



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. S. v. Minister of Employment and Social Development*, 2017 SSTADIS 673

Tribunal File Number: AD-17-647

BETWEEN:

**R. S.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Valerie Hazlett Parker

HEARD ON:

DATE OF DECISION: November 21, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] The Appellant applied for a Canada Pension Plan disability pension and claimed that he was disabled by a number of physical ailments. The Respondent refused the application initially and after reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal of Canada (Tribunal). The Tribunal's General Division dismissed the appeal. The Appellant was granted leave to appeal by the Tribunal's Appeal Division. On September 20, 2016, the Appeal Division dismissed the appeal.

[2] On September 27, 2017, the Appellant filed an application to rescind or amend the Appeal Division's decision (Application) on the basis of new material facts (the Application and accompanying letter was dated October 27, 2017, in error).

[3] This appeal proceeded on the basis of the written record for the following reasons:

- a) The issue before the Tribunal is clearly set out and addressed by both parties in written submissions;
- b) There are no gaps in the submissions filed by the parties;
- c) Pursuant to paragraph 37(a) of the *Social Security Tribunal Regulations*, the Member has determined that no further hearing is required; and
- d) The *Social Security Tribunal Regulations* requirement to proceed as informally and quickly as circumstances, fairness and natural justice permit.

### THE LAW AND ANALYSIS

[4] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. Section 66 of the DESD Act provides :

66. (1) The Tribunal may rescind or amend a decision given by it in respect of any particular application if

(a) in the case of a decision relating to the Employment Insurance Act, new facts are presented to the Tribunal or the Tribunal is satisfied that the decision was made without knowledge of, or was based on a mistake as to, some material fact; or

(b) in any other case, a new material fact is presented that could not have been discovered at the time of the hearing with the exercise of reasonable diligence.

(2) An application to rescind or amend a decision must be made within one year after the day on which a decision is communicated to the appellant.

(3) Each person who is the subject of a decision may make only one application to rescind or amend that decision.

(4) A decision is rescinded or amended by the same Division that made it.

Therefore, evidence put forward under a new facts application must satisfy a two-part test:

a) Discoverability: the evidence must establish a fact that existed at the time of the original hearing but was not discoverable before the original hearing by the exercise of due diligence, and

b) Materiality: the evidence must reasonably be expected to affect the result of the prior hearing (*Canada (Attorney General) v. MacRAE*, 2008 FCA 82).

[5] The Appellant presented two sets of documents as new material facts: Reports from Statistics Canada on the general economy dated January 2003 and January 2004, and three Appeal Division decisions and a Pension Appeals Board decision. I must decide whether they meet this legal test for new material facts.

### **Statistics Canada Reports**

[6] The Appellant argues that one of the General Division's reasons for dismissing his appeal was that it concluded that his home-based business was not profitable from 2001 to 2003 because of a poor general economy. He presents the reports from Statistics Canada to counter this finding. He submits that these documents are new material facts because he was not aware of this issue at the time that the General Division decision was made.

[7] The fact that the Appellant was not aware of this issue does not establish that these reports are new material facts under section 66 of the DESD Act. These documents existed at the time of the Appeal Division decision. They are dated a number of years prior to the decision, and were available on a government website. Although the Appellant argues that he was not aware of them or of how to obtain them, I am satisfied that they were discoverable with reasonable diligence.

[8] In addition, the presentation of these documents would not have any impact on the Appeal Division decision. No issues regarding the general economy or why the Appellant's business was not profitable were argued at the Appeal Division. These documents do not relate to any issue that was before the Appeal Division. These documents therefore are not material. They are not new material facts under the DESD Act.

### **Appeal Division and Pension Appeals Board Decisions**

[9] The Appellant also referred to three decisions of the Tribunal's Appeal Division, being appeal number AD-16-2016 [sic] dated August 31, 2015, a General Division decision of TH (no citation given), *M.Q. v. Minister of Employment and Social Development*, appeal number AD-15-1140 dated March 8, 2016, and claimed that they were new material facts under the DESD Act. The Appellant did not file copies of these decisions with the Tribunal.

[10] The Appellant contends that these Appeal Division decisions were not discoverable prior to the Appeal Division hearing because they had not been published on the Tribunal website prior to that date. This may be so. However, I am not satisfied that they would have affected the outcome of the appeal in this case. A decision made by the Appeal Division in one case is not binding in any other case. Although a Tribunal decision may be persuasive in another case, the Appeal Division is not required to follow the reasoning of another such decision. Each appeal is to be decided on its particular facts. The Appellant has not provided any argument or evidence that establishes that the facts of any of these cases were so similar to his that they would impact the outcome of the decision in this matter. They do not meet the materiality test under the DESD Act. Consequently, they are not new material facts.

[11] The Appellant also argues that the Pension Appeals Board decision in *Boyle v. Minister of Human Resources Development* (June 10, 2003), CP18508 (PAB), is a new material fact. This decision was clearly discoverable prior to the Appeal Division decision as it was referenced in the decision that granted leave to appeal, and could have been found with reasonable diligence. It was published on various legal research websites. The Appellant does not suggest that he could not have discovered this decision.

[12] In addition, this document would not likely affect the outcome of the appeal. The Appeal Division found that this decision was not relevant. In addition, a decision made by the Pension Appeals Board is not binding on the Tribunal's Appeal Division. Therefore, its presentation would not likely change the outcome of the decision in question in this matter. This document also does not meet the legal test for a new material fact under section 66 of the DESD Act.

## **CONCLUSION**

[13] The Application is dismissed as the Appellant has not produced any new material facts under the DESD Act.

Valerie Hazlett Parker  
Member, Appeal Division