



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. L. v Minister of Employment and Social Development*, 2019 SST 1527

Tribunal File Number: GP-18-2833

BETWEEN:

**A. L.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Lianne Byrne

In-Person hearing on: August 13, 2019

Date of decision: October 21, 2019

## **DECISION**

[1] The Claimant is not entitled to a Canada Pension Plan (CPP) disability pension.

## **OVERVIEW**

[2] The Claimant's first application for a CPP disability pension was dismissed by the Minister at the initial and reconsideration levels. The Claimant appealed this decision to the Office of the Commissioner of Review Tribunals (OCRT). His appeal was dismissed by the OCRT for the reasons set out in its decision dated May 17, 1996.<sup>1</sup> He appealed this decision to the Pension Appeals Board. However, his appeal was dismissed by the Pension Appeals Board for the reasons set out in the decision dated December 1, 1999.<sup>2</sup> The Claimant did not appeal this decision.

[3] He applied a second time for a CPP disability pension on September 17, 2012. The Minister denied his application at the initial level. He did not request a reconsideration of this decision.

[4] The Minister received a third application from the Claimant for the disability pension on January 18, 2018. The Minister denied the application initially and on reconsideration on the basis that the doctrine of *res judicata* applies. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

## **PRELIMINARY MATTERS**

[5] The Claimant attended an in-person hearing on August 13, 2019. I had some concerns about the Claimant's ability to participate fully at the hearing. Therefore, the hearing was adjourned to provide the Claimant an opportunity to continue the hearing by teleconference with a support person. The teleconference was scheduled for October 8, 2019.

[6] In advance of the teleconference, the Claimant advised the Tribunal that he did not have a support person to attend with him, but that he would attend alone. On the day of the hearing, he

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<sup>1</sup> GD2-197

<sup>2</sup> GD2-283

advised the Tribunal that he was not feeling well and would call the Tribunal a few days later to discuss an adjournment. On October 15, 2019, the Claimant advised the Tribunal that he did not want to attend another teleconference hearing and that the Tribunal could proceed with making its decision.

## **ISSUE(S)**

[7] Does the doctrine of *res judicata* apply to the Claimant's application for a CPP disability benefit dated January 18, 2018?

## **ANALYSIS**

### ***The Claimant attended the in-person hearing but did not attend the subsequent teleconference***

[8] Paragraph 3(1)(a) of the Social Security Tribunal Regulations (SST Regulations) states that "[t]he Tribunal must conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit."

[9] Subsection 3(2) of the SST Regulations provides that "[i]f a question of procedure that is not dealt with by these Regulations arises in a proceeding, the Tribunal must proceed by way of analogy to these Regulations."

[10] Section 12 of the Regulations specifies that "[i]f a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received notice of the hearing" and further provides that "[t]he Tribunal must proceed in a party's absence if the Tribunal previously granted an adjournment or postponement at the request of the party and the Tribunal is satisfied that the party received notice of the hearing."

[11] The Claimant attended an in-person hearing on August 13, 2019. The Claimant was given an opportunity after this hearing to continue with a support person via teleconference. On September 20, 2019, a Notice of Hearing was sent to the Claimant by Priority Post to the following address: X. On September 23, 2019, the Notice of Hearing was successfully delivered. The Claimant was also advised about the teleconference by telephone calls from the Tribunal on September 23, 2019 and October 7, 2019.

[12] The Claimant did not attend the teleconference scheduled on October 8, 2019. He advised the Tribunal that he did not wish to reschedule and that the Tribunal could proceed to make a decision.

[13] I decided to proceed in the Claimant's absence given that I am satisfied that he received the Notice of Hearing.

***The doctrine of Res Judicata applies in this case.***

[14] The doctrine of *res judicata* precludes the rehearing or re-litigation of matters that have been previously determined.<sup>3</sup> There is a two-step test to consider when determining whether the doctrine of *res judicata* should be applied. The first step involves determining whether the following three conditions are met:

- (1) That the same question had been decided;
- (2) That the judicial decision which is said to create the estoppel was final; and
- (3) That the parties to the judicial decision are the same.

[15] The Claimant did not provide any submissions regarding the first step of this test. I find that all three conditions are met. First, the question to be decided in this appeal is the same as in the previous appeal. The relevant facts are also the same. There has been no change in the minimum qualifying period. The issue remains whether the Claimant had a severe and prolonged disability by December 31, 1995.

[16] Second, I also find that the judicial decision was final. In making this finding, I considered that the Claimant's appeal to the Pension Appeals Board was dismissed by decision dated December 1, 1999. The Claimant did not appeal this decision.

[17] Third, the parties to the judicial decision are the same as in the present appeal.

[18] The second step requires that I decide whether or not to exercise my discretion to apply the doctrine of *res judicata*. In exercising this discretion, I am guided by the list of factors

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<sup>3</sup> *D.K. v. Minister of Employment and Social Development*, 2015 SSTAD 1068

identified by the Supreme Court of Canada in *Danyluk v. Ainsworth Technologies Inc.*<sup>4</sup>, which include:

- (1) The wording of the statute from which the power to issue the administrative order derives;
- (2) The purpose of the legislation;
- (3) The availability of an appeal;
- (4) The safeguards available to the parties;
- (5) The expertise of the decision-maker;
- (6) The circumstances giving rise to the prior proceedings; and
- (7) The potential injustice.

[19] As noted by the Social Security Tribunal – Appeal Division in *D.K. v. Minister of Employment and Social Development*, these factors may not merit equal consideration and there may be other considerations as well. There is also an overriding question of fairness involved to avoid a potential injustice.<sup>5</sup>

[20] In this case, I considered that the Claimant knew the case he had to meet in the proceedings before the OCRT and the Pension Appeals Board. He was given a reasonable opportunity to meet it and had the opportunity to state his case. He did not appeal the Pension Appeal Board's decision. He did not raise any issues of injustice or issues of natural justice and, I agree with the Minister, that there are none apparent. He was not deprived of an opportunity to have his application properly assessed and adjudicated. I am therefore not satisfied that I should exercise my discretion to refuse to apply the doctrine of *res judicata*.

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<sup>4</sup> [2001] 2 S.C.R. 460

<sup>5</sup> 2015 SSTAD 1068

[21] I therefore find that the doctrine of *res judicata* applies and the appeal should be dismissed.

**CONCLUSION**

[22] The appeal is dismissed.

Lianne Byrne  
Member, General Division - Income Security