



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Tribunal File Number: AD-19-815

BETWEEN:

Donna Nesbitt

Appellant
(Claimant)

and

Minister of Employment and Social Development

Respondent
(Minister)

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Neil Nawaz

DATE OF DECISION: March 17, 2021

Canada

DECISION AND REASONS

DECISION

[1] The appeal is allowed. The General Division committed an error of law by failing to consider the Claimant's condition in its totality. I am overturning the General Division's decision and substituting it with my own decision to grant the Claimant a disability pension.

OVERVIEW

[2] The Claimant was injured in a January 2015 motor vehicle accident. On December 15, 2017, she applied for a Canada Pension Plan (CPP) disability pension, claiming that she could no longer work because of neck and back pain, headaches, and cognitive impairments.

[3] The Minister refused the application, and the Claimant appealed that refusal to the Social Security Tribunal. On August 27, 2019, the Tribunal's General Division dismissed the appeal, finding insufficient evidence that the Claimant had a severe disability during her minimum qualifying period, which ended on December 31, 2017. In particular, the General Division found that the Claimant's physical and mental problems did not prevent her from regularly pursuing substantially gainful employment.

[4] In November 2019, the Claimant requested leave to appeal from the Tribunal's Appeal Division, alleging that the General Division committed the following errors in arriving at its decision:

- Failing to consider the Claimant's impairments in their totality;
- Finding that the Claimant's back pain required no intervention;
- Finding that the Claimant's physical and cognitive impairments were well managed;
- Finding that the Claimant's job at a yoga studio was not a valid attempt to work;
- Discounting Dr. Goldstein's opinion without reason; and
- Finding that Dr. Goldstein's expert opinion contradicted the Claimant's treating specialists.

[5] Shortly afterward, the Claimant filed an application to rescind or amend the General Division's decision based on what she claimed was previously undiscoverable medical information. The Appeal Division placed this appeal on hold pending final disposition of the Claimant's rescind or amend application. In December, that matter came to an end at the Federal Court of Appeal after the Minister and the Claimant filed minutes of settlement regarding "any claims respecting the [Claimant's] December 15, 2017 application for a CPP disability pension."¹ The Minister is now conceding that the General Division erred in law in this proceeding by failing to consider the totality of the Claimant's conditions on her capacity to regularly pursue any substantially gainful occupation.

ISSUE

[6] There are three grounds of appeal to the Appeal Division. A claimant must show that the General Division acted unfairly, interpreted the law incorrectly, or based its decision on an important error of fact.²

[7] I had to decide whether any of the Claimant's allegations fell into one or more of the grounds of appeal and whether any of them had merit.

ANALYSIS

[8] At my request, the parties participated in two case conferences to discuss whether their settlement applied to this proceeding. Following the second case conference, the Minister's representative issued a letter that said:

The Minister concedes that the General Division erred in law by not considering the totality of Ms. Nesbitt's (the Applicant's) conditions on her capacity to regularly pursue any substantially gainful occupation. The decision in *Bungay v Canada (Attorney General)* requires that the claimant's condition be assessed in its totality. This means that a decision maker must consider all of the possible impairments that affect a claimant's employability as a part of the "real world" approach.

¹ AD03-4.

² The formal wording for these grounds of appeal is found in s 58(1) of the *Department of Employment and Social Development Act (DESDA)*.

The General Division did not consider the impact that the Applicant's shoulder pain and headaches have on her employability. The General Division assessed the medical evidence of these conditions and determined that they were well managed, but did not consider the effect that these conditions, individually or cumulatively, may have on her employability. When considering the Applicant's employability at paragraph 51, the General Division simply confirms its conclusion that her conditions are well managed but does not meaningfully consider all of the claimant's impairments and their impact on employability. The General Division therefore erred in law.³

[9] I have reviewed the General Division's decision against the underlying record. I agree with the Minister that the General Division erred in law by failing to consider the Claimant's condition in its totality.

REMEDY

[10] The Appeal Division has the authority to address whatever errors the General Division may have committed.⁴ I can refer this matter back to the General Division for another hearing or give the decision that the General Division should have given.

[11] The parties have come to an agreement that the Claimant is entitled to the CPP disability pension. They are asking me to give the decision that the General Division should have given and find the Claimant disabled within the meaning of the *Canada Pension Plan*.⁵

[12] I am granting that request. The record is complete. The Tribunal is required to conduct its proceedings as quickly as fairness and natural justice allow. I am satisfied that the evidence supports a finding of disability.

[13] In accordance with the parties' agreement, I find that the Claimant had a severe and prolonged disability as of September 2016. According to section 69 of the *Canada Pension Plan*, pension payments start four months after the date of disability. The Claimant's disability pension will therefore commence as of January 2017.

³ AD08-1.

⁴ DESDA, s 59(1).

⁵ See s 42(2)(a) of the CPP.

CONCLUSION

[14] The appeal is allowed.



Member, Appeal Division

METHOD OF PROCEEDING:	On the record
REPRESENTATIVES:	Robert Littlejohn, representative for the Claimant, Hillary Perry, representative for the Minister