



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. B. v. Minister of Employment and Social Development*, 2018 SST 30

Tribunal File Number: AD-17-535

BETWEEN:

**L. B.**

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

DATE OF DECISION: January 11, 2018

## REASONS AND DECISION

### INTRODUCTION

[1] The Appellant worked in a physically demanding job. He injured a biceps tendon when he tried to catch his grandchild as she fell. He applied for a Canada Pension Plan disability pension and claimed that he was disabled by this injury. The Respondent refused the application. The Appellant appealed this decision to this Tribunal. On May 25, 2017, the Tribunal's General Division dismissed his appeal. The Appellant applied for leave to appeal this decision to the Tribunal's Appeal Division, and leave to appeal was granted on November 2, 2017.

[2] In a letter dated December 8, 2017, the Respondent conceded that this matter should be referred back to the General Division for reconsideration on the basis that the General Division decision, in part, was not supported by the evidence that was before it.

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

- a) The issues before the Appeal Division are straightforward;
- b) The Respondent conceded that the matter should be referred back to the General Division for reconsideration; and
- c) The *Social Security Tribunal Regulations* require that the Tribunal proceed as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.

### STANDARD OF REVIEW AND ANALYSIS

[4] In *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93, the Federal Court of Appeal 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 to a decision under review. The *Department of Employment and Social Development Act* (DESD Act) is the home statute for this Tribunal.

[5] The only grounds of appeal available under the DESD Act are set out in subsection 58(1), namely, that the General Division failed to observe a principle of natural justice or made a jurisdictional error, 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.

[6] 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. 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 for 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] Paragraph 33 of the General Division decision in this case states that the Appellant did not follow his doctor’s recommendations to get a splint or to undergo injections as treatment, and that he was not taking medication to treat his pain or insomnia. The General Division concluded that the Appellant had therefore not adequately managed his condition. In the application for leave to appeal, the Appellant argued that the General Division did not consider his explanations for not following these medical recommendations. In particular, the Appellant stated that he did not take pain medication because he had previously been addicted to narcotic medication and did not want to become addicted again. He also did not obtain a splint because, in discussion with his doctor, he concluded that it would be of no benefit to him.

[8] I am satisfied that the General Division based its decision on erroneous findings of fact regarding the Appellant’s compliance with treatment recommendations. I am also satisfied that these findings of fact were made without regard for all of the material that was before it, including the Appellant’s testimony. This was an error under paragraph 58(1)(c) of the DESD Act such that the Appeal Division should intervene.

## **CONCLUSION**

[9] The appeal is therefore allowed.

[10] Subsection 59(1) of the DESD Act sets out the remedies that the Appeal Division can grant. As evidence will have to be heard and weighed, it is appropriate that this matter be referred back to the General Division for reconsideration. The General Division's mandate is to hear and weigh evidence to reach a decision.

[11] To avoid any possible apprehension of bias, the matter should be referred to a different Tribunal member.

Valerie Hazlett Parker  
Member, Appeal Division