Citation: *KC v Minister of Employment and Social Development*, 2021 SST 719

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	K. C.
Respondent:	Minister of Employment and Social Development
Representative:	Jessica Grant (counsel)

Decision under appeal:	General Division decision dated April 23, 2021 (GP-19-1666)

Tribunal member:	Janet Lew
Type of hearing:	Teleconference
Hearing date:	October 5, 2021
Hearing participants:	Appellant Respondent's representative
Decision date:	November 26, 2021
File number:	AD-21-243

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant, K. C. (Claimant), is appealing the General Division decision dated April 23, 2021. The General Division found that the Claimant's mental health conditions did not result in her being incapable regularly of pursuing any substantially gainful occupation by the end of her minimum qualifying period (MQP) on December 31, 2010.[1] The General Division concluded that the Claimant was not entitled to a Canada Pension Plan disability pension.

[3] The Claimant argues that the General Division made legal and factual errors. She asks for a reconsideration. The Respondent, the Minister of Employment and Social Development (Minister) argues that the General Division did not make any errors. The Minister asks the Appeal Division to dismiss this appeal.

Issues

[4] The issues in this appeal are:

a) Did the General Division make a legal error by requiring the Claimant to provide objective medical evidence of her medical condition at the end of her MQP?

b) Did the General Division fail to consider the totality of the Claimant's medical conditions?

c) Did the General Division fail to provide the Claimant with a fair chance to review the medical records?

---

[1] Service Canada uses a claimant's years of Canada Pension Plan contributions to calculate their coverage period, or "minimum qualifying period" (MQP). The end of the coverage period is called the MQP date. To qualify for a disability pension, a claimant has to have a severe and prolonged disability by the end of their MQP. See section 44(2) of the *Canada Pension Plan*.

d) Did the General Division fail to give the Claimant a chance to produce relevant medical records?

e) Did the General Division ignore evidence about the Claimant's experience of depersonalization and derealisation?

f) Did the General Division ignore the Claimant's explanation of gaps in the evidence?

Analysis

[5] The Appeal Division may intervene in General Division decisions if there are jurisdictional, procedural, legal, or certain types of factual errors.

Did the General Division make a legal error by requiring the Claimant to provide objective medical evidence of her medical condition at the end of her MQP?

[6] The Claimant argues that the General Division made a legal error by requiring her to produce objective medical evidence to prove that she had a severe and prolonged disability at the end of her MQP. She says that her testimony established that she had a severe disability by the end of her MQP. She says that the General Division should have accepted her oral evidence as objective medical evidence.

– The General Division decision

[7] The General Division cited several court cases when it wrote that a claimant has to produce objective medical evidence of their disability at the time of their MQP, if they want to qualify for a disability pension.[2]

[2] See General Division decision, at para 6.citing *Canada (Attorney General) v Dean*, 2020 FC 206, citing *Warren v Canada (Attorney General)*, 2008 FCA 377; *Gilroy v Canada (Attorney General)*, 2008 FCA 116; and *Canada (Attorney General) v Hoffman,* 2015 FC 1348; and CPP Regulations*;* Canada (*Attorney General) v Angell*, 2020 FC 1093, at para 40.

[8] The General Division found that the post-MQP reports of the Claimant's family doctor and psychiatrist did not qualify as "objective medical evidence" at the time of the MQP. This was because the psychiatrist:

- first assessed the Claimant eight years after the end of her MQP[3] and
- based her opinion on the Claimant's self-reporting, rather than on any clinical observations or assessments from 2010, or from reviewing any 2010 medical records.

[9] The General Division acknowledged that neither the family physician nor the psychiatrist would have been able to review any 2010 medical records relating to the Claimant's psychological condition.[4] The Claimant simply did not have any medical records relating to her psychological condition until October 2011.

[10] The General Division found that the Claimant had not produced any records to show that she was severely disabled by December 31, 2010. For this reason, the General Division concluded that there was "a lack of medical evidence on which to base a finding that her medical conditions, depression and anxiety, prevented her from working by December 31, 2010."[5]

– The Appeal Division decision of July 28, 2021

[11] The Appeal Division considered whether the Claimant had an arguable case on the issue of whether she had to provide objective medical evidence of her condition at the end of her MQP.

[12] The Appeal Division member referred to another case of the Appeal Division. The member in that case found that objective medical evidence could include a description of physical observations, clinical symptoms, established functional

[3] See psychiatrist's Final Report of assessment on June 6, 2018, at GD2-55 to GD2-59 (and at GD2-25 to GD2-27).
[4] See General Division decision, at para 23.
[5] See General Division decision, at para 24.

limitations, and diagnoses by a health professional.[6] The Appeal Division found that self-reporting was a legitimate part of objective medical evidence too.

[13] The Appeal Division also noted that medical evidence did not have to be from the time of the MQP. Medical records prepared after the MQP could still be relevant if they addressed a claimant's condition at their MQP.

[14] The Appeal Division determined that, as long as records are relevant, even if prepared after the MQP, the General Division should consider them. The Appeal Division indicated that the General Division should not automatically dismiss evidence simply because it might have been prepared or arose after the MQP.

[15] The Appeal Division found that the Claimant had an arguable case that the General Division "required more of the Claimant's medical evidence than the law requires."[7] The Appeal Division gave permission for the Claimant to move ahead with her appeal.

– **The General Division did not make a legal error when it required the Claimant to produce objective medical evidence of her medical condition at the end of her MQP**

[16] On its face, the General Division might have seemed to require more from the Claimant than the law requires. But, overall, the General Division did not make a legal error when it required the Claimant to produce objective medical evidence of her medical condition at the end of her MQP.

[17] In the case of *Warren*,[8] the Federal Court of Appeal said that it is well established that an applicant must provide some objective medical evidence.

[18] In this case, there was limited medical evidence available. While the General Division may have stated that it required the Claimant to produce objective medical evidence, it is clear that the General Division's focus was on whether there was any

[6] Appeal Division cited *Minister of Employment and Social Development v LF*, 2018 SST 164 at para 10.
[7] See Appeal Division leave to appeal decision dated July 28, 2021, at para 21.
[8] See *Warren v Canada (Attorney General)*, 2008 FCA 377.

medical evidence—apart from the Claimant's own testimony—that addressed the Claimant's condition **at the end of her MQP**.

[19] As the General Division noted, the earliest medical information on file that related to the Claimant's psychological condition was 10 months after the Claimant's MQP. The General Division found that this medical report did not help the Claimant because it was prepared well after the end of the MQP.

[20] On October 18, 2011, the Claimant went to the emergency department of her local health sciences center. The Claimant had an episode of acute alcohol intoxication. She attempted suicide by cutting both of her wrists.

[21] The medical practitioner did not document any prior or ongoing history of either acute alcohol intoxication or suicide attempts.[9] It was likely for this reason that the General Division determined that the October 18, 2011 medical record did not help the Claimant establish that she was severely disabled by the end of her MQP.

[22] The General Division recognized that the medical information did not have to be produced around the end of the MQP. But, the General Division found that neither the family doctor's report nor the psychiatrist's assessment addressed the Claimant's condition at the end of her MQP.

[23] The family doctor prepared a CPP Medical Report in June 2018.[10] He first began treating the Claimant in May 2017, long after the end of her MQP. He diagnosed her with social anxiety disorder and depression. He did not give an opinion regarding the Claimant's medical condition around December 2010.

[24] A psychiatrist assessed the Claimant in June 2018.[11] The psychiatrist reviewed the Claimant's past psychiatric history. The psychiatrist noted that the Claimant had

---

[9] See Emergency Record of health sciences center, for October 18, 2011, at GD6-55.
[10] See family doctor's CPP Medical Report, dated June 29, 2018, at GD2-87 to GD2-90.
[11] See psychiatrist's Final Report of assessment on June 6, 2018, at GD2-55 to GD2-59 (and at GD2-25 to GD2-27).

longstanding depression and anxiety. However, the psychiatrist did not directly address the Claimant's condition around the end of her MQP.

[25] The General Division accepted that the Claimant had longstanding depression and anxiety. But, the General Division determined that a longstanding condition does not necessarily establish severity. In this regard, the General Division suggested that any self-reporting of a severe disability had to be supported by medical records that were made closer in time to the MQP. The records could include but were not limited to clinical observations or assessments.

[26] As the Federal Court of Appeal said in a case called *Angheloni*, "the suffering of [a] respondent, however, is not an element on which the test of "disability" rests."[12] In other words, the Court of Appeal did not consider a claimant's self-reporting of their condition to be "objective" medical evidence.

[27] The General Division did not make a legal mistake when it concluded that the Claimant had not produced sufficient objective medical evidence of a severe disability at the end of her MQP. The Claimant did not produce any medical records at all from the timeframe around the end of the MQP. More importantly, none of the medical records before the General Division directly addressed the Claimant's condition around the end of her MQP.

Did the General Division fail to consider the totality of the Claimant's medical conditions?

[28] The Claimant argues that the General Division failed to consider the totality of her medical conditions. She argues that the General Division did not consider medical records that her previous advocate should have gotten. The Claimant asks to have these records reviewed once she gets them.

[29] The General Division did not fail to consider certain medical records because they were not in evidence. On top of that, the Claimant's representative did not ask for

[12] See *Canada (Minister of Human Resources Development) v Angheloni*, 2003 FCA 140 at para 27.

an adjournment, or for a chance to produce these records before the General Division made its decision.

Did the General Division fail to provide the Claimant with a fair chance to review the medical records?

[30] The Claimant argues that the General Division failed to give her a chance to review the emergency hospital records. The Claimant writes:

> The hearing on January 20, 2021 I was not given the opportunity to personally review those emergency hospital records presented during the hearing. The medical emergency records were unnecessary and would not support the General Division's decision. .. I have requested further assessments, psychiatric appointments, diagnosis with Dr. [L].[13]

[31] The Claimant suggests that if she had had a chance to review the emergency hospital records during the hearing, she would have realized that there were missing records. And, if she knew that some of the records were missing, she would have told the General Division. She suggests that she would have asked the General Division to adjourn the proceedings so she could get these records and include them as part of the evidence.

[32] Yet, it is clear from the audio recording of the General Division hearing that the Claimant was aware that there were pre-MQP records that she had yet to receive.[14] The Claimant's representative told the General Division member that neither he nor Service Canada (as the Minister's agent) were able to get pre-MQP records, despite their efforts.

[33] The General Division member then told the Claimant and her representative that objective medical evidence was needed to prove a severe disability.[15] The member asked the Claimant whether she had been involved in any efforts to get pre-MQP efforts.

---

[13] See Claimant's arguments filed on September 7, 2021, at AD4-2.
[14] At approximately 8:20 of the audio recording of the General Division hearing.
[15] At approximately 11:29 of the audio recording of the General Division hearing.

[34] The Claimant responded that she had asked her current family doctor about getting records from her former psychiatrist. Her current family doctor advised her that, "because it was from, like a different, further back before computers or something, he didn't have, he had written everything down and that he didn't keep that documentation anymore…. He said that he tried to get that information."[16]

[35] In other words, the Claimant's current family doctor advised her that he had tried to get the psychiatrist's records, but they were no longer available.

[36] I find the Claimant's arguments without merit. She says that she did not know that the records that the General Division had were limited and did not include the pre-MQP records. However, the audio recording of the hearing indicates that the Claimant was aware that the General Division did not have any pre-MQP records. Neither the Claimant nor her representative were able to get these records because they apparently no longer exist, according the Claimant's family doctor.

Did the General Division fail to give the Claimant a chance to produce relevant medical records?

[37] The Claimant argues that the General Division failed to provide her with a chance to produce relevant medical records. She wanted to produce the medical records of a psychiatrist whom she saw in her early teenage years.[17]

[38] The Claimant argues that these pre-MQP medical records were important. She did not have any medical care around the end of her MQP, so would be unable to produce any records from 2010 to establish that she was severely disabled at that time. She says that she has to rely on pre- and post-MQP medical records to prove a severe disability.

---

[16] At approximately 13: 27 to 14:20 of the audio recording of the General Division hearing.
[17] The psychiatrist's final report dated June 6, 2018, at GD2-55, refers to a psychiatrist. The Claimant reported that she saw this psychiatrist in her early teenage years. This psychiatrist diagnosed the Claimant with depression and anxiety. The report indicates that the Claimant used Zoloft, Prozac, and Cipralex, with the latter showing the most benefit.

[39] The Claimant argues the General Division member should have considered these pre-MQP medical records. She says these records establish a pattern of ongoing mental health struggles for which she has not received proper medical care.

[40] The Claimant's former representative obtained medical records on the Claimant's behalf. The Claimant says that she believed that her representative got all of the relevant medical records, including the pre-MQP records of the psychiatrist she saw about 20 years ago. The Claimant suggests that she learned of the missing records only after the General Division hearing had already ended. The Claimant argues that the General Division should have given her the chance to produce these records.

[41] Usually, the General Division would be entitled to assume that parties produce all of the relevant records upon which they want to rely. The General Division would also be entitled to assume that the parties would let them know if there are any missing records, or that they need extra time to get any missing records.

[42] In this case, the General Division was aware that there were no medical records from 1999 to 2010. However, the General Division did not make an error when it went ahead with the hearing.

[43] The Claimant's representative did not ask for an adjournment of the hearing so that he and his client could get any extra records. The Claimant's representative explained that he and Service Canada had already tried to get pre-MQP records.

[44] More importantly, the Claimant testified that her family doctor told her that these records were no longer available due to the passage of time.

[45] The General Division also asked the Claimant whether she had seen anyone for medical treatment between 1999 and 2017. The Claimant responded that she had not.[18]

[18] At approximately 15:10 to 15:34 of the audio recording of the General Division hearing.

[46] The General Division was led to believe that the pre-MQP records no longer existed. That being the case, there was no need to adjourn the proceedings to let the parties get these records.

[47] Apart from that, the Claimant did not need to rely on the records to establish a history of mental health struggles. The Claimant testified that she began to experience mental health issues at an early age and that she saw a psychiatrist in her early teenage years. The General Division did not reject the Claimant's testimony on this point. Indeed, the member found the Claimant straightforward and sincere.

[48] The General Division noted that the medical evidence showed a long history of illness, starting at a young age and continuing through to the MQP until the present time.[19] However, it is clear that the General Division found that this history alone was insufficient to establish a severe disability at the end of the MQP.

[49] The General Division needed to see some medical records around 2010 that specifically addressed the Claimant's medical condition then. The older pre-MQP records still would not have been enough.

[50] In other words, there is no evidence that the absence of the medical records from approximately 20 years ago placed the Claimant at a disadvantage. The pre-MQP records would not have established that the Claimant became severely disabled by the end of her MQP.

Did the General Division ignore evidence about the Claimant's experience of depersonalization and derealisation?

[51] The Claimant argues that the General Division ignored evidence about her episodes of depersonalization and derealisation.

[52] The Claimant described these episodes of depersonalization and derealisation to the psychiatrist.[20] The Claimant reported that she feels as if she is entering a dark

[19] See General Division decision, at para 14.
[20] See psychiatrist's Final Report dated June 6, 2018, at GD2-55 to GD2-59 and Outpatient Documents dated June 6, 2018, at GD6-2 to GD6-5.

place. The Claimant reported that she first experienced an episode at about 12 years of age. It lasted an hour. Afterward, she felt significantly depressed for several months.

[53] The psychiatrist noted that the Claimant frequently experiences these episodes. The Claimant feels they last up to an hour, although her partner questions if they last that long. Driving, engaging in social activities, or having to talk with others can trigger episodes. The Claimant reported to the psychiatrist that she might not experience any episodes or she could experience up to 20 of them in a typical week.[21]

[54] The Claimant suggests that, had the General Division considered that she experienced episodes of depersonalization and derealisation, it would have accepted that she was severely disabled by the end of her MQP.

[55] The General Division did not mention any of these episodes. But, there is a general presumption in law that a decision-maker considers all of the evidence before it. So, a decision-maker does not have to discuss or even refer to all of the evidence, unless that evidence is of such probative value that the decision-maker should have discussed it. Evidence has probative value if it is of such importance that it could have some impact on the outcome.

[56] It is clear that the General Division's primary concern was whether there were records around the MQP that documented the Claimant's condition. So, if there were no records to support her claims, then the General Division found it could not necessarily conclude that the Claimant had proven that her condition was severe by the end of her MQP.

[57] I find that the General Division did not make a legal error when it did not mention the Claimant's episodes of depersonalization and derealisation. From the General Division's perspective, the Claimant had to produce some records from around 2010.

[58] The General Division simply determined that there had to be some medical records to substantiate the Claimant's allegations. The evidence about the Claimant's

---

[21] See psychiatrist's Final Report dated June 6, 2018, at GD2-55 to GD2-59

episodes of depersonalization and derealisation alone would not have established that the Claimant was severely disabled, without any supporting medical records from around 2010.

Did the General Division ignore the Claimant's explanation of gaps in the evidence?

[59] The Claimant did not produce any medical records from the 2010 timeframe. She says that she reasonably explained why there were gaps in the medical records. Her grandmother had passed away on December 14, 2009. This had a traumatic effect on her. She says it plunged her into a very depressive state, so she was unable to leave her home or interact with others. It was very hard for her to seek help or treatment.

[60] The Claimant says the General Division ignored this evidence. She says that this evidence was important. She argues that, if the General Division had not ignored this evidence, it would have accepted that her mental health struggles have been ongoing and that she was severely disabled by the end of her MQP.

[61] The General Division purported to address this issue under the hearing "Why there is no medical evidence before December 31, 2010."

[62] The General Division noted the Claimant's evidence that she saw a psychiatrist from 1998 to 1999. The General Division noted her testimony:

- She did not have a family doctor between 1999 and 2017. No one was available.
- The Claimant went to walk-in clinics.
- For emergency services, she went to the hospital. For instance, she went to the hospital around 2002 to 2005 and again at age 21/22 and 26.[22]

[63] However, the General Division ultimately did not explain out why the Claimant did not produce any medical records from around 2010. But, in the proceedings before me,

[22] See General Division, at para 9.

the Claimant says that there were no records from this timeframe because she did not get medical help or care in 2010.

[64] It is immaterial that the General Division ignored the Claimant's explanation for the lack of 2010 medical records because the explanation still would not have proven that she was severely disabled by the end of her MQP. She still had to produce some objective medical evidence.

[65] The General Division was prepared to accept that post-MQP records could be relevant and show that she was severely disabled by the end of the MQP. However, any post-MQP opinions had to address the 2010 timeframe. In this case, they did not.

[66] Even if the post-MQP records and opinions had addressed the MQP timeframe, there still had to be some foundation or basis beyond the Claimant's self-reporting. There had to be a basis upon which a doctor could form an opinion about the Claimant's medical condition at the end of her MQP.

[67] There were other gaps in the medical evidence. This included the pre-MQP timeframe. However, the Claimant did not tell the General Division why she did not produce the pre-MQP records. She did not explain the absence of the pre-MQP records because she was unaware that they did not form part of the hearing file. She relied on her representative to get and produce these records. Hence, the General Division could not possibly have ignored the Claimant's explanation for the gap in pre-MQP records if the Claimant did not give any explanation in the first place.

Conclusion

[68] In summary, the General Division did not ignore evidence, either because the evidence did not exist, or because the evidence had no impact on the outcome of the proceedings.

[69] The General Division also did not make a legal error by requiring the Claimant to provide objective medical evidence. The Courts have consistently said that claimants have to produce some objective medical evidence.

[70] The Claimant says that she should not be held to such a rigorous standard of producing objective medical evidence. She says her oral testimony should be sufficient to prove her case. But the General Division was correct when it required the Claimant to produce some records—even if they arose after the end of the MQP—that addressed the Claimant's condition at the end of her MQP.

[71] The appeal is dismissed.

Janet Lew
Member, Appeal Division