



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. H. v. Minister of Employment and Social Development*, 2016 SSTADIS 206

Tribunal File Number: AD-15-1159

BETWEEN:

G. H.

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: June 15, 2016

REASONS AND DECISION

OVERVIEW

[1] The Appellant appeals a decision dated June 17, 2015 of the General Division, whereby it summarily dismissed her appeal of a decision denying her application for a disability pension under the *Canada Pension Plan* because it was satisfied that the appeal did not have a reasonable chance of success.

[2] The Appellant filed an appeal of the decision of the General Division on October 21, 2015 (the “Notice of Appeal”). She also filed supporting medical records. No leave is necessary in the case of an appeal brought under subsection 53(3) of the *Department of Employment and Social Development Act* (DESDA), as there is an appeal as of right when dealing with a summary dismissal from the General Division. Having determined that no further hearing is required, this appeal before me is proceeding pursuant to subsection 37(a) of the *Social Security Tribunal Regulations*.

ISSUES

[3] The issues before me are as follows:

1. Did the General Division err in finding that the earliest the Appellant could be deemed disabled was September 2012?
2. Did the General Division fail to observe a principle of natural justice or otherwise act beyond its jurisdiction?
3. Did the General Division err in choosing to summarily dismiss the Appellant’s appeal?

FACTUAL BACKGROUND

[4] The relevant facts are not in dispute. The Appellant developed a severe autoimmune polyneuropathy, resulting in various symptoms and numerous functional limitations, including imbalance, neuropathic pain and weakness. As a result of her

polyneuropathy, the Appellant retired before age 60. She applied for and began receiving a Canada Pension Plan retirement pension in September 2011. She did not apply for a Canada Pension Plan disability pension until December 2013, as she had been unaware of the severity of her illness when she retired and had not received a diagnosis early on.

GROUND OF APPEAL

[5] Subsection 58(1) of the DESDA sets out the only grounds of appeal. They are as follows:

- (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.

SUBMISSIONS

[6] The Respondent submits that the Appellant has not raised any grounds of appeal. It claims that the Appellant is relying on new medical evidence in support of the appeal. The Respondent argues that the governing legislation does not enable the Appeal Division to consider any new evidence, nor does it provide for a new hearing or reassessment. The Respondent argues that the General Division properly dismissed the appeal summarily as it had no reasonable chance of success.

[7] The Appellant submits that the General Division erred in finding that the earliest she could be deemed disabled was September 2012. She argues that she was “indeed deemed disabled prior to the date of retirement” and that she should not be penalized because she did not receive an early diagnosis of her condition.

[8] The Appellant suggests that she was denied a fair opportunity to present her case before the General Division, because supporting medical evidence was not available before she was forced to retire. The Appellant further maintains that it is unjust that she is deemed ineligible simply because she was unaware of the severity of her illness when she retired.

ISSUE 1: DEEMED DATE OF DISABILITY

[9] The Appellant argues that she was “indeed deemed disabled prior to the date of retirement” and that the General Division erred in deeming her disabled well after this date.

[10] As the General Division pointed out, paragraph 42(2)(b) of the *Canada Pension Plan* defines the earliest when an appellant can be “deemed disabled”. It is a defined, specific term and is not the same as when an appellant actually became disabled. That paragraph reads:

(b) a person is deemed to have become or to have ceased to be disabled at the time that is determined in the prescribed manner to be the time when the person became or ceased to be, as the case may be, disabled, but **in no case shall a person - including a contributor referred to in subparagraph 44(1)(b)(ii) - be deemed to have become disabled earlier than 15 months before the time of the making of any application in respect of which the determination is made.** (my emphasis)

[11] The General Division applied the provisions of this paragraph and properly found that the earliest the Appellant could be deemed disabled was 15 months before she applied for a Canada Pension Plan disability pension.

ISSUE 2: NATURAL JUSTICE

[12] The Appellant suggests that she was denied a fair opportunity to present her case before the General Division, because supporting medical evidence was not available before she was forced to retire. The Appellant further maintains that it is unjust that she is deemed ineligible simply because she was unaware of the severity of her illness.

[13] The principles of natural justice are concerned with procedural fairness and serve to ensure that a claimant has been afforded adequate notice and a reasonable opportunity to prepare and present her claim and to defend against the case that might be brought against her.

[14] There is no indication that the Appellant was deprived of a fair hearing by the General Division. Neither the absence of medical records nor a confirmed diagnosis at the material time sounds in a failure of the principles of natural justice.

ISSUE 3: SUMMARY DISMISSAL

[15] The Appellant did not contest the appropriateness of the summary dismissal of her appeal before the General Division. A summary dismissal is appropriate when there are no triable issues or when there is no merit to the claim, or, as subsection 53(1) of the DESDA reads, there is “no reasonable chance of success”. On the other hand, if there is a sufficient factual foundation to support an appeal and the outcome is not “manifestly clear”, then the matter is not appropriate for a summary dismissal. A weak case is not appropriately summarily dismissed, as it involves assessing the merits of the case and examining the evidence and assigning weight to it.

[16] There are no exceptions to and no basis to overcome the deeming provisions under paragraph 42(2)(b) of the *Canada Pension Plan* (short of establishing incapacity, which is not the case here). The Appellant accordingly could not have been deemed disabled earlier than the 15-month maximum retroactivity before her application for a disability pension. On the facts of this case, there was no reasonable chance of success and the General Division appropriately summarily dismissed the matter.

DISPOSITION

[17] The appeal is dismissed.

Janet Lew
Member, Appeal Division