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

Citation: *P. H. v. Minister of Employment and Social Development*, 2018 SST 5

Tribunal File Number: AD-16-1194

BETWEEN:

P. H.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: January 3, 2018

Canada

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] The Appellant completed high school and some post-secondary education. She worked and contributed to the Canada Pension Plan. Her last job was the executive director of a women's shelter. The Appellant claimed that she could no longer work because of post-traumatic stress disorder, anxiety, and other mental illnesses. She also suffered from type II diabetes and other physical conditions. She applied for a Canada Pension Plan disability pension in 2007. The Respondent refused this application initially and on reconsideration. The Appellant appealed the reconsideration decision to the Office of the Commissioner of Review Tribunals, which was the predecessor of the Social Security Tribunal of Canada (Tribunal). It dismissed her appeal in 2009. She did not seek judicial review of this decision.

[3] The Appellant again applied for a Canada Pension Plan disability pension in 2015. This application was based on the same facts as the prior application. The Respondent refused this application on the basis of *res judicata* (the matter had already been decided). The Appellant appealed this decision to the Tribunal. On September 7, 2016, the Tribunal's General Division dismissed this appeal. The Tribunal's Appeal Division granted leave to appeal this decision on July 26, 2017.

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

a) I have determined that no further hearing is required;

b) The legal issues to be decided are straightforward; and

c) The *Social Security Tribunal Regulations* require that the Tribunal proceed as informally and quickly as circumstances, fairness, and natural justice permit.

ANALYSIS

[5] 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 decisions under review. The *Department of Employment and Social Development Act* (DESD Act) is the home statute for this Tribunal.

[6] 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 erred with respect to its jurisdiction, 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.

[7] Based on the unqualified wording of s. 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.

[8] The Appellant presented four grounds of appeal. For the reasons set out below, I am not satisfied that these grounds of appeal demonstrate that the General Division made an error under subsection 58(1) of the DESD Act such that this appeal should be allowed.

Financial Distress

[9] In her application for leave to appeal, the Appellant states that she is in financial distress. I have great sympathy for her circumstances. However, the DESD Act sets out limited grounds of appeal that the Tribunal can consider. The Appellant's financial distress is not one of them. The appeal cannot succeed on this basis.

Representation at the Initial Hearing

[10] The Appellant also argues that because she was not represented at the General Division hearing, she was not able to properly present her case. This Tribunal does not require that a claimant retain a representative for a hearing. It is for claimants to choose whether to do so, or to represent themselves during the appeal process and at a hearing.

[11] The principles of natural justice are concerned with ensuring that the parties to a proceeding know and understand the legal case that they have to meet, have the opportunity to present their case, and have the decision made by an impartial decision-maker based on the facts and the law. In this case, the Appellant did not suggest that she did not understand the proceedings or was prevented from presenting her case to the General Division. There is no indication that the General Division member was biased or did not make the decision based on the facts and the law. Therefore, I am satisfied that the General Division observed the principles of natural justice. That the Appellant represented herself is not an error under subsection 58(1) of the DESD Act.

2007 Income

[12] The Appellant also clarified that any income she received from her employer in 2007 was not earned, but reflected a final payment for vacation and other benefits. This may be so. The General Division decision did not turn on how this income was characterized. The General Division decision was based on the application of the legal doctrine of *res judicata*. Therefore, the characterization of this income is not material to the issue to be decided in this appeal and does not point to an error under subsection 58(1) of the DESD Act.

Doctrine of *Res Judicata*

[13] The General Division dismissed the Appellant's appeal on the basis of the doctrine of *res judicata*, that the matter had already been decided. This doctrine is intended to prevent the abuse of the decision-making process that would result if parties could re-litigate the same issues in different venues. There are three preconditions that must be met for this doctrine to apply:

a) The issue to be decided is the same as that decided in a prior decision;

b) The prior decision is final; and

c) The parties to the proceeding are the same as in the prior proceeding.

[14] The General Division concluded, based on the evidence, that these conditions were met in this case. The issue to be decided was whether the Appellant was disabled under the *Canada Pension Plan* on or before December 31, 2008, based on her mental and physical illnesses. This decision was previously made by the Office of the Commissioner of Review Tribunals, and the decision was final. The parties were the Appellant and the Minister of Employment and Social Development or its predecessor in both cases. There is no indication that the General Division made any error in deciding that these preconditions were met.

[15] In *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, the Supreme Court of Canada stated that if these preconditions are met, a decision-maker still has some discretion regarding whether to apply the doctrine of *res judicata* in a particular case. The decision provides a list of some factors that may be considered to determine whether this discretion should be exercised. The decision states that the primary consideration is that the decision-maker must do justice to the parties, and must ask: Is there something in the circumstances of this case such that the usual operation of the doctrine would work an injustice?

[16] In this case, the General Division decision is short. That, by itself, is not an indication that the General Division failed to apply its discretion properly. The decision does not list the seven factors that were set out in *Danyluk* to decide whether the doctrine of *res judicata* should be applied. However, this list of factors is not exhaustive, and *Danyluk* states that the seven factors listed were relevant to that case. Accordingly, not all of these factors may be relevant to the matter before me, and other factors may be relevant. The objective is to ensure that the operation of *res judicata* promotes the orderly administration of justice but not at the cost of real injustice in the particular case (*Danyluk*, paragraph 67). The General Division was aware of the legal issues before it and set out the legal test to be met. The prior decision-maker, the Office of the Commissioner of Review Tribunals, had expertise regarding disability pensions. The Appellant's legal rights were sufficiently safeguarded since she participated in the process and exercised her legal right of appeal to the General Division. The General Division decision was made based on the law and the facts. The Appellant presented no argument that suggested

that an injustice was done. Therefore, I am satisfied that the General Division properly considered the legal issues and applied the doctrine of *res judicata* in this case, and no injustice was done. The General Division did not make an error under subsection 58(1) of the DESD Act.

[17] The General Division decision is logical, intelligible, and defensible on the law and the facts.

Valerie Hazlett Parker
Member, Appeal Division