



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. C. v Minister of Employment and Social Development*, 2020 SST 794

Tribunal File Number: AD-19-805

BETWEEN:

**M. C.**

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: September 21, 2020

## **DECISION AND REASONS**

### **DECISION**

[1] The appeal is dismissed.

### **OVERVIEW**

[2] M. C. (Claimant) has degrees in education and nursing. She worked in a factory and in nursing. She stopped working in 2001. The Claimant applied for a Canada Pension Plan disability pension in 2006, 2009 and 2010. The Minister of Employment and Social Development refused these applications and the Claimant did not appeal the decisions.

[3] The Claimant applied for the disability pension again in 2016. She says that she is disabled by many conditions including degenerative disc disease, osteoarthritis, myofascial pain syndrome, gastritis and dermatitis. The Minister refused this application also. It decided that the Claimant's conditions were not a severe disability before the end of the minimum qualifying period (MQP – the date by which a claimant must prove that they are disabled to receive the disability pension).

[4] The Claimant appealed this Minister's decision to the Tribunal. The Tribunal's General Division dismissed the appeal. It also decided that the Claimant did not have a severe disability before the end of the MQP.

[5] 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 made an error in law or based its decision on an important factual error made without regard to the Claimant's testimony. I have now considered the General Division decision, and the documents filed with the Tribunal. The General Division did not make an error in law. It also did not overlook or misconstrue any important information. The appeal is therefore dismissed.

### **PRELIMINARY MATTER**

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

- a) The parties had ample time to prepare and file written submissions on appeal;
- b) The legal issues to be decided are straightforward;
- c) Both parties requested that the appeal be decided on the basis of the documents filed with the Tribunal;
- d) The *Social Security Tribunal Regulations* requires that appeals be concluded as quickly as the considerations of fairness and natural justice permit.<sup>1</sup>
- e) This matter started in 2016 and has been ongoing for a long time. It is in the interest of justice to conclude it quickly.

## ISSUES

[7] Did the General Division make an error in law by failing to consider the Claimant's testimony?

[8] Did the General Division base its decision on an important factual error made without regard to the Claimant's testimony?

## 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.<sup>2</sup>

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<sup>1</sup> *Social Security Tribunal Regulations* s. 3(1)

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

### **Error in law**

[9] To decide whether a claimant is disabled, a decision-maker must consider all of the evidence that is presented to it. This includes medical evidence and evidence of employment efforts.<sup>3</sup>

[10] The General Division decision summarizes the medical evidence that was presented, including reports from the orthopedic surgeon and family doctor that refer to the Claimant having mild physical conditions from arthritis and degenerative disc disease, and a normal neurological study.<sup>4</sup> The decision also refers to the Claimant's testimony, including her sincere belief that she is disabled,<sup>5</sup> and that she has not worked or volunteered since 2001.<sup>6</sup> While these references to the evidence are not exhaustive, it is not necessary for the General Division to refer to each and every piece of evidence that is before it. The General Division is presumed to have considered all of the evidence.<sup>7</sup>

[11] The General Division made no error in law. It considered the Claimant's testimony. The appeal fails on this basis.

### **Important factual error**

[12] The Appeal Division can consider is whether 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.<sup>8</sup>

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<sup>3</sup> *Villani v. Canada (Attorney General)*, 2001 FCA 248

<sup>4</sup> General Division decision at para. 7

<sup>5</sup> General Division decision at paras. 8, 10

<sup>6</sup> General Division decision at para. 9

<sup>7</sup> *Simpson v. Canada (Attorney General)*, 2012 FCA 82

<sup>8</sup> *Department of Employment and Social Development Act* s. 58(1)(c)

[13] In the documents filed with the Appeal Division the Claimant does not set out any important factual errors that she says the General Division made, except that the General Division “got it wrong”. The Claimant’s disagreement with the General Division decision is not a reason to allow the appeal. This does not point to the General Division having made any error that the Appeal Division can consider.

[14] In addition, the General Division is presumed to have considered all of the evidence. It is not necessary that each and every piece of evidence be referred to in the decision.<sup>9</sup> The General Division summarizes the relevant evidence.<sup>10</sup> It explains that it gave more weight to the medical report dated in 2004 because it was closer to the end of the MQP than the other medical reports that were presented.<sup>11</sup> The General Division considered this evidence when it decided that the Claimant’s disability was not severe. There was an evidentiary basis for the finding of fact that the disability was not severe. The General Division made no error in this regard.

[15] Finally, most of the written evidence is dated long after the MQP ended, and relates to medical conditions that arose after the end of the MQP. Therefore, the General Division did not make any error when it failed to refer to this evidence.

[16] The General Division did not overlook or misconstrue any important information.

[17] The appeal therefore fails on the basis that the General Division based its decision on an important factual error.

## CONCLUSION

[18] The appeal is dismissed for these reasons.

Valerie Hazlett Parker  
Member, Appeal Division

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<sup>9</sup> *Ibid.*

<sup>10</sup> General Division decision at para. 7

<sup>11</sup> General Division decision at para. 8

METHOD OF PROCEEDING:	On the Record
SUBMISSIONS:	M. C., Appellant  Stephanie Pilon, Representative for the Respondent