



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. S. v. Minister of Employment and Social Development*, 2016 SSTADIS 91

Tribunal File Number: AD-15-1069

BETWEEN:

B. S.

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

HEARD ON: February 22, 2016

DATE OF DECISION: February 29, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant	B. S.
Counsel for the Appellant	Rajinder Johal
Counsel for the Respondent	Duane Schippers
Interpreter	H. G.

INTRODUCTION

[1] The Appellant claimed that he was disabled as a result of an injury to his left wrist and ongoing pain and limitations from this. He applied for a *Canada Pension Plan* disability pension. The Respondent denied the application initially and upon 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 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division dismissed the appeal on the basis of the written record.

[2] On October 19, 2015 the Appellant was granted leave to appeal the General Division decision to the Appeal Division of the Tribunal. He argued that the General Division erred as it did not consider any of the medical evidence that supported his claim. The Respondent argued that the General Division decision contained no error and that the appeal should be dismissed.

[3] This appeal proceeded by videoconference after considering the following:

- a) The complexity of the issue under appeal;
- b) The fact that the parties were represented;
- c) The availability of videoconferencing in the area where the Appellant resides;

- d) The requirements under the *Social Security Tribunal Regulations* to proceed as informally and quickly as the circumstances, fairness and natural justice permits; and
- e) The nature of the submissions filed by the Respondent; the Appellant not having filed submissions.

THE LAW

[4] According to subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) 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.

Therefore I must decide if the General Division erred as set out above such that its decision should not stand.

ANALYSIS

[5] In this case, leave to appeal was granted on the basis that the General Division may have erred as it may not have considered medical evidence that supported the Appellant's claim in its decision. Counsel for the Appellant argued that the General Division should have placed more weight on medical reports by doctors who supported his claim that he was disabled.

[6] In contrast, counsel for the Respondent submitted that the General Division did not err. He argued that the law is settled that the General Division is presumed to have considered all of the evidence presented to it (*Simpson v. Canada (Attorney General)*, 2012 FCA 82), and there was no suggestion that the evidence referred to by the Appellant was not before the General

Division. In addition, it was not necessary for the General Division, as the trier of fact, to refer to each and every piece of evidence that is presented in its reasons for decision (*Simpson*).

[7] Further, counsel for the Respondent contended that it was not necessary for the General Division to explain how each such piece of evidence was weighed by it in making its decision. Rather, reasons for decision are sufficient if an examination of the reasons and the record, as a whole, demonstrate why the decision was made. Counsel submitted that this was accomplished in this case as the decision sets out what conclusion was reached and the basis for it. Finally, counsel for the Respondent suggested that the reports that the Appellant relied on to support his claim are reasonably seen as not contradictory to the reports that did not support the Appellant's disability pension claim as they were not clear in what they said and the Appellant provided no written submissions to assist the General Division to reach a conclusion in this regard.

[8] Counsel for the Respondent correctly stated the law that is applicable in this matter. It is for the General Division, as the trier of fact, to receive the evidence from the parties, weigh it and reach a conclusion on the basis of the law and the evidence. In *Gaudet v. Attorney General of Canada* 2013 FCA 254 the Federal Court of Appeal decided that a reviewing tribunal is not to retry the issues, but to assess whether the outcome was acceptable and defensible on the facts and the law.

[9] The General Division is also presumed to have considered all of the evidence before it. The Appellant did not argue that the General Division ignored this evidence. In fact, the Appellant acknowledged that the General Division considered the evidence. The Appellant disagreed with how it was weighed. This is the province of the trier of fact; the Appeal Division is not to reweigh the evidence to reach a different conclusion than the General Division.

[10] In *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 the Supreme Court of Canada stated that the reasons for a decision are to be examined together with the result as a whole to determine if the result falls within an acceptable range of outcomes. I am not persuaded that the General Division's lack of detailed analysis of each medical report was fatal to the decision. The General Division referred to relevant medical evidence. It also considered the Appellant's functional abilities, and his personal characteristics. The decision clearly set out the evidentiary basis for its conclusion.

While the reasons for decision could perhaps have contained further detail, the reasoning was clear. I am satisfied that the decision was transparent, intelligible and that it fell within the possible range of outcomes.

[11] For these reasons, although I am sympathetic to the Appellant's condition, the appeal must be dismissed. The General Division decision did not contain any error as set out in section 58 of the DESD Act.

Valerie Hazlett Parker
Member, Appeal Division