



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. B. v. Minister of Employment and Social Development*, 2017 SSTADIS 204

Tribunal File Number: AD-16-391

BETWEEN:

M. B.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shirley Netten

DATE OF DECISION: May 3, 2017

REASONS AND DECISION

[1] On December 2, 2016, the General Division of the Social Security Tribunal of Canada determined that a disability pension under the *Canada Pension Plan* (CPP) was not payable to the Appellant. The Appeal Division granted leave to appeal this decision on February 28, 2017, on the basis that an arguable case had been raised with respect to the General Division's application of *Villani v. Canada (Attorney General)* 2001 FCA 248, in its analysis.

[2] In submissions dated April 13, 2017, the Respondent, while maintaining its position that the Appellant is not disabled, concedes that "the General Division decision comes to the conclusion that the Appellant's disabilities are severe before going through the full analysis in its test for disability." It is apparent from the Appellant's initial submissions (March 7, 2016) that the parties are in agreement in this respect. The Appellant has not filed further submissions following the decision granting leave to appeal, and the deadline for such submissions under s. 43 of the *Social Security Tribunal Regulations* has passed.

[3] Based on my review of the appeal file and the parties' submissions, I find that allowing this appeal is consistent with the evidence and the relevant provisions of the *Department of Employment and Social Development Act* (DESDA). I find that the General Division erred in its application of the law regarding the test for severe disability found in s. 42(2)(a)(i) of the CPP, specifically in relation to the consideration of the Appellant's personal and vocational characteristics, required by *Villani*. Accordingly, the appeal is allowed, pursuant to s. 58(1)(b) of the DESDA.

[4] Whereas the Appellant initially requested that the Appeal Division proceed to grant him disability benefits (substituting its decision for that of the General Division), the Respondent asks that the matter be referred back to the General Division for reconsideration by another member.

[5] The General Division's error of law, in this case, is not determinative of the Appellant's claim for disability benefits. The Appellant's entitlement to such benefits continues to be contested, and I agree that it is appropriate to refer this matter to the General Division for reconsideration by a different member, pursuant to s. 59 of the DESDA.

CONCLUSION

[6] The appeal is allowed. The matter is referred back to the General Division for reconsideration by another member.

Shirley Netten
Member, Appeal Division