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

Citation: *I. A. v. Minister of Employment and Social Development*, 2017 SSTGDIS 18

Tribunal File Number: GP-16-1031

BETWEEN:

I. A.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Income Security Section

DECISION BY: Joanne Sajtos

DATE OF DECISION: February 1, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Appellant's application for a *Canada Pension Plan* (CPP) disability pension was date stamped by the Respondent on July 26, 2010. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal). The General Division of the Tribunal rendered a decision on March 18, 2014 dismissing the appeal and deciding that the Appellant's medical conditions were not severe on or before the date of his minimum qualifying period (MQP), December 31, 2011. An appeal of the General Division decision was filed before the Appeal Division of the Tribunal. In a decision dated January 14, 2015, the Appeal Division refused the Application for Leave to Appeal.

[2] The Appellant reapplied for CPP disability benefits. In the second application dated stamped May 14, 2015, the Appellant requested that the Respondent again consider his request for disability benefits. On August 18, 2015, the Respondent denied the application concluding that a Review Tribunal (which was mentioned by mistake and should have been referred as the General Division of the Tribunal) had made a decision, which was final and binding. The Appellant requested reconsideration and in a decision dated January 25, 2016, the Respondent stated that the Social Security Tribunal – General Division decision was final and binding, and the Respondent could not change it. In a Notice of Appeal received March 11, 2015, the Appellant appealed the Respondent's reconsideration to the General Division of the Tribunal.

[3] The appeal was determined on the basis of the documentary evidence filed on the record.

THE LAW

[4] Section 68 of the *Department of Employment and Social Development Act* states:

> The decision of the Tribunal on any application made under this Act is final and, except for judicial review under the *Federal Courts Act*, is not subject to appeal to or review by any court.

ISSUE

The Tribunal must decide if the Appellant's appeal of the Respondent's reconsideration decision dated January 25, 2016 is *res judicata?*

SUBMISSIONS

[5] In his Notice of Appeal, the Appellant submitted that the grounds for his appeal were based on the fact that he has been unable to obtain employment since prior to the year 2011 due to his medical conditions.

[6] The Respondent submitted in writing on October 4, 2016 that a final decision was made by the Tribunal on March 18, 2014 that the Appellant did not have a severe and prolonged disability when his MQP ended in December 2011. The Appeal Division denied leave to appeal this decision. Thus, the issue of disability as of December 2011 is *res judicata*.

ANALYSIS

[7] The doctrine of *res judicata* prevents parties to a proceeding from rehearing or re-litigating the same issues. The Appellant's appeal for disability benefits on or before the date of his December 31, 2011 MQP was considered by the General Division of the Tribunal in March 2014.

[8] In *Danyluk v. Ainsworth Technologies Inc*., 2001 SCC 44, [2001] 2 S.C.R. 460, the court defined the doctrine of *res judicata* as "the idea that a dispute once judged with finality is not subject to relitigation. The Federal Court in *Alves v. Canada (Attorney General), 2014 FC 1100* held that the doctrine of *res judicata* applied to decisions of the Tribunal.

[9] The Supreme Court of Canada in *Danyluk* set out three conditions that must be met for the doctrine to apply:

a. the issue must be the same as the one decided in the prior decision;

b. the prior decision must have been final, and

c. the parties to the proceedings are the same.

[10] The Tribunal is in agreement with the Respondent that in this case the three conditions noted by the Supreme Court of Canada have been met. Specifically, the relevant facts remain the same as in the initial application of July 2010 with respect to whether the Appellant was disabled on or before his MQP of December 31, 2011. The Tribunal's decision of March 2014 is final, as leave to appeal to the Appeal Division has been denied. Finally, the parties are the same as those at the initial appeal.

[11] The Appeal Division, in *E.L. v Minister of Employment and Social Development*, 2016 CanLII 59182 (SST), which is persuasive but not binding, stated that, as noted in *Danlyuk*, the rules of *res judicata* should not be mechanically applied as the "underlying purpose is to balance the public interest in the finality of litigation with the public interest in ensuring that justice is done on the facts of a particular case." Thus, one must consider a two-step analysis and determine as a matter of discretion, whether the doctrine ought to be applied. The Supreme Court of Canada provided a list of factors for and against the use of the discretion, including the wording of the statute, purpose of the legislation, availability of an appeal, safeguards available to the parties, expertise of administrative decision-maker, circumstances giving rise to the prior administrative proceeding and potential injustice. As noted by the Respondent, the first six factors relate to the Tribunal's mandate, while the last factor concerns itself with natural justice.

[12] In consideration of the discretionary factors, the Tribunal notes that subject to judicial review, the General Division decision is considered to be final in accordance with section 68 of the DESDA. Thus, the Tribunal is satisfied that the General Division decision of March 2014 is final. The purpose of the legislation, in part, is to provide social insurance for a loss of earnings due to disability. It is not a "social welfare scheme" but rather a contributory plan with defined entitlement and contributions. The determination of the Appellant's benefits was rightfully considered in the General Division decision of March 2014 based on his MQP date of December 2011. Although an appeal was available, the Appellant did not meet the requirements of leave to appeal. Safeguards in the process included the right to a reconsideration decision and a subsequent *de novo* hearing at the Social Security Tribunal, which included the opportunity to present additional relevant evidence not considered by the Respondent. The Member of the Social Security Tribunal specialized in weighing evidence

and making determinations specific to disability claims in accordance with the CPP. There were no undue circumstances to consider in the decisions made by the Respondent. Finally, the Appellant's appeal has been determined based on factual and legal considerations that were not arbitrary or an abuse of process so as to exercise the discretion to not apply the doctrine of *res judicata*.

[13] Although the Appellant has in essence requested that his appeal be allowed for equitable reasons, the Tribunal notes that in *Curto v. MHRD* (October 9, 1996), CP 3841 (PAB), the PAB acknowledged that it was not a court of equity and therefore could not base its principles on equity or equitable principles. As a statutory body created by legislation by the government of Canada it is bound and limited by the provisions of its legislation. The Tribunal is also created by legislation and its powers limited by its enabling statute.

[14] The doctrine of *res judicata* is applicable in this case. The Tribunal will not consider the merits of the Appellant's appeal.

CONCLUSION

[15] The appeal is dismissed.

Joanne Sajtos
Member, General Division - Income Security