



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. N. v. Minister of Employment and Social Development*, 2016 SSTADIS 95

Tribunal File Number: AD-15-831

BETWEEN:

**S. N.**

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: Valerie Hazlett Parker

HEARD ON: February 19, 2016

DATE OF DECISION: February 29, 2016

## REASONS AND DECISION

### PERSONS IN ATTENDANCE

The Appellant	S. N.
Representative for the Appellant	Hadeel Kamal
Counsel for the Respondent	Christine Singh
Interpreter	V. L.

### INTRODUCTION

[1] The Appellant claimed that she was disabled by ongoing right shoulder, neck and upper back pain, headaches, anxiety and depression that resulted from a motor vehicle accident. She applied for a *Canada Pension Plan* disability pension. The Respondent denied her claim 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 an in person hearing and on May 21, 2015 dismissed the appeal.

[2] On August 19, 2015 the Appellant was granted leave to appeal this decision to the Appeal Division of the Tribunal. Leave was granted on the basis that the General Division may not have considered the cumulative effect of all of her disabilities on her capacity to work and that the decision may not have sufficiently explained why some medical evidence was given greater weight than other evidence.

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

- a) The complexity of the issues under appeal;
- b) The fact that multiple participants such as witness and/or a third party may be present;

- c) The fact that an interpreter will be present;
- d) The fact that the Appellant or other parties are represented; and
- e) The requirements under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

## **ANALYSIS**

[4] The *Department of Employment and Social Development Act* governs the operation of this Tribunal. Section 58 of the Act sets out the only grounds of appeal that can be considered to by the Appeal Division of the Tribunal. Section 59 of the Act sets out the remedies that can be granted on appeal (see the Appendix to this decision).

[5] In *Attorney General of Canada v. Jean*, 2015 FCA 242 the Federal Court of Appeal seemed to suggest that the Appeal Division of the Social Security Tribunal should not subject appeals before it to a formal standard of review analysis, but should determine whether any grounds of appeal as set out in section 58 of the *Department of Employment and Social Development Act* should succeed. I must decide if the General Division decision contains such an error.

[6] First, the Appellant argued that the appeal should succeed as the General Division failed to consider all of her medical conditions together when it decided that she was not disabled under the *Canada Pension Plan* as it stated that she had not received any mental health treatment when she had received this. In contrast, the Respondent argued that the General Division did consider all of her conditions in reaching its decision.

[7] The Appellant claimed that she was disabled by physical injuries and mental illness that resulted from a motor vehicle accident. It was not disputed that the General Division summarized and analysed the evidence regarding her physical injuries and ongoing pain. In *E.J.B. v. Canada (Attorney General)*, 2011 FCA 47 the Federal Court of Appeal stated that a disability pension claimant's condition, as a whole, must be examined when deciding if she is disabled. I am satisfied that the General Division considered her physical injuries and her mental illness in reaching its decision. The General Division decision summarized the medical

evidence. It considered all of this evidence, including the treatment that the Appellant underwent for her physical conditions and that the Appellant was not under any active mental health therapy at the time of the hearing. I was not persuaded that the error made by stating that the Appellant had not received any mental health treatment was material to the decision reached.

[8] The Appellant was also granted leave to appeal on the basis that the General Division decision reasons may have been insufficient as it did not explain how the various medical reports were weighed to reach the decision that the Appellant was not disabled. The Appellant made no submissions directly on this issue.

[9] Counsel for the Respondent acknowledged that although the General Division decision stated that there were inconsistencies in the medical diagnoses and treatment recommendations, it did not resolve those inconsistencies or explain how the evidence was weighed as a result. Counsel argued that despite this, when the decision was examined as a whole, the reasoning was transparent. She further argued that the language of the decision implied that the General Division was not satisfied, because of the inconsistencies, and because there was not one medical report that became the “authentic report” for the disability pension application, that there was insufficient medical evidence to conclude that the Appellant’s disability was severe under the *Canada Pension Plan*.

[10] I don’t accept the Respondent’s argument that the language of the decision implied that the medical evidence was insufficient. This conclusion is not the only one that can be drawn from reading the decision. The decision certainly did not state that the medical evidence was insufficient to adjudicate the Appellant’s claim.

[11] *In Newfoundland and Labrador Nurses’ Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 the Supreme Court of Canada stated that it is not necessary for a decision to specifically address each and every piece of evidence and argument raised at a hearing. Rather, the reasons must be read together with the outcomes and serve the purpose of showing whether the result falls within a range of possible outcomes. I am persuaded that when the reasons for decision are examined as a whole, the reasoning for the decision reached by the General Division is set out. The General Division decision refers to the Appellant’s numerous

medical conditions, the medical assessments conducted in that regard, the treatment received and recommended, and the impact of her conditions on her functional capacity. The reasons for decision emphasized the assessments that commented on the Appellant's capacity to work. Although the reasons for decision could have more clearly addressed how it weighed the medical evidence that was presented, the fact that it did not do so is not fatal to the decision when the reasons are considered in their entirety.

[12] In addition, the Respondent is correct that insufficiency of reasons is not a "stand alone" ground of appeal upon which an appellate body should intervene.

[13] Finally, the Appellant's Representative argued that the General Division did not appreciate the severity of the Appellant's limitations and restrictions, both physical and mental. She presented a summary of the Appellant's medical conditions and their impact on her. I am sympathetic to the Appellant's plight. However, the Federal Court of Appeal, in *Simpson v. Canada (Attorney General)*, 2012 FCA 82 clearly stated that it is for the trier of fact, the General Division in this case, to weigh the evidence. It is not for the Appeal Division to reweigh the evidence, or to substitute its decision for that of the trier of fact.

## **CONCLUSION**

[14] For these reasons the appeal is dismissed. I am not satisfied that on balance the General Division erred as set out in section 58 of the Act.

*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.

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.