



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *W. N. v. Minister of Employment and Social Development*, 2016 SSTADIS 26

Date: January 15, 2016

File number: AD-15-1254

APPEAL DIVISION

Between:

W. N.

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 January 15, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Appellant applied for a *Canada Pension Plan* disability pension first in October 2000. The Respondent denied this claim initially and after reconsideration. The Appellant did not appeal from this reconsideration decision.

[2] The Appellant applied again for a *Canada Pension Plan* disability pension in April 2008. He claimed that he was disabled by having contracted Hepatitis C through a blood transfusion. This claim was also denied by the Respondent initially and after reconsideration. The Appellant appealed this reconsideration decision to the Office of the Commissioner of Review Tribunals. A Review Tribunal held a hearing and in February 2010 decided that he was not disabled under the *Canada Pension Plan*. The Appellant did not seek any further review or appeal of this decision.

[3] In January 2012 the Appellant again applied for a *Canada Pension Plan* disability pension and again claimed that he was disabled by Hepatitis C. The Respondent denied this claim initially and after reconsideration. The Appellant appealed this reconsideration decision to the Office of the Commissioner of Review Tribunals. The appeal was transferred to the General Division of the Social Security Tribunal pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division summarily dismissed the appeal on June 25, 2015 on the basis that the claim had been decided by the Review Tribunal in 2010, and the doctrine of *res judicata* operated to prevent the matter from being heard again.

[4] The Appellant appealed the summary dismissal decision to the Appeal Division of the Tribunal. He was not required to first obtain leave to appeal to the Appeal Division as the *Department of Employment and Social Development Act* provides for an appeal to the Appeal Division as of right from a summary dismissal decision.

[5] This appeal was decided on the basis of the written record after considering the following:

- a) The Member determined that no further hearing was required;

- b) The requirements under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit; and
- c) both parties filed detailed submissions which set out their position on the issues in this matter.

ANALYSIS

[6] The *Department of Employment and Social Development Act* governs the operation of this Tribunal. Subsection 58(1) of the Act states that the only grounds of appeal 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.

[1] The Respondent submitted that, based on the wording of the legislation, and the decision of the Federal Court of Appeal in *Canada (Attorney General) v. Jean*, 2015 FCA 242 the Appeal Division of the Tribunal should show deference to the General Division on questions of fact and mixed fact and law, but show no deference to it on questions of law. The Appellant made no submissions on the issue of what standard of review should be applied to the General Division decision. I must decide if the General Division decision contained an error as set out in section 58 of the Act such that the decision cannot stand.

[7] The Appellant argued that he should receive a *Canada Pension Plan* disability pension because he contracted Hepatitis C from a tainted blood transfusion. He has been unable to work for many years as a result of this disease. The Government of Canada compensated him and other tainted blood recipients under a different program. These arguments were also presented to the General Division. The Appellant did not allege that the General Division erred in fact, in law or did not observe the principles of natural justice.

[8] The Respondent contended that the General Division decision contained no error as set out in section 58 of Act, and therefore the appeal should be dismissed.

[9] This appeal involves, first, a question of law, being whether the General Division identified the correct legal test to summarily dismiss a disability pension claim and the correct legal test for *res judicata*. Second, the appeal involves a question of mixed fact and law, being whether the General Division correctly applied the law to the facts before it.

[10] The General Division correctly stated that it was required to summarily dismiss a claim that had no reasonable chance of success (s. 53 of the Act). The General Division provided notice to the parties of its intention to so proceed, and gave them the opportunity to provide written submissions on that issue. The General Division made no error in this regard.

[11] The legal basis for summarily dismissing the appeal was that the claim could not proceed due to the operation of the doctrine of *res judicata*. This doctrine prevents parties from re-litigating a matter that has already been decided. The General Division decision correctly set out the legal test to be met for this doctrine to apply. The General Division found that the parties and the issue to be decided were the same as that which was before the Review Tribunal in 2010. The Review Tribunal decision was final. The General Division set out the evidentiary basis for the conclusion that the legal test for *res judicata* to apply to this matter had been met and that there was no reason in law for this doctrine not to be applied. The decision is reasoned and intelligible. It is defensible on the law and the facts. The General Division made no error in its application of the law to the facts before it.

[12] I understand the Appellant's disagreement with this result. He was compensated for contracting Hepatitis C by the Government of Canada. However, this Tribunal is bound by the *Canada Pension Plan* and the Act. I am not able to grant the Appellant any relief on the basis of compassionate or extenuating circumstances, or because the Government of Canada, under a different legal program, provided him a benefit.

[13] The appeal must be dismissed.

Valerie Hazlett Parker
Member, Appeal Division