



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *LP v Minister of Employment and Social Development*, 2021 SST 116

Tribunal File Number: AD-21-20

BETWEEN:

**L. P.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: March 30, 2021

## **DECISION AND REASONS**

### **DECISION**

[1] The appeal is dismissed.

### **OVERVIEW**

[2] L. P. (Claimant) earned a university degree and a number of professional credentials as a financial planner. She worked for financial institutions until 2009. For approximately six months starting in 2016, the Claimant worked as a cashier in a coffee shop. She worked for about 40 days at a bank after this. She has not worked since then.

[3] The Claimant applied for a Canada Pension Plan disability pension and says that she is disabled by mental health illness (episodic schizophrenia). She also has a knee condition that limits her physically.

[4] The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal. It decided that there was not enough evidence to prove that the Claimant had a severe disability before the end of her minimum qualifying period (MQP – the date by which a claimant must prove that they are disabled to receive the disability pension).

[5] Leave (permission) to appeal to the Tribunal's Appeal Division was granted. The appeal had a reasonable chance of success because the General Division may have made an error in law by failing to consider the Claimant's activities at the end of the MQP. I have now read the documents filed with the Tribunal, including the parties' written submissions to the Appeal Division, the General Division decision, and the medical evidence filed with the General Division. I have also listened to the parties' oral submissions and the recording of the General Division hearing.

[6] The General Division made no error in law. It did not base its decision on any important

factual error. Therefore, the appeal is dismissed.

## ISSUES

[7] Did the General Division make an error in law:

- a) by failing to consider the Claimant's activities at the end of the MQP; or
- b) by failing to consider her physical limitations?

[8] Did the General Division base its decision on at least one important factual error because:

- a) it failed to give enough weight to Dr. Pityk's evidence;
- b) it failed to consider that the Claimant worked short-term jobs before 2009; or
- c) it failed to consider whether the Claimant's disability is prolonged?

## ANALYSIS

[9] An appeal to the Tribunal's Appeal Division is not a rehearing of the original claim. Instead, the Appeal Division can only decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) made an error in law; or
- d) based its decision on an important factual error.<sup>1</sup>

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<sup>1</sup> This paraphrases the grounds of appeal set out in section 58(1) of the *Department of Employment and Social Development Act*.

## **Errors in Law**

### 1. The Claimant's activities

[10] To be disabled, the Claimant must prove that she had a severe and prolonged disability before the end of the MQP. The MQP is based on when and how much the Claimant contributed to the Canada Pension Plan from her earnings. The Claimant's MQP is December 31, 2012.

[11] A disability is severe if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.<sup>2</sup> To decide whether the Claimant had a severe disability, the General Division must consider all of the Claimant's medical conditions, as well as her personal characteristics.<sup>3</sup> The General Division did so. Its decision summarizes the medical evidence that was presented orally and in writing. In addition, the General Division examined the Claimant's personal characteristics. The decision states that the Claimant was 44 years old at the end of the MQP, that she has a university degree and years of experience in business, and that English is her first language.<sup>4</sup>

[12] In addition, at the hearing, the General Division member asked the Claimant about her daily activities, particularly as Dr. Joseph reported them in his January 2009 report. This is not set out in the decision. However, it is not necessary for the written decision to refer to each and every piece of evidence that is before it. The General Division is presumed to have considered all of the evidence.<sup>5</sup> Tribunal members distill and synthesize masses of information and, in the end, express only the most important factual findings and justifications for them.<sup>6</sup>

[13] The General Division examined the evidence about the Claimant's medical conditions, her personal characteristics, and her activities of daily living. Therefore, the General Division made no error in law.

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<sup>2</sup> Section 42(2)(a) of the *Canada Pension Plan*.

<sup>3</sup> *Villani v Canada (Attorney General)*, 2001 FCA 248.

<sup>4</sup> General Division decision at para 24.

<sup>5</sup> *Simpson v Canada (Attorney General)*, 2012 FCA 82.

<sup>6</sup> *Canada v South Yukon Forest Corporation*, 2012 FCA 165.

## 2. The Claimant's physical limitations

[14] The Claimant also argues that the General Division made an error because it failed to consider her physical limitations, particularly with respect to her knee. However, the General Division considered this. Its decision states that, although the Claimant had knee surgery many years ago and has ongoing knee pain, there was no evidence that this condition prevented her from working at the end of the MQP.<sup>7</sup> Therefore, the General Division made no error in law.

### **Important Factual Errors**

[15] The Claimant also says that the General Division based its decision on a number of important factual errors. To succeed on this basis, she must prove three things, namely:

- a) that a finding of fact was erroneous (wrong);
- b) that the finding was made perversely, capriciously, or without regard for the material that was before the General Division; and
- c) that the decision was based on this finding of fact.<sup>8</sup>

### 1. Dr. Pityk's evidence

[16] First, the Claimant says that the General Division based its decision on an important factual error that she did not have a severe disability, since it failed to give sufficient weight to Dr. Pityk's evidence. She argues that more weight should have been given to his oral and written evidence because he has treated the Claimant's mental health illness longer than her other doctors.

[17] Dr. Pityk has treated the Claimant for longer than other mental health professionals. However, it is for the General Division to accept all of the evidence from the parties, weigh it, and make a decision based on the law and the facts. The General Division weighed the medical evidence. Its decision explains that less weight was given to Dr. Pityk's evidence because he had

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<sup>7</sup> General Division decision at para 12.

<sup>8</sup> Section 58(1)(c) of the *Department of Employment and Social Development Act*

no knowledge of the Claimant's condition before the end of the MQP. He began to treat her approximately five years after this.<sup>9</sup>

[18] The General Division also considered the medical evidence about the Claimant's condition before the end of the MQP.<sup>10</sup> In particular, in January 2009, Dr. Joseph conducted an assessment and wrote that the Claimant could gradually return to work at that time.<sup>11</sup> Dr. Koka also examined the Claimant in 2009. He made no comment about the Claimant's ability to work.<sup>12</sup>

[19] The Appeal Division cannot intervene in a case only because one party is unhappy with how the General Division weighed the evidence that was before it. The Appeal Division cannot reweigh evidence to reach a different conclusion than the General Division.<sup>13</sup>

[20] The General Division decision also states that Dr. Pityk wrote that, in April 2009, another doctor told the Claimant not to work, but that he did not give the source of this information. The General Division assumed that the Claimant was the source.<sup>14</sup> The Claimant argues that the General Division should not have made this assumption and that there was no basis for it.

[21] The finding of fact that the Claimant was the source of the information may have been a mistake. However, if it was, it was not made in a perverse or capricious manner or without regard to the material that was before the General Division. The General Division decision sets out the basis for this finding of fact—that Dr. Pityk did not specify the source of the information.

[22] In addition, the General Division decision was not based on where this information came from.

[23] Therefore, it is not an important factual error. The Appeal Division cannot intervene on this basis.

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<sup>9</sup> General Division decision at para 21.

<sup>10</sup> General Division decision at paras 14 to 18.

<sup>11</sup> GD2-31.

<sup>12</sup> GD2-67.

<sup>13</sup> *Simpson v Canada (Attorney General)*, 2012 FCA 82.

<sup>14</sup> General Division decision at para 19.

## 2. The Claimant's work history

[24] Second, the Claimant says that the General Division based its decision on an important factual error because it failed to consider that she worked short-term jobs before 2009. However, during the General Division hearing, the Tribunal member specifically asked the Claimant about the résumé that she had filed with the Tribunal. The Claimant testified that it was accurate. This document shows that the Claimant worked in different financial institutions, each for a number of years.<sup>15</sup> The only short-term job she held was long after the end of the MQP, when she worked for 40 days for a bank.

[25] In addition, the decision was not based on how long she worked at each job, but on her capacity to work at the end of the MQP. Therefore, the General Division did not base its decision on any important factual error in this regard.

## 3. Failure to consider whether the disability is prolonged

[26] Finally, the Claimant argues that the General Division based its decision on an important factual error because it failed to consider whether her disability is prolonged. However, to be disabled under the *Canada Pension Plan*, a claimant must have a disability that is **both** severe and prolonged.<sup>16</sup> So, if a disability is not severe, there is no need to decide whether it is prolonged.

[27] The General Division made no error about this because it decided that the Claimant's disability was not severe at the relevant time.

## **CONCLUSION**

[28] The appeal is dismissed for these reasons.

Valerie Hazlett Parker  
Member, Appeal Division

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<sup>15</sup> GD2-173.

<sup>16</sup> Section 42(2)(a) of the *Canada Pension Plan*.

HEARD ON:	March 23, 2021
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	L. P., Appellant  Daniel Willis , Counsel for the Respondent