Federal Court Cour fédérale

Date: 20250411

Docket: T-1148-24

Citation: 2025 FC 677

Ottawa, Ontario, April 11, 2025

PRESENT: Madam Justice McDonald

BETWEEN:

SAMANTHA CLARK

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] On this Application for judicial review, Samantha Clark, who represents herself, asks the Court to review the decision of the Social Security Tribunal (Tribunal) Appeal Division dated May 2, 2024. In that decision, the Appeal Division [AD] refused her request for leave to appeal a decision of the General Division [GD], which determined she was not eligible for a Canada Pension Plan (CPP) disability pension.

[2] Since 2017, Ms. Clark has made three applications for CPP disability benefits. Her first application was denied on the basis that she did not have a "severe and prolonged disability" prior to December 31, 2016—the end of her minimum qualifying period.

[3] The decision challenged in this judicial review is the Appeal Division decision refusing her appeal on the grounds that the question of her eligibility for CPP disability benefits had been finally determined and was therefore *res judicata*. The issue before the Appeal Division was not whether Ms. Clark's current medical condition qualifies her for CPP disability benefits, but whether the legal and factual issues raised in her third application for CPP disability benefits had already been determined.

[4] I acknowledge that the denial on the ground of *res judicata* may appear to be a technical ground of denial, however the record demonstrates that Ms. Clark's medical evidence regarding her eligibility for CPP disability benefits within the coverage period had been fully considered and finally determined.

[5] For the reasons below, I am dismissing this Application.

I. Background

[6] Ms. Clark was employed as a Continuing Care Assistant (CCA) and injured her arm on June 10, 2014, while assisting with a patient transfer. She underwent surgery on her left wrist and forearm in November 2015. On May 12, 2021, she was diagnosed with Chronic Regional Pain Syndrome (CRPS) in her left forearm.

[7] Ms. Clark has made three applications for CPP disability benefits, which I will summarize below.

A. *2017 application*

[8] Ms. Clark first applied for a CPP disability pension on February 17, 2017. Her minimum qualifying period ended December 31, 2016, meaning she had to establish a severe and prolonged disability before that date. On May 4, 2017, her application was denied on the grounds that she did not have a severe and prolonged disability prior to December 31, 2016. A reconsideration of this decision was upheld. She appealed to the GD who concluded that she did not have a severe and prolonged disability by December 31, 2016 and therefore was not eligible for the CPP disability pension.

[9] On March 4, 2020, the GD refused Ms. Clark's application to rescind or amend the first GD decision based on a new diagnosis of CRPS. Ms. Clark did not appeal this decision.

B. *2020 application*

[10] In October 2020, Ms. Clark re-applied for a CPP disability pension citing the same coverage period. On January 18, 2021 the Minister dismissed the second application, finding that the issue was *res judicata* because the GD had already adjudicated the Applicant's appeal of her first application. Ms. Clark did not seek reconsideration of the Minister's dismissal.

C. *2022 application*

[11] On October 29, 2022, Ms. Clark applied for the third time for a CPP disability pension, once again relying on the same qualifying period. On April 4, 2023, the Minister again denied the third application, finding the matter *res judicata*. She requested a reconsideration and the Minister's decision was upheld.

[12] On February 16, 2024, the GD dismissed her appeal, finding that the coverage period issue was the same as addressed in the prior decisions which had not been appealed by Ms. Clark. This led the GD to conclude that the matter was *res judicata*. The GD applied the criteria in *Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 [*Danyluk*] and concluded that there were no grounds to reopen. Finding as follows:

> **– The first six factors in the *Danyluk* test's second step**
>
> [28] These factors are largely "mechanical" in nature. I see no issue with the legislation's wording or purpose. An appeal was available from the 2018 Tribunal decision. To do so, the Appellant first had to apply to the Appeal Division for leave to appeal. The Appellant didn't do that. She made an application to rescind or amend the 2018 Tribunal decision. I see no persuasive evidence that the decision maker in the 2018 Tribunal decision lacked the necessary expertise. Nor does it appear that procedural safeguards were unavailable or that the circumstances leading to the Tribunal appeal demand intervention. More generally, I find that the proceedings leading to the 2018 Tribunal decision were conducted fairly. The Appellant knew the case she had to meet, she had a reasonable opportunity to meet it, and she was given an opportunity to state her case. In fact, the Appellant had a representative with her at the 2018 Tribunal hearing.

> **– The seventh factor – potential injustice**
>
> [29] I am not persuaded that an injustice has occurred, even though the report from Dr. Elgebeily (pain specialists) didn't exist until May 2021. The Appellant filed new medical information after her 2018 hearing. The Appellant's representative submits that to deny the admission of this new evidence would deny justice to the Appellant. Only after the 2018 decision, was the new evidence in the form of a new diagnosis received. Specifically, the Appellant's representative says the report of Dr. Elgebeily in May 2021 provides a new diagnosis of chronic regional pain syndrome (CRPS). The report says "IMPRESSION AND PLAN: Chronic left wrist and left forearm pain, likely CRPS.

D. *Appeal Decision under review*

[13] The AD Decision found the GD's application of *res judicata* reasonable and explained why Ms. Clark's new medical evidence did not change the legal issue or justify revisiting the earlier findings, noting:

> 17 I understand why the Claimant would like a new hearing about whether she is entitled to the disability pension. She has medical conditions that result in limitations to what she can do (functional limitations). However, the question of whether her disability was severe and prolonged […] during her coverage period has already been decided, and she already brought a new facts application that was unsuccessful. The General Division provided thorough and thoughtful reasons about applying the rule. There's no arguable case here that the General Division made an error.

II. Issue and standard of review

[14] The only issue on this Application for judicial review is if the Decision of the Appeal Division to refuse leave to appeal on the grounds that the issue she raised had already been decided is a reasonable conclusion.

[15] When considering if a decision is reasonable, the Court looks at the decision-making process and its outcome. The Court looks for "internally coherent reasoning" and "the presence of justification, transparency and intelligibility" and if the decision is "justified in relation to the relevant factual and legal constraints that bear on the decision" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 12, 86 and 99 [*Vavilov*]).

III. Analysis

[16] Ms. Clark argues that the finding of *res judicata* as a reason to deny her CPP disability benefits is unjust, as her CRPS diagnosis was made after her first and second applications, and therefore this diagnosis was not properly considered. She argues that her CRPS diagnosis was not considered at the time of her first or second applications because of the delay in getting referrals to the medical experts who made the CRPS diagnosis.

[17] I will now turn to consider the question that was before the AD when Ms. Clark requested an appeal. Under section 34 of the *Department of Employment and Social Development Act*, SC 2005 [*DESDA*] the AD is to consider if the appeal had a "reasonable chance of success". This is done by considering if any of the three factors outlined in subsection 58(1) of the *DESDA* apply to the GD findings. Namely, if there was (a) a breach of natural justice; (b) an error of law; or (c) an erroneous finding of fact made in a perverse or capricious manner or without regard to the material before it.

[18] It is helpful to quote directly from the AD Decision to respond to the arguments made by Ms. Clark on this Application for judicial review. The AD states as follows:

> [13] In my view, the Claimant hasn't raised an arguable case for an error by the General Division about whether the legal issue changed. The General Division found that the availability of new evidence about a diagnosis doesn't change the legal test the decision maker applies. The Claimant hasn't brought an arguable challenge of the General Division's conclusion or reasons. The General Division found that the legal issue remained the same in both proceedings **because the focus isn't on diagnoses**.
>
> [14] … The Claimant's re-argument that it is unjust to apply the rule doesn't challenge the General Division's decision. The General Division explained that **it had already considered the new diagnosis in the new facts application, which was also unsuccessful**. The Claimant hasn't brought an arguable challenge to the reason the General Division gave for its conclusion that applying the rule wouldn't result in an injustice. [Emphasis in original.]

[19] Against the findings of the AD and in assessing if the *res judicata* finding is reasonable, the Court considers the following questions: (1) has the same issue been previously decided; (2) was the previous decision a final decision; and (3) are the parties the same. Even if the answer is yes to these questions, there may be special circumstances, such as new evidence, that justifies not applying the doctrine of *res judicata* or there may be circumstances where to apply *res judicata* would work an injustice (*Danyluk* at paras 25and 67; *Kaloti v Canada (Minister of Citizenship and Immigration)(CA)*, 2000 CanLII 17123 (FCA) at paras 8-9).

[20] In applying the *res judicata* considerations, I will start by noting the following findings in the 2024 GD decision:

[29] I am not persuaded that an injustice has occurred, even though the report from Dr. Elgebeily (pain specialists) didn't exist until May 2021. The Appellant filed new medical information after her 2018 hearing. The Appellant's representative submits that to deny the admission of this new evidence would deny justice to the Appellant. Only after the 2018 decision, was the new evidence in the form of a new diagnosis received. Specifically, the Appellant's representative says the report of Dr. Elgebeily in May 2021 provides a new diagnosis of chronic regional pain syndrome (CRPS). The report says "IMPRESSION AND PLAN: Chronic left wrist and left forearm pain, likely CRPS.

[30] However, the 2018 Tribunal decision acknowledges the existence of the issues of chronic left wrist and arm pain, anxiety, depression and bladder pain and frequency.

[31] The issue is not the exact diagnosis. The real issue is the specific impact of the Appellant's medical conditions on her function and ability to work by December 31, 2018. An exact diagnosis of her pain would not have had a significant impact on her ability to work, since the medical conditions and functional limitations, including chronic pain, were already acknowledged in the 2018 Tribunal decision.

[32] The Appellant's current representative said that at the time of the 2018 hearing, the Appellant had depression and anxiety. She was overwhelmed and had to accept the decision at that time. However, the Tribunal Member did consider these conditions on the Appellant's capacity. Further, the Appellant did have a professional representative.

[33] The Appellant also had the help of a professional representative to file an application to Rescind or Amend the 2018 Tribunal decision. Basically, this is an appeal that will decide if the new information filed by the Appellant is considered "new material fact". In the Tribunal's decision of 2020, the Tribunal Member said she considered the new diagnoses of ulnar neuropathy and complex regional pain syndrome. She found that "a different diagnosis of a medical condition in and of itself does not bring an applicant closer to a disability pension in the absence of persuasive evidence that she was disabled within the meaning of the CPP". The Application to Rescind or Amend was dismissed.

[34] The Appellant's current representative submitted that there was ample medical evidence in the file before the 2018 Tribunal

> decision was made, that showed the Appellant was disabled and couldn't work. He said that although she wasn't properly diagnosed, the doctors said she couldn't be rehabilitated. But the decision maker noted in her 2018 Tribunal decision that "there are numerous medical reports on file, which were all considered." I do not have the legal authority to change the 2018 Tribunal Member's decision.
>
> [35] While I am sympathetic to the Appellant's situation, I am bound by the legislation and, as such, only have the powers granted to me by the governing statute. Further, I am required to interpret and apply the provisions as they are set out in the CPP. [Footnotes omitted.]

[21] The AD Decision reasonably concluded that the 2024 GD decision (quoted above) and made no errors in their application of *res judicata* as there was no "new evidence" that was not considered. The GD also considered whether denying relief would result in injustice. It found that the underlying issues—chronic wrist and forearm pain—were considered in the original proceeding. The CRPS diagnosis, though new, did not materially alter the evidentiary landscape regarding Ms. Clark's condition as of December 31, 2016. There was therefore no error of law that would establish an arguable case warranting them to grant leave to appeal.

[22] Given the circumstances, the AD properly and reasonably considered if Ms. Clark's circumstances had been previously considered and if her arguments on appeal had a reasonable chance of success. The AD acted within their discretion when they refused leave to appeal on the grounds that Ms. Clark had not made an arguable case as required under subsection 58(1) of the *DESDA*.

[23] I am sympathetic to Ms. Clark's circumstances; however, the AD Decision is intelligible, justified, and transparent and is therefore reasonable. There is no basis for this Court to intervene in the Decision.

IV. Conclusion

[24] This Application for judicial review is dismissed. No costs are awarded.

JUDGMENT IN T-1148-24

THIS COURT'S JUDGMENT is that:

1. This Application for judicial review is dismissed.

2. No costs are awarded.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1148-24
STYLE OF CAUSE:	SAMANTHA CLARK V ATTORNEY GENERAL OF CANADA
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APPEARANCES:

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Ian McRobbie	FOR THE RESPONDENT

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