Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *B. M. v. Minister of Employment and Social Development*, 2016 SSTADIS 409

Tribunal File Number: AD-15-1294

BETWEEN:

B. M.

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: October 18, 2016

REASONS AND DECISION

INTRODUCTION

[1] This is an appeal of the decision of the General Division dated September 29, 2015, in respect of the Appellant's claim for a Canada Pension Plan disability pension. The General Division determined that the Appellant was not eligible for a disability pension, as it found that her disability was not "severe" by the end of her minimum qualifying period of December 31, 2013.

[2] The Appellant sought leave to appeal the decision of the General Division on several grounds. The Appeal Division granted leave to appeal on December 21, 2015, on the basis that the General Division may have based its decision on erroneous findings of fact that it made in a perverse or capricious manner or without regard for the material before it.

[3] Upon reviewing the submissions received from both parties, I have determined that no further hearing is required, pursuant to subsection 43(a) of the *Social Security Tribunal Regulations.*

ISSUES

[4] There are two issues before me:

i. did the General Division base its decision on erroneous findings of fact that it made in a perverse or capricious manner or without regard to the material before it?

ii. what is the appropriate disposition of this matter?

GROUNDS OF APPEAL

[5] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

(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.

[6] The Appeal Division granted leave to appeal on this latter ground.

(a) Psychiatrist's notes

[7] The Appellant's questionnaire indicates that she last worked in November 2010, when her employer moved to London (GD2-53).

[8] At paragraph 37 of its decision, the General Division wrote:

> [37] The Appellant stated that her inability to find employment worsened her depression, but again, the Tribunal does not find that this is reflected in the report by her psychiatrist.

[9] The findings by the General Division accurately reflect the contents of the psychiatrist's report. There is no indication in his report of July 5, 2012 that the Appellant's inability to find employment worsened her depression, although the psychiatrist acknowledged that the Appellant experienced anxiety and depression "on and off for many years" and that she also exhibited mood swings (GD3-4 to GD3-7).

[10] Given that the psychiatrist had prepared a CPP medical report and that it would have been based on the Appellant's self-reporting, the General Division should have been able to rely on the psychiatrist's medical report as an accurate and generally comprehensive summary regarding the Appellant's medical history, incorporating the Appellant's reporting, his own observations and investigations undertaken by him.

[11] However, the Appellant suggests that that the General Division should not have limited its findings to the medical report of the psychiatrist, and instead, should have also considered and addressed the psychiatrist's clinical records. In this regard, the Appellant submits that the General Division failed to "give adequate consideration to the medical documentation with respect to the nature and extent of [her] multiple injuries and disabilities". The Appellant cites, for example, the psychiatrist's note of January 3, 2011 at GD3-19.

[12] Momentarily setting aside any admissibility issues, the General Division acknowledged at paragraph 25 that the psychiatrist's handwritten notes had been provided, but found them to be largely illegible. I concur that these handwritten notes are largely illegible.

[13] Although the General Division is not bound by the strict rules of evidence, there should be no expectation that a decision-maker should interpret largely illegible records to draw conclusions as to medical opinions where there is no supporting medical opinion evidence. Simply furnishing clinical records does not establish the truth of their contents because they are hearsay statements made by the psychiatrist. Had the Appellant intended to rely upon the contents of the records to establish the severity of her disability, and if they were critical to her claim, she should have obtained a narrative report in which the psychiatrist addressed the impact of the loss of employment on her. At the very least, the Appellant should have obtained transcribed typewritten notes, even if only to support her claims over what she reported to her psychiatrist.

[14] That said, while it is not unnatural to experience a reactive depression to a loss of and an inability to secure employment, this does not necessarily result in a severe and prolonged disability. The General Division addressed the Appellant's submissions that her depression deteriorated. At paragraph 35, the General Division concluded that it would have been reasonable to expect the psychiatrist to indicate in his report whether there had been any significant change or a "major breakdown" after the loss of her employment, had such an event occurred.

(b) English skills

[15] The Appellant alleges that the General Division erred in finding that her work history indicated that she had sufficient English communication skills to be competitive in the working world. The Appellant contends that this overlooks the fact that her work experience in Canada was in areas that did not require her to communicate with others.

[16] At paragraph 46, the General Division wrote:

> [46] The Tribunal noted that the Appellant, after coming to Canada, has been able to work steadily for twenty-five years, at first as a dishwasher, then in a laundry. This demonstrates to the Tribunal that even though she asked for complete interpretation during the hearing, she must have been able to communicate well enough to be able to understand what she had to do, i.e., follow directions, etc.; therefore being able to complete the tasks satisfactorily and therefore maintain her employment.

[17] The General Division also wrote, at paragraph 47:

> [47] In terms of the real world, as stated above, the Tribunal concluded that she was able to communicate well enough to maintain employment. While her schooling would not allow for any re-training, her experience in her previous positions in a restaurant and in a laundry provided her with transferable skills. At the age of 58 as of her MQP, she would still have a few years of gainful employment possible.

[18] It is not apparent that the General Division was unaware that the Appellant's work experience did not demand much communication from her. After all, the General Division specifically noted that the Appellant worked as a dishwasher and then in a laundry. The General Division did not suggest that she was proficient in the English language; rather, the member indicated that she must have had some rudimentary understanding in order to follow directions and complete tasks satisfactorily, even if it was in these two limited areas of employment.

[19] I am not persuaded that the General Division failed to apprehend either the limited extent of the Appellant's English skills, or that her prior work experience did not require her to communicate with others on an ongoing basis.

CONCLUSION

[20] The appeal is dismissed.

Janet Lew
Member, Appeal Division