



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. T. v Minister of Employment and Social Development*, 2020 SST 204

Tribunal File Number: AD-20-69

BETWEEN:

E. T.

Appellant
(Claimant)

and

Minister of Employment and Social Development

Respondent
(Minister)

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Neil Nawaz

DATE OF DECISION: March 4, 2020

DECISION ON AGREEMENT

BACKGROUND

[1] The Claimant was born in Hungary and moved to Canada in 1998. She completed some English-as-a-second-language training and found work in factories and restaurants. In 2012, she slipped on ice and fractured her wrist.

[2] In October 2015, she applied for a Canada Pension Plan disability pension, claiming that she could no longer work because of wrist pain and depression. The Minister refused the application. The Claimant appealed this refusal to the General Division of the Social Security Tribunal, which dismissed the appeal.

[3] The Claimant applied for leave to appeal from the Appeal Division. At that point, the Minister conceded that the General Division had committed an error by failing to give sufficient consideration to the Claimant's mental illness. The issue then became what the appropriate remedy should be. The Minister had already recommended that the matter be returned to the General Division for a new hearing. The Claimant's representative asked the Appeal Division to give the decision that, in her view, the General Division should have given and find her client disabled.

[4] The Appeal Division declined to return the matter to General Division and instead rendered a decision on the merits—but it found that the Claimant was not disabled. The Claimant then applied for judicial review of that decision. In January, the Federal Court of Appeal found that the Appeal Division had acted unreasonably when it decided the merits of the case without first giving the Claimant and her representative an opportunity to make submissions.¹

[5] The Court returned this matter to the Appeal Division and directed it to allow the parties an opportunity to make further submissions. I called a settlement conference for March 3, 2020 and, at that conference, the parties came to a verbal agreement.²

¹ *Toth v Attorney General of Canada*, 2020 FCA 8.

² This verbal agreement was memorialized in an audio recording.

AGREEMENT

[6] The parties to this appeal have now requested that the Appeal Division make a decision pursuant to Section 18 of the *Social Security Tribunal Regulations*.

[7] The parties agree that the appeal should be allowed on the basis that the General Division based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it. Specifically, the General Division failed to consider the impact of the Claimant’s mental illness on her capacity regularly to pursue any substantially gainful occupation.

[8] Pursuant to section 59(1) of the *Department of Employment and Social Development Act*, the Appeal Division hereby allows the appeal and gives the decision that the General Division should have given. In particular, the Appeal Division finds that the Claimant became disabled, within the meaning of section 42(2)(a) of the *Canada Pension Plan*, as of October 2015, the last time she held a job.

[9] According to section 69 of the *Canada Pension Plan*, payments start four months after the date of disability. The Claimant’s disability pension therefore begins as of February 2016.

[10] The appeal is hereby allowed in accordance with the agreement.



Member, Appeal Division

REPRESENTATIVES:	Alexandra Victoros, for the Appellant Hilary Perry, for the Respondent
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