Citation: *T. G. v. Minister of Employment and Social Development*, 2014 SSTAD 262

Appeal No: AD-13-26

BETWEEN:

T. G.

Appellant

and

Minister of Employment and Social Development
(Formerly 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 23, 2014
TYPE OF HEARING	On the Written Record
DATE OF DECISION:	September 25, 2014

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On April 26, 2013, the General Division of the Social Security Tribunal (the Tribunal dismissed the Appellant's claim that she was disabled under the Canada Pension Plan due to chronic pain caused by a work injury.

[3] The Appellant filed an appeal from that decision with the Appeal Division of the Tribunal on July 10, 2013.

[4] The hearing of this appeal was conducted on the written record. The Appellant filed a notice that she had no submissions to make with the Tribunal. The Respondent filed submissions with the Tribunal.

THE LAW

[5] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the only grounds of appeal are the following:

a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[6] Subsection 59(1) of the DESD Act provides that the Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.

ISSUE

[7] The Tribunal must decide if the General Division decision was reasonable.

SUBMISSIONS

[8] The Appellant made no submissions.

[9] The Respondent submitted that the appeal should be dismissed because:

a) The standard of review of a General Division decision is reasonableness;

b) The decision of the General Division was reasonable; and

c) The General Division made no error of law in its application of the decision in *Villani v. Canada (Attorney General)*, 2003 FCA117.

ANALYSIS

Standard of Review

[10] The Appellant made no submissions on this issue.

[11] The Respondent submitted that the proper standard of review for a decision made by the General Division of the Tribunal is that of reasonableness. The leading case on this is *Dunsmuir v. New Brunswick* 2008 SCC 9. In that case, the Supreme Court of Canada concluded that when reviewing a decision on questions of fact, mixed law and fact, and questions of law related to the tribunal's own statute, the standard of review is reasonableness; that is, whether the decision of the tribunal is within the range of possible, acceptable outcomes which are defensible on the facts and the law. I accept the Respondent's detailed submissions on this issue as a correct statement of the law.

[12] I find that the standard of review in this case is that of reasonableness.

Application of Standard of Review to this Case

[13] The Respondent argued that the appeal should be dismissed because the General Division decision was reasonable. It also argued that the General Division committed no error in its application of the *Villani* decision in this case.

[14] The Respondent pointed to three paragraphs in the General Division decision where the Appellant's personal characteristics such as age, education, work experience, etc. were set out. From this it argued that the General Division must have been aware of these factors and applied them in making the decision. From a review of the decision, it is clear that the General Division Member was aware of the Appellant's age, education, work experience and other personal circumstances. The decision is not clear, however, on how that information was considered along with the medical evidence to reach its conclusion.

[15] Notwithstanding this, I find that the General Division decision reasonably considered the applicable legal principles in coming to the conclusion it did. As the Federal Court of Appeal stated in *Gaudet v. Canada (Attorney General)*, 2013 FCA 254, the role of the Tribunal in reviewing a decision is not to retry the case, or re-do what the General Division did. Rather, it is to assess whether the General Division reached an outcome that was acceptable and defensible on the facts and the law.

[16] I find that the General Division made a reasonable decision that is defensible on the facts and the law. The Appellant was injured at work in 2006, and continued to suffer neck, shoulder and arm pain thereafter. She also developed depression secondary to her injury. The Appellant's doctors concluded that despite her limitations she would be able to return to work, perhaps after retraining. The Appellant also attended for two Functional Capacity Evaluations, which both concluded, after detailed testing, that she was capable of completing light work duties on a full-time basis. In addition, there was evidence that the Appellant did not comply with all treatment recommendations including mental health therapy prior to her MQP, and she made little effort to obtain employment within her physical restrictions.

CONCLUSION

[17] The appeal is dismissed for these reasons.

Valerie Hazlett Parker

Member, Appeal Division