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

Citation: *VN v Minister of Employment and Social Development*, 2020 SST 894

Tribunal File Number: AD-20-739

BETWEEN:

V. N.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Kate Sellar

DATE OF DECISION: October 14, 2020

Canada

DECISION AND REASONS

DECISION

[1] I dismiss the request to change (rescind or amend) the Appeal Division decision. These reasons explain why.

BACKGROUND

[2] V. N. (Claimant) worked as a full-time home-based customer service call-centre representative until 2016. She stopped working because of pain in her back from degenerative disc disease (DDD). She has chronic pain disorder, adjustment disorder, major depressive disorder, and anxiety disorder.

[3] The Claimant applied for a disability pension under the *Canada Pension Plan* (CPP) in September 2016. The Minister denied the application initially and on reconsideration. The Claimant appealed to this Tribunal. The General Division dismissed her appeal.

[4] The Claimant appealed the General Division's decision. I found that the General Division made an error of law. I gave the decision that the General Division should have given: the Claimant proved that she had a severe and prolonged disability within the meaning of the CPP. She proved that she was entitled to the disability pension by September 2019 when she had medical evidence to support the diagnosis of chronic pain disorder **and** psychological conditions. The Appeal Division decision explains the reasons why I decided that the Claimant's disability was severe and prolonged starting in September 2019.[1]

[5] The Claimant has filed an application to change[2] the Appeal Division decision. In this decision, I will refer to that application as the "new facts application." The Claimant argues that the decision should state that her disability was severe and prolonged starting in April 2016.

[6] I dismiss the Claimant's new facts application. The evidence provided by the Claimant in support of her application do not establish a new material fact.

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[1] Appeal Division decision, especially at para 87.
[2] *Department of Employment and Social Development Act*, s 66. This is called an application to rescind or amend.

ISSUES

[7] The issues are:

1. Are there any new facts that would allow me to change the date of disability in the initial decision?

2. If there are no new facts, is there any other way that I can change the date of disability?

ANALYSIS

What you CANNOT do if you are dissatisfied with an Appeal Division decision

[8] Once an Appeal Division member issues a final decision, they have accomplished what they are required to do for the parties in that case. Their role in considering and deciding the matter is over. The Latin word to describe a tribunal member in that situation[3] is "*functus officio*." The need to be able to rely on a decision as being final is important at tribunals.

[9] Accordingly, there is **no** route set out in the law that allows a dissatisfied party to ask the Appeal Division for a complete "do-over" in order to reconsider its decision generally.

[10] Similarly, the law provides **no** path to appeal to the Chair of the Tribunal for a change in the outcome.

What you CAN do if you are dissatisfied with an Appeal Division decision

[11] If a Claimant or the Minister is dissatisfied with a decision from the Appeal Division, there are four legal avenues available to pursue.

[12] First, the law[4] allows a dissatisfied party to apply to the Federal Court of Appeal for a review of the decision. In that case, the Federal Court of Appeal decides whether the Appeal Division's decision was reasonable.[5]

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[3] And the word that lawyers would use in electronic databases online to search for a decision on this issue
[4] The Federal Court can review leave to appeal decisions from the Appeal Division.
[5] DESDA, s 68 states that decisions at the Tribunal are final, there is no right of appeal to court, except for judicial review under the *Federal Court Act*.

[13] Second, the Supreme Court of Canada has confirmed that if a party is dissatisfied with a decision:

- because the decision maker failed to decide an issue; and
- that issue was fairly raised by the proceedings; and
- the decision maker at the tribunal had the power to decide that issue in its legislation;

then the decision maker should be allowed to complete the job and decide that issue.[6]

[14] Third, in a case about a disability pension (like the Claimant's case), the law[7] allows a dissatisfied party to ask the Appeal Division to rescind or amend (change) its decision. This is what I refer to as a "new facts application." In that case, the Appeal Division decides whether the Claimant has presented:

- a new material[8] fact
- that could not have been discovered at the time of the hearing by being reasonably diligent.

[15] Fourth, there is a path for a dissatisfied party to ask the Appeal Division to issue a corrigendum. A corrigendum is the correction of an error in the decision. The Tribunal has a Chairperson's Directive[9] that describes how and when a dissatisfied party may ask the Appeal Division to provide a corrigendum. The background information about the corrigendum option states that it is "usually used to correct minor errors such as a date or the spelling of someone's name." The ability to request a corrigendum is consistent with case law from the Supreme Court of Canada, which confirms that once a judge or an adjudicator has issued a final decision, the case cannot be reopened unless:

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[6] *Chandler v. Alberta Association of Architects*, 1989 CanLII 41 (SCC), [1989] 2 SCR 848.
[7] DESDA, s 66.
[8] "Material" means that the fact could reasonably be expected to affect the outcome of the decision.
[9] Chairperson's Directive on Corrigendum is available online at https://www1.canada.ca/en/sst/rdl/5corrigendum.html

- there was a "slip" in writing it up, or
- the writer made an error in expressing their clear or obvious intention. [10]

A corrigendum provides a path for dissatisfied parties to ask the Appeal Division to fix these kinds of slip-ups.

[16] This decision will focus on the third and fourth options listed above.[11]

Has the Claimant raised a new fact?

[17] The Claimant has not raised any new fact in support of her new facts application. As a result, a new facts application does not provide a path to the Claimant for changing the date of disability.

[18] The Claimant requests that the Appeal Division amend its decision to correct an error about the Claimant's disability date. The Claimant argues that the Appeal Division inadvertently overlooked relevant and important parts of the medical record that support a disability date of April 2016. The Claimant askes that the Claimant's disability date be corrected to April 2016 based on the medical evidence and

> …to recognize that the date of a CPD diagnosis is never the date of the commencement of the condition. There is sufficient medical documentation of the fact of [the Claimant's] "severe pain" from April 2016 ongoing, and thereafter.[12]

[19] The Claimant argues that the Appeal Division has "wide latitude" in giving decisions. The Claimant points out that the Tribunal makes decisions about access to benefits consistent with "supporting service delivery to the public, to do so with a view of better serving the needs of Canadians."[13]

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[10] The Supreme Court of Canada explain this in case called *Chandler v. Alberta Association of Architects*, 1989 CanLII 41 (SCC), [1989] 2 SCR 848.
[11] The first option is a route that involves the courts rather than the Appeal Division, and the second option does not appear to apply here as I reached a conclusion about the date of disability in the initial decision.
[12] RA1-8.
[13] RA1-32.

[20] The Claimant also points out that when a tribunal section, regulation or rule does not address a particular situation, the regulation must be interpreted to secure the "just, most expeditious and least expensive determination of appeals and applications."[14]

[21] The Minister argues that the Claimant has not provided any new evidence in support of the new facts application. All of the evidence that the Claimant refers to in her application was at the Appeal Division. The Minister notes that the Tribunal does not have the power to change a decision through a new facts application without a **new** material fact.[15]

[22] The Claimant has not presented any new fact in support of this request, so I cannot grant a new facts application in order to select a different date of disability for the Claimant. All of the evidence the Claimant raises was evidence that the General Division had (and therefore the Appeal Division had it too). It is not new.[16] The Claimant seems to be asking that I review the available evidence again and come to a different conclusion. This is not how a new facts application works. While most applications get caught up in whether the new facts are material or discoverable as required by the law, at minimum there must be new facts to consider.

Is there any other way for me to change the date of disability?

[23] There is no other way for me to change the date of disability.

[24] I cannot change the date by considering the issue of the date of disability all over again (as some kind of general reconsideration power). I issued a decision with reasons that covered the issue of the date of disability. The legislation gives me the ability to issue decisions, but I do not have the "wide latitude" the Claimant suggests I have.

[25] I cannot change the date of disability through a corrigendum. In my view, corrigendum is a vehicle for fixing the kinds of minor errors that the Supreme Court was referencing as a "slip up" or an error in the way I expressed a clear or obvious intention.

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[14] RA1-32.
[15] RA2-2.
[16] The Claimant relies on documents at GD2, GD3, GD9, GD11, and GD14 in support of the new facts application.

[26] The Claimant uses language that suggests that perhaps the date of disability I selected was the type of slip up that simply requires correcting. However, the date of disability was part of my initial decision and I provided reasons for selecting that date specifically.[17] It was not a minor error like the spelling of a person's name. It was not a slip up in the writing or an example of making an error in expressing my clear or obvious intention. The Chairperson's Directive does mention the notion of correcting a date. However, in this case I did not write the wrong date in error. I communicated the date I intended to communicate.

CONCLUSION

[27] I dismiss the Claimant's application to rescind or amend the Appeal Division decision. I cannot issue a corrigendum in this case to change the date of disability. There is no other vehicle for me to change the date of disability in my decision.

Kate Sellar
Member, Appeal Division

HEARD ON:	
METHOD OF PROCEEDING:	On the Record
REPRESENTATIVES:	Stephen Yormak, Representative for the Appellant Hilary Perry, Representative for the Respondent

[17] Appeal Division decision, para 87.