



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *CF v Minister of Employment and Social Development*, 2021 SST 207

Tribunal File Number: AD-21-8

BETWEEN:

C. F.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Kate Sellar

DATE OF DECISION: May 20, 2021

DECISION AND REASONS

DECISION

[1] I am allowing the appeal. The General Division made an error of fact. To fix the error, I am giving 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. F. (the Claimant) was in a car accident in May 2018. The Claimant is a police officer. He stopped working and experienced both physical and mental health conditions after the accident.

[3] In October 2018, the Claimant applied for disability pension under the *Canada Pension Plan* (CPP). The Minister denied the application initially and on reconsideration. The Claimant appealed to this Tribunal. The General Division dismissed the appeal. The General Division found that the Claimant's disability was not severe within the meaning of the CPP, and that he had some capacity to work. The Claimant asked for permission (leave) to appeal to the Appeal Division.

[4] I gave the Claimant leave (permission) to appeal the General Division's decision. I found there was an arguable case that the General Division made an error of law by failing to consider all of the Claimant's conditions together.

[5] I must decide whether the General Division made an error under the *Department of Employment and Social Development Act* (DESDA). If the General Division did make an error, I must decide how to remedy (fix) it.

[6] I find that the General Division made an error of fact by ignoring important evidence. I will give the decision that the General Division should have given: the Claimant is entitled to a disability pension.

ISSUE

[7] Did the General Division make an error of fact by ignoring the psychiatric report and the catastrophic assessment reports?

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 it made an error calling for a review. That review is based on the wording of the DESDA, which sets out the grounds of appeal. The three reasons for an appeal arise when the General Division fails to provide a fair process, makes an error of law, or makes an error of fact.¹

The General Division ignored some evidence

[9] The Claimant argues that the General Division failed to consider and discuss the content of his psychiatric report and the catastrophic assessment reports from September 2020. The Claimant's minimum qualifying period (MQP) ended on December 31, 2020.² These reports were close to the end of the MQP, and were important.

[10] The General Division does not have to refer to every piece of evidence in its decision.³ I must presume the General Division considered all of the evidence. However, the Claimant can overcome that presumption by showing that the evidence that the General Division was silent about was important enough that the General Division needed to discuss it.⁴

[11] In other words, I can infer that the General Division ignored evidence when the General Division fails to mention some relevant evidence in its reasons.⁵ The more important the

¹ DESDA, s 58(1).

² GD2-35.

³ The Federal Court of Appeal explained this in a case called *Simpson v Canada (Attorney General)*, 2012 FCA 82.

⁴ The Federal Court decision in *Lee Villeneuve v Canada (Attorney General)*, 2013 FC 498 explains this idea.

⁵ *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), para 17.

evidence that the General Division fails to mention, the more likely the silence about that evidence leads to the inference that the General Division ignored it.⁶

[12] The psychiatric report states that the Claimant had:

- major depressive disorder,
- post-traumatic stress disorder (residual symptoms),
- chronic pain associated disorder, both due to psychological factors and a general medical condition, and
- post-concussion syndrome (neurocognitive disorder due to mild traumatic brain injury).

[13] The report describes the pain the Claimant experiences because of the car accident. The report assigns the Claimant a Global Assessment of Functioning (GAF) score of 40.⁷ The prognosis is poor due to “chronicity of his symptoms and poor response to the treatment provided to him.”⁸

[14] The Claimant argues that the General Division decision makes no mention of the Claimant’s major depressive disorder, posttraumatic stress disorder or the GAF scores, “despite these psychological issues being central to the [Claimant’s] disability.”⁹ The Claimant notes that a GAF score of 40 show a major impairment in several areas of functioning such as work, family, and home life.

[15] The catastrophic assessment report concluded that the Claimant meets the criteria for a catastrophic injury designation based on his whole person impairment rating and from a psychiatric perspective.

⁶ *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319, para 39; and *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), para 16 and 17.

⁷ GD10-13 to 14 contains the Claimant’s diagnoses and GAF score.

⁸ GD10-63.

⁹ AD1-13.

[16] The Claimant points out that the assessment was important because it represents a number of medical experts working together to figure out the extent of the Claimant's level of impairment. The Claimant's WPI was 55%, which satisfies criterion 7 for catastrophic impairment.¹⁰

[17] The expert assessor found three "class 4" marked psychiatric impairments in the Claimant's social functioning, concentration, persistence, pace and adaptation.¹¹ The assessor also found one "class 3" moderate psychiatric impairment in activities of daily living. These findings mean that the Claimant has what is called "catastrophic impairment".¹²

[18] The General Division decision:

- describes some of the Claimant's diagnoses as adjustment disorder, mixed anxiety and depressed mood;¹³
- mentions some relevant treatment (anti-depressants and assessments by a psychiatrist)¹⁴;
- mentions the phrase "psychological/emotional symptomology" in relation to a different report;¹⁵ and
- refers to the family doctor reporting that the Claimant had emotional issues and was dealing with a psychiatrist.¹⁶

[19] The Minister relies on the fact that the General Division does not have to refer to every piece of evidence in its decision. The Minister argues that the reports the Claimant alleges were ignored do not help the Claimant to establish a severe disability under the CPP anyway. The standard for a severe disability for CPP disability pension is different from the standard for a

¹⁰GD10-37.

¹¹GD10-34 explains that class 4 (marked impairment) is impairment that significantly impedes useful functioning; GD10-63 summarizes the scores on social functioning, persistence, and pace.

¹²GD10-71.

¹³General Division decision, para 2.

¹⁴General Division decision, para 11.

¹⁵General Division decision, para 16.

¹⁶General Division decision, para 24.

catastrophic assessment for the purpose of accident benefits. The report stated that the Claimant could be considered for a vocational assessment, job retraining, and/or transferable skills analysis. This suggests the Claimant's disability is not severe for the purpose of the CPP disability pension.¹⁷ The Minister also argues that the occupational therapist's part of the CAT report states that the Claimant advised that he worked hard to be an officer and working in an administrative job is not his passion.¹⁸

[20] In my view, the General Division decision does not grapple with the content of the two reports that the Claimant relies on here. The General Division failed to consider and analyze the psychiatric diagnoses and limits to the Claimant's functioning as described in these September 2020 reports.

[21] It is true that the General Division does not have to discuss every piece of evidence before it. However, there are several reasons why these reports were important enough that the General Division needed to analyze them.

[22] First, the reports are dated in September 2020, and the hearing was at the end of October, 2020. Since the Claimant's MQP would end December 31, 2020, the General Division had to consider whether the Claimant's disability was severe on the date of the hearing. The timing of these reports is significant. The reports represented an updated and thorough reporting of the Claimant's diagnoses and functional limitations that would help the General Division member to answer the question before her.

[23] Second, the reports are written by experts who had an opportunity to assess the Claimant: an orthopaedic assessment, a neurological assessment, a psychiatric assessment and an occupational therapist's assessment. The expert assessors also had access to, summarized, and drew conclusions about much of the other medical documents in the Claimant's medical records, which is also helpful.

[24] And third, while the reports do apply a different standard (a standard used for the purpose of accident benefits), much of the information in these reports is helpful for assessing whether a

¹⁷ GD10-17.

¹⁸ GD10-70.

disability is severe. Catastrophic injury reports can describe functional limitations. These documents do make reference to the impact of the Claimant's conditions. They are relevant in assessing his ability to work in a real life context.

[25] For those three reasons, I am satisfied that these reports were important enough that the General Division needed to discuss them. The General Division did not discuss them in the analysis, and I infer that the General Division made its decision without regard for this evidence. In my view, the General Division reached its decision about the Claimant's ability to work without considering these key reports. This means that the General Division made an error of fact.¹⁹

[26] The Claimant raised additional errors in the General Division decision. However, given the nature of the error I have found (there are central pieces of evidence that need to be discussed in order to analyze whether the Claimant's disability is severe), I do not need to give a decision on each of those other alleged errors.

REMEDY

[27] Once I find an error, I have two options to fix (remedy) it. I can give the decision that the General Division should have given, or I can return the case to the General Division for reconsideration.²⁰

[28] At the Appeal Division hearing, the Minister and the Claimant agreed that if I found that the General Division made an error, I should give the decision that the General Division should have given.

[29] When the Claimant has had a fair chance to present the case, I give the decision that the General Division should have given. This is often the most fair and efficient way forward.²¹ The General Division decision did not grapple with some key evidence, and it is efficient for me fix that error and give a decision with that evidence in mind.

¹⁹ DESDA, s 58(1)(c).

²⁰ DESDA, s 59.

²¹ *Social Security Tribunal Regulations*, s 2. See also *Nelson v Canada (Attorney General)*, 2019 FCA 222.

[30] The Claimant showed he had a severe and prolonged disability on or before the end of his minimum qualifying period (MQP), which ended December 31, 2020. The Claimant applied for a disability pension in October 2018. His disability was severe and prolonged as a result of the car accident in May 2018. He was no longer able to work after the accident. In my view, the Claimant has shown that he had a severe and prolonged disability within the meaning of the CPP as of May 2018. In reaching this conclusion, I have considered the Claimant's medical conditions, functional limitations, and his personal circumstances.

“Severe” disability within the meaning of the CPP

[31] To be eligible for a disability pension, the Claimant must have a severe disability within the meaning of the CPP. A person with a severe disability is incapable regularly of pursuing any substantially gainful occupation.²² Again, when assessing the evidence about a claimant's disability, the General Division considers both:

- the Claimant's background (including age, education, language proficiency, past work and life experience); and
- the Claimant's medical condition (which involves assessing the condition in its totality – all of the possible impairments that could affect capacity to work).²³

[32] The General Division also considers the steps the Claimant took to manage the medical conditions, and whether the Claimant unreasonably refused any treatment.²⁴

Claimant's personal circumstances do not negatively impact his employability

[33] When deciding whether the Claimant has a severe disability, I need to consider how employable the Claimant is in the real world, given his:

- age;
- level of education;

²² *Canada Pension Plan*, s 42(2).

²³ The Federal Court of Appeal explained this in a case called *Bungay v Canada (Attorney General)*, 2011 FCA 47.

²⁴ The Federal Court of Appeal explained this in a case called *Sharma v Canada (Attorney General)*, 2018 FCA 48; and in *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

- ability to speak, read, and write English; and
- past work and life experience.²⁵

[34] The Claimant was 37 years old at his General Division hearing in the fall of 2020. He spent some time taking university level courses in business administration but did not graduate. He has a college diploma in Police Foundations. The Claimant can speak, read and write in English. His past work was in policing, and also in related settings like corrections and security.

[35] In my view, there is nothing about the Claimant's personal circumstances that is a non-medical barrier to his real-world employability. The Claimant has many years to retirement, he has post-secondary education, and he does not experience any language barriers. In this case, it is really the limits the Claimant experiences in terms of his functioning that mean he is incapable regularly of pursuing any substantially gainful occupation.

Claimant's medical conditions limit his functioning and impact his ability to work

[36] By way of background, the Claimant had low back pain from an injury in 2011. He was involved in a traumatic event at work in January 2018 which had an impact on his emotional health which stabilized by April 2018.

[37] In May 2018, the Claimant was in a car accident. He had a concussion and whiplash. A month later, he was experiencing decreased cognitive ability, forgetfulness and emotional lability, which was part of post-concussion syndrome. He was experiencing headaches and nausea. He had difficulty processing information. He was dizzy and he had trouble sleeping, low mood, anger, anxiety, decreased motivation, word finding difficulties, and difficulty following directions.²⁶

[38] The Claimant's family doctor completed the CPP medical report when the Claimant applied for the disability pension.²⁷ The Claimant's family doctor diagnosed post-traumatic stress syndrome and generalized anxiety with severe headaches, neck pain, nausea, inability to focus or

²⁵ This "real-world" approach, using these four criteria, comes from the Federal Court of Appeal in a case called *Villani v Canada (Attorney General)*, 2001 FCA 248.

²⁶ GD12-8.

²⁷ GD2-55 to 63.

concentrate on tasks. The doctor was clear at that time that the Claimant was not able to work in a high stress environment or handle a firearm, so he could not work as a police officer. Back in 2018, the Claimant's family doctor stated that the Claimant could return to some type of work in the future, and that his condition was likely to improve.

[39] I need to identify what the Claimant's medical conditions are, and how they impact the Claimant's ability to work. The reports that I find the most helpful are those that are closest in time to the date of the General Division hearing. The General Division needed to consider whether the Claimant had a disability that was severe and prolonged as of the day of the hearing. The reports the Claimant relies on that are closer to the hearing begin to reference and assess to the chronic nature of the Claimant's conditions and the impact that those conditions continue to have on his daily functioning. These documents also provide the most updated prognosis.

[40] The Claimant's updated diagnoses (as mentioned earlier) are:

- major depressive disorder,
- chronic pain disorder (mixed, due to psychological factors and general medical condition),
- post-traumatic stress disorder, and
- post-concussion syndrome.²⁸

[41] These identified disabilities result in limits to the Claimant's functioning. The Claimant has mild sleep apnea. His global assessment of functioning (GAF) score is 40.²⁹ A GAF score of 40 is consistent with major impairment in several areas, such as work or school, family relationships, judgment, thinking or mood.

[42] The Claimant's post-traumatic adjustment disorder results in these symptoms:

²⁸ GD10-33, see also GD12-28 to 29.

²⁹ GD10-33.

somatic preoccupation, social withdrawal, behavioural inhibition, depression, anxiety, PTSD-like symptoms, mood swings, severe perceived stress, apathy/anergia, and losses in sense of self-efficacy.³⁰

[43] The Claimant's irritability and angry outbursts impacted his personal life. He became "irratic, illogical, hyperemotional, impatient, angry and experiences a loss of control. To some degree these symptoms stabilized with medication and therapy but also through withdrawal and avoiding other people."³¹

[44] The Claimant had a neurocognitive assessment in October 2018, but the assessment from 2020 pointed out the Claimant's academic proficiencies and intellectual abilities. An expert later pointed out much closer to the time of his hearing that back in 2018, that the Claimant had no formal testing for attentional control, mental tracking, sustained processing, list learning, chronic pain or psychological distress. These kinds of test would have been helpful given the limits on functioning the Claimant relies on in this appeal.³²

[45] The Claimant's chronic pain condition is moderate. He experiences pain in his neck, left shoulder, back and left torso. The pain symptoms impact "every facet of his life, including occupational and social activities."³³ He lacks physical stamina. He avoids heavier or more repetitive chores of housekeeping and home maintenance. The Claimant has headaches and nausea with some "immobility" as a result, about twice a week. I find these kinds of symptoms would negatively impact the Claimant's reliability in a workplace, particularly in any physical work.³⁴

[46] The Claimant testified about what he considers to be the main functional barrier to his return to work. He described his cognitive abilities as the biggest limit to his functioning. He describes this as having a limited "battery life". He can only read several pages and needs to go back, even just to remember information in a pamphlet. He takes notes and has to capture things like errands and obligations in lists on his phone and in calendars or he will not remember.

³⁰ GD12-28.

³¹ GD12-22.

³² GD12-11.

³³ GD10-16.

³⁴ GD12-21.

[47] In addition to not being able to return to being a police officer, he struggles with driving his car other than locally. He testified about limiting his time on the computer. He says that if he uses a computer for a length of time, he needs to rest. He says that he struggles to learn new things.

[48] The Claimant relies on a neuropsychological evaluation from September 2020.³⁵ The psychologist reviewed much of the Claimant's medical documents, and also performed the neuropsychological assessment of the Claimant. This document is helpful because it describes some of the challenges the Claimant has in his functioning that would no doubt have an impact on his ability to work. For example, the neuropsychological assessment says that the Claimant's poor performance and "visual-constructional difficulties" the Claimant had during testing are likely to result in the Claimant being disorganized.

[49] While the Claimant has "no difficulty processing, comprehending, or remembering 'bits' of information" people tell him, he may forget the context or why the information is relevant. The neuropsychological reports found the Claimant likely to forget to do things at a particular time in the future. The Claimant is "now fully reliant on lists, schedules, prompts, reminders, and other compensatory memory strategies in carrying out day-to-day activities. As reported on interview, he can 'go to pieces' with changes in routine or unexpected demands on his memory and/or problem solving abilities."³⁶

[50] And while it may seem that the Claimant could overcome some of these functional challenges in processing or memory (through the use of his lists, for example), the same neuropsychological report makes it clear that the Claimant also has trouble with completing tasks. As a result of a combination of his mild traumatic brain injury, post-concussion syndrome, chronic pain condition and psychological maladjustment, the report concluded that the Claimant is unable to complete tasks fast enough or proficiently enough "to return to any type of gainful employment."

³⁵ GD12-12 and following.

³⁶ GD12-20.

[51] The problem is that the Claimant is “extremely prone to mental fatigue and, once fatigued, vulnerable for further cognitive and/or behavioural decompensation. He has, in fact, suffered such symptoms from the time of the injury onward.”³⁷

[52] The psychologist who completed the neuropsychological report also gave evidence at the General Division hearing consistent with these conclusions. The psychologist testified that the Claimant has superior intellectual abilities but he has lost considerable speed efficiency and cannot multi task. He is severely impaired for reading rate. He has moderate impairment which is predictive of long term problems with employment. The concern is that the Claimant may succeed in getting a job, but will not be able to keep it. He cannot parallel process. He has chronic pain to control.

[53] The Claimant also relies on a catastrophic assessment report. That report concluded that the Claimant meets the criteria for a catastrophic injury designation. The Claimant’s WPI was 55%, which satisfies criterion 7 for catastrophic impairment.³⁸

[54] As noted earlier, that report shows the Claimant has marked psychiatric impairments in social functioning, concentration, persistence, pace and adaptation.³⁹ In my view, these kinds of impairments represent a significant barrier to employability. Social functioning, concentration, persistence, pace and adaptation are necessary to participate in the workforce. Even if the Claimant were to find work that did not have the same kinds of demands as policing, inability to concentrate, persist, pace, adapt or function socially would mean the Claimant is not capable regularly of pursuing substantially gainful work.

[55] The psychiatric assessment states that the Claimant “could be considered” for a vocational assessment, job retraining and/or transferable skills analysis.⁴⁰ However, in light of all of the Claimant’s conditions considered together, as occurred in the multi-faceted

³⁷ GD12-34.

³⁸ GD10-37.

³⁹ The Claimant explains that the American Medical Association Class 4 Marked Impairment is indicative of an impairment that significantly impedes useful functioning.

⁴⁰ GD10-17.

neuropsychological assessment, I am of the view that the Claimant does not have capacity to work or to retrain.

[56] In my view, the medical evidence and the Claimant's testimony shows that he is not capable regularly of any substantially gainful work. While the Claimant's family doctor was optimistic about the Claimant's prognosis after the car accident, the reality several years later as illustrated by the neuropsychological evaluation and the CAT results paint a different picture. The Claimant's conditions have become chronic. Although the pain and headaches are not the Claimant's main condition that act as a barrier to employment, it is his cognitive limitations that are most significant.

[57] In my view, the Claimant is not reliable, which is a key part of being capable **regularly** of employment. He has trouble remembering tasks, and cannot complete tasks due to fatigue. His emotional response when he is tired, what the neuropsychological evaluation calls "behavioural decompensation" is a serious functional limitation to participation in a workplace setting.

[58] I am satisfied that the Claimant has taken steps to manage his conditions, as is required by the CPP in order to qualify for a disability pension. The Claimant has seen a great many physicians, specialists, other health care professionals, and assessors of various kinds since he was injured in a car accident in 2018. He has had support from his family doctor, speech language pathologist, massage therapist, chiropractor, psychologist, occupational therapist, and psychiatrist. His evidence demonstrates a willingness to try treatments, including medications, when health care professionals have recommended it.

[59] In my view, the evidence does not show that the Claimant has any (or residual) capacity for work that would trigger the need to show he meets the employment efforts test. The employment efforts test requires that people who have some capacity for work need to show that they have made efforts to get and keep employment, and those efforts were unsuccessful because of the medical conditions.⁴¹

⁴¹ The Federal Court of Appeal describes that test in a case called *Inclima v Canada (Attorney General)*, 2003 FCA 117.

[60] There are several aspects of the evidence that the Minister argues show some capacity for work. I will address each of those aspects of the evidence before moving on to decide whether the Claimant's disability is prolonged. The Claimant's testimony about cutting grass, the surveillance evidence, and the fact that the Claimant manages properties are not evidence of capacity to work in this case.

The Claimant's testimony about cutting grass is not evidence of a capacity for work

[61] During his General Division hearing, he was asked if he could do something similar to his old police officer job that would be substantially gainful. The Claimant explained that he could not help people in high stress situations anymore. He also said he could cut grass but that he would not make the money I used to make.

[62] Although the Minister argues this evidence should be taken at face value, I view the Claimant's testimony about cutting grass as being one of sarcasm. He followed up by stating that he could screw boards into a wall. He was commenting on how little he could perform physically, and was not seriously suggesting that was capable regularly of landscaping in order to earn a substantially gainful wage. He said he could cut grass for a couple of hours but he would be too tired. He did not clarify how many times a week he could cut grass.

[63] In my view, the medical evidence about the Claimant's functioning is not consistent with an ability to complete landscaping work or other physical tasks to a substantially gainful level. First, the medical evidence states that excessive physical activity, even "rapid standing up and sitting down or moving the head from side to side" aggravate his pain.⁴²

[64] The Claimant gets distracted very easily. He uses noise-cancelling headphones. Bright lights and noise bother him. He has trouble with attention, memory, concentration. The Claimant would not be capable regularly for that kind of work. The medical evidence shows that his mood problems when he becomes fatigued would be a problem in the workplace.

[65] The Claimant's testimony about cutting grass is not evidence of a capacity to work.

⁴² GD10-8.

The description of video surveillance of the Claimant is not evidence of a capacity for work

[66] There is reference in the materials to video surveillance of the Claimant organized by his insurer. I have not viewed the video surveillance myself. I do not understand the Claimant to take issue with the notion that he drives his car locally, picks his children up from daycare, goes to a store, or has completed tasks at a property he owns. Generally speaking, the ability to perform tasks like this in his life could be evidence of a residual (some) capacity for work. In this case, I am satisfied (as was the medical team who viewed the surveillance) does not mean that the Claimant had capacity for work.

[67] First, I am mindful that being capable of doing small tasks around the home is not necessarily evidence of a capacity to do that kind of work in some kind of hypothetical sedentary or semi-sedentary job that might qualify as “any” job in the CPP.⁴³ In my view, the Claimant’s ability to run errands has very little to do with the ability to work. His functional limitations in terms of work have to do with social functioning, concentration, memory and task completion over and above what would be required to simply run errands.

[68] Second, the Claimant gave important testimony about how he copes and how well he does with tasks like these, particularly when it comes to tasks like picking up his children. I accept the Claimant’s evidence that even with attempts to manage the impact of his cognitive challenges by tracking tasks to do with multiple calendars and lists, he is not reliable and has not always succeeded at tasks. The medical evidence also states that he required:

...assistance from others to manage his rental properties and has hired a housekeeper. He is simply not able to manage any of the jobs that he would have routinely completed pre-injury, adding that although he usually had a helper, he was able to manage all tasks on his own. He is no longer able to do this and requires assistance.⁴⁴

[69] Third, the experts who had access to the video surveillance expressly discussed that evidence and explained how it factored into their opinions about the Claimant’s condition. I have

⁴³ The Federal Court of Appeal discussed this idea in a case called *Villani v Canada (Attorney General)*, 2001 FCA 248

⁴⁴ GD12-22.

no reason to reach an opposite conclusion to any of these experts. The psychiatrist, psychologist and occupational therapist described the limitations of the surveillance evidence like this:

- “provide(s) no information of salience with regard to his cognitive abilities or emotional state.”⁴⁵
- “does not accurately capture the after effects of activity of [the Claimant]’s requirement for recovery time particularly when this occurs within the confines of his home.”⁴⁶
- “does not give details of what occurred after participating in those activities, whether he was in severe pain, or whether he had to take extra medications, or rest for an extended period of time.does not show his mood which may be depressed before and after participating in activities.”⁴⁷

[70] I have not viewed the video surveillance. The Claimant did not seem to take issue with or want to explain anything in the surveillance when he met with assessors. I will not conclude that the fact that the Claimant drove his car locally and did errands or some routine tasks in 2018 and 2019 means that he has some capacity for work.

The fact that the Claimant manages properties is not evidence of a capacity to work

[71] I accept the psychologist’s testimony that given the Claimant’s limitations, he will struggle to maintain his properties. As mentioned, the record shows that the Claimant has help to manage his properties. The psychologist also testified that the Claimant could “work as a helper” but he is not competitively employable. Even with lists as reminders, he could not be reliable.

[72] In light of the evidence from the psychologist, I do not find that the Claimant’s management of properties is evidence of a residual capacity to work.

The disability is prolonged

⁴⁵ GD12-12.

⁴⁶ GD10-97.

⁴⁷ GD10-19.

[73] 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.⁴⁸

[74] When he first applied for a disability pension in 2018, the Claimant's family doctor stated that in terms of prognosis, the Claimant's condition was likely to improve in more than a year. At that time, the doctor stated that he expected the Claimant to return to work within 6 to 12 months, and that he could do modified work.⁴⁹

[75] However, much closer to the end of the MQP, and by the time of the General Division hearing, the Claimant's prognosis had evolved. There are multiple references in the more recent specialist reports to the notion that the Claimant's prognosis is poor or guarded, in part because his symptoms became chronic, he meets criteria for multiple diagnoses, and he had poor response to treatment.⁵⁰ For example:

[76] Although the Claimant's head injury from the car accident would be "mild" and uncomplicated, he was one of the significant minority of people who go on to develop a post-concussion syndrome. He has a cognitive disorder; but also post-traumatic somatoform and adjustment disorders. Two years after the car accident, and "at this point in time his recovery would be considered complete. Residual symptoms would be chronic and permanent, with prognosis for any dramatic change in the foreseeable future quite guarded on a statistical basis."⁵¹ As the medical evidence makes clear:

Cognitive impairment along with vulnerability to fatigue/exhaustion, chronic pain, and nonrestorative sleep have resulted in a "personality change" with this leading to numerous conflicts and the marital dissolution. Of concern is the persistence of such symptoms at 2 years, 3 months post-injury. This is indicative of evolving chronicity, an exigency associated with a less optimistic long-term prognosis with regard to any further recovery.⁵²

⁴⁸ *Canada Pension Plan*, s 42(2).

⁴⁹ GD2-62.

⁵⁰ GD10-63, GD12-34.

⁵¹ GD12-19.

⁵² GD12-23.

[77] It has been several years now since the Claimant's accident, and the impact on his functioning is not expected to improve. I am satisfied that the Claimant's disability is prolonged within the meaning of the CPP.

[78] The Claimant applied for a disability pension in October 2018. I find his disability was severe and prolonged starting in May 2018 when he had his car accident. He was no longer able to work (he did not know yet that the conditions resulting from that accident would be chronic, but they proved to be). The Claimant is eligible for a disability pension under the CPP effective May 2018. Payments start four months later, in September 2018.⁵³

CONCLUSION

[79] I allow the appeal. The General Division made an error of fact. I give 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:	April 1, 2021
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	John Hammond, Representative for the Appellant Viola Herbert, Representative for the Respondent

⁵³ *Canada Pension Plan*, s 69.