



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. L. v Minister of Employment and Social Development*, 2019 SST 91

Tribunal File Number: AD-18-828

BETWEEN:

G. L.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: February 7, 2019

DECISION AND REASONS

DECISION

[1] The appeal is allowed, and the matter is referred back to the General Division for reconsideration.

OVERVIEW

[2] G. L. (Claimant) completed Grade 12 and worked for many years driving a forklift truck. He has had four strokes. In September 2016, he began to receive a Canada Pension Plan retirement pension. In December 2017, he applied for a Canada Pension Plan disability pension and claimed that he was disabled by a number of conditions, such as diabetes, low energy, back pain, and the effects of a stroke, including brain damage. The Minister of Employment and Social Development refused the application because the Claimant applied for the disability pension 15 months after he began receiving the retirement pension.

[3] The Claimant appealed this decision to the Tribunal. The Tribunal's General Division summarily dismissed the appeal on the basis that the appeal had no reasonable chance of success. The Claimant's appeal from this decision is allowed because the General Division erred in law by failing to consider whether the Claimant was incapable of forming or expressing an intention to make the application.

PRELIMINARY MATTERS

[4] The Tribunal decided this appeal on the basis of the documents filed after considering the following:

- a) The legal issue to be decided is straightforward;
- b) The parties attended a pre-hearing conference where the law was explained and the legal issues were discussed; and
- c) The *Social Security Tribunal Regulations* require the Tribunal to conclude appeals as quickly as the circumstances and considerations of fairness and natural justice permit.

ISSUE

[5] Did the General Division make an error by failing to consider whether the Claimant was incapable of forming or expressing an intention to make the application for the disability pension before he did so?

ANALYSIS

[6] 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. 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.¹

[7] The General Division decision correctly states that, to replace a retirement pension with a disability pension, a claimant must be found to have been disabled before retirement pension payments began and that the application for the disability pension must have been made within 15 months of this date. The Claimant began receiving the retirement pension in September 2016. He applied for the disability pension in December 2017. The General Division made an error when it stated that this was 16 months after the Claimant began receiving the disability pension.²

[8] In addition, the *Canada Pension Plan* provides an exception to this 15-month rule. It states that, if a claimant was incapable of forming or expressing an intention to apply, the application may be deemed to have been made at an earlier time.³ The Claimant based his application for the disability pension, in part, on brain damage resulting from a stroke. He claims that this impacted his capacity to form or express an intention to apply. In the decision, the General Division acknowledged that the Claimant was gathering evidence about his incapacity.⁴ Despite this, the General Division summarily dismissed the appeal because there was no evidence of mental incapacity. However, it does not appear that the General Division fully

¹ DESD Act, s 58(1).

² General Division decision at para 11.

³ *Old Age Security Act*, s 28.1.

⁴ General Division decision at para 7.

considered this issue. This is an error in law. The Federal Court of Appeal teaches that all of a claimant's conditions must be considered.⁵

CONCLUSION

[9] The appeal is allowed.

[10] The DESD Act sets out what remedies the Appeal Division can give on an appeal.⁶ It is appropriate that this appeal be referred back to the General Division for reconsideration because the record is incomplete. The Claimant should have the opportunity to present his full case regarding his alleged incapacity and have it considered by the General Division.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
SUBMISSIONS:	G. L., Appellant

⁵ *Bungay v Canada (Attorney General)*, 2011 FCA 47.

⁶ DESD Act, s 59(1).