



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. K. v. Minister of Employment and Social Development*, 2017 SSTADIS 469

Tribunal File Number: AD-16-404

BETWEEN:

R. K.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Meredith Porter

HEARD ON:

DATE OF DECISION: September 21, 2017

REASONS AND DECISION

[1] Correspondence was received from the Respondent, dated June 6, 2017. The Respondent notes that that several documents were received on May 7, 2014, after the Rule 26 documents were sent to the General Division of the Social Security Tribunal of Canada (Tribunal) General Division on April 25, 2014, and before the Respondent's submissions were filed June 11, 2014. The Respondent's submissions made reference to one of these documents but did not attach this, or any of the additional documents in their possession. These documents include:

- 1) Medical report dated May 1, 2014, Tab 1
- 2) Progress note dated April 16, 2014, Tab 2
- 3) Laboratory Reports dated August 12, 2013 to April 16, 2014, Tab 3

[3] It is the Respondent's position that the matter should be referred back to the General Division pursuant to subsection 59(1) of DESDA so that all evidence can properly be considered by the General Division. This, the Respondent argues, would allow the Appellant the fair opportunity to present his case supported by all of the evidence that was in the possession of the Department.

[4] No further submissions were received from the Appellant following receipt of the Appeal Decision granting leave to appeal, and following receipt of the Respondent's correspondence dated June 6, 2017, which was sent to the Appellant on June 7, 2017.

[5] I am not able to dismiss the appeal, give the decision that the General Division should have given, or render any decision on the merits of the General Division's decision as the Appellant has not had the opportunity to put his case forward fully and fairly before the General Division.

[6] In the circumstances, it is only appropriate that the matter be referred back to the General Division in order for a hearing *de novo* to proceed with all evidence disclosed between the parties and available for consideration by the General Division.

[7] A member of the General Division of the Tribunal will hold the hearing in this matter, and decide the issues. I do not wish to fetter their ability to do so by determining the form of hearing. Therefore, this matter is referred to the General Division with direction to hold a hearing de novo, and who will decide all issues related to the hearing.

Meredith Porter
Member, Appeal Division