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

Tribunal File Number: GP-18-1779

BETWEEN:

A. A.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by:	John Eberhard
Claimant represented by:	Walid Mohamed
Teleconference hearing on:	October 3, 2019
Date of decision:	October 4, 2019

Canada

DECISION

OVERVIEW

[1] A. A. is the Claimant in this case. He applied for a Canada Pension Plan (CPP) disability pension on July 4, 2017. His application was denied. He requested reconsideration. The Minister reviewed the file. The original decision was affirmed in April 2018.[1] The Claimant appealed the Minister's decision to the Social Security Tribunal - General Division (SST).

[2] The Claimant made an earlier application for disability benefits. He claimed that he was disabled by a compression fracture in the 12th thoracic vertebrae, sever back pains, right leg sever pain and shooting pain, sever headaches, dizziness and cognitive impairment. That application was received on November 15, 2010.[2] The Minister denied the application. A reconsideration decision was dated January 11, 2012. The Claimant appealed the decision to the Social Security Tribunal (General Division – GD). The GD made the decision to deny the appeal on November 23, 2015.[3] The tribunal agreed with the Minister that he did not prove he had a severe and prolonged disability. The Claimant appealed the decision to the Appeal Division of the SST. The application for leave to appeal was denied by a decision dated January 22, 2016.[4]

[3] The position of the Minister is that the decision on the previous application is final and binding on both the Claimant and this tribunal. The Minister's reason is that the Claimant did not meet the CPP rules to qualify for disability benefits as of December 31, 2011[5] and the matter cannot be adjudicated a second time. The last time the Claimant made sufficient contributions to the CPP to qualify for disability benefits was in 2007. He has not made any further contributions. His Minimum Qualifying Period (MQP) remains the same.[6] At the time of the earlier decision, the evidence did not support a finding of disability within the meaning of the CPP. I agree with the position taken by the Minister and I dismiss the appeal. Here are the reasons why.

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[1] GD2-7
[2] GD2-225
[3] GD2-49
[4] The appeal decision is found in the file at page GD2-99
[5] This is the date of your Minimum Qualifying Period (MQP)
[6] The MQP is December 31, 2011. This is found in the file at page GD2 – 34

ANALYSIS

Facts that I accept

[4] The GD of the SST determined you did not have a severe and prolonged disability when your MQP ended on December 31, 2011. The GD heard evidence from both you and your wife at that time. It also reviewed the file by looking at the results of your 1996 motor vehicle accident and 2010 fall. The adjudicator reviewed the medical reports from your treating caregivers, application and specialists. The decision concluded that there was no objective evidence regarding your pain, physical dysfunction, headaches, dizziness, cognitive impairment or lack of sleep. You contended that there was objective evidence regarding these conditions and that it was contained in the Application Questionnaire. You completed that document when you applied for the disability pension. The Appeal Division (AD) agreed with the decision of the GD tribunal and did not grant leave to appeal. The AD applied the tests that would have allowed the leave to appeal. These are:

- the General Division (GD) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- the General Division based its decision on an erroneous finding of fact that it made in perverse or capricious manner or without regard for the material before it.

[5] The AD dismissed your application for leave to appeal.[7] You did not appeal that decision.

There are three issues in this Appeal

[6] A person who applies for a disability pension has to meet the requirements that are set out in the law that deals with CPP disability benefits.

[7] The Applicant requested leave to appeal the General Division decision to the Appeal Division (AD) of the Tribunal. He wrote in the application that the General Division did not observe natural justice and he disagreed with a number of factual conclusions made in the decision. The AD rejected this argument. The grounds for allowing leave to appeal are found in the Department of Employment and Social Development Act (Section 58).

[7] First, you have to meet the contribution requirements. The formal term for this is the "minimum qualifying period"[8] (MQP). That is not a problem in this appeal. Your Record of Earnings revealed that you made valid contributions to the CPP in 1990, 1997, 1999, 2001, 2003, 2005, 2006 and 2007. You had earnings below the Year's Basic Exemption in 1992, 1994, 1996 and 1998. In letters to the Minister, you stated that you were taking care of your wife and his young children. This affected your ability to earn income and make further contributions to the CPP. Your MQP is December 31, 2011. It has not changed.

[8] Second, one has to have a disability that is "severe and prolonged"[9]. You have to have that disability on or before the date of the MQP. That question was adjudicated at the original hearing. The tribunal decided you did not have a severe disability at that time.

[9] The third issue is whether I have jurisdiction to review the facts and come to a conclusion on the merits of your original application. Because the matter was decided, the Supreme Court of Canada[10] directs that I do not have the jurisdiction to reconsider the issue of disability when your MQP ended on December 31, 2011.[11]

The facts heard at this hearing

[10] You made submissions in your notice of appeal. Both you and your wife, S. Z. testified at this hearing. You spoke of your accidents and the physical and mental health issues that resulted. You both agreed that the adjudicator at the first hearing had all of this evidence before her. You reiterated that your impediments date back to 1992. I agree that your medical issues are long standing and are still with you today. You did say that your condition today is much worse than it was in the past.

[11] You and your wife also expanded on the difficulty you have in understanding the application process for getting a CPP disability pension. While your wife speaks very good English and is obviously well educated, you have difficulty with the language. On occasion during this hearing, you asked the interpreter for assistance in understanding some words and

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[8] GD2-35
[9] This requirement is found at s.42(2)(a) of the CPP.
[10] This law is found in the case of Danyluk v. Ainsworth Technologies Inc., 2001 SCC 44, [2001] 2 S.C.R. 460
[11] GD2-44

phrases. You did not request an interpreter at the first GD hearing of 2015. There is no indication in the first decision that there was a language problem. The adjudicator heard evidence from both you and your wife. You also referred a possible misunderstanding of the difference in your education level. The adjudicator may not have known the difference between a grade 12 education in Canada from a similar achievement in your home country where you were educated. I am satisfied that the GD did apply the proper test[12] even though it is not my responsibility to make that judgement. Here is the reason why.

THE LAW

[12] I must decide what impact the earlier decision has on my right to make a decision on the merits of the case. I must apply the law that deals with the rehearing of a case. I am not an appeal court or appeal tribunal. There are well-recognised legal decisions that deal with this issue.

Res Judicata

[13] When considering issues previously decided by the courts, including administrative officers and tribunals, there is a legal doctrine[13] that applies. The Federal Court[14] stated that the doctrine specifically applied to decisions of the SST. When the principal applies, the GD cannot reconsider issues in the decision of a previous proceeding. You may not agree, but this is the law that I have to apply in this case.

[14] To apply the legal principal, I must determined if three conditions are met:

(a) Is the issue the same as the one decided in the prior decision?
(b) Is the prior decision final? and,
(c) Are the parties to both proceedings the same?

[15] I find that to each of these questions the answer is, yes. Therefore, the legal principal applies. I have no authority to adjudicate on the merits of this case.

[12] GD2-114 at paragraph -32
[13] res judicata
[14] This principal is set out in the case of Belo-Alves v. Canada (Attorney General), 2014 FC 1100

[16] An exception to the legal rule is where it is not in the interests of justice to apply it. I do not find the exception to apply in this case. I have considered the additional documents you submitted dated in 2014, 2017, 2018 and the arguments you have made. You indicate that there have been procedures that have changed in CPP cases. You did not indicate what changes on which you rely. This may be, but the law has not changed. You indicated that you have been lost in the system and confused. Unfortunately, the tribunal is not set up to give you legal advice, answer procedural strategies and questions regarding your MQP or provide financial help in the preparation of your appeal.[15] When leave to appeal was denied, you were provided with the details of the decision and instructions on how to appeal the SST-AD decision. The fact that you say you did not know of your rights does not assist me in finding that some legal injustice has been done to you.

[17] You have indicated that your health has been getting worse. It may be that now your doctors believe you unable to work. This evidence is years after your MQP ended. Is not relevant to the issue of whether the legal principal is to be applied to your 2017 disability application. As you point out in your argument, there are new reports from Dr. Lacerte, Dr. Sekek, O.K. Dugan (DCC), Anula Bajwa (Resident Physiotherapist) and the brain scan of 2016. These reports, received well after the MQP, do not assist me in making the decision I have to make. Besides, shortly after the MQP of December 2011, Dr. Lacerte felt that you were capable of returning to some form of light to moderate employment. He changed his mind long after your MPQ.

[18] There has been no issue of injustice raised. If I reconsidered the facts on the same issue of disability at the same MQP, this would not be fair to either party to this proceeding. Allowing you another chance to make your case, when your previous application was considered and denied, would be inconsistent with the requirements established by the law. The date when you are considered disabled does not change the date of your eligibility. The evidence of your medical conditions were considered at the time of the original hearing. I cannot change the facts that were accepted at that time.

[19] The principal I apply here is essentially to prevent abuse of the administrative decision-making process as well as to prevent conflicting decisions on the same issue and set of facts. The

[15] Your concerns were set out in your application for appeal found in the file at page GD1-2

goal is to balance fairness to the parties with the protection of the administrative decision-making process.

[20] The Supreme Court states[16] at paragraph 18 that:

> "The law rightly seeks a finality to litigation. To advance that objective, it requires litigants to put their best foot forward to establish the truth of their allegations when first called upon to do so. A litigant, to use the vernacular, is only entitled to one bite at the cherry. The appellant chose the ESA as her forum. She lost. An issue, once decided, should not generally be re-litigated to the benefit of the losing party and the harassment of the winner. A person should only be vexed once in the same cause. Duplicative litigation, potential inconsistent results, undue costs, and inconclusive proceedings are to be avoided."

[21] By permitting this hearing to proceed with new or repetitive evidence is permitting the re-litigation of the case. This results in a waste of resources, makes it uncertain or difficult for parties to rely on the results of the prior case hearing and raises the spectre of inconsistent adjudicative determinations. You have requested that your original application made in 2010 be reconsidered in view of the additional information provided. I cannot do this. Your appeal to the AD confirmed the decision. That decision was final.

[22] The circumstances of this case do not fall into the exception to the rule. This appeal meets the criteria for the legal principal that I must apply. I do not have the authority to reconsider the issue of severity of your disability. The decision of the previous GD tribunal is final and binding.

CONCLUSION

[23] The appeal is dismissed.

John Eberhard
Member, General Division - Income Security

[16] This is found at paragraph 18 of the Danyluk decision