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

Citation: *R. P. v Minister of Employment and Social Development*, 2020 SST 436

Tribunal File Number: GP-19-1409

BETWEEN:

R. P.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Anne S. Clark

Teleconference hearing on: March 26, 2020

Date of decision: April 17, 2020

Canada

DECISION

[1] The appeal is dismissed. The Claimant's appeal for disability benefits under the *Canada Pension Plan* (CPP) cannot proceed because a previous Tribunal Member already decided that he did not meet the eligibility requirements for a CPP disability benefit by December 31, 2012.

[2] I reviewed all file material before the hearing. After hearing the Claimant's testimony and the parties' submissions, I was able to inform the parties of my decision at the end of the hearing. The Claimant has pursued disability benefits for many years and described how he is struggling financially and emotionally. I was able to make my decision immediately and I felt it would be unfair to make the Claimant wait for several weeks more to learn that his appeal would not proceed. This decision confirms my oral decision and gives my reasons for denying the Claimant's appeal.

OVERVIEW

[3] In June 2011, the Claimant applied for Canada Pension Plan (CPP) disability benefits. The Minister denied the application and the Claimant appealed. The Tribunal held a hearing on February 10, 2015. The General Division (GD) of the Tribunal denied the appeal and found the evidence did not show the Claimant had a severe and prolonged disability by December 31, 2012, which was the end of the minimum qualifying period (referred to as the MQP)[1]. That was the last date the Claimant could have qualified for CPP disability benefits.

[4] The Claimant applied for leave to appeal to the Appeal Division (AD) and the AD denied the application in June 2015[2].

[5] In January 2019, the Claimant applied for CPP disability benefits and said he was still unable to work because of his disability. The Minister denied the application stating that issue was already decided in a final decision of the Tribunal. The Claimant appealed to the Tribunal.

[6] In a letter before the hearing and again at the hearing, I asked the Claimant to address whether he thought there would be an injustice if I applied the rules of *res judicata.* I asked him to

[1] See the GD decision dated June 5, 2015 at GD2-94
[2] See the AD decision dated July 10, 2015 at GD2-88

describe what the injustice would be. His said it would be unfair because he has no financial help even though he has been unable to work. He feels he was disabled when the GD denied his appeal in 2012. He feels it was unfair for the GD to deny his appeal then and he should have another chance to have an appeal because he is still disabled by the same conditions. He said his disability has worsened and it would be unfair for me to refuse to rehear his appeal because he is still unable to work. He receives other benefits because of his disability and has evidence of depression and anxiety. He said his doctor does not understand why he was denied.

PRELIMINARY MATTERS

[7] The Tribunal cannot decide a case that was already decided. This rule is called *res judicata*. It applies when the parties to the appeal are the same; the issues are the same; and, the earlier decision was final. When the rule applies, a tribunal cannot make another decision on the same issues. There may be an exception to the rule.

[8] The information on file shows the Claimant's appeal meets the criteria to have *res judicata* apply. The parties are the same; the issue is the same and there was a final decision. However, I must also decide if following the rule could cause an injustice. If that is the case, I have the authority to make an exception and hear the appeal even though it is about the same issue.

[9] The issues about *res judicata* are the first issues to be decided in this appeal. The first question is whether *res judicata* should apply. If *res judicata* should not apply, I would then be able to address whether the Claimant had a disability as defined by the CPP by the end of the MQP. I scheduled a hearing by teleconference for March 18, 2020 to hear evidence and submissions on the question of whether *res judicata* should apply. This was to make sure the parties had full opportunity to submit evidence and make submissions on the question of whether there would be a real injustice if *res judicata* prevents the appeal from proceeding.

[10] Before the hearing, I informed the parties I would separate the issues. We would first hold a hearing to determine whether the appeal could proceed to the second issue or if I must dismiss it because the issue was already decided. If my decision was that the appeal could proceed I would then schedule a second hearing for the parties to submit evidence about the issue

of whether the Claimant had a severe and prolonged disability when he last qualified for CPP disability benefits.

ISSUE

[11] Does this appeal meet the criteria for *res judicata* to apply?

[12] If so, should I make an exception and refuse to apply *res judicata* because it would cause an injustice?

ANALYSIS

[13] I have decided this appeal meets the criteria for *res judicata* to apply. I have also decided the circumstances do not exist for me to refuse to apply *res judicata*.

When *res judicata* applies

[14] Three requirements must exist for the doctrine of *res judicata* to prevent the Tribunal from reopening issues on appeal[3]. They are that:

a) The issue must be the same as the one decided in the prior decision;

b) The prior decision was a final decision; and

c) The parties in the current appeal are the same as in the previous proceeding.

The requirements exist in this appeal

[15] The issue in the previous appeal was whether the Claimant was disabled as defined by the CPP on or before December 31, 2012. The Claimant's MQP has not changed since the previous appeal. That means the issue in the current appeal is the same as the issue in the previous appeal.

[16] The GD issued a decision on June 5, 2015 in the previous appeal. The GD decided the Claimant did not have a severe and prolonged disability as defined by the CPP by December 31, 2012. The AD denied the Claimant's application for leave to appeal. This means the GD decision

[3] *Danyluk v. Ainsworth Technologies Inc.,* [2001] SCC 44

dated June 5, 2015 is a final decision on the question of whether the Claimant had a disability as defined by the CPP by December 31, 2012.

[17] Finally, the Claimant and the Minister were the parties in the first appeal and in this appeal.

Applying *res judicata* involves some discretion

[18] Even though the current appeal meets the three requirements for *res judicata* to apply, I can still decide to allow the appeal to proceed. The law allows me some discretion but I cannot use that discretion randomly. In other words, I cannot refuse to apply the rules for just any reason. My objective must be to ensure the application of *res judicata* promotes the orderly administration of justice, but not at the cost of real injustice[4].

[19] The Supreme Court of Canada set out a list of factors to consider about the previous appeal when addressing this question. They include, but are not limited to: (a) the wording of the statute that gave the authority for the previous decision; (b) the purpose of the legislation; (c) the availability of an appeal; (d) the availability of administrative safeguards; (e) the expertise of the decision-maker; (f) the circumstances that gave rise to the previous proceeding; and (g) any potential injustice[5].

[20] The Supreme Court of Canada directs that the list is not meant to be a complete checklist. I should not apply the list mechanically or consider and apply only the factors listed[6]. The factors may be different in different cases and there is an overriding principle of fairness. The most important factor I must consider is whether, considering all of the circumstances in the prior appeal and in the current appeal, the application of *res judicata* (leaving the GD decision as the final decision) would work an injustice[7].

[21] I reviewed the file material from the previous appeal. The provisions of the CPP that applied to the Claimant's prior appeal were the same as those that apply to the current appeal. The Claimant

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[4] *Danyluk, supra* at paragraph 67
[5] *Danyluk, supra*
[6] *Penner v. Niagra (Regional Police Services Board)*, 2013 SCC 19 at paragraph 38
[7] *Danyluk, supra* at paragraph 80

represented himself and dealt with the Tribunal and administrative staff directly to pursue his appeal. In that appeal, his submissions and evidence demonstrated that he knew the case he had to meet.

[22] The GD had the authority to conduct the appeal and gave the Claimant opportunities to obtain and present evidence. The hearing was in person. The Tribunal heard from the Claimant and reviewed the record and submissions from the parties. The Tribunal Member issued a written decision explaining her reasons. The process allowed for an application for leave to appeal from the GD decision to the AD. The Claimant applied for leave to appeal. The AD denied his application.

[23] The Claimant's request is that I rehear his appeal because he is still disabled and he disagrees with the decision the GD made in 2015. He did not identify any facts arising from the previous appeal that would show an injustice if I do not allow his appeal to proceed. I asked the Claimant to describe the potential injustice he believes would occur. He said it was unfair for the GD to deny his previous appeal and he feels he should be able to appeal again because he is still disabled and needs financial assistance.

[24] The Claimant had the opportunity to present his case and fully participate in the appeal before a duly authorized member of the Tribunal. The Claimant is asking me to rehear his appeal and allow him another chance to prove his case. I understand what he wants and am sympathetic to his position but I cannot do what he is asking. I find there are no circumstances that would cause an injustice if I apply the doctrine of *res judicata* to this appeal.

CONCLUSION

[25] The GD decided in June 2015 that the Claimant did not have a severe disability by the end of his MQP. I cannot rehear or decide that issue again. The principles of *res judicata* apply and given the entirety of the circumstances, the application of *res judicata* in this case would not work an injustice.

[26] The appeal is dismissed.

Anne S. Clark
Member, General Division - Income Security