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

Citation: *C. M. v. Minister of Employment and Social Development*, 2018 SST 1277

Tribunal File Number: AD-18-639

BETWEEN:

C. M.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Neil Nawaz

DATE OF DECISION: December 7, 2018

REASONS AND DECISION

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Appellant, C. M., is a 56-year-old woman whose last job was delivering automobile parts. She stopped working in 2010 after she developed neck, back, and shoulder pain. In December 2016, she applied for the Canada Pension Plan (CPP) disability benefit.

[3] The Respondent, the Minister of Employment and Social Development (Minister), refused the application because the Appellant did not have enough CPP contributions to qualify for the disability benefit. The Appellant appealed this refusal to the General Division of the Social Security Tribunal. In a decision dated August 15, 2018, the General Division summarily dismissed the appeal because it was not satisfied that the appeal had a reasonable chance of success. The General Division specifically found that the Appellant had not established a minimum qualifying period (MQP), as required under the law, because she had not recorded at least four years of valid CPP contributions within any six-year period.

[4] On October 2, 2018, the Appellant filed an appeal of the summary dismissal with the Tribunal's Appeal Division, alleging that the General Division had based its decision on an important error. Since she did not specify the error, the Tribunal asked her to provide additional reasons for the appeal. In her reply, dated October 16, 2018, she said that she had not known there was a time limit to apply for the CPP disability benefit. She added that she had not applied previously, because her fibromyalgia was not significant at the time; now that it was, she needed help.

[5] On October 18, 2018, the Appellant submitted a report, dated October 17, 2018, prepared by a registered massage therapist.

[6] In a letter dated December 3, 2018, the Minister conceded that the General Division had erred in law when it determined that the Appellant had never established an MQP. The Minister

recommended that the matter be referred back to the General Division for a *de novo* (new) hearing.

[7] Leave to appeal is not necessary in the case of an appeal brought under section 53(3) of the *Department of Employment and Social Development Act* (DESDA) because there is an appeal as of right when dealing with a summary dismissal from the General Division.

[8] I have decided that an oral hearing is unnecessary for this appeal. I am proceeding solely on the basis of the documentary record because there are no gaps in the file and no need for clarification.

ISSUES

[9] The only grounds of appeal to the Appeal Division are that the General Division (i) erred in law; (ii) failed to observe a principle of natural justice; or (iii) 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.[1]

[10] The issues before me are as follows:

Issue 1: Can the Appeal Division consider new evidence?

Issue 2: Did the General Division err when it found that the Appellant had not established an MQP?

ANALYSIS

Issue 1: Can the Appeal Division consider new evidence?

[11] Once the General Division has heard an appeal, there is a very limited basis upon which a claimant can introduce new or additional information before the Appeal Division. The Appellant has submitted a report that was prepared after the General Division's decision was issued. However, I am unable to consider it, given the constraints of section 58(1) of the DESDA, which does not give the Appeal Division authority to assess the merits of disability claims.

[1] Section 58(1) of the DESDA.

Issue 2: Did the General Division err when it found that the Appellant had not established an MQP?

[12] Although the General Division correctly applied a high threshold when it summarily dismissed the appeal, it erred in law when it found that the Appellant had never established an MQP.

[13] In paragraph 8 of its decision, the General Division cited the current sections 44(1)(b) and 44(2)(a)(i) of the *Canada Pension Plan*, which establish an MQP when a claimant has made valid CPP contributions in four of the last six years of their contributory period. The General Division added:

> [The Appellant's] contributory period was from 1980 to 2015, with the last six years being 2010 to 2015. Her Record of Earnings indicates that the [Appellant] made contributions to the CPP in 1989, 1990, 1991, 1999, 2000, 2008, 2009 and 2010. She needed valid contributions in at least four years from 2010 to 2015, but she only had contributions in one year during this period (2010).

I see two problems in this passage. First, the General Division contradicted itself: on one hand, it found that the Appellant made valid CPP contributions in 2008, 2009, and 2010 within a six-year time frame; on the other hand, the General Division found only one year of contributions within the same period.

[14] The second, and more significant, problem is the one identified by the Minister: the General Division appears to have forgotten that the CPP once had less demanding contributory requirements.[2] Moreover, it is still possible to establish an MQP before January 1, 1998, if a claimant can show that they made contributions in either two of three calendar years or five of ten calendar years. In this case, the Appellant's Record of Earnings indicates valid contributions in 1990 and 1991, suggesting that she had an MQP ending December 31, 1992.

REMEDY

[15] The DESDA sets out the Appeal Division's powers to remedy errors by the General Division. Under section 59(1), I may give the decision that the General Division should have

[2] Under the former provisions of section 44(1)(b) of the *Canada Pension Plan*.

given; refer the matter back to the General Division for reconsideration in accordance with directions; or confirm, rescind, or vary the General Division's decision. Furthermore, under section 64 of the DESDA, the Appeal Division may decide any question of law or fact that is necessary for the disposition of any application made under the DESDA.

[16] Under section 3 of the *Social Security Tribunal Regulations*, the Appeal Division is required to conduct proceedings as quickly as circumstances and considerations of fairness allow, but I feel I have no option but to refer this matter back to the General Division for rehearing.

[17] I agree with the Minister that the record is not sufficiently complete to permit me to decide this matter on its merits. The Minister had previously refused the Appellant's claim for CPP benefits because it found that she had never established an MQP. Had the Minister identified the Appellant's MQP earlier, the Appellant might have devoted more time and energy to gathering evidence that she was disabled before December 31, 1992, rather than focusing, as she did, on her medical condition in the period after 2010. The Minister's oversight was perpetuated by the General Division's own failure to appreciate that the law governing CPP eligibility was different before 1998.

[18] In my view, the appropriate remedy for this appeal is to refer the matter back to the General Division for reconsideration. Although it appears that the Appellant established an MQP, she will still have to show that her disability was severe and prolonged and that it rendered her incapable regularly of pursuing any substantially gainful occupation on or before December 31, 1992 and continuously afterwards.

CONCLUSION

[19] I find that the General Division erred in law by failing to recognize that the Appellant had established a valid MQP. Since the record is not sufficiently complete to allow me to decide this matter on its merits, I am referring it back to the General Division for a *de novo* (new) hearing. I am also directing Tribunal staff to make this decision available to the member who is assigned to rehear this appeal.

Member, Appeal Division

METHOD OF PROCEEDING:	On the record
REPRESENTATIVES:	Christopher Holm, for the Appellant Matthew Vens, for the Respondent