



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. P. v Minister of Employment and Social Development*, 2019 SST 449

Tribunal File Number: AD-18-632

BETWEEN:

J. P.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Kate Sellar

Date of Decision: May 15, 2019

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] J. P. (Claimant) applied for a disability pension under the Canada Pension Plan for a second time in 2012. The Minister denied the application both initially and on reconsideration. The Claimant appealed to the Office of the Commissioner of Review Tribunals, and that appeal was transferred here, to the Social Security Tribunal, in April 2013.

[3] The General Division dismissed the Claimant's appeal on March 19, 2015, finding that the Claimant was not eligible for a disability pension.

[4] The Appeal Division must decide whether there is an arguable case that the General Division made an error under the *Department of Employment and Social Development Act* (DESDA) that would justify granting the Claimant's application for leave to appeal.

[5] I find that there is no arguable case that the General Division made an error under the DESDA. The application for leave to appeal is refused.

ISSUE

[6] Has the Claimant raised an arguable case that the General Division made an error that would justify granting leave to appeal?

ANALYSIS

Appeal Division Review of General Division Decisions

[7] The Appeal Division allows leave to appeal General Division decisions only where there is an arguable case that the General Division has made an error. The only errors that allow the Appeal Division to grant leave to appeal are those that are listed in the DESDA. These possible errors are referred to as the "grounds of appeal." The grounds of appeal are:

(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.¹

[8] On leave to appeal, an applicant must show that the appeal has a reasonable chance of success.² To meet this requirement, the applicant needs to show only that there is some arguable ground on which the appeal might succeed.³

Has the Claimant raised an arguable case that the General Division made an error that would justify granting leave to appeal?

[9] The Claimant has not raised an arguable case that the General Division made an error that would justify granting leave to appeal. I have also reviewed the record, and I am satisfied that the General Division did not ignore or misconstrue the evidence in this case.

[10] On the form requesting leave to appeal the General Division's decision, the Claimant did not select a ground of appeal. In the pages that he filed with the form, the Claimant's wife stated that she was not sure what box to check on the form as it is very confusing for her, and that the Claimant also had "no clue" about which box to select.⁴

[11] The statement in support of the application describes the current state of the Claimant's health, including the problems he experiences with his memory, and with completing activities of daily living. The statement explains that the Claimant takes medications, and that he is not

¹ DESDA, s 58(1).

² DESDA, s 58(2).

³ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁴ AD1-4.

able to work. The statement also describes the fact that the Claimant has had different doctors over the years, and has been trying to access additional medical records.⁵

[12] The Tribunal asked the Claimant to provide more information or argument about how the General Division made an error that would support his application for leave to appeal.⁶ The Claimant did not provide a response to that request and the time for doing so has now passed.

[13] I find that the Claimant has not raised an arguable case for an error by the General Division under the DESDA. More specifically, the Claimant has not raised an argument that fits within one of the required grounds of appeal. The Claimant's information about the current state of his health does not help the Appeal Division to decide whether the General Division made an error. The General Division had to decide whether the Claimant had a severe and prolonged disability within the meaning of the *Canada Pension Plan (CPP)* during his minimum qualifying period (MQP).⁷ The Claimant's MQP ended on December 31, 2009.⁸ None of the information the Claimant provided can lead, even arguably, to a conclusion that the General Division made an error of fact, an error of law, or failed to observe a principle of natural justice.

[14] It is not the Appeal Division's role in deciding leave to appeal to hear the case over again, or to reweigh the evidence.⁹ The claimant provides all the evidence and arguments required under the DESDA.¹⁰ However, the Appeal Division should go beyond what the Federal Court has called a "mechanistic" review of the grounds of appeal.¹¹

[15] Accordingly, I have reviewed the documentary record and I am satisfied that the General Division did not overlook or misconstrue the evidence in the Claimant's case.

[16] There is no doubt from the evidence that the Claimant had medical conditions in 2007 when he first applied for and the Minister refused his application for a disability pension. In November 2008, the Claimant started a business selling used cars. During the MQP, he created a

⁵ AD1-2 to 4.

⁶ Consistent with the principle in *Bossé v Canada (Attorney General)*, 2015 FC 1142.

⁷ *Canada Pension Plan*, s 42(2)(a).

⁸ General Division decision, para 10.

⁹ *Parchment v Canada (Attorney General)*, 2017 FC 354.

¹⁰ *Tracey v Canada (Attorney General)*, 2015 FC 1300.

¹¹ *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

full-time job for himself that was within his restrictions in terms of his ability to walk and to sit (he had ischemic heart disease, edema, and type 2 diabetes). It appears that he was taking phone calls, attending car auctions, showing and selling cars, and completing paperwork. He was working full time when the MQP ended on December 31, 2009. He did not stop working for medical reasons until September 2010, well after the end of the MQP, when he had a stroke.¹² The General Division concluded that he was not incapable regularly of pursuing any substantially gainful occupation at the end of the MQP in December 2009. That decision is supported by evidence from the record.

CONCLUSION

[17] The application for leave to appeal is refused.

Kate Sellar
Member, Appeal Division

REPRESENTATIVE:	J. P., self-represented
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¹² GT1-10.