



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. L. v. Minister of Employment and Social Development*, 2016 SSTADIS 92

Tribunal File Number: AD-15-1112

BETWEEN:

M. L.

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 23, 2016

DATE OF DECISION: February 29, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

| | |
|----------------------------|--------------------|
| The Appellant | M. L. |
| Counsel for the Appellant | Terry Copes |
| Counsel for the Respondent | Faiza Ahmed-Hassan |

PRELIMINARY MATTER

[1] On the day prior to the hearing of this matter, counsel for the Respondent filed a copy of the *Bungay v. Canada (Attorney General)*, 2011 FCA 47 decision with the Tribunal with a letter that stated that it wished to rely on this decision at the hearing. Counsel for the Appellant did not receive a copy of the decision prior to the hearing. The parties agreed that the Appellant would therefore have until February 29, 2016 to make further written submissions regarding this decision, and that the decision on this appeal would not be released until those submissions had been received and considered. Counsel for the Appellant advised the Tribunal on February 24, 2016 that he would not be making any submissions in this regard.

INTRODUCTION

[2] The Appellant claimed that he was disabled by a neck injury, partial blindness, ankle injury and associated limitations when he applied for a *Canada Pension Plan* disability pension. The Respondent denied his 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 in person and on July 15, 2015 dismissed the appeal.

[3] On October 26, 2015 the Appellant was granted leave to appeal the General Division decision to the Appeal Division of the Tribunal.

[4] This appeal was heard by videoconference after considering the following:

- a) The fact that the appellant and other parties were represented;
- b) The availability of videoconference in the area where the Appellant resides;
- c) The requirements under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit;
- d) The nature of the issue under appeal; and
- e) The nature of the submissions filed on appeal.

ANALYSIS

[5] The *Department of Employment and Social Development Act* governs the operation of the 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.

[6] I must decide if the General Division erred as set out in section 58 of the Act such that the decision should not stand.

[7] Counsel for the Appellant argued that the General Division erred in law as it considered each of his medical conditions, but not their combined effect to determine if he was disabled under the *Canada Pension Plan*. Counsel pointed to paragraph 37 of the decision which states

The Tribunal recognizes that the Appellant suffers from a number of different medical conditions; however the Tribunal must consider the effect of these conditions on the Appellant's ability to work on or before December 31, 2004. The Appellant's vision and leg problems existed long prior to his MQP and did not affect his ability to work as a heavy equipment mechanic prior to 2004. EMG studies in 2005 identified mild carpal

tunnel and ulnar nerve entrapment and moderate carpal tunnel were diagnosed in 2010 and were operated on in 2011 resulting in some though not total improvement

He argued that this paragraph considered the Appellant's vision and ankle problems, but not his later injuries, and not the combined effect of all of his conditions. He further argued that there was no indication elsewhere in the decision that the cumulative effect of his conditions was considered.

[8] In contrast, counsel for the Respondent argued that the General Division made no error in law. She referred to various paragraphs in the decision in which the General Division summarized and considered the written and oral evidence regarding each of the Appellant's injuries. She argued further that paragraph 37 of the decision clearly demonstrated that the General Division considered all of his conditions together in making the decision in this case.

[9] In *Bungay* the Federal Court of Appeal stated that the decision maker must take into account a disability pension claimant's entire condition. I acknowledge that in this case the General Division summarized and considered each of the Appellant's medical conditions. I am not persuaded, however, that it considered his condition in its entirety – which would include a consideration of the cumulative affect that his numerous injuries may have had on his capacity to pursue a substantially gainful occupation at the relevant time.

[10] Counsel for the Respondent correctly stated that the General Division decision need not refer to each and every piece of evidence and argument that was presented. However, the decision should demonstrate that the General Division considered the Appellant's condition as a whole, which it did not in this case.

[11] I am therefore satisfied that the General Division erred in law as it did not apply the correct legal test to the evidence that was before it. Both counsel agreed that if an error of law is found in a decision, the Appeal Division need not show any deference to the General Division. I concur. Section 58 of the Act is clear that an error of law, whether or not that error appears on the face of the record, is a ground of appeal.

CONCLUSION

[12] For these reasons, the appeal is allowed.

[13] Section 59 of the Act sets out what remedies can be granted on an appeal. Both counsel suggested that if the appeal was allowed it was appropriate that the matter be referred to the General Division for reconsideration. I agree.

[14] To avoid any possibility of any appearance of bias the matter should be assigned to a different General Division Member.

Valerie Hazlett Parker
Member, Appeal Division