



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. B. v. Minister of Employment and Social Development*, 2018 SST 955

Tribunal File Number: AD-18-337

BETWEEN:

H. B.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: September 27, 2018

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

REASONS

[2] In 2016, the Appellant, H. B., applied for a disability pension under the terms of the *Canada Pension Plan (CPP)*, saying that she was unable to work due to chronic pain, fibromyalgia, migraines, depression, and allergies. The Respondent, the Minister of Employment and Social Development (Minister), refused her application initially and on reconsideration. Later, the Tribunal's General Division dismissed an appeal from the Minister's decision.

[3] In July of this year, I granted leave to appeal to the Tribunal's Appeal Division. In that decision, I acknowledged that the General Division might have based its decision on erroneous findings of fact that it made without regard to the material before it.

[4] In the course of a pre-hearing conference, the parties reached an agreement and have now asked that I make a decision based on that agreement.¹

[5] In general terms, the parties have agreed that:

- a) 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, as described in section 58(1)(c) of the *Department of Employment and Social Development Act (DESD Act)*;
- b) in particular, the General Division overlooked the most up-to-date medical evidence regarding the Appellant's cognitive abilities (namely, Dr. Koponen's report dated October 2, 2017);²
- c) the appeal should be allowed; and

¹ AD2; AD3; *Social Security Tribunal Regulations*, s 18.

² GD5-20 to 21.

- d) in accordance with section 59(1) of the DESD Act, the matter should be referred back to the General Division for a new (*de novo*) hearing by a different Tribunal member.

[6] Based on the information available to me, I am satisfied that the appeal should be allowed in the manner agreed by the parties.

Jude Samson
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
REPRESENTATIVES:	Leo Dillon, Representative for the Appellant Nathalie Pruneau (paralegal) and Sandra Doucette (counsel), Representatives for the Respondent