



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. G. v. Minister of Employment and Social Development*, 2016 SSTADIS 503

Tribunal File Number: AD-16-1137

BETWEEN:

L. G.

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: December 22, 2016

REASONS AND DECISION

BACKGROUND

[1] The Appellant is seeking a Canada Pension Plan disability pension. The Respondent denied her application. On an appeal from this decision, the General Division determined that the Appellant was not eligible for a disability pension as it found that her disability was not “severe” on or before the end of her minimum qualifying period on December 31, 2013.

[2] On November 2, 2016, I granted leave to appeal, on the basis that the General Division may have based its decision on an erroneous finding of fact that it made without regard for the material before it, regarding the Appellant’s productivity as a berry picker in 2013.

[3] At paragraph 63 of its decision, the General Division found that the employer stated that the Appellant was an average picker and picked 300 pounds of blueberries per day. This was one of the factual bases upon which the General Division determined that the Appellant demonstrated a capacity to work within her functional limitations and medical conditions. Given that the employer did not give any evidence regarding the volume of blueberries which the Appellant might have picked on a daily basis in 2013, and implied that her productivity could in fact have declined, this may have represented an erroneous finding of fact made without regard for the material before it.

APPEAL

[4] On December 19, 2016, the Respondent agreed that the General Division appeared to have made an error of fact without regard for the material, in making findings regarding the Appellant’s productivity as a berry picker, in the absence of an evidentiary foundation. The Respondent advised that both parties agree that the appeal should be granted and the matter returned to the General Division for redetermination by way of an in-person hearing.

CONCLUSION

[5] Given the Respondent's position in this matter, the appeal is allowed and the matter referred to the General Division for a redetermination on the merits, with directions that it conduct an in-person hearing.

Janet Lew
Member, Appeal Division