



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. A. v. Minister of Employment and Social Development*, 2018 SST 169

Tribunal File Number: AD-18-51

BETWEEN:

K. A.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: February 16, 2018

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] K. A. (Claimant) applied for a Canada Pension Plan survivor's pension after the death of her common-law partner. This application was denied in 2013 due to a lack of information. The Claimant applied again for this pension in 2015, and it was awarded to her with payments starting in December 2014. The Claimant appealed the Minister of Employment and Social Development's decision to start payments in December 2014 to the Social Security Tribunal. The Tribunal's General Division dismissed the appeal. Leave to appeal to the Tribunal's Appeal Division is refused because there is no reasonable chance of success on appeal.

ISSUE

[3] I must decide whether the Claimant may have a reasonable chance of succeeding on the appeal based on a ground of appeal set out in the *Department of Employment and Social Development Act* (DESD Act).

ANALYSIS

[4] The DESD Act governs the Tribunal's operation. It sets out only three narrow grounds of appeal that the Appeal Division can consider. They are that the General Division failed to observe the principles of natural justice or made a jurisdictional error, made an error of law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it. The Claimant's reasons for requesting leave to appeal must be considered in this context.

[5] The Claimant argues that payment of the survivor's pension should start in 2012 when her common-law partner died. She applied for the pension at this time, but the application was denied because she did not provide all of the required information required. This information

was not provided for reasons outside the Claimant's control.¹ The Claimant took no further steps regarding this application. The General Division decision explains that due to the wording of the *Canada Pension Plan*, no pension can be paid until a complete application has been filed, and that the Claimant's application was made in November 2015.² The legal basis for its conclusion that no benefit could be paid to the Claimant prior to December 2014 is also clearly explained, and the legal basis for this conclusion is set out.³

[6] The Claimant states that the principles of natural justice were not observed because she could not have filed the documents required any sooner since she did not have them. The principles of natural justice are concerned with ensuring that all parties to a claim know the legal test that they have to meet, that they have an opportunity to present their case, and that the decision is made by an independent decision-maker based on the facts and the law. The Claimant's argument does not point to any failure to observe these principles. It has no reasonable chance of success on appeal.

[7] The Claimant also argues that the General Division erred in law because she does not have paperwork related to documents and payment dates. This argument does not point to any error made by the General Division. Leave to appeal cannot be granted on this basis.

[8] Finally, the Claimant argues that the General Division decision was based on an erroneous finding of fact under the DESD Act because she was asked to provide information regarding the legal issue of incapacity when she did not claim that she was incapacitated. The General Division decision states that the Appellant stated that one of the reasons she failed to pursue an earlier application for the pension or to submit an application sooner was that she suffered from post-traumatic stress disorder.⁴ When it became clear that the Claimant was not pursuing any relief on the basis of incapacity, the General Division accepted this, and made its decision without a hearing.⁵ There is no indication that the General Division made any erroneous finding of fact. The Claimant's argument in this regard therefore does not have a reasonable chance of success on appeal.

¹ Paragraph 6 of the decision.

² Paragraphs 20 to 22 of the decision.

³ Paragraphs 25 to 28 of the decision.

⁴ Paragraph 4 to 5 of the decision.

⁵ Paragraph 7 of the decision.

[9] I have reviewed the General Division decision and the written record. I am satisfied that the General Division did not overlook or misconstrue any important evidence. I am also satisfied that it observed the principles of natural justice and made no error in law.

CONCLUSION

[10] Leave to appeal must be refused because the Claimant did not point to any ground of appeal under the DESD Act that may have a reasonable chance of success on appeal.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	K. A., Self-represented
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