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

Citation: *S. A. v. Minister of Employment and Social Development*, 2017 SSTADIS 710

Tribunal File Number: AD-16-1202

BETWEEN:

S. A.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Valerie Hazlett Parker

HEARD ON: November 28, 2017

DATE OF DECISION: December 7, 2017

Canada

REASONS AND DECISION

DECISION

The appeal is dismissed.

INTRODUCTION

[1] The Appellant completed high school and part of a college theology program. He was employed as a physical labourer for a tire manufacturer when he was involved in a head-on vehicle collision in 2011. As a result of this accident the Appellant suffers from ongoing pain, physical limitations, and mental illness. He applied for a *Canada Pension Plan* disability pension. The Respondent denied the application initially and on reconsideration. The Appellant appealed the reconsideration decision to the General Division of the Social Security Tribunal. On September 26, 2016, the General Division dismissed his appeal.

[2] The Appellant applied for leave to appeal the General Division decision. Leave to appeal was granted on July 31, 2017. The appeal was heard by videoconference.

THE LAW AND ANALYSIS

[3] The Federal Court of Appeal, in *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93, decided that administrative tribunals must look first to their home statutes for guidance in determining their role and what standard of review is to be applied on an appeal. The *Department of Employment and Social Development Act* (DESD Act) is the home statute for this Tribunal.

[4] The only grounds of appeal available under the DESD Act are set out in subsection 58(1). They are that the General Division failed to observe a principle of natural justice, made an error of law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.

[5] Paragraphs 58(1)(*a*) and (*b*) of the DESD Act 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. 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.

[6] The Appellant does not suggest that the General Division failed to observe the principles of natural justice. He contends that it did not properly apply the law as set out in *Villani v. Canada (Attorney General)*, 2001 FCA 248, and that it based its decision on erroneous findings of fact without regard for all of the material before it. For the reasons that follow, I am not satisfied that the General Division made such errors under subsection 58(1) of the DESD Act.

Villani Assessment

[7] First, the Appellant argues that the General Division did not apply a “real world” analysis to reach its conclusion. Specifically, he argues that the General Division did not consider the Appellant’s numerous physical limitations along with his personal characteristics. *Villani* requires the decision maker to consider a disability pension claimant’s personal characteristics, including age, education, and language abilities, in the context of their physical or mental conditions. I am satisfied that the General Division did this adequately in this case. The decision specifically refers to the Appellant being young, having some post-secondary education, adequate language skills, and limited work experience. In addition, it found that the Appellant had experience volunteering with youth and adults at his church. The decision also summarized the Appellant’s ongoing limitations and medical conditions. It was on this basis that the General Division concluded that the Appellant would be a candidate for retraining or employment within his limitations. The reasoning for this conclusion is logical, intelligible, and defensible on the evidence and the law.

Erroneous Findings of Fact

[8] The Appellant also argues that the General Division’s decision was based on erroneous findings of fact under subsection 58(1) of the DESD Act. The Federal Court of Appeal has decided that the Tribunal is presumed to have considered all of the evidence before it, including

testimony and written material. Each and every piece of evidence need not be mentioned in the written decision: *Simpson v. Canada (Attorney General)*, 2012 FCA 82. However, this presumption can be rebutted if the Tribunal disregarded extremely probative evidence.

[9] In this case, the Appellant consulted with a number of medical professionals after the accident. They penned numerous reports, which were filed with the General Division. The decision summarized this medical evidence as follows:

> While the Tribunal has considered all of the medical evidence contained in the Hearing File, significant weight has been placed on reports submitted by the Appellant's treating physicians, Dr. Sloan and Dr. Prabhu. The Tribunal has considered the oral testimony presented with equal weight.

The decision then specifically analyzes the evidence from these doctors and the Appellant's testimony.

[10] The Appellant argues that the General Division did not consider two reports penned by Dr. Townley (AD4-88 and AD4-100) or an in-home assessment written by Chantal Pullen (AD4-135), and that it therefore based its decision on erroneous findings of fact made without regard for all of the material before it.

Ms. Pullen's Report

[11] Chantal Pullen penned an in-home assessment report dated October 30, 2013 (AD4-135). She set out the Appellant's limitations and made recommendations for ongoing assistance with indoor and outdoor home care tasks and medical treatment. This report is summarized in paragraph 22 of the decision. The General Division concluded that the Appellant has physical restrictions and limitations. This finding of fact is not erroneous, and the appeal cannot succeed on the basis that this report was not specifically mentioned in its analysis when the content of the report was considered.

Dr. Townley's Evidence

[12] The Appellant also argues that Dr. Townley's reports were not considered. He was the only doctor who assessed whether the Appellant was employable and therefore, I am satisfied that this evidence was extremely probative and should not have been overlooked. The General

Division summarized Dr. Townley's evidence in paragraph 24 of the decision, including his final conclusion that the Appellant was not employable.

[13] The Respondent urged me to interpret Dr. Townley's conclusion that the Appellant was not employable in the context of motor vehicle litigation that may have been ongoing at the time the report was written, and to conclude that he really meant that the Appellant was not employable in his prior work. Therefore, according to the Respondent, this evidence was not very probative in the appeal. I am not satisfied that this is a reasonable conclusion. Dr. Townley changed his opinion from the Appellant being at a competitive disadvantage in his initial report to being unemployable in the addendum to this report. Clearly, being unemployable, with no restrictions placed on that term, means something broader than just being unable to return to a prior job.

[14] Even though Dr. Townley's reports were penned approximately three years prior to the minimum qualifying period (the date by which the Appellant must be found to be disabled to be eligible for the disability pension), I am satisfied that this evidence is highly relevant to the issue at hand. Although it is ultimately for the Tribunal member to decide if the Appellant is disabled, Dr. Townley's conclusions speak directly to that issue.

[15] I am not satisfied, though, that the decision contains any erroneous findings of fact made perversely, capriciously or without regard for this evidence. The decision summarizes this evidence. It also summarizes other evidence that favoured the Appellant's and the Respondent's case in this appeal. Paragraph 24 of the decision clearly indicates what evidence was given weight to reach the decision. It is for the General Division to receive and weigh evidence.

[16] While the decision gives no specific explanation for not giving weight to Dr. Townley's evidence, I am not satisfied that this is an error such that the Appeal Division should intervene. The Supreme Court of Canada considered the issue of the sufficiency of reasons for a decision in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.. An appellate body is not to intervene if reasons for a decision are merely imperfect. Also, the reasons for a decision must be read together with the outcome to show whether the result falls within a range of possible outcomes. In this case, when the decision is read as a whole with the outcome, I am satisfied that it is reasonable and defensible on the facts

and the law. The decision sets out the evidentiary basis for the decision made and the reasoning for it. The Appellant was significantly injured in the car accident. He continues to suffer from physical and mental limitations. Dr. Townley opined that the Appellant was unemployable. However, the General Division placed greater weight on the reports of his treating physicians and the Appellant's testimony, and concluded on balance that he retained some work capacity. As a result, he was obliged to demonstrate that efforts at obtaining and maintaining work were unsuccessful because of his conditions (see *Inclima v. Canada (Attorney General)*, 2003 FCA 117). He did not do so, and consequently his appeal failed. The General Division's reasoning is clear, logical, and based on an application of the law to the facts.

[17] The appeal is dismissed for the reasons set out above.

Valerie Hazlett Parker
Member, Appeal Division

APPEARANCES

S. A.	Appellant
Frank Van Dyke	Appellant's Counsel
Marcus Dirnberger	Respondent's Counsel