



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. H. v. Minister of Employment and Social Development*, 2018 SST 1015

Tribunal File Number: AD-16-335

BETWEEN:

**A. H.**

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: October 15, 2018

## DECISION AND REASONS

### DECISION

[1] The appeal is allowed, and the matter is referred back to the General Division for consideration on the merits of the disability claim.

### OVERVIEW

[2] A. H. (Claimant) completed Grade 10 before joining the paid workforce. In 1996, he was in a serious car accident that has left him with a number of medical conditions, including spinal cord damage, physical limitations, and difficulties with memory and concentration. He did not return to work after the accident. The Claimant applied for a Canada Pension Plan disability pension, which the Minister of Employment and Social Development (as it is now called) refused. The Claimant appealed this decision to the Office of the Commissioner of Review Tribunals. A hearing before a Review Tribunal was scheduled for June 1999. Just before the hearing date, the Claimant withdrew the appeal orally and in writing. The Review Tribunal conducted the hearing as scheduled in the Claimant's absence and dismissed the appeal.

[3] The Claimant made two other applications for a Canada Pension Plan disability pension, in 2002 and January 2011. The Minister refused these applications on the basis that the matter had been decided by the Review Tribunal. The Claimant appealed the Minister's decision on the 2011 application to the Office of the Commissioner of Review Tribunals. That appeal was transferred to this Tribunal when it began its mandate in April 2013. On October 21, 2014, the Tribunal's General Division summarily dismissed the appeal, finding that the doctrine of *res judicata* (that the matter has been decided) applied to the 1999 Review Tribunal decision and that, therefore, the appeal had no reasonable chance of success.

[4] The Claimant applied for judicial review of the General Division decision. This application to the Federal Court was dismissed. In its decision to dismiss the application, the Federal Court stated that the Claimant should have exercised his right to appeal before the Tribunal's Appeal Division. He has now done so.

[5] The appeal is allowed because the General Division failed to observe the principles of natural justice when it applied the doctrine of *res judicata* in this case. The matter is referred back to the General Division because there has been no hearing on the merits of the disability claim.

### **PRELIMINARY MATTER**

[6] This appeal was decided based on the documents filed with the Tribunal after considering the following:

- The legal issue to be decided is straightforward.
- The parties have both stated that the General Division failed to observe the principles of natural justice and have requested that the matter be referred back to the General Division for an oral hearing.
- The parties have filed submissions on the legal issue to be decided.
- The *Social Security Tribunal Regulations* require that proceedings be concluded as quickly as the circumstances and considerations of fairness and natural justice permit.

### **ISSUE**

[7] Did the General Division fail to observe a principle of natural justice when it summarily dismissed the Claimant's appeal on the basis of *res judicata*?

### **ANALYSIS**

[8] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out only three grounds of appeal that the Appeal Division can consider, 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.<sup>1</sup>

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<sup>1</sup> DESD Act, s. 58(1)

[9] The principles of natural justice are concerned with ensuring that the parties to a legal proceeding have an opportunity to present their case, know and answer the legal case against them, and have a decision made by an independent decision-maker based on the law and the facts. The Claimant's argument that he did not have an opportunity to present his case is considered below.

[10] The Claimant first applied for a disability pension after his accident in 1996. The Minister refused the application. The Claimant appealed this decision to the Office of the Commissioner of Review Tribunals, which scheduled an oral hearing in 1999. Just before the hearing was to be held, the Claimant withdrew his application both orally and in writing. Despite this, the Review Tribunal held the hearing in the Claimant's absence and dismissed the appeal.

[11] The rules of procedure for Review Tribunals permitted a claimant to withdraw an application for a disability pension at any time. The Review Tribunal therefore had no jurisdiction to hold the hearing and make the decision that it did. This error was compounded when the General Division summarily dismissed the Claimant's appeal based on *res judicata*.

[12] The doctrine of *res judicata* stands for the principle that, once a legal claim has been decided, it should not be relitigated to the benefit of the losing party and the harassment of the winner.<sup>2</sup> However, the Claimant's appeal was never heard. He has had no opportunity to present his case. Therefore, the General Division failed to observe a principle of natural justice when it summarily dismissed his appeal.

## CONCLUSION

[13] The appeal is allowed for these reasons.

[14] The DESD Act sets out what remedy the Appeal Division can give when an appeal is allowed.<sup>3</sup> In this case, it is appropriate that the Appeal Division return the matter to the General Division for consideration on its merits. The Claimant has not been able to present evidence. The Tribunal has made no findings of fact and has not applied the law to the facts to determine

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<sup>2</sup> *Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 SCR 460, 2001 SCC 44

<sup>3</sup> DESD Act, s. 59(1)

whether he is disabled. The General Division's mandate is to receive the evidence of the parties and weigh it to reach a decision.

[15] Therefore, the appeal is referred back to the General Division for consideration.

Valerie Hazlett Parker  
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
SUBMISSIONS:	David Daniels, Counsel for the Appellant  Tiffany Glover, Counsel for the Respondent