



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. S. v. Minister of Employment and Social Development*, 2016 SSTADIS 114

Date: March 10, 2016

File number: AD-15-1194

APPEAL DIVISION

Between:

G. S.

Appellant

and

**Minister of Employment and Social Development
(Formerly Minister of Human Resources and Skills Development)**

Respondent

Decision by: Hazelyn Ross, Member, Appeal Division

PERSONS IN ATTENDANCE

Appellant - G. S.
Appellant's Representative - Allan Bayda
Respondent's Representative - Penny Brady

DECISION

[1] The Appeal is allowed.

[2] The matter is referred back to the General Division of the Social Security Tribunal, (the Tribunal), for re-determination by another Member.

INTRODUCTION

[3] The Appellant applied for a *Canada Pension Plan*, (CPP), disability pension. The Respondent denied the application and the Appellant requested reconsideration of the decision. Upon reconsidering its initial decision, the Respondent upheld the denial.¹ The Appellant appealed to the Tribunal's General Division and on August 6, 2015 the General Division issued its decision in the appeal.

[4] The General Division found that while the Appellant's disability was severe it was not prolonged. Accordingly, the Appellant had not met the test set out in paragraph 42(2)(a)(i) of the CPP. Therefore, he was not eligible for a CPP disability pension. The Appellant sought and was granted leave to appeal the General Division decision. Leave to appeal was granted on the basis that the Appellant had presented grounds of appeal that may have a reasonable chance of success.

[5] After leave was granted the Appeal Division received submissions from the Counsel for the Respondent. In her submissions, Counsel for the Respondent indicated that the Respondent was consenting to the Appeal Division allowing the appeal and referring the matter back to the General Division for redetermination by another Member. Counsel for the Respondent took this position because she noted that while the General Division correctly set out the test for disability under paragraph 42(2)(a)(1) of the CPP it may difficult to determine if the General

¹ GT1-05 reconsideration decision letter dated November 15,2012.

Division had applied the correct test to the facts of the case. Counsel for the Respondent repeated her position at the hearing. She also clarified that it was the position of the Respondent that the redetermination be on the issue of disability.

[6] At issue was whether the General Division had made the correct finding on the question of whether the Appellant's disability was prolonged. The Appeal Division notes that this very issue was one of the grounds on which leave to appeal was granted. In granting leave to appeal, the Appeal Division concluded that the General Division decision contained an error of fact when it determined that the Appellant did not suffer a prolonged disability.²

[7] Given the Respondent's position, the Appeal Division is prepared to allow the appeal. In the view of the Appeal Division allowing the appeal accords with section 2 of the *Social Security Tribunal Regulations* SOR/2013-60 which enjoins the interpretation of the Regulations "so as to secure the just, most expeditious and least expensive determination of appeals and applications. Further, the Appeal Division invokes its jurisdiction pursuant to s. 59 of the *Department of Employment and Social Development Act* to remit matters back to the General Division.

CONCLUSION

[8] The appeal is allowed.

[9] The matter is referred back to the General Division for re-determination by another Member.

Hazelyn Ross
Member, Appeal Division

² Per 58(1) of the DESD Act, an appeal can be brought on three grounds only, namely that,

- (1) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (2) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (3) the General Division based its decision on an error of fact made in a perverse or capricious manner or without regard for the material before it.²