



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. G. v Minister of Employment and Social Development*, 2019 SST 1266

Tribunal File Number: AD-19-311

BETWEEN:

J. G.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: October 23, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] J. G. (Claimant) completed high school and worked in the engine room of a ship. He was injured at work in 2012. After further injuries and a lot of medical treatment, the Claimant returned to school and completed an engineering technology program at college. Despite this he has not worked since 2012.

[3] The Claimant applied for a Canada Pension Plan disability pension and claimed that he was disabled by the knee injury, broken ankle, broken leg, broken ribs and back problems. The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Tribunal.

[4] The Tribunal's General Division held a teleconference hearing. It decided that the Claimant did not have a severe disability before the end of the minimum qualifying period (MQP) and dismissed the appeal. The appeal to the Tribunal's Appeal Division is allowed because the General Division failed to observe a principle of natural justice when it proceeded with the hearing when the Claimant did not have copies of all of the documents that were presented to the Tribunal.

ISSUE

[5] Did the General Division fail to observe a principle of natural justice when it held a hearing without the Claimant having all of the documents that had been filed with the Tribunal?

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 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

[7] 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.

[8] The Claimant argues that the General Division failed to observe these principles because he did not have all of the documents that had been filed with the Tribunal at the hearing. The written record in this matter is lengthy. It contains many medical documents, including specialist reports, and a number of documents prepared by or for the provincial worker's compensation program.

[9] At the start of the General Division hearing the Tribunal Member confirmed that the Claimant and he had the same randomly chosen page.² During the hearing, the General Division Member asked the Claimant about a particular document, at page GD3-55.³ The Claimant responded that he did not have any GD3, and that his last page was GD2-1086. The General Division Member explained what the document in question was, and the Claimant answered his question related to this document.

[10] Later in the hearing, the General Division Member asked the Claimant a question about another document, at page GD2-1299.⁴ Again, the Claimant said that he did not have this document. The General Division Member explained it, and the Claimant answered his question.

[11] The Claimant now says that he did not have a significant number of documents that had been filed with the Tribunal, and that this impaired his ability to present his case to the Tribunal,

¹ DESD Act s. 58(1)

² General Division hearing recording at approximate time 3:04 the Tribunal Member asked the Claimant to pick a random page, and ensured that it was the same in both of their written records.

³ General Division hearing recording at approximate time 18:30

⁴ General Division hearing recording at approximate time 29:19

and to address the Minister's legal case. He says that had he had these documents he would have been able to emphasize that he continued to take pain medication to treat pain and not just to avoid withdrawal symptoms, that his chronic pain was well documented, and that a permanent impairment was diagnosed prior to the MQP. He also would have explained and emphasized different evidence and made other legal arguments.

[12] Some of the documents that the Claimant did not have were coded in GD1 and were attached to the Claimant's application and Notice of Appeal. Although this points to the Claimant having the documents since he presented them to the Tribunal, if he did not receive coded copies back from the Tribunal, he could not assume that all parties had received them. While it may have been prudent for him to confirm that the Tribunal and Minister had received these documents before the hearing, this does not detract from the fact that not all parties had all of the documents that had been filed with the Tribunal.

[13] In addition, at the hearing before me the Claimant listed numerous documents in GD2 that he did not have at the hearing. GD2 is the Minister's reconsideration file. It generally contains documents that the Claimant has presented to the Minister during the application for disability pension process, including documents presented before the appeal to the Tribunal. It often also contains documents created by the Minister in its review of the disability pension application. These documents referred to the Claimant's ongoing limitations, treatment and chronic pain. The Claimant would not have these documents unless the Tribunal provided copies to him. Again, if the Claimant had all of these documents at the General Division hearing, he would have been able to address all of the available evidence. This could have resulted in a different General Division decision.

[14] The Claimant also did not have any GD3 documents (approximately 55 pages). Again, further or different legal arguments could have been advanced based on these documents. The General Division decision could have been different as a result.

[15] The Minister argues that the Claimant was able to present his case because he answered questions about the documents that he did not have. However, the fact that he was able to answer questions does not satisfy me that the Claimant was able to fully present his case. If he had had the missing documents, additional or different legal arguments may have been presented.

[16] It should have been clear to the General Division Member that the Claimant was missing a significant number of documents when he stated that his last page was GD2-1086 since GD2 has 1360 pages. As a result of not having these pages, as well as some of the documents in GD1 and no documents in GD3, the Claimant was not able to fully present his case to the General Division. This is a breach of the principles of natural justice.

CONCLUSION

[17] The appeal is therefore allowed.

[18] The DESD Act sets out what remedies the Appeal Division can give when an appeal is allowed.⁵ This matter is referred back to the General Division for reconsideration. The Claimant was not able to fully present his case to the Tribunal. The written record may not be complete. It is the General Division's mandate to receive the parties' evidence, weigh it and reach a decision based on the law and the facts.

Valerie Hazlett Parker
Member, Appeal Division

HEARD ON:	October 21, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. G., Appellant David Daniels and Dorothy Myles, Counsel for the Appellant Stéphanie Pilon, Representative for the Respondent

⁵ DESD Act s. 59(1)