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

Citation: *I. G. v. Minister of Employment and Social Development*, 2017 SSTADIS 765

Tribunal File Number: AD-17-613

BETWEEN:

I. G.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: December 27, 2017

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] The Appellant was born and educated to Grade 10 in India before she moved to Canada. In Canada she worked in physically demanding jobs and suffered a number of injuries to her left shoulder. She stopped working in June 2014. She applied for a Canada Pension Plan disability pension and claimed that she was disabled under the *Canada Pension Plan* due to shoulder injuries, pain on the left side of her body and heel, inability to use her left side, lack of energy and depression. The Respondent refused the application, and the Appellant appealed this decision to the Social Security Tribunal of Canada (Tribunal). On June 19, 2017, the Tribunal's General Division dismissed her appeal and determined that she did not have a severe disability. The Tribunal's Appeal Division granted leave to appeal on October 30, 2017.

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

a) Pursuant to paragraph 37(*a*) of the *Social Security Tribunal Regulations*, I have determined that no further hearing is required.

b) The requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

c) The Appellant provided detailed submissions in her application for leave to appeal.

d) The Respondent provided detailed written submissions.

e) Neither party requested an oral hearing in this matter.

ANALYSIS

[4] The *Department of Employment and Social Development Act* (DESD Act) governs the operation of the Tribunal. The only grounds of appeal available under the DESD Act are the following:

> a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
>
> b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
>
> c) the General Division 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.

[5] Based on the unqualified wording of paragraphs 58(1)(*a*) and (*b*) of the DESD Act, no deference is owed to the General Division on questions of natural justice, jurisdiction or errors of law.

[6] Paragraph 58(1)(*c*) directs the Appeal Division to intervene if the General Division based its decision on an erroneous finding of fact that it made "in a perverse or capricious manner" or "without regard to the material before it." This language suggests that the Appeal Division should intervene only when the General Division bases its decision on an error that is clearly egregious or at odds with the record.

[7] I must decide whether the General Division made an error under subsection 58(1) of the DESD Act such that the appeal should be allowed. The Appellant raises a number of grounds of appeal which are each dealt with below.

Physiotherapy Reports

[8] The first ground of appeal the Appellant raises is that the General Division erred because it did not specifically refer to physiotherapy reports in the decision despite a number of such reports being filed with the Tribunal. However, paragraph 36 of the decision references

physiotherapy when it lists the types of treatment that the Appellant underwent. This indicates that the General Division was aware of this evidence.

[9] Additionally, in *Canada v. South Yukon Forest Corporation*, 2012 FCA 165 (CanLII) the Court stated that decision-makers "are not trying to draft an encyclopedia memorializing every last morsel of factual minutiae, nor can they. They distill and synthesize masses of information, separating the wheat from the chaff and, in the end, express only the most important factual findings and justifications for them." I am satisfied that the General Division did this. Paragraphs 8 to 24 summarize the oral and written evidence, including the Appellant's medical consultations. These reports also list the same symptoms set out in the physiotherapy reports. Therefore, the General Division did not err by not referring specifically to the physiotherapy reports in the decision.

Effects of Medications

[10] Next, the Appellant argues that the General Division erred because it did not consider the impact that taking medication may have had on her capacity to work or retrain. The General Division decision did not address this issue. However, there was no evidence, either orally from the Appellant or in the medical reports, that taking medication resulted in any particular impairment that would prevent the Appellant from being able regularly to pursue any substantially gainful occupation. The General Division cannot be faulted for not considering an argument that was not presented to it, and that was not apparent from the material filed with the Tribunal.

Future Minimum Qualifying Period

[11] In order for a claimant to receive a Canada Pension Plan disability pension, they must be found to be disabled before their minimum qualifying period (MQP), which is calculated based on the contributions that the claimant made to the Canada Pension Plan while working. In this case, the MQP ends on December 31, 2019. As the hearing of this matter was in 2017, the MQP is in the future. Accordingly, the General Division could determine only whether the Appellant was disabled at the time of the decision, not whether she was disabled before the MQP.

[12] Paragraph 6 of the decision correctly sets out that the MQP is December 31, 2019. Paragraph 7 states that the Tribunal must decide whether the Appellant is disabled prior to the end of the MQP, and paragraph 27 states that the Appellant must prove, on a balance of probabilities, that she was disabled by the end of the MQP. However, I am satisfied that when the General Division considered the oral and written evidence, and the parties' submissions, it considered whether the Appellant was disabled at the date of the decision, not the future MQP date. The decision thoroughly considers the medical evidence that had been filed with the Tribunal up to the date of the hearing. It places weight on the medical opinions that state that there were no objective medical findings to support the Appellant's reported pain and functional limitations, that her treatment up to the time of the hearing included medication, physiotherapy and chiropractic treatment, and that while she was prescribed medication for mental illness she did not undergo any other treatment for this condition. In addition, the General Division places weight on the fact that the Appellant had declined modified work that was available to her at her last workplace. The General Division considers her condition in the present, not in the future.

[13] Also, paragraph 39 of the decision states, "The Tribunal finds that the Appellant does not suffer from a severe disability that makes her incapable regularly of pursuing any substantially gainful occupation as to the date of writing this decision." It is clear from this that the General Division member turned her mind to the Appellant's condition at the present time, not in the future.

[14] For these reasons, I am satisfied that no error was made regarding the MQP.

The Appellant's Personal Circumstances

[15] In *Villani v. Canada (Attorney General)*, 2001 FCA 248, the Federal Court stated that to decide whether a disability pension claimant is disabled, their personal circumstances, including age, education, language ability and work and life history must be considered along with their medical conditions. The General Division clearly did so. Paragraph 28 of the decision sets out this requirement. Paragraph 29 sets out that the Appellant was 40 years old when she applied for the pension, that she obtained a Grade 10 education in India, and that her last job was working as a machine operator. In addition, paragraph 41 again sets out the Appellant's age, work experience, limited English skills and that she was able to work in spite of this limitation. It

examines these factors and concludes that the Appellant has capacity to retrain for alternate work or to upgrade her English skills. As set out above, the General Division also considers the medical evidence. Therefore, I am satisfied that the decision fully considers the Appellant's personal characteristics and medical conditions in reaching its decision.

Workplace Disability Insurance

[16] The Appellant also argues that the General Division erred because it placed weight on the fact that her workplace disability insurance program did not approve her claim. The decision, in paragraph 20, refers to this denial due to a lack of evidence, as part of the summary of the evidence that was filed with the Tribunal. However, I am satisfied that the General Division did not place weight on this fact in making its decision. The General Division correctly set out the legal test to be met for the Appellant to be found disabled under the *Canada Pension Plan*. It considers and places weight on the medical reports and the Appellant's testimony, especially her refusal to try to return to work in an accommodated role. The General Division's mandate is to receive the parties' evidence and weigh it to reach a decision. It made no error in this regard.

Dr. Punjawi's Reports

[17] The Appellant contends, further, that the General Division erred because it did not consider Dr. Punjawi's reports and the various impairments and treatments listed in them. Paragraphs 22 and 24 of the decision summarize these reports, including the Appellant's symptoms, and the doctor's conclusion in January 2017 that she was disabled. Paragraph 33 of the decision specifically analyzes these reports, and explains that little weight was given to this evidence because Dr. Punjawi made his diagnosis on the first occasion he met the Appellant.

[18] Paragraph 37 refers to Dr. Punjawi setting out that the Appellant's medical issues included vertigo and headaches. It also states that there was no other evidence regarding these particular conditions or treatment for them. This finding of fact was based on the evidence and not made erroneously.

[19] The General Division has an obligation to provide reasons for a decision that allow the reader to understand the decision that was made and why. When read as a whole, I am satisfied

that this was done. The General Division considered Dr. Punjawi's evidence as well as the other written and oral evidence. The reason for not giving weight to Dr. Punjawi's reports is set out clearly. After considering all of the evidence, the General Division was satisfied that the Appellant retained some capacity for work despite her limitations. She therefore had a legal obligation to demonstrate that she was unable to obtain or maintain employment because of her conditions. She failed to do so because she refused accommodated work and has not made any other attempt to work or retrain. The decision is logical, intelligible and defensible on the law and the facts.

[20] For these reasons I am satisfied that the General Division did not make an error under subsection 58(1) of the DESD Act. The appeal must therefore be dismissed.

Valerie Hazlett Parker
Member, Appeal Division