Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *DM v Minister of Employment and Social Development*, 2020 SST 1071

Tribunal File Number: AD-20-777

BETWEEN:

D. M.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Kate Sellar

Date of Decision: October 9, 2020

Canada

DECISION AND REASONS

DECISION

[1] I grant the application for leave to appeal. These reasons explain why.

OVERVIEW

[2] D. M. (Claimant) has Schizoid Personality Disorder with avoidant traits and is unable to work or function in work or social settings. In 1990, the Claimant's military contract expired. He did not apply for another contract of service. He could not cope with being around people. His last day on the job was in January 1990. He returned home to live with his parents. He lived on his savings and tried to go back to college in 1990. He signed up for a very light course load. He explained that he was just "going through the motions" and that he had

> no interest in anything and I still couldn't take being around people, so I eventually stopped going to my classes. I failed college and life. I was twenty three."[1]

[3] He went back to live with his parents and said he became a "shut in" in 1991. He described himself as always being a recluse even when he worked or attended school.

[4] Around 1998 or 2000, the Claimant was diagnosed with Schizoid Personality Disorder. He received financial support. He has not worked since 1990 and has not attended school since 1991. He can only cope when he is alone in his apartment. His isolation is not by choice. Around 2016, the Claimant became involved in the criminal justice system.

[5] The Minister received the Claimant's application for a disability pension on November 29, 2017. The Minister denied the application initially and on reconsideration. On reconsideration, the Minister calculated the Claimant's minimum qualifying period (MQP) incorrectly. The Claimant appealed the reconsideration decision to this Tribunal. The General Division decided that the Claimant's MQP ended on December 31, 1990, and that he was not entitled to a disability pension.

---

[1] GD1-40.

[6] The Claimant requests permission (leave) to appeal the General Division's decision. I must decide whether there is an arguable case that the General Division made an error under the *Department of Employment and Social Development Act* (DESDA) that would justify granting the application for leave to appeal.

[7] It can be argued that General Division made an error of law. I grant the application for leave to appeal.

PRELIMINARY MATTERS

[8] The Claimant provided new evidence to the Appeal Division in support of his case.[2]

[9] The Appeal Division does not usually consider new evidence.[3] The focus at the Appeal Division is to decide whether the General Division made an error. In most cases, new evidence is not relevant in that context.

[10] I will not consider the new evidence on appeal.

ISSUE

[11] Can it be argued that the General Division made an error of law by failing to provide reasons for why it gave such little weight to the mental health and addiction counsellor's opinion about the Claimant's medical condition?

ANALYSIS

Reviewing General Division decisions

[12] The Appeal Division does not give people a chance to re-argue their case in full at a new hearing. Instead, the Appeal Division reviews the General Division's decision to decide whether it made an error calling for a review. That review is based on the wording of the DESDA, which

[2] AD1.
[3] *Parchment v Canada (Attorney General)*, 2017 FC 354.

sets out the grounds of appeal.[4] The three reasons for an appeal arise when the General Division fails to provide a fair process, makes an error of law, or makes an error of fact.

[13] At the leave to appeal stage, a claimant must show that the appeal has a reasonable chance of success of satisfying the Appeal Division that the General Division made a reviewable error.[5] To meet this requirement, a claimant needs to show only that there is some arguable ground on which the appeal might succeed.[6] This is a low threshold to meet.

Medical Evidence

[14] When a person applies for a disability benefit, the law requires them to provide "a report of any physical or mental impairment", including

a) the nature, extent and prognosis of the impairment,
b) the findings upon which the diagnosis and prognosis were made,
c) any limitation resulting from the impairment, and
d) any other pertinent information, including recommendations for further diagnostic work or treatment, that may be relevant.[7]

[15] Accordingly, when a Claimant applies for a disability pension, there is a CPP Medical Report form that can be completed and signed by a medical professional. A completed form may well cover most information about the physical and mental impairments listed above.

[16] There are cases from the Federal Courts that this Tribunal is required to follow when making decisions about access to CPP disability pensions. The Federal Courts write those decisions when a party asks the court to decide whether a tribunal decision was reasonable (this is called judicial review). As a result, decisions from the Federal Courts do not always tell us everything we need to know about applying the test for a disability pension in every case. We do know from these decisions that:

---

[4] DESDA, s 58(1).
[5] DESDA, s 58(2).
[6] The Federal Court of Appeal explained this in a case called *Fancy v Canada (Attorney General)*, 2010 FCA 63.
[7] *Canada Pension Plan Regulations*, CRC, c 385, s 68(1).

a) The personal circumstances of the Claimant is important, but medical evidence is still required to meet the test for a disability pension;[8]
b) Some kind of objective medical evidence is needed to support an application for a disability pension;[9]
c) Medical reports should not be dismissed out of hand just because they are dated after the minimum qualifying period (MQP), if those reports speak to the Claimant's disability at the time of the MQP;[10]
d) The Claimant needs to provide some documents that support what the medical situation was at the time of the MQP;[11]
e) Evidence about the Claimant's medical condition after the MQP is not relevant where the Claimant has not proved that there was a disability during the MQP.[12]

Can it be argued that the General Division made an error of law?

[17] It can be argued that the General Division made an error of law by failing to provide reasons for why it gave such little weight to the mental health and addictions counsellor's opinion about the Claimant's medical condition. It may not be sufficiently clear why the mental health and addiction counsellor's opinion (which was based on her professional understanding of the Claimant's diagnosis as well as the Claimant's history) was mere "speculation." The failure to give reasons in relation to a key issue like this may be an error of law.

[18] The Claimant did not have a physician complete the CPP Medical Report when he applied for the disability pension. The Claimant provided a medical report a physician prepared to certify that he was fit to stand trial in a criminal case. However, the Claimant also provided a report from a mental health and addictions counsellor, which explained that the Claimant's diagnosis was Schizoid Personality disorder with avoidant features. The letter provided critical information abut what that diagnosis means, taken from the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). The letter concludes:

---

[8] *Villani v Canada (Attorney General)*, 2001 FCA 248.
[9] *Warren v Canada (Attorney General)*, 2008 FCA 377.
[10] *Bowles-Fraser v Canada (Attorney General)*, 2018 FCA 308.
[11] *Dean v Canada (Attorney General)*, 2020 FC 206.
[12] *Canada (Attorney General) v Hoffman*, 2015 FC 1348.

> Based on my professional understanding of personality disorders and [the Claimant's] reported history, it is reasonable to assert that his mental illness was likely present since adolescence and hindered him from gaining employment and accessing medical services and treatment and medical documentation.[13]

[19] The General Division decided that the Claimant was required to provide evidence to support his claim that he had a severe disability on or before the end of his MQP. The General Division acknowledged that there was no evidence from the MQP, and that "the recent information does not prove on a balance of probabilities the Claimant has a severe disability that began on or before December 31, 1990."[14]

[20] The General Division decision states:

> It is not enough for the Claimant to say he remembers being unable to work during a particular period. The law requires the Claimant to provide a report of his physical and mental disability. The report must include the nature, extent and prognosis of the disability; the findings upon which the diagnosis and prognosis were made; any likely limitations; and further information such as required treatment that may be relevant. There are very clear requirements for medical information to support a claimant's application. I understand from the reports on file that it is possible the Claimant may have avoided health professionals meaning there would be no medical evidence from that period of time. That statement is speculation on the part of his health providers and is not evidence that is what likely happened to him and when.[15]

[21] The Claimant argues that the General Division made an error by concluding that he did not prove that his condition was severe on or before the end of his MQP. The Claimant has explained that his disability involves avoiding social situations or events, avoiding making decisions, and self-isolation.[16] He argues that without treatment, a person with avoidant personality disorder may lead a life of near or total isolation.[17]

---

[13] GD6-1 to 2.
[14] General Division decision, para 22.
[15] General Division decision, para 21.
[16] GD1-16.
[17] GD1-18.

[22] The Claimant explained that he had not had a family doctor since childhood.[18] He provided medical evidence from after the MQP, a statement from his brother, and his own testimony about his mental health during his MQP. The Claimant argues that it is not reasonable to conclude that he has not proven his case, particularly in light of the challenges he has in accessing medical care from another person given the nature of the disability itself. The Claimant explains that his own evidence that he became a shut-in 1991 was a reference so close to the end of the MQP that certainly it should have helped to show that he met the definition of a severe disability by December 31, 1990.

[23] The General Division does not need to reference all of the evidence, arguments, legislation, or case law in a decision, but reasons must allow the reader to understand why a tribunal made its decision, and allow for review or appeal.[19] The Ontario Court of Appeal put it this way:

> the 'path' taken by the tribunal to reach its decision must be clear from the reasons read in the context of the proceeding, but it is not necessary that the tribunal describe every landmark along the way.[20]

[24] Failing to give reasons on a key issue in circumstances that require an explanation could be characterized as an error of law.[21]

[25] In my view, it is arguable that the General Division made an error of law. This is a low threshold to meet. The General Division's decision seems to suggest that the Claimant did not have medical evidence that speaks to when his health condition likely made him incapable regularly of any substantially gainful occupation. On its face, the evidence from the mental health and addictions counsellor provided detailed information about the Claimant's diagnosis, including its usual onset, and its likely onset in his case given his history.

---

[18] GD2-66.
[19] That idea comes from *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.
[20] *Clifford v Ontario Municipal Employees Retirement System*, 2009 ONCA 670.
[21] *Doucette v Canada (Minister of Human Resources Development)*, 2004 FCA 292, para 6 citing *R. v Sheppard*, [2002] 1 SCR 869.

[26] The mental health and addictions counsellor seems to have concluded that the Claimant likely had the illness since adolescence. It hindered his ability to access medical care, treatment, and work. It is not at all clear from the decision how this is mere "speculation" or how or why this report did not meet the legal requirements for medical evidence. In the absence of that kind of explanation on such a key issue, it is arguable that the General Division made an error of law.

[27] I do not need to consider and then accept or reject each individual ground of appeal.[22] At the next stage of the appeal, the Claimant can continue to rely on all of the arguments that he made about which errors the General Division made in its decision.[23]

[28] At the next stage of the appeal, the Appeal Division would benefit from arguments about whether the General Division ignored the Claimant's own evidence about his limitations.

CONCLUSION

[29] I grant the application for leave to appeal. This does not mean that I have made up my mind about whether the General Division had made an error – that is the task for the next decision in this case.

Kate Sellar
Member, Appeal Division

REPRESENTATIVE:	D. M., self-represented

[22] That idea comes from a case called *Mette v Canada (Attorney General)*, 2016 FCA 276.
[23] That idea comes from a case called *Hillier v Canada (Attorney General)*, 2019 FCA 44.