



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SB v Minister of Employment and Social Development*, 2021 SST 95

Tribunal File Number: AD-20-823

BETWEEN:

S. B.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: March 12, 2021

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] S. B. (Claimant) completed Grade 10 before he entered the paid workforce. He worked in physically demanding jobs for a number of years. He stopped working in 2011. The Claimant then applied for a Canada Pension Plan disability pension. He says that he is disabled by a number of conditions including back and knee pain, knee replacement, arthritis and breathing issues. The Minister of Employment and Social Development refused the application. The Claimant appealed to the Tribunal. The Tribunal's General Division dismissed the appeal. It decided that the Claimant did not have a severe disability because although he has limitations he has not complied with reasonable treatment recommendations to exercise and lose weight.

[3] Leave to appeal this decision to the Tribunal's Appeal Division was granted because the appeal had a reasonable chance of success. The General Division may have based its decision on an important factual error regarding the Claimant's compliance with treatment recommendations. I have now read all of the documents filed with the Appeal Division, the General Division and the General Division decision. I have listened to the General Division hearing recording and the parties' submissions. The General Division provided a fair process. It did not base its decision on an important factual error. Therefore, the appeal is dismissed.

ISSUES

[4] Did the General Division fail to provide a fair process at the hearing?

[5] Did the General Division base its decision on an important factual error regarding the Claimant's compliance with treatment recommendations to exercise and lose weight?

ANALYSIS

[6] 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.¹

Fair Process

[7] The Tribunal must provide all parties with a fair process. This means that it must ensure that all parties have the opportunity to present their legal case to the Tribunal, to know and answer the other party's legal case, and to have a decision made by an independent decision maker based on the law and the facts.

[8] The Claimant says that the General Division failed to provide this because his helper did not attend the General Division hearing and he was "blindsided" by the process.

[9] When asked the Claimant said that his helper was "from CPP", but offered no other information about what her role was to be at the General Division hearing, or how her failure to attend impacted his ability to present his legal case. The Claimant did not say that he was prevented from presenting any evidence or argument, or that he could not respond to the Minister's legal case.

[10] In fact, the General Division member gave the Claimant the opportunity to make any other statements he wanted at the end of the hearing, and even said that he could have time to think about this before he responded.²

[11] I understand that the Claimant may have been uncomfortable at the General Division hearing. However, this is not enough for me to conclude that the General Division failed to provide a fair process.

¹ This paraphrases the grounds of appeal set out in s. 58(1) of the *Department of Employment and Social Development Act*

² General Division hearing recording at approximate time 28:00 although the exact time may differ depending on the device used to listen to the recording

[12] The Claimant was not prevented from presenting his legal case. He did not say that he could not understand or respond to the Minister's legal case. The General Division provided a fair process.

Important Factual Error

[13] The Claimant also says that the General Division based its decision on an important factual error regarding his compliance with treatment recommendations. To succeed on this basis, he must prove three things:

- a) that a finding of fact was erroneous (wrong);
- 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.³

[14] The General Division decision states that the Claimant had not followed treatment recommendations to lose weight and exercise. A number of doctors recommended this, including the family doctor who treated the Claimant before the end of his minimum qualifying period,⁴ an internal medicine (rheumatology) specialist,⁵ and the physician at a pain clinic.⁶

[15] Despite this, there was very little evidence that the Claimant had tried to comply with these recommendations. The Claimant testified that it is very difficult for him to move because of his pain.⁷ He explained that he does leg raises in bed and walks about one-half block and back each day.⁸ When asked about his diet, the Claimant testified that he is losing weight slowly.⁹ He did not provide any details of changes to his diet or other steps he had tried to lose weight.

³ Section 58(1)(c) of the *Department of Employment and Social Development Act*

⁴ GD2-159

⁵ GD2-118

⁶ GD2-117

⁷ General Division hearing recording at approximate time 10:46

⁸ General Division hearing recording at approximate times 11:40, 15:00

⁹ General Division hearing recording at approximate time 17:20

[16] This evidence was an evidentiary basis for the General Division to find as fact that the Claimant had not followed treatment recommendations to lose weight and exercise. Therefore, the finding of fact was not wrong.

[17] I acknowledge that no doctor wrote that the Claimant was non-compliant with treatment. However, this is not required for the General Division to make a finding of fact about this. It is for the General Division to make findings of fact based on its review of all of the evidence. The General Division did so.

[18] Finally, the Claimant presented a letter from his doctor to support his legal case. This letter was not presented to the General Division. New evidence generally is not permitted on an appeal.¹⁰ I did not consider this evidence in making this decision.

CONCLUSION

[19] The appeal is dismissed for these reasons.

Valerie Hazlett Parker
Member, Appeal Division

HEARD ON:	March 9, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. B., Appellant Suzette Bernard, Representative for the Respondent

¹⁰ *Canada (Attorney General) v. O'Keefe*, 2016 FC 503