



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MB v Minister of Employment and Social Development*, 2021 SST 294

Tribunal File Number: AD-21-116

BETWEEN:

M. B.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: June 23, 2021

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] M. B. (Claimant) attended high school and college. She earned a certificate in construction safety. She has worked in a number of different jobs. The Claimant last worked in a construction safety and management position.

[3] The Claimant applied for a Canada Pension Plan disability pension. She says that she is disabled by post-traumatic stress disorder (PTSD). She also has substance abuse issues that are controlled, and Attention Deficit Hyperactivity Disorder. 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 before the end of the minimum qualifying period (MQP – the date by which a claimant must prove that they are disabled to receive the disability pension).

[4] Leave to appeal to the Tribunal's Appeal Division was granted. The appeal had a reasonable chance of success because the General Division may have based its decision on an important factual error about the reason she stopped working.

[5] It is easier to meet the legal test to be granted leave to appeal than to succeed on the appeal itself. I have now read all of the documents filed with the Appeal Division and the General Division decision. I have also heard the parties' oral arguments. The General Division did not base its decision on any important factual errors. Therefore, the appeal is dismissed.

ISSUES

[6] Did the General Division base its decision on at least one of the following important factual errors:

- a) that the Claimant stopped working because of alcohol addiction and a desire to change jobs;

- b) that the Claimant planned to change her career before leaving her job;
- c) that the Claimant did not seek mental health treatment until after she stopped working;
- d) that the Claimant avoided dealing with her past traumas;
- e) that harassment at work began after the Claimant stopped working;
- f) that the harassment and work stress were specific to one employer;
- g) that the Claimant missed school because of substance abuse, not mental health illness;
- h) that the Claimant stopped attending school in 2018 because she was not suited to it;
- i) that the Claimant was sober, settled, and had a new focus on life; or
- j) that the Claimant's history of trauma is "baggage"?

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:

- 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

[8] The Claimant says that the General Division based its decision on a number of important factual errors. To succeed on appeal, she must prove three things for each such error:

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

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

- 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.²

Why the Claimant Left Her Job

[9] The Claimant says the General Division made two important factual errors about why she left her last job. First, she says that the General Division erred when it stated that she left her last job because of her alcoholism and a desire to change jobs. There is an evidentiary basis for this. For example, immediately after the Claimant left work she contacted CAMH for treatment for alcohol addiction.³ Therefore, it is not wrong.

[10] The Claimant also takes issue with the General Division's finding of fact that she planned to change her career before she left her last job. There is a factual basis for this finding of fact as well. The Claimant testified that she planned to leave work and go to school before she did so, and that she knew that the government was giving out funding for school.⁴

[11] Finally on this issue, the Claimant argues that she did not plan to leave work to go to school, but that she had a number of exit plans. This may be so. However, the General Division did not base its decision on the precise reason that the Claimant left her job. Rather, it considered the evidence, including the Claimant's testimony that she had more than one exit plan from her last job, and the impact that her conditions and symptoms had on her capacity regularly to pursue work. Based on all of this it concluded that the Claimant did not leave work because she was disabled.

[12] Because there was a factual basis for these findings of fact, they were not wrong. The appeal cannot succeed on this basis.

The Claimant's Mental Health Treatment

[13] The Claimant argues that the General Division made an important factual error when it stated that she did not get mental health treatment until after she left work. She says that she

² See section 58(1)(c) of the *Department of Employment and Social Development Act*

³ See General Division decision at para. 9, GD5-7

⁴ See General Division decision at paras. 31, 32

applied for treatment in July 2017, and that she was treated for anxiety and stress in October 2017.

[14] There is some evidence that the Claimant had medical issues in 2017 and that they may have begun before she left work. However, the decision was not based on when the Claimant's conditions started, or what specific date she began to get treatment for them. The General Division had to decide whether the Claimant had a severe and prolonged disability before the end of the MQP, which was December 31, 2019. Therefore, the appeal fails on this basis.

[15] In addition, the Claimant says that the General Division based its decision on an important factual error that she avoided dealing with past traumas. However, the General Division did not make this finding of fact. The decision summarizes the evidence – that Dr. Vegda wrote that the Claimant had a history of trauma,⁵ and that Dr. Vegda and Holly Smith address the Claimant's past trauma, but focus mainly on substance abuse.⁶

[16] At the Appeal Division hearing the Claimant argued that the PTSD condition was underlying her other conditions, and she was unaware that she had this. She says that the General Division erred because it focussed on how the PTSD was manifested – through substance abuse, anxiety, etc. and it should have focussed on the PTSD itself.

[17] However, it does not matter what a medical condition is called, or what diagnoses are made. The General Division is to consider all of the evidence, and decide whether the Claimant has a disability that is both severe and prolonged under the *Canada Pension Plan* at the relevant time. This is what the General Division did. It made no error because it focussed on how the Claimant's PTSD showed itself rather than the PTSD condition itself.

Workplace Harrassment

[18] The Claimant argues, in addition, that the General Division based its decision on important factual errors about workplace harassment that she endured. First in this regard, the Claimant says that the General Division based its decision on an important factual error that the workplace harassment started after she left her job.

⁵ See General Division decision at para. 12

⁶ See General Division decision at para. 14

[19] The General Division decision summarizes the evidence about workplace harassment.⁷ This includes that the Claimant felt stress at work because she worked in a male dominated industry, and that she took sick days because of this. The Claimant also testified that the harassment started after she stopped working when her employer asked her to return and for further medical information.⁸ The Claimant discussed this with her psychiatrist who wrote to the employer to assist her.

[20] This is the evidentiary basis for the finding of fact that there was little evidence of harassment at work. The finding of fact is not wrong because it has an evidentiary basis.

[21] Next, the Claimant argues that the General Division based its decision on an important factual error when it found as fact that the harassment was specific to one employer. However, the General Division did not make this finding of fact. The decision states that if the Claimant did leave work because of stress and harassment on the job, she would have been capable of working elsewhere.⁹ This is not a finding of fact. It is a conclusion made after considering all of the evidence. This is a reasonable conclusion for the General Division to have drawn after it examined all of the evidence, including the Claimant's skills and education, her work history, treatment for her conditions and the results the treatment.

[22] The appeal fails on this basis.

Why the Claimant Left School

[23] Further, the Claimant says that the General Division made important factual errors about why she left the college program she began after she left work. The General Division decision states that the Claimant attended school so she could open a business in the fashion industry.¹⁰ She attended school for 25 hours each week¹¹ and earned good grades. She missed a few days of

⁷ See General Division decision at paras. 20-28

⁸ See General Division decision at para. 24

⁹ See General Division decision at para. 27

¹⁰ See General Division decision at para. 35

¹¹ See General Division decision at para. 38

school.¹² The Claimant testified that she left school because of anxiety and sleep problems. Dr. Vegda noted that at this time her insurance benefits ended so she had financial stress also.

[24] The General Division decision finds as fact that the Claimant was more likely unable to get to school on time because of her alcohol and cannabis consumption than anxiety.¹³ This may have been an error as the evidentiary basis for this finding of fact is not clear.

[25] However, the decision is not based on this finding of fact. Later in the decision the General Division correctly states that the Claimant has controlled her substance abuse since her pregnancy in 2019. So, this would not have prevented her from attending school or work at the end of the MQP, which is the relevant time.

[26] The General Division's decision should be approached as an organic whole, without a line-by-line treasure hunt for error.¹⁴ A holistic examination of the decision reveals that the General Division did not base its decision on a finding of fact that the Claimant was likely unable to attend school because of substance use. Therefore, the General Division made no error regarding this finding of fact.

Other Issues

[27] The Claimant also says that the General Division made an error when it states that she was sober, settled and had a new focus on life by the end of 2019.¹⁵ There is evidence to support this. The Claimant testified that when she became pregnant in 2019 she stopped consuming cannabis and alcohol. She is congratulated for remaining sober since then.

[28] Last, the Claimant says that the General Division made an error because it referred to her personal history as “baggage”. While this term is perhaps insulting, I note that it is the one used by the Claimant’s representative at the General Division hearing. Also, the decision was not based on how the General Division characterized the Claimant’s history. It accurately summarized the written and oral evidence about this. It considered all of the evidence, and

¹² See General Division decision at para. 44

¹³ See General Division decision at para. 41

¹⁴ *Irving Pulp & Paper Ltd. v. CEP, Local 30*, 2013 SCC 34

¹⁵ See General Division decision at para. 60

reached a decision that is based on the law and the facts. The General Division did not overlook or misconstrue any important information.

CONCLUSION

[29] The Claimant has overcome a number of issues. She continues to struggle with others. She has a sympathetic case. Be that as it may, the Tribunal cannot grant relief on the basis of compassion.¹⁶

[30] The General Division did not base its decision on any important factual errors. There is no suggestion that it made an error in law or failed to provide a fair process.

[31] Therefore, the appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division

HEARD ON:	June 16, 2021
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	M. B., Appellant Marshall Mara, Representative for the Appellant Jordan Fine, Counsel for the Respondent

¹⁶ Wilson v. Canada (Attorney General), 2019 FCA 49