Citation: *MA v Minister of Employment and Social Development*, 2023 SST 797

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	M. A.
Respondent:	Minister of Employment and Social Development
Representative:	Ian McRobbie

Decision under appeal:	General Division decision dated September 2, 2022 (GP-21-1052)

Tribunal member:	Kate Sellar
Type of hearing:	In Writing
Decision date:	**June 16, 2023**
File number:	AD-22-812

Decision

[1] I'm dismissing the appeal. The General Division didn't make an error. The Claimant didn't show that he is entitled to a *Canada Pension Plan* (CPP) disability pension. I'll explain why.

Overview

[2] M. A. (Claimant) has an undergraduate degree in engineering. After graduating, he has had a few different types of jobs. He has not worked in a sustained way since November 2018.

[3] The Claimant explains that every non-benevolent employer or client he has ever had has fired him. They cite incompetence, insubordination, poor cultural fit, and poor output.

[4] The Claimant applied for CPP disability pension in June 2020. He was diagnosed in the clinical range for autism spectrum disorder (ASD). He explains that he has difficulties with social interaction, non-compliance and frequent tantrums, and a major problem with transitions. The Claimant said he has a short temper and is unpredictable. He explains that he has incapacitating irrational and debilitating compulsions, hypersomnia, and periods of depression during which he finds no enjoyment in his usual diversions.

[5] The Minister of Employment and Social Development (Minister) denied his application initially and on reconsideration. The Claimant appealed to this Tribunal. On appeal, the Claimant had to show that his disability was severe and prolonged by December 31, 2020, the last day of his coverage period.

[6] The General Division decided that the Claimant isn't eligible for the disability pension. The General Division stated that although the Claimant has functional limitations that affected his ability to work by the end of his coverage period, his disability was not severe within the meaning of the CPP.

[7] I must decide whether the General Division made an error under the *Department of Employment and Social Development Act* (Act). The Claimant requested and received a written hearing.[1] I find that the General Division did not make an error. I dismiss the Claimant's appeal.

Issues

[8] The issues in this appeal are as follows:

I. Did the General Division make an error of fact or fail to observe a principle of natural justice in the way it relied on prior inconsistent statements to impeach the Claimant's credibility?

II. Did the General Division act beyond its jurisdiction by deciding questions about labour relations, or otherwise make an error of law by giving insufficient reasons about the Claimant's self-employment?

III. Did the General Division make an error of law or fail to provide a fair process by taking judicial notice of controversial facts, particularly about the Claimant's education and certain commercial realities?

IV. Did the General Division make any errors of fact or of law in its treatment of Dr. Rainville's report?

V. Did the General Division make an error of fact about whether there was evidence from certain employers about their alleged dissatisfaction?

VI. Did the General Division make any errors in its analysis of the Claimant's total condition, namely:

a. an error of fact about a doctor recommending that the Claimant continue his job search;

b. an error of fact by finding that there was no evidence showing a "marked decline in functioning" after 2018;

[1] The parties provided written submissions beginning at AD1 through to AD11, all of which I reviewed and considered.

c. an error of law by conflating diagnosis with disability;

d. an error of fact by finding that the Claimant had no significant difficulties with oral communication; or

e. an error of fact by finding that caffeine had no discernible effect on the Claimant?

VII. Did the General Division make an error of law by failing to conduct an analysis in accordance with the principles in *Inclima v. Canada* and the wording of the CPP?

VIII. Did the General Division make an error of law or of fact by failing to accurately assess the Claimant's real-world employability, specifically by:

a. failing to consider the Claimant's nation of origin as part of his life experience

b. analyzing the medical evidence, the personal considerations, and commercial realities severally and in silos;

c. conflating capacity with security of tenure;

d. giving insufficient or contradictory reasons about the impact of the Claimant's work experience on his employability;

e. making errors of fact about the factual underpinnings of the Claimant's personal circumstances; or

f. finding the "real-world" test to include "unusualness" as a factor to consider?

IX. Did the General Division fail to provide the Claimant with a fair process by prejudicing the Claimant for being self-represented?

Analysis

[9] Before addressing the Claimant's individual arguments about errors in the General Division decision, it's worth providing some information about errors of fact that guide the analysis I provide in this decision.[2]

[2] See section 58.1(b) of the *Department of Employment and Social Development Act* (Act).

– **What is an error of fact?**

[10] Following the law about errors of fact requires me to assume that the General Division considered all the evidence, even if the General Division didn't refer to every piece of evidence in the decision.[3] However, the Claimant can overcome that assumption by showing that the evidence was important enough that the General Division should have discussed it.[4]

[11] An error of fact needs to be important enough that it could affect the outcome of the appeal. An error of fact does not simply mean that the General Division reached a finding that a party doesn't agree with. An error of fact can happen when:

- The General Division willfully makes findings that are contrary to the evidence or misconstrues the evidence.
- There is no evidence to rationally support the General Division's finding.
- The General Division fails to reasonably account for critical evidence that goes against its finding.[5]

[12] Decisions may contain phrases or characterizations of the evidence that the parties are not comfortable with. Decisions may contain minor inaccuracies that don't rise to the level of an error of fact.

I./ The General Division didn't make an error of fact or fail to observe a principle of natural justice in the way it relied on prior inconsistent statements to impeach the Claimant's credibility.

[13] The General Division found that there were some functional limitations that the Claimant gave inconsistent evidence about.[6] For example, the General Division noted that the Claimant testified that he was very good at punctuality, although other references in the record stated that he had trouble with punctuality. Similarly, the

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[3] See *Simpson v Canada (Attorney General)*, 2012 FCA 82.
[4] See *Lee Villeneuve v Canada (Attorney General)*, 2013 FC 498.
[5] See *Walls v Canada (Attorney General)*, 2022 FCA 47.
[6] See paragraphs 18 to 20 in the General Division decision.

Claimant wrote that he was unpredictably absent from work due to emotional instability, but in his testimony, he said his attendance at his longest job was pretty good. As a result, the General Division stated that they were unable to find that the Claimant had limitations with respect to punctuality or attendance.

[14] The Claimant argues that the General Division's approach here was an error of fact because there was no inconsistency in his evidence. He says the evidence in the record was about his abilities at the time of the MQP, and that some of the oral evidence was more specific to post-MQP work.

[15] In my view, the General Division reached a conclusion about punctuality and attendance that the Claimant doesn't agree with, but that alleged error doesn't rise to the level of perverse or capricious. The Claimant's argument here is closer to a concern about the way the General Division weighed the evidence, which cannot form the basis for an error of fact. The General Division considered the evidence in its totality and decided it would not find that punctuality and attendance were functional limitations for the Claimant (the focus of the General Division was at the time of the MQP as well). The record supports sufficiently the General Division's finding. I won't interfere with it.

[16] Further, the Claimant argues that the way the General Division pointed out these inconsistencies was unfair because the General Division impeached his credibility without the General Division member putting the contrary evidence to him first.[7]

[17] However, the Minister argues, and I agree that the General Division didn't make any finding about the Claimant's credibility at all. Evidence can be inconsistent enough that the General Division doesn't make the finding that the Claimant wants. That's not impeaching credibility. Evidence can be inconsistent and simply be unreliable, or not be sufficient to warrant the finding. The General Division can highlight inconsistent evidence and weigh it. But that it not a violation of natural justice.

[7] This rule is called the rule in *Browne v Dunn*.

II./ The General Division didn't act beyond its jurisdiction by deciding questions about labour relations, or otherwise make an error of law by giving insufficient reasons about the Claimant's self-employment.

[18] The General Division made two findings that the Claimant's says it had no jurisdiction to make:

- asking job candidates to demonstrate their skill set before making an offer of employment is different from performing work for free
- the Claimant's last job was self-employment.[8]

[19] The Claimant refers to these kinds of questions as labour relations matters that are outside of the General Division's jurisdiction, as they are covered by provincial employment standards legislation. He argues that the General Division's power to decide any question of law or fact that is necessary to dispose of the application is a narrow power. [9]

[20] The Minister argues that the Tribunal's jurisdiction as referenced above is broad, not narrow.[10] The General Division has the jurisdiction to decide any question of law or fact that is necessary for the disposition of any application made under the Act. When the General Division makes findings of fact about the impact of the Claimant's disability or his personal circumstances, these are properly part of its jurisdiction.

[21] In my view, the General Division didn't make any findings outside its jurisdiction. The Claimant made arguments about his self-employment and certain employer practices, and the General Division weighed in on those issues to the extent that it was necessary to decide whether the Claimant was incapable regularly of pursuing any substantially gainful occupation.

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[8] See paragraph 61 in the General Division decision.
[9] See section 64(2)(a) of the Act.
[10] The Minister relies on paragraph 17 in *Nelson v Canada*, 2019 FCA 222; and paragraph 22 in *Mudie v Canada (Attorney General)*, 2021 FCA 239.

[22] General Division decisions often include findings about a Claimant's functional limitations, the requirements of certain kinds of work, the reasons a claimant makes certain choices in relation to looking for work or pursuing treatment, and various aspects of employment in Canada when deciding whether a claimant is incapable regularly of substantially gainful work.

III./ The General Division didn't make an error of law or fail to provide a fair process by taking judicial notice of controversial facts, particularly about the Claimant's education and certain commercial realities

[23] The General Division decided that the Claimant had limitations but that they would not prevent him from working. In support of that conclusion, the General Division mentioned the Claimant's education. The General Division noted that his education showed various specific capacities, like the ability to follow instruction, and interact with professors and peers.[11]

[24] The Minister argues that the decision to take judicial notice is a question of law and can't form the basis of a natural justice error.

[25] I understand the Claimant to argue that there is a disconnect here between some of the skills or competencies the General Division assumed the Claimant had simply because he was university educated.

[26] In my view, the General Division may have made a finding without sufficient evidentiary basis here. Many (but not all university graduates) will demonstrate the precise constellation of competencies that the General Division wrote about. However, I don't think this was the General Division taking judicial notice of notorious facts about the Claimant. Further, I don't think this language rose to the level of an error of law. In my view, the General Division's base observation here was that the Claimant's university degree must mean that he has some competencies, and there is no

[11] See paragraph 38 in the General Division decision.

reviewable error in that assumption. In my view, nothing turns on the General Division providing more specific examples.

[27] Further, the General Division wasn't taking judicial notice of the fact that the Claimant was well-educated, it was a finding of fact based on the record that the Claimant had a university degree.

[28] I agree with the Minister that the General Division did take judicial note that "many" employers do not require pre-employment assessment tests and screenings.[12] One can establish this fact easily. It is beyond dispute amongst reasonable people. The fact is readily verifiable by visiting job pages. In any event, the comment was obiter.

IV./ The General Division didn't make any errors of fact or of law in its treatment of Dr. Rainville's report.

[29] The General Division considered the Claimant's argument that Dr. Rainville decided that he was medically unfit to enroll with the Canadian Armed Forces in any conceivable capacity.[13] The General Division found that the reasons for the unfit determination weren't obvious in the report, and that there wasn't a clear explanation about how the doctor who completed the assessment got the evidence she relied upon. The General Division decided not to put much weight on the report. The General Division weighed the report against the CPP Medical Report Dr. Tan completed and the opinion from Dr. Newman.[14]

[30] The Claimant argues that the General Division made factual errors about Dr. Rainville's report.[15] The General Division decided that it was "not possible" to determine how Dr. Rainville got the information she used to make her decision.

[31] The Minister argues that the General Division did not make the factual findings the Claimant alleges, so there is no factual error. The General Division only said that it was "not obvious" how Dr. Rainville got the information, and that the General Division

[12] See paragraph 61 in the General Division decision.
[13] See paragraph 43 in the General Division decision.
[14] See paragraphs 45 and 46 in the General Division decision.
[15] See paragraph 43 and 44 in the General Division decision.

based that finding on the record. The Minister takes the position that the Claimant's arguments are meritless about the General Division basing its findings on Dr. Querengesser's refusal to provide clarification to Dr. Rainville.

[32] The General Division found that it was not obvious how Dr. Rainville got the information. The record supports this finding. The report itself didn't say how Dr. Rainville got the information, and that is exactly what the General Division noted.[16] The General Division gave several reasons why it assigned less weight to Dr. Rainville's report. The question about where Dr. Rainville got her information was only one of those reasons. The Appeal Division must be careful only to identify areas where alleged inaccuracies rise to the level of an error of fact, to avoid an exercise of simply reweighing the evidence.

[33] Further, the General Division was entitled to note that Dr. Querengesser's refusal to provide clarification supports the idea that Dr. Rainville's report may have lacked important information.[17]

[34] In my view, the General Division made no error here. I am wary of dissecting the General Division's reasons for giving one medical report less weight than two others that came from treating professionals. The Claimant hasn't demonstrated how the General Division's reasons for giving less weight to the military letter rise to the level of an error. There are arguments in support of the General Division weighing things differently, but I don't see those arguments amounting to an error of fact that requires correcting.

V./ The General Division didn't make an error of fact about whether there was evidence from certain employers about their alleged dissatisfaction.

[35] The Claimant argues that the General Division made errors of fact about:

- the reasons X terminated the Claimant

[16] See paragraph 43 in the General Division decision.
[17] The Minister made this argument at AD5-10.

- the quality of the evidence about his history of terminations.

[36] The Claimant also claims that the General Division ignored his testimony on these points.

[37] The Minister argues the following:

- The General Division understood that the Claimant's termination for X was for fit and was termination code K in the Record of Employment.

- The General Division made no error when it noted that the evidence about the other terminations was less specific, and that the record supports this observation.[18]

- The General Division did not ignore the Claimant's testimony about the terminations, but it did not discuss it.

[38] In my view, there is no error of fact. The General Division decided that the Claimant's work experience didn't show that he was unable to work. The General Division summarized the Claimant's argument about his work history like this:

> The [Claimant] says that his limitations prevent him from holding jobs. He says this is evidenced by the fact that every single employer/client, spanning wildly different industries and sectors, has fired him for the exact same reasons. These reasons include poor cultural fit, poor output, inability to adapt to the demands of the job, and insubordination.[19]

[39] The General Division didn't accept the Claimant's arguments about his work history for several reasons. For one, the General Division found that it didn't have evidence from the Claimant's former employers or the Claimant's former client showing that they fired the Claimant for the reasons he outlined.[20]

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[18] See GD3-411.
[19] See paragraph 25 in the General Division decision.
[20] See paragraph 30 in the General Division decision.

[40] The General Division went on to consider evidence from the Claimant's former client from November 2018 stating that they terminated the Claimant because he wasn't:

- reporting to his immediate supervisor
- following up on or acting on actions assigned to him
- showing up for meetings because they are "a waste of time"
- at the level expected of him by then.[21]

[41] Arguably, this evidence from the former client goes against the General Division's finding that there was no such evidence from a client in the record. However, ultimately the General Division's finding seems to me to be a statement of conclusion about how similar the evidence in the record was to the Claimant's statement. The Claimant's statement was about being terminated for the exact same reasons every time and in wildly different industries and sectors. The General Division did not have evidence in the record that backed that specific statement.

[42] The General Division also found that there was no similar evidence from other employers. Certainly, there was some hearsay evidence from a psychologist about what he understood the problem had been at a call centre. But again, this wasn't evidence from the employer, which I believe was the point the General Division was making. It may also be that the General Division relied on the idea that the evidence about the call centre job was technically not a termination, and that the evidence about the grocery store came from the psychologist not the employer. The evidence from the software job did indicate that the Claimant was not a good fit, but this did not go unacknowledged by the General Division.

[21] See paragraph 31 in the General Division decision.

[43] Further, in my view, the Claimant's testimony about the terminations was not so important that the General Division had to discuss it. Hearsay evidence is not inadmissible at tribunals, but it does go to weight.

[44] Even if I am wrong about this, and the General Division did ignore the evidence, the question is whether ignoring that evidence was an error of fact – could accepting the Claimant's evidence have changed the outcome? In my view, the answer is no.

[45] Even if the General Division had accepted the Claimant's testimony about his work history in its entirety, the General Division relied on the Claimant's young age, his education, and the medical evidence to conclude that he didn't meet the definition of a severe disability. The General Division did not find that the Claimant's work history was smooth or without struggle. But not everyone who struggles to get and keep employment has a severe disability.[22] The General Division's decision reflects that.

VI./ The General Division didn't make any errors in its analysis of the Claimant's total condition.

[46] The General Division's analysis started by acknowledging that it needed to consider all the Claimant's conditions together.[23] I'm satisfied that the General Division took that approach. Although the General Division discussed the main conditions earlier in the reasons than some of the other conditions, there's no basis for a finding that the General Division missed conditions or considered them singularly.

– No error of fact about a doctor recommending that the Claimant continue his job search

[47] The Claimant argues that the General Division made an error of fact by finding that a doctor suggested he continue his work efforts.[24] The Claimant explains that the reference was to a therapist, rather than a doctor. The comment was not necessarily in connection to any clinical question or clinical judgment. And the comment was only about the idea that it's never good to give up completely.

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[22] See *Villani v Canada (Attorney General)*, 2001 FCA 248.
[23] See paragraph 12 in the General Division decision.
[24] See paragraph 45 in the General Division decision.

[48] The Minister notes that the Claimant's therapist is a doctor, and it was not perverse or capricious for the General Division to find that the Claimant continued to apply for jobs at the recommendation of his therapist, particularly based on the Claimant's testimony on this point at the hearing.[25]

[49] In my view, there is nothing perverse or capricious about the General Division's finding. I won't interfere with the General Division's characterization of the therapist's role in the Claimant's decision to continue looking for work. Some of the distinctions the Claimant raises here about clinical judgement and the existential nature of giving up show only that the Claimant is making finer distinctions than are necessary from the evidence.

– **No error of fact by finding that there was no evidence showing a "marked decline in functioning" after 2018**

[50] The General Division found that there was no medical evidence showing a marked decline in functioning after 2018.[26]

[51] The Minister argues that the record supports this finding and is not an error of fact. The General Division pointed out that there was no evidence of a marked decline in the documents it considered the most relevant in the record from that time.

[52] In my view, the General Division did not make an error. The Claimant hasn't pointed to medical evidence of a marked decline in functioning after 2018 that the General Division ignored or misunderstood.

– **No error of law by conflating diagnosis with disability**

- The General Division decision does not focus unduly on diagnosis. In fact, the General Division decision reflects an analysis of both functional limitations and personal circumstances to reach a conclusion about whether a disability is severe within the meaning of the CPP.

[25] See about 24:05 in the Recording of the General Division hearing.
[26] See paragraph 42 in the General Division decision.

– **No error of fact by finding that the Claimant had no significant difficulties with oral communication**

[53] The General Division stated that it was "unable to find that [the Claimant] has limitations in his ability to communicate verbally to such an extent that they would affect his ability to work."[27]

[54] The Minister argues that the record supports this finding. The finding wasn't perverse or capricious. The General Division weighed the evidence from Dr. Tan's CPP medical report and evidence in the record about some job interviews, and the Claimant's testimony to reach its decision.

[55] In my view, the record supports the General Division's finding. The finding was neither perverse nor capricious, even if it was not the finding the Claimant wanted the General Division to make. The CPP medical report flagged impairments and functional limitations related to behaviour and lack of emotional regulation, but not the Claimant's ability to communicate orally.[28]

– **No error of fact by finding that caffeine had no discernible effect on the Claimant**

[56] At the General Division, the Claimant argued that when he cut out caffeine on the advice of a proctologist, he experienced lower productivity and cognitive ability. The General Division stated that it had no medical evidence showing that the Claimant's inability to use caffeine had resulted in those functional limitations affecting work.[29]

[57] In my view, the General Division found only that it did not have medical evidence sufficient to conclude that the Claimant had functional limitations stemming from the doctor's recommendation to cut out caffeine. There is no reason for me to interfere with that factual finding. The General Division's refusal to find that the Claimant had those particular functional limitations because of cutting out caffeine is different from finding that caffeine had no discernible effect on the Claimant.

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[27] See paragraph 24 in the General Division decision.
[28] See GD2-89.
[29] See paragraph 54 in the General Division decision.

VII./ The General Division didn't make an error of law by failing to conduct an analysis in accordance with the principles in *Inclima v Canada* and the wording of the CPP.

[58] *Inclima* is a case from the Federal Court of Appeal that stands for the idea that when there is some evidence of a capacity to work, the Claimant must show that efforts to get and keep work were unsuccessful because of the disability.[30] I sometimes refer to this as the "employment efforts test."

[59] The Claimant argues that, while the General Division found that he showed many qualities that were "consistent" with work capacity, there was no analysis that connects those capacities with an ability to earn a substantially gainful amount. The General Division didn't identify what substantially gainful work the Claimant would have the capacity for, but just that he would work better in an "autonomous, small company setting." The Claimant argues that the General Division needed to discuss whether that work would be substantially gainful, or to discuss the attempts the Claimant made to get and keep that kind of work.

[60] The Minister argues that the General Division made no legal error by failing to engage in an *Inclima* analysis. The law doesn't require decision makers to apply the *Inclima* analysis when they have already found that the claimant doesn't have a severe disability. That was the case here. The Minister points out that the Claimant's arguments here are mostly about specific nuances of wording in the reasons that aren't errors because the Appeal Division doesn't hold the General Division to a standard of perfection.[31]

[61] In my view, there is no error. It is true that the General Division did not apply the work efforts test. But that is because it did not find evidence of capacity to work that would trigger the need to apply the test.

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[30] See *Inclima v Canada (Attorney General)*, 2003 FCA 117.
[31] See AD5-18 in the Minister's arguments. The Federal Court of Appeal refers to this idea about standard of perfection in paragraphs 17 to 19 *Canada v (Attorney General) v Poirier*, 2020 FCA 98.

[62] Instead, the General Division considered the Claimant's own testimony and the medical evidence about his limitations, and decided that the limitations, taken together, didn't preclude work. That conclusion is quite different from finding some evidence of capacity to work that would trigger the employment efforts test. The General Division found that the Claimant had limitations, but they weren't connected to work. It is only functional limitations that impact work that the General Division needs to be concerned about. If the functional limitations aren't about work and the personal circumstances show evidence of employability, I don't see an error in failing to apply the work efforts test.

[63] And in any event, evidence about work efforts is part of the analysis when deciding whether a disability is severe.[32] The General Division considered the Claimant's efforts to get and keep work as part of its discussion about the Claimant's personal circumstances and his employability.[33]

VIII./ The General Division didn't make an error of law by failing to accurately assess the Claimant's real-world employability.

[64] The Claimant argues that the General Division made a series of errors in its analysis of his real-world employability.

[65] The Minister argues that globally, the General Division did apply the *Villani* analysis and considered the Claimant's personal characteristics like his age, education, languages, and past work and life experience. The Claimant's individual issues with the *Villani* analysis show that he would like the Appeal Division to re-weigh the evidence on this issue, rather than revealing errors on the General Division's part.

[66] I share the global concern the Minister raises, but it's important I consider each of the concerns the Claimant raised about the employability analysis as well.

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[32] See paragraph 50 in *Villani v Canada (Attorney General)*, 2001 FCA 248.
[33] See paragraphs 59 to 61 addressing the Claimant's arguments about his attempts to work.

– **No failure to consider the Claimant's nation of origin as part of his life experience**

[67] The Claimant argues that the General Division made an error of law by failing to consider life history as part of the real-world assessment of his personal characteristics that affect employability. He says his clinical records document the difficulties he had integrating into Canadian urban society. He argues that the General Division ought to have considered his nation of origin (in his case, rural United States).

[68] The Minister agues that there was no error of law here. If the Claimant wanted to raise nation of origin as important, he could have done that in his arguments to the General Division.

[69] In my view, decision makers do sometimes leave "life experience" out of the real-world assessment, although the Federal Court of Appeal mentions it, specifically in *Villani*. However, I cannot agree that failing to mention nation of origin specifically as an example of the Claimant's life experience in this case amounts to an error of law. Leaving out a part of a legal test can alter the test itself and then be an error of law, but in this case, there is no requirement to have discussed the Claimant's nation of origin specifically.

– **No error by analyzing the medical evidence, the personal considerations, and commercial realities severally and in silos**

[70] The Claimant argues that the General Division failed to take the "total person" approach in his appeal, which requires considering the medical evidence in conjunction with personal considerations and commercial realities.[34] In the Claimant's view, the General Division considered his work experience, medical evidence, and personal considerations under separate headers to isolate various aspects of the analysis from one another.

[71] The Minister argues that the General Division made no error in law in the way it assessed these items. The General Division:

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[34] See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- considered the Claimant's limitations arising from his primary condition[35]
- considered the Claimant's other conditions along with the primary conditions[36]
- considered the Claimant's real-world attributes.[37]

[72] The Minister argues again that the Claimant's arguments amount to holding the General Division's analysis to a standard of perfection, rather than identifying errors.

[73] In my view, the General Division didn't make an error. The General Division analyzed the limitations, the conditions, and the real-world attributes or commercial realities. The reasons address these issues in turn, but the structure of the decision does not suggest an error in the reasoning. The need to separate parts of the analysis is necessary to ensure readability of the reasons.

– **No error conflating capacity with security of tenure**

[74] The Claimant argues that the General Division made an error of law by deciding that he was able to work without completing the "real-world" analysis first.

[75] The Minister argues that the General Division's reasons are sufficient here and there is no error. The General Division didn't make an error by finding that the Claimant was "able to work" by December 31, 2020 before completing the real-world analysis. The General Division was only referencing the Claimant's work capacity "as a result of his conditions" – it wasn't the final conclusion about whether the disability was severe.[38] Once the General Division went on to discuss the Claimant's real-world employability, the conclusion was that they didn't stop him from working, even when considered together with the limitations he has as a result of disability.

[76] In my view, the Claimant is correct in the sense that to decide whether a disability is severe, the focus isn't on functional limitations generally, but on those that have a

[35] See paragraph 23 in the General Division decision.
[36] See paragraphs 48 to 55 in the General Division decision.
[37] See paragraphs 56-61 in the General Division decision.
[38] See paragraph 50 in the General Division decision.

connection to the capacity to work. The General Division reached a conclusion about the functional limitations and stated that, taken together, they didn't preclude work. This is not an error of law. The General Division then considered the impact of his personal circumstances to decide the ultimate question about whether the condition was severe. There is no error in this approach.

– **No error by giving insufficient or contradictory reasons about the impact of the Claimant's work experience on his employability**

[77] The Claimant argues that the General Division characterized his work experience as being both in the "general technology sector" but then also found that the work he was pursuing was "specialized." The Claimant argues that the contradiction is important.

[78] However, I cannot find that the use of these two phrases amounts to a contradiction that requires explanation, or that failing to provide more explanation here amounts to insufficiency in the General Division's reasons. The General Division's reasons as a whole demonstrate a sufficient understanding of the Claimant's work history such that the alleged contradiction doesn't require further clarification. In any event, in my view, the Claimant's age and education loomed larger in the General Division's assessment of his personal circumstances than his work history.

– **No error of fact about the factual underpinnings of the Claimant's personal circumstances**

[79] The General Division found that "sometimes the [Claimant] has not been successful in getting a job because he has refused to complete a task asked of him as part of the assessment and hiring process."[39] The General Division also stated that "at other times, the [Claimant] was complimented on his interview, but in the end was simply not found to be the best candidate for the job."[40]

[80] The Claimant argues that the use of the word "sometimes" reflects an error of fact because it exaggerates the one instance in the record when this occurred. Further, he argues that the General Division misunderstood evidence about one job competition

[39] See paragraph 47 in the General Division decision.
[40] See paragraph 47 in the General Division decision.

in which, far from refusing to complete a task, he was offering to go the extra mile to demonstrate his competency, but only after an interview.

[81] In my view, it was open the to the General Division to use the word sometimes to describe the incidents in the record. It was not perverse or capricious for the General Division to find that the Claimant's communication refusing to perform tasks without compensation till the prospective employer offers an interview as one of refusing to complete a task. He put a pre-condition on the task. This is not the way the Claimant wanted the General Division to understand the way he communicated with that employer, but the General Division's interpretation does not rise to an error of fact.

– No error by finding the "real-world" test to include "unusualness" as a factor to consider

[82] The General Division decided that the Claimant has favourable employability attributes. The Claimant argued at the General Division that in the real world, having limited or narrow work experience is a significant barrier to gainful employment. The General Division stated that it's "not unusual for someone of [the Claimant's] age who has devoted time to university studies to not have years of work experience."[41]

[83] The Claimant argues that this phrasing is an error of law because it imports unusualness as a factor to consider when conducting the real-world analysis. He says that looking at personal circumstances is a way for the General Division to consider whether a Claimant who still has some work capacity is nevertheless prevented from getting work due to their personal circumstances. The analysis cannot and should not include every characteristic that could affect employability for some employers.

[84] I share the Minister's view of the General Division's statement. The Minister argues that the General Division's comment about unusualness was not part of the real-world test as the General Division analyzed it. Nothing turned on the comment – it was

[41] See paragraph 60 of the General Division decision.

simply a response to a notion that having limited work experience at early age is not, in and of itself, a barrier to future employment.

IX./ Did the General Division fail to provide the Claimant with a fair process by prejudicing the Claimant for being self-represented?

[85] The General Division noted that the Claimant attended the hearing and represented himself, and he "presented his case concisely and clearly."[42] Similarly, the General Division stated that the submissions the Claimant prepared were of "high quality" and "tells me that the [Claimant] can focus on a tasks with desirable results and is not without any ability to interact professionally with prospective employers."[43]

[86] In my view, the General Division did not prejudice the Claimant in any way for being self-represented. The General Division can consider the Claimant's ability to communicate during the hearing in the context of its discussion of whether his oral communication affected his ability to work.

Conclusion

[87] The appeal is dismissed. The General Division didn't make an error.

Kate Sellar

Member, Appeal Division

[42] See paragraph 24 of the General Division decision.
[43] See paragraph 40 of the General Division decision.