



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *B. D. v. Minister of Employment and Social Development*, 2016 SSTADIS 82

Tribunal File Number: AD-15-1578

BETWEEN:

**B. D.**

Appellant

and

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

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Janet LEW

DATE OF DECISION: February 22, 2016

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] The Applicant seeks leave to appeal the decision of the General Division rendered on October 6, 2015. The General Division determined that the Applicant was not eligible for a disability pension under the *Canada Pension Plan*, as it found that her disability was not “severe” on or before her minimum qualifying period of December 31, 2010. The Applicant’s representative, a paralegal, filed an application requesting leave to appeal on December 18, 2015. To succeed on this application, I must be satisfied that the appeal has a reasonable chance of success.

### **ISSUE**

[2] Does the appeal have a reasonable chance of success on any of the grounds cited by the Applicant?

### **SUBMISSIONS**

[3] The Applicant’s representative submits that the General Division made the following errors:

- (a) erred in not considering the totality of the evidence; and
- (b) erred in law in failing to apply *Villani v. Canada (Attorney General)*, 2001 FCA 248.

[4] The Social Security Tribunal copied the Respondent with the leave materials, but the Respondent did not file any submissions.

### **ANALYSIS**

[5] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

- (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] I need to be satisfied that the reasons for appeal fall within any of the grounds of appeal and that the appeal has a reasonable chance of success, before leave can be granted. The Federal Court of Canada recently approved this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

**(a) Totality of evidence**

[7] The Applicant's representative submits that the General Division erred in law in not considering the totality of the evidence. He listed the Applicant's various problems and then reviewed the medical evidence. For instance, he referred to diagnostic examinations performed on March 29, 2008 and December 22, 2011. He also referred to the medical opinions of Drs. Pinto and Dhaliwal.

[8] A review of the decision of the General Division indicates that in fact it considered each of the Applicant's complaints and the medical records listed by the Applicant's representative, other than perhaps the March 2008 MRI of the right knee. However, it is unnecessary for a decision-maker to list all of the medical evidence before it, particularly where there is more current medical information, such as in this case.

[9] I see the representative's submissions under this ground as effectively requesting that we reassess and re-weigh the evidence and come to a different conclusion from the General Division. Subsection 58(1) of the DESDA sets out very limited grounds of appeal and does not allow for a reassessment. I am not satisfied that the appeal has a reasonable chance of success on this ground.

(b) *Villani*

[10] The Applicant's representative submits that the General Division erred as it did not apply *Villani* by considering the Applicant's personal characteristics such as her age, level of education, language proficiency and past work and life experience. The representative notes that the Applicant has a grade 10 education from India, is not proficient in the English language and has largely worked in labour-intensive positions.

[11] *Villani* indicates that the statutory test for severity be applied with some degree of reference to the "real world" and that a decision-maker must take into account the particular circumstances of the applicant, such as age, education level, language proficiency and past work and life experience. *Bungay v. Canada (Attorney General)*, 2011 FCA 47, confirmed that a decision-maker must consider these details, when it wrote:

[11] . . . Further, aside from brief mention of the applicant's work history, there is no mention of her age, education level, language proficiency and past life experience at all or in any detail as required by *Villani, supra*.

. . .

[14] The dissenting member charged herself properly as to the law as set out in *Villani* (at paragraph 14):

The *Villani* (2001 FCA 248 (CanLII), [2002] 1 F.C. 130) test and the case law requires the Tribunal and this Board to examine an individual's entire physical condition, age, level of education, employability and so on.

[12] The Federal Court of Appeal in *Bungay* allowed the application for judicial review and quashed the decision of the Pension Appeals Board, ordering that a new panel of the Pension Appeals Board "reconsider [the] matter applying the *Villani* test".

[13] The General Division does not appear to have referred to nor mentioned *Villani*. I am satisfied that the appeal has a reasonable chance of success on the ground that the General Division may not have applied the *Villani* test in examining the Applicant's personal circumstances.

## **CONCLUSION**

[14] The application for leave to appeal is granted.

[15] This decision granting leave in no way presumes the result of the appeal on the merits of the case.

*Janet Lew*  
Member, Appeal Division