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

Citation: *WL v Minister of Employment and Social Development*, 2021 SST 63

Tribunal File Number: AD-20-848

BETWEEN:

W. L.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: February 17, 2021

Canada

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] W. L. (Claimant) earned a college diploma. She last worked in an administrative position in a health care setting. The Claimant applied for a Canada Pension Plan disability pension. She says that she is disabled by an ankle injury and the resulting physical limitations and pain.

[3] The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal. It decided that the Claimant did not have a severe disability because she retained some capacity to work.

[4] Leave to appeal this decision to the Appeal Division was granted because the General Division may have made an error in law when it failed to consider whether the Claimant would require a benevolent employer to return to work.

[5] I have now listened to the recording of the General Division hearing and the parties' oral submissions on appeal. I have read the documents filed with the Tribunal and the General Division decision. The General Division made no error in law. Therefore, the appeal is dismissed.

ISSUE

[6] Did the General Division make an error in law when it failed to consider whether the Claimant could only work for a benevolent employer?

ANALYSIS

[7] An appeal to the Tribunal's Appeal Division is not a rehearing of the original claim. Instead, the Appeal Division can only decide whether the General Division did one of the following

- failed to provide a fair process
- failed to decide an issue that it should have, or decided an issue that it should not have
- made an error in law
- based its decision on an important factual error[1]

[8] The General Division had to decide whether the Claimant had a severe and prolonged disability under the *Canada Pension Plan* (CPP). The CPP does not use the term benevolent employer. However, courts have decided that a disability pension claimant may be disabled even though they have worked, if they worked for a benevolent employer.[2] A benevolent employer is one who alters work conditions, productivity expectations, and/or other terms of employment to accommodate an employee. However, an employer is not a benevolent employer if it does not accommodate an employee beyond what would be expected in the competitive marketplace.[3]

[9] In addition, whether an employer is a benevolent employer is only one factor that may be considered when deciding whether a claimant is disabled.[4] Accordingly, the General Division does not need to consider this issue in every appeal.

[10] The General Division decision refers to the Claimant's family doctor's reports, which say that the Claimant could not sit at a table or desk for more than a few minutes.[5] It also summarizes the Claimant's testimony, including

- It was painful for the Claimant to walk from the parking lot to her office.

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[1] This paraphrases the grounds of appeal set out in section 58(1) of the *Department of Employment and Social Development Act*.
[2] *Atkinson v Canada (Attorney General)*, 2014 FCA 187.
[3] *Atkinson v Canada (Attorney General)*, 2014 FCA 187.
[4] *Atkinson* v Canada (Attorney General), 2014 FCA 187 at para 39.
[5] General Division decision at paras 20 and 21.

- The Claimant relied on co-workers to do any tasks that involved walking.
- The Claimant missed a lot of time from work after her injury, and she was tired at the end of the workday.
- The Claimant did not think she could work from home because of her restrictions with sitting and keeping her foot on the floor.

This shows that the General Division considered all of the evidence in making its decision.

[11] The Claimant argued in both her oral and written submissions to the General Division that she would only be able to work for a benevolent employer because of her restrictions. Therefore, this issue was clearly before the General Division.

[12] The decision does not refer to a benevolent employer or whether the Claimant could only return to the workforce if she was so employed. The decision also fails to consider whether the Claimant's accommodations at work were beyond what would be expected in the marketplace.

[13] However, failing to consider each and every argument that a Claimant presents to the General Division is not, by itself, a reason for an appeal to be allowed. The General Division decision is not to be assessed against a standard of perfection. The fact that the reasons do not include all of the arguments or other details that a reader would prefer is not, on its own, a reason to set aside the decision.[6]

[14] In addition, to decide whether an employer is a benevolent employer, all aspects of a claimant's employment and any accommodations that are made for the claimant should be considered. In this case there was very little evidence about any accommodations that the Claimant required at work. She testified only that she had difficulty walking from her parking place to her office and that she relied on others to do tasks that required her to walk. The Tribunal and the Federal Court of Appeal considered these same accommodations in a case called *Atkinson*.[7] Both the Tribunal and the Court concluded in that case that these

[6] *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.
[7] Tribunal decision: *KA v Minister of Human Resources and Skills Development*, 2013 SSTAD 6; review by Federal Court of Appeal: *Atkinson v Canada (Attorney General)*, 2014 FCA 187

accommodations were not beyond what would be expected in the marketplace.[8] Therefore, the fact that an employer made these accommodations was not enough for it to be considered a benevolent employer.

[15] There was no evidence presented about any other accommodations that the Claimant required. There was no evidence that the employer altered work expectations, the Claimant's hours or work schedule, or her pay.[9] Therefore, the General Division could not fully consider whether the Claimant's employer was a benevolent employer. Therefore, General Division made no error when it failed to consider this issue.

[16] The General Division decision summarizes the oral and written evidence. It explains why it weighed the evidence the way it did. For example, the decision states that little weight was given to one family doctor's report because it was not based on any observation or physical examination.[10]

[17] The General Division decision also provides reasons for its decision. The General Division member decided that the disability was not severe because, although the Claimant has physical limitations from the ankle injury, she had not tried to find alternate work. In addition, the medical evidence indicated that the Claimant could do sedentary work, and the Claimant's personal characteristics would not preclude work.[11] The General Division decision is clear, transparent, and intelligible.

CONCLUSION

[18] The appeal is dismissed for these reasons.

Valerie Hazlett Parker
Member, Appeal Division

HEARD ON:	February 9, 2021

[8] *Atkinson v Canada (Attorney General)*, 2014 FCA 187 and *KA v Minister of Human Resources and Skills Development*, 2013 SSTAD 6.
[9] The Claimant made submissions about this, but there was no evidence presented on this.
[10] General Division decision at para 22.
[11] General Division decision at paras 26 to 30

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Chantelle Yang, Counsel for the Appellant Rebekah Ferriss, Representative for the Respondent Samaneh Frounchi, Counsel for the Respondent