

Citation: *L. D. v. Minister of Employment and Social Development*, 2015 SSTGDIS 121

Date: October 29, 2015

File number: GP-14-1404

GENERAL DIVISION - Income Security Section

Between:

L. D.

Appellant

and

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

Respondent

Decision by: Jeffrey Steinberg, Member, General Division - Income Security Section

REASONS AND DECISION

INTRODUCTION

[1] The Appellant applied for a *Canada Pension Plan* (CPP) disability pension on July 19, 2012. The Respondent denied the application initially and upon reconsideration. It is the Appellant's fourth application for a CPP disability pension. Her Minimum Qualifying Period (MQP) is December 31, 1998. The Appellant appealed the reconsideration decision to the Social Security Tribunal (the Tribunal).

ISSUE

[2] The Tribunal must decide whether the appeal should be summarily dismissed.

THE LAW

[3] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if satisfied that it has no reasonable chance of success.

[4] Section 22 of the *Social Security Tribunal Regulations* (SST Regulations) states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.

[5] Subsection 84(1) of the CPP, which was the legislation in place at the time of the May 13, 2004 Review Tribunal (RT) hearing, provided that a decision of a RT as to whether any benefit is payable to a person is final and binding for all purposes on all parties unless leave of the Pension Appeals Board (PAB) is granted to appeal the decision to the PAB.

EVIDENCE

- **1st application**

[6] The Appellant previously applied for a CPP Disability benefit on May 6, 1996 (1st application). As noted above, her MQP is December 31, 1998. Her application was denied

initially and upon her reconsideration request. She never filed an appeal to a RT. Therefore, the Minister's decision became final.

- **2nd application**

[7] The Appellant reapplied for a CPP Disability benefit on March 10, 2000 (2nd application). Her MQP remained December 31, 1998. Her application was denied and she did not request reconsideration of the initial decision of denial. Therefore, the Minister's decision became final.

- **3rd application**

[8] The Appellant reapplied for a CPP Disability benefit on March 6, 2002 (3rd application). Her MQP remained December 31, 1998. Her application was initially denied. She sought reconsideration of that decision which was also denied. She appealed to the RT, which heard the appeal on May 13, 2004. On June 14, 2004, the RT issued its decision. The RT noted that all three applications, the one before it and the previous two applications, had the same MQP, i.e., December 1998 based on the same alleged disability following the Appellant's motor vehicle accident in 1996. It concluded based on the Federal Court of Appeal decision of *Minister of Human Resources Development v. MacDonald*, ([2002] FCA 48, that the doctrine of *res judicata* applies not only to Review Tribunals and Pension Appeals Board decision but also to those of the Minister and that the *MacDonald* decision was binding upon it. Based on the facts before it, the RT concluded it had no alternative but to decline jurisdiction to hear and decide the appeal.

SUBMISSIONS

[9] The Appellant did not provide any submissions in writing although she was provided with the opportunity to do so.

[10] The Respondent submitted in its Submission of the Minister that:

- a) A final and binding decision was made by the RT following the May 13, 2004 hearing. The RT determined that the Appellant did not have a severe and prolonged disability

when her MQP ended on December 31, 1998. Therefore, the issue of disability as of December 31, 1998 is *res judicata*.

- b) As the Appellant's MQP is unchanged since the RT decision, and there was no appeal of that decision, the Respondent does not have the authority to consider the issue of disability.

ANALYSIS

[11] In compliance with section 22 of the SST Regulations, the Appellant was given notice in writing of the intent to summarily dismiss the appeal and was allowed a reasonable period of time to make submissions.

[12] The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions as they are set out in the CPP.

[13] The Appellant did not appeal the June 14, 2004 decision of the RT by seeking leave of the PAB.

[14] As the same MQP of December 31, 1998 now before the Tribunal, was before the RT, which declined jurisdiction to hear the Appellant's appeal, the Tribunal finds that the doctrine of *res judicata* applies. The same issue, i.e., whether the Appellant suffer from a severe and prolonged disability on or before December 31, 1998, and same parties were before the RT which declined jurisdiction. Given that the same parties and same issue before the RT are now before the Tribunal, it does not appear that the Appellant's current application has a reasonable chance of success based on the doctrine of *res judicata*.

[15] Alternatively, should the doctrine of *res judicata* not apply to the RT decision of June 14, 2004 based on the fact it was not a final decision on the merits since the RT declined to assume jurisdiction, the Tribunal finds that this appeal constitutes a collateral attack on the final RT decision which the Appellant never appealed. As it would be improper for the Tribunal to allow the Appellant to collaterally attack the final decision of the RT by now hearing this appeal

which addresses the identical issue, the Tribunal exercises its discretion to refuse to hear the appeal.

[16] Accordingly, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[17] The appeal is summarily dismissed.

Jeffrey Steinberg
Member, General Division - Income Security