Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *C. V. v. Minister of Employment and Social Development*, 2017 SSTADIS 457

Tribunal File Number: AD-17-257

BETWEEN:

**C. V.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

---

# SOCIAL SECURITY TRIBUNAL DECISION

## Appeal Division

---

Leave to Appeal Decision by: Jennifer Cleversey-Moffitt

Date of Decision: September 19, 2017

## REASONS AND DECISION

## INTRODUCTION

[1] The Respondent date-stamped the Applicant's application for a *Canada Pension Plan* (CPP) disability pension on May 25, 2015. The Respondent refused the application initially and upon reconsideration. The Applicant appealed the reconsideration decision to the General Division of the Social Security Tribunal of Canada (Tribunal). On January 16, 2017, the General Division determined that a disability pension under the CPP was not payable. The Applicant filed an application for leave to appeal (Application), which the Tribunal's Appeal Division received on August 5, 2016.

[2] On March 27, 2017, the Tribunal wrote to the Applicant requesting further information, as the initial Application did not identify the grounds for appeal. The Applicant provided her response, which the Tribunal's Appeal Division received on April 10, 2017.

## ISSUE

[3] The Member must decide whether 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* (DESDA), "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 DESDA provides that "[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success."

[6] According to subsection 58(1) of the DESDA, the only grounds of appeal are 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 made in a perverse or capricious manner or without regard for the material before it.

[7] The process of assessing whether to grant leave to appeal is a preliminary one. The review requires an analysis of the information to determine whether there is an argument that would have a reasonable chance of success on appeal. This is a lower threshold to meet than the one that must be met on the hearing of the appeal on the merits. The Applicant does not have to prove the case at the leave to appeal stage: *Kerth v. Canada (Minister of Human Resources Development)*, 1999 CanLII 8630 (FC). The Federal Court of Appeal, in *Fancy v. Canada (Attorney General)*, 2010 FCA 63, determined that an arguable case at law is akin to determining whether, legally, an appeal has a reasonable chance of success.

**SUBMISSIONS**

[8] The Applicant is appealing the General Division decision because she believes that the General Division erred in law in making its decision. She submits that the General Division should have accepted that she has a disability.

[9] In her initial Application, the Applicant submitted that her pain is chronic and that she has a difficult time getting from "point A to point B." Additionally, she submitted that the Tribunal should send someone to view her foot to determine whether it is a disability. She submitted that she should definitely be approved for a CPP disability pension because other people have been approved and she does not think their disabilities are as serious as hers is.

[10] In her response to the Tribunal's letter of March 27, 2017, the Applicant wrote:

> I feel that my application to the Appeal Division has a reasonable chance of success because I feel that I definitely have a legitimate disability with my foot and leg. As I have said many times before, if you saw my leg and foot, you would see that I definitely have a real disability. (AD1B-3)

[11] It should also be noted that, in her initial Application, she did submit that the Tribunal had asked numerous questions and that she had answered all of them to the best of her ability. (AD1-2)

**ANALYSIS**

[12] It is insufficient to make a general statement that the General Division made an error in law and to then neglect to specify where that error in law was and how it may have impacted the decision.

[13] It does appear from the Application and from the response to the Tribunal's letter of March 27, 2017, that the Applicant is in disagreement with the General Division decision, but she does not specify where the error in law has occurred. Mere disagreement with the outcome of the decision is not a ground of appeal.

[14] In reading the General Division decision, I believe that it is evident that the Member acknowledges that the Applicant was suffering from multiple conditions but that the disability was not severe and prolonged as of the date of her minimum qualifying period (MQP) of December 31, 2008. At paragraph 29 of the General Division decision, the Member writes:

> The preponderance of medical evidence presented to the Tribunal along with the Appellant's answers indicate that the Appellant was having issues with her flat feet after her knee replacement surgery had been completed. However the fact is that the Appellant was not suffering from these issues at the time of her MQP. The fact that the Appellant indicated in her questionnaire that she was unable to work after January 1, 2010 shows the Tribunal that the Appellant acknowledges her abilities at the time of her MQP and while she was suffering from pain she still had options available to her that would relieve that pain. The evidence also indicates that the level of pain was not of such a state at the time of her MQP and did not increase until 2010 when she first mentions it to her family doctor.

[15] For the purposes of a leave to appeal application, I am restricted to considering only those grounds of appeal that fall within subsection 58(1) of the DESDA. The subsection does not permit me to undertake a reassessment of the evidence.

[16] There is no suggestion by the Applicant that the General Division failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law, nor has she identified any erroneous findings of fact that the General Division, in coming to its decision, may have made in a perverse or capricious manner or without regard for the material before it. Instead, all the submissions focus on how the Applicant feels that she should be entitled to a CPP disability pension because her assessment of her condition is that it is a severe disability.

[17] The General Division examined the Applicant's personal circumstances as they existed at the end of her MQP. The Member found that the medical evidence did not support a finding that she had been suffering from a severe disability prior to the end of her MQP.

[18] It should be noted that paragraph 58(1)(*b*) of the CPP provides that an error of law, regardless of whether it is apparent on the face of the record, is a ground of appeal. The Appeal Division is satisfied that the General Division properly applied the case law and committed no error of law, apparent or not, that could provide a ground of appeal.

[19] The Applicant clearly disagrees with the General Division decision. However the Applicant's submissions do not identify a ground of appeal that has a reasonable chance of success on appeal. Instead, the Application is essentially requesting that the Appeal Division reweigh the evidence and come to a different conclusion. In *Parchment v. Canada (Attorney General)*, 2017 FC 354, in paragraph 23 of the decision, the Federal Court again explained the Appeal Division's role:

> In considering the appeal, the Appeal Division has a limited mandate. They have no authority to conduct a rehearing of Mr. Parchment's case. They also do not consider new evidence. The Appeal Division's jurisdiction is restricted to determining if the General Division committed an error (ss. 58(1) (a) through (c) of the DESDA) and the Appeal Division is satisfied that an appeal has a reasonable chance of success (58(2) of the DESDA). Only if the criteria of ss. 58(1) and (2) are met does the Appeal Division then grant leave to appeal.

[20] The Appeal Division's role is to determine whether the General Division has made a reviewable error set out in section 58(1) of the CPP and, if so, to provide a remedy for that error. In the absence of such a reviewable error, the law does not permit the Appeal Division to intervene. It is not the Appeal Division's role to rehear the case *de novo*. The General Division's decision provided an analysis that suggests that the Member conducted a meaningful assessment of the evidence and that he had defensible reasons supporting the conclusion.

[21] I bear in mind the Federal Court's decision in *Griffin v. Canada (Attorney General)*, 2016 FC 874 (CanLII), where Justice Boswell provided guidance as to how the Appeal Division should address applications for leave to appeal under s. 58(1) of the DESDA:

> [20] It is well established that the party seeking leave to appeal bears the onus of adducing all of the evidence and arguments required to meet the requirements of subsection 58(1): see, e.g., *Tracey*, above, at para 31; also see *Auch v. Canada (Attorney General)*, 2016 FC 199 (CanLII) at para 52, [2016] FCJ No 155. Nevertheless, the requirements of subsection 58(1) should not be applied mechanically or in a perfunctory manner. On the contrary, the Appeal Division should review the underlying record and determine whether the decision failed to properly account for any of the evidence: *Karadeolian v. Canada (Attorney General)*, 2016 FC 615 (CanLII) at para 10, [2016] FCJ No 615.

[22] I have reviewed the underlying record and have not identified any instance of where the General Division Member failed to properly account for any portion of the evidence.

[23] I conclude that the proposed appeal has no reasonable chance of success. I am not satisfied that the appeal has a reasonable chance of success on appeal.

**CONCLUSION**

[24] For the reasons set out above, the Application is refused.

Jennifer Cleversey-Moffitt
Member, Appeal Division