



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. O. v Minister of Employment and Social Development*, 2020 SST 793

Tribunal File Number: AD-19-288

BETWEEN:

D. O.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: September 21, 2020

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

[2] The matter is referred back to the General Division for reconsideration.

OVERVIEW

[3] D. O. (Claimant) completed high school and worked for a large corporation. In 2004, she was shot during a home invasion. As a result, the Claimant has a number of mental health illnesses, including post-traumatic stress disorder, depression, and anxiety. She applied for a Canada Pension Plan disability pension and says that she is disabled by her conditions. The Minister of Employment and Social Development granted the application, and decided that the Claimant was disabled 15 months before the date of the application.

[4] The Claimant appealed the Minister's decision regarding when the disability pension should start to the Tribunal. She says that because of her conditions she was incapable of forming or expressing an intention to make an application from the date of the injury until she did so. The Tribunal's General Division summarily dismissed the appeal. It decided that the appeal did not have a reasonable chance of success based on the documents that had been filed with the Tribunal.

[5] The Claimant appealed the General Division's decision to the Tribunal's Appeal Division. The appeal is allowed because the General Division failed to provide a fair process and it made an error in law. The matter is referred back to the General Division for reconsideration.

ISSUE

[6] Did the General Division fail to provide the Claimant with a fair process?

[7] Did the General Division make an error in law when it failed to consider evidence of the Claimant's activities to decide whether she was incapable of forming or expressing an intention to make an application?

ANALYSIS

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.¹

Fair process

[8] The Tribunal must provide a fair process to the parties that appear before it. This means that all parties must have the opportunity to fully present their legal case to the Tribunal, to know and answer the other party's legal case, and to have a decision made by an impartial decision maker based on the law and the facts.

[9] The General Division failed to provide the Claimant with a full opportunity to present her legal case. It relied on the documents filed with the Tribunal. It decided that the Claimant was not incapable of forming or expressing an intention to make an application based on the following:

- a) The family doctor completed a declaration of incapacity that said the Claimant was not incapable.² and
- b) The Claimant authorized treatment and obtained long-term disability benefits;³

[10] However, the Claimant wrote on the questionnaire that accompanied the disability pension application that she has trouble with paperwork. At the Appeal Division hearing she also

¹ This paraphrases the grounds of appeal set out in s. 58(1) of the *Department of Employment and Social Development Act*

² General Division decision at para. 6. The Claimant later filed a letter from her doctor that says that she misunderstood the form, together with a Declaration of Incapacity that says that the Claimant was incapable from the date of her injury.

³ *Ibid.* at para. 7

stated that had there been an oral hearing, she would have been able to explain verbally that she had no capacity to make an application and why.

[11] By summarily dismissing the appeal, the General Division eliminated the Claimant's opportunity to fully present her case to the Tribunal. The appeal must be allowed on this basis.

[12] This error was not corrected by the General Division having given notice of its intention to summarily dismiss the appeal. The Claimant is not legally trained. She has difficulty with paperwork. She cannot be expected to have replied to this notice by requesting an oral hearing.

Error in law

[13] The General Division also made an error in law. The Federal Court of Appeal states that the decision maker must "look at the medical evidence as well as the relevant activities of the individual concerned between the claimed date of commencement of disability and the date of application which cast light on the capacity of the person of forming and expressing the intent."⁴ The General Division decision does not refer to any evidence about the Claimant's activities at the relevant time. There is no written evidence about this either. However, such evidence could have been presented at an oral hearing.

[14] Therefore, the General Division made an error in law when it failed to turn its mind to the Claimant's activities at the relevant time. The appeal must succeed on this basis also.

REMEDY

[15] When an appeal is allowed, the Appeal Division can give different remedies.⁵ It is appropriate that this matter be referred back to the General Division for reconsideration. These are the reasons why:

- a) The record is not complete. The Claimant has not been able to fully present her case.
- b) The Claimant has oral evidence to present to the Tribunal;

⁴ *Canada (Attorney General) v. Danielson*, 2008 FCA 78

⁵ *Department of Employment and Social Development Act* s. 59(1)

- c) The General Division is best suited to hear all of the evidence, weigh it and make a decision;

CONCLUSION

[16] The appeal is allowed.

[17] The matter is referred back to the General Division for reconsideration with an oral hearing.

Valerie Hazlett Parker
Member, Appeal Division

HEARD ON:	September 16, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. O., Appellant Viola Herbert, Representative for the Respondent