



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. R. v Minister of Employment and Social Development*, 2019 SST 754

Tribunal File Number: AD-19-430

BETWEEN:

P. R.

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: August 12, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] P. R. (Claimant) applied for a Survivor's pension after the death of her spouse. The Minister of Employment and Social Development refused the application because it was made after the time to do so had expired.

[3] The Claimant applied again for this pension. The Minister of Employment and Social Development approved this application, and granted the Claimant 11 months of retroactive payment from the date of this application. The Claimant appealed the Minister's decision regarding when this pension was to start being paid, claiming that she was incapable of forming or expressing an intention to apply from July 2016 to August 2017. The Tribunal's General Division heard the appeal and dismissed it, finding that the Claimant was not so incapable. Leave to appeal the General Division's decision to the Tribunal's Appeal Division is refused because the appeal does not have a reasonable chance of success based on the grounds of appeal under the *Department of Employment and Social Development Act* (DESD Act).

PRELIMINARY MATTERS

[4] The Claimant's application to the Appeal Division did not contain grounds of appeal under the DESD Act. The Tribunal wrote to the Claimant and asked her to provide grounds of appeal. The Claimant responded in the time requested.

ISSUE

[5] Does the appeal have a reasonable chance of success because the General Division made an error in law or based its decision on an erroneous finding of fact under the DESD Act?

ANALYSIS

[6] The DESD Act governs the Tribunal's operation. It provides rules for appeals to the Appeal Division. An appeal is not a re-hearing of the original claim, but a determination of whether the General Division made an error under the DESD Act. The Act also states that there are only three kinds of errors that can be considered. They are that the General Division failed to observe a principle of natural justice, 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 must be refused if the appeal has no reasonable chance of success.² Therefore, to be granted leave to appeal the Claimant must present at least one ground of appeal that falls under the DESD Act and on which the appeal has a reasonable chance of success.

[7] The Claimant says that the General Division decision should be reconsidered because her documents were very clear and they should be re-evaluated. However, an appeal to the Tribunals' Appeal Division is not a re-hearing of the claim. It is an examination of the General Division decision to decide whether it made one of the errors set out in the DESD Act. The Appeal Division is not to reweigh the evidence to reach a different conclusion than the General Division did.³ Therefore, leave to appeal cannot be granted on this basis.

[8] The Claimant also says that the General Division made an error in law. However, she does not explain what this error was or how it was made. I have read the General Division decision and the documents filed with the General Division. The decision correctly sets out the law and applies it to the facts. The General Division also did not overlook or misconstrue any important information. Therefore it did not make an error in law or base its decision on an erroneous finding of fact.

[9] There is no suggestion that the General Division failed to observe a principle of natural justice.

¹ DESD Act s. 58(1)

² DESD Act s. 58(2)

³ *Misek v. Canada (Attorney General)*, 2012 FC 890

CONCLUSION

[10] Therefore, leave to appeal must be refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVES:	P. R., Self-represented
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