



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. L. v Minister of Employment and Social Development*, 2020 SST 359

Tribunal File Number: AD-20-108

BETWEEN:

E. L.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: April 22, 2020

DECISION AND REASONS

DECISION

[1] The appeal is allowed. The General Division based its decision on important factual errors.

[2] The decision that the General Division should have given is made. The Claimant is disabled and entitled to a Canada Pension Plan disability pension.

OVERVIEW

[3] The Claimant completed high school and a medical office secretary program. She worked in this field for many years. The Claimant stopped working in 2016. She applied for a Canada Pension Plan disability pension and claimed that she was disabled by depression and anxiety.

[4] The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal. It decided that despite her mental health illnesses the Claimant retained some work capacity and so did not have a severe disability.

[5] Leave to appeal this decision to the Tribunal's Appeal Division was granted because the General Division may have based its decision on an important factual error. I have now considered all of the documents filed with the Appeal Division and the General Division. The appeal is allowed because the General Division did base its decision on important factual errors. The decision that the General Division should have given is made; the Claimant is entitled to the disability pension.

PRELIMINARY MATTER

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

- a) The legal issue to be decided is straightforward;

- b) The parties' legal positions are clearly set out in the documents filed with the Tribunal;
- c) The Claimant asks that the appeal be allowed and that the Appeal Division give the decision that the General Division should have given, namely that she is disabled;
- d) The Minister conceded that the General Division based its decision on important factual errors made without regard for all of the evidence that was before it, and asks that the Appeal Division give the decision that the General Division should have given, namely that the Claimant is disabled; and
- e) The *Social Security Tribunal Regulations* require that appeals be concluded as quickly as circumstances and considerations of fairness and natural justice permit.¹

ISSUES

[7] Did the General Division base its decision on an important factual error?

[8] If so, what remedy is appropriate?

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
- d) based its decision on an important factual error.²

¹ *Social Security Tribunal Regulations* s. 3(1)

² This paraphrases the grounds of appeal set out in s. 58(1) of the DESD Act

[10] The Claimant's arguments that the General Division based its decision on important factual errors are considered below.

Important factual errors

[11] One ground of appeal under the DESD Act is 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 a 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.³

[12] The General Division decision finds as fact that the objective evidence does not support disability for all work activity.⁴ It also finds as fact that the medical evidence supports that the Claimant has work capacity.⁵ However, in May 2019, the Claimant's psychiatrist wrote that the Claimant was not capable of returning to any type of employment.⁶ In September 2019, the Claimant's family doctor also wrote that the Claimant had not been well enough in all of 2018 and 2019 to return to work in any capacity.⁷

[13] This evidence is contrary to the findings of fact that the General Division made. The decision does not refer to this evidence. While it is not necessary for the General Division to refer to each and every piece of evidence that is before it,⁸ when the evidence is contrary to the decision reached, the General Division should explain why no weight was given to this evidence. Because it did not mention this evidence, or explain why no weight was given to it, I am satisfied that the General Division made findings of fact in error and without regard for this evidence.

³ DESD Act s. 58(1)(c)

⁴ General Division decision at para. 31

⁵ Ibid. at para. 39

⁶ GD4-30

⁷ GD4-28

⁸ *Simpson v. Canada (Attorney General)*, 2012 FCA 82

[14] The decision was based, at least in part, on these findings of fact. Therefore, the General Division made errors under the DESD Act and the appeal must be allowed.

[15] The Claimant also argues that the General Division based its decision on a number of other important factual errors. However, since I have found that the appeal must be allowed for the reasons set out above, I need not consider the remaining grounds of appeal.

Remedy

[16] The DESD Act sets out what remedies the Appeal Division can give when an appeal is allowed. It is appropriate that the Appeal Division give the decision that the General Division should have given in this case. The reasons for this are as follows:

- a) The written record is complete;
- b) The parties have both requested that the Appeal Division give the decision that the General Division should have given;
- c) The DESD Act states that the Tribunal can decide questions of law and fact necessary to dispose of an appeal;⁹ and
- d) The *Social Security Tribunal Regulations* require that appeals be concluded as quickly as the circumstances and considerations of fairness and natural justice permit.

Analysis

[17] The Claimant's minimum qualifying period (MQP – the date by which the Claimant must prove that she's disabled to receive the disability pension) ends on December 31, 2019.

[18] I have reviewed all of the documents filed with the Appeal Division and the General Division. The medical evidence demonstrates that the Claimant has had mental illness for many years. She has undergone treatment, and followed all treatment recommendations. The mere fact that she did not take medication does not demonstrate that her condition was not severe, only that medication was not prescribed for it. The medical evidence also shows that although the

⁹ DESD Act s. 64

Claimant's treating doctors were optimistic that the Claimant would improve with treatment in 2017,¹⁰ over time and with continued treatment their opinions changed. By 2019, the treating doctors wrote that the Claimant was not capable of work.¹¹

[19] The Claimant also wrote that she was incapable of work. She wrote that she went to therapy for as long as she could afford to, that her condition has worsened due to her family's circumstances and financial strain. In addition, with her functional impairments including an inability to focus and complete tasks, interact professionally, organize, handle conflict and maintain emotional composure she was unable regularly to pursue any substantially gainful occupation.¹² This evidence was not contradicted. I am satisfied that the Claimant worked in spite of her conditions for as long as she was capable of doing so.

[20] The Federal Court of Appeal teaches that to decide whether a claimant is disabled, their medical condition and their personal circumstances must be considered.¹³ The Claimant has training as a medical secretary. Her work experience is only in this field. This limits her ability to obtain work in other areas. In addition, she was 60 years of age at the end of the MQP. This age would also significantly impair her capacity to work. It is also not reasonable to expect her to retrain for different work at this age.

[21] When all of the evidence is considered, I am satisfied that the Claimant's disability is severe. It was severe when she stopped working in 2016, and continued to be severe thereafter.

[22] The Claimant's disability is also prolonged. The Claimant has had mental illness for many years. It has persisted despite treatment. The most recent medical evidence does not suggest that it will improve to any significant degree.

CONCLUSION

[23] The appeal is allowed because the General Division based its decision on important factual errors.

¹⁰ For example, Dr. Severidge GD2-65; Dr. Buchanan GD2-51

¹¹ See medical reports referred to above

¹² GD2-10

¹³ *Villani v. Canada (Attorney General)*, 2001 FCA 248

[24] The decision that the General Division should have given is made. The Claimant is disabled under the *Canada Pension Plan*. She was disabled in June 2016 when she stopped working.

[25] The *Canada Pension Plan* says that payment of the disability pension starts four months after a person becomes disabled.¹⁴ Therefore, payment of the pension starts in October 2016.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	E. L., Appellant Suzette Bernard, Counsel for the Respondent

¹⁴ *Canada Pension Plan* s. 69