



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *V. P. v. Minister of Employment and Social Development*, 2016 SSTADIS 190

Tribunal File Number: AD-16-169

BETWEEN:

**V. P.**

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: Janet Lew

DATE OF DECISION: May 31, 2016

## REASONS AND DECISION

### OVERVIEW

[1] This appeal involves an application for a *Canada Pension Plan* disability pension. I granted leave to appeal on March 29, 2016, on the basis that the General Division may have failed to observe a principle of natural justice if, as the Appellant alleges, it determined that two documents were inadmissible because the Appellant had missed a deadline by which to file them.

### LEAVE DECISION

[2] In the leave decision, I indicated that the two documents may have had some probative value on the issues before the General Division. I also indicated that if indeed the General Division addressed the issue of the admissibility of the two documents, it should have indicated on what basis it considered the two documents inadmissible. The mere fact that the Appellant might have missed a filing deadline is insufficient to refuse to admit documents, as the General Division has the discretion to admit any late records, taking into account the balance of prejudice to both parties and the interests of justice. Assuming that the issue of the admissibility of records arose, I indicated that it is not altogether apparent from the decision of the General Division that it properly exercised its discretion and that it considered both the balance of prejudice to the parties and the interests of justice.

[3] For the purposes of the leave application, I was satisfied that the appeal had a reasonable chance of success, but I indicated that, if the Appellant hoped to succeed on this issue, she would need to adduce evidence or provide some proof of her attempts to file these two documents during the hearing, as well as to demonstrate that the General Division deemed the two documents inadmissible because she had missed a filing deadline. I indicated that the best evidence of the

Appellant's attempts likely would be to provide the timestamp on the recording of the hearing to show that she tried to file the two documents at the hearing and that the General Division Member refused to admit them as she was too late in doing so.

[4] Finally, I indicated that if the Appellant were unable to adduce such evidence, the appeal could well fail. I wrote that if the General Division had considered the issue of the admissibility of the records and did not restrict itself to considering whether the Appellant had missed a filing deadline and if it considered the appropriate legal tests for the admissibility of documents, then it may not have erred.

## **SUBMISSIONS**

[5] Despite my leave decision, the Appellant did not provide any submissions.

[6] Counsel for the Respondent provided submissions on May 13, 2016. The Respondent is of the position that I should refer the matter to the General Division for a *de novo* hearing, pursuant to subsection 59(1) of the *Department of Employment and Social Development Act*, so that another member of the General Division may determine whether the Appellant is disabled within the meaning of the *Canada Pension Plan*.

## **ANALYSIS**

[7] Neither of the parties directed me to any portions of the audio recording of the hearing before the General Division, to substantiate the Appellant's allegations that she had sought to admit two documents into evidence. I make no finding as to whether the Appellant had indeed filed the two documents either prior to or during the hearing of the appeal before the General Division.

[8] Although I had indicated that the Appellant would need to adduce some evidence or provide some proof of her attempts to file these two documents during the hearing and show that the General Division deemed the two documents inadmissible because the Appellant had missed a filing deadline, this has now been rendered moot in light of the Respondent's concession. I note too that the Appellant has indicated that she has difficulty listening to audio tapes.

[9] It may well be that the two documents were properly excluded from the evidentiary record, but the decision of the General Division does not disclose the basis upon which they may have been excluded, or if the issue of their admissibility even arose. It is unclear whether it acted improperly but I am nonetheless prepared to allow the appeal, given the Respondent's concession.

[10] As the trier of fact, the General Division is in the best position to evaluate the probative value of the documents and determine what impact they might have on the outcome of these proceedings. Accordingly, the appropriate disposition is to remit the matter to the General Division for a new hearing.

## CONCLUSION

[11] The appeal is allowed and the matter remitted to a different member of the General Division for a hearing *de novo*.

*Janet Lew*

Member, Appeal Division