

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200122

Docket: A-87-19

Citation: 2020 FCA 16

**CORAM: DAWSON J.A.
STRATAS J.A.
WOODS J.A.**

BETWEEN:

KULWINDER SINGH

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on January 22, 2020.
Judgment delivered from the Bench at Toronto, Ontario, on January 22, 2020.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on January 22, 2020).

STRATAS J.A.

[1] Ms. Singh seeks to quash the decision dated January 10, 2019 of the Appeal Division of the Social Security Tribunal (file no. AD-18-454). The Appeal Division declined to reconsider its refusal to grant her leave to appeal from the decision dated September 7, 2017 of the General Division. The General Division dismissed Ms. Singh's application for disability benefits under the *Canada Pension Plan*, R.S.C. 1985, c. C-8.

[2] At the outset, we wish to explain to Ms. Singh the limitations to which the General Division, the Appeal Division and this Court are subject in this case.

[3] Parliament sets the rules about who is entitled to disability benefits under the *Canada Pension Plan*. The General Division, the Appeal Division and this Court have to follow these rules. They cannot do as they please.

[4] We in this Court are constrained in another way. We are not allowed to second-guess decisions of the Appeal Division. We have to give the Appeal Division some leeway—what the law calls “deference”—when the Appeal Division interprets the rules, makes findings of fact, applies the rules to the facts, and then reaches a conclusion. In circumstances like these, to set aside the decision of the Appeal Division, we need to be persuaded that the decision suffers from an overriding serious defect.

[5] In this case, our task is only to assess whether the Appeal Division had an acceptable basis on the facts and the law to reach the conclusion it did and whether it satisfactorily supported its conclusion. We are not allowed to go through the evidence and reach our own conclusion about Ms. Singh’s eligibility for benefits. See, generally, the Supreme Court’s recent decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

[6] Thus, when we do not interfere with a decision of the Appeal Division, it does not mean that we disbelieve the person claiming disability benefits. Nor does it mean that we are ignoring

or trivializing the person's medical condition. It is just that, by law, we are very limited in our ability to set aside a decision of the Appeal Division.

[7] In this case, the Appeal Division followed subsection 58(1) of the *Department of Employment and Social Development Act*, S.C. 2005, c. 34. Subsection 58(1) says that the Appeal Division cannot grant leave to appeal from the General Division unless one of certain limited, well-defined circumstances is present. In this case, it found that none of those circumstances was present. So it denied Ms. Singh leave to appeal.

[8] After the Appeal Division denied Ms. Singh leave to appeal, Ms. Singh submitted new evidence to the Appeal Division. She asked the Appeal Division to reconsider its decision.

[9] In situations like this, the rule in paragraph 66(1)(b) of the *Department of Employment and Social Development Act* applies. The rule is that the Appeal Division can rescind or amend a decision, here the decision denying Ms. Singh leave to appeal, if, among other things, there is "a new material fact that could not have been discovered at the time of the hearing with the exercise of reasonable diligence". In this case, the Appeal Division found that the new evidence Ms. Singh presented was neither new nor material. In the view of the Appeal Division, the evidence did not contain new information and could not have affected its decision.

[10] Since the Appeal Division was acting under paragraph 66(1)(b) of the *Department of Employment and Social Development Act*, an application for judicial review can be made to this

Court: *Federal Courts Act*, R.S.C. 1985, c. F-7, para. 28(1)(g). We can determine Ms. Singh's application for judicial review.

[11] However, the application for judicial review must be dismissed. As mentioned above, we must defer to factual and discretionary decisions of the Appeal Division like the one here. The Appeal Division's decision does not suffer from the sort of overriding serious defect on the facts or the law that would allow us to set it aside. Therefore, the decision of the Appeal Division must remain in place.

[12] Costs are often awarded against a party that does not succeed in this Court. However, the respondent submits that in these circumstances the Court should not make a costs award against Ms. Singh. We agree.

[13] Therefore, for the foregoing reasons, we will dismiss the application for judicial review without costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-87-19

AN APPLICATION FOR JUDICIAL REVIEW OF THE DECISION OF THE SOCIAL SECURITY TRIBUNAL (APPEAL DIVISION) DATED JANUARY 10, 2019, FILE NO. AD-18-454

STYLE OF CAUSE: KULWINDER SINGH v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: JANUARY 22, 2020

REASONS FOR JUDGMENT OF THE COURT BY: DAWSON J.A.
STRATAS J.A.
WOODS J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

Kulwinder Singh ON HER OWN BEHALF

Marcus Dirnberger FOR THE RESPONDENT

SOLICITORS OF RECORD:

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