



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. C. v. Minister of Employment and Social Development*, 2018 SST 504

Tribunal File Number: AD-16-1394

BETWEEN:

M. C.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: May 8, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] M. C. (Claimant) completed high school and a college program to be a correctional officer. She worked in retail settings and as a customer service representative at a telemarketing company. In October 2007, she was hit by a car while on foot, resulting in numerous injuries, including to her right shoulder, knee, and soft tissues, as well as chronic pain. She underwent two surgeries on her shoulder and extensive physiotherapy, massage, and chiropractic treatment. The Claimant also has mental illness and was treated by a psychologist.

[3] The Claimant applied for a Canada Pension Plan disability pension and claimed that she was disabled by the physical and mental conditions caused by the accident. The Minister of Employment and Social Development (Minister) refused the application. The Claimant appealed the decision to this Tribunal. The Tribunal's General Division held an oral hearing and dismissed the appeal, finding that the Claimant did not have a severe disability under the *Canada Pension Plan*. The appeal is dismissed because the General Division did not fail to consider all of her conditions or fail to consider the relevant legal principles in making its decision. Nor did the General Division base its decision on any erroneous findings of fact.

ISSUES

[4] Did the General Division base its decision on an erroneous finding of fact because it ignored evidence that supported the Claimant's case?

[5] Did the General Division err in law by imposing a higher burden of proof than the balance of probabilities?

[6] Did the General Division err in law by failing to apply relevant legal principles to the evidence?

[7] Did the General Division err in law by failing to give sufficient reasons for its decision?

ANALYSIS

[8] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out only three narrow grounds of appeal that can be considered, namely, that the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in 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.¹ The Claimant argues that the General Division based its decision on an erroneous finding of fact and that it erred in law. The Claimant's grounds of appeal are reviewed below in this context.

Issue 1: Erroneous finding of fact

[9] One ground of appeal under the DESD Act is that the General Division based its decision on an erroneous finding of fact made without regard for the material before it.² To succeed on this basis, the Claimant must demonstrate three things: that the finding of fact was erroneous, that it was made without regard for the material before the General Division, and that the decision was based on this finding of fact.

[10] The Claimant argues that there was overwhelming evidence before the General Division that she was disabled. She has both physical and mental limitations from the accident, and some of her treatment providers, including a chiropractor, have said that she is not employable.

[11] The General Division decision contains a lengthy and detailed summary of all of the evidence that was before it, including medical evidence³ and oral testimony from the Claimant and her spouse.⁴

[12] The Claimant underwent a number of assessments and treatments after the accident, and there are numerous medical reports in the record. The reports came to different conclusions about whether the Claimant could work. For example,

¹ DESD Act, s. 58(1)

² *Ibid.*

³ General Division decision, paras. 39 through 60

⁴ *Ibid.*, paras. 35 through 38

- A vocational rehabilitation assessment report noted the Claimant's ongoing pain treatment with non-prescription medication, her attendance at physiotherapy and home exercises, her ongoing physical limitations, and that she was unemployable at that time.⁵
- Dr. McKee penned a number of reports and stated that the Claimant was capable of light sedentary work.⁶
- Dr. Gouge, a psychologist, diagnosed the Claimant with adjustment disorder with depressive symptoms.⁷
- A functional capacity evaluation concluded that the Claimant's ability to perform sedentary office work had been moderately compromised.⁸
- Dr. Miller assessed the Claimant and reported that she continued to have headaches and right shoulder pain that radiated to other parts of her body. He concluded that the Claimant's depression had worsened, her pain had continued, she was totally disabled at that time, and it would be very difficult for her to retrain or find new work.⁹

[13] The General Division considered all of the evidence that was before it, including evidence that supported and hindered the Claimant's case. The decision states specifically that the Tribunal reviewed the medical evidence and the testimony.¹⁰ It analyzed the evidence regarding each of the Claimant's conditions, including her right shoulder,¹¹ her other physical conditions (knee and ankle injuries, arm and hip pain, and chronic pain),¹² her depression,¹³ and the treatment she received and its outcome. The General Division weighed the evidence and

⁵ Report by D. Soligo of June 15, 2009; General Division decision, para. 44

⁶ Report dated December 5, 2011; General Division decision, para. 50; report dated June 11, 2015; General Division decision, para. 60

⁷ Report of March 25, 2012; General Division decision, para. 51

⁸ Report by G. Chabot of Oct 29, 2012; General Division decision, para. 52

⁹ Report dated December 10, 2012; General Division decision, paras. 53 to 54

¹⁰ General Division decision, para. 69

¹¹ *Ibid.*

¹² *Ibid.*, para. 70

¹³ *Ibid.*, para. 71

placed greater weight on the medical evidence of the professionals who treated the Claimant¹⁴ than on that of those who did not.

[14] Clearly, the General Division had regard for all of the material that was before it when it decided that the Claimant was not disabled. It made no erroneous findings of fact.

[15] In addition, I am persuaded that the General Division's conclusion that the Claimant was not disabled was not a finding of fact, but a legal conclusion. This conclusion was reached after the General Division received the evidence from both parties, weighed it, and applied the law to the facts.

[16] The appeal fails on this basis.

Issue 2: Burden of proof

[17] To succeed before the General Division, the Claimant had to prove that it was more likely than not that she was disabled on or before December 31, 2014. This is correctly set out in the decision.¹⁵ The Claimant argues that the General Division imposed a higher burden of proof because it failed to consider all of the evidence that was before it. However, a review of the General Division decision, in the context of the evidentiary record, demonstrates that the General Division did not ignore or misstate any important information. It considered all of the medical evidence and the testimony and weighed it to reach the decision.

[18] Therefore, this argument fails.

Issue 3: Did the General Division err in law by failing to apply relevant legal principles to the evidence?

[19] The General Division must apply the law to the facts when making its decision. The Claimant contends that the General Division erred in law because it failed to apply relevant legal principles set out in various court decisions when it made its decision.

¹⁴ *Ibid.*, para. 74

¹⁵ *Ibid.*, para. 7

a) *Villani*¹⁶

[20] In the *Villani* decision, the Federal Court of Appeal teaches that, to decide whether a claimant is disabled, their personal circumstances, including age, education, language skills, and work and life experience, must be considered. This is correctly set out in the decision.¹⁷ The decision also states that the Claimant had transferrable skills, she is young and college-educated, and she has identified areas of vocational interest.¹⁸ While the Claimant discounts the value of her college education and her transferrable skills, this does not detract from the General Division's consideration of these factors. Accordingly, the General Division made no error in this regard.

b) *Leduc*¹⁹

[21] In the *Leduc* decision, the Pension Appeals Board states that the question to be answered is whether it is realistic to postulate that, given an appellant's difficulties, any employer would remotely consider engaging them. This decision is not binding on this Tribunal. However, the principle is persuasive in the context of a disability appeal. It is a restatement of the principle set out in *Villani* and was applied in this case.

[22] While the General Division decision does not set out specifically what transferrable skills the Claimant has, it is not necessary for it to do so. Similarly, it is not necessary for the Tribunal to set out what alternate work the Claimant may be able to perform. When the evidence is examined as a whole, including the fact the Claimant has a post-secondary education and work experience in two areas of work, the conclusion that she has transferrable skills is logical and based on the evidence.

c) *Martin*²⁰

[23] In *Martin*, the Supreme Court of Canada recognized that chronic pain could be a disabling condition. The General Division accepted that the Claimant suffers from chronic pain.

¹⁶ *Villani v. Canada (Attorney General)*, 2001 FCA 248

¹⁷ General Division decision, paras. 65 to 66

¹⁸ *Ibid.*, para. 74

¹⁹ *Leduc v. Minister of National Health and Welfare* (Jan 29, 1988) CP 1376

²⁰ *Nova Scotia (Workers' Compensation Board) v. Martin*, [2003] 2 S.C.R. 504

In addition, the decision summarized the Claimant's testimony about her ability to complete daily activities,²¹ including limitations with housework, and volunteering at her daughter's skating club. The General Division was therefore alive to the Claimant's limitations associated with her pain. It made no error in this regard.

d) *Lombardo*²²

[24] In *Lombardo*, the Pension Appeals Board confirms that a claimant has an obligation to demonstrate a good-faith preparedness to follow appropriate medical advice. There is no question that Claimant underwent numerous assessments and treatment and that she was compliant with all treatment recommendations. The decision was not based on any failure by the Claimant to follow medical advice. The General Division made no error regarding this legal principle

Issue 4: Sufficiency of reasons

[25] Lastly, the General Division must give reasons for its decision.²³ Reasons must be sufficient so that the parties understand the decision that was made and why the General Division made the decision it made.²⁴ It is not necessary that the reasons refer to each piece of evidence that was presented²⁵ or that they include all statutory provisions, arguments, and jurisprudence.²⁶ The reasons must also be read in light of the record and the outcome to determine whether the decision falls within the range of possible outcomes.

[26] The reasons for the General Division's decision are sufficient. The decision summarizes the relevant oral and written evidence that was presented. The evidence was weighed, with more weight given to the medical evidence presented by professionals who treated the Claimant. The relevant law was considered and applied to the facts. Based on this, the General Division concluded that, although the Claimant was in an accident, suffered significant injury, and continues to be limited as a result, she did not have a severe disability under the *Canada Pension*

²¹ General Division decision, paras. 29 through 32

²² *Lombardo v. Minister of Human Resources Development* (July 23, 2001), CP 12731

²³ DESD Act, s. 54(2)

²⁴ *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62

²⁵ *Canada v. South Yukon Forest Corporation*, 2012 FCA 165

²⁶ *Ibid.*

Plan. The General Division decision also explains why it came to this conclusion. The written reasons are legally sufficient. The appeal cannot succeed on this basis.

CONCLUSION

[27] The appeal is therefore dismissed.

Valerie Hazlett Parker
Member, Appeal Division

HEARD ON:	May 2, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. C., Appellant Brian Julien, Counsel for the Appellant Christian Malciw, Counsel for the Respondent