



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *W. N. v Minister of Employment and Social Development*, 2020 SST 694

Tribunal File Number: AD-20-646

BETWEEN:

**W. N.**

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: August 13, 2020

## **DECISION AND REASONS**

### **DECISION**

[1] The appeal is dismissed.

### **OVERVIEW**

[2] W. N. (Claimant) worked for many years as a team leader and Personal Support Worker. She stopped working after she had surgery on her right shoulder. The Claimant then applied for a Canada Pension Plan disability pension and claimed that she was disabled by her right shoulder condition.

[3] The Minister of Employment and Social Development refused the application. The Claimant appealed the Minister's decision to the Tribunal. The Tribunal's General Division dismissed the appeal. It decided that although the Claimant could not continue to do the physically demanding tasks required of a Personal Support Worker, she still had some capacity regularly to pursue sedentary work.

[4] Leave to appeal this decision to the Tribunal's Appeal Division was granted because the appeal had a reasonable chance of success on the basis that the General Division may have failed to consider what impact her shoulder limitations had on her capacity to perform sedentary work. However, I have now considered all of the written material filed with the Appeal Division, the General Division decision, and portions of the recording of the General Division hearing.<sup>1</sup> I have also listened to the parties' oral arguments. The General Division considered the impact of the Claimant's shoulder condition on her capacity regularly to pursue sedentary work. It made no error. Therefore, the appeal is dismissed.

### **PRELIMINARY MATTER**

[5] At the hearing of the appeal, the Claimant's representative stated that the General Division also failed to provide a fair process because it failed to consider the Claimant's age and the impact this would have on her capacity regularly to pursue any substantially gainful

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<sup>1</sup> At the hearing, the parties agreed that it was not necessary to listen to the entire recording of the General Division hearing

occupation. The representative later withdrew this argument. Therefore, it is not considered in making this decision.

## **ISSUE**

[6] Did the General Division make an error in law because it failed to consider the impact of the Claimant's shoulder condition on her capacity to pursue sedentary work?

## **ANALYSIS**

[7] An appeal to the Tribunal's Appeal Division is not a re-hearing of the original claim. Instead, the Appeal Division can only 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.<sup>2</sup>

The Claimant says that the General Division based its decision on an important factual error because it failed to consider the impact of her shoulder condition on her capacity to do sedentary work. To succeed on this basis the Claimant must prove three things:

- a) that this 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>3</sup>

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<sup>2</sup> This summarizes the grounds of appeal set out in the *Department of Employment and Social Development Act* s. 58(1)

<sup>3</sup> *Department of Employment and Social Development Act* s. 58(1)(c)

[8] The General Division considered the Claimant's limitations because of her shoulder condition. The decision sets out what the Claimant said about her functional limitations, including restrictions with driving, lifting, carrying, dressing and completing household chores. In addition, the Claimant had experience with sedentary work tasks, including making sure that others had their paperwork done.<sup>4</sup>

[9] The General Division also summarized the medical evidence, including that

- a) The physiotherapist wrote that the Claimant had no real limitations with her shoulder;<sup>5</sup>
- b) The family doctor wrote that the Claimant could do only occasional reaching, lifting, carrying, and pushing in November 2019;<sup>6</sup> and
- c) Another doctor wrote that the Claimant was best suited for a sedentary job;<sup>7</sup>

[10] This demonstrates that the General Division considered the Claimant's capacity to complete different tasks in spite of her shoulder condition. There was an evidentiary basis for its finding of fact that she could regularly pursue sedentary employment. Therefore, the General Division made no error.

[11] There is no suggestion that the General Division overlooked or misconstrued any important information.

## **CONCLUSION**

[12] The appeal is therefore dismissed.

Valerie Hazlett Parker  
Member, Appeal Division

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<sup>4</sup> General Division decision at para. 10, 21

<sup>5</sup> General Division decision at para. 12

<sup>6</sup> General Division decision at para. 13

<sup>7</sup> General Division decision at para. 18

HEARD ON:	August 12, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	W. N., Appellant  Tre'Vien Teer, Representative for the Appellant  Susan Johnstone, Representative for the Respondent