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

Citation: *M. A. v Minister of Employment and Social Development*, 2020 SST 335

Tribunal File Number: AD-19-295

BETWEEN:

M. A.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Kate Sellar

DATE OF DECISION: April 17, 2020

Canada

DECISION AND REASONS

DECISION

[1] I dismiss the appeal. The General Division did not make an error.

OVERVIEW

[2] M. A. (Claimant) was educated in India and came to Canada in 2003. She studied English and then started working as a packager. She had an injury and stopped working in July 2012. She was in a car accident in September 2012. She had a second car accident in June 2015.

[3] The Claimant applied for a disability pension under the *Canada Pension Plan* (CPP) in July 2016. The Minister denied the application initially and on reconsideration. The Claimant appealed to this Tribunal. On January 17, 2019, the General Division dismissed the appeal.

[4] The Claimant filed an application for leave (permission) to appeal the General Division's decision. I granted permission for the appeal, finding that there was an arguable case for an error. That is a low threshold.

[5] Now, I must decide whether the General Division made an error under the *Department of Employment and Social Development Act* (DESDA) that would justify allowing the appeal.

[6] I am satisfied that the General Division did not make an error. The appeal is dismissed.

PRELIMINARY MATTERS

[7] On leave to appeal, the Claimant argued that the General Division ignored evidence about the Claimant's visits to her doctor in February and March of 2015. At the beginning of the hearing at the Appeal Division, the Claimant's lawyer confirmed that she was no longer relying on this argument that the General Division ignored evidence. There is no evidence in the record at General Division about these doctor visits that could form the basis for an error of law by the General Division.

ISSUES

[8] The issues are:

1. Did the General Division make an error of law by failing to consider the Claimant's personal circumstances in assessing her work capacity?

2. Did the General Division make an error of law by failing to analyze whether the Claimant had a disability during the period of proration in 2015?

ANALYSIS

Reviewing General Division decisions

[9] The Appeal Division does not hear cases again from the beginning. At the Appeal Division, the focus is on deciding whether the General Division made an error. The only errors the Appeal Division can look at are ones that are listed in the DESDA. One of those errors falls into a category called an "error of law."[1]

Severe disability: the legal tests

[10] To access a disability pension under the CPP, one of the things that a claimant has to show is that the disability is severe.

[11] A claimant's disability is severe when they are incapable regularly of pursuing any substantially gainful occupation on or before the end of the minimum qualifying period (MQP).[2] The MQP is calculated based on the claimant's contributions to the Canada Pension Plan.

[12] In this case, the Claimant had to show that her disability was severe on or before December 31, 2014 (the day her MQP ended). However, because she had some additional contributions to the Canada Pension Plan, she could also qualify for the disability pension if she could show that her disability was severe and prolonged in 2015, on or before February 28 of that year. That is called the "period of proration."

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[1] DESDA, s 58(1)(b).
[2] *Canada Pension Plan*, s 42(2).

[13] Claimants show that their disability is severe by providing evidence about their medical conditions (including the functional limitations they have) and their personal circumstances.[3] The Claimant's age, level of education, language proficiency and past work and life experience make up the Claimant's "personal circumstances." They inject a sense of the "real world" into the approach for determining whether a claimant has a severe disability.

[14] In some cases, the General Division will consider the claimant's medical conditions (and their functional limitations) along with their personal circumstances and decide that the Claimant is incapable regularly of pursuing any substantially gainful occupation (the disability is severe).

[15] In other cases, the General Division will consider all of these factors and decide that there is some evidence of work capacity (sometimes called "residual capacity"). If there is evidence of some capacity to work, then the Claimant must show that efforts to get and keep work were unsuccessful because of the medical condition (I will refer to that as the "re-employment efforts test").[4]

[16] The Appeal Division has found that the General Division needs to consider the claimant's personal circumstances when deciding whether there is residual capacity for work. Otherwise, a claimant could lose their appeal for failing to meet the re-employment efforts test without the General Division ever having considered whether they were employable in the "real world."[5]

Did the General Division make an error of law in the analysis of work capacity?

[17] The General Division did not make an error of law by failing to assess the Claimant's personal circumstances when deciding whether there was work capacity. The General Division considered the Claimant's personal circumstances, but still decided that the Claimant's disability was not severe within the meaning of the CPP. The General Division could perhaps have done a better job explaining how it ultimately concluded that the Claimant's disability was not severe even though her personal circumstances meant she had barriers to re-employment. However, I am satisfied that the General Division did not make an error.

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[3] The Federal Court of Appeal explains this in a case called *Bungay v Canada (Attorney General)*, 2011 FCA 47.
[4] The Federal Court of Appeal explains this in a case called *Inclima v Canada (Attorney General)*, 2003 FCA 117.
[5] *S.G. v Minister of Employment and Social Development*, 2018 SST 19.

[18] In the analysis about the Claimant's work capacity, the General Division member correctly stated that they needed to consider the Claimant's personal circumstances, and then discussed the facts relevant to that analysis.[6] The General Division member concluded that

> [h]er personal circumstances would negatively affect her ability to seek and, if necessary, retrain for part-time employment. However I have also concluded that the Claimant has a residual capacity to seek and maintain suitable gainful employment within her limitations at the time of her MQP of December 31, 2014.[7]

[19] The Claimant argues[8] that the General Division concluded that she did not meet the definition for a severe disability without ever really considering her personal circumstances. The Claimant argues that General Division applied the real-world analysis and considered her personal circumstances only after already reaching a conclusion that her disability was not severe. The Claimant argues that it is difficult to reconcile the General Division's two key findings here: that she both has residual capacity to work, and that due to her personal circumstances, she is hampered from finding suitable employment. The Claimant relies on the idea that there are other cases in which claimants with similar barriers to employment have been found to have a severe disability.[9]

[20] The Minister argues[10] that the General Division considered both the evidence about the medical conditions and the personal circumstances, and then reached the conclusion that the Claimant had a capacity to work. As a result, the Minister argues that the Claimant's concern is really about the way the General Division applied the facts to the law. The Appeal Division does not get apply the facts to the law all over again and reach a different conclusion.[11]

[21] On leave to appeal, I found that there was an arguable case for an error. I found that it was possible that the General Division did not explain enough about how the Claimant's

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[6] General Division decision, para 9.
[7] General Division decision, para 9.
[8] AD1-15 and AD3-5.
[9] The Claimant relies on *R.S. v Minister of Employment and Social Development*, 2018 SST 512 for example, where the Claimant's personal circumstances along with her medical conditions meant that she met the definition for a severe disability within the meaning of the CPP.
[10] AD2-8 to 10.
[11] There are several cases that explain that idea, including *Garvey v Canada (Attorney General)*, 2018 FCA 118.

personal circumstances were a barrier to seeking or retraining for part-time employment, and yet the Claimant still did not meet the threshold for having a disability that was severe under the CPP.

[22] I have heard the arguments from both parties about whether the General Division made an error of law. Although the General Division could have expressed itself more clearly, the General Division's reasons are sufficient for the Appeal Division to understand the basis for the decision. I am satisfied that the General Division did not make an error.

[23] The General Division reviewed the medical evidence and the evidence about functional limitations. The General Division decided that the Claimant did not have a serious health condition based on that evidence. I reach that conclusion for two reasons.

[24] First, the analysis of the medical evidence starts with a heading that says, "Claimant did not show a serious health condition during the MQP or the period of proration."[12]

[25] Second, the General Division's analysis of the evidence supports its conclusion that the Claimant did not show a serious health condition at the time of the MQP. The CPP medical report described the main physical condition as arising from a car accident in 2015, after the end of the MQP and the period of proration. The X-rays of the Claimant's lumbar spine showed nothing significant a month after the end of the prorated period. The General Division decided that the mental health condition also arose many years after the end of the MQP.

[26] If there was no serious medical condition that caused functional limitations impacting the Claimant's capacity to work at the time of the MQP, it follows that the Claimant cannot meet the test for a severe disability, regardless of her personal circumstances

[27] The General Division considered the medical evidence (and functional limitations) and ended that section of the analysis by concluding that the Claimant did not meet the test for a severe disability. The General Division reached that conclusion because the main medical conditions arose after the end of the MQP (the injuries from the 2015 car accident). The General Division then went on to:

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[12] General Division decision, heading before para 7.

- consider the Claimant's personal circumstances and decide they represented a barrier to reemployment;
- note that the Claimant nonetheless still had a residual capacity to work; and
- decide that the Claimant did not meet the re-employment efforts test.

[28] In my view, although the General Division could have expressed the decision more clearly, there is no error of law.

[29] I granted leave here because it seemed that the General Division might have failed to describe how it was that the Claimant's barriers to real-world employability were not enough to meet the overarching test for a disability pension. On a closer review of the decision, I see that the General Division relied more heavily on the lack of medical conditions resulting in functional limitations at the time of the MQP. In light of the way that the General Division analyzed the medical evidence from the MQP, it is more clear to me now that the Claimant's personal circumstances, although they were a barrier to employment, did not weigh heavily enough for the General Division to find that there was a severe disability.

[30] The General Division considered the Claimant's personal circumstances, but they were not enough to overcome the deficits in the medical evidence about the Claimant's ability to work. Ultimately, there is no error of law.

Did the General Division make an error of law about the Claimant's eligibility in 2015?

[31] The General Division did not make an error of law about the Claimant's possible eligibility in 2015.

[32] The Claimant argues[13] that the General Division did not asses whether the Claimant's disability was severe in 2015 (up to February 28, 2015) which was the period of proration. Although the General Division correctly identified that the Claimant had until February 28,

[13] AD3-4.

2015, the analysis focusses only on whether the Claimant met the test for a severe disability during the MQP, not the period of proration.

[33] The Minister argues[14] that the General Division did not make an error of law. There was no disabling event during the period of proration (January 1, 2015 and February 28, 2015) for the General Division to discuss and analyze in its decision. The General Division decided that the disability was not severe and prolonged as of the end of the MQP. The chronic pain resulting from the car accident in June 2015 was after the period of proration. The Claimant stopped working in July 2012 because of an injury. The date the Claimant said that she became disabled was July 1, 2012.

[34] In my view, the General Division did not make an error. The General Division concluded that the Claimant did not meet the test for a severe disability during the MQP. The Claimant has not pointed to any evidence that was before the General Division that referenced a change in the Claimant's condition during the two-month period of proration in 2015 that required further analysis. The General Division concluded that

> much of the Claimant's claim of chronic pain resulted from a motor vehicle accident in June 2015, which is after the date of her MQP of December 31, 2014, **and after a possible prorate date of February 28, 2015**…[15] **(emphasis added)**

CONCLUSION

[35] I dismiss the appeal. The General Division did not make an error.

Kate Sellar
Member, Appeal Division

HEARD ON:	December 10, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Karla Carranza, Representative for the Appellant

[14] AD2-10.
[15] General Division decision, para 12.

	Viola Herbert, Representative for the Respondent