



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. B. v Minister of Employment and Social Development*, 2019 SST 444

Tribunal File Number: AD-19-268

BETWEEN:

T. B.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: May 13, 2109

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] T. B. (Claimant) completed high school and some post-secondary courses. He worked for over twenty years as a forklift driver. He stopped working in 1996. He was awarded workers' compensation benefits for back and knee injuries. In February 2015, the Claimant applied for and began to receive a Canada Pension Plan retirement pension. In March 2018, he applied to replace this pension with a Canada Pension Plan disability pension. The Minister of Employment and Social Development refused this application because it was made beyond the time permitted to replace a retirement pension with a disability pension.

[3] The Claimant appealed the Minister's decision to the Tribunal. The Tribunal's General Division summarily dismissed the appeal on the basis that it had no reasonable chance of success. The Claimant's appeal from the General Division decision is dismissed because the General Division did not make any errors on which the Appeal Division can intervene.

PRELIMINARY MATTER

[4] This appeal was decided on the basis of the documents filed with the Tribunal after considering the following:

- a) The legal issue to be decided is not complex;
- b) The parties attended a pre-hearing teleconference where procedural matters were discussed and the relevant law explained; and

- c) The *Social Security Tribunal Regulations* requires that proceedings be concluded as quickly as the circumstances and considerations of fairness and natural justice permit.¹

ISSUE

[5] Did the General Division make an error upon which the Appeal Division can intervene in this appeal?

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, 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.² Therefore, to succeed on appeal, the Claimant must present a ground of appeal that falls under the DESD Act and upon which the Appeal Division can intervene.

[7] The Claimant argues that the appeal should be allowed because the General Division and the Minister did not consider his disabilities, illness or his age. While he acknowledges that he applied for the retirement pension in 2015, and the disability pension in 2018, he states that he did not know that receiving the retirement pension would prevent him from later receiving the disability pension. He argues that he should not be prevented from getting the disability pension simply because he was not aware of the time limitations within which he had to apply for it.

[8] I have great sympathy for the Claimant and his circumstances. However, the Tribunal is created under the DESD Act and as such only has legal authority to grant relief as set out in this legislation. I am not able to grant any relief based on compassion or extenuating circumstances. I can only change the General Division decision if it has made an error under the DESD Act.

¹ *Social Security Tribunal Regulations* s. 3(1)

² DESD Act s. 58(1)

[9] I have read the General Division decision and the written record. The facts are not in dispute. The General Division did not overlook or misconstrue any important information. The Claimant applied for the disability pension approximately three years after he began to receive the retirement pension.³

[10] The General Division made no error in law. It correctly stated that the effect of subsection 66.1(1.1) and paragraph 42(2(b) of the *Canada Pension Plan* is that a retirement pension with a disability pension cannot be replaced by a disability pension when the disability pension application is made fifteen months or more after the retirement pension started to be paid.⁴ The General Division applied this law to the facts before it and concluded that the Claimant's appeal did not have a reasonable chance of success because the Claimant applied for the disability pension more than 15 months after he started to receive the retirement pension.

[11] The principles of natural justice are concerned with ensuring that parties to an appeal have the opportunity to present their case to the Tribunal, to know and answer the other party's case and to have a decision made by an impartial decision maker based on the law and the facts. There is no suggestion that the General Division failed to observe these principles.

CONCLUSION

[12] The appeal is dismissed because the General Division made no error under the DESD Act.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
SUBMISSIONS:	T. B., Appellant

³ General Division decision at para. 2

⁴ General Division decision at para. 7