



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *I. B. v Minister of Employment and Social Development*, 2019 SST 322

Tribunal File Number: AD-18-344

BETWEEN:

**I. B.**

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: ~~November 16, 2018~~ **January 25, 2019**

## DECISION AND REASONS

### DECISION

[1] The appeal is dismissed.

### OVERVIEW

[2] I. B. (Claimant) was born and completed her education in Poland. She moved to Canada in 1993. In Canada, the Claimant worked as X and in an X business with her husband. The Claimant last worked in 2014, and she claims that she is disabled by mental illness, hypertension, diabetes, and high cholesterol. The Minister of Employment and Social Development refused the Claimant's application for a Canada Pension Plan disability pension. The Claimant appealed this decision to this Tribunal. In November 2016, the Tribunal's General Division dismissed her appeal, concluding that the Claimant did not have a severe disability. The Claimant's appeal from the General Division decision was dismissed by the Tribunal's Appeal Division.

[3] The Claimant applied to have the General Division decision rescinded or amended based on new facts. In February 2018, the General Division dismissed this application, finding that the documents she presented were not new facts under the *Department of Employment and Social Development Act* (DESD Act). The Claimant's appeal from this General Division decision is dismissed because the General Division observed the principles of natural justice and did not base its decision on any erroneous finding of fact under the DESD Act.

### ISSUES

[4] Did the General Division fail to observe a principle of natural justice because it decided the application without considering all of the evidence that was available to it?

[5] Did the General Division base its decision on an erroneous finding of fact under the DESD Act by:

- a) failing to consider all of the evidence obtained after the Claimant's October 2016 car accident, or
- b) failing to consider the Claimant's reason for not providing psychiatric or other medical

evidence about her condition at the time of the minimum qualifying period?

## **ANALYSIS**

[6] The DESD Act governs the Tribunal's operation. It sets out only three narrow grounds of appeal that can be considered. They are 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> The Claimant's arguments on appeal are considered below in this context.

### **Issue 1: Natural Justice**

[7] One ground of appeal under the DESD Act is that the General Division failed to observe a principle of natural justice. These principles are concerned with ensuring that all parties to an appeal have the opportunity to present their case to the Tribunal, to know and answer the legal case against them, and to have a decision made by an impartial decision-maker based on the facts and the law.

[8] The Claimant argues that it is unjust and unfair that the General Division made its decision in 2016 without having considered all of the evidence that the Claimant now has, including numerous medical reports that were written after that hearing as a result of referrals for investigation and treatment by the Claimant's new family physician. However, this appeal involves the General Division decision regarding the Claimant's application to rescind or amend the 2016 decision. This decision was made in February 2018. Therefore, I do not have jurisdiction to decide whether the General Division made such an error in the 2016 decision.

[9] There is no suggestion that the General Division failed to observe any principle of natural justice regarding the 2018 decision. Therefore, the appeal fails on this basis.

### **Issue 2: Erroneous Findings of Fact**

[10] Another ground of appeal under the DESD Act is that the General Division based its decision on an erroneous finding of fact made in a perverse or capricious manner or without

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

regard for the material that was before it. In order for an appeal to succeed on the basis of an erroneous finding of fact, three criteria must be satisfied. The finding of fact must be erroneous, it must have been made in a perverse or capricious manner or without regard for the material before the General Division, and the decision must be based on this finding of fact.<sup>2</sup>

[11] The General Division correctly sets out the legal test that the Claimant had to meet to succeed on an application to rescind or amend a decision based on new facts<sup>3</sup>— that for a document to meet the legal test for new facts, two criteria must be satisfied; the document must have been discoverable at the time of the hearing, and it must be material (it may affect the outcome of the case).<sup>4</sup> It applied this test to the documents that the Claimant presented as new facts, which included a psychological assessment, psychiatric reports, and a diagnostic image report of the Claimant's spine. Regarding the Claimant's mental illness, she also submits that there was limited information on this before the 2016 hearing because the Claimant's psychiatrist had retired and she was awaiting an appointment with a new psychiatrist. She also saw a psychologist after the car accident in 2016 and presented his report as a new fact.

[12] However, the General Division did consider the Claimant's mental illness in 2016.<sup>5</sup> It considered that the Claimant has persistent depression, that she was prescribed medication to treat this condition, that she had been referred to a new psychiatrist, and that she was waiting for an appointment. The documents presented as new facts did not suggest a significant change in treatment or present a new diagnosis or worsening of the Claimant's condition. Therefore, although the documents themselves did not exist at the 2016 hearing because they were written in 2017, they did not reveal any new information.<sup>6</sup> The General Division therefore was correct in deciding that these documents were not new facts under the DESD Act. The appeal fails on this basis.

[13] The Claimant also argues that the General Division erred because it found that the Claimant had not exercised due diligence in pursuing treatment. However, the General Division did not make this finding. The General Division stated that the documents from Records

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<sup>2</sup> *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319.

<sup>3</sup> General Division decision February 2018 at paras 10 to 16.

<sup>4</sup> *Canada (Attorney General) v MacRAE*, 2008 FCA 82.

<sup>5</sup> General Division November 2016 decision at paras 41 to 45.

<sup>6</sup> General Division February 2018 decision at para 20.

Management were available before the November 2016 hearing and that the Claimant did not explain why they were not discoverable with the exercise of due diligence for that hearing.<sup>7</sup> This statement of fact is not erroneous. The General Division therefore did not base its decision on an erroneous finding of fact in this regard, and the appeal must fail on this basis.

### **Other Issues**

[14] In her written documents, the Claimant also argues that the General Division erred because it did not consider a 2017 letter from the family doctor as a new application for a disability pension. The General Division made no error in this regard. It is not for the General Division, when it decides an application to rescind or amend a decision, to consider a medical report as a new application for a disability pension. Nothing in the written record suggests that the Claimant intended this. If the Claimant wants to file a new application for a disability pension, she can do so by filing the correct application form and supporting documents with ~~the Tribunal~~ **Service Canada**. The appeal cannot succeed on this argument.

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<sup>7</sup> *Ibid.* at para 22.

[15] **CONCLUSION**

[16] The appeal is dismissed.

Valerie Hazlett Parker  
Member, Appeal Division

HEARD ON:	November 13, 2018
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	I. B., Appellant  Monika Tomaszewska, Representative for the Appellant  Viola Herbert, Representative for the Respondent