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

Citation: *J. R. v. Minister of Employment and Social Development*, 2017 SSTADIS 663

Tribunal File Number: AD-17-221

BETWEEN:

J. R.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Neil Nawaz

DATE OF DECISION: November 17, 2017

Canada

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant, J. R., is appealing a decision of General Division of the Social Security Tribunal of Canada (Tribunal) to summarily dismiss her claim for disability benefits under the *Canada Pension Plan* (CPP).

[3] Ms. J. R. had been working as a retail sales clerk when she sustained a workplace injury that left her with back, shoulder and neck pain. She left her job in November 2014 and applied for CPP disability benefits, The Respondent, the Department of Employment and Social Development, refused her application, having determined that her disability was not "severe" during the minimum qualifying period (MQP), which ended on December 31, 2005, or if the proration provision applied, April 30, 2006.

[4] In a decision dated March 1, 2017, the General Division summarily dismissed the appeal, finding that, because Ms. J. R. had provided no evidence of her medical status as of the MQP or proration dates, it had no reasonable chance of success. The General Division also cited the fact that she had been working in 2014.

[5] On March 13, 2017, Ms. J. R. appealed to the Tribunal's Appeal Division, reiterating her prior submissions that severe pain made it impossible for her to work. In a letter dated September 18, 2017, the Tribunal reminded Ms. J. R. of the specific grounds of appeal permitted under subsection 58(1) of the *Department of of Employment and Social Development Act* (DESDA) and asked her to provide, within a reasonable timeframe, more detailed reasons for her appeal. At Ms. J. R.'s request, the Tribunal subsequently granted her two extensions of time in which to file supplemental submissions, but she had not done so as of the most recent deadline, November 10, 2017, or as of the date of this decision.

[6] In view of the requirement under the *Social Security Tribunal Regulations* to proceed as informally and as quickly as circumstances, fairness and natural justice permit, I have decided to dispense with an oral hearing and consider this appeal on the basis of the existing documentary record. For the reasons that follow, I have concluded that the General Division's decision must stand.

ISSUES

[7] The issues before me are as follows:

Issue 1: How much deference should the Appeal Division extend to General Division decisions?

Issue 2: Did the General Division apply the correct test for a summary dismissal?

Issue 3: Did the General Division commit any errors in rendering its decision?

ANALYSIS

Issue 1: How much deference should the Appeal Division show the General Division?

[8] The only grounds of appeal to the Appeal Division are that the General Division erred in law, failed to observe a principle of natural justice, or 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.[1] The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration, or vary the General Division's decision in whole or in part.[2]

[9] Until recently, it was accepted that appeals to the Appeal Division were governed by the standards of review set out by the Supreme Court of Canada in *Dunsmuir v. New Brunswick.*[3] Where errors of law or failures to observe principles of natural justice were alleged, the applicable standard was held to be correctness, reflecting a lower threshold of deference deemed to be owed to a first-level administrative tribunal. Where erroneous findings of fact

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[1]. Subsection 58(1) of the *Department of Employment and Social Development Act*.
[2]. Subsection 59(1) of the DESDA.
[3]. *Dunsmuir v. New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9.

were alleged, the standard was held to be reasonableness, reflecting a reluctance to interfere with findings of the body tasked with hearing factual evidence.

[10] The Federal Court of Appeal decision *Canada v. Huruglica*[4] rejected this approach, holding that administrative tribunals should not use standards of review that were designed to be applied by appellate courts. Instead, administrative tribunals must look first to their home statutes for guidance in determining their role. This premise led the Court to determine that the appropriate test flows entirely from an administrative tribunal's governing legislation: "The textual, contextual and purposive approach mandated by modern statutory interpretation principles provides us with all the necessary tools to determine the legislative intent […]"

[11] The implication here is that the standards of reasonableness or correctness will not apply unless those words, or their variants, are specifically contained in the tribunal's home statute. Applying this approach to the DESDA, one notes that paragraphs 58(1)(*a*) and (*b*) do not qualify errors of law or breaches of natural justice, which suggests that the Appeal Division should afford no deference to the General Division's interpretations. The word "unreasonable" is not found in paragraph 58(1)(*c*), which deals with erroneous findings of fact. Instead, the test contains the qualifiers "perverse or capricious" and "without regard for the material before it." As suggested by *Huruglica*, those words must be given their own interpretation, but the language suggests that the Appeal Division should intervene when the General Division bases its decision on an error that is clearly egregious or at odds with the record.

Issue 2: Did the General Division apply the correct test for summary dismissal?

[12] I am satisfied that the General Division used the appropriate mechanism to dispose of Ms. J. R.'s appeal. In paragraph 3 of its decision, and again at paragraph 13, the General Division invoked subsection 53(1) of the DESDA, correctly stating the provision that permits it to summarily dismiss an appeal that has no reasonable chance of success. However, I acknowledge that it is insufficient to simply cite legislation without properly applying it to the facts.

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4. *Canada (Citizenship and Immigration) v. Huruglica*, [2016] 4 FCR 157, 2016 FCA 93.

[13] The decision to summarily dismissal an appeal relies on a threshold test. It is not appropriate to consider the case on the merits in the parties' absence and then find that the appeal cannot succeed. In *Fancy v. Canada*,[5] the Federal Court of Appeal determined that a reasonable chance of success is akin to an arguable case at law. The Court also considered the question of summary dismissal in the context of its own legislative framework and determined that the threshold for summary dismissal is high.[6] The question to be asked is whether it is plain and obvious on the record that the appeal is bound to fail. The question is *not* whether the appeal must be dismissed after considering the facts, the case law and the parties' arguments. Rather, the question is whether the appeal is destined to fail regardless of the evidence or arguments that might be submitted at a hearing.

[14] Here, Ms. J. R. admitted that she was able to work during the period in which she last qualified for CPP disability benefits. Furthermore, the General Division found that none of her medical evidence was from the relevant period of 2005–06. My review of the record confirms that the earliest available report was dated 2014. According to the *Canada Pension Plan Regulations*, at least some form of relevant objective evidence must be submitted in support of a disability claim,[7] a principle that has been endorsed repeatedly in case law.[8]

[15] In the absence of any recourse to equity, the General Division was within its jurisdiction to summarily dismiss the appeal. In my view, it was plain and obvious on the record that the Ms. J. R.'s arguments were bound to fail.

Issue 3: Did the General Division err in rendering its decision?

[16] Ms. J. R.'s submissions amounted to a recapitulation of the case she had already presented to the General Division. In essence, she argued that she was suffering from a severe and prolonged disability, but the Appeal Division has no mandate under the DESDA to rehear evidence on its merits and is permitted to consider only those grounds that fall under the categories described in subsection 58(1).

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[5]. *Fancy v. Canada (Attorney General)*, 2010 FCA 63.
[6]. *Lessard-Gauvin c. Canada (Attorney General)*, 2013 FCA 147; *Sellathurai v. Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 1; and *Breslaw v. Canada (Attorney General)*, 2004 FCA 264.
[7]. See paragraph 68(1)(*a*).
[8]. *Pantic v. Canada (Attorney General)*, 2011 FC 591; *Villani v. Canada (Attorney General)*, [2002] 1 FCR 130, 2001 FCA 248.

[17] It is important to keep in mind that the burden of proof in CPP disability claims lies with the claimant. In this case, the onus was on the Appellant to show that she was entitled to the CPP disability benefit. My review of the record suggests that the General Division fairly assessed the available evidence and correctly applied it to the law. Ultimately, the General Division found nothing that pertained to the period—now more than a decade in the past—when the Appellant last had coverage.

[18] Although Ms. J. R. may find this outcome unfair, the Appeal Division can exercise only such jurisdiction as is granted to it by the DESDA. Support for this position is found in *Canada v. Tucker*,[9] among many other cases, which have confirmed that an administrative tribunal is not a court but a statutory decision-maker and, therefore, not empowered to provide any form of equitable relief.

CONCLUSION

[19] The Appellant has failed to demonstrate how the General Division erred in summarily dismissing her appeal. The appeal is therefore dismissed.

Member, Appeal Division

[9]. *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278.