

Citation: *Y. Z. v. Minister of Human Resources and Skills Development*, 2013 SSTAD 4

Appeal No: 26912

BETWEEN:

Y. Z.

Appellant

and

Minister of Human Resources and Skills Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal Decision

SOCIAL SECURITY TRIBUNAL
MEMBER:

Valerie HAZLETT PARKER

HEARING DATE: September 3, 2013

TYPE OF HEARING: On the Written Record

DATE OF DECISION: September 6, 2013

DECISION

[1] The Request made by the Respondent to have the Appeal dismissed is granted.

INTRODUCTION

[2] The Appellant applied for Canada Pension Plan disability benefits on January 12, 2007. She claims that she is disabled as a result of being diagnosed and treated for serious cancer. The last medical documents produced by the Appellant state that her cancer is in remission. The Appellant also disclosed that she received treatment from a Psychologist. She has refused to provide any reports or information regarding this treatment.

[3] On August 17, 2009, a Review Tribunal determined that a *Canada Pension Plan* (the “CPP”) disability pension was not payable.

[4] The Appellant filed an Application for Leave to Appeal that Review Tribunal decision (the “Leave Application”) with the Pension Appeal Board (PAB) on November 6, 2009.

[5] The PAB granted leave to appeal on December 1, 2009. Pursuant to section 259 of the *Jobs, Growth and Long-term Prosperity Act* of 2012, the Appeal Division of the Tribunal is deemed to have granted leave to appeal on April 1, 2013.

[6] The Respondent requested that the Appellant sign and deliver to it a Consent for Service Canada to Obtain Personal Information, a Consent to Attend an Independent Medical Examination (IME) and a Request Sheet for Additional Information CPP Disability (“Questionnaire”) (hereinafter “Consents”) pursuant to s. 68 of the *Canada Pension Plan Regulations*.

[7] The Appellant provided the requested Consents to the Respondent in 2007. The Respondent asked her for further Consents in 2009 and she refused to provide them.

[8] The Respondent then brought a Motion before the PAB seeking an Order that the Appellant provide these Consents, and that her appeal be dismissed if she failed to do so within a prescribed time period.

[9] This Motion was first before the PAB on March 3, 2011. No order was made at that time, as the Appellant agreed to provide the Consents to the Respondent. She did not do so.

[10] The Respondent then returned the matter to the PAB. On September 29, 2011 the PAB ordered that the Appellant provide the Consents within 30 days, and if she failed to do so, the Respondent may ask the PAB to dismiss her appeal.

[11] The Appellant sought judicial review of this decision. On June 25, 2012 the Federal Court upheld the decision of the PAB.

[12] On June 20, 2013 the Respondent again asked the Appellant by letter to provide the signed Consents. This letter also notified the Appellant that it would request this Tribunal to dismiss her appeal if the Consents were not provided by July 20, 2013.

[13] On July 23, 2013 this Tribunal received a Request from the Respondent to dismiss this appeal because the Appellant had not provided the Consents.

[14] By letter dated July 30, 2013 this Tribunal advised the Appellant that the Respondent's Request to dismiss her appeal would be decided on the Written Record, and that the Appellant must provide any written material to support her position to the Tribunal on or before August 30, 2013.

[15] The Appellant has provided no written material, nor has she provided the completed and signed Consents.

THE LAW

[16] Section 4 of the *Social Security Tribunal Regulations* provides that a party may request the Tribunal to provide for any matter concerning a proceeding.

[17] Section 68 of the *Canada Pension Plan Regulations* provides that where an Appellant claims that she is disabled, she shall supply certain information to the Minister. This includes information regarding her occupation and earnings, and to undergo such special examinations and provide reports as the Minister deems necessary for the purpose of determining the disability of that person.

[18] In this case, the PAB concluded that this obligation to undergo special examinations and provide medical reports is a continuing one, and that requests for further medical information can be made from time to time. Therefore, the Respondent's request for additional Consents in 2009 was reasonable and ought to be complied with. This conclusion was upheld by the Federal Court.

ISSUE

[19] This Tribunal must decide whether this appeal should be dismissed because the Appellant has not provided the Consents required by the Respondent.

EVIDENCE AND SUBMISSIONS

[20] The Respondent provided an affidavit of Barbara Howard, sworn on July 19, 2013 as evidence in support of the Request. The Orders made by the PAB and Federal Court in this case are appended as Exhibits to this affidavit.

[21] At the initial PAB hearing on March 3, 2011, the Appellant changed her mind and agreed to provide the Consents. The PAB therefore made no Order. The matter was brought back to the PAB in September 2011 as the Consents had not been provided. At this hearing, the PAB Ordered that the Consents be provided within 30 days, and if they were not so provided the Respondent may seek to have the appeal dismissed. This Order was upheld by the Federal Court on June 25, 2012.

[22] The Respondent now seeks to have the appeal dismissed as the Appellant has not provided the Consents.

ANALYSIS

[23] Pursuant to s. 4 of the *Social Security Tribunal Regulations* this Tribunal has the authority to deal with any matter regarding a proceeding, upon a Request being filed with the Tribunal. This includes the Respondent's Request to dismiss the appeal for non- production of the Consents.

[24] The law is also stated clearly by both the PAB and the Federal Court: the Respondent is entitled to receive these Consents from the Appellant to properly evaluate and litigate the appellant's claim.

[25] The Appellant was asked to provide these Consents on numerous occasions by the Respondent, as set out in the affidavit of Ms. Howard. The Appellant agreed to provide them when she appeared before the PAB. Despite this agreement, the subsequent Order of the PAB, the Order of the Federal Court, and subsequent request by the Respondent, she has not provided the Consents.

[26] The Appellant has filed no evidence or argument to explain why she has not done so.

[27] The Appellant is clearly in default of her obligation to provide the Consents to the Respondent. The Appellant must know that the consequence for her actions is that her appeal may be dismissed as that Order was sought in this Request and before the PAB. I find therefore, that, in the circumstances of this case, it is appropriate to dismiss the Appellant's claim.

CONCLUSION

[28] The Request by the Respondent is granted. The claim by the Appellant is dismissed.

Valerie Hazlett Parker
Member, Appeal Division