



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. M. v Minister of Employment and Social Development*, 2020 SST 173

Tribunal File Number: AD-19-862

BETWEEN:

A. M.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: March 2, 2020

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] A. M. (Claimant) completed a post-secondary education in China before immigrating to Canada. In Canada, she completed some other educational courses and worked in a variety of jobs, including as a nanny, cashier, and a waitress. In 2003, she began to run her own business, a convenience store, and was involved in all aspects of this business. The Claimant was in a car accident in 2013 and has a number of limiting conditions as a result including hand, joint, shoulder and back pain, headaches, depression, and difficulty standing, walking, lifting and bending.

[3] The Claimant applied for a Canada Pension Plan disability pension and claimed that she was disabled by these conditions. The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal. It decided that the Claimant had some capacity regularly to pursue a substantially gainful occupation at the end of the minimum qualifying period (MQP – the date by which a claimant must prove that they are disabled to receive the disability pension).

[4] Leave to appeal the General Division's decision to the Tribunal's Appeal Division was granted on the basis that the General Division may have made an error in law by giving inadequate reasons for its decision, or it may have based its decision on an important factual error regarding the Claimant's capacity to work. However, after examining the General Division decision, the documents filed with the Tribunal and the parties' submissions at the Appeal Division hearing, I am not persuaded that the General Division made any errors. The appeal is therefore dismissed.

GROUNDS OF APPEAL

[5] 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. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) made an error in law; or
- d) based its decision on an important factual error.¹

The Claimant's grounds of appeal are examined in this context below.

ISSUES

[6] Did the General Division make an error in law by giving inadequate reasons for its decision?

[7] Did the General Division base its decision on an important factual error regarding the Claimant's capacity to work?

ANALYSIS

Reasons for decision

[8] The DESD Act says that the General Division must give written reasons for its decision.² The Supreme Court of Canada teaches that written reasons must be sufficient for the reader to know what decision was made, why it was made, and to enable judicial review of the decision. Reasons for a decision must be justifiable, transparent and intelligible. The decision should be

¹ This paraphrases the grounds of appeal set out in s. 58(1) of the DESD Act

² DESD Act s. 53(2)

read as a whole and in context, and demonstrate that the tribunal grappled with the issues necessary to dispose of the appeal.³

[9] In addition, this court instructs that it would be improper to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.⁴

[10] The failure to provide sufficient reasons for a decision can be an error in law.⁵ This is one of the grounds of appeal that the Appeal Division can consider.

[11] The Claimant says that the General Division made such an error because it failed to some of the evidence that was presented, including witness statements regarding when the Claimant stopped working, and her own testimony in this regard.

[12] However, when the General Division is read as a whole, its reasons are sufficient. The decision clearly states that the Claimant must prove that she met the test to be disabled before the end of the Minimum Qualifying Period (MQP- which is December 31, 2015).⁶ It summarized the evidence, including

- a) that the Claimant owns a convenience store business;
- b) that before the car accident she worked very long hours at this business;
- c) that after the car accident she worked shorter hours;
- d) that she has a number of ongoing symptoms that limit her physically;
- e) that on the questionnaire she completed for the disability pension she wrote that she worked part-time in 2017, and that she didn't know why she wrote this if she stopped working in 2015; and

³ *Newfoundland and Labrador Nurses Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62

⁴ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65

⁵ *Doucette v. Canada (Minister of Human Resources Development)*, 2004 FCA 292

⁶ General Division decision at para. 3

- f) the Claimant's psychiatrist and family doctor both wrote that the Claimant worked at this business after December 31, 2015;

[13] The decision does not refer to two unsworn witness statements that say that the Claimant stopped working in 2015. However, it is not necessary for a decision to refer to each and every piece of evidence that is presented. The General Division is presumed to have considered all of the evidence.⁷ Nothing presented to the Appeal Division rebuts this presumption.

[14] The General Division decision explains why it gave more weight to the medical documents than the Claimant's testimony – the oral evidence was inconsistent with the written evidence,⁸ the Claimant's income was similar in 2015 to years before the car accident,⁹ and the Claimant was evasive when answering questions about when she stopped working.¹⁰

[15] The General Division made no error in law. The appeal fails on this basis.

Important factual error

[16] Another ground of appeal that the Appeal Division can consider is whether the General Division based its decision on an important factual error. To succeed on this basis, the Claimant must prove three things:

- a) that a finding of fact was made in error;
- b) that the finding was made perversely, capriciously, or without regard for the material that was before the General Division; and
- c) that the decision was based on this finding of fact.¹¹

[17] The Claimant argues that the General Division based its decision on an important factual error because it failed to consider evidence that she stopped working in October 2015. However, the General Division decision refers to the Claimant's testimony and that of her representative

⁷ *Simpson v. Canada (Attorney General)*, 2012 FCA 82

⁸ General Division decision at para. 15

⁹ General Division decision at para. 18

¹⁰ General Division decision at para. 14

¹¹ *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319

(husband) that she stopped working at that time.¹² Although the decision does not specifically refer to the witness statements that support her legal position, it is not required to do so. It is not necessary to mention every piece of evidence in a decision.

[18] The decision also explains why it gave less weight to this evidence than to the written medical reports. Therefore, there was an evidentiary basis for its finding of fact that the Claimant had some capacity to work at the MQP. This finding of fact was not made in error.

[19] The appeal fails on this basis.

[20] Finally, it is for the General Division to receive evidence from the parties and weigh it to reach a decision. It is not for the Appeal Division to reweigh the evidence to reach a different conclusion.¹³ The appeal therefore cannot be allowed because the Claimant disagrees with how the General Division weighed the evidence before it.

CONCLUSION

[21] I understand that the Claimant is very unhappy with the outcome of her appeal. However, an appeal cannot be allowed based on sad circumstances or my sympathy for the Claimant's condition.

[22] The appeal must be dismissed.

Valerie Hazlett Parker
Member, Appeal Division

HEARD ON:	February 25, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. M., Appellant Viola Herbert, Representative for

¹² General Division decision at paras. 3, 11

¹³ *Simpson*, above

	the Respondent
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