



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. S. v Minister of Employment and Social Development*, 2019 SST 287

Tribunal File Number: AD-19-146

BETWEEN:

R. S.

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: March 19, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] R. S. (Claimant) applied for a Canada Pension Plan retirement pension in September 2018. The Minister of Employment and Social Development granted the application and began to pay this pension to the Claimant in October 2018. The Claimant appealed the Minister's decision regarding when payment of the pension should start because he says that he applied for the retirement pension in April 2018. The Tribunal's General Division held a hearing and dismissed the appeal. Leave to appeal the General Division's decision is refused because the Claimant has not presented a ground of appeal under the *Department of Employment and Social Development Act* (DESD Act) on which the appeal has a reasonable chance of success.

ISSUES

[3] Does the appeal have a reasonable chance of success because the Minister did not attend the hearing?

[4] Does the appeal have a reasonable chance of success because the Minister has not disclosed important information?

ANALYSIS

[5] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out only three grounds of appeal that the Appeal Division can consider. They are that the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in 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.¹ In addition, leave to appeal is to be refused if the appeal has no reasonable chance of success.²

¹ DESD Act s. 58(1)

² DESD Act s. 58(2)

Therefore, to be granted leave to appeal the Claimant must present a ground of appeal that falls under the DESD Act and on which the appeal has a reasonable chance of success. The Claimant's arguments are considered below in this context.

Issue 1: The Minister's failure to attend the hearing

[6] In the application to the Appeal Division the Claimant wrote that the Minister did not attend the General Division hearing. The General Division made its decision in its absence. It is up to each party to present their evidence and to decide whether they will attend a hearing. The Tribunal cannot compel any party to do so. The Claimant's frustration with the Minister's non-attendance at the hearing does not point to any error made by the General Division. Leave to appeal cannot be granted on this basis.

Issue 2: The Minister's failure to disclose information

[7] The Claimant also argues that leave to appeal should be granted because the Minister is "hiding evidence" or has failed to disclose a copy of his April 2018 application for the retirement pension. The Claimant made this argument at the General Division hearing.³ The General Division examined the evidence that was before it, including the record of contact between the Claimant and Service Canada, the online history, and the Claimant's testimony.⁴ The General Division concluded that there was insufficient evidence to prove that the Claimant had applied for the retirement pension in April 2018. Although the Claimant has sent numerous emails to the Tribunal to support his application for leave to appeal, he has not produced any additional material that bolsters his argument. The appeal does not have a reasonable chance of success based on the Minister's failure to disclose information because nothing suggests that the General Division made an error in its consideration of this issue.

[8] I have reviewed the General Division decision and the written record. The General Division did not overlook or misconstrue any important information. It considered the relevant law and applied it to the facts. There is no suggestion that the General Division failed to observe a principle of natural justice.

³ General Division decision para. 10

⁴ *Ibid.* para. 11

CONCLUSION

[9] Leave to appeal is refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	R. S., Self-represented
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