



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *G. B. v. Minister of Employment and Social Development*, 2016 SSTADIS 187

Tribunal File Number: AD-16-643

BETWEEN:

**G. B.**

Appellant

and

**Minister of Employment and Social Development  
(formerly known as the Minister of Human Resources and Skills  
Development)**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Janet Lew

DATE OF DECISION: May 25, 2016

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] The Applicant seeks leave to appeal the decision of the General Division, dated February 8, 2016, which determined that he was not eligible for a disability pension under the *Canada Pension Plan*, because his disability was not “severe” by the end of his minimum qualifying period of December 31, 2006. The Applicant applied for leave to appeal on May 4, 2016. The Applicant can only succeed on this application if I am satisfied that the appeal has a reasonable chance of success.

### **ISSUE**

[2] Does the appeal have a reasonable chance of success?

### **SUBMISSIONS**

[3] The Applicant submits that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction. The Applicant further submits that the General Division also 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. In particular, he alleges that there are several points within the decision of the General Division which are “problematic”.

[4] The Applicant alleges that there are also problems with his medical records and file, as they are “inaccurate, incomplete, problematic, disturbing, hurtful, conflicting [and] troubling”. As a result, the Applicant has written to four physicians, requesting that they address the problematic points in the decision of the General Division, clarify the “different of [*sic*] interpretations”, clarify his medical history and where appropriate, amend his medical file. The Applicant notes that he has registered a complaint against one of his treating physicians, as he is of the position that his physician did not provide adequate care. The Applicant indicates that once he has received responses from each of the physicians, he will forward them to the Social Security Tribunal.

[5] The Social Security Tribunal provided a copy of the leave materials to the Respondent. However, the Respondent did not file any written submissions.

## **ANALYSIS**

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

- (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.

[7] Before leave can be granted, I need to be satisfied that the reasons for appeal fall within the enumerated grounds of appeal under subsection 58(1) of the DESDA and that the appeal has a reasonable chance of success. The Federal Court of Canada endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

### **(a) Natural justice**

[8] The Applicant's counsel did not identify where the General Division may have failed to observe a principle of natural justice, and I am therefore unprepared to grant leave to appeal on this ground.

### **(b) Erroneous finding of fact**

[9] The Applicant alleges that the General Division based its decision on erroneous findings of fact made without regard for the material before it. He enclosed a radiology report of August 29, 2007 which states that he did not have a left dislocated shoulder. He also enclosed a MRI report of his left shoulder, dated May 4, 2013, which shows that he has

acromioclavicular osteoarthritis. He submits that the General Division erred as it relied on x-rays of his left shoulder to rule out any serious pathology. The Applicant argues that the x-rays would not have revealed the acromioclavicular osteoarthritis. It was therefore an error by the General Division to conclude that he did not have a severe disability involving his left shoulder, when there was evidence before it in the MRI.

[10] At paragraph 31 of its decision, the General Division referred to the MRI of the left shoulder. It wrote that the MRI showed no evidence of rotator cuff tear. A review of the MRI report (at GD1-68) indicates that the report also shows that moderate acromioclavicular osteoarthritis was present and that the radiologist's opinion was that there was no evidence of a rotator cuff tear. On this basis, it cannot be said that the General Division misstated the evidence or that it made an erroneous finding of fact, as indeed the MRI indicated that there was no evidence of a rotator cuff tear. In any event, there is no requirement that a decision-maker "make an explicit finding on each constituent element ... leading to its final conclusion": *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62. It does not appear either that the General Division relied on the results of this MRI, or that it based its decision on the MRI. A review of the decision of the General Division indicates that it focused on the medical consultations and treatments which addressed the Applicant's disability prior to or at the end of the minimum qualifying period.

[11] I am not satisfied that the appeal has a reasonable chance of success on this ground.

**(c) Additional medical records**

[12] The Applicant intends to file additional medical records in support of his claim and to clarify or address any inconsistencies in the existing medical file. As the Federal Court recently pronounced in *Canada (Attorney General) v. O'Keefe*, 2016 FC 503, an appeal to the Appeal Division does not allow for new evidence and is limited to the three grounds of appeal listed in subsection 58(1) of the DESDA. There is no suggestion by the Applicant that these additional medical records address any of the grounds of appeal listed in subsection 58(1) of the DESDA.

[13] Essentially, the Applicant is seeking a reassessment. As the Federal Court held in *Tracey*, it is not the role of the Appeal Division to reassess the evidence or reweigh the factors considered by the General Division when determining whether leave should be granted or denied. I am not satisfied that there is a reasonable chance that the Applicant will succeed in demonstrating that a reassessment is appropriate.

## **CONCLUSION**

[14] I am not satisfied that the appeal has a reasonable chance of success and the application for leave to appeal is therefore dismissed.

*Janet Lew*  
Member, Appeal Division