



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. H. v. Minister of Employment and Social Development*, 2016 SSTADIS 62

Tribunal File Number: AD-15-1229

BETWEEN:

B. H.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: January 28, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Appellant applied for a *Canada Pension Plan* disability pension in September 2001. The Respondent denied this claim, and the Appellant appealed the decision to the Office of the Review Tribunals, which dismissed her appeal. She sought judicial review of the Review Tribunal decision. In October 2005 the Pension Appeals Board dismissed this application. The Appellant did not appeal this decision

[2] The Appellant again applied for a disability pension in March 2012. The Appellant did not have any further contributions to the *Canada Pension Plan* such that she would have a different Minimum Qualifying Period (the date by which a claimant must be found to be disabled in order to receive the disability pension). The Respondent denied this claim on the basis that the claim had been previously considered and dismissed. The Appellant appealed this 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*. On August 18, 2015 the General Division of the Social Security Tribunal summarily dismissed the Appellant's 2012 appeal. The claim was summarily dismissed on the basis of the application of the doctrine of *res judicata*, that the matter had already been decided.

[3] The Appellant appealed the General Division decision to the Appeal Division of the Tribunal. *The Department of Employment and Social Development Act* governs the operation of the Tribunal. The Act states that leave to appeal is not required if the General Division summarily dismissed the claim.

[4] This appeal was decided based on 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) The nature of the issues in this matter, and the submissions of the parties.

ANALYSIS

[5] The *Department of Employment and Social Development Act* also sets out the only grounds of appeal that can be considered by the Appeal Division. 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.

[6] Neither party to this appeal suggested that the General Division made any error with respect to natural justice, jurisdiction, or fact. I am satisfied that no such error was made.

[7] What remains is a consideration of whether the General Division erred in law. Section 53 of the Act and section 22 of the *Social Security Tribunal Regulations* require that the General Division summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success, after giving the parties a reasonable opportunity to make submissions. There was no suggestion that the General Division did not provide the parties with an adequate opportunity to make submissions in this case.

[8] The General Division correctly identified that appeals before it are to be dismissed if they have no reasonable chance of success. I am also satisfied that the General Division correctly applied this legal test to the facts before it. The decision clearly set out the factual

basis for its logical decision in this regard. The decision was clear that the Appellant's claim was bereft of any chance of success based on the undisputed facts.

[9] The General Division also correctly identified the doctrine of *res judicata*. This prevents parties from re-litigating a claim when it has already been decided. The General Division decision set out the legal requirements that are to be met for this doctrine to apply to the matter before it. These are that the parties and the legal issue before the General Division and the prior decision (in this case the Pension Appeals Board decision in 2005) are the same, and that the prior decision was final and binding.

[10] The General Division correctly applied the law to the facts before it. The decision clearly set out, and it was not disputed, that the parties to the claim before the General Division and the Pension Appeals Board in 2005 were the same. The same issue was to be decided by both bodies, being whether the Appellant was disabled under the *Canada Pension Plan* (CPP) on or before December 31, 1997 and thereafter. The decision of the Pension Appeals Board in October 2005 was final and binding on the parties.

[11] The application of the legal doctrine of *res judicata* is a discretionary one. Neither party suggested that the General Division improperly exercised its discretion in this matter, and I am satisfied that the General Division acted properly in this regard. The decision is logical, transparent and intelligible.

[12] The Appellant contended that the General Division should have considered the merits of her claim that she was disabled as she produced medical evidence to support this. I appreciate that this evidence may exist, however the claim cannot succeed as the same issue between the same parties was decided in 2005. There was no basis in law for it to be re-litigated.

[13] The General Division also made no error by not advising the Appellant of other rights to appeal the 2005 decision that she may have had. It is not for the General Division, or any tribunal, to advise parties of their legal rights.

[14] Accordingly, I am satisfied that the General Division decision contained no error in law. Although I am sympathetic to the Appellant's situation, the Appeal must be dismissed.

Valerie Hazlett Parker
Member, Appeal Division