



Citation: *JK v Minister of Employment and Social Development*, 2023 SST 1848

**Social Security Tribunal of Canada
General Division – Income Security Section**

Decision

Appellant: J. K.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated February 21, 2023 (issued
by Service Canada)

Tribunal member: Adam Picotte

Type of hearing: In Writing

Decision date: October 25, 2023

File number: GP-23-1330

Decision

[1] The appeal is dismissed.

[2] The Appellant, J. K., isn't eligible for a CPP disability benefit. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant is a previous applicant for a CPP disability benefit. She first applied for a CPP disability benefit on July 18, 2011. This application was denied initially and also on reconsideration. After receiving the reconsideration decision the Appellant appealed the denial to the Social Security Tribunal (SST). On January 27, 2015, the SST dismissed the Appellant's appeal. This decision was final as the Appellant did not pursue an appeal with the appeal division of the SST.

[4] The Appellant says the denial of her application in 2015 was unjust. She continued to be unable to work because of her disability and as such has made this present appeal for a CPP disability benefit.

[5] The Minister says that a decision of the SST is final and is not subject to appeal to or review by any court except as provided in *DESDA*¹. Absent an injustice or issue of issue of natural justice the Appellant's appeal is Res Judicata and this appeal should be dismissed on that basis.

What the Appellant must prove

[6] For the Appellant to succeed, she must prove the legal doctrine of Res Judicata does not apply.

[7] In *Danyluk v. Ainsworth Technologies Inc.*, the Supreme Court of Canada affirmed that the doctrine of *res judicata* applies when considering issues previously decided by the Courts, including administrative officers and tribunals.² The Federal

¹ Section 68 of the DESDA

² *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460 ("*Danyluk*")

Court in *Belo-Alves v Canada* stated that the doctrine specifically applied to decisions of the SST.³

[8] When *res judicata* applies, a litigant is prevented from re-litigating an issue by the decision in a previous proceeding. The Court in *Belo-Alves* stated that by applying the rule of *res judicata*, the question of disability cannot be re-litigated.⁴

[9] There is a two-step analysis involved in determining whether it is appropriate to apply the doctrine of *res judicata*.

[10] First, it must be determined if the three conditions set out in *Danyluk* are met:

- (a) The issue must be the same as the one decided in the prior decision;
- (b) The prior decision must have been final; and,
- (c) The parties to both proceedings must be the same.⁵

Second, the Tribunal must determine if it is not in the interests of justice to apply *res judicata*.⁶

Matters I have to consider first

The Appellant requested an in-person hearing

[11] The Appellant requested an in-person hearing. The *SST Regulations* sets out that a hearing must be held in the format requested by the Appellant.⁷ Upon receiving the request for an in-person hearing, I wrote to the Appellant and advised that the matter would proceed by way of a case conference, through videoconference, to discuss the issue of *Res Judicata*. I would hear her arguments about why *Res Judicata* did not apply. I advised her, through the letter, that if I determined the issue of *Res Judicata* did not apply, that the matter would then be sat down for an in person hearing as per her request.

³ *Belo-Alves v. Canada (Attorney General)*, 2014 FC 1100

⁴ *Ibid* at para.96

⁵ See *Danyluk*

⁶ *Danyluk* at paras. 67 - 81

⁷ Section 2 *SST Regulations*

[12] The Appellant agreed to proceed in this way, and as such, attended the case conference.

[13] On the day of the case conference, the Appellant's video conference did not work properly. As a result, we proceeded through teleconference. I was satisfied that the Appellant had a full opportunity to provide me with all information that she felt was relevant to her appeal.

Reasons for my decision

[14] I have determined that the three conditions set out in Danyluk are met.

[15] The issue is the same in this appeal as it was in 2015 when the Appellant's claim was first denied at the SST. In July 2011, the Appellant applied for a CPP disability benefit. This proceeded to Reconsideration and was then appealed to the SST. A member of the General Division of the Income Security Section of the SST issued a final decision denying a claim for a CPP disability benefit. In denying the claim, the member determined that the Appellant did not have a severe and prolonged disability on or before the expiration of her MQP, which was December 31, 2013.

[16] The SST decision made after the hearing was final. As set out in the DESDA, all decisions of the SST are final decisions. That means, absent an appeal to the Appeal Division of the SST, a matter is considered final for the purpose of the adjudication process. As the Appellant did not appeal her matter to the SST Appeal Division, her decision was final as of 2015.

[17] Both parties are the same parties to both appeals. Both the Minister and the Appellant are the same entities involved in the initial application in 2011. Both were also the parties that appeared before the general division in 2015.

[18] Having determined that the criteria for *Res Judicata* has been met, I will now turn to whether there was a denial of natural justice in this matter.

[19] I have determined that the Appellant was not denied natural justice. At the initial hearing, in 2015, the appeal proceeded by way of an in person hearing. The Appellant

was provided with her preferred form of hearing. She raised with me, that the previous member considered certain facts, which she asserted were not relevant. Specifically, that her blood work was mischaracterized as being within a healthy range. However, this is not the test for a denial of natural justice.

[20] In reviewing the 2015 SST decision, I was satisfied that the presiding member gave reasoned consideration to the legal test for a CPP disability benefit and that there was no basis for a denial of natural justice. Absent a compelling basis to find otherwise, I am left to conclude that it would be improper to allow this appeal to proceed with the matter is *Res Judicata*.

[21] As a result, I am dismissing this appeal.

Conclusion

[22] I find that the Appeal is *Res Judicata*.

[23] This means the appeal is dismissed.

Adam Picotte
Member, General Division – Income Security Section