



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. P. v. Minister of Employment and Social Development*, 2018 SST 781

Tribunal File Number: AD-18-384

BETWEEN:

**S. P.**

Applicant

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: July 31, 2018

## DECISION AND REASONS

### DECISION

[1] The application to rescind or amend the Appeal Division's decision is refused.

### OVERVIEW

[2] S. P. (Claimant) trained as a microbiologist in India. When he moved to Canada he worked in physically demanding positions. He suffered paraplegia which resolved but has left him with physical limitations. Despite his limitations the Claimant continues to work as a security guard. He applied for a Canada Pension Plan disability pension and claimed that he was disabled by his physical limitations.

[3] The Minister of Employment and Social Development (Minister) refused the application. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal. The Claimant appealed this decision to the Tribunal's Appeal Division. The appeal was dismissed because the Claimant was ineligible for the disability pension since he was not disabled before beginning to receive a Canada Pension Plan retirement pension.<sup>1</sup>

[4] The Claimant now requests that the Appeal Division's decision be rescinded or amended because the decision was made before he could respond to the Minister's written submissions on the appeal. The application is refused because the Appeal Division observed the principles of natural justice and the Claimant has not presented any new material facts.

### PRELIMINARY MATTER

[5] This application was decided on the basis of the documents filed with the Tribunal after considering the following:

- The legal issue to be decided is narrow and straightforward;
- The Minister filed clear written submissions on this issue

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<sup>1</sup> Under s. 44(1)(b) of the *Canada Pension Plan*, a person cannot be disabled if they are receiving a Canada Pension Plan retirement pension

- The Claimant relied on the application he filed and the documents filed with the General Division;
- There were no gaps in the written documents filed with the Tribunal; and
- The *Social Security Tribunal Regulations* (Regulations) require that the Tribunal conduct proceedings as informally and quickly as the circumstances and considerations of fairness and natural justice permit.<sup>2</sup>

## ISSUES

[6] Did the Appeal Division fail to observe a principle of natural justice because it made the decision without the Claimant's response to the Minister's written submissions?

[7] Should the Appeal Division decision be rescinded or amended based on new material facts?

## ANALYSIS

### Issue 1: Natural justice

[8] The principles of natural justice are concerned with ensuring that all parties to an appeal have an opportunity to present their case to the Tribunal, know and can answer the other party's case, and have a decision made by an independent decision maker based on the law and the facts. The Claimant argues that the Appeal Division failed to observe these principles because it made the decision to dismiss his appeal before he responded to the Minister's written submissions.

[9] However, the Claimant was not prevented from answering the Minister's written arguments. The Minister argued at both the General Division<sup>3</sup> and the Appeal Division<sup>4</sup> that the Claimant was ineligible for the disability pension because he was not disabled before he began to receive the retirement pension. The Claimant therefore knew the Minister's legal position. He could have addressed this argument. Instead, after the Minister filed its submissions on appeal, the Claimant filed a document with the Tribunal that stated that he relied on the written

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<sup>2</sup> *Social Security Tribunal Regulations*, s. 3(1)

<sup>3</sup> GD5

<sup>4</sup> AD2

arguments he made in the application for leave to appeal, and had no further submissions to make.<sup>5</sup>

[10] The Claimant knew the Minister's case and was not prevented from addressing it.

[11] In addition, the Regulations provide for procedural matters regarding appeals. The Regulations state that, within 45 days of leave to appeal being granted, the parties to an appeal may file submissions or a notice stating that they have no submissions to file.<sup>6</sup> There is no right to respond to submissions filed by another party to an appeal. The Appeal Division therefore did not fail to observe a principle of natural justice when it made its decision after receiving the Minister's submissions and the Claimant's letter that stated he had no submissions to make.

## **Issue 2: New facts**

[12] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It states that the Tribunal may rescind or amend a decision if a new material fact is presented that could not have been discovered at the time of the hearing with the exercise of reasonable diligence.<sup>7</sup>

[13] Before April 1, 2013, the *Canada Pension Plan* also provided for the reconsideration of a decision on the basis of new facts. In that context, the Federal Court of Appeal clearly enunciated a two-part test for evidence to be admissible as a "new fact":

- (1) It must establish a fact (usually a medical condition in the context of the *Canada Pension Plan*) that existed at the time of the original hearing but was not discoverable before the original hearing by the exercise of due diligence, and
- (2) The evidence must reasonably be expected to affect the result of the previous hearing.<sup>8</sup>

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<sup>5</sup> AD3

<sup>6</sup> *Social Security Tribunal Regulations* s. 42

<sup>7</sup> DESD Act, s. 66(1)(b)

<sup>8</sup> *Canada (Attorney General) v. MacRae*, 2008 FCA 82

This two-part test is now reproduced in the DESD Act. Therefore, I must determine whether the Claimant has presented new evidence that meets the “new material facts” test regarding his alleged disability as of the minimum qualifying period.

[14] The Claimant did not present any new evidence with the application. He contends that he was disabled in 2008 when he became ill and that he continued to be disabled in 2015 when he began to receive the retirement pension. He relies on the evidence that was before the General Division. Because the Claimant did not present any new facts, he has not met the legal test for the Appeal Division decision to be rescinded or amended.

**CONCLUSION**

[15] For these reasons, the application to rescind or amend the Appeal Division decision is refused.

Valerie Hazlett Parker  
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
SUBMISSIONS:	S. P., Applicant  Stéphanie Pilon, Representative for the Respondent