



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. M. v. Minister of Employment and Social Development*, 2017 SSTADIS 258

Tribunal File Number: AD-16-616

BETWEEN:

**A. M.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

---

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

---

Leave to Appeal Decision by: Janet Lew

Date of Decision: June 1, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] The Applicant seeks leave to appeal the General Division decision dated February 20, 2016. The General Division determined that the Applicant was not eligible for a disability pension under the *Canada Pension Plan*, as it found that her disability was not “severe” by the end of her minimum qualifying period on December 31, 2015.

### ISSUE

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

### GROUND OF APPEAL

[3] 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.

[4] Before granting leave to appeal, 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 endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[5] The Applicant submits that the General Division erred in law by failing to consider the reasonableness of her explanation for not seeking alternative or modified work. She claims that *M.C. v. Minister of Human Resources and Skills Development* (May 14, 2010),

CP 26420 at para. 36 (PAB), where Boland J. wrote that applicants who have not demonstrated a meaningful effort to try alternative work are “obliged to provide reasonable explanations or be disentitled,” is convincing in this regard. She notes that the decision has been followed: *H. W. v. Minister of Employment and Social Development*, 2014 SSTAD 309.

[6] The Applicant further submits that it was reasonable for her not to seek alternative or modified work, as it would have led her private insurer to terminate her long-term disability benefits. She claims that, had she attempted to pursue alternative work and then failed as a result of her disability, she would have been left financially destitute without either employment income or private disability benefits. The Applicant claims that attempting alternative employment was not a viable option, given the circumstances.

[7] The Applicant asserts that the General Division failed to indicate whether it had considered the Applicant’s explanation as to why she had not sought any alternative or modified work.

[8] The General Division indicated that the Applicant had not attempted either part-time or alternative work suitable to her medical conditions and functional limitations, or a return to work with modified duties with her former employer.

[9] I am satisfied that an arguable case has been made that (1) the General Division was required to assess the reasonableness of an applicant’s failure to seek alternative or modified work and, if so, (2) it may have erred in failing to consider the Applicant’s explanation as to why she did not seek alternative or modified work. This by no means suggests that I have necessarily accepted that the General Division is required to assess whether it is reasonable for an applicant not to seek alternative or modified work, or whether the Applicant’s explanation is at all reasonable, as these are issues that the Applicant may address in her submissions.

## **CONCLUSION**

[10] The application for leave to appeal is granted. This decision granting leave to appeal does not in any way prejudge the result of the appeal on the merits of the case.

Janet Lew  
Member, Appeal Division