



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *N. M. v. Minister of Employment and Social Development*, 2016 SSTADIS 361

Tribunal File Number: AD-16-996

BETWEEN:

**N. M.**

Applicant

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: Hazelyn Ross

HEARD ON: On the record

DATE OF DECISION: September 14, 2016

## REASONS AND DECISION

[1] The Appeal Division refuses to rescind or amend its decision of June 15, 2016.

### INTRODUCTION

[2] The Applicant applies to the Appeal Division of the Social Security Tribunal of Canada, (the Tribunal), to rescind or amend its decision June 15, 2016, (the Application). In this decision, the Appeal Division refused leave to appeal the decision of the General Division of the Tribunal dated November 23, 2015.

### GROUNDS OF THE APPLICATION

[3] The Applicant submitted that she had new evidence that warranted the Appeal Division rescinding or amending its decision. She attached this “new evidence” to her application.

### ISSUE

[4] The Appeal Division must decide if the materials submitted with the Application satisfy the test for new material facts set out in subsection 66(1) of the *Department of Employment and Social Development Act*, (the DESD), namely,

Do the information and documents presented by the Applicant constitute new material facts that could not have been discovered with the exercise of reasonable diligence at the time the Appeal Division rendered its decision refusing leave to appeal the General Division decision?

[5] This appeal proceeded on the Record for the following reasons:

- a) Pursuant to subsection 37(a) of the Social Security Tribunal Regulations, the Member determined that no further hearing was required.
- b) The requirements under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.
- c) the Member was satisfied that all of the documentation necessary to decide the Application is present in the Tribunal record.

## APPLICABLE LAW

### Rescind or Amend

[6] The applicable statutory provision provides that:

**66. (1)** The Tribunal may rescind or amend a decision given by it in respect of any particular application if

(a) in the case of a decision relating to the Employment Insurance Act, new facts are presented to the Tribunal or the Tribunal is satisfied that the decision was made without knowledge of, or was based on a mistake as to, some material fact; or

(b) in any other case, a new material fact is presented that could not have been discovered at the time of the hearing with the exercise of reasonable diligence.

**(2)** An application to rescind or amend a decision must be made within one year after the day on which a decision is communicated to the appellant.

**(3)** Each person who is the subject of a decision may make only one application to rescind or amend that decision.

**(4)** A decision is rescinded or amended by the same Division that made it.

[7] To succeed on an application to rescind or amend a decision, an applicant must establish that the “new evidence” it is submitting is evidence that was not discoverable, with the exercise of reasonable diligence, prior to the hearing or proceeding in respect of which the Application issues. Evidence that could have been discovered prior to the hearing or proceeding is not likely to be considered “new”. As well an applicant must also show that the evidence is or was material to the outcome of the decision. A new fact will be material if it can be shown that it could reasonably be expected to have affected the outcome of the decision: *Canada (Attorney General v. Jagpal)*, 2008 FCA 38.

## SUBMISSIONS

[8] In addition to the documents submitted as new evidence, the Applicant wrote to the Appeal Division indicating that her health conditions had worsened. She also indicated that she had already submitted every possible document that made her eligible for a CPP disability pension. (RA2-1)

[9] Counsel for the Respondent submitted that the Applicant’s new evidence did not rise to the required threshold that would allow the Appeal Division to rescind its earlier decision. She submitted that the Appeal Division should dismiss the application. (RA3)

## ANALYSIS

[10] Pursuant to subsection 66 (4) of the DESD Act, the only decision the Appeal Division can rescind or amend is its decision of June 15, 2016.

### **The new evidence**

[11] In her application, the Applicant updated her medical condition. She indicated that she had suffered three falls, once when she was using a cane. As well, she indicated that her medical conditions were worsening. She stated that her osteoporosis was interacting with her fibromyalgia resulting in constant pain. The Applicant also indicated that she suffered from escalating muscle spasms, chronic pain, migraines, depression and anxiety. She submitted a number of documents with her application. (RA1-1) The documents are:-

1. A medical report dated January 30, 2015 from LaSalle X-ray & Ultrasound;
2. A medical report dated February 12, 2015 from Health Sciences North; and a
3. Copy of page 2 of the CPP medical report (GD1-44) setting out the Applicant's medical conditions.

[12] The Appeal Division finds that these documents do not meet the test for "new facts". First, the medical report dated January 30, 2015 had been before the General Division (GD4-2) as had the copy of the CPP medical report. Thus, they were documents that would have been captured by the Appeal Division decision. These reports do not contain new facts or evidence.

[13] The Appeal Division also finds that the February 2015 medical report does not meet the criteria for new evidence as it details a bone density report the content of which was always in the Applicant's knowledge and to which she could have testified at the General Division hearing. In any event, this report does no more than expand upon the report of June 2013 report in which the Applicant was diagnosed with osteoporosis. (GD3-101). In this sense, the February 2015 report is additional evidence and not new evidence. Furthermore, the report speaks to the Applicant's condition in February 2015 and not to her condition as it existed at the end of her minimum qualifying period, which the General Division found to be December 31, 2009.

[14] On an application to rescind or amend a decision, the test is whether the new evidence establishes the existence of a condition, which though in existence at the time of the hearing or proceedings in question, could not be discovered with the exercise of reasonable diligence: *Canada (Attorney General v. Richard)*, 2008 FCA 69.

[15] The Appeal Division finds that the medical reports submitted by the Applicant do not meet this test. The Applicant's medical conditions were always known and had been addressed by the General Division in its decision. Accordingly, the Appeal Division must refuse the Application.

## **CONCLUSION**

[16] The Applicant asked the Appeal Division to rescind or amend its decision of June 15, 2016 in which it refused leave to appeal the decision of the General Division. In its decision, the General Division found that the Applicant had not become disabled on or before December 31, 2009. As set out above, the Appeal Division finds that the Applicant has not presented it with any new material fact that would allow it to rescind or amend its decision of June 15, 2016.

[17] The application to rescind or amend the decision of the Appeal Division issued June 15, 2016 is refused.

Hazelyn Ross  
Member, Appeal Division