Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *J. G. v. Minister of Employment and Social Development*, 2016 SSTADIS 37

Date: January 20, 2016

File number: AD-15-205

APPEAL DIVISION

Between:

J. G.

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

Heard In person on November 24, 2015, Windsor, Ontario, and by Teleconference on January 12, 2016.

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant	J. G.
Counsel for the Appellant	Eric Katzman
Counsel for the Respondent	Faiza Ahmed-Hassan
Observer (January 12, 2016)	T. G.

INTRODUCTION

[1] The Appellant completed high school and obtained a diploma as a Personal Support Worker. She worked in this field for some time, and then took a position as a telephone customer service representative. While she was employed in customer service the Appellant was involved in a motor vehicle accident. She suffered a number of injuries with long-lasting symptoms including: facial pain and breathing difficulty (deviated septum), whiplash, cervical lordosis, nystagmus, major depressive disorder, myofacial and chronic pain, incontinence, abdominal problems which resulted in a hysterectomy, and diabetes (diagnosed later, but she claimed resulted from weight gain and inactivity as a result of her other injuries). She has not worked since the accident in November 2008.

[2] The Appellant claimed that she was disabled as a result of these injuries when she applied for a *Canada Pension Plan* disability pension. The Respondent denied her application initially and after reconsideration. The Appellant appealed the reconsideration decision to the Office of the Commissioner of Review Tribunals. The appeal was transferred to the General Division of the Social Security Tribunal in April 2013 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a hearing and on January 28, 2015 dismissed the appeal.

[3] The Appellant requested leave to appeal the General Division decision to the Appeal Division of the Tribunal. On May 7, 2015 leave to appeal was granted.

[4] The *Department of Employment and Social Development Act* governs the operation of this Tribunal. Sections 58 and 59 of the Act set out the only grounds of appeal that can be considered in an appeal to the Appeal Division and what remedies the Appeal Division can grant on an appeal (see the Appendix to this decision)

[5] This appeal was heard in person and by teleconference after considering the following:

a) The complexity of the issues under appeal;

b) The information in the file, including the need for additional information;

c) The fact that the Appellant or other parties were represented; and

d) The requirements under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

STANDARD OF REVIEW

[6] The parties made submissions on the standard of review that should be applied by the Appeal Division to a decision of the General Division of this Tribunal. 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. The correctness standard of review is to be applied to questions of jurisdiction, and questions of law that are of importance to the legal system as a whole and outside the adjudicator's specialized area of expertise.

[7] In *Canada (Attorney General) v. Jean* and *Canada (Attorney General) v. Paradis*, 2015 FCA 242 the Federal Court of Appeal stated that the Appeal Division of the Social Security Tribunal should not subject appeals before it to a standard of review analysis, but determine whether any grounds of appeal set out in section 58 of the Act should succeed. Counsel for the Appellant relied on this decision and argued that no standard of review should be applied by the Appeal Division to matters before it, and the Appeal Division should not show any deference to the General Division on any issues raised. He further contended that the General Division in

this case was not in a better position to hear the evidence and make findings of fact or credibility because the hearing was conducted by telephone. In fact, he argued, the Appeal Division was in a better position to assess evidence and credibility because it saw the Appellant at the in person portion of the hearing, and had access to the audio recording of the General Division hearing.

[8] Counsel for the Appellant relied on the wording of subsection 58(1) of the Act. He argued that the language was clear that if an error of law was found, that should be the end of the inquiry and the appeal allowed. If an error of mixed fact and law were at issue, as in this case, it would also fall under paragraph 58(1)(b) of the Act and should be treated as an error of law as there is an aspect of law to be considered. He also relied on the statement by the Federal Court of Appeal in *Paradis*, that no deference is owed by the Appeal Division to the General Division, to support his argument that errors of fact should also be shown no deference by the Appeal Division.

[9] In contrast, counsel for the Respondent argued that the General Division was in a better position than the Appeal Division to hear and weigh the evidence presented on the merits of this matter. Although the Appeal Division could listen to the audio recording of the General Division hearing, it could not question the Appellant or assess her credibility. I agree. It is not for the Appeal Division of the Tribunal to hear and weigh the evidence, and to make findings of credibility. The law is also clear that the Appeal Division is not to hear new evidence presented on an appeal unless it goes to a ground of appeal set out in the Act (see *Tracey v. Canada (Attorney General)*, 2015 FC 1300).

[10] Counsel for the Respondent argued that he wording of subsection 58(1) of the Act is clear that the Appeal Division is to intervene if an error of law is found in a General Division decision, whether or not that error appears on the face of the record. Paragraph 58(1)(c) of the Act permits the Appeal Division to intervene on errors of fact only if they are found to be made in a perverse or capricious manner or without regard to the material before it. This is a higher threshold for an appellant to meet on appeal than on an error of law, and indicates that deference is owed to the General Division on questions of fact.

[11] Regarding questions of mixed law and fact, the Respondent relied the Federal Court of Appeal decision in *Li v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1. The Court there stated that when new legislation is modelled on existing legislation, Parliament is presumed to have known this, and therefore decisions under the existing legislation are relevant and persuasive. Counsel argued that the language of the Act and the *Employment Insurance Act* are practically the same, so the Umpire decisions made under the *Employment Insurance Act* should be persuasive in matters before this Tribunal. The Office of the Umpire consistently found that questions of mixed law and fact were to be considered on the reasonableness standard. Thus, deference is owed to the General Division regarding questions of mixed fact and law.

[12] I have considered the arguments of the parties and the law on the issue of standard of review. I concur that I must determine if a ground of appeal under subsection 58(1) of the Act should succeed. This case involves questions of law and questions of mixed law and fact. The Act is clear that the Appeal Division is to intervene if an error of law is found, whether that error appears on the face of the record or not. The Appeal Division ought not to show any deference to the General Division on these issues.

[13] Regarding questions of mixed fact and law, the Act is silent. I appreciate the Appellant's argument that the Act is a benefits-conferring legislation, and as such, as stated in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 is to be interpreted broadly. However, I am not persuaded that this leads to the conclusion that questions of mixed fact and law are to be treated the same as pure questions of law. An appeal to the Appeal Division is not a hearing *de novo*. The Appeal Division does not hear evidence at first instance, and does not assess this, nor make findings of credibility. This is for the trier of fact, the General Division. Hence, the General Division is owed deference on factual matters. If a an error of mixed fact and law results in an erroneous finding of fact then the Appeal Division should show deference to the General Division decision. If, however, an error of mixed fact and law results in the incorrect law being applied to the facts, the Appeal Division should show no deference to the General Division and this error should be treated as an error in law (see *Housen v. Nikolaisen* 2002 SCC 33).

ANALYSIS

[14] The Appellant requested leave to appeal to the Appeal Division on numerous grounds. The parties made submissions on seven grounds of appeal, which are analysed below.

The General Division Did Not Consider the Appellant's Back Pain in Reaching its Decision:

[15] The first ground of appeal to be considered was whether the General Division based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard to the material before it when it did not analyse the Appellant's back pain and its impact on her capacity to work. The Appellant's counsel argued that the Appellant testified that this pain was one of the main reasons she could not return to work after the accident. He contended that the General Division decision focused on the diagnosis of the cause of this pain, described as slipped discs by the Appellant, and not on its impact on her functional ability.

[16] In contrast, the Respondent argued that the conclusion reached by the General Division, that there was no evidence of slipped discs and that the back pain was not a severe disability, were not erroneous findings of fact made in a perverse or capricious manner or without regard to the evidence. It argued that the General Division referred to medical reports that considered her back pain, and the fact that there was no diagnosis to explain it. On the basis of the evidence, including specialist assessments and a report of the treating chiropractor, the General Division concluded that any injury to the Appellant's back was not severe. This finding of fact was reasonable, and the appeal should not succeed on this basis.

[17] I agree with counsel for the Respondent that the General Division decision referred to and considered the oral written evidence to reach the decision that there was no organic explanation for her back pain. The decision also states that the Appellant's pain was from soft tissue injuries, considered whether it improved prior to treatments being terminated in 2010, and whether the Appellant was compliant with all treatment recommendations. The decision did not analyse the impact that this pain had on the Appellant's capacity to engage in a substantially gainful occupation to decide if it was a severe disability. This was an error of fact. However, for an error of fact to be reviewable under section 58 of the Act it must have been made in a

perverse or capricious manner, or without regard to the material before it. I am not satisfied that the error was made in this fashion as the evidentiary basis for the finding of fact is set out.

The General Division Did Not Consider if the Appellant's Condition Worsened After Treatment Stopped in 2010:

[18] Leave to appeal was granted on the basis that the General Division may have erred by not considering if her condition worsened after certain medical treatments were terminated in 2010. Counsel for the Appellant argued that the General Division misunderstood the significance of this decline in her condition, and that the General Division erred as it ignored her testimony that she would not have been able to work even if treatment had continued.

[19] The Respondent contended that the General Division perhaps should have been less ambiguous in its consideration of this issue; however, on the facts it was not clear what treatments were terminated. The evidence demonstrated that chiropractic treatment continued to the date of the hearing, massage therapy and acupuncture stopped, but the evidence suggested that these treatments were not beneficial anyway. Counsel for the Respondent contended, in the alternative, that the General Division, if it made any error in this regard, did not do so in a perverse or capricious manner or without regard to the evidence that was before it.

[20] It is not clear from a reading of the General Division decision what treatments were terminated in 2010, or why. The decision did, however, set out that the Appellant was improving in 2010 with various treatments, and declined after they stopped. It made no error of fact in so doing. The appeal cannot succeed on this basis.

The General Division Did Not Provide Reasons for Preferring Some Contradictory Evidence:

[21] In *R. v. Sheppard*, 2002 SCC 26 the Supreme Court of Canada clearly set out the purposes for providing reasons for a decision. These include permitting the parties to know the decision that was made, why that decision was made and to allow for effective appellate review. This decision also stated that to fulfill this, the decision maker should give reasons for findings of fact made on contradictory evidence and upon which the outcome of the case is dependent.

[22] The decision of the Federal Court of Appeal in *Canada (Minister of Human Resources Development) v. Quesnelle* (2003 FCA 92) is also instructive. In that case, like the one before me, there were numerous medical reports which came to different conclusions regarding whether the claimant was able to work. The Court stated that

> in omitting to explain why it rejected the very considerable body of apparently credible evidence indicating that Ms. Quesnelle's disability was not "severe", the Board failed to discharge the elementary duty of providing adequate reasons for its decision. The size and complexity of the record before it called for an analysis of the evidence that would enable the parties and, on judicial review, the Court, to understand how the Board reached its decision despite the mound of apparently credible evidence pointing to the opposite conclusion.

[23] In this case, there was a great deal of medical evidence, prepared mostly to assist parties in litigation related to the motor vehicle accident. The Appellant argued that the General Division did not give reasons for findings of fact made on the basis of contradictory evidence, and that it improperly discounted medical reports that were dated after the Minimum Qualifying Period (the date by which a claimant must be found to be disabled in order to receive a *Canada Pension Plan* disability pension), even though some of the reports referred to her condition prior to the Minimum Qualifying Period. In addition, counsel for the Appellant contended that the General Division ignored medical reports that supported her disability claim as they were not referred to at all in the decision. Counsel for the Appellant set out in his written submissions extracts from a number of these medical reports that supported the Appellant's claim. These reports were timely, penned in 2010 which was the year of the Minimum Qualifying Period.

[24] Counsel for the Respondent argued that there were no contradictory medical reports because all of the specialists in each medical discipline reached similar conclusions (e.g. all the neurologists concluded that there was no neurological basis for the Appellant to be unable to work). In the alternative, counsel argued that the strict requirements for giving reasons in this regard as set out in the *Sheppard* case should not apply to an administrative tribunal. Further she argued that the General Division decision was reasonable in this regard as it relied on medical evidence that was penned near the time of the Minimum Qualifying Period.

[25] I do not accept the Respondent's argument that there was no contradictory evidence. I agree that some specialists in the same field of medicine reached similar conclusions. However,

there was a body of evidence that concluded that the Appellant was disabled by her injuries and/or unable to work. These reports were not referred to in the General Division decision. It does not appear that the General Division considered this evidence. The General Division decision only referred to medical reports that were contrary to the Appellant's position. Therefore, the General Division failed to discharge its duty to provide adequate reasons for its decision as set out in *Quesnelle*.

[26] Further, in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, an appeal in an administrative law context, the Supreme Court of Canada again stated that reasons for decision should allow the reader to understand why the decision was made and enable appellate review. Without some analysis of the contradictory medical evidence, this purpose for giving written reasons is not achieved.

[27] On this basis, I am persuaded that the General Division based its decision on erroneous findings of fact made without considering all of the medical evidence, being the timely medical reports that supported the Appellant's claim.

[28] Similarly, I am satisfied that the General Division erred when it discounted the weight to be given to medical reports on the basis only that they were penned after the Minimum Qualifying Period. I agree with the argument presented by counsel for the Appellant that such a report may be valuable if it refers to the Appellant's condition prior to this date. Some of these reports did, and should have been considered.

[29] The reasons for decision were also inadequate as it did not set out how contradictory medical evidence was weighed and did not explain why some of this evidence was preferred.

[30] Finally in this regard, counsel for the Appellant suggested that the General Division did not consider that the medical reports it relied on to reach its decision were penned by medical professionals hired by the automobile insurer, who have a stake in finding that accident victims are not hurt and do not require treatment. This argument goes to the weight that should be given to the medical reports. I do not know whether this argument was advanced before the General Division. It was for the General Division to weigh the evidence, not the Appeal Division, so I was not persuaded by it.

The General Division Did Not Consider Any Reasonable Explanation for the Appellant Not Seeking Alternate Work:

[31] The Federal Court of Appeal in *Inclima v. Canada (Attorney General)*, 2003 FCA 117 stated that where there is evidence of work capacity, a person must show that effort at obtaining and maintaining employment has been unsuccessful by reason of the person's health condition. Decisions have also stated that if no attempts to find alternate work have been made, consideration should be given to whether there was a reasonable explanation for not seeking this work (see for example *Boyle v. Minister of Human Resources Development*, June 10, 2003 CP18508 PAB). Leave to appeal was granted in this case on the basis that the General Division may not have considered the Appellant's reasonable explanation for not seeking alternate work. Counsel for the Appellant argued that the Appellant's evidence of her medical symptoms and that she would not be a predictable employee was a reasonable explanation for not seeking alternate work, as well as her contention that she could not work. In contrast, counsel for the Respondent argued that there was no evidence of any explanation for not seeking alternate work.

[32] The decision in *Boyle* is instructive on this issue. In that case the claimant did not seek alternate work as he had been assured that his last job was available for him to return to any time he could do so. There was no such evidence presented to the General Division in this case. While I accept that the Appellant was employed as a customer service representative when she was involved in the car accident, there was no evidence that her employer held her position for her indefinitely. There was no evidence of any other explanation given for not seeking alternate work. The appeal cannot succeed on the basis of this ground of appeal as there is no evidentiary basis that supports the argument presented on appeal.

[33] Counsel for the Appellant also contended that the legal requirement to seek out work and to demonstrate that it could not be obtained or maintained because of the claimed disability was unfair, not based in the legislation, and of no value. He urged the Tribunal to move away from this legal requirement. With respect, this legal requirement is reasonable and rational. For a claimant to receive a *Canada Pension Plan* disability pension, she must meet a high standard.

She must be incapable regularly of pursuing any substantially gainful occupation. The Federal Court of Appeal, in *Villani v. Canada (Attorney General)*, 2001 FCA 248 clearly stated that medical evidence and evidence of efforts to work are required. This reasoning has been approved and relied on by numerous Courts and Tribunals. There is no reason in law to move away from this legal requirement as it is based on the wording of the legislation. Although the test in *Inclima* is not set out in the legislation it has been clearly stated repeatedly in decisions that are binding on this Tribunal. I am also not persuaded that this legal test is unfair. A claimant bears the burden of proof. Providing evidence of efforts to work at alternate employment assists a claimant in satisfying this burden.

[34] The General Division decision also stated, in relation to the requirement to seek alternate employment, that the Appellant did not attend at a chronic pain management program despite recommendations from more than one doctor to do so. It relied on this failure to attend treatment in making its decision. Counsel for the Appellant argued that the Appellant had been compliant with all treatment recommendations except for this one, and should not be penalized for not attending one recommended treatment.

[35] Counsel for both parties agreed, as do I, that a disability pension claimant is required to follow treatment recommendations or to provide a reasonable explanation for not doing so. The General Division decision contains no explanation for the Appellant's failure to attend at a chronic pain management program. It placed weight on the finding of fact that she did not do so. I am not persuaded that the General Division erred in making this finding of fact.

[36] The Respondent also contended that by advancing these particular arguments related to erroneous findings of fact the Appellant was attempting to have the Appeal Division reweigh the evidence that was presented to the General Division to reach a different conclusion. Again, it is not for the Appeal Division to reweigh the evidence, but to determine if the appeal should succeed based on sections 58 and 59 of the Act. The appeal cannot succeed on the basis of this ground of appeal.

The General Division May Not Have Assessed the Cumulative Effects of All Medical Conditions:

[37] The law is clear that when deciding if a claimant is disabled under the *Canada Pension Plan*, all of her medical conditions must be examined, and not just the major ones (*Bungay v. Canada (Attorney General)*, 2011 FCA 47). Leave to appeal was granted in this case as the General Division may not have considered the cumulative effect of all of the Appellant's conditions on her capacity to work. The Appellant argued that her incontinence, diverticulitis, depression, post-traumatic stress disorder and sleep difficulties all go to her inability to be a regular and predictable worker. Counsel also relied on the *L.F. v. Minister of Human Resources Development*, September 20, 2010 CP 26809 (PAB) decision, which stated that not every job is a substantially gainful occupation, and to be this, it must be meaningful work in a competitive environment without the need for accommodations. The Appellant's counsel contended that the General Division did not consider the cumulative effect of the Appellant's conditions in determining this. He argued that because of the Appellant's incontinence she would require frequent washroom breaks when at any job, and would not be able to work reliably and that this was not considered by the General Division.

[38] Counsel for the Respondent relied on the *Simpson v. Canada (Attorney General)*, 2012 FCA 82 decision for her argument that the General Division need not refer to each and every piece of evidence that is presented when making its decision. She further suggested that the General Division considered the Appellant's bladder and bowel incontinence in the context of her pain, and referred to medical reports that set out that she had pain in the lower trunk area. She contended that this demonstrated that the General Division turned its mind to the Appellant's incontinence in reaching its decision. She also stated that the medical evidence suggested that these conditions were not severe and may have had a functional overlay.

[39] The General Division decision makes scant reference to the Appellant's bladder or bowel incontinence or its effect on the Appellant. I do not accept that these conditions were considered in the context of her pain. They are different conditions, which are treated very differently, and could impact the Appellant's ability to work in different ways. The decision did

not analyse these conditions at all. The impact of these conditions on the Appellant's ability to work was also not considered.

[40] I am satisfied that the General Division did not address the Appellant's incontinence in reaching its decision in this matter.

[41] Counsel for the Respondent also submitted that it was reasonable for the General Division not to place weight on evidence regarding her depression and other mental illness because these were not identified as existing conditions prior to the Minimum Qualifying Period. The first mental health consultation did not occur until after this date. In reply to this, counsel for the Appellant argued that simply because the family doctor did not list any mental illness at the time he completed the medical report that accompanied the application for the disability pension one should not conclude that this condition did not exist. It would be unreasonable to expect the family doctor to list each and every malady in a case such as the one at hand where there are so many medical conditions.

[42] Neither counsel in oral or written submissions pointed to any evidence of mental illness prior to the Minimum Qualifying Period, although there was evidence of chronic pain and fibromyalgia which often have a mental illness component, at least insofar as treatment is concerned. Without any evidence of mental illness prior to the Minimum Qualifying Period, I cannot conclude that the General Division erred in not considering this condition specifically.

[43] However, there was nothing in the General Division decision that indicated that it considered the combined effect of all of the Appellant's medical conditions on her ability to work, including incontinence, diverticulitis and others. The General Division erred in law by not doing so.

The General Division May Have Applied the Incorrect Test for a Severe Disability:

[44] Paragraph 42(2)(a) of the *Canada Pension Plan* provides that a person is considered to have a severe disability if he or she is incapable regularly of pursuing any substantially gainful occupation. The Appellant argued that the General Division erred in law as it stated in paragraph 70 of its decision that "[the Appellant] should have been able to work in some capacity". Counsel argued that this is different than being able regularly to pursue any

substantially gainful occupation. He contended that although the correct legal test was set out in paragraph 7 of the decision, that was just a "copy and paste from somewhere", but the wording in paragraph 70 was the" thinking that drove the decision making in this matter". Counsel for the Appellant further relied on the decision in *Carvery v. Minister of Human Resources Development*, (January 31, 2003) CP18772 (PAB), which concluded that the ability to work 14 to 16 hours per week was not substantially gainful when the regular work week is 37 to 40 hours. He submitted that for a job to be a substantially gainful occupation, it should be worked for at least 30 hours each week.

[45] Counsel for the Respondent argued that the General Division paraphrased the legal test for a severe disability in paragraph 70 of the decision, and correctly set out the test in paragraph 7. She relied on the decision of the court in *Minister of Human Resources Development v. Quesnelle*, 2003 FCA 92 which concluded that while it was unwise for the decision maker to paraphrase the legislation, it was not an error in law.

[46] I agree that the General Division paraphrased the legislative test for a severe disability in paragraph 70 of the decision. It set out the test correctly in paragraph 7. While the wording in paragraph 7 may have been copied from the legislation, this does not detract from the fact that it was set out correctly. In addition, the General Division correctly referred to and applied the law as set out in *Villani*, *Inclima* and other binding decisions to the facts before it, which included evidence regarding the Appellant's ability to pursue a substantially gainful occupation. Clearly the General Division was alive to and considered the correct definition of severe.

[47] I do not accept the argument of counsel for the Appellant that to be substantially gainful, an occupation must be pursued for a minimum of 30 hours each week. This is not what the *Canada Pension Plan* requires. It requires, at least in part, work that is done without undue accommodations, and is remunerated reasonably (see *Atkinson v. Canada (Attorney General)*, 2014 FCA 187). I need not decide, however, if the Appellant's work was substantially gainful as she did not work at all after the accident.

CONCLUSION

[48] For the reasons set out above I am satisfied that the General Division decision contained errors such that the appeal must be allowed under section 58 of the Act. The General Division did not consider all of the Appellant's medical conditions, nor their cumulative effect on her capacity to pursue substantially gainful employment, reached erroneous findings of fact without regard to all of the material that was before it, erred in law and the reasons for the decision were insufficient in some ways.

[49] Section 59 of the Act sets out the remedies that the Appeal Division can give on an appeal. This is not a case where it is appropriate for the Appeal Division to give the decision that the General Division should have given as I did not hear the evidence in this matter. The case is referred back to the General Division for reconsideration. To avoid any possibility of any apprehension of bias the General Division decision should be removed from the record, and the matter referred to a different Member of the General Division.

Valerie Hazlett Parker
Member, Appeal Division

APPENDIX

Department of Employment and Social Development Act

58. (1) 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.

58. (2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

59. (1) 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.