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

Citation: *R. C. v Minister of Employment and Social Development*, 2019 SST 1412

Tribunal File Number: AD-19-807

BETWEEN:

R. C.

Applicant
(Claimant)

and

Minister of Employment and Social Development

Respondent
(Minister)

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: December 17, 2019

Canada

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Claimant, R. C., is a former pressman who was last employed in 2007. In February 2009, he applied for a Canada Pension Plan (CPP) disability pension, claiming that he could no longer work because of a variety of medical conditions, including back pain, chest pain, and high blood pressure. The Minister of Employment and Social Development refused the application. The Claimant appealed the Minister's refusal to the Office of the Commissioner of Review Tribunals.[1] In January 2011, a review tribunal (RT) dismissed the Claimant's appeal because it found that his disability was not "severe and prolonged," as defined by the *Canada Pension Plan*.

[3] The Claimant appealed the RT's decision to the Pension Appeals Board (PAB). In a decision dated August 1, 2012, the PAB determined that the Claimant's disability was not severe as of his minimum qualifying period (MQP), which ended on December 31, 2011. The Claimant later applied to rescind or amend the PAB decision, but the Social Security Tribunal's Appeal Division refused to do so because it found no new material facts. The Claimant also applied for judicial review, but the Federal Court of Appeal dismissed the application because it determined that the PAB decision was not unreasonable.

[4] In February 2018, the Claimant submitted another application for CPP disability benefits, claiming that he was unable to work because of chronic chest pain, neuroplastic changes, hypertension, bone spurs, sciatica, rhinitis, contact dermatitis, and anxiety. His MQP remained December 31, 2011 and, once again, the Minister refused the Claimant's application.

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[1] In 2013, the Office of the Commissioner of Review Tribunals and the Pension Appeals Board were replaced, respectively, by the Social Security Tribunal's General Division and Appeal Division.

[5] The Claimant appealed this refusal to the General Division. On October 20, 2019, the General Division dismissed the appeal, finding that it was barred from revisiting a matter that had already been decided by the PAB.

[6] On November 17, 2019, the Claimant applied for leave to appeal to the Appeal Division. In his application, the Claimant insisted that the PAB's August 2012 decision was wrong because it had relied on Dr. Loane's July 2011 opinion[2] that there was no objective evidence of a disabling injury or illness. The Claimant claimed that Dr. Loane's opinion was based on outdated information. He said that, although he had been previously been diagnosed with mild costochondritis, subsequent medical assessments[3] confirmed that his condition was much more severe and based on neuroplastic changes.

[7] I have reviewed the General Division's decision against the record. I have concluded that none of the Claimant's reasons for appealing have a reasonable chance of success on appeal.

ISSUE

[8] There are only three grounds of appeal to the Appeal Division. A claimant must show that the General Division acted unfairly, interpreted the law incorrectly, or based its decision on an important factual error.[4]

[9] An appeal can proceed only if the Appeal Division first grants leave to appeal.[5] At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.[6] This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.[7]

[10] I have to decide whether there is an arguable case for any of the Claimant's reasons for appealing.

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[2] Independent Medical Examination report dated July 20, 2011 by Dr. Thomas Loane, physiatrist, GD2-640.
[3] Letter dated May 6, 2014 by Tony Ingram, physiotherapist, GD1-71; letter dated July 31, 2016 by Dr. Annette McCarthy, family physician, GD1-73; and letter dated November 18, 2013 by Dr. Mohammed Tarhoni, physiatrist, GD1-67.
[4] Section 58(1) of the *Department of Employment and Social Development Act* (DESDA).
[5] DESDA, ss 56(1) and 58(3).
[6] DESDA, s 58(2).
[7] *Fancy v Canada (Attorney General)*, 2010 FCA 63.

ANALYSIS

[11] I do not see an arguable case here.

[12] The Claimant's submissions in support of his leave to appeal application are essentially identical to his reasons for appealing to the General Division last year.[8] In both, the Claimant argued that his condition had been misdiagnosed and that the PAB was therefore wrong when it turned down his disability claim in 2012. In both, the Claimant argued that post-hearing medical reports confirmed that his condition was chronic and that he was no longer capable of work.

[13] Here, as at the General Division, the Claimant's real target is the seven-year-old PAB decision. Here, as at the General Division, the Claimant relies on evidence that came after the issuance of the PAB decision. Neither of these approaches is a valid ground of appeal to the Appeal Division.

[14] In order to succeed, the Claimant must show that the General Division committed an error in arriving at its decision. However, the Claimant's submissions do not explain how the General Division acted unfairly, erred in law, or based its decision on factual error. In this case, the General Division determined that the doctrine of *res judicata* prohibited it from considering the Claimant's disability as of the MQP, and it found that any documentary evidence, whether generated before or after the August 2012 PAB decision, was out of bounds because it pertained to the Claimant's medical condition before December 31, 2011. In doing so, the General Division relied on criteria set out in *Danyluk v Canada*[9] to confirm that the PAB decision (i) was final; (ii) involved the same parties as the current proceeding; and (iii) addressed the same issues as the current proceeding.

[15] In *Danyluk*, the Supreme Court of Canada held that there are sound public policy reasons underpinning *res judicata*:

> 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,

[8] Notice of Appeal to General Division dated August 29, 2018, GD1-5.
[9] *Danyluk v Ainsworth Technologies Inc*., 2001 SCC 44

> potential inconsistent results, undue costs, and inconclusive proceedings are to be avoided.

The General Division concluded—properly, in my view—that the issue of whether the Claimant was disabled as of the MQP, had already been adjudicated by the PAB and could therefore not be revisited. The General Division also noted that (i) the Appeal Division had previously rejected Claimant's efforts to reopen the PAB decision on the basis of new evidence and (ii) the Federal Court of Appeal had previously upheld the PAB decision, finding it reasonable.

[16] Just as the General Division was barred from reassessing the substance of the Claimant's disability claim because of *res judicata*, so is the Appeal Division, which has no mandate to consider evidence of disability on its merits. My authority permits me to determine only whether any of the Claimant's submissions fall within the three narrow permitted grounds of appeal and whether any of them raises an arguable case. It is not sufficient for a claimant to merely state their disagreement with the General Division decision, nor is it sufficient for a claimant to express their continued conviction that their health conditions render them disabled within the meaning of the *Canada Pension Plan*.

[17] The Claimant may regard this outcome as unjust, but I have no other option. It remains a fact that the RT and the PAB conclusively assessed the Claimant's pre-2012 impairments, and their successor tribunals are therefore barred from hearing what amounts to the same case. I must follow the law, and I do not have the discretion to simply order what I think is a fair result. This reality is reflected in cases such as *Canada v Tucker*,[10] which held that an administrative tribunal is not a court but a statutory decision-maker and therefore not empowered to provide any form of equitable relief.

[10] *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278.

CONCLUSION

[18] The Claimant has not identified any grounds of appeal that would have a reasonable chance of success on appeal. Thus, the application for leave to appeal is refused.

Member, Appeal Division

REPRESENTATIVE:	R. C., self-represented