



Citation: ML v Minister of Employment and Social Development, 2022 SST 563

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. L.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated February 8, 2022
(GP-21-750)

Tribunal member: Neil Nawaz

Decision date: June 24, 2022

File number: AD-22-298

Decision

[1] Leave to appeal is refused. I see no basis for this appeal to go forward.

Overview

[2] The Claimant is a 61-year-old former millwright with a history of mental health problems. In 2004, the Minister approved his application for a Canada Pension Plan (CPP) disability pension.

[3] In 2019, the Minister received information indicating that the Claimant had been working. The Minister conducted an investigation and found that the Claimant had taken jobs at Home Depot and several other employers between 2011 and 2017. The Minister terminated the Claimant's pension and assessed an overpayment totalling more than \$100,000.

[4] The Claimant appealed the Minister's decision to the Social Security Tribunal's General Division. He claimed that he had made multiple attempts to contact the Minister about his work activities starting in 2011 but the line was always busy. He said that he had no choice but to contact the Minister by telephone because he suffers from severe dyslexia.

[5] The General Division held a hearing by teleconference and dismissed the appeal. It found that the Claimant's mental health problems had abated. It found that the Claimant had managed to contact the Minister in writing on other occasions. Above all, it found that the Claimant had performed substantially gainful work for a series of employers between 2011 and 2017, earning amounts above the maximum CPP pension in some years.

[6] The Claimant is now requesting permission to appeal from the Appeal Division. He alleges that the General Division prevented him from making his case by failing to make allowances for his severe dyslexia.

Issue

[7] There are four grounds of appeal to the Appeal Division. A claimant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.¹

[8] An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.² At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.³ This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.⁴

[9] What does this mean? I have to decide whether the Claimant has raised an arguable case that falls under one or more of the permitted grounds of appeal.

Analysis

[10] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the Claimant does not have an arguable case.

There is no arguable case that the General Division ignored the Claimant's dyslexia

[11] The Claimant alleges that the General Division disregarded an essential element of his ongoing disability—his severe dyslexia—which he says essentially renders him mentally handicapped.⁵

¹ See *Department of Employment and Social Development Act* (DESDA), section 58(1).

² See DESDA, sections 56(1) and 58(3).

³ See DESDA, section 58(2).

⁴ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁵ See Claimant's application requesting leave to appeal dated May 5, 2022, AD1-4.

[12] I don't see an arguable case for this allegation.

[13] One of the General Division's roles is to establish facts. In doing so, it is presumed to have considered all the evidence before it.⁶ However, there is no need to make such a presumption in this case because it is clear that the General Division did in fact consider the Claimant's dyslexia. In its decision, the General Division wrote: "The Claimant now claims to be disabled due to a neurological problem with his spine. He also reports depression, hallucinations, scoliosis, memory issues, and a **severe learning disability**."⁷

[14] Having recognized his learning disability, the General Division cautioned that it was required to focus on the Claimant's functional limitations rather than his diagnoses. This statement accurately reflects the law.⁸ The General Division proceeded to examine the Claimant's activities between from 2011 to 2017. It ultimately found that, based on his employment and earnings during that period, he had ceased to be disabled.

[15] The Claimant plainly disagrees with this finding, but that is not enough to overturn the General Division's decision. In its role as finder of fact, the General Division is entitled to some leeway in how it weighs evidence.⁹ The Claimant may have a learning impairment, but that was just one of several factors that the General Division had to consider in assessing his disability.

There is no arguable case that General Division denied the Claimant a fair hearing

[16] The Claimant also alleges that the General Division failed to provide allowances for his dyslexia and suggests that, as a result, he was denied a full opportunity to present his case.

⁶ See *Simpson v Canada (Attorney General)*, 2012 FCA 82.

⁷ See General Division decision, paragraph 47. The General Division also addresses the Claimant's "severe dyslexia" in paragraphs 5 and 39.

⁸ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81 and *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁹ See *Simpson*, note 6.

[17] Again, I don't see an arguable case here.

[18] At the General Division, the Claimant argued that he was at a disadvantage in defending his pension because he had difficulty reading and writing correspondence. He appears to be making a similar argument at the Appeal Division, accusing the General Division of failing to accommodate his cognitive impairment. However, the record appears to indicate otherwise:

- When the Claimant submitted his notice of appeal past the 90-day deadline, the General Division granted him an extension of the filing deadline;¹⁰
- In his notice of appeal to the General Division, the Claimant expressed “no preference” for any particular type of hearing;¹¹
- The General Division then gave the Claimant a hearing by videoconference, which it later changed to teleconference because of technical issues.
- When needed, the Claimant has managed to communicate in writing at length with, first the Minister,¹² and later the General Division;¹³ and
- On several occasions, navigators—staff employed by the Tribunal to help unrepresented claimants with their appeals—discussed the General Division's rules and procedures with the Claimant and sent him two follow-up letters telling him what to expect at the hearing.¹⁴

[19] The Claimant may, as he claims, be functionally illiterate, but the General Division provided him with an oral hearing to explain why he never stopped being disabled despite his post-2011 employment and earnings. I don't deny that the rules around the CPP are complex. It is never easy for claimants to represent themselves in these appeals. However, the record shows that the General Division and its staff went

¹⁰ See General Division's decision on extension of time dated May 20, 2021.

¹¹ See Claimant's notice of appeal to the General Division, dated March 29, 2021, GD1-3.

¹² For example, see Claimant's letter date-stamped March 24, 2020, GD2-12.

¹³ See Claimant's letter accompanying his notice of appeal to the General Division dated March 29, 2021, as well as follow-up emails dated April 9, 2021 and May 5, 2021.

¹⁴ See records of telephone discussions with navigator on April 15, 2021, June 2, 2021, July 8, 2021, and January 31, 2022. On June 17, 2021 and July 8, 2021, the navigator sent the Claimant follow up letters summarizing their discussions.

some distance in helping the Claimant negotiate his way through the appeals process. If the Claimant lost his appeal, it wasn't because the General Division failed to accommodate his learning impairment.

Conclusion

[20] The Claimant has not identified any grounds of appeal that would have a reasonable chance of success on appeal. Thus, permission to appeal is refused.



Member, Appeal Division