

Citation: *A. T. v. Minister of Employment and Social Development*, 2015 SSTAD 766

Date: June 19, 2015

File number: AD-15-177

APPEAL DIVISION

Between:

A. T.

Appellant

and

**Minister of Employment and Social Development
(formerly known as the Minister of Human Resources and Skills Development)**

Respondent

Decision by: Valerie Hazlett Parker, Member, Appeal Division

Decided on the record on June 19, 2015

REASONS AND DECISION

INTRODUCTION

[1] The Appellant applied for and began to receive a *Canada Pension Plan* retirement pension in January 2012. She applied for a *Canada Pension Plan* disability pension on July 11, 2014. The Respondent denied her claim for a disability pension initially and after reconsideration. The Appellant appealed this decision to the General Division of the Social Security Tribunal. The General Division summarily dismissed the appeal on March 9, 2015. The Appellant then appealed to the Appeal Division of the Social Security Tribunal.

[2] This appeal was decided on the basis of the written record for the following reasons:

- a) The fact that the credibility of the parties was not a prevailing issue;
- b) The information in the file, including the need for additional information;
- c) The requirements under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit;
- d) the nature of the submissions received from both parties to the appeal; and
- e) the legal issue in this matter.

ANALYSIS

[3] The Respondent submitted that the standard of review to be applied to the General Division decision in this case is that of reasonableness as the issue is one of mixed fact and law. The Appellant made no submissions on this issue. 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 submissions on this issue as a

correct statement of the law. I am also satisfied that the issue before me is one of mixed fact and law, being whether the General Division properly applied the law to the undisputed facts in this case. Hence, the standard of review is that of reasonableness.

[4] The Appellant stated in her letter of appeal that she disagreed with the General Division decision. This is not a ground of appeal that can be considered. The *Department of Employment and Social Development Act* governs the operation of this Tribunal. Section 58 of this Act sets out the only grounds of appeal that can be considered. They are that:

- 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.

[5] The Appellant did not allege that any factual errors were made. From a reading of the materials before me it is clear that the parties agree on the relevant facts – the date of commencement of the retirement pension, and the date of application for a disability pension.

[6] The Appellant also did not allege that any of the principles of natural justice were breached. From the record, there is no indication that the Appellant was not given an adequate opportunity to present her full case, answer the case against her, or that the decision was made in any improper fashion.

[7] The General Division decision also clearly and correctly set out the law that applied in this case. The *Canada Pension Plan* and *Canada Pension Plan Regulations* set out definite rules regarding when an application for a disability pension must be made in order to replace a retirement pension with a disability pension. The General Division decision correctly and reasonably applied the facts of this case to this law, and rendered a decision that was correct,

and within the range of possible acceptable outcomes that is defensible on the facts and the law.

[8] In this case the Appellant's compromised health, although significant, is not relevant to the decision that was made in this matter. The Social Security Tribunal does not have the authority to grant relief to any claimant who does not meet the legislated rules for when a disability application must be made.

[9] For these reasons, I find that the General Division decision is reasonable and the appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division