



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. R. v Minister of Employment and Social Development*, 2020 SST 300

Tribunal File Number: AD-20-80

BETWEEN:

**J. R.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: **April 9, 2020**

## **DECISION AND REASONS**

### **DECISION**

[1] The appeal is dismissed.

### **OVERVIEW**

[2] J. R. (Claimant) completed high school. He worked for a number of years in different jobs, then ran his own window cleaning business. He closed the business and stopped working in 2015. He applied for a Canada Pension Plan disability pension and claimed that he was disabled by depression, anxiety and asthma.

[3] The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division allowed the appeal and decided that the Claimant was disabled in 2015.

[4] The Minister appealed this decision to the Tribunal's Appeal Division. It allowed the appeal and referred the matter back to the General Division for reconsideration. The General Division then decided that the Claimant was not disabled because he had not followed reasonable treatment recommendations which would be expected to improve his condition.

[5] Leave to appeal this General Division decision to the Tribunal's Appeal Division was granted on the basis that the General Division may have based its decision on an important factual error regarding the Claimant's refusal to follow treatment recommendations.

[6] I have now considered the documents filed with the Appeal Division for this appeal, the General Division decision, the documents filed with the General Division and listened to the relevant parts of the recording of the last General Division hearing. After considering all of this, I am not satisfied that the General Division based its decision on any factual error. The appeal is therefore dismissed.

### **PRELIMINARY MATTER**

[7] This appeal was decided on the basis of the documents filed with the Tribunal for the following reasons:

- a) the written record is complete;
- b) the parties have filed written submissions that clearly set out their legal positions;
- c) When leave to appeal to the Appeal Division was granted, a date was set for a teleconference hearing of the appeal. The Claimant later wrote to the Tribunal and stated that he did not wish to attend a hearing, and requested that the decision be made based on the documents filed with the Tribunal;<sup>1</sup>
- d) The *Social Security Tribunal Regulations* require that appeals be concluded as quickly as the circumstances and considerations of fairness and natural justice permit;<sup>2</sup>

## ISSUE

[8] Did the General Division base its decision on an important factual error regarding the Claimant's refusal to follow reasonable treatment recommendations?

## ANALYSIS

[9] 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

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<sup>1</sup> ADN4-1

<sup>2</sup> *Social Security Tribunal Regulations* s. 3(1)

d) based its decision on an important factual error.<sup>3</sup>

### **Important factual error**

[10] The Claimant argues that the General Division based its decision on an important factual error. To succeed on this basis, the Claimant must prove three things:

- a) that the finding of fact was erroneous (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.<sup>4</sup>

[11] The General Division found as fact that the Claimant had unreasonably refused to follow treatment recommendations.<sup>5</sup> There was an evidentiary basis for this conclusion, including the following:

- a) in May, 2014 the Claimant stopped taking an anti-depressant after one day;
- b) in December 2016 the Claimant's doctor reported that the Claimant was not interested in taking medication;
- c) the Claimant's doctor recommended that he see a psychiatrist, but the Claimant had not done so prior to the General Division hearing;
- d) the Claimant was again referred to a psychiatrist just before the General Division hearing;

Therefore, it was not made in error.

[12] The Claimant also argues that the General Division failed to consider medical documents that were filed with the Tribunal just before that hearing. These documents included a personal

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<sup>3</sup> This paraphrases the grounds of appeal set out in s. 58(1) of the DESD Act

<sup>4</sup> DESD Act s. 58(1)(c)

<sup>5</sup> General Division decision at para. 21

health questionnaire.<sup>6</sup> These documents are not specifically referred to in the General Division decision. However, at the start of the hearing the Tribunal Member confirmed that all parties had copies of these documents and stated that they would be considered when making the decision in this appeal.<sup>7</sup> Consequently, I am satisfied that the General Division turned its mind to this evidence.

[13] Also, the General Division is presumed to have considered all of the material that is before it, and need not mention each and every piece of evidence in its decision.<sup>8</sup> The decision summarizes the relevant evidence and explains why it made the finding of fact regarding the Claimant's refusal to follow treatment recommendations to take medication and to see a psychiatrist.

[14] The General Division made no error in this regard. The appeal fails on this basis.

#### **New evidence**

[15] The Claimant also presented new evidence to the Tribunal being a letter from his doctor and a copy of a prescription. However, the presentation of new evidence is not a ground of appeal under the DESD Act. New evidence is not generally permitted on an appeal.<sup>9</sup> Therefore, the appeal cannot succeed on the basis of the Claimant's presentation of new evidence.

[16] The General Division did not overlook or misconstrue any important information. There is no suggestion that the General Division made any error in law or failed to provide a fair process.

#### **CONCLUSION**

[17] The appeal is therefore dismissed.

Valerie Hazlett Parker

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<sup>6</sup> IS12

<sup>7</sup> General Division hearing recording at approximate minute 5:50, although the exact time may vary depending on what device is used to listen to the recording

<sup>8</sup> *Simpson v. Canada (Attorney General)*, 2012 FCA 82; *Canada v. South Yukon Forest Corporation*, 2012 FCA 165

<sup>9</sup> *Canada (Attorney General) v. O'Keefe*, 2016 FC 503

Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
SUBMISSIONS:	J. R., Appellant  Susan Johnstone, Representative for the Respondent