



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. U. v Minister of Employment and Social Development*, 2019 SST 1040

Tribunal File Number: AD-19-565

BETWEEN:

M. U.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: October 17, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] M. U. (Claimant) began to receive a Canada Pension Plan retirement pension in May 2016. In March 2018, she applied for a Canada Pension Plan disability pension. The Minister of Employment and Social Development refused the disability pension application because the Claimant had been in receipt of the retirement pension for more than 15 months before she applied for the 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 for the same reason. The appeal to the Tribunal's Appeal Division is dismissed because the General Division made no errors under the *Department of Employment and Social Development Act* (DESD Act).

PRELIMINARY MATTER

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

- a) Neither party requested an oral hearing;
- b) the parties attended a Case Conference on September 11, 2019. The relevant law was explained and discussed;
- c) the legal issue to be decided on appeal is straightforward; and

the *Social Security Tribunal Regulations* require that appeals be concluded as quickly as the circumstances and considerations of fairness and natural justice permit.¹

ISSUE

[5] Did the General Division make any error under the DESD Act?

ANALYSIS

[6] The 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.² If at least one of these errors was made, the Appeal Division can intervene. The Claimant's position is considered in this context.

[7] One ground of appeal that the Appeal Division can consider is whether the General Division failed to observe a principle of natural justice. These principles 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.

[8] The Claimant wrote in the Application to the Appeal Division that she would like to explain herself to the Tribunal. However, the Claimant was given an opportunity to do so. She could have fully explained her legal position in the Notice of Appeal that she filed with the Tribunal. In addition, the General Division provided written notice that it intended to summarily dismiss the appeal with an opportunity to respond.³ The Claimant did not respond to this.

[9] The Supreme Court of Canada teaches that although the principles of natural must be observed in every case, this does not mean that an oral hearing is required. What is required will

¹Social Security Tribunal Regulations s. 2

² DESD Act s. 58(1)

³ GDO

depend on the circumstances of each case and the administrative context in which the decision is made.⁴ The *Social Security Tribunal Regulations*, which govern this Tribunal provide that appeals can be decided based on the documents filed with the Tribunal or an oral hearing.⁵ The decision of how an appeal is to be heard is a discretionary one. Nothing in this case suggests that the General Division exercised its discretion improperly when it decided to proceed based on the documents filed. Therefore, the appeal fails on the basis that the General Division failed to observe a principle of natural justice because the Claimant did not present her case fully.

[10] The Claimant also explains in the Application to the Appeal Division how she struggled to find legal representation. It is unfortunate that she could not get the legal help she wanted. However, the Claimant's inability to obtain legal representation does not point to the General Division having made an error under the DESD Act.

[11] I have read the General Division decision and reviewed the written record. The General Division did not overlook or misconstrue any important information. It correctly stated the law and applied it to the undisputed facts. Therefore, the appeal fails on this basis also.

CONCLUSION

[12] The appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
SUBMISSIONS:	M. U., Appellant

⁴ Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 SCR 817.

⁵ Social Security Tribunal Regulations s. 21