Citation: *TC v Minister of Employment and Social Development*, 2022 SST 671

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	T. C.
Respondent:	Minister of Employment and Social Development
Representative:	Jeremy MacDonald

Decision under appeal:	General Division decision dated December 31, 2021 (GP-20-1419)

Tribunal member:	Neil Nawaz
Type of hearing:	Teleconference
Hearing date:	July 5, 2022
Hearing participants:	Appellant Respondent's representative
Decision date:	July 25, 2022
File number:	AD-22-213

Decision

[1] The appeal is dismissed. The General Division did not make any errors.

Overview

[2] The Claimant, T. C., is a 52-year-old former legal secretary. For years, she has lived with anxiety, depression, and diabetes, among other medical conditions. In October 2015, she left her job because of symptoms related to workplace stress.

[3] In April 2016, the Claimant applied for a Canada Pension Plan (CPP) disability pension. The Minister refused the application because, in her view, the Claimant had not shown that she had a severe and prolonged disability as of her minimum qualifying period (MQP), which was to end on December 31, 2018.[1]

[4] In January 2019, the Claimant applied for the disability pension for a second time. Once again, the Minister refused the application. This time, the Claimant appealed the Minister's refusal to the Social Security Tribunal's General Division.

[5] The General Division held a hearing by teleconference and dismissed the appeal because it did not find enough evidence that the Claimant was disabled. The General Division acknowledged that the Claimant had significant health issues but found that they did not prevent her from substantially gainful employment as of her MQP. The General Division placed particular weight on evidence that the Claimant had worked as a seasonal tax preparer in 2020 and 2021.

[6] The Claimant then asked the Tribunal's Appeal Division for permission to appeal. She insisted that she was disabled and alleged that, denying her the disability pension, the General Division made the following errors:

- It found, contrary to evidence, that she had a "real world" capacity to work;

[1] Coverage for the CPP disability pension is established by working and contributing to the CPP. In this case, the Claimant's earnings and contributions required her to show that she became disabled before December 31, 2018 and has remained so ever since.

- It failed to consider her psychological condition;
- It wrongly inferred capacity from her seasonal job; and
- It failed to take into account the shortage of alternative jobs for which she is qualified.

[7] I gave the Claimant permission to appeal because I thought she had an arguable case. Earlier this month, I held a hearing by teleconference to discuss her allegations in full.

What the Claimant must prove

[8] There are four grounds of appeal to the Appeal Division. A claimant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use them;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.[2]

[9] In this appeal, I had to decide whether any of the Claimant's allegations fell into one or more of the permitted grounds of appeal and, if so, whether any of them had merit.

Analysis

[10] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that none of the Claimant's allegations has merit.

[2] *Department of Employment and Social Development Act* (DESDA), section 58(1).

The General Division did not err in finding that the Claimant had a "real world" capacity to work

[11] The Claimant does not agree with the General Division's decision. She insists that she is unable to work because of anxiety, depression, and other mental health conditions. She maintains that the circumstances around her seasonal jobs at H&R Block are proof of disability rather than capacity. She argues that the General Division was wrong to consider her capacity to work in light of "irrelevant" factors such as her past work experience.

[12] Although it is clear that the Claimant has physical and psychological problems, I don't see how the General Division made an error when it nonetheless concluded that she remained capable of employment. I come to this conclusion for the following reasons.

– The General Division is entitled to weigh the evidence

[13] The Claimant submitted a report from her family doctor indicating that she suffered from multiple co-morbidities, including anxiety and depression, diabetes, obesity, osteoarthritis, and irritable bowel syndrome. The Claimant testified that she had difficulty focusing on tasks and coping with workplaces stress. She also said that she could not sit and type for extended periods.

[14] The General Division acknowledged that the Claimant had functional limitations, but it also found that those limitations did not necessarily mean she was disabled.[3] This finding is consistent with the law governing CPP disability, which says that claimants must show that they are incapable regularly of pursuing any substantially gainful occupation. As the General Division noted, it had to look at all the evidence, not just the Claimant's medical diagnoses or her subjective assessment of her own capacity. In this case, the General Division placed weight on the following factors:

- The Claimant did not receive any medical care from January 2020 to October 2021;

[3] General Division decision, paragraph 17, citing *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- The Claimant worked as a seasonal tax preparer in 2020, earning more than $7,200 over 3½ months in 2021; and
- The Claimant was well positioned to find alternative work because she had lengthy work experience as a medical secretary.

[15] I can't see how the General Division erred by basing its decision on the above factors. One of the General Division's roles is to establish facts. In doing so, it is entitled to some leeway in how it weighs evidence. The Federal Court of Appeal addressed this topic in a case called *Simpson*,[4] in which the claimant argued that the tribunal attached too much weight to selected medical reports. In dismissing the application for judicial review, the Court held:

> [A]ssigning weight to evidence, whether oral or written, is the province of the trier of fact. Accordingly, a court hearing an appeal or an application for judicial review may not normally substitute its view of the probative value of evidence for that of the tribunal that made the impugned finding of fact.

[16] In this case, the General Division made what strikes me as a full and genuine effort to sort through the relevant evidence to assess its quality. I see no reason to second-guess its choices, especially since it offered considered reasons for those choices.

– **The General Division was required to assess the Claimant's background and personal characteristics**

[17] The Claimant argues that the General Division committed an error by taking into account "irrelevant" factors such as her past work experience: "If a person's disability was only ever severe enough to prevent them from ever entering the work force in the first place, then there would never be an acceptable claim for CPP benefits."[5]

[18] I don't see merit in this argument.

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[4] See *Simpson v Canada (Attorney General)*, 2012 FCA 82.
[5] See Claimant's application for leave to appeal dated April 4, 2022, AD1-13.

[19] According to an important case called *Villani*,[6] employability must be assessed in a "real world" context. That means decision-makers must assess CPP disability claimants as whole persons, taking into account background factors such as their age, education, language proficiency, and work and life experience.

[20] In its decision, the General Division rightly performed such an assessment.

> I find that the Claimant can work in the real world. The Claimant was 48 years old at the end of 2018. She speaks English fluently. She finished high school and a one-year secretarial program at college. She also completed a medical transcription course, although she says she required accommodations to pass. She worked for many years as a legal secretary. She also worked on a census for Statistics Canada. Most recently, she worked seasonally for H&R Block during tax season in 2020 and 2021. She did this from January 12 to April 30 in 2021. She is clearly suited to and qualified for sedentary office work.[7]

[21] The Claimant's work history was not irrelevant. Her years as a legal secretary gave her experience and skills that, despite her impairments, were an asset in the employment market. That asset permitted her more scope to search for a job that was better suited to her particular set of limitations.

The General Division considered the Claimant's psychological condition

[22] One of the major themes in the Claimant's submissions is her conviction that the General Division ignored her mental illness, which she maintains is rooted in a debilitating lack of self-esteem. She says that she is plagued by a feeling that she can "never be good enough,"[8] which often leads her to push herself past her furthest physical and psychological limits. She claims that it was this "warped sense of her responsibilities" that kept her working at H&R Block, even though she was disabled.

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[6] See *Villani v Canada (Attorney General)*, [2002] 1 FCR 130, 2001 FCA 248.
[7] See General Division decision, paragraphs 27 and 28.
[8] See Dr. McFarlane's CPP medical report, GD2-214 and GD2-216.

[23] I carefully considered this argument but ultimately concluded that it could not succeed.

[24] According to a case called *Bungay*, decision-makers are required to consider, not just a claimant's main medical condition, but the cumulative impact of all their conditions on their ability to work.[9]

[25] However, it is difficult for the Claimant to argue that the General Division wasn't aware of her psychological condition. First, the General Division cited *Bungay*'s main principle,[10] and it listed the Claimant's various conditions several times in its decision.[11] Second, decision-makers are presumed to have considered all the evidence before them.[12]

[26] Of course, all presumptions can be rebutted given enough evidence. In this case, though, I was not convinced that the General Division overlooked any significant aspect of the Claimant's mental health claims. The Claimant mentioned her low self esteem several times in her submissions to, first, the Minister[13] and, later, the General Division.[14] I have listened to the recording of the General Division hearing and note that much of the Claimant's testimony dealt with the very issues that she now claims were ignored. A decision-maker can't be expected to address each of every piece of evidence in its written reasons.[15] It is true that the General Division didn't specifically mention the Claimant's low self-esteem in its decision, but that is likely because the General Division felt that it was outweighed by other factors, such as the Claimant's post-MQP employment and the relatively modest treatment that she had received for her condition.

[27] The Claimant may not agree with how the General Division chose to weigh the evidence around her medical conditions, but that is not a reason to overturn its decision.

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[9] See *Bungay v Canada (Attorney General)*, 2011 FCA 47.
[10] See General Division decision, paragraph 11.
[11] See General Division decision, paragraphs 4, 6, 22, and 23.
[12] See *Simpson*, note 4.
[13] See the Claimant's letter to the Minister dated February 14, 2020, GD2-14.
[14] See the Claimant's notice of appeal to the General Division dated September 27, 2020, GD1-16.
[15] See *Simpson*, note 4.

I am satisfied that, in performing its analysis, the General Division was mindful of all significant aspects of the Claimant's psychological state, including her low sense of self worth.

The General Division did not err by inferring capacity from the Claimant's seasonal job

[28] The Claimant takes issue with the General Division's finding that her post-MQP jobs at H&R Block amounted to substantially gainful employment. In particular, she alleges that the General Division misconstrued her testimony that she never turned down additional hours when offered and sometimes spent extra unpaid hours helping her co-workers.[16] She maintains that her pathological need to please compelled her to work even though she was disabled.

[29] Again, I am not persuaded by this argument.

[30] It is true that the major factor behind the General Division's decision was the Claimant's seasonal employment after the end of her CPP coverage period. The General Division found that the Claimant had not just **attempted** to return to work, she had **succeeded** in returning to work:

> In 2021, in just over 3½ months, she worked 508 hours. This is almost full-time employment, although the hours were likely skewed towards the busiest tax months of March and April. She earned $7,242.21 during that period. Her employer said her job ended because the tax season was over. I see no reference to disability on her record of employment.
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> I cannot conclude that the Claimant's disability got in the way of earning a living for that nearly four-month period. Nor can I conclude that her performance was unsatisfactory. She worked right up to the end of tax season. She was also asked to take additional training in the fall of 2021. At the hearing, she said she went to bed after returning from work each day. However, she said she did not miss any work at H&R Block due to disability. Nor did she turn down any additional hours. In fact,

[16] See General Division decision, paragraph 33.

> she spent some extra unpaid hours helping out her co-workers. She appears to have been a reliable and valued employee.[17]

[31] None of the General Division's findings in the above passage was disputed by the Claimant. However, she said that they lacked context. She said that she was able to perform what amounted to full-time work, for at least a short time, because of a psychological condition pushed her past the limits of endurance. However, as we have seen, the General Division was aware of that context—it simply chose not to give it the weigh that the Claimant thought it was due. In its role as finder of fact, that was its right.

[32] At the General Division, the Claimant testified that she was completely exhausted when she returned from work each day.[18] However, the General Division noted this testimony in its decision and focused instead on what it regarded on a larger fact: whatever the toll that the Claimant's job took on her, she nevertheless succeeded in doing it on a full-time basis for nearly four months. Given this fact, the General Division made a reasonable inference that the Claimant would have been able to manage a part-time job or, alternatively, carry on working longer in a full-time office job—one that did not have a specific end date.

[33] According to the philosophy that governs the CPP, claimants are either regularly capable of a substantially gainful occupation or they are not. The legislation makes no allowances for how difficult a claimant finds a job; it only cares about whether a claimant is able to perform the job on a sustained basis and whether that job is substantially gainful.

The General Division was not permitted to consider limited job opportunities

[34] The Claimant lives in a rural area of Nova Scotia and has frequently cited the region's poor economy as an impediment to finding employment. She argues that it is difficult, even for someone who is fully healthy, to find work, and impossible for someone with her level of impairment.

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[17] See General Division decision, paragraphs 32 and 33.
[18] Refer to recording of General Division hearing at 22:45.

[35] In its decision, the General Division dismissed this argument. It was right to do so.

[36] In a case called *Rice*,[19] the Federal Court of Appeal held that socio-economic factors such labour market conditions are irrelevant when assessing whether or not a person is disabled. While the *Canada Pension Plan* should be generously interpreted, it contains no language to suggest that the standard of disability can vary by region according to factors such as the unemployment rate.

Conclusion

[37] The General Division did not commit an error that falls within the permitted grounds of appeal. From what I can see, it made a full and genuine effort to weigh relevant evidence and apply the law. Its decision stands.

[38] The appeal is therefore dismissed.

Member, Appeal Division

[19] See *Canada (Minister of Human Resources Development) v Rice*, 2002 FCA 47.