



Citation: *JB v Minister of Employment and Social Development*, 2022 SST 1041

Social Security Tribunal of Canada Appeal Division

Decision

Appellant (Claimant): J. B.

Respondent: Minister of Employment and Social Development
Representative: Viola Herbert

Decision under appeal: General Division decision dated June 16, 2022
(GP-21-2333)

Tribunal member: Kate Sellar

Decision date: November 22, 2022

File number: AD-22-668

Decision

[1] I am allowing the appeal. The General Division made an error by failing to provide the Claimant with a fair process. I am returning the matter to the General Division for reconsideration.

Background

[2] J. B. (Claimant) has epilepsy. She has had seizures since 1982 or earlier. She explains that she took prescription medication to manage her seizures but she became very depressed and was suicidal in 2005. She says she stopped the medication and tried neurofeedback in early 2006. Shortly after that, she gave birth to her son. She never went back to medication. She moved to a different province. She explained that at some point, her new family doctor received her medical file from her previous doctor. However, the new doctor purges records that are more than 10 years old, so that doctor doesn't have her medical records from 2005 anymore.

[3] The Claimant applied for a *Canada Pension Plan* (CPP) disability pension on June 22, 2020. To be eligible for the disability pension, the Claimant had to show that her disability was severe and prolonged on or before December 31, 2006 (the last day of her coverage period). The Minister of Employment and Social Development (Minister) refused her application.

[4] The Claimant appealed the Minister's decision to this Tribunal. The General Division dismissed her appeal, finding that the medical evidence didn't show that she had functional limitations affecting her ability to work on or before December 31, 2006. The Claimant asked for permission to appeal that decision to the Appeal Division.

[5] I gave the Claimant permission to appeal. I found that the General Division may have failed to provide the Claimant with a fair process.

The parties agree on the outcome of the appeal

[6] Following a case conference, the parties have asked for a decision based on a written agreement. The Claimant signed the agreement on November 17, 2022 and the Minister's representative signed it on November 22, 2022. That agreement says:

The parties agree this appeal should be allowed and request that the Appeal Division issue a decision pursuant to subsection 59(1) of the *Department of Employment and Social Development Act* (DESDA) referring the matter back to the General Division.

This appeal should be allowed on the basis that the General Division failed to observe a principle of natural justice under section 58(1)(a) of the DESDA when it failed to provide the [Claimant] with information about how to ask for the hearing to be put on hold (adjourned) in order for her to determine whether she could call on an important witness (her previous family doctor).

Proceeding in this matter is the most cost effective and efficient for the [Claimant] and Respondent and is consistent with section 2 and paragraph 3(1)(a) of the *Social Security Tribunal Regulations* SOR/2013-60 which require the Tribunal to interpret these *Regulations* so as to secure the just, most expeditious and least expensive determination of appeals, and to conduct hearings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.

I accept the parties' agreement

[7] I accept the agreement in its entirety. The General Division made the error as identified in the agreement. The agreement is consistent with the key issue I raised in the decision granting the Claimant leave to appeal.

[8] Since the error is about a lack of fair process, the fix (remedy) is to return the appeal to the General Division to provide the fair process that was lacking. While I have the authority to give the decision that the General Division should have given, I cannot hold the hearing again and hear new evidence from the previous family doctor --- that is the General Division's role.

[9] To fix the error, I will return the matter to the General Division for reconsideration. The Claimant should have the opportunity to explore whether she can secure her former

family doctor as a witness. The records the Claimant needed from that doctor were destroyed. At the General Division hearing, she did raise the idea of contacting that doctor to testify. That doctor may have highly relevant testimony for the General Division given the gap in the medical records. The Claimant should have the chance to bring this witness if she can.

[10] I thank the parties for the work they did to together to settle the matter at the Appeal Division level.

Conclusion

[11] I allowed the appeal consistent with the parties' agreement. The General Division made an error by failing to provide the Claimant with a fair process. I returned the matter to the General Division for reconsideration.

Kate Sellar

Member, Appeal Division