Citation: *I. F. v. Minister of Employment and Social Development*, 2015 SSTAD 1266

Appeal No. AD-15-905

BETWEEN:

I. F.

Appellant

and

Minister of Employment and Social Development
(formerly Minister of Human Resources and Skills Development)

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: October 28, 2015

REASONS AND DECISION

INTRODUCTION

[1] The Appellant appeals a decision dated May 5, 2015 of the General Division, whereby it summarily dismissed her application of August 12, 2015 for a Canada Pension Plan disability pension, as it was satisfied that the appeal did not have a reasonable chance of success.

[2] The Appellant received the decision of the General Division on May 7, 2015. She filed an appeal on August 12, 2015 to the Appeal Division (Notice of Appeal). No leave is necessary in the case of an appeal brought under subsection 53(3) of the *Department of Employment and Social Development Act* (DESDA), as there is an appeal as of right when dealing with a summary dismissal from the General Division. Having determined that no further hearing is required, this appeal before me is proceeding pursuant to subsection 37(a) of the *Social Security Tribunal Regulations.*

ISSUES

[3] The issues before me are as follows:

1. Was the Appellant late in filing her Notice of Appeal on August 12, 2015?
    a. If so, do I have any discretion to extend the time for filing the Notice of Appeal?
    b. Should I exercise any discretion to extend the time for filing the Notice of Appeal?
2. Is there any basis to grant the Respondent's request for a ruling, pursuant to section 4 of the *Social Security Tribunal Regulations?*
3. What is the applicable standard of review when reviewing decisions of the General Division?

4. Did the General Division err in choosing to summarily dismiss the Appellant's claim?

5. Did the General Division fail to observe a principle of natural justice?

6. If so, what remedies, if any, are appropriate and available to the Appellant, or can the decision of the General Division be saved?

FACTUAL OVERVIEW

[4] The Appellant applied for a Canada Pension Plan disability pension on October 19, 2011 (GT1-35 to GT1-38). The Respondent denied the application initially on February 18, 2012 (GT1-29 to GT1-31) and upon reconsideration, on November 13, 2012 (GT1-06 to GT1-08). The Appellant appealed the reconsideration to the Office of the Commissioner of Review Tribunals on December 12, 2012.

[5] Under section 257 of the *Jobs, Growth and Long-term Prosperity Act,* any appeal filed before April 1, 2013 under subsection 82(1) of the *Canada Pension Plan,* as it read immediately before the coming into force of section 229, is deemed to have been filed with the General Division of the Social Security Tribunal on April 1, 2013. On April 1, 2013, the OCRT transferred the Appellant's appeal of the reconsideration decision to the Social Security Tribunal.

[6] On May 7, 2014, the Appellant wrote to the Social Security Tribunal requesting an extension, as she was still waiting for her medical file from Quebec (GT3).

[7] On January 19, 2015, the Social Security Tribunal advised the parties that it considered the appeal ready to proceed. The Social Security Tribunal advised the parties that if they wished to file any additional documents or written submissions that had not already been sent to the Social Security Tribunal , to file them without delay. The Social Security Tribunal also wrote:

> **Important:** If you are not ready for this appeal to proceed at this time, please contact the Tribunal without delay. You will be required to provide the reason why you are not ready to proceed. Tribunal staff will discuss the next steps with you.

[8] On March 23, 2015, the General Division gave notice in writing to the Appellant, advising that it was considering summarily dismissing the appeal from the reconsideration decision of the Respondent because:

> In order to qualify for a Canada Pension Plan – disability benefit you must have paid into CPP for at least 4 of the last 6 years. Under the late provision of the CPP the most recent date by which you made sufficient contributions to be considered for CPP – disability benefit is December 1997.
>
> The Tribunal must find that you had a disability by December 1997 that was both severe and prolonged. However, in your case you had employment earnings after December 1997. In 2001 and 2002 you had employment earnings of $6,428 and $10,542 respectively. These earnings provide an evidentiary basis that you did not have a disability that was both severe and prolonged as of December 1997.

[9] The General Division invited the Appellant to provide detailed written submissions by no later than April 27, 2015, explaining why her appeal had a reasonable chance of success.

[10] On April 27, 2015, the Appellant contacted the Social Security Tribunal by telephone. She advised that she required an extension to respond to the letter dated March 23, 2015 from the Social Security Tribunal. On April 28, 2015, the Social Security Tribunal contacted the Appellant, advising her that she would need to document her request. The Appellant responded that she had already submitted a written request on April 27, 2015, by mail.

[11] The Social Security Tribunal received the Appellant's written request for an extension on April 30, 2015. She explained that she had been unsuccessful in obtaining her records from Quebec. She wrote that if she did not receive her information, she would "go ahead with what [she has and would] be sending … what copies [of what she has]". She confirmed that she was again seeking an extension, on compassionate grounds, to allow her to prepare her case. Not only was she unwell, but she was also dealing with a very sick child who had undergone three open heart surgeries, a recently diagnosed kidney infection, and Streptococcus pyogenes (i.e. flesh-eating disease). The Appellant further advised that her

husband and both parents were also unwell. She explained that when she last worked, it had been for six months and she was unable to fulfill her responsibilities then.

[12] On May 5, 2015, the General Division rendered its decision. The General Division relied upon the following provisions, in coming to its decision:

a) Subsection 53(1) of the *Department of Employment and Social Development Act,* which states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success;

b) Section 22 of the *Social Security Tribunal Regulations,* which states that before summarily dismissing an appeal, the General Division must give notice in writing to the appellant and allow the appellant a reasonable amount of time to make submissions.

[13] The General Division found that there was a lack of any medical evidence establishing disability in and around the Appellant's minimum qualifying period of December 31, 1997; that the Appellant's psychological disability occurred in 2005 and 2006, eight and nine years beyond her minimum qualifying period; that her treating physician advised that the Appellant's main medical condition commenced in and around 2010 – 13 years after her minimum qualifying period; and that the Appellant had valid contributions to the Canada Pension Plan in 2001 and 2002, which it found established an employment capacity beyond the minimum qualifying period. Given these considerations, the General Division found that the appeal had no reasonable chance of success.

[14] On August 12, 2015, the Appellant filed an appeal from the summary dismissal decision of the General Division. She advised in the Notice of Appeal that she would be producing medical records. She enclosed an article she wrote for "Children Heart Network" about her daughter's congenital heart disease, along with various medical records from BC Children's Hospital for her daughter.

[15] On September 25, 2015, the Appellant filed copies of medical records which she had recently obtained from various Quebec health practitioners, with the Social Security Tribunal.

[16] On October 2, 2015, counsel for the Respondent filed a request for a section 4 determination under the *Social Security Tribunal Regulations*, that these records, along with any submissions and any new evidence, be deemed inadmissible, as they had been filed past the 45-day deadline within which the parties were required to file written submissions. Counsel for the Respondent referred to *Alves v. Canada (Attorney General)*, 2014 FC 1100 at para. 73, in which the Federal Court of Canada held that "[a]dducing new evidence is no longer a ground of appeal" and that it is an error to consider it as such.

[17] Counsel also relied upon an endorsement in 2015 SSTAD 572, where one of my colleagues wrote,

> In this case, the Claimant has filed further medical reports to support the disability claim under the *Canada Pension Plan.* This evidence does not point to any of the grounds of appeal set out in the Act. Consequently, they are not relevant to the proceeding before me. They are inadmissible.

[18] Counsel for the Respondent submits that that the only evidentiary material which the Appeal Division should consider is the evidence which was before the General Division. Counsel requests a determination by the Appeal Division as follows:

(a) that no new evidence be permitted and that any reports submitted by the Appellant which were not before the General Division not be entered on the Appeal Division record;

(b) that any submissions by the Appellant which refer to, or are based on the inadmissible new evidence, be struck from the Appeal Division record; and

(c) that the appeal proceed under sections 58 and 59 of the *Department of Employment and Social Development Act.*

SUBMISSIONS

[19] In the Notice of Appeal filed on August 12, 2015, the Appellant explained why she was late in filing the Notice of Appeal. She explained that the Service Canada office was closed on August 6, 2015, when she went to file her Notice of Appeal. (She referred to

August 6, 2015 as a Wednesday, but in fact it is a Thursday.) She did not however explain why she did not file the Notice of Appeal until approximately one week later, on August 12, 2015.

[20] Although the Appellant does not use the precise language of the DESDA, the Appellant essentially submits that the General Division failed to observe a principle of natural justice when it did not consider her request for an extension of time so she could obtain medical records from Quebec. She explained that she had attempted to obtain these records previously, but was now driving from X, B.C. to Quebec to personally retrieve them. She submits that the General Division rendered a decision without all of the evidence before it.

[21] On August 17, 2015, the Social Security Tribunal confirmed with the parties that the Appellant had filed a Notice of Appeal. The Social Security Tribunal advised that parties had until September 27, 2015 to file submissions or file a notice with the Appeal Division advising that they had no new submissions.

[22] On September 24, 2015, counsel for the Respondent filed written submissions. Counsel for the Respondent submitted that the General Division correctly stated and applied the test as to when it must summarily dismiss an appeal. Counsel for the Respondent further submitted that the General Division also correctly stated the law as it relates to the law with respect to disability benefits. Counsel for the Respondent further submitted that, based on the Appellant's application for disability benefits and the medical evidence, the General Division had concluded that the Appellant had not demonstrated that she suffered from a disability under the *Canada Pension Plan,* as there was a lack of medical evidence establishing disability in and around the Appellant's minimum qualifying period of December 31, 1997. Counsel for the Respondent submitted that the appeal is therefore bereft of any chance of success and was properly summarily dismissed. Counsel for the Respondent submitted that the decision of the General Division is entirely reasonable as it is transparent, intelligible and is the only acceptable outcome based on the law and the facts. Counsel for the Respondent submits that the decision contains no reviewable error to permit the intervention of the Appeal Division.

[23] On September 30, 2015, the Appellant notified the Social Security Tribunal by telephone that she had sent documents by express post on September 27, 2015. The Social Security Tribunal received these documents on October 1, 2015; they consisted of the Appellant's medical records, along with some records pertaining to both her spouse and daughter. Some of the Appellant's records are in French and appear to cover the period from 1993 to 1997. Some of the records also relate to a motor vehicle accident which occurred on November 26, 2006 near Sardis, B.C.

[24] The Appellant advised that she would like to send more medical records, including those of Santé Publique.

[25] On October 2, 2015, counsel for the Respondent requested a section 4 determination.

ISSUE 1: WAS THE NOTICE OF APPEAL LATE WHEN IT WAS FILED ON AUGUST 12, 2015?

[26] The Respondent does not suggest that the Appellant was late in filing the Notice of Appeal. Indeed, the Respondent mistakenly suggests that the Appellant filed the Notice of Appeal on July 2, 2015, although the Social Security Tribunal received and date-stamped the Notice of Appeal on August 12, 2015.

[27] Form SST-ATATTAD (2013-03-001) E on which the Notice of Appeal was filed with the Social Security Tribunal indicates that an appellant is late if he or she is filing more than 90 days after receiving a Canada Pension Plan appeal decision.

[28] Sections 53 and subsection 56(1) of the DESDA govern summary dismissals. The sections read:

> **53.** (1) The General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.
>
> (2) The General Division must give written reasons for its decision and send copies to the appellant and the Minister or the Commission, as the case may be, and any other party.
>
> (3) The appellant may appeal the decision to the Appeal Division.

. . .

> **56.** (2) Despite subsection (1), no leave is necessary in the case of an appeal brought under subsection 53(3).

[29] The two sections are silent about any time limits for appeals from a summary dismissal decision. While section 57(1) of the DESDA imposes a 90-day time limit after the day on which the decision is communicated to an appellant within which to make an application, the section pertains only to applications for leave to appeal to the Appeal Division.

[30] Absent any express provisions setting out a time limit for an appeal from a summary dismissal decision, I find that although the Notice of Appeal was filed after 90 days on which the decision of the General Division was communicated to the Appellant, she was not late in filing it.

ISSUE 2: SECTION 4 DETERMINATION

[31] Counsel for the Respondent seeks a section 4 determination as to the admissibility of the Appellant's submissions and evidence filed on September 25, 2015. In particular, counsel seeks the following:

(a) that no new evidence be permitted and that any reports submitted by the Appellant which were not before the General Division not be entered on the Appeal Division record;

(b) that any submissions by the Appellant which refer to, or are based on the inadmissible new evidence, be struck from the Appeal Division record; and

(c) that the appeal proceed under sections 58 and 59 of the *Department of Employment and Social Development Act.*

[32] The Appellant's submissions and medical records filed on September 25, 2015 serve two purposes: (1) to support the Appellant's allegation that the General Division failed to observe a principle of natural justice in failing to consider her request for an

extension of time or adjournment of the proceedings and (2) to support the Appellant's claim to a Canada Pension Plan disability pension.

[33] Counsel for the Respondent has referred me to *Alves*, and submits that "[a]dducing new evidence is no longer a ground of appeal". However, this also overlooks the Federal Court's unequivocal endorsement that an appellant can rely upon new evidence provided that it is based on one of the three enumerated grounds. The Federal Court wrote:

> Under the current legislation, an appeal will only have a reasonable chance of success if it is based on one of the three enumerated grounds. This test is narrower than the test that was previously applied, which did not list grounds of appeal. Adducing new evidence is no longer a ground of appeal …

[34] In other words, any new evidence does not form a ground of appeal unto itself, but that new evidence can be relied upon if it addresses one of the grounds of appeal.

[35] The first of these purposes set out in paragraph 32 directly speaks to one of the grounds of appeal under subsection 58(1) of the DESDA, as the Appellant alleges that the General Division failed to observe a principle of natural justice. Accordingly, I would allow the submissions and the medical records to be admitted into evidence for that purpose. The Appellant can rely on these submissions and any medical records for the purpose of demonstrating that they might have been relevant and material to her claim for a disability pension under the Canada Pension Plan. If the Appellant is able to demonstrate that these submissions and medical records might have been relevant and material to her claim for a disability pension, then it would serve to bolster her claim that her request for an extension of time or an adjournment was with some merit, i.e. not considering her request might have amounted to a failure to observe a principle of natural justice.

[36] As I do not consider this appeal to be a *de novo* hearing, I would not admit the submissions and medical records to be used for the purposes of reassessing the Appellant's claim for a disability pension under the *Canada Pension Plan (M.C. v. Minister of Employment and Social Development,* 2014 SSTAD 20).

[37] I confirm that the appeal is proceeding under sections 58(1) and 59 of the DESDA. The leave provisions under section 58 of the DESDA have no applicability to the proceedings at hand.

ISSUE 3: STANDARD OF REVIEW

[38] The Appellant did not address the issue of the standard of review.

[39] The Respondent provided submissions on this issue. Counsel for the Respondent submits that the standard of review is reasonableness for questions of fact and for questions of mixed fact and law. The Respondent submits that for questions of law, the Appeal Division should not show deference to the General Division's decision and should apply a correctness standard.

[40] The Respondent submits that the main issue in this appeal, whether the appeal has a reasonable chance of success, involves a question of mixed fact and law. The Respondent submits that the Appeal Division should review the General Division's decision on a reasonableness standard, but however, it should show no deference to the General Division's statement of the test for a summary dismissal and to the General Division's statement of the law with respect to disability.

[41] I concur with these submissions. In *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada determined that there are only two standards of review at common law in Canada: reasonableness and correctness. Questions of law generally are determined on the correctness standard, while questions of fact and of mixed fact and law are determined on a reasonableness standard. And, when applying the correctness standard, a reviewing body will not show deference to the decision-maker's reasoning process and instead, will conduct its own analysis, which could involve substituting its own view as to the correct outcome.

[42] The applicable standard of review will depend upon the nature of the alleged errors involved.

[43] Subsection 58(1) of the DESDA sets out the grounds of appeal as follows:

(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.

[44] From what I can determine, the Appellant does not dispute any of the factual findings made by the General Division, as it rendered a decision on the basis of the evidence before it. Rather, she alleges that the General Division failed to consider her request for an extension of time or an adjournment of the proceedings, to enable her to obtain supporting medical documentation. This request for an extension of time or an adjournment of the proceedings is a discretionary matter. As such, I find that a correctness standard applies where the General Division is alleged to have failed to observe a principle of natural justice, by failing to consider the request for an extension of time or an adjournment of the proceedings.

ISSUE 4: DID THE GENERAL DIVISION ERR IN CHOOSING TO SUMMARILY DISMISS THE APPELLANT'S CLAIM?

[45] Although the Appellant did not question the appropriateness of the summary dismissal procedure, I will address that issue before I assess the decision of the General Division.

[46] Counsel for the Respondent submits that the first task for the General Division was to identify the law with respect to summary dismissals under section 53 of the DESDA, which it did at paragraphs 4 and 5 of its decision. Counsel for the Respondent submits that the decision of the General Division to summarily dismiss the appeal contains no reviewable error to permit the intervention of the Appeal Division and that it is reasonable.

[47] Counsel for the Respondent submits that the appeal should be dismissed because the Appellant did not meet the statutory requirements under subsection 42(2) of the *Canada Pension Plan.* In other words, counsel submits that the Appellant did not prove that she had a severe and prolonged mental or physical disability at her minimum qualifying period. Counsel submits that a disability is not established if there is a lack of medical evidence of a disability in and around the Appellant's minimum qualifying period, such as here. Counsel submits that the evidence also showed that the Appellant had made valid contributions in 2001 and 2002. Counsel submits that the General Division reasonably concluded that these contributions established an "employment capacity" beyond the minimum qualifying period.

[48] Counsel submits that the General Division did not err in its application of the law to the facts, which are not in dispute.

[49] Subsection 53(1) of the DESDA requires the General Division to summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success. If the General Division either failed to identify the test or misstated the test altogether, this would qualify as an error of law which, under the correctness standard, would require me to conduct my own analysis and substitute my own view as to the correct outcome: *Dunsmuir* and *Housen v. Nikolaisen*, [2002] S.C.R. 235, 2002 SCC 33 (CanLII) at para. 8.

[50] Here, the General Division correctly stated the test by citing subsection 53(1) of the DESDA at paragraphs 2, 4, 5 and 21 of its decision. Counsel submits that, given the uncontested facts and the applicable law, there was only one possible conclusion.

[51] It is insufficient to simply recite the test for a summary dismissal set out in subsection 53(1) of the DESDA, without properly applying it. Having correctly identified the test, the second step required the General Division to apply the law to the facts. If the correct law is applied, the decision to summarily dismiss must be reasonable. This requires an assessment on a reasonableness standard, as it involves a question of mixed fact and law.

[52] In determining the appropriateness of the summary dismissal procedure and deciding whether an appeal has a reasonable chance of success, a decision-maker must determine whether there is a "triable issue" and whether there is any merit to the claim.

In *A.P. v. Minister of Employment and Social Development and P.P.*, 2015 SSTAD 973, I used the language of "utterly hopeless" and "weak" case, in distinguishing whether an appeal was appropriate for a summary dismissal. As long as there was an adequate factual foundation to support the appeal and the outcome was not "manifestly clear", then the matter would not be appropriate for a summary dismissal. I determined that a weak case would not be appropriate for a summary disposition, as it necessarily involves assessing the merits of the case and examining the evidence and assigning weight to it. In essence, "no reasonable chance of success" has been more or less interpreted to mean "no chance of success".

[53] Here, the General Division assessed the evidence before it. The General Division found that there was no medical evidence at or around the minimum qualifying period and that any medical condition which might support a disability did not arise until well after the minimum qualifying period.

[54] Had the Appellant agreed that the absence or availability of any medical records could be an indication of the extent of her disability, it might have been appropriate under those limited circumstances to summarily dismiss the appeal where there was no evidence whatsoever at or around the minimum qualifying period. However, the Appellant had advised that there was additional medical evidence forthcoming; additionally, she might have given evidence *viva voce* had the matter proceeded to a hearing. As there were missing records, the Appellant requested an extension of time or an adjournment of the proceedings, to enable her to obtain this medical evidence. Presumably that evidence which the Appellant proposed to obtain related to her disability at or around the minimum qualifying period. Indeed, a cursory review for the dates of the Appellant's medical records submitted on October 1, 2015 suggests that these records were prepared in or around the minimum qualifying period. In other words, these records filed on October 1, 2015 might assist the Appellant in establishing that she was disabled by her minimum qualifying period and thereby establish that she was disabled for the purposes of the *Canada Pension Plan.*

[55] The General Division also found that the Appellant had made valid contributions to the Canada Pension Plan in the amounts of $6,428 and $10,542 for the years 2001 and 2002,

respectively. The General Division determined that these amounts established that the Appellant had employment capacity after the minimum qualifying period. While these amounts are not insignificant, it is unclear whether the General Division determined whether the amounts represented a "substantially gainful occupation", or how and upon what bases it came to the determination that these amounts necessarily represented "employment capacity".

[56] By assessing the evidence and making findings of fact on the evidence, the General Division indicated that there were triable issues. While the General Division was entitled to make findings of fact as to whether the Appellant was disabled and whether she had "employment capacity", this went beyond applying the test for a summary dismissal. If the General Division had to analyze the evidence, assign weight and decide upon whether the evidence could support a finding of incapacity, it cannot be said that there was no reasonable chance of success, no triable issue, or no merit to the appeal. While the General Division correctly recited the test for a summary dismissal, that does not signal that the correct law was *de facto* applied. It is irrelevant in assessing whether the matter was appropriate for a summary disposition as to whether, overall, the decision itself could be considered reasonable, as the overriding consideration in this second step must be whether the correct test was applied.

[57] It may be that, ultimately, even after production of the complete medical files (including the medical records of Santé Publique), that the trier of fact concludes that the Appellant's disability did not arise until after her motor vehicle accident in November 2006. After all, the majority of the Appellant's current complaints started after this motor vehicle accident, according to what she reported to Dr. Liem, general dentist (AD3-70). However, that calls for an assessment of the evidence that falls beyond the purview of a summary dismissal, and would be more suitable for a hearing.

[58] Here, the General Division muddied the distinction between a manifestly clear, "utterly hopeless" case without merit and in this case, a possibly weak or very weak case, and thereby improperly dismissed the appeal summarily.

ISSUE 5: DID THE GENERAL DIVISION FAIL TO OBSERVE A PRINCIPLE OF NATURAL JUSTICE?

[59] Setting aside the issue of the appropriateness of the summary dismissal disposition in the circumstances of this case, the Appellant submits that the General Division should have granted her request for an extension of time to obtain her medical records, as it would only then have a complete medical picture before it, in rendering a decision. Otherwise, the Appellant submits, rendering a decision without full disclosure of records amounts to a breach of the principles of natural justice as she would not have had an opportunity to fully and fairly present her case.

[60] As noted by Blanchard, J. in *Gearlen v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 874, administrative tribunals have the authority to control their internal procedure and "to that end, have the discretion to grant or reject a request for an adjournment. (*Siloch* v. *Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 10, online: QL.) Their decisions, however, must comply with the rules of fairness and natural justice".

[61] Albeit a request for an extension of time or an adjournment of the proceedings calls for the exercise of some discretion, I do not see any indication anywhere that the General Division even considered the request for an extension of time or an adjournment of the proceedings. While it was fully within its discretion to refuse such a request and it would thereby be entitled to some deference, the General Division did not allude to the Appellant's request anywhere within its decision.

[62] Paragraph 3(1)(a) of the *Social Security Tribunal Regulations* requires the Social Security Tribunal to conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit, but this does not override or supersede a party's entitlement to a fair opportunity to be heard. The General Division does not appear to have given any consideration to the issues as to whether the Appellant might suffer any undue prejudice if the appeal proceeded, whether the Appellant's efforts to obtain her medical file were grossly insufficient, whether she otherwise had an adequate opportunity to present her claim, or what impact any delay an extension or adjournment

might have on the Respondent. In weighing the balance of interests, the obvious prejudice and potential injustice that would result in having the appeal dismissed on the basis of lack of evidence greatly outweighs any prejudice to the Respondent in a delay of the proceedings. By failing altogether to consider the request for an extension or an adjournment of the proceedings, surely it cannot be said that the decision to proceed complied with the rules of fairness and natural justice.

ISSUE 6: REMEDIES

[63] As I have indicated above, even if the General Division had had a complete evidentiary picture before it, this matter was not appropriate for a summary disposition.

[64] The General Division improperly characterized the disposition of this matter as a summary disposal, but in fact it assessed the appeal on its merits based on the documents and submissions before it, which it was permitted to do under section 28 of the *Social Security Tribunal Regulations.* That section permits the General Division to make a decision on the basis of the documents and submissions filed. Even so, and even if the conclusion falls within the range of acceptable outcomes, the decision of the General Division cannot be saved as the Appellant may have been denied any measures available to her under the DESDA or the *Social Security Tribunal Regulations,* such as a consideration on the full merits of the appeal. The Appellant clearly indicated in her correspondence that she had additional medical records which she intended to file, which addressed the disability issue. The Appellant may have been deprived of the opportunity to fully present her case when the General Division summarily dismissed the appeal.

[65] As I have found that the appeal ought not to have been summarily dismissed, I am referring the matter to the General Division for reconsideration.

[66] Even had the matter been appropriate for a summary disposition, I would have also referred the matter back to the General Division, as the General Division did not observe a principle of natural justice in ensuring that the Appellant had a fair opportunity to present her case on appeal. She had sought an extension of time or an adjournment of the proceedings to enable her to obtain additional medical records, but the General Division

seemingly did not turn its mind to her request for an extension, or if it did, did not indicate whether it gave any consideration to the interests of the parties and the prejudice that might accrue if an extension or an adjournment were not granted. The General Division's failure to consider the Appellant's request for an extension of time or an adjournment of the proceedings constituted prejudice to her.

CONCLUSION

[67] For the reasons set out above, the Appeal is allowed and the matter referred to the General Division for a full reconsideration as to whether the Appellant can be found disabled for the purposes of the *Canada Pension Plan* by her minimum qualifying period, and continuously disabled since then.

[68] The Appellant is granted leave to file any additional medical records, including those of Santé Publique, along with updated submissions, subject to any directions or orders made by the General Division.

[69] To avoid any potential for an apprehension of bias, the matter should be assigned to a different Member of the General Division and the decision of the General Division should be removed from the record.

Janet Lew
Member, Appeal Division