



Citation: *AB v Minister of Employment and Social Development*, 2022 SST 3

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: A. B.
Representative: Charu Mehta

Respondent: Minister of Employment and Social Development
Representative: Attila Hadjirezaie

Decision under appeal: General Division decision dated February 25, 2021
(GP-18-2625)

Tribunal member: Janet Lew

Type of hearing: On the Record

Decision date: January 5, 2022

File number: AD-21-160

Decision

[1] The appeal is allowed. The Applicant, A. B. (Claimant), is entitled to a Canada Pension Plan disability pension commencing April 2017.

Overview

[2] The Claimant is appealing the General Division decision. The General Division found that the Claimant did not have a severe disability by the end of his minimum qualifying date¹ of December 31, 2019.

[3] The Claimant argues that the General Division made several legal and factual errors. The Claimant asks the Appeal Division to allow the appeal and give the decision that it says the General Division should have given.

[4] The Claimant argues that the evidence at the General Division shows that he had a severe and prolonged disability since he was injured in a motor vehicle accident in December 2016. The Claimant asked the Appeal Division to grant him a disability pension.

[5] The Respondent, the Minister of Employment and Social Development (Minister), accepts the Claimant's arguments. The Minister agrees that the General Division made a legal error by failing to consider the Claimant's personal circumstances on his capacity to regularly pursue any substantially gainful occupation. The Minister agrees that the appeal should be allowed. The Minister submits that the Claimant is entitled to a disability pension commencing April 2017.

Issue

[6] Did the General Division make a legal error by failing to consider the Claimant's personal circumstances?

¹ The end of the minimum qualifying period is the date by which a claimant has to be found disabled to qualify for a Canada Pension Plan disability pension.

Analysis

[7] The Appeal Division may intervene in General Division decisions if there are jurisdictional, procedural, legal, or certain types of factual errors.²

Did the General Division fail to apply the *Villani*³ test?

[8] The Claimant argues that the General Division failed to apply the Villani test by failing to consider his personal characteristics in a real world context.

[9] The General Division held that, when deciding whether a disability is severe, sometimes it has to consider a person's age, level of education, language proficiency, and past work and life experience. The General Division explained that this would allow for a realistic assessment of that person's work capacity.

[10] The General Division wrote:

In this case, I considered that [the Claimant] was 57 years old as of the MQP [minimum qualifying period]. He is able to speak and understand English. He has a university degree obtained in India. He also has an Appliance Technician Certificate and a Certificate of Qualification obtained in Canada. He has worked since 2008 as a service technician.

Despite his age, he is very well-educated. He is fluent in the English language. In considering his personal characteristics, I do not find that he was unemployable in a real world context as of the MQP. While I accept that he was unable to return to a physically-demanding job, he would not be precluded from attempting lighter work within his restrictions. He has not attempted any other jobs since he stopped working at [his job]. Therefore, he has not show that his efforts at obtaining and maintaining employment have been unsuccessful because of his health condition.⁴

[11] The Claimant argues that the General Division failed to properly account for the real world consequences of his vocational characteristics.⁵

² See section 58(1) of the *Department of Employment and Social Development Act*.

³ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

⁴ See General Division decision, at paras 28 and 29.

⁵ See Claimant's Application to the Appeal Division, at AD1-4.

[12] The Minister submits that, in light of the evidence and the particular facts of this case, the General Division erred in law by failing to consider the Claimant's personal circumstances on his capacity to regularly pursue any substantially gainful occupation.

[13] The Claimant was involved in a motor vehicle accident in December 2016. He sustained injuries to his lower back, left shoulder, left leg and left foot. He also developed an adjustment disorder with mixed anxiety and a depressed mood. He also had impaired sleep. The Claimant wrote in the questionnaire for disability benefits that he had trouble with his concentration and focus.⁶

[14] The Claimant's insurer referred the Claimant to psychologists, who prepared psychological assessments dated June 11, 2018, and May 31, 2019. These assessments represent the most current medical information that the General Division had available for its review.

[15] In the first of these two reports, one of the psychologists believed that the Claimant had nearly achieved maximum psychological recovery. The psychologist did not anticipate further recovery beyond an additional eight psychological treatment sessions. The psychologist was of the opinion that the Claimant exhibited functional limitations with his mood and anxiety.⁷ The psychologist was unable to offer any opinion with respect to any physical restrictions the Claimant might have, as these were beyond his scope of expertise.

[16] The Claimant's insurer referred the Claimant to another psychologist, who prepared an assessment dated May 31, 2019. The insurer asked the psychologist whether the Claimant currently suffered from an impairment from his injuries and, if so, to describe the impairment. The psychologist wrote that the Claimant continued to be experiencing:

some depressive and anxious symptomatology in the context of his ongoing pain and physical concerns as well as in-vehicle anxiety, and worries related to his mental health, his depressed mood, his financial situation because he has been

⁶ See Claimant's Questionnaire for Disability Benefits, dated October 25, 2017, at GD2-73.

⁷ See Psychology Assessment Report dated June 11, 2018, at GD5-75 to GD5-91.

depleting his savings, his safety, possible future motor vehicle accidents, and his job and working again.⁸

[17] The two psychologists shared the opinion that the Claimant had functional limitations because of his mood and anxiety. The Claimant's adjustment disorder affected his work capacity in a real world context.

[18] The General Division failed to consider these aspects of the psychologist's opinions when it assessed whether the Claimant had a severe and prolonged disability.

Remedy

[19] The parties agree on the remedy.⁹ They submit that the appeal should be allowed and that I should find that the Claimant became disabled within the meaning of paragraph 42(2)(a) of the *Canada Pension Plan* in December 2016, after his motor vehicle accident. Further, the parties submit that the Claimant is entitled to a disability pension commencing April 2017.¹⁰

[20] I accept the parties' submissions on the remedy. The Claimant has had both physical and mental health issues that have and continue to affect his capacity to regularly pursue a substantially gainful occupation.

[21] In 2018, a psychologist was of the opinion that the Claimant had largely attained maximum medical recovery in his overall mental health condition. Despite his improvement, however, the Claimant continued to have functional limitations because of his depressed mood and anxiety. Because of a combination of physical and mental health issues, the Claimant was incapable of regularly pursuing a substantially gainful occupation since his accident in December 2016.

⁸ See Treatment and Assessment Plan (OCF-18) Psychology Paper Review, dated May 31, 2019, at GD5-61 to GD5-71.

⁹ For various reasons, the Claimant has not responded to the Minister's submissions of August 4, 2021, at AD5-1. The Minister submitted that the appeal should be allowed and that the Claimant is entitled to a disability pension. However, it is clear from the Claimant's application to the Appeal Division that he considers himself to have a severe and prolonged disability. He appealed the General Division decision because he is seeking a Canada Pension Plan disability pension.

¹⁰ Section 69 of the *Canada Pension Plan* describes when payment of a disability pension starts.

[22] The Claimant's presentation was largely unchanged a year later.

[23] The Claimant's representative has informed the Appeal Division that the Claimant's mental health has deteriorated, to the point that he has been unable to instruct his counsel, or participate in these proceedings.¹¹ There is no evidence to suggest that the Claimant can expect to see any improvement in his overall medical condition. His disability is also prolonged.

[24] I accept the parties' arguments on the remedy. I find that the Claimant became disabled within the meaning of paragraph 42(2)(a) of the *Canada Pension Plan* in December 2016, after his motor vehicle accident. I also find that the Claimant is entitled to a disability pension commencing April 2017.¹²

Conclusion

[25] The appeal is allowed. The Claimant is entitled to a Canada Pension Plan disability pension commencing April 2017.

Janet Lew
Member, Appeal Division

¹¹ Ordinarily, the Appeal Division does not accept new evidence, but this information explains why the Claimant has been unable to participate in these proceedings.

¹² Section 69 of the *Canada Pension Plan* describes when payment of a disability pension starts.