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

Citation: *LR v Minister of Employment and Social Development*, 2021 SST 267

Tribunal File Number: AD-21-85

BETWEEN:

L. R.

Appellant
(Claimant)

and

Minister of Employment and Social Development

Respondent
(Minister)

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Neil Nawaz

DATE OF DECISION: June 9, 2021

Canada

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Claimant is a 59-year-old woman who last worked as a part-time casino host in 1997. Ten years earlier, she was in a car accident that left her with a fractured spine and partial paralysis of her legs.

[3] In June 2018, she applied for a Canada Pension Plan (CPP) disability pension, claiming that she could no longer work because she had little sensation in her legs or control over her bladder and bowels. The Minister refused the application because, in its view, the Claimant's condition did not amount to a "severe and prolonged"[1] disability as of her minimum qualifying period (MQP), which ended on December 31, 1997.[2]

[4] The Claimant appealed the Minister's refusal to the Social Security Tribunal's General Division. It held a hearing by videoconference and, in a decision dated December 2, 2020, dismissed the appeal. It found that Claimant had not provided enough supporting medical evidence to show that she was regularly incapable of pursuing a substantially gainful occupation as of the MQP. The General Division acknowledged that the Claimant's last employer added physical duties that were beyond her capabilities. However, it noted the Claimant's testimony that she could have continued doing the job if her employer had just kept her greeting customers and answering telephones.

[5] The Claimant is now requesting leave to appeal from the Tribunal's Appeal Division. She insists that her medical conditions made it impossible for her to work at the casino. She said that she wanted to carry on but could not have been a reliable employee due to the frequency and unpredictability of her problems.

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[1] Defined in s 42(2)(a) of the *Canada Pension Plan.*
[2] 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.

[6] Earlier this year, I granted the Claimant leave to appeal because I thought she had raised an arguable case. I called a hearing by teleconference to discuss the Claimant's allegations. Now, having reviewed the record and heard the parties' oral arguments, I have concluded that none of the Claimant's reasons for appealing justify overturning the General Division's decision.

ISSUES

[7] There are four grounds of appeal to the Appeal Division. A claimant must show that the General Division

(i) did not follow procedural fairness;
(ii) made an error of jurisdiction;
(iii) made an error of law; or
(iv) based its decision on an important factual error.[3]

[8] I had to answer the following questions:

Question 1: Did the General Division mischaracterize the Claimant's testimony that she could have continued doing sedentary work if the casino had let her?

Question 2: Did the General Division's conclusion—that the Claimant was capable of light work—flow logically from its findings?

ANALYSIS

Question 1: Did the General Division mischaracterize the Claimant's testimony?

[9] The General Division dismissed the Claimant's appeal, even though it found her credible when she testified that she had difficulty standing and controlling her bladder. I have concluded that the General Division did not make any errors in how it addressed the Claimant's testimony.

[10] The General Division based its decision in part on oral evidence—specifically the Claimant's admission that she could have continued doing her casino job if her employer had not

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

changed her duties and required her to hang coats.[4] I have listened to the hearing recording, and it appears that the General Division's decision accurately reflected what the Claimant said.

[11] It is true that the Claimant qualified her words to suggest that (i) she was struggling with her regular job duties and (ii) her employer was already unhappy with her work performance:

> General Division: If your boss had said, we don't need you to do the coats, just stick with the duties you were doing, could you have continued doing that?
>
> Claimant: Yes, with some difficulties. My spasms were so unpredictable that I couldn't be at every shift I should have been, and I think they were getting frustrated with that. 5

[12] However, I saw no indication that the General Division ignored or distorted any significant aspect of this testimony. When I look at the written reasons for its decision, I see that the General Division acknowledged the Claimant's difficulties at work:

> I recognize that the Claimant's bowel and bladder condition caused her to have a few accidents at work. It also meant that she had to [use] incontinence pads on a daily basis. She also had unpredictable muscle spasms that caused her to miss some days at work, and some difficulty with constant sitting for the duration of her 4-hour work shifts. Unfortunately, she rarely got breaks at work because of how busy the casino was.[6]

[13] This passage tells me that the General Division was aware that the Claimant did her best to keep working at her last job despite her impairments. And while the General Division may not have given the Claimant's testimony much weight, one cannot say that the General Division ignored or misrepresented it.

[14] What's more, the General Division had good reason to discount the Claimant's testimony. As we will see, the General Division was barred from finding the Claimant disabled based only on her subjective evidence.

Question 2: Did the General Division's conclusion flow from its findings?

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[4] General Division decision, para 15.
[5] General Division hearing recording, 26:05.
[6] General Division decision, para 16.

[15] The Supreme Court of Canada has said that the three hallmarks of administrative decision-making are transparency, justification, and intelligibility.[7] As a matter of law and procedural fairness, judges and tribunal members must provide comprehensible reasons for their decisions.[8] There must be logical connections from evidence to findings, and from findings to conclusions.

[16] In this case, I allowed leave to appeal because I thought the Claimant had an argument that the General Division had failed to offer adequate reasons for its decision. On one hand, the General Division found the Claimant credible when she testified that she had difficulty performing even non-physical duties in her last job at the casino.[9] On the other hand, the General Division found that she was nevertheless capable of some form of substantially gainful employment as of the end of the MQP. At first glance, that appeared to be a contradiction.

[17] However, I have now reviewed the General Division's decision in the context of the available evidence. I am satisfied that the General Division's reasoning met the standard demanded by the law.

[18] The Claimant last had coverage for CPP disability benefits in 1997. That is a long time ago, and it meant that she came to the General Division at a disadvantage. Because her treatment providers from that time had either retired or long since destroyed their records, the Claimant was unable to produce any medical evidence about her condition during the most relevant period. As the General Division noted, the only medical report on file was a CPP questionnaire completed by the Claimant's family physician in June 2018.[10] In that report, the doctor said that he first saw the Claimant in 2006 and could not comment on her condition in December 1997.

[19] In a case called *Dean*, Federal Court of Canada said there has to be objective medical evidence of disability by the end of the MQP.[11] This doesn't mean the Claimant was required to produce a medical record dated on or before December 31, 1997, but there had to be some

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[7] *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.
[8] *Canada (Attorney General of v Angell*, 2020 FC 1093.
[9] General Division decision, paras 8 and 16.
[10] See medical report dated June 4, 2018 by Dr. Olanrewaju Egbeyemi, GD2-48
[11] *Canada (Attorney General) v Dean*, 2020 FC 206. See also and *Canada (Attorney General) v. Hoffman*, 2015 FC 1348; *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Villani v Canada (Attorney General*), 2001 FCA 24.

documentation related to that date, such as a later report from a doctor or other health care professional who was involved with the Claimant's treatment during the relevant period.

[20] In the absence of such documentation, the General Division could not simply take the Claimant's word for it that she was disabled 23 years ago. The General Division may have found the Claimant credible, but that was not enough. There had to be medical evidence corroborating her claim that she was unable to manage even sedentary employment as of the MQP.

CONCLUSION

[21] For the above reasons, the Claimant has not demonstrated to me that the General Division committed an error that falls within the permitted grounds of appeal.

[22] The appeal is therefore dismissed.

Member, Appeal Division

HEARD ON:	May 25, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	L. R., Claimant Viola Herbert, representative for the Minister