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

Citation: *R. A. v Minister of Employment and Social Development*, 2020 SST 213

Tribunal File Number: AD-19-865

BETWEEN:

R. A.

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: March 6, 2020

Canada

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Claimant has training as an industrial engineer and worked for many years in newspaper production. He was laid off in 2009 and later worked as a tree surveyor for the X. In August 2015, he suffered a stroke that left him partially paralyzed. He has not worked since then, and he is now 63 years old.

[3] In November 2017, the Claimant applied for Canada Pension Plan (CPP) disability benefits, claiming that he could no longer work because of restricted left-sided movement, impaired motor skills, laboured speech, reduced vision, sleep apnea, and depression and anxiety.

[4] The Minister refused the application because, in its view, the Claimant had not shown that he suffered from a "severe and prolonged" disability during his minimum qualifying period (MQP),[1] which it determined had ended on December 31, 2013.

[5] The Claimant appealed the Minister's refusal to the General Division of the Social Security Tribunal. The General Division held a hearing by teleconference and, in a decision dated November 29, 2019, dismissed the Claimant's appeal, finding insufficient medical evidence that he was disabled as of the MQP. The General Division based its decision on the fact that the Claimant's stroke, which was the basis for his disability claim, came well after his MQP—and the end of his CPP disability coverage.

[6] On December 11, 2019, the Claimant submitted an application for leave to appeal from the Appeal Division. In it, he expressed unhappiness that no one had informed him of the CPP

[1] The MQP is the period in which a claimant last had coverage for CPP disability benefits. Coverage is established by working and contributing to the CPP.

post-retirement disability benefit (PRDB). He said that if he had known about the PRDB earlier, he would have applied for it when it was introduced in January 2019.

[7] It soon became clear that the Claimant was pursuing a separate claim for the PRDB, and Tribunal staff advised him to withdraw his leave to appeal application. He did so, but then indicated that he wished to pursue an appeal of the General Division decision after all. The Tribunal reinstated his leave to appeal application and asked him to provide reasons for appealing.

[8] In a letter dated January 15, 2020, the Claimant alleged that the General Division had not adequately addressed his obesity, which he said was a significant factor in his inability to work before 2014. He noted that, when he was dismissed from his newspapering job, he weighed more than 400 pounds, which contributed to his sleep apnea and ultimately led to his stroke. He claimed that his weight "drastically" reduced his chances of being hired by other companies.

[9] On February 11, 2020, the Tribunal asked the Claimant to provide additional written reasons for his appeal. To date, the Tribunal has yet to receive any response.

[10] I have reviewed the General Division's decision against the underlying record. I have concluded that the Claimant has not put forward any grounds of appeal that would have a reasonable chance of success.

ISSUE

[11] 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 error of fact.[2]

[12] An appeal can proceed only if the Appeal Division first grants leave to appeal.[3] At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.[4]

---

[2] The formal wording for these grounds of appeal is found in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).
[3] DESDA, sections 56(1) and 58(3).
[4] DESDA, section 58(2).

This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.[5]

[13] I have to decide whether the Claimant has raised an arguable case.

ANALYSIS

[14] The Claimant maintains that the General Division ignored a significant aspect of his argument—that his weight contributed to his disability and rendered him effectively unemployable before December 31, 2013.

[15] I do not see an arguable case on this point.

[16] An administrative tribunal with a fact-finding mandate is presumed to have considered all the evidence before it, and it does not have to address each and every element of a party's submissions in its written reasons.[6] The file contains numerous references to the Claimant's weight, including a September 2015 medical report that said he carried 168 kg on a 192-cm frame.[7] There were also many statements from physicians urging the Claimant to lose weight. The General Division may not have specifically referred to these pieces of information in its reasons, but that does not necessarily mean it ignored them.

[17] As it happens, the General Division did make several references to the Claimant's weight in its decision:

> You testified that before your stroke you were **overweight** but in good condition and "strong as an ox."[8]
>
> [Dr. Hanna] diagnosed you with stroke (with left-sided weakness and dysfunction), hypertension, sleep apnea, **obesity** and gastroesophageal reflux disease.[9]

[5] *Fancy v Canada (Attorney General)*, 2010 FCA 63.
[6] *Simpson v Canada (Attorney General)*, 2012 FCA 82.
[7] CPP medical report by Dr. Vinjamuri Chari, physiatrist, dated September 4, 2015, GD2-396.
[8] General Division decision, paragraph 8.
[9] General Division decision, paragraph 10.

> You testified that your reflux medical problem has resolved through a **diet** program.[10]
>
> [Emphasis Added]

It is clear from these passages that the General Division was aware of the Claimant's excess weight, as well as his argument that his excess weight contributed to his impairment.

[18] Of course, a finding of disability depends on many factors. A claimant's weight may be one of them, but far more important is what the claimant was actually near the end of the MQP. In this case, General Division came to its decision for several reasons, including the Claimant's admission that he was actively looking for work in 2012 and 2013. The Claimant's weight may well have contributed to his stroke, but that does not change the fact that the stroke occurred more than 18 months after his MQP.

[19] The Claimant may not agree with the General Division, but it was within its authority to sort through the evidence, assign weight to it, and make defensible findings of fact. The Federal Court of Appeal has stated:

> Assigning weight to evidence, whether oral or written, is the province of the trier of fact. Accordingly, a court hearing an appeal or an application for judicial review may not normally substitute its view of the probative value of evidence for that of the tribunal that made the impugned finding of fact.[11]

In its role as fact finder, the General Division should be given some leeway in how it assesses the evidence. Here, I see no reason to interfere with the General Division's conclusion that the Claimant did not have a severe and prolonged disability as of December 31, 2013.

CONCLUSION

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

---

[10] General Division decision, paragraph 11.
[11] *Simpson*, paragraph 10.

Member, Appeal Division

REPRESENTATIVE:	J. A., for the Applicant