Citation: *MA v Minister of Employment and Social Development*, 2024 SST 642

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	M. A.
Respondent:	Minister of Employment and Social Development
Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated June 28, 2023 (issued by Service Canada)

Tribunal member:	Adam Picotte
Type of hearing:	Teleconference
Hearing date:	April 12, 2024
Hearing participants:	Appellant
Decision date:	April 16, 2024
File number:	GP-23-2177

Decision

[1] The appeal is dismissed.

[2] The Appellant, M. A., isn't eligible for a Canada Pension Plan disability benefit. This decision explains why I am dismissing the appeal.

Overview

[3] On April 29, 2022, the Appellant applied for a CPP disability benefit. The Appellant is a previous applicant for a CPP disability benefit. In January 2019, he appeared before the Social Security Tribunal at the general division. The prior member determined that the Appellant did not qualify for a disability benefit. As a result, I must determine whether this matter can proceed to a decision on the merits of the case. The term for this is called *res judicata*.

[4] The Appellant says that he did not have a fair hearing in 2019. As a result, he submits he should be able to proceed to a new hearing on the merits of the claim.

[5] The Minister says the matter is r*es judicata* and as such, I am unable to make a new decision in this matter.

What the Appellant must prove

[6] For the Appellant to succeed, he must prove that *res judicata* does not apply.

[7] In *Danyluk*[1], the Supreme Court of Canada affirmed that *res judicata* applies when considering issues that the courts and administrative tribunals previously decided. When *res judicata* applies, the decision in the previous proceeding prevents the re-litigation of the same issue. If *res judicata* applies to this case, then the 2019 General Division decision, dismissing the appeal for benefits would prevent the Appellant from relitigating the issue of disability under the CPP before the Tribunal.

[1] *Danyluk* v *Ainsworth Technologies Inc.*, 2001 SCC 44.

[8] The *Danyluk* decision sets out a two-step test for the application of *res judicatares judicata.*

The first step of the Danyluk test

[9] Three conditions must be met in the first step of the *Danyluk* test:

1. The issue must be the same as the one decided in the prior decision;
2. The prior decision must have been a final decision; and
3. The parties to both proceedings must be the same.

The second step of the Danyluk test

[10] The second step of the *Danyluk* test is deciding whether *res judicata* should not be applied as a matter of discretion. When making this decision, the following factors should be considered:

1. The wording of the statute from which the power to issue the administrative order derives;
2. The purpose of the legislation;
3. The availability of an appeal;
4. The safeguards available to the parties in the administrative procedure;
5. The expertise of the administrative decision maker;
6. The circumstances giving rise to the prior administrative proceedings; and
7. The potential injustice.

Reasons for my decision

[11] It is clear to me on the record that all three factors in the first step are met. The issue is the same, the prior decision, came from the general division of the SST and is therefore a final decision, and the parties to both proceedings are the same.

In the prior appeal before the general division, the member determined that the MQP was December 31, 2006.

[12] In reviewing the appeal record, I noted that the Appellant had earnings above the year's basic exemption in 2010 – 2012. However, his 2013 earnings were below the year's basic exemption. Typically, when that happens, an Appellant is provided a pro-rated MQP. However, that was not done in the 2019 hearing. As a result, I considered whether *res judicata* should not be applied in this situation.

[13] I wrote to the Minister and asked why a pro-rated MQP was not provided on this file. The Minister explained that the year's basic exemption for the year 2013 was $5100. To benefit from proration, the Appellant would have needed to earn at least $425 in 2013 (5100 divided by 12). He didn't. He only earned $423 in 2013. This means the Appellant's earnings in 2013 can't be prorated.[2]

[14] As a result, I am satisfied that both appeals deal with the same issue. Therefore, the first part of the test set out in *Danyluk* is met.

[15] The second step of the *Danyluk* test does not assist the Appellant. In considering the file materials, I see no basis to disturb the previous Tribunal decision. The Appellant was provided with a fair hearing, where he was given an opportunity to explain why he ought to qualify for a disability benefit.

[16] During the hearing that I had with him, he explained to me that he did not feel comfortable with the initial member. He felt that member did not exhibit compassion for him and did not make him feel happy. Because the Appellant did not feel comfortable, he believed he should be provided with a new hearing.

[17] While I am sympathetic to the Appellant, I am not satisfied that there was a potential injustice in his case. He was provided with a fair opportunity to express himself and explain why he should qualify for a disability benefit. Ultimately, the general division

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[2] GD10-4-5

determined he should not qualify for a disability benefit. I see no reason to interfere with that decision.

Conclusion

[18] I find that the Appellant isn't eligible for a new decision because *res judicata* applies.

[19] This means the appeal is dismissed.

Adam Picotte
Member, General Division – Income Security Section