



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SA v Minister of Employment and Social Development*, 2021 SST 64

Tribunal File Number: AD-21-1

BETWEEN:

S. A.

Appellant
(Claimant)

and

Minister of Employment and Social Development

Respondent
(Minister)

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision by: Neil Nawaz

Date of Decision: February 12, 2021

DECISION AND REASONS

DECISION

[1] Leave to appeal is granted, and the appeal is allowed. This matter shall be returned to the General Division for rehearing.

OVERVIEW

[2] The Claimant is a former grocery store manager who stopped working in April 2016 after he developed back pain and diabetic neuropathy. At the time, he was 48 years old.

[3] In July 2017, the Claimant applied for a Canada Pension Plan (CPP) disability pension, claiming that he could no longer work. The Minister refused the application because, in its view, the Claimant had not shown that he was regularly incapable of pursuing a substantially gainful occupation as of his minimum qualifying period (MQP),¹ which ended on December 31, 2013.

[4] The Claimant appealed the Minister's refusal to the Social Security Tribunal's General Division. Last October, it dismissed the appeal after finding insufficient evidence of a severe and prolonged disability at the MQP.

[5] The Claimant has requested leave to appeal from the Tribunal's Appeal Division, alleging that the General Division committed various errors in coming to its decision. The Claimant says that he cautioned the General Division not to hold its hearing in mid-morning, because he was usually heavily medicated at that time of day. He says that the General Division nevertheless proceeded to schedule his hearing for 10:00 a.m. As a result, he was unable to present his case effectively, because his mind was clouded by the effects of medical marijuana, which he takes for pain.

[6] This week, following a settlement conference, the Minister agreed that this matter should be returned to the General Division for new hearing.² In light of this concession, I see no need to hold an oral hearing and have decided to proceed based on the existing documentary record.

¹ The MQP is the period in which a claimant last had coverage for CPP disability benefits. Coverage is established by working and contributing to the CPP.

² See letter from the Minister's representative dated February 11, 2021, AD02.

ISSUE

[7] There are only three grounds of appeal to the Appeal Division. A claimant must show that the General Division acted unfairly, interpreted the law incorrectly, or based its decision on an important error of fact.³

[8] In this appeal, I had to decide whether the Claimant was unfairly disadvantaged by the General Division's decision to hold his hearing in the morning.

ANALYSIS

[9] The Claimant says that, when Tribunal staff contacted him to discuss his upcoming General Division hearing, he told them that mid-morning was the worst time for him to function because of the medications he takes for pain. When his appeal was scheduled via teleconference at 10:00 a.m., he felt that his caution had fallen on "deaf ears."

[10] I agree with the Minister that this is sufficient reason to overturn the General Division's decision. Natural justice demands that all parties in judicial or quasi-judicial proceedings have a right to be heard. If the Claimant was impaired by side effects from his pain medications, then he was denied an opportunity to put forward his best case. Since the General Division hearing was not recorded, I have no way to judge the Claimant's performance for myself, but I am willing to accept his word that he was not at his best. I come to this conclusion bearing in mind that the Claimant did not have the benefit of legal representation and that he apparently made an effort to warn the Tribunal in advance that mornings were not good for him.

REMEDY

[11] The Appeal Division has the power to fix errors committed by the General Division. I can refer this matter back to the General Division for reconsideration or give the decision that the General Division should have given.⁴

[12] The Minister has recommended that I return this matter to the General Division for a new hearing. I agree.

³ *Department of Employment and Social Development Act (DESDA)*, s. 58(1).

⁴ *DESDA*, s. 59(1).

[13] I don't think the record is complete enough to allow me to decide this matter myself. As noted, there is no recording of last October's hearing and, in any case, the General Division committed a breach of natural justice that likely prevented the Claimant from presenting his best case. Unlike the Appeal Division, the General Division's primary mandate is to hear evidence and make findings of fact on questions of disability. As such, it is better positioned than I am to assess whether the Claimant is regularly incapable of substantially gainful employment.

CONCLUSION

[14] I am allowing this appeal because the General Division ignored indications that a mid-morning hearing would likely put the Claimant at a disadvantage. In doing so, the General Division deprived the Claimant of his right to be heard.

[15] I am returning this matter to the General Division for another hearing. I am directing the General Division to schedule an afternoon oral hearing before a member other than the one who heard it the first time.



Member, Appeal Division

METHOD OF PROCEEDING:	On the record
APPEARANCES:	S. A., Claimant Viola Herbert, Representative for the Minister