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

Citation: *B. W. v Minister of Employment and Social Development*, 2020 SST 522

Tribunal File Number: GP-20-207

BETWEEN:

B. W.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Income Security Section

Decision by: Virginia Saunders

Date of decision: March 18, 2020

DECISION

[1] The Claimant is B. W.. She applied to rescind or amend a Social Security Tribunal decision of September 11, 2019. I am dismissing her application. These are my reasons.

OVERVIEW

[2] The Claimant applied for a *Canada Pension Plan* (CPP) disability pension in October 2017. The Minister denied the application, and the Claimant appealed to the Social Security Tribunal. I heard the appeal in August 2019.

[3] On September 11, 2019, I dismissed the appeal because I decided the Claimant was not incapable regularly of pursuing any substantially gainful occupation on or before December 31, 2016, the end of her Minimum Qualifying Period.

[4] The Claimant filed this application to rescind or amend the September 2019 decision. I did not think a further hearing was required because I had all the information I needed to fairly consider her application. Therefore I decided the application based on the documents and submissions already filed.[1]

THE ISSUE IN THIS APPEAL

[5] I can rescind or amend the September 2019 decision if the Claimant presents a new material fact that could not have been discovered at the time of the original hearing with the exercise of reasonable diligence.[2]

[6] I have to decide if the Claimant has satisfied this test.

ANALYSIS

The Claimant has not presented a new material fact

[7] The Claimant has to prove on a balance of probabilities that the evidence filed in support of her application to rescind or amend establishes a new material fact. A new material fact is one

[1] This is allowed by section 28 of the *Social Security Tribunal Regulations*.
[2] Subsection 66(1)(b) *Department of Employment and Social Development Act*

that existed at the time of the hearing, and could reasonably be expected to have affected the result.[3]

[8] The Claimant says the new material fact is an MRI of her lumbar spine, dated September 22, 2019.[4] Because the MRI was taken just three weeks after the hearing, I will assume it shows the Claimant's medical condition at the hearing date. So although the MRI results did not exist at that time of the hearing, the condition they revealed likely did.

[9] However, I do not think this evidence could reasonably be expected to have affected the outcome of the hearing. My decision in September 2019 concerned the Claimant's ability to work when her Minimum Qualifying Period ended. I based the decision on evidence showing that, while the Claimant had back pain and degenerative changes in the lower lumbar spine, her main limitations were with standing and walking. I was not satisfied that she could not have tried sedentary work at December 31, 2016.[5]

[10] The 2019 MRI is the first one the Claimant had of her lumbar spine. It showed multilevel degenerative disc changes, most significantly at L4-5 where there was severe nerve root compression.[6] X-rays that were already in the file, which I considered when making my September 2019 decision, noted degenerative changes but not severe nerve root compression.[7]

[11] It is possible that if the Claimant had had an MRI before December 2016, it would have revealed nerve root compression. But that is not important. What is important is her ability to work up to December 31, 2016.[8] Whatever might have been wrong with the Claimant's spine, the rest of the evidence showed that any limitations caused by her back pain did not prevent her from earning a living at some type of job up to December 31, 2016. That is why I reached the

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[3] *Canada (Attorney General) v. Macrae*, 2008 FCA 82. This decision was made under subsection 84(2) of the CPP, which has since been repealed and replaced with paragraph 66(1)(b) of the *Department of Employment and Social Development Act*. The new provision contains part of the test set out in *Macrae*. However, since it did not change the law in any significant way, the rest of the test still applies.
[4] In the application to rescind or amend, the Claimant referred to an MRI that she said was already in the Tribunal's possession. The document was part of the Claimant's application for leave to appeal, which is a separate proceeding in the Tribunal's Appeal Division. The document was copied to this file and is called RA1A.
[5] Tribunal decision, September 11, 2019, paragraphs 13 to 23
[6] RA1A
[7] March 13, 2013, GD2-153-154; July 11, 2018, GD1-39-40
[8] *Taker v. Canada (Attorney General),* 2012 FCA 39

decision I did. It is why an MRI showing her condition in 2019 could not reasonably be expected to have changed the result.

CONCLUSION

[12] The Claimant has not presented a new material fact. As a result, I did not consider if it could not have been discovered at the time of the hearing with the exercise of reasonable diligence.

[13] The application to rescind or amend is dismissed.

Virginia Saunders
Member, General Division - Income Security