



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *N. M. v. Minister of Employment and Social Development*, 2016 SSTADIS 210

Tribunal File Number: AD-16-158

BETWEEN:

**N. M.**

Applicant

and

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

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Leave to Appeal**

---

DECISION BY: Janet Lew

DATE OF DECISION: June 15, 2016

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] The Applicant seeks leave to appeal the decision of the General Division, dated November 23, 2015. The General Division determined that the Applicant was not eligible for a disability pension under the *Canada Pension Plan*, because her disability was not “severe” by the end of her minimum qualifying period of December 31, 2009. The Applicant applied for leave to appeal on January 14, 2016. She filed a medical letter dated May 11, 2015, from her physiotherapist, which supports her claim to a disability pension. 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 she is entitled to a *Canada Pension Plan* disability pension because she has a medical condition which has left her with multiple functional limitations. She reports that she has had this condition since 1976, when she began working, and that her condition has become worse over time. Her physiotherapist stated in a medical opinion dated May 11, 2015 that the Applicant will have lifelong limitations (AD1A-4).

[4] The Applicant’s representative wrote to the Social Security Tribunal (SST), in response to its letters dated January 19, 2016 and March 8, 2016. The SST had advised the Applicant that she had not identified the reasons for her appeal. Notes of a telephone discussion on January 26, 2016 between the Applicant’s representative and an employee of the SST, which are reproduced below, suggest that the employee explained the three grounds of appeal under subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA).

## Telephone Conversation Log / Journal de conversation téléphonique

Recorded by/ Enregistré par:	Price-Arsenault , Cory
Date:	January 26, 2016

FYI / À titre d'information:

Please Call Back / Veuillez rappeler:

Urgent

Message: AD-16-158

10:16: Appellant's rep called for clarification as to the notice of incomplete application dated Jan 19<sup>th</sup>. I explained that I did not see him listed as the representative on file and he said he would resent the ATD form. I explained that I would be unable to speak to him of appeal specifics but that I could help him with general tribunal questions. He asked what was required in terms on reasons for appeal and I explained the 3 grounds for appeal to the AD (natural justice, error law or fact). He said he would fax this into the tribunal.

[5] On March 24, 2016, the Applicant's representative confirmed that he had submitted all of the medical documentation to the SST to substantiate the Applicant's claim.

[6] The SST provided a copy of the leave materials to the Respondent. However, the Respondent did not file any written submissions.

### ANALYSIS

[7] Subsection 58(1) of the 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.

[8] 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.

[9] Despite the SST's letters of January 19, 2016 and March 8, 2016, the Applicant has not identified any grounds of appeal under subsection 58(1) of the DESDA. As the Federal Court held in *Auch v. Canada (Attorney General)*, 2016 FC 199, where an applicant fails to put forward any grounds of appeal stipulated in subsection 58(1) of the DESDA, that appeal must be refused.

[10] I have examined the medical evidence and compared it to the General Division's decision, in the event that important evidence might have been overlooked or possibly misconstrued. I do not see that the General Division overlooked or misconstrued important evidence. As the General Division indicated, there was relatively little in the way of medical documentation which addressed the Applicant's disability at the end of her minimum qualifying period of December 31, 2009. The medical reports and records on file primarily dated from 2013 onwards, and on top of that, did not provide any opinion on the status of the Applicant's disability at the end of the minimum qualifying period. It was immaterial that Applicant currently has significant limitations, as she had to establish that she had a severe and prolonged disability on or before the minimum qualifying period. In this instance, the General Division determined that there was simply insufficient documentation to establish that the Applicant was disabled on or before December 31, 2009.

[11] Essentially, the Applicant is seeking a reassessment of her claim, in part based on the medical opinion of her physiotherapist. As the Federal Court held in *Tracey*, it is not appropriate for the Appeal Division, in determining whether leave should be granted or denied, to reassess the evidence or reweigh the factors considered by the General Division. More recently, the Federal Court recently pronounced in *Canada (Attorney General) v. O'Keefe*, 2016 FC 503 that 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. From this, it is also apparent that an appeal does not provide an opportunity for a reassessment. There is no suggestion by the Applicant either that the physiotherapist's report addresses any of the grounds of appeal listed in subsection 58(1) of the DESDA.

## **CONCLUSION**

[12] 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