



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. R. v Minister of Employment and Social Development*, 2019 SST 1363

Tribunal File Number: AD-19-707

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: November 27, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] P. R. (Claimant) received a Canada Pension Plan disability pension until she turned 65 in 2011. She then received a Canada Pension Plan retirement pension. In 2016 the Claimant applied for a disabled contributor's child benefit (DCCB) because she is raising her grandchildren.

[3] The Minister of Employment and Social Development refused the application because the Claimant was not receiving a disability pension when she applied for the DCCB. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal.

[4] The Claimant now asks for leave (permission) to appeal this decision to the Tribunal's Appeal Division. However, the Claimant did not identify any grounds of appeal in her application. The Tribunal wrote to her, explained what grounds of appeal can be considered and asked the Claimant to provide this information. The Claimant did not respond to this letter.

[5] Leave to appeal is refused because there is no 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

[6] Does the appeal have a reasonable chance of success because the General Division made its decision without holding an oral hearing?

[7] Does the appeal have a reasonable chance of success because the General Division made an error under the DESD Act on which the Appeal Division can intervene?

ANALYSIS

[8] 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.

Issue 1: Failure to hold an oral hearing

[9] The General Division scheduled an oral hearing for the Claimant's appeal.³ The Claimant did not attend the hearing, and did not respond to the Tribunal when it left her a telephone message afterward.⁴ However, that the General Division made its decision without having held a hearing does not point to it having made an error under the DESD Act. The *Social Security Tribunal Regulations* state that if a party fails to appear at a hearing, the Tribunal may proceed in their absence if it is satisfied that the party received notice of the hearing.⁵ The General Division decision explains why it proceeded in the Claimant's absence. The Claimant does not argue that she did not have notice of the hearing. Therefore, the appeal does not have a reasonable chance of success on the basis that the General Division erred when it decided the appeal without her

¹ DESD Act s. 58(1)

² DESD Act s. 58(2)

³ GD0

⁴ General Division decision at para.4

⁵ *Social Security Tribunal Regulations* s. 12(1)

participating in an oral hearing.

Issue 2: Other errors

[10] In the application to the Appeal Division the Claimant wrote that she did not apply for the DCCB earlier because she did not know about it, and that an exception should be made in her case to allow her to receive the DCCB. This argument does not point to the General Division having made any error under the DESD Act.

[11] The Claimant does not say that she was not able to present her case to the Tribunal or to answer the other party's legal case.

[12] There is no suggestion that the General Division made an error in law. The General Division's job is to receive the evidence, weigh it and make a decision based on the law and the facts. The General Division has no power to make exceptions to the law based on compassion or extenuating circumstances.

[13] I have reviewed the General Division decision and the written record. The General Division did not overlook or misconstrue any important information.

CONCLUSION

[14] Leave to appeal is refused for these reasons.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVES:	P. R., Self-represented