in a sedentary capacity because of the episodes of paralysis he experiences in his legs, and the numbness in his hands.

Reasonable steps to manage his condition and did not refuse treatment

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

[59] Claimants must show that they have taken reasonable steps to manage their medical conditions.[32] 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).[33]

[60] The Claimant’s situation was unique. He lives in a small community and his evidence (as well as the evidence of one of his witnesses) explained that the family doctor in the area was not well-respected. I accept his evidence that he stayed in contact with that doctor throughout the time he struggled with the symptoms he had with his legs. He followed the recommendation that he received, which was to take over the counter pain medications and live with it. He made the difficult decision to stop doing a job that he could no longer do and take an early retirement because the work was beyond his physical abilities. He stopped working after he sustained injuries from falling. He did not attend at the emergency room or try to get a second opinion. He

[32] *Sharma v Canada (Attorney General)*, 2018 FCA 48.
[33] *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

eventually found his way to a specialist and then agreed to the surgery the specialist recommended.

[61] In a case of medical mismanagement like this one, there is a limit as to what the claimant needs to have done for their steps to be reasonable. In light of all the circumstances (although it would have been better for the Claimant to gain access to a specialist sooner), I will not find that he acted unreasonably by following his family doctor's orders to "live with it" because it was arthritis. The Claimant deferred to his family doctor for a long time, even when his functional limitations were so severe he decided to retire early. However, there is a reasonableness to that decision in light of the Claimant's community context and lack of medical knowledge.

The Claimant's disability is prolonged

[62] 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.[34]

[63] I accept that the Claimant's disability started in about 2004. It is therefore long-continued.

[64] I find, based on the Claimant's evidence and the available medical evidence, that the disability is of indefinite duration.

[65] The CPP Medical Report does not give a positive prognosis, stating only "unknown."[35] This statement does not provide an end date for the Claimant's symptoms. Dr. Kamel did not provide any information about the source of the uncertainty, and I cannot infer what he might have meant. I accepted the Claimant's evidence about how little this particular physician did to address the Claimant's concerns about his health, culminating in the Claimant's decision to retire early. I also accept that as late as 2017 (many years after the end of the MQP), Dr. Kamel stated for the disability tax credit that the Claimant still gets weakness and needs help for walking and dressing. He did not give information on that form to suggest that the Claimant's disability would improve at any given point.

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[34] *Canada Pension Plan*, s 42(2).
[35] GD2-70.

[66] The Claimant gave compelling testimony that I find helpful in understanding whether his condition improved after his surgery, and whether it might ever get better. The reports from the specialist about the Claimant's surgery sound as though the Claimant made some important improvements in terms of gait, and tightness/clumsiness in his hands. These reports do not explain how often the Claimant is still having the episodes he calls "paralysis" in which he loses the strength in his legs and cannot stand up. The reports also do not explain how often the Claimant was experiencing numbness in his hands, which I do not understand on its face to be the same thing as tightness or clumsiness.

[67] I accept the Claimant's very specific and reliable evidence about the permanent nature of his nerve damage (the garden hose analogy). He still seems to have the symptoms he used to have: his hands will go numb and his legs give out on him and he cannot get up again for half an hour.

[68] The Claimant proved that he had a severe disability when he stopped working in January 2005. His MQP ended on December 31, 2008. For the purpose of payment, the Claimant cannot be considered disabled more than 15 months before he applied. In this case, the Minister received the Claimant's application in March 2017. As a result, the earliest the Claimant can be considered disabled is December 2015. Payments start four months after the disability began, which means that payment start April 2016.

CONCLUSION

[69] The appeal is allowed. The General Division made an error. I gave the decision that the General Division should have given: the Claimant is entitled to a disability pension under the CPP.

Kate Sellar
Member, Appeal Division

HEARD ON:	November 8, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. L., Representative for the Appellant Viola Herbert, Representative for the Respondent