



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. J. v Minister of Employment and Social Development*, 2020 SST 528

Tribunal File Number: AD-20-649

BETWEEN:

R. J.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shirley Netten

DATE OF DECISION: June 23, 2020

DECISION AND REASONS

DECISION

[1] I am granting the Claimant's application to rescind or amend the Appeal Division decision of February 14, 2020.

BACKGROUND

[2] In July 2019, the Social Security Tribunal's General Division denied R. J. (the Claimant) entitlement to a Canada Pension Plan (CPP) disability pension. On appeal, the Appeal Division found that the General Division had made a reviewable error of fact. The Appeal Division went on to substitute its decision for that of the General Division, but reached the same conclusion: the Claimant was not entitled to the CPP disability pension.

[3] The Claimant has now applied to rescind or amend the Appeal Division decision, based upon new facts.

AGREEMENT

[4] A settlement conference was held in this matter. The parties reached agreement on several matters, two of which relate to the application to rescind or amend the Appeal Division decision. The parties agree that the Claimant's February 2020 medical reports meet the test for new facts found in section 66 of the *Department of Employment and Social Development Act* (DESDA). The parties further agree that the Appeal Division decision ought to be amended with respect to remedy only, with the matter returned to the General Division for reconsideration.

[5] I accept this agreement on the basis that the outcome is consistent with the evidence and the relevant provisions of the DESDA. The two specialists' reports were dated after the Appeal Division hearing and contain relevant new facts. The Appeal Division considers only the evidence that was before the General Division, when it decides the underlying benefits issue. However, the remedy selected by the Appeal Division in this appeal (to substitute rather than refer back) was substantially influenced by the parties' submissions at the hearing. The parties were not then aware of the two specialists' reports.

[6] In accordance with the parties' agreement, I am amending the Appeal Division decision to remove paragraphs 1, 6, and 15 to 42 (inclusive). I am adding a new paragraph 15, stating "I accept the parties' agreement that this matter be returned to the General Division for reconsideration." I am adding a Conclusion, stating "This appeal is allowed. This matter is returned to the General Division for reconsideration."

[7] Having amended the Appeal Division decision in this way,¹ I further direct the General Division to proceed with its reconsideration without delay. I understand that the parties intend to submit a corrected agreement to the General Division regarding the Claimant's entitlement to the disability pension, under section 18 of the *Social Security Tribunal Regulations*.

CONCLUSION

[8] The Appeal Division decision of February 14, 2020 is amended as described above. The Claimant's appeal is returned to the General Division for reconsideration.

Shirley Netten
Member, Appeal Division

REPRESENTATIVES:	D. Allison, for the Claimant M. Dirnberger, for the Respondent
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¹ When the Appeal Division amends a previous Appeal Division decision, the original Appeal Division decision is not actually corrected, reprinted or republished. The two Appeal Division decisions must be read together to understand the final result.