



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. A. v Minister of Employment and Social Development*, 2019 SST 1258

Tribunal File Number: AD-19-549

BETWEEN:

H. A.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal and Appeal Decision by: Valerie Hazlett Parker

Date of Decision: September 27, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] H. A. (Claimant) worked as a drywaller. He applied for a Canada Pension Plan disability pension and claimed that he was disabled because of chronic pain. The Minister of Employment and Social Development refused the application because it decided that the Claimant did not have a severe disability.

[3] The Claimant appealed this decision to the Tribunal. The Tribunal's General Division scheduled a hearing. Neither the Claimant nor his lawyer attended. The General Division then dismissed the appeal after considering the documents filed with the Tribunal.

[4] After the General Division decision was made, the Claimant's lawyer contacted the Tribunal and advised that he was not able to connect to the teleconference hearing because his computer and telephone system had been "hacked" and ransom demanded. Leave to appeal is granted and the appeal is allowed because the General Division failed to observe a principle of natural justice when it decided the appeal without the Claimant having had an opportunity to present his legal case in these circumstances. The appeal is referred back to the General Division for reconsideration so that the Claimant can present his legal case.

PRELIMINARY MATTERS

[5] The Tribunal's Appeal Division scheduled a Settlement Conference, and an invitation to attend was sent to both parties. The Claimant and his lawyer did not attend the Settlement Conference. However, the Minister of Employment and Social Development's representative consented to leave to appeal being granted and the matter being referred back to the General Division for a hearing.

ANALYSIS

[6] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It provides rules for appeals to the Appeal Division. An appeal is not a re-hearing of the original claim, but a determination of whether the General Division made an error under the DESD Act. The Act also states that there are only three kinds of errors that can be considered. 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.¹ In addition, leave to appeal is to be refused unless the appeal has a reasonable chance of success.²

[7] In the Application to the Appeal Division the Claimant's lawyer writes that although the Claimant received notice of the General Division hearing, they were not able to connect to the hearing because the lawyer's computer records were "hacked" and encrypted by unknown persons who made ransom demands. As a precaution the backup and telephone systems were shut down to prevent further damage. This is why they did not attend the hearing and present the Claimant's case.

[8] These are unusual circumstances which are beyond the Claimant or his lawyer's control. It resulted in the Claimant being unable to present his case to the Tribunal. The appeal has a reasonable chance of success on the basis that these circumstances resulted in a breach of natural justice.

[9] The principles of natural justice 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 other party's legal case and to have a decision made by an impartial decision maker based on the law and the facts. When the General Division made its decision without having heard from the Claimant in these circumstances it failed to observe these principles. Therefore, the appeal must be allowed.

[10] The DESD Act sets out what remedies the Appeal Division can give when an appeal is allowed.³ This appeal is referred back to the General Division for reconsideration. The record is

¹ DESD Act s. 58(1)

² DESD Act s. 58(2)

³ DESD Act s. 59

not complete because the Claimant's oral evidence has not been presented. It is for the General Division to receive evidence, weigh it and make a decision based on the law and the facts. Referring the matter back to the General Division will permit this.

CONCLUSION

[11] Leave to appeal is granted.

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

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	Viola Herbert, for the Respondent
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