

Citation: *B. S. v. Minister of Employment and Social Development*, 2014 SSTAD 325

Appeal No: AD-14-296

BETWEEN:

B. S.

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: October 20, 2014

TYPE OF HEARING: On the Written Record

DATE OF DECISION: November 10, 2014

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On May 2, 2014, the General Division of the Social Security Tribunal summarily dismissed the Appellant's claim.

[3] The Appellant filed an Appeal from that decision with the Appeal Division of the Social Security Tribunal on June 25, 2014. The parties were invited to make written submissions on this appeal. The Appellant filed no submissions with the Tribunal. The Respondent filed written submissions with the Tribunal on October 15, 2014.

[4] The hearing of this appeal was conducted on the written record after the time to file submissions had expired.

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 whether the General Division had jurisdiction to decide the Appellant's claim that he should be granted a remedy as he received erroneous advice from the Respondent.

SUBMISSIONS

[8] The Appellant argued that the appeal should be allowed because the General Division was not qualified to examine his complaint that he received erroneous advice regarding his application for *Canada Pension Plan* (CPP) benefits.

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

- a) The issue before the Tribunal is purely a question of law, being whether the Appellant was entitled to replace his retirement pension with a disability pension; and
- b) The General Division made no error in law.

ANALYSIS

Standard of Review

[10] Neither party made any submissions regarding what standard of review should be applied the General Division decision. The leading case on this issue 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... the standard of correctness is maintained for jurisdictional questions and some other questions of law.

[11] In this case the Appellant has questioned the jurisdiction of the General Division to decide his claim. The standard of review is correctness.

Application of Standard of Review to this Case

[12] In this case, the Appellant began to receive a CPP retirement pension in October 2006. He applied to replace the CPP retirement pension with a CPP disability pension in October 2010, some four years later. His application to replace the retirement pension with a disability pension was denied on the basis that the provisions of the CPP do not permit this to be done more than 15 months after a retirement pension begins to be paid to a claimant.

[13] The Appellant argued that the Tribunal was not qualified to examine his complaint regarding erroneous advice given to him by the Department of Employment and Social Development (formerly the Department of Human Resources and Skills Development) (the Department) regarding what CPP benefits he should have applied for. He provided no explanation of how this was to have occurred.

[14] This Tribunal was created by statute. As such, it only has the power to decide those issues that the statute sets out. Section 64 of the *Department of Employment and Social Development Act* sets out what matters the Tribunal may decide under the CPP. This includes whether any benefit is payable to a person, whether a person is eligible for a division of unadjusted pensionable earnings, whether a person is eligible for an assignment of a retirement pension, and whether any penalty should be imposed. It does not include the power to grant any remedy based on erroneous advice given to a claimant by the Department.

[15] In addition, in *Lee v. Attorney General of Canada* 2011 FC 689 the Federal Court decided that there is no legal obligation on the Minister to inform all individuals eligible for a benefit of their entitlement to it. This reasoning is binding on this Tribunal, and defeats any argument that the Appellant was entitled to some remedy because he was given erroneous advice.

[16] The General Division decision set out the law correctly and applied it to the facts before it. It made no error in this regard.

CONCLUSION

[17] For these reasons the appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division