



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. P. v. Minister of Employment and Social Development*, 2016 SSTADIS 484

Tribunal File Number: AD-16-343

BETWEEN:

J. P.

Applicant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Hazelyn Ross

Date of Decision: December 8, 2016

REASONS AND DECISION

INTRODUCTION

[1] In a decision that it issued on December 29, 2015, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a disability pension under the *Canada Pension Plan* was not payable to the Applicant. The Appeal Division of the Tribunal received her application for leave to appeal (Application) the General Division decision on February 19, S 2016.

GROUND OF THE APPEAL

[2] On the behalf of the Applicant, her representative submitted that the General Division breached a principle of natural justice, or failed to exercise its jurisdiction or acted in excess of its jurisdiction. She submitted that it did so by failing to have regard for the material before it. (AD1-3) The Applicant's representative cites a failure by the General Division to fully consider the September 2015 report of the Applicant's former family physician, Dr. Gorrell. In this report, Dr. Gorrell refers to the lasting effects of emotional and psychological trauma that the Applicant suffered as a result of sexual assault.

ISSUE

[3] The Appeal Division must decide if the appeal has a reasonable chance of success.

THE LAW

[4] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (DESD Act), "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and "the Appeal Division must either grant or refuse leave to appeal."

[5] Subsection 58(2) of the DESD Act provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success."

SUBMISSIONS

[6] The Applicant's representative submitted that she was seeking leave to appeal on the basis that, while the General Division cited Dr. Gorrell's report in its decision it did not "consider the emotional and psychological trauma suffered by the Appellant." She stated that the Applicant's emotional and psychological trauma were related to the challenges that Dr. Gorrell reported that she had in the areas of social, emotional, coping with stress and interpersonal relationships."

[7] The Applicant's representative also submitted that the General Division failed to give any weight to her psychological, social and emotional deficits and their impact on the Applicant's ability to sustain employment. She also alleged that the General Division refused to hear evidence regarding these medically reported conditions and experiences.

ANALYSIS

[8] The Appeal Division has had the opportunity to listen to the recording of the General Division hearing. Having done so, it is not the Appeal Division's understanding that the Member refused to hear evidence regarding the Applicant's "medically reported conditions and experiences" as alleged.

[9] At 23:17, there is a discussion of Dr. Gorrell's report of September 2015 in relation to why the Applicant stopped work. During the interchange with the General Division Member, the Applicant's representative agreed that psychological issues played no part of the reasons why she stopped work. At 24:14 the Applicant's representative confirms that her panic attack had been an isolated incident. The question is raised again at 22:59. At this point the General Division indicates that the documentary evidence contained little reference to psychological issues prior to the MQP. At 35:36 the parties agreed that psychological issues were not relevant to the determination of the Applicant's capacity on or before the MQP and agreed to move on.

[10] On the basis of the Appeal Division's understanding of what transpired at the hearing, it is not persuaded that the General Division erred in the manner alleged. Specifically, the Appeal Division finds that the General Division did not disregard material that was before it.

Accordingly, the Appeal Division finds that the submissions of the Applicant's representative do not give rise to grounds of appeal that would have a reasonable chance of success.

CONCLUSION

[11] The Application is refused.